



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 30 April 2019**

**Session 5**



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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**

**14<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)  
\*Colin Beattie (Midlothian North and Musselburgh) (SNP)  
\*Angela Constance (Almond Valley) (SNP)  
\*Jamie Halcro Johnston (Highlands and Islands) (Con)  
Dean Lockhart (Mid Scotland and Fife) (Con)  
\*Gordon MacDonald (Edinburgh Pentlands) (SNP)  
\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Scott Bell (Scottish Government)  
Joe FitzPatrick (Minister for Public Health, Sport and Wellbeing)  
Derek Mackay (Cabinet Secretary for Finance, Economy and Fair Work)  
Nadine Murphy (Scottish Government)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

*Tuesday 30 April 2019*

*[The Convener opened the meeting at 10:32]*

#### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning and welcome to the 14th meeting in 2019 of the Economy, Energy and Fair Work Committee. I have received apologies from committee member Dean Lockhart. I ask everyone to ensure that all devices are turned to silent.

Under agenda item 1, the committee is asked whether it agrees to take items 7 and 8 in private. Do we agree to do so?

**Members indicated agreement.**

## Subordinate Legislation

### Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2019 [Draft]

10:33

**The Convener:** For agenda item 2, I welcome Joe FitzPatrick, the Minister for Public Health, Sport and Wellbeing. He is joined by Nadine Murphy, Paul Ingram and Elaine Black from the Scottish Government. I invite the minister to make an opening statement on the instrument.

**The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick):** Good morning. The order that is before the committee is largely technical in nature, but I thought that it would be helpful to put on record some background and context to its purpose.

The independent living fund was a United Kingdom scheme that made care payments to severely disabled people. The scheme closed to new applicants in April 2010 and ceased to operate on 30 June 2015. The Scottish Government made a commitment to maintain the ILF in Scotland and established ILF Scotland, which operated from 1 July 2015.

The funding is used by recipients for services that they otherwise would not have and which offer them flexibility to live in their own home or take up employment or education and which help to reduce social isolation. An agreement has been reached to allow ILF Scotland, on behalf of the Northern Ireland Executive, to distribute packages of ILF support to existing recipients of ILF payments who live in Northern Ireland.

ILF Scotland was established in 2015 as a company that was limited by guarantee and owned wholly by the Scottish ministers to meet the very tight timeframe for delivery and to ensure that payments were protected. At the time, ILF Scotland appointed its own external auditor, and its annual accounts have been audited under the commercial sector audit requirements that are set out in the Companies Act 2006.

In June 2018, ILF Scotland was established as a new devolved Scottish public body, with the classification of executive non-departmental public body. NDPBs follow an executive model framework that requires that external auditing is provided by the Auditor General for Scotland. The Auditor General for Scotland is a statutory auditor whose services are outlined in the Public Finance and Accountability (Scotland) Act 2000. The auditor is accountable to the Scottish Parliament

and has several statutory powers to assist the auditing process. It is therefore desirable, for auditing and accountability purposes, for ILF Scotland to be on the same footing as other statutory NDPBs. To that end, the order's purpose is to enable the Auditor General for Scotland to provide external audit services to ILF Scotland. In seeking to make the change, we have consulted the Scottish Government legal directorate, senior staff from the Auditor General for Scotland's office and ILF Scotland.

The order will subject ILF Scotland to section 1226 of the Companies Act 2006, which will allow the Auditor General for Scotland to be appointed as the statutory external auditor, and to section 483 of the 2006 act, which will allow ILF Scotland to be specified as a body that is subject to the Auditor General's auditing powers.

I am happy to take any questions on the order.

**Andy Wightman (Lothian) (Green):** The Delegated Powers and Law Reform Committee has drawn attention to the fact that the order has not followed proper drafting practice in relation to territorial designation. The Government's response is, basically, that that does not matter because ILF Scotland is clear about what it does. Regardless of whether it matters, proper drafting practice would seem to be a good thing; not following proper drafting practice complicates the scrutiny of legislation, because we need to determine whether the drafting matters, whereas if proper drafting practice is carried out in the first place, we do not need to do that. What is your response to that, minister?

**Joe FitzPatrick:** The matter was raised by the Delegated Powers and Law Reform Committee, which, I think, was satisfied by the response that it received from the Government.

**Nadine Murphy (Scottish Government):** The Scottish Government's view is that the order extends to the whole of the UK, as a matter of Scots law. That reflects the general UK-wide extent of the enabling powers that are set out in section 483 of the 2006 act, under which the order is drafted, and, therefore, in line with drafting practice, a provision that deals with extent is not required. That position is supported by the Scottish statutory instrument drafting manual, which states that an instrument will have the same extent as the power under which it is made. In those circumstances, to include a provision on extent could be criticised as being unnecessary. That criticism was made of the Construction Contracts (Scotland) Exclusion Order 2011.

Subordinate legislation that contains no express proposition about its extent is presumed to have the same extent as the parent act. It is useful to note that similar orders have been made by

Scottish ministers under the enabling powers of UK acts of Parliament that have UK-wide extent. That was demonstrated by the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Amendment Order 2014 and, more notably, by the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2008, which was made using the same enabling powers as those used for this draft order. The 2008 order forms a precedent for making legislation under section 483 of the 2006 act.

**Andy Wightman:** Thank you. I follow all that. Can I take it that there is a difference of opinion between the Scottish Government and the Parliament on whether proper drafting practice has been followed? You are arguing that the statutory instrument manual suggests that including a provision on extent is not required.

**Nadine Murphy:** Yes.

**Andy Wightman:** However, the Delegated Powers and Law Reform Committee said that there was a failure. Is it fair to say that there is a difference of opinion?

**Nadine Murphy:** That is fair. Our drafting is supported by what the manual says and by precedent. In fact, the same drafting was used for an order that had the same parent act as the order that is before the committee.

**Joe FitzPatrick:** It is not unusual for there to be differences of opinion on drafting, but the Government fully appreciates the work that the Delegated Powers and Law Reform Committee does in raising such issues so that we can ensure that we get things absolutely right.

**John Mason (Glasgow Shettleston) (SNP):** On timing, I want to clarify why the order is being made now rather than last year, next year or some other time.

**Joe FitzPatrick:** The order could not be introduced until the ILF's function changed to become an NDPB.

**John Mason:** This was the first opportunity that the order could be made.

**Joe FitzPatrick:** Yes—in effect, this is the first opportunity.

**The Convener:** As there are no further questions from committee members, we will move to the formal debate on the motion to approve the affirmative instrument. I invite the minister to formally move the motion.

*Motion moved,*

That the Economy, Energy and Fair Work Committee recommends that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for

Scotland) Order 2019 [draft] be approved.—[Joe FitzPatrick]

*Motion agreed to.*

**The Convener:** Does the committee agree to the clerk and I producing a short factual report of the committee's decision and to our arranging for it to be published?

**Members indicated agreement.**

**The Convener:** I thank the minister and his officials.

10:41

*Meeting suspended.*

10:43

*On resuming—*

## **Construction and Scotland's Economy**

**The Convener:** The next item on this morning's agenda is the committee's inquiry into construction and Scotland's economy. I welcome to the meeting Derek Mackay, Cabinet Secretary for Finance, Economy and Fair Work, who is joined by Scott Bell, head of procurement development and construction review division, and Elizabeth Stark, head of manufacturing and construction, in the Scottish Government.

I will ask a couple of questions about issues that have arisen during the course of the committee's inquiry. The first relates to the measurement of the economic performance of the sector. I understand that the Scottish Government has recently adjusted the methodology for construction output and gross domestic product due to anomalies that appear to be impacting Scotland's economic performance figures. Some of the witnesses commented to the committee on the issue, including Dr Stuart McIntyre, who accepted that progress had been made but indicated that the methodology is not yet perfect.

Will the cabinet secretary update us on progress regarding further adjustment of the methodology?

**The Cabinet Secretary for Finance, Economy and Fair Work (Derek Mackay):** Sure, that is a good question. I had a short opening statement and a long opening statement, and thought you would prefer the short one, but I will not give any opening statement at all. [*Laughter.*] We can go straight to questions, as is, of course, your prerogative.

10:45

**The Convener:** My apologies, cabinet secretary.

**Derek Mackay:** It is fine; I am happy to go straight to questions, if that is what you wish.

**The Convener:** Perhaps we could have a compromise: if you make a brief opening statement and then come to my question, would that be an agreeable way of proceeding?

**Derek Mackay:** I will give an even shorter opening statement than I intended to give.

I am very grateful for the opportunity to discuss construction with the committee. It is a very timely piece of work, as we shape actions going forward and knowing how important construction is to Scotland's economy, the workforce and, in turn, our wider objectives as a nation. That is as short

an opening statement as I can manage and not at all what I was intending to say.

