



OFFICIAL REPORT
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Finance and Constitution Committee

Tuesday 29 September 2020

Session 5



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FINANCE AND CONSTITUTION COMMITTEE

22nd Meeting 2020, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Tom Arthur (Renfrewshire South) (SNP)

*Jackie Baillie (Dumbarton) (Lab)

*Alexander Burnett (Aberdeenshire West) (Con)

*Angela Constance (Almond Valley) (SNP)

*Patrick Harvie (Glasgow) (Green)

*Dean Lockhart (Mid Scotland and Fife) (Con)

*John Mason (Glasgow Shettleston) (SNP)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

Finance and Constitution Committee

Tuesday 29 September 2020

[The Convener opened the meeting at 15:30]

United Kingdom Internal Market Bill

The Convener (Bruce Crawford): Good afternoon and welcome to the 22nd meeting in 2020 of the Finance and Constitution Committee. The only item on our agenda is to take evidence on the United Kingdom Internal Market Bill from the Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove. Because we are required to conclude the evidence session by 4.30, members are asked to keep their questions succinct and I ask Mr Gove to do the same with his answers.

I warmly welcome Mr Gove to our meeting and invite him to make a short opening statement, should he wish to do so.

Rt Hon Michael Gove MP (Chancellor of the Duchy of Lancaster): Thank you, convener. It is good of you to invite me to answer questions today. I am happy to move straight to the question and answer session. I am grateful to you for making it so easy for us to have this session virtually.

The Convener: That is helpful. Thank you, minister.

A lot of substantial and wide-ranging issues and fundamental questions have been raised with us about the impact of the internal market bill on devolution. I will give three quick examples. The Public Administration and Constitutional Affairs Committee has said that the proposals in the internal market white paper would

“set in law the principles of mutual recognition and non-discrimination”,

which would

“effectively create new reservations in areas of devolved competence.”

Professor Michael Dougan from the University of Liverpool told us that

“the operation of the UK internal market has real potential to limit the capacity of the devolved institutions to pursue different economic or social choices from those made in London.”

NFU Scotland told us that

“mutual recognition and non-discrimination would, in effect, drive a coach and horses through the concept of commonly

agreed frameworks”.—[Official Report, Finance and Constitution Committee, 2 September 2020; c 3.]

Were they not correct? How will the UK Government address those concerns?

Michael Gove: That goes to the heart of a live debate. The United Kingdom Internal Market Bill—combined with the additional powers that the Scottish Parliament and other devolved legislatures gain as a result of our departure from the European Union—results in a net accretion of power to the Scottish Parliament. It is a power surge and, as a result of that combination of measures, the Scottish Parliament and Government will be stronger within the framework of the United Kingdom.

The Convener: Therefore, all the people that I have just quoted—and you will hear more—are wrong.

Michael Gove: NFU Scotland is supportive of the principle of an internal market and it believes, rightly, that it is important that high-quality Scottish produce should have unfettered access to the rest of the United Kingdom. We need to ensure that and we can do it through common frameworks and the bill.

The Convener: Therefore, the wide-ranging concerns that have been expressed by many organisations, of which you will hear more this afternoon, are going to be ignored.

Michael Gove: No. We take account of every concern, but some of them are misplaced. There has been some misinformation and myth making about the legislation. It is important to recognise that, while the whole United Kingdom was in the European Union, the operation of all our legislatures was constrained by EU law. Now that we are outside, all the legislatures will have more power.

The Convener: I am sure that my colleagues will want to pick up on that, but I will deal with one of the UK Government amendments, which, if passed, would mean that

“A manner of sale requirement is not within the scope of the mutual recognition principle”.

However, that is only part of the picture, is it not? Our committee adviser points out that, for example, in relation to minimum pricing per unit of alcohol, restrictions on prices would still be subject to the non-discrimination principle and, in particular, that the proportionality principle that protected the Scottish scheme for minimum unit pricing for alcohol is noticeably absent from the bill.

Is the amendment therefore not an overt admission by the UK Government that, despite the protestations to the contrary, minimum unit pricing always was covered by the bill, and is it the case

that the amendment might not even have the effect of protecting minimum unit pricing if any significant changes to it were required?