To answer your question, if you ask two economists for a forecast, you will get at least two opinions and they will not necessarily contain the same figures. It is fair to say that, as we get a deeper understanding of the statistics on GDP growth and the economy, particularly in relation to construction, there has been a requirement for further work, realignment and adjustment. That is what has changed the GDP statistics over the past few years—there is no suggestion that it has been anything other than our trying to understand what is counted and what is not. The Office for National Statistics has gone over the information at a UK level and is now doing work at a regional and, for us, a Scottish level, in order to understand the GDP statistics. The question has been about what we choose to count and what is not counted. I understand that the adjustment that was made last year—so, some months back—was largely around renewables as they relate to construction. Of course, the economists can give further information, but the statistics have been sharpened up.

As the committee will be aware, in summary, the GDP statistics showed that there was less economic growth in relation to construction in previous years and more growth in recent years.

**The Convener:** You will be aware that the committee has heard evidence on retentions, and I understand that research on retentions has been commissioned by the Scottish Government. Do you have an indication of the direction of travel in which the Scottish Government is thinking of going? Some witnesses suggested the complete abolition of retentions. Can you give us any indication?

**Derek Mackay:** Not yet, but I can certainly explain some of the thinking right now. I have heard some of the opinions; some people would like a complete abolition of retentions, but others see a role for them. It is probably a question of balance. A retention is not the only tool in the box, so to speak. However, it may be one of the mechanisms that we have for quality assurance. We do not want a situation—in either the public or the private sector, but let us say in the public sector for this example—in which if we have commissioned work but are not assured that the project has been completed to our satisfaction, we have very little recourse against the contractor, so there may still be a role for retentions going forward. However, their role must never be to improve the cash flow of the client or those who are contracting the works. A retention should be used for quality assurance purposes—to assure people that there are levers that can be deployed

to ensure that what was paid for is what has been delivered.

Research has been undertaken and I think that the report is being compiled. Once that has been concluded it, as well as the evidence that the committee has harvested, can inform our opinion on the issue. I am open minded about the future use of retentions, but they have to be one of many tools that can be used to ensure that we get value for money and a satisfactory conclusion to contracts. There are no conclusions yet, but I am happy to look at the evidence.

**John Mason:** As well as retentions, one of the options is project bank accounts, although the evidence on them has been mixed. It is positive that the threshold has been reduced, but there was some feeling that bigger companies benefit more from them and that tier 3 and 4 companies that are further down the supply chain do not benefit as much. The argument was that, in effect, they take money out of everyone's pockets, because it is sitting somewhere else.

How do you feel about project bank accounts?

**Derek Mackay:** Again, it is about balance. On the whole, project bank accounts are perceived to be a good thing. We have lowered the threshold so that there can be more access to them. Arguably, the biggest beneficiaries are the small and medium-sized enterprises and sub-contractors that run through the supply chain, because they mean that they can get access to what they are due more quickly. We see a benefit to them.

We are not making them mandatory for every contract, although we have reduced the threshold so that they can be deployed. I am happy for officials to go into further detail about the thresholds. On the whole, there is more consensus that project bank accounts are welcome rather than something that is disliked by those further down the supply chain.

I should say that a further tool, in addition to retentions and project bank accounts, is performance bonds. They can be used by those procuring the work to get assurances around delivery. That is a different financial intervention that might work for others. As I say, there is more than one tool to ensure cash flow.

We are all trying to ensure that resources flow through the system, so that proper payment is made for the work that is done as opposed to people being able to retain cash for the wrong purposes, which causes great difficulties for businesses, particularly SMEs—that, I am sure, is what Mr Mason is driving at.

**John Mason:** Is the threshold at the right level just now?

**Derek Mackay:** The thresholds have been moved, and they could be moved further. Those are the mandatory thresholds. However, we could explore whether we could do more through choice where there might be agreement. We could be more flexible with thresholds and move them further than they have already been moved.

The level feels pretty optimum right now, but if businesses further down the contract levels wish to deploy thresholds, I would see that as a positive thing.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I want to look at access to finance. Evidence indicates that, especially for SME construction firms, there is an increasing barrier to accessing finance. First-echelon lenders—the banks and so on—seem to have more or less withdrawn from lending to the construction market, which forces the SMEs in particular to specialist, second or third-echelon lenders, and sometimes even private equity and challenger banks. As we have heard, all those are much more expensive than the traditional route.

Are you satisfied that the current access to finance for SMEs is sustainable and adequate?

**Derek Mackay:** There is more that we can and must do, and that includes the financial products that Government has. On banks and lenders, I was at the Financial Services Advisory Board yesterday—the First Minister was also in attendance—and I have established with FISAB a banking and economy forum. It will be useful to take the interests of the economy and Government directly to the banks and financial services.

I often hear that there is a mismatch between those who are seeking lending and the facilities. People say that they cannot get the resources that they need, but I meet the banks, which tell me that there is plenty capital and they are very obliging. Maybe there is a balance to be struck between what both are saying.

On the Government's intervention, I am happy to take that evidence to the banking and economy forum, if it is sector specific and there are examples, if that is appropriate.

In the economic action plan that I launched on my appointment as economy secretary in addition to my finance role, there are clear actions around stimulating the economy, financial products and the construction sector. We can do more around the proposed Scottish national investment bank but, as a precursor to that, there is the building Scotland fund and there are resources that could be maximised. The Scottish growth scheme is an example, and it is arguably underutilised by the sector. The scheme needs to be properly promoted and we need to understand what the

barriers are to it being accessed in the way that it could be.

More can be done with the banks and the wider economy, and even with Government enterprise programmes. I am very happy to look at how we can further support doing that. That said, even though it has, as you would expect, taken some time to set up the due diligence and mechanisms for the building Scotland fund, it is absolutely the case that more is coming through the pipeline. I welcome that.

**Colin Beattie:** I was just going to touch on the BSF, which was launched in 2018. I understand that, to date, something like £80 million of the £150 million has been allocated. Looking at the pipeline of projects, have the demand and uptake been in line with what you expected? Are things on track?

**Derek Mackay:** I have not set out a target as such, although we have made £150 million available for the building Scotland fund. I can work back to other figures, but I can tell you that there are £400 million-worth of potential projects in the pipeline; contracts worth £53 million over the next two years have been signed; and £64 million has been allocated. Those three different figures reflect what has been signed and what we anticipate will happen as things stand right now, but the figure for what could be in scope with potential projects is £400 million.

Of course, not all those projects will happen, but there is greater awareness of what is going on. Last week, the Minister for Trade, Innovation and Investment, Ivan McKee, was in Livingston to announce the building Scotland fund element of a development there, and a number of house builders that might not have had access to Government finance are engaging with the fund. There is far more interest, which is good, and a kind of critical mass or body heat is gathering as the sector continues to talk about it. That self-promotion is a good thing, and it will ensure that the finance leverages in additional private sector finance to stimulate the economy, particularly house building and, indeed, the construction industry. All of that is welcome. In answer to your question, I expect the resources to be fully used.

**Colin Beattie:** On a point of clarification, there has been an announcement of £30 million to fund 1,800 private rented premises. Is that included in the £400 million figure or in the figure for the contracts that have already been signed up to? I would not imagine that that contract has already been signed.

**Derek Mackay:** If you wish, I can come back to you with information on what has been agreed and a bit more scope about what is in the pipeline, and you can see how all that is broken down. The fund

is very welcome—as I said, it is a precursor to the Scottish national investment bank—and I can give you more information on the different categories.

**Colin Beattie:** That would be helpful.

**Derek Mackay:** The situation is very fluid. As I said, there is more interest in the fund, and that is a good thing.

**Colin Beattie:** You also mentioned the Scottish national investment bank, which will receive Government funding of £2 billion over 10 years. However, we have had evidence that that is not enough to replace current levels of European Investment Bank investment in Scotland. If that European funding went away, how do you think that we would make it up?

**Derek Mackay:** That is a very good question. First, we need to ensure that that funding does not go away and that we avert any move by the EIB to stop further investments in Scotland—or, for that matter, in the UK. Of course, that relates to the wider political position of what happens with Brexit and the arrangements post-Brexit if it should happen. Here is an even bigger suggestion: let us avert Brexit completely. If we did, the question would not arise.

However, it is true that if the EIB chooses not to invest in Scotland any more, the Scottish Government will not be able to fully mitigate the impact of Brexit and the possible outcome. EIB resources are integral and additional. If it does not invest, we will do everything we can to stimulate infrastructure investment through the national investment bank, but I come back to the wider point that, given the circumstances of Brexit, the onus is really on the UK Government to ensure that there is no detriment to Scotland's public finances or economy. If it proceeds in that fashion with regard to Brexit—particularly if there is a no-deal Brexit—we will do everything that we can to leverage in extra finance, but the situation will be incredibly challenging. It would be an act of self-harm if the result were that the EIB did not continue to invest in Scotland.

11:00

**Angela Constance (Almond Valley) (SNP):** Good morning, cabinet secretary. I was pleased to learn of the £2 million in loans that will be available for developing the trade park in Livingston. I have a few questions relating to skills and workforce development. Productivity is important in that context and, going back to the issue of statistics that you raised at the beginning of your evidence, the committee heard some disturbing evidence that productivity in the construction industry has flat-lined since 1945. Professor John McLaren said:

“Productivity is extremely important, but we do not have a good handle on it”.—[*Official Report, Economy, Energy and Fair Work Committee*, 5 February 2019; c 34.]

What work is on-going to improve the measurement of productivity, given its importance to our economy?

**Derek Mackay:** In other committee appearances, I remember it being said that how important we think something is is judged by what we measure. Angela Constance is aware of how important housing is—the building of units and the jobs and economic benefit that go with that. However, we will be able to do more with the same resources if we have that drive on productivity. A lot of the work is around skills and how we move that agenda forward, understanding health and safety and ensuring that innovation can deliver enhanced productivity. Overall, over the period of devolution, we have generally made more progress on productivity than any other part of the UK.

We need to do further work on analysing measurement, which was a key part of the question. Equally, we need to increase productivity so that we produce more units from the same resources and enhance skills and digital design. It is also very important to transition to a low-carbon economy. We need better data at the same time that we invest in enhancing productivity and ensuring that the sector can take that forward. I am happy to look at what further work we can do around measuring productivity, which will, I dare say, largely involve surveys and other forms of assessment rather than detailed understanding.

**Angela Constance:** Does the Government have any specific thoughts about how we can improve the measurement of productivity? That appears important to me. If we can measure productivity robustly, we will know whether it is improving and to what extent in what sector. That would provide a more informed platform from which to continue to improve productivity.

**Derek Mackay:** I am happy to engage more with the sector on what it is measuring and what its indicators are. The statistics around productivity often involve data sets that are changing. I am happy to give that further thought. We do not need further measurement to appreciate the fact that we need to do more about productivity, but I get the point about how and what we are measuring. I am determined that we should get on with the areas that we know have made and will make a difference, particularly in relation to construction. As I said, that will be around collaboration, innovation and how we intervene directly in relation to our infrastructure spend. I am happy to take that up.

**Angela Constance:** Thank you. We are all well aware that there is a strong economic case for

improving diversity in the world of work, which should include construction. Does the cabinet secretary share concerns that women account for only 12 per cent of the construction industry workforce? What can we do to improve that in future, given that there are concerns around the lack of progress by the Scottish Further and Higher Education Funding Council and Skills Development Scotland on their gender action plan targets to get more young women into construction-related courses?

**Derek Mackay:** That is an excellent question that speaks to the challenge that we face. As well as having action plans, the skills agencies put an expectation on training providers to make progress on representing the diversity of our nation in our trades. One of our biggest challenges lies in encouraging trade organisations, contractors and businesses to ensure that employment and recruitment reflect wider society, and gender is absolutely key in that—the figure that you gave on that is unacceptable.

We have made progress on gender, including in foundation apprenticeships, but it is not good enough. We can have promotional campaigns that use icons and try to address the image of the construction sector, but some of it is about not just who comes through training programmes but who is actually recruited. Therefore, the relationship with the trade organisations and the sector's employment and recruitment practices are important. There is a gender action plan and a diversity drive, but there is absolutely more to do.

I have touched on gender because of the imbalance in that regard, but the age profile is also worthy of consideration. There is a perception that some of our schemes are age restricted, when in fact they are not and, actually, the age composition of the people coming through is older than people might think. However, the issue is worth a further look, given the challenges that we have with our economy and with record low unemployment. That is a good thing, but given the availability of the skills and talent in the people pipeline, we must ensure that we do not exclude people because of age or gender. The retraining partnership will tackle that issue. Retraining is not just about young people coming through the education system; it is about people of any age who wish to change profession, trade or sector to deal with the skills gap.

There is a lot in that question. There are action plans and we have expectations, but progress is too slow. As Angela Constance well knows, the political party to which we belong has chosen to take positive action on gender. The sector will have to take a long hard look at how it makes further progress on diversity and the representation of the population in the workforce.

**Angela Constance:** I realise that some of the more specific aspects of skills interventions are outwith your portfolio but, given the cross-Government commitment to target young people and to do everything that we can to support them in their journey into work—I would never want the Government to take its foot off the pedal on that—I wonder whether more could be done in relation to older people, who you mentioned. I hesitate to say “older” because, when we talk about older people in the context of apprenticeships, we tend to be talking about the over-25s—says she who is well over 45. However, is it not important to have more opportunities for slightly older people to return to the labour market via apprenticeships, particularly into the traditional trades and particularly for women returners?

**Derek Mackay:** Yes; that point is well made. In the circumstances that I described in which we have a shrinking working-age population, a changing demography, skills shortages and an economy that is transitioning, we absolutely have to look at the age issue as well as the gender issue. Of course, we also have to consider ethnic minorities. Some people are deterred from even making approaches on apprenticeships because they assume that they are for young people. I suppose that our definition of “young” changes depending on our age—says he at 41.

**Angela Constance:** Stop showing off.

**Jackie Baillie (Dumbarton) (Lab):** Oh dear.

**Derek Mackay:** Jackie Baillie is objecting—she is 42. *[Laughter.]*

**Jackie Baillie:** That is good. I like you more now.

**Derek Mackay:** We have to look at how we are presenting the apprenticeship opportunities. The retraining partnership will be critical in ensuring that those opportunities are open to as many people as possible.

There is a short-life working group to look specifically at the issue of workforce supply, skills and talents in relation to housing. As soon as that work is complete, I am happy to come back to the committee on that. I accept that the housing issue is much wider than construction and is about the entire economy.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** Despite being in a strong position, I am not going to get involved in the age-related banter, which is totally inappropriate, of course. *[Laughter.]*

As the cabinet secretary will be aware, in an evidence session with construction leaders, we were told that they were concerned that the Government would miss its targets on new homes. A more concerning issue that was raised on a visit

to Edinburgh College is the fact that there is not just a skills shortage in some construction disciplines but a deficit—in other words, the shortages are getting more extreme.

Given that Homes for Scotland believes that

“the reduced supply of a skilled workforce is still one of the binding constrictions on increasing housing output in Scotland”,

what more can be done within your remit to increase the number of young people and others who go into the sector? How can we ensure that we have better planning to meet such shortages, not just in construction but more widely?

**Derek Mackay:** I appreciate the question. I am sure that Jamie Halcro Johnston will forgive me when I say that, given that there is a problem with the number of people, the first thing that we can do is have a positive approach to migration. Of course, that makes a difference because it affects the supply of people. We should encourage people to come to Scotland and to stay in Scotland.

I must object to the premise of the question, which is that we will not meet our housing targets. All the information that I have seen suggests that we will meet our housing targets. A lot of investment is being put into ensuring that that happens. That said, I agree that there is a skills shortage and that there is concern about skills in the future. That is the number 1 issue that is raised when I meet businesses, which is not what people might expect. Having a supply of talented people with the appropriate skills for today's and future needs is more important to business than issues such as tax. Digital technology, which I know the committee is interested in, is another area in which we need to be focused having the appropriate skills.

We are trying to make sure that the enterprise, education and skills systems are giving business and industry what they need: the appropriate qualifications, easy routes to achieving those qualifications and, in construction in particular, vocational learning, which involves working with colleges. When I visited the City of Glasgow College the other week, I was shown how it is calibrating its system to provide what the economy needs.

The number of people who are coming through the system is important. As has been mentioned, we are talking about not just age but the ability to retrain. We are setting up a retraining and reskilling partnership with the business community, which will be welcomed. Accreditation has been highlighted to me as being extremely important, whereby people get professional accreditation while they are learning. In-work learning and in-learning work are important,

because they help to retain people in a particular sector and enable them to gain work experience while they are being educated.

A lot is being done to ensure that more people come through the pipeline, but, if we are to achieve our ambitions for the country, which are to deliver what we have set out to deliver and, beyond that—as the First Minister has outlined—to raise the level of infrastructure spend to a more internationally competitive level, we need the people to do the work. That will require a transition in not just the quantum—the number of people—but the demography and the gender of the workforce, which is why it is important that, as we have discussed, we bring more women, older people and ethnic minority people into the construction sector. A range of interventions are necessary to support the sector.

**Jamie Halcro Johnston:** Another point that was made in evidence was that some of the training courses that are being offered through the apprenticeship levy are not meeting the needs of industry. What areas of concern are you aware of? What can be done?

11:15

**Derek Mackay:** That is a fair point. People often bemoan the apprenticeship levy. I do that, too, because educational establishments have to pay the levy even if their primary function is to provide training. Jamie Halcro Johnston will be well aware of the fact that the levy was imposed by the UK Government without engagement or consultation with us.

The funding that was secured from the UK Government largely substituted for funding that already came to Scotland in the formula. The funding systems differ north and south of the border. North of the border, the investment has partly been in the educational and training opportunities that we were already building. We can show how the quantum of money has been spent on education and training and on supporting industry and the workforce. In the rest of the UK, the UK Government's interest was in doing something different with its funding. It is fair to say that the UK Government started from a lower base—it was behind us on apprenticeships, training and modern apprenticeship opportunities.