Michael Gove: No, I disagree with that. First, when the Scottish Government wanted to introduce minimum unit pricing, it was challenged under European Union law. Minimum unit pricing was secured and it would never have been threatened by the bill. Given the concerns that were raised, we saw no harm in putting that guarantee in the bill—in capital letters, as it were. Of course, if the UK Government applied minimum unit pricing in England in a way that was discriminatory—for example, if we said that alcoholic drinks that are produced in England would be subject to a different pricing mechanism from alcoholic drinks that are produced, distilled or manufactured in Scotland or Wales—that would be covered by the bill, but the principle of minimum unit pricing and the idea that, wherever alcohol is produced, if it is sold in Scotland it needs to comply with that minimum pricing regulation is not, never was and never will be harmed by the bill.

The Convener: Does that mean that you accept that, if the bill is amended in this way, any substantive changes to the minimum unit pricing for alcohol could be challenged on the basis of the non-discrimination principle?

Michael Gove: No, not on current practice. However, if—purely for the sake of argument—the Welsh Government were to say that whisky that is produced in Scotland would have a different minimum alcohol unit price from whisky produced in Wales, it could be contested, but if the Welsh Government said that all whisky in Wales had to be subject to minimum unit pricing, then it could do that and it could set the price as it wished.

The Convener: I think that there will be some debate to come on that.

Murdo Fraser (Mid Scotland and Fife) (Con): Good afternoon, Mr Gove. I want to ask about a different bit of the bill: the financial assistance powers that feature in part 6 of the bill, which gives UK ministers the power to provide financial assistance in all parts of the United Kingdom in what would otherwise be devolved areas. Can you explain the thinking behind those powers and how you intend them to be used?

Michael Gove: It is important to recognise that those powers would augment the capacity of the Scottish Parliament and the Scottish Government to invest in the welfare of the people of Scotland. By its very nature, the United Kingdom is a union and any union is more than the sum of its parts. There can be investment in projects that benefit all parts of the union.

For example—and I say this without prejudice to any future investment—we have seen how the new, or revived, Borders rail line has benefited the people of the Scottish Borders and Edinburgh. It would be entirely possible to conceive of a further linkage down to Carlisle or elsewhere, which would be an example of cross-union connectivity. Investment in that would be investment in both Scotland and England and would be to the benefit of both. We already have a borderlands deal, which recognises the economic integrity of the Borders in many different ways. It would be entirely within that principle that we would seek to invest.

Murdo Fraser: We have heard some concern that the powers would seek to supplant the Barnett formula, but you seem to be saying that it would be additional spending over and above the Barnett formula, which would be sacrosanct. Like me, you might think it curious that some politicians who usually want to rip up the Barnett formula are suddenly very concerned about preserving it, but can you give us a guarantee that the Barnett formula is being protected and that any spending under this heading would be additional to Barnett and would not replace it?

Michael Gove: Totally. We are absolutely committed to the Barnett formula, which recognises that there are unique circumstances in Scotland because of history and geography that mean that the level of per capita spending is higher, which is reflected in the block grant, which would be completely unaffected. However, as we have seen during the recent Covid crisis, the broad shoulders of the UK Treasury mean that we are able to provide assistance to every part of the United Kingdom on top of the Barnett formula and any Barnett consequentials.

Alex Rowley (Mid Scotland and Fife) (Lab): You mentioned the common frameworks, Mr Gove. In Scotland, there is a view that most of the bill's objectives would be achievable through common frameworks. Given that we could make progress and deliver what needs to be delivered through common frameworks, why is there a need for the bill?

Michael Gove: Common frameworks can do a lot, but they cannot do everything. Common frameworks cover specific sectors, such as food and feed or the application of chemicals. However, they are sector specific, and the bill provides cross-cutting support to ensure that businesses and individuals in Scotland can have unimpeded access to the rest of the UK market. Of course, Scottish Government officials are working with officials in the UK Government and other Administrations, because they recognise that, although frameworks can do a lot, they cannot do everything. Frameworks cover some things that

are outside the scope of the market and some things that are market related, and then there are other market-related provisions that frameworks, sadly, do not provide reassurance on. However, I am glad that we are making progress on frameworks, without prejudice to the different views that people might take of the bill.