When I hear businesses critique the apprenticeship levy, my answer is partly to ask what they need from Scottish Enterprise and the skills system and how we can meet their needs with the resources that we have.

**Jamie Halcro Johnston:** What do businesses say?

**Derek Mackay:** Some businesses want to work with educational institutions to design a pipeline of courses that will work for them. I will give an example of a partnership that is working well, which involves West College Scotland. A company that does rendering—external works to properties—guaranteed employment to a dozen or perhaps 16 people, who were not all young. They were taken through college and were then guaranteed a job. That is an interesting mix. Instead of saying, “Can we have our money back from the apprenticeship levy?”, a company asked whether the college could provide a course and the company guaranteed a job. People who go through that course get education and guaranteed work, so everyone is a winner.

The enterprise and skills system must be agile enough to ask business and industry what they need in order to deliver. What do they need for their economic growth? What will give people sustainable, purposeful and meaningful employment while delivering skills for our country?

I tested such an approach yesterday at FiSAB, which will look at the pipeline of people that it will need for jobs in its sector. Great big announcements are being made across the country, such as those on the 2,500 jobs at Barclays in Glasgow and the 400 jobs at KPMG. When such companies are to create jobs, they want to ensure that the skilled workforce is in place, and the same applies to construction companies. If the products, including financial products, are not there and if the routes to getting the workforce that is needed are not there, my door is open—as are those of the skills and education ministers—to ensure that we provide the courses and routes that will help to deliver the skilled and talented workforce and ensure that opportunities are not lost.

The funding council and the funding of such opportunities must focus on the outcomes and not just the inputs—the number of bums on seats. It is fair to ask how we ensure that the whole system is calibrated to address the skills shortage. That all relates to the apprenticeship levy, which your fundamental question was about. Instead of saying to companies, “There’s your apprenticeship levy money back,” we are saying that they are investing in Scotland’s education and skills system—they are paying for it—so let us make it work for them. I am trying to secure such a relationship.

**Jamie Halcro Johnston:** I recognise that and thank you for your answer, but the concern is that companies do not feel that there is such an approach.

About a year ago, I asked the First Minister how small businesses could access apprenticeship support, because the number of apprenticeships in

small businesses was low and it was found to be difficult for them to take on apprentices—there seemed to be barriers. What has been done since then to improve access to apprentices for small businesses and make it easier for them to take on apprentices?

**Derek Mackay:** It must be understood that it is larger businesses that pay the apprenticeship levy—it is a UK tax. However, the only way in which we can grow our economy at the pace that we want is by supporting small and medium-sized enterprises. It is partly my point that, if we just gave people their money back, that would not serve the economy well. The enterprise, skills and education system absolutely must deliver for all businesses, no matter how big or small they are.

Small businesses can get involved through the developing the young workforce arrangements or through colleges directly. When I meet college principals, as I did last week, I ask whether they are well engaged with the local business community and whether businesses know how to engage with colleges on the courses that are required for our economy.

As it happens, my anecdotal case about West College Scotland was a small business, which was growing and had captured a piece of the market. It had a relationship with Skills Development Scotland and the college, and it built the product that was right for it.

**Jamie Halcro Johnston:** So, should FiSAB not have the concern that it had a year ago?

**Derek Mackay:** If FiSAB still has that concern, I want to address it by making sure that businesses have access to the opportunities that are their right. In the skills and apprenticeship landscape for businesses, it can still be quite complex to determine where to go to and which is the point of entry as well as exploring what qualifications and opportunities are appropriate for a business and, separately, the funding streams. I am not complacent and saying that it is all fixed now and that businesses will get a totally different answer.

We have made a lot of progress, but my aspiration is that it will be as easy as possible for businesses to get access to the education, training and skills system, so that we can optimise opportunities for businesses and for the people who are going through the education system. If there is more work to be done, especially in relation to construction, I am happy to pick that up. The Enterprise and Skills Strategic Board is helping with that by bringing together the private sector knowledge and the skills and enterprise agencies as we were asked to do by this committee.

**Jackie Baillie:** The cabinet secretary’s press team is very good, so I assume that he will have

seen this morning's article by Ian McConnell in *The Herald*, which tells us that the number of construction firms in Scotland in "critical distress" in the first quarter of the year was up by a stunning 560 per cent compared with last year. What is going on, cabinet secretary?

**Derek Mackay:** I have not seen the article.

**Jackie Baillie:** Ah.

**Derek Mackay:** I was preparing for this meeting, of course.

If the question is about whether there are construction firms in distress, that is my point. Although there are now positive economic indicators—I hope that we all welcome record low unemployment at 3.3 per cent, GDP growth that has outperformed that of the UK in many quarters, foreign direct investment that is second only to that in London and the level of exports having gone up—there are some skill shortages in construction; Brexit uncertainty is a feature across the UK; access to finance is an issue, which the committee has picked up on; and there are issues with relationships within the construction sector. There are now very welcome economic indicators, but there is no doubt that the economy is subdued. Some of the issues that the committee is exploring can help us to understand what is going on in the construction sector and what more we can do to support it.

A further line in all of this is probably the issue of access to finance. I have heard from construction companies that, for the number of companies that are in distress, the biggest challenge is not being paid for work that they have done. That is largely not happening in the public sector, but it might be the fashion in which private sector contractors are engaging with one another.

**Jackie Baillie:** That answer does not explain the huge difference between Scotland and the rest of the United Kingdom. The number of construction firms there that were in critical distress in the first quarter increased by 17 per cent; the increase here was 560 per cent. I respectfully say to the cabinet secretary that is not just a question of the economy being subdued. I think that we are in an emergency situation, which is not explained by Brexit because Brexit is having an impact across the whole UK.

**Derek Mackay:** As I have said, I have not seen the article, so I can speak only to the question that has been put to me, not to the content of the article. I speak to construction firms and Scottish industry, and I am speaking to the facts that we have covered. Even on the GDP statistics, we know that there have been times when construction in Scotland has continued when it has not continued in the rest of the United Kingdom. I am sure that Jackie Baillie will agree that there

were many years in which we chose to invest in infrastructure and construction in our country when the UK Government did not, which has led to further economic growth and further infrastructure investment.

I have seen commentary elsewhere about what, I think, are called mega-projects, such as the Queensferry crossing, but there is also an issue about maintaining the wider infrastructure of our country. A lot of issues are involved in how we use our resources to support the construction sector and infrastructure. Housing is a key target for the Government. A wider economic role that we play involves supporting businesses small, medium and large. The financial models that we have been able to put in place have allowed construction to be delivered where it otherwise would not have happened.

I am, of course, happy to consider any issues that might have been identified with regard to why companies are feeling in any way vulnerable or exposed at the moment. However, from talking to the construction firms that I have met, I think that it is true to say that work is being deferred because of Brexit. That is the point that I was making. If we were enjoying greater economic growth right now, those companies would be able to do more work. They tell me that, if we did not have the uncertainty of Brexit, we would not be facing the issues that might be causing some companies—particularly small and medium-sized construction companies—to collapse. Sometimes, the issues come down to not being paid in a timely fashion. I suspect that we will come back to that subject.

**Jackie Baillie:** I just contrast the 560 per cent increase in the fragility and vulnerability of construction firms in Scotland with the figure of 17 per cent in the rest of the United Kingdom, even though those companies are also experiencing the effects of Brexit. Something is going on that we absolutely need to understand.

**Derek Mackay:** Then let us explore that.

**Jackie Baillie:** I am happy to share the article with you.

Robin Crawford, who led the 2013 review of Scottish public sector procurement in construction, said to the committee:

"It is slightly depressing that every single one of those issues was raised in the 'Review of Scottish Public Sector Procurement in Construction' report. Six years on, it is disappointing that so little progress has been made in tackling many of them."—[*Official Report, Economy, Energy and Fair Work Committee*, 26 February 2019; c 5.]

Can you explain the lack of implementation of the review's recommendations?

**Derek Mackay:** I have asked for an update on all of the recommendations from that review. I am

not sure whether the information has been shared with the committee, but I am happy to share it. I do not accept that there has not been progress, because I have seen quite substantial progress. I am sure that, in its fair-mindedness, the committee will appreciate that the recommendations were not just for the Government. Some of the recommendations were for the sector, and the onus is on all of us to collaborate.

I think that, once the recommendations had been considered, only one recommendation was not accepted, and it concerned the appointment of a construction champion or adviser. I was not in my present role at the time, but I think that some of the debate around that recommendation focused on the fact that there were two options. One was to have a champion or adviser who would work with the Government and others in the construction sector more widely, and the other was to have a regulator. Some people wanted one thing and some wanted the other.

Having a regulator would present difficulties, because there are already a number of ways into the disputes that people can have in the construction sector, including adjudication processes and legal processes. I am not convinced that we need a national regulator, as such a person might just end up capturing all of those issues that can already be resolved through existing routes. However, my mind is not closed to having a construction adviser, which might help in relation to what the recommendations are, how they are being implemented, how they are being taken forward and who the go-to person is, other than the responsible ministers.

On that one recommendation that was not accepted by the Scottish Government, my mind is open. Maybe it is my mild-mannered approach, which Jackie Baillie shares, that is the issue. As I said, I am happy to share evidence of the progress that we have made and of how the issues have moved on since the initial report.

**Jackie Baillie:** That would certainly be helpful. I like your open-mindedness. It was, of course, the First Minister, in her previous guise, who rejected that recommendation, so I welcome the new thinking.

Nevertheless, I am slightly confused, because what you are saying is at odds with what people who are involved in the review and the implementation said. Mr Bruce Dickson from BAM Construction sat on the review and the implementation group. He believed that the review arrived at the right recommendations but that the Scottish Government simply did not implement them. Why is there such a difference of opinion between the table that you are going to share with us and his view?

11:30

**Derek Mackay:** Do you mean in terms of the construction advisor or all of the recommendations?

**Jackie Baillie:** I am talking about all of the recommendations. Six years on, we are still talking about companies being in critical distress. The review pointed to what the Government needed to do, and it looks as though either it has not been done or it has been done too slowly.

**Derek Mackay:** I am happy to go through the 67 recommendations—which became 68.

**Jackie Baillie:** Not now, cabinet secretary.

**Derek Mackay:** You ask why we have not made progress. I then offer a line-by-line explanation of progress, and you—rightly probably—say, “Not now,” which is why I am happy to share that information.

To be clear, I am of a similar mind to the First Minister of Scotland on the issue. We did not reject the recommendation; we said that it merited further consideration, and I am quite open-minded about it. I see how it might be possible to take forward some of the recommendations and where we have done what we were asked to do to the letter. However, we need the further projections that are being done. That might partly explain some people’s perception that the recommendations have not been taken forward, when I would argue that they have been.

I am happy to share that information, so that the committee is equipped with that evidence.

**Jackie Baillie:** I will leave it there, convener.

**The Convener:** No doubt, you can share that information with us in a mild-mannered way. We will have a brief, mild-mannered, follow-up question from Gordon MacDonald before we come to questions from John Mason.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I appreciate that you have not seen the clipping in this morning’s *Herald* referring to the 560 per cent increase that Jackie Baillie mentioned. Just to be clear, it is an increase from five companies in critical distress last year to 33 companies this year, out of 20,000 enterprises working in construction. What is your view on the 17 per cent increase for the UK? Could that be because the UK had more companies in critical distress last year?

**Derek Mackay:** That may well be the explanation, convener. I am loth to cite an article that I have not read, challenge statistics that I have not seen and make it up as I go along; that is not the way I would present evidence to committee. I am therefore happy to go away and look at that information. I would never for a minute

accuse Jackie Baillie of using colourful language or selectively quoting statistics to make a point and try to trip me up. I would never make such an accusation or charge. However, Gordon MacDonald's further explanation of the statistics is quite illuminating, and I am happy to look at the detail and come back to you, convener.

**The Convener:** We will leave that there for now.

**John Mason:** To continue the theme of procurement, the committee had a lot of evidence, some of which conflicted. There was some criticism that the public sector generally—not just the Government—tends to go for the lowest cost as opposed to best value. I remember that, when I was a councillor—and I know that Derek Mackay was in a similar boat—we sometimes looked at best value and did not choose the lowest cost. However, I can also imagine that, if the Government paid more than the lowest cost for the Aberdeen western peripheral route, Opposition MSPs might be queueing up to criticise the Government for that. How can we get the balance between getting the lowest cost, which is apparently a good thing for the public purse, and getting best value over the length of a contract?

**Derek Mackay:** The basic premise is right. Just picking the lowest cost should not be the golden rule. A different characterisation might be getting maximum value from a tender, which can be to the wider economy or for local community benefit, as well as value for money. It would be wrong to conclude that Government or public services are told to just go for the lowest cost—absolutely not. There have to be wider considerations.

I have visited the Government's procurement staff and heads of procurement across the public sector, and I am also clear about what is in the public sector manual. There is a balance of considerations to be taken into account when people weigh up contract awards. It is not just about the cheapest bid; it is about all those wider considerations. Maximum value is an interesting way to look at it, because that considers more than just the cost and who is the cheapest. It includes all the other considerations that can come into play, and I think that that—

**John Mason:** Do you think that that is happening at the moment?

**Derek Mackay:** Yes, I do.

**John Mason:** I am not talking only about the Government, because everybody is under pressure. Are councils, the Government and Transport Scotland looking at maximum and best value, or are they under pressure to take the lowest cost?

**Derek Mackay:** I do not think that they are under pressure to always take the lowest cost. As

anyone who has worked in procurement will know, if you look only at cost and not at the other factors, it can be more expensive in the long run.

There is a duty on the public sector to look at the wider benefits of procurement. The power of procurement is shown by the fact that £11 billion is spent by the Scottish public sector. If we need to further evangelise on the point, we will do it. However, I have visited heads of procurement across Scottish public life and the Government's own procurements team to make the very point that the power of our spend is about more than just the cheapest contract award. It is about getting maximum value and achieving the maximum contribution to our economy. Of course, it all has to be done within the law—the state aid rules, or whatever the rules will be in the future—but we should not look only at cost. I cannot be any clearer than that.

**John Mason:** We had evidence that some of the big contractors are coming in with bids that are unrealistically low in order to survive and continue their business. The margins are so tight that they know that, once they win the tender, they will have to cut costs for their subcontractors and so on. I am not suggesting that the public sector should pay over the odds, but do you think that, at times, bids get thrown out because they are unrealistically low? Should they be?

**Derek Mackay:** There is due diligence. My officials can maybe give you some further analysis, but if the procuring authority is not satisfied that a bid is credible, it can take that into account. Where there is bad or illegal practice, that will of course be challenged if a bid is not credible. It is possible to take differing views on some of the criteria, but the financial coherence of a bid is important. It is not always just about the lowest cost. We do not want to be in a position where people deliberately go for cut-price contracting only to realise that they will be renegotiating all the way through delivery because of the initial bid. There are checks and balances in place. Maybe Scott Bell can give you further detail on that internal process.

**Scott Bell (Scottish Government):** As the committee will know, in Scotland, our legislation does not allow people to use the lowest cost bid approach. It is a recognised procurement route, but we specifically disallow that approach. However, that is not to say that using the most economically advantageous tender approach cannot result in the lowest bid winning.

Something that we are working on—this has been the subject of very recent exchanges with Construction Scotland at an official level—is how we can work with both industry and contracting authorities to remove the issue of unsustainable pricing. That is what we need to focus on.

We have mechanisms to remove bids where contracting authorities feel that they are unsustainable. Do all contracting authorities do that all the time? I cannot answer that question because, ultimately, they make local decisions. However, the legislation is clear. We do not allow use of lowest cost as the only measure and we allow people to exclude bids that look unsustainable. We have also legislated for whole-life costs to be used in the analysis of tenders, and not just the cost of producing the building.

**John Mason:** If I use the Aberdeen western peripheral route as an example, I do not think that Carillion went down because of that, but it appears that, in the long term, one of the factors was that it was bidding unsustainably for a range of projects, and it did not survive. In that case, the public sector did quite well, because the other partners had to pick up the pieces. However, it is not a sustainable model, because we cannot expect them to keep doing that—they have made that pretty clear. A particular bid might be sustainable, but the contractors that we are looking to—there may be only a few of them—might not be sustainable companies.

**Derek Mackay:** Some of the competition law and the regulation of business between companies and auditors is reserved and so is a matter for the UK Government. It is hard for us to regulate that practice and all we can do is judge the bids that we receive within the law.

I would not want to speak here and now about an individual contract, particularly if it might be subject to challenge. However, I can talk about a model that a company may have used. Mr Mason asked whether the low-bid models might lead to failure. Carillion is an example of that, as its general business model was one that led to failure. Scotland's exposure was less than the exposure in the rest of the UK because of the number of projects that Carillion happened to have in Scotland—I understand that it had 400 projects in the rest of the UK but only eight in Scotland. I make that point only in relation to the scale of exposure.

A large company that is pursuing public sector work might follow a model that is good for turnover, but the question that lies behind all this is who carries the risk. Is there proper apportionment of risk in contracting? Taxpayers and the Government want projects to be completed with maximum value to the economy in every sense—who is doing the work, who is benefiting from that work, the nature of the work, how it contributes to the nation's infrastructure, whether it helps us to deliver a low-carbon economy and so on—and they want to know that the company that is doing the work and its subcontractors can deliver and in turn help to grow the economy through their

success. There are better models available than the one that Carillion chose to deploy.

There is a difference between where the risks and profits lie in the old-style private finance initiative and where they lie for the current pipeline of work and under what may come next. At the bottom of all this is the question of who carries the risk. It cannot be the case that the public sector carries all the risk and the private sector carries all the profit.