Alex Rowley: It would be good to be more specific about what cannot be covered by frameworks, but we can come back to that. One of the big concerns that people have about the bill relates to future trade deals. In the course of the evidence that the committee has taken, we have been given a good example of that with regard to the sale of cosmetics that are tested on animals. As we know, that is banned under EU law, but the bill could pave the way for a future trade deal with a country that allowed the testing of cosmetics on animals. The objection to testing on animals is an animal welfare objection, not an objection that the cosmetics would represent a health risk, so under the legislation, Scotland could be forced against its will to sell cosmetics that have been tested on animals, which is not our policy just now. You have talked about a power surge to Scotland, but there are many such examples of powers that Scotland currently has through the EU which, under the bill, we would not have, because the power to legislate on those matters would rest at a UK level. Is that—

Michael Gove: Let me reassure you on that matter. All sorts of myths such as that have been put about, but they are nonsense. They are stories to scare children at bedtime, and not a real reflection of policy. The UK Government has been a world leader on animal welfare. For example, outside the EU, we can limit live animal exports and ban the import of fur. The UK Government has led not just Europe but the UK in animal welfare, introducing, for example, Lucy's law, which is the law against puppy farming. We were the first jurisdiction of the United Kingdom to introduce closed-circuit television in slaughterhouses, to ensure that end-of-life welfare standards for animals are protected as rigorously as possible. The idea that the UK Government would somehow compromise our high animal welfare standards is for the birds. There are all sorts of people who want to suggest that the legislation would lead to a race to the bottom, but economists will always say to look at the revealed preference—look at how folk have acted in the past if you want to know how they will act in future. Like previous UK Governments, this UK Government has been a world leader on environmental, animal welfare and other standards.

The other thing about the EU is that the rules are set by qualified majority voting. The Scottish Government and the Scottish Parliament will have

more powers outside the EU than they would have inside it. Some in Scotland argue that an independent Scotland should seek membership of the European Union. That would result in a diminution, not an expansion of Scotland's power, sovereignty and autonomy.

Alex Rowley: Your Government may have a good record on animal welfare, but the point is that, under the bill, a future UK Government could decide to do a trade deal with a country and put aside those standards. You in Westminster would have the power to do that; we in Scotland would have no power to stop it. That is the problem.

15:45

Another big concern in Scotland is around our health service and other public services. Again, it is looking to the future and possible trade deals that would compromise our right in Scotland to say that we are not putting sections of our health service, for example, into the private sector. The bill says that health and social care would be exempt from mutual recognition, but a number of witnesses have pointed out to us that, under clause 17(2), the secretary of state would have the power to add or remove, by regulation, services exclusions in schedule 2. Again, the power to remove exclusions for our public services would sit with Westminster, and we in Scotland, and our Government in Scotland, would have no right or ability to stop that. Surely that is not a power surge but a power grab.

Michael Gove: It may be a lurid fantasy of some that it is the secret agenda of a Government to use the bill as a Trojan horse to privatise parts of the NHS, but it is one of the most absurd, ludicrous and—frankly—irrational fantasies that I have heard in my political lifetime.

The reason why we are so clear about that is that our NHS is not for sale under any circumstances. There are some people who are anxious to spread myths about the UK Government but, again, if you look at the evidence, you can see that we have chosen not just to legislate but to invest in our NHS in an unprecedented way. The whole thing is ludicrous. You could say that a future Scottish Parliament could vote to abolish support for farmers and that, as that is a theoretical possibility, it is a danger. However, rather than looking at such fantasies, it is better to look at the reality, and the reality is that Scotland's farmers and health system are better within the United Kingdom, and within the United Kingdom internal market. Nobody has yet seen or produced any evidence to suggest the contrary.