**John Mason:** I do not think that anyone was suggesting that.

**Derek Mackay:** I know that you were not suggesting that, Mr Mason—I was just getting it off my chest.

**John Mason:** We will leave it at that, then.

**Andy Wightman:** Bruce Dickson from BAM Construction and others talked about the very tight profit margins. Bruce Dickson talked about suicide bids by contractors that come in with deliberately low-cost bids. No evidence was provided to back that up, but there was fairly consistent evidence from the industry and private companies that the very tight profit margins are not sustainable. They were interested in looking at new methods of procurement, framework contracts and longer-term supply pipelines and so on in order to deliver best value all round, which is exactly what you were arguing for, cabinet secretary.

You said that there are better models out there. How much thinking is the Scottish Government giving to how the public sector—we cannot tell the private sector how to carry out procurement—can procure capital projects that provide industry with a little bit more stability and do not force it into the kind of behaviour that was described to us?

11:45

**Derek Mackay:** We are putting a lot of thought into it. We will engage with the leadership forum, Construction Scotland. We are also establishing an infrastructure commission—although that will be focused on advising what infrastructure the country needs. Scottish Futures Trust has done work on whole-life investment and contracts. Right now, we are exploring what a construction framework for Scotland would look like. That would be based on good practice. People on our framework would deliver best practice. There is also the business pledge, which is for SMEs and not just big companies.

The premise of your question is that some companies are engaging in behaviour that endangers them. They are bidding for work at a price that they know they cannot sustain. That is bad practice, I suppose, unless they are making so much revenue elsewhere that they are just

carrying a loss. If they are setting out to make a loss at the outset, it would be interesting to see the effect on competition.

A lot of thinking has been given to what the models will be in future, which will encourage good practice in the private sector, too. Half of all the construction spend in Scotland comes from the public sector, so it is a big issue for us. If we get it right, we will be getting it right, through our leadership, for the majority of construction spend in Scotland.

The question of the financial model goes back to what I was saying to Mr Mason, which is that it is about risk. That is the point here. Some companies are taking a risk in the pursuit of turnover and not necessarily profit, in the hope that adjudication, renegotiation or whatever it happens to be can address some of their financial risk.

We want to get off on the best possible footing. On the issue of how we encourage best behaviour, if we create a framework that can be accessed only through best practice and compliance, that would be a good way to drive behaviour and address the other areas that I have touched on, which are guidance and modelling.

On some of the behaviours of the past, in the early days, old-school PFI meant that the private sector took the profit but the risk stayed with the public sector. That has changed. How risk can be shared is quite important in some of the models going forward. Wales is looking at a mutual investment model for some of its infrastructure spend. We are very interested in that, because it is compliant with ONS classification rules and could provide a further way of revenue finance for future infrastructure spend. It might be one of the ways in which we can help to deliver the ambition of the national infrastructure mission, which is to raise infrastructure spend. All of that will help the practice that has been identified. The well-publicised failure of companies that have engaged in the behaviour that you describe says that that model does not work.

**Andy Wightman:** You mentioned a new framework. Is that something that you have shared with the committee? I am not clear what you are talking about.

**Derek Mackay:** No. You have not asked me about it before, but you have asked me now. We are working on what a construction framework would look like, and what compliance and good behaviour to get on to that framework would look like. Such a framework could also speak to some of the other issues that we have been discussing this morning. We are exploring what we can do within the law that encourages the best possible behaviours by companies that would get them on

to a framework that can then do work. If the committee has not heard about the new framework before, I am engaging openly with you now to say that I am very interested in seeing how such a framework can challenge some of the behaviours that we have discussed.

**Andy Wightman:** We are coming to the end of our inquiry. Are you in a position to share some of your thinking—maybe not today but in writing this week—so that we can have some sense of what your thinking is before we produce a report?

**Derek Mackay:** It is actually a question of what comes first. I am more than happy to take the committee's advice and recommendations and consider how it can help to shape the framework. I am not prejudiced on the outcome. It would be quite useful to turn the committee's recommendations, and what it found through taking evidence, into Government action. I am genuinely trying to be helpful here, but my thinking is that, if we can create a framework for construction in Scotland, within the law, that can champion good behaviours and get better compliance on some of the things that need to be done, it would be a great way to tackle some of the issues that have been raised this morning.

**Andy Wightman:** We will leave it with you, but if there is anything that you wish to share with us imminently about the broad scope of that thinking, feel free to do so; if you do not, that is fine.

**Derek Mackay:** I will happily write back to the committee with my current thinking, but my offer to the committee is to help to shape the framework.

**Andy Wightman:** Absolutely—good. It is a question of chickens and eggs.

You mentioned the infrastructure commission. There was some criticism of support for the construction sector. The Royal Town Planning Institute said:

“the national planning framework does not really talk to the infrastructure investment plan, to city region deals or to the regional transport partnerships. There is a disconnect, so we need to better join up how we plan our infrastructure”.

We now also have the infrastructure commission in place. Given the scale of procurement and the industry's need to be able to innovate and plan, do you have any plans to try to join up some of the things that I have mentioned, such as the national planning framework and the infrastructure investment plan, which people still tend to perceive as being developed in silos?

**Derek Mackay:** That is a fair question. Having been local government minister, planning minister, transport minister, and now finance and economy cabinet secretary, I have seen how these different key documents and processes stand in their own

right. However, they have to come together, although they serve different purposes. The IIP is ultimately about the Government's own investment in infrastructure. I was minister at the time of NPF3. Once planning policy is resolved, we will move into NPF4. That is the spatial plan for the country; it is a planning framework that covers private sector investment as much as public sector investment so it is different from the IIP. The infrastructure commission will set out what infrastructure we need as a country.

There are good reasons for those things to have the remits that they do, along with different engagement processes. Ultimately, it all comes back to Parliament and to Government, as it should. They should drive each other; they should have that interrelationship and they should focus on what we are trying to deliver for the country. I think that they do. I think that the interrelationship has got far stronger. When I conducted NPF3, I did a review of Scottish planning policy at the same time because I thought that it made sense that the spatial plan spoke to the planning policy as it was going through.

The national planning framework is top of the planning hierarchy. The different policies and plans need to work together; Government cohesion and national cohesion are important. Within the Cabinet, I have convened a gathering of ministers with an interest in the economy. That includes economy ministers, the Deputy First Minister and the communities secretary, who works with the planning minister. I think that we will bring all of this together; the different policies and plans serve the same purpose, which is to deliver the Government's purpose, but they have to drive each other. I think that they will be far more aligned in the future than was previously the case. Having an in-depth knowledge of all of them will drive forward our infrastructure investment.

It is important that we accept the challenge, get the independent advice and get on with it in each of those different areas. It is fundamental that those workstreams speak to each other and the ministers have to be engaged in a cohesive plan. I have seen no evidence of the disjoint but I want us to collaborate to make sure that we can deliver all of those things in a cohesive fashion. That is partly why I have brought together ministers with a focus on the economy.

**Andy Wightman:** Thanks. On a related topic of joining things up, in January 2019, the Scottish Government published an assessment of housing land audits. Some significant weaknesses were found, which affect the usefulness of those audits. Do you have any plans to change how the housing land audit system works?

**Derek Mackay:** Ultimately, that is more a matter for local government, which delivers the housing

land audit system, and the planning minister, who oversees it. There has been further research on it, which will aid the Planning (Scotland) Bill and planning policy, but that question is more for the planning minister and local government.

**Andy Wightman:** It is a good example of the importance of joining things up, though. The construction of housing is an important part of the construction industry and yet significant weaknesses have been identified in the land audits, which are needed in order to be able to deliver that construction. It is not within your portfolio, but it is a good example of the kind of thing that you want to join up.

**Derek Mackay:** I agree with you, but you asked what plans I had, and I was pointing out ministerial responsibility and local government delivery—that was all.

**Andy Wightman:** Sure.

**Derek Mackay:** I am supportive, however; that is the key point.

**Andy Wightman:** You could ask the relevant minister whether there has been any thinking about how to follow up on the weaknesses that were found, given your role as someone who wants to join things up, and then come back to us.

**Derek Mackay:** I am more than happy to ask other ministers to answer for their brief. I am aware that there has been research and I agree that there is a useful role to play here. On whether there are any views on changing the audit system, there has been consideration of that through the Planning (Scotland) Bill and it is for local government to implement any change. I will certainly ask the planning minister about that.

**Andy Wightman:** Thanks.

**Gordon MacDonald:** Cabinet secretary, you have mentioned innovation a number of times this morning. We know that Scottish construction has for decades suffered from low investment in innovation, research and development and technology. What difference has the creation of the Construction Scotland innovation centre back in 2014 made to the sector?

**Derek Mackay:** It is my understanding that the chief executive of the centre should have shared with the committee statistics, some of the reports on performance and, perhaps most important, future plans. On the whole, bringing people in the sector together and seeking to collaborate, instead of companies and institutions doing their own things in isolation, could give Scotland the competitive edge with regard to innovation, the transition to a low-carbon economy, the need to meet very rigorous standards in the use of products and the skills issue that we have already discussed. I very much welcome the move to bring

together those stakeholders and to focus on research and development. Instead of keeping doing what we have always done and delivering houses or trades in the way that they have always been delivered, we need to innovate and champion the technology and the talent, and the progress that is happening in the trades is welcome. The key difference that the creation of the centre has made is that we are collaborating more and bringing people in the sector together more, instead of allowing them to invent things in isolation. They are now sharing these things.

Scotland has innovation centres on a number of themes, and there is no doubt that innovation is the way to drive performance as we move forward. Instead of being left behind, we are trying to stay ahead of the curve. That approach ensures that we build good cross-company joint working, and it will also put us in a stronger position to attract UK funding through sector deals as well as industrial strategy money. I have had meetings about this with Greg Clark, the business secretary; I have to say that his diary was a wee bit freer before the Brexit negotiations, but we have discussed areas such as innovation, where Scotland has been punching well above its weight.

**Gordon MacDonald:** We have heard this morning about the tight margins that a lot of construction companies are working to. Given that and the fact that the vast majority—91 per cent—of such companies are either sole traders or have fewer than 10 employees, how can we support or encourage companies to invest in innovation?

**Derek Mackay:** There is a lot in that question. I think that if we had control over some tax reliefs, we would be able to support further investment in research and development. Government funding and agencies can help here, but given that some of these companies are treading water, they might not see the immediate value in undertaking research and development. However, that value exists.

I would point out that we are investing a record amount of money in business enterprise research and development. Of course, that is not specifically about construction, but I know that the Economy, Energy and Fair Work Committee has wider interests. Overall, more is being spent in Scotland on enterprise research and development than has been spent since records began. That will make a difference.

Government can assist through funding support from Scottish Enterprise and Highlands and Islands Enterprise, and, as I have said, the collaboration that is happening in the innovation centres will be really important. In that respect, I should also highlight the national manufacturing institute for Scotland. Through the finance, support and collaboration that we can offer and, indeed,

the manufacturing institute, we have a range of ways to help and support companies to innovate and enhance their productivity. Moreover, the innovation hub provides a physical location for that support.

**Gordon MacDonald:** Will the construction framework, which you have mentioned, contain any reference to innovation?

**Derek Mackay:** You are now pre-empting what might be in my as yet undetermined construction framework, but it was a nice try.

I would point out that innovation is one of the criteria for meeting the Scottish business pledge. Those criteria reflect what we think is important in that respect, and although we think that innovation is really important, I would not want a company to be excluded just because they are not innovating. It might be doing many other good things, and we would not want to say, "You're not allowed to do work for us, because you're not innovating." I would not exclude a company on those terms, but do we want to encourage more innovation and research and development? Absolutely. Do we want to make it as easy as possible for a company to do those things? Absolutely.

The future will mean far more digital and technology than was the case decades ago, and the pace of change is so fast. Automation, machine learning, artificial intelligence and so on mean that roles are changing and construction sites are changing immeasurably. There is a role for all that, but I would not exclude a company because of a lack of innovation.

12:00

**The Convener:** I have a final question to round up this session. How do you see Construction Scotland fitting into all this?

**Derek Mackay:** That is a good question. I have met the leadership and there is a leadership forum that meets regularly with civil servants. As its members take up some of the work that they have been charged with, further engagement with them will be really important. We do not just want to meet its members as representatives of themselves; information has to be cascaded in support streams to the whole sector, and then it has to come back to us. A closer relationship with Construction Scotland would be helpful.

The infrastructure commission will also provide advice to the Government about the country's infrastructure needs.

A number of other matters have been raised at committee and, I imagine, will have been raised in the evidence that you have taken that you will want me to explore further. I can do that with

Construction Scotland as the umbrella organisation representing the sector.

**The Convener:** Andy Wightman would like to press you on some specific aspects of that.

**Andy Wightman:** Construction Scotland told us that, since the publication of the strategy, it has had formal meetings with the Scottish Government, led by the procurement directorate. Could you say a little bit more about the character of those meetings and what they are designed to achieve? In particular, how is engagement with industry taking place beyond the larger companies, with the small sole traders that Gordon MacDonald talked about?

**Derek Mackay:** In terms of ministerial representation—

**Andy Wightman:** I was hoping to hear from—

**Derek Mackay:** Do you not want to hear from me?

**Andy Wightman:** I want to hear from you, but I am keen to hear something about the character of those meetings.

**Derek Mackay:** I engage not only with Construction Scotland, but with construction companies, the wider business community and the big six representative organisations in relation to Scotland's economy. There will be a national economic forum this week. I engage regularly with business and industry leaders, as do civil servants and ministers who support my portfolio.

If you are asking about the nature of the meetings that have been held exclusively with civil servants, it is right for me to ask the civil servants to tell you about that.

**Scott Bell:** We have had a number of engagements with the Construction Scotland industry leadership group members, and more broadly than that, to ensure that we are working with Construction Scotland in a way that means that it is engaging broadly with the industry, not just large prime contractors. Indeed, we are spending quite a bit of time with Construction Scotland looking at a number of factors involving representatives from quite small businesses.

We are not using those meetings just to focus on procurement, although 50 per cent of industry turnover is in public procurement and that is clearly important. We also work closely with colleagues in the economic development directorate and other directorates across the Scottish Government to bring that whole-of-government sense to the communication and relationship with industry. On the same basis, we are looking to Construction Scotland to ensure that it has its membership in reach across the whole industry.

So far, the meetings have been very positive, showing a clear willingness to work together in a more constructive manner. Indeed, supportive ideas have been coming from the industry about a potential framework or frameworks to support industry more broadly. We are using those meetings as a sounding board for that, particularly as we focus on SMEs across Scotland and not just the large firms.

**Andy Wightman:** Are minutes of those formal meetings published? I presume that they are taken.

**Scott Bell:** To allow good discussion at those meetings, we capture the key discussion points. We have had two formal meetings and we have captured the discussion points of those. I am happy to share them with the committee and we can look at how we could put them into the public domain regularly.

**Andy Wightman:** I am aware that there is a UK construction sector deal. How much engagement has the Scottish Government had with that and what benefits might be obtained for construction in Scotland?

**Derek Mackay:** All the sector deals are led by the UK Government, but the engagement with the devolved Administrations and the Scottish Government is not what it should be usually; sometimes it is an afterthought rather than there being involvement from the start. That is a missed opportunity, because we could harness and capture a lot of things that would probably augment and improve sector deals.

For the construction sector deal specifically, we were involved very late in the day. I am not making a critique of the deal, but although there is nothing in it to which we would object, it would be better practice if the UK Government involved us in the sector deals well in advance of their publication. That would surely be more beneficial for shaping them.

The deals are generally led by the business secretary, Greg Clark, with whom I have a good working relationship. The UK Government is a wee bit preoccupied at the moment, but I think that Scotland can do very well from the sector deals through the industrial strategy funding that comes from them. We are trying to calibrate it so that we maximise the resources that can come from that. Although I have no major objections to the construction sector deal, there could be much deeper engagement with Scotland and the Scottish Government, which would mean deeper and greater engagement with the sector as well and greater understanding of the sector's needs. The construction sector deal is therefore not the worst of the sector deals, but there could have

been better involvement with the Scottish Government.

On the positive side, I know from my travels around Scotland that there are great construction firms building brilliant buildings and infrastructure across the country. Some are so good that they demonstrate that the proud tradition of Scottish engineering and design continues. Some of the companies—for example, McLaughlin and Harvey Construction Ltd—are delivering projects across the globe from Scotland. Their export of their talent and expertise is to be celebrated.

We therefore still have a lot to offer the world in terms of construction, engineering and design and we are delivering wonderful projects. It is right that we explore the issues that we have explored here today, but we should not lose sight of the fact that many wonderful projects are being delivered around the globe by Scottish companies.

**The Convener:** Thank you, cabinet secretary. I suspend the meeting for a changeover of officials for agenda item 5.

12:07

*Meeting suspended.*

12:08

*On resuming—*

## **Common Frameworks and the Committee's Scrutiny Role after EU Exit**

**The Convener:** For agenda item 5, the cabinet secretary has been joined by Lewis Hedge, who is the head of regulation, standards and conformity at the Scottish Government. I welcome him to the meeting. Item 5 relates to common frameworks and the committee's scrutiny role after the UK leaves the European Union. Unlike for agenda item 4, I invite the cabinet secretary to make a short opening statement.

**Derek Mackay:** I am grateful for that, convener: it will be a short statement.

The Scottish Government has made it clear that we are not, in essence, opposed to common UK frameworks, but will agree to them only when they are in Scotland's interests. No firm conclusions have been reached on whether there is a need to establish common frameworks for any areas within my portfolio. In addition to wider internal market considerations, there are six potential frameworks within my portfolio: services, mutual recognition of professional qualifications, public procurement, late payment in commercial transactions, recognition of insolvency proceedings in EU member states, and statistics.

Paul Wheelhouse has indicated that we will be happy to keep the committee informed of progress in ministerial discussions on energy and EU exit as they progress, and Michael Russell, as the Cabinet Secretary for Government Business and Constitutional Relations, is happy to offer further information—or to appear at committee, if you wish—on the wider issue of Scottish and UK Government relations in developing common frameworks.

**The Convener:** Thank you. Are there any questions from committee members?

**Andy Wightman:** As the Finance and Constitution Committee has demonstrated in its work, this is a new area for UK Governments and devolved Administrations. I have a general question about process and how it all happens. We have identified common frameworks that require legislation, so there is clearly a role for legislatures, and we have identified frameworks that do not require legislation and which are, essentially, memorandums of understanding or agreements between the Governments across the UK.

It seems to be a rather ad hoc process at the moment, with people trying to identify what will

require legislation and what will not. The number of common frameworks has been identified by the UK Government—we have been told that there will be 111. As a senior member of Government, and forgetting for a moment your portfolio responsibilities, do you think that changes are needed to the Scotland Acts to provide a better legislative framework for delivering both types of common framework? Have you discussed that?

**Derek Mackay:** Since I am being asked for a wider Government opinion, rather than my portfolio opinion, the simple answer to the situation is independence. [*Interruption.*] I was asked, convener.

**The Convener:** You were.

**Derek Mackay:** The complexity of finding a way through that is something that Michael Russell can address, as the appropriate cabinet secretary. I have tried to focus on the areas within my portfolio, but the process is complex and ad hoc. For our part, we are trying to protect the interests of the people of Scotland and we are trying to protect the responsibilities that are already devolved in order to ensure that whatever we do is in those interests. However, the situation is very complex.

**Andy Wightman:** To follow on from that, I note that protecting the interests of the people of Scotland is, rightly, your Government's job. That means that you will possibly take approaches in your areas of responsibility that are different from how other ministers approach common frameworks—for example, on the environment or agriculture. When it comes to making sure that the frameworks are operational and deliver what they are meant to deliver, surely there will be weaknesses if there is no agreed approach to how we do them.

**Derek Mackay:** I understand the point. That is why Michael Russell has overall responsibility for engagement with the UK Government, as I said in my opening statement. When the Scottish Government engages with the UK Government, behaviour varies from one Whitehall department to another. Even in relation to the Brexit negotiations, some departments have been more forthcoming in sharing information than others, so they are better performers, whether they are Treasury, rural or business departments.

Within the Scottish Government, Michael Russell oversees the process. There is an infrastructure of intergovernmental arrangements, which is being reviewed by the UK Government. My engagement with the Treasury is being reviewed in relation to the finance ministers' quadrilateral meetings, which we do not currently have because there is no functioning Northern Ireland Government. The infrastructure is in place

to deal with intergovernmental issues, and Michael Russell leads on the common frameworks. Where those affect a specific cabinet secretary's responsibility, we engage. We are trying to put some structure in the process, but it is clear that not all the common frameworks will be in place on day 1 of exit from the European Union—if it happens, and if it happens in the fashion that the UK Government currently appears to desire.

We are doing our best to make it all work in the interests of the people, but we will not compromise devolution, although we recognise that in some areas it would be good to have UK-wide co-operation—for example, in mutual recognition of professional qualifications. The committee considered, when it looked at a statutory instrument on that, why a common framework should be developed for that in the event of a no-deal Brexit.

12:15

**Andy Wightman:** That is helpful. On the services directive, for example, in your letter of 17 April you say that

“Official-level discussions are continuing on the potential for a common framework in this area.”

Without getting into the substance of what that might look like, you say that “discussions are continuing” and you have said that Mike Russell is co-ordinating the work overall. For clarification, if you complete your work and determine that a common framework would be useful, is it the case that the Government would not seek to implement that until a common approach has been agreed for all common frameworks?

**Derek Mackay:** We would have to have both: we will have to be assured that the common frameworks are as we want them to be, that they are agreed by the Scottish Government collectively and that we are happy with the process. Of course, we will have to be assured that individual frameworks work for specific policy interests.

I am absolutely speculating, based on the premise of the question: we are not even at the stage of there having been a presentation to ministers on what a common framework would look like. That is because, as a result of where we are on the Brexit negotiations, we have not got into policy detail. All the work is being done on the basis that there will be Brexit. I speculate, however, that we would, of course, want agreement on both those matters.

**Angela Constance:** Is the lead body that is driving forward the work on the 111 common frameworks that have to be established the joint ministerial committee on European Union negotiations?

**Derek Mackay:** Yes. That committee is, ultimately, where the political negotiations happen.

**Angela Constance:** How are the Scottish Government's interests pursued on that body? Is it just Mr Russell who attends the meetings, or is his presence supplemented by that of other ministers, as appropriate?

**Derek Mackay:** Other ministers can, as appropriate, join Mr Russell.

**Angela Constance:** At JMC level, where are we in the process of agreeing a way forward that is mutually respectful to the various Governments? Has there been agreement about the processes by which ministers will communicate and seek to come to agreement, or on what will happen if ministers cannot agree?

**Derek Mackay:** That is an excellent question, although it is probably more for Michael Russell, because he is at JMC meetings more regularly than I am. However, it will come as no surprise that what he has reported back to the Cabinet is that the process has been pretty unsatisfactory so far: it is well understood that Scotland has been sidelined, and we have not found the political interventions and platforms to be particularly fruitful for Scotland's interests. However, as I acknowledged in my letter to the committee, some of the work of officials on work streams to prepare for and make progress on common frameworks has been more fruitful.

Nothing is predetermined. I set out in my opening statement the broad position that the Government has taken. However, the existing infrastructure has—to say the least—not worked well in terms of recognising Scotland. I understand that the UK Government will reflect further on the issue this weekend, not just in relation to frameworks, but more widely on Scotland's position, so let us see what that produces.

**Angela Constance:** Assuming that the intergovernmental framework and minister-to-minister relationships can be sorted out, do you have a view on how Parliament, the committee—in relation to the common frameworks that fall within your portfolio—and civic Scotland should be informed of and involved in the decision-making processes?

**Derek Mackay:** There are no firm proposals yet, because they would be premature, but as Mr Russell has said to the Finance and Constitution Committee, if we are to progress with common frameworks, there should, as appropriate, be engagement with civic Scotland, Parliament and policy committees including this one. That engagement should take place so that there is openness and transparency in what we do.

**Angela Constance:** Are there any missing common frameworks for your portfolio? Do you agree with the UK Government's framework analysis of the subject areas and the type of common frameworks that are proposed?

**Derek Mackay:** There is an understanding that a UK-wide framework would be helpful in some areas—mutual recognition of professional qualifications is an example in which it is self-evident that that would be helpful.

There are other areas that are in dispute, because it is the UK Government that has decided what is and what is not in scope. Areas of dispute include the status of state aid and data sharing.

All the other areas will be subject to considerations such as what the common frameworks look like—the details that the UK Government wants us to agree to. When we consider all that, we will ensure that devolved matters are protected and that the common frameworks do not interfere with Scotland's interests. If we can find justifications for and benefits to Scotland in common frameworks, we will work to find a way through that.

There is not total harmony right now: some areas are in dispute. Even on the areas in which we think common frameworks might have benefit, the devil will be in the detail, when we see it.

**Angela Constance:** So, are there still more questions than answers?

**Derek Mackay:** Absolutely.

**The Convener:** I think that you said that the detail will be worked out by department officials.

**Derek Mackay:** Absolutely. That will depend on each policy. Some frameworks will be more straightforward than others. For example, mutual recognition of professional qualifications might be an area on which we can make a lot of progress. There might be other areas in which it is more difficult to reach an understanding about what the two Governments are trying to achieve with policy, so we might be in conflict. We will not know until we get into the policy minutiae that will be presented to ministers. We will try to work our way through the issues with arrangements at political level, although they have, thus far, been unsatisfactory. However, there has been intensive work by officials to find a way forward.

**The Convener:** The next agenda item will require a new set of officials, so we will allow the cabinet secretary to depart in harmony on this occasion. Thank you for coming in, cabinet secretary.

## European Union (Withdrawal) Act 2018

### Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

12:22

**The Convener:** Agenda item 6 is consideration of notification from the Scottish Government relating to the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.

Under EU law, EU nationals have the right to establish a business in any member state. If the UK leaves the EU in a no-deal scenario, the European Communities Act 1972 will be repealed, but the rights will be saved in domestic law by section 4 of the European Union (Withdrawal) Act 2018. The UK and Scottish Governments have determined that the rights to be retained in domestic law should be regulated by the statutory instrument.

The committee agreed to seek further information on the regulations and the response is contained in the papers.

Is the committee content for the issues to be dealt with by a statutory instrument to be laid at Westminster?

**Members** *indicated agreement.*

**The Convener:** As the committee is content, I will write to the cabinet secretary to notify him of our decision.

12:23

*Meeting continued in private until 12:53.*



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