Alex Rowley: I am a devolutionist, but this is not about you saying that a UK Government would never do that. You are creating the legislation that

will allow it to happen. That is the key difference. If you have no intention of allowing those things to happen, why create the legislation that will allow them to happen? That is why the people of Scotland are revolting en masse, and it is why you will pave the way for independence in Scotland—not the Scottish National Party, but you and your friend the Prime Minister.

Michael Gove: You say that you see people revolting, but I have seen no evidence of that. There is the odd headline on the front page of *The National*, but I do not think that this is the talk of the steamie. I do not think that people in Aberdeen or Auchtermuchty are looking at the United Kingdom Internal Market Bill and saying that it is a Trojan horse for privatisation of the NHS. If you can find such people who say that and who are not paid-up members of the SNP, I would be very interested to hear from them. This is a totally concocted political myth, and the truth is that what we are doing in this bill is protecting the internal market and maintaining high standards. Were we to stay in the European Union, a future European Union might choose to alter the rules of the game in a way that we could not control. Leaving the European Union not only strengthens the UK's institutions but strengthens the capacity of the UK and the devolved Administrations to protect that which is dear to us.

The Convener: I am keen to make sure that everyone gets a chance to ask their questions. I made a plea at the beginning of the meeting for succinct questions and answers. Can we try to abide by that, please?

Angela Constance (Almond Valley) (SNP): I would like to put to Mr Gove some of the evidence that we heard last week from Professor Michael Dougan of the University of Liverpool. He said, and I quote the professor exactly:

“The starting assumption for the bill seems to be that regulatory divergence by Scotland and Wales is a problem; it is not an expression of local democracy or a valid search for different solutions to societal problems in Scotland and Wales, but a problem that needs to be managed. That starting assumption runs throughout the bill's provisions on non-discrimination, and especially on mutual recognition.”—[*Official Report, Finance and Constitution Committee*, 23 September 2020; c 8.]

I wonder what Mr Gove's response to the professor is?

Michael Gove: I will put the professor's mind at rest. That is not the starting assumption of the bill.

Angela Constance: I suspect that he would be looking for a wee bit more detail. I will therefore cite another quote from Professor Dougan. He said:

“It is fair to say that there are two main factors that are particularly striking under the United Kingdom Internal Market Bill. The first is that it is in effect a *cassis de Dijon*

on steroids. It takes the idea of mutual recognition, multiplies and magnifies it, and makes it a far stronger principle of mutual recognition than EU lawyers would recognise in the context of the single market. Secondly, it does not acknowledge the simple empirical fact that the UK internal market is unique in the world, due to the size of the English economy and population relative to the size of the other participating territories.”—[*Official Report, Finance and Constitution Committee*, 23 September 2020; c 3.]

When you put those two factors together, there is a huge impact on devolution. Will Mr Gove respond in more detail to those concerns?

Michael Gove: I, again, take gentle issue with the professor. It is the case that there is a read-across in relation to the *cassis de Dijon* principle, which is at the heart of the EU single market. It means that if something can legitimately be put on sale in one part of a single or an internal market, it can legitimately be put on sale in another part of it. However, it is important to bear in mind why that is so. The UK internal market works to the benefit of every one of us. It is the case that 60 per cent or more of Scotland's trade is with England and other parts of the UK. The Fraser of Allander institute and others estimate that some half a million or more jobs depend on unfettered access within the internal market that the bill underpins.

Given that we have been in the EU for 40 years, single market rules have governed the operation of the UK internal market. As we leave, we need new rules, and those new rules are such that the devolved Administrations have more power than they did when we were in the EU, which is critical.

The position behind the internal market bill—which is, indeed, the position of the UK Government overall—is that devolution gives us the best of both worlds. It gives access to that internal market for every part of the United Kingdom, and the Scottish Parliament and other devolved Administrations can also legislate in the areas that are important to them. Whether it be in relation to higher education funding, minimum unit pricing for alcohol, the plastic bag charge, or whatever else, we welcome the innovation that devolved Administrations show.

Angela Constance: Let us say, for example, that the Scottish Government was minded to introduce a ban on single-use plastics. Under the bill, would it be the case that Scottish authorities could introduce and enforce such a ban against Scottish producers but the problem would be that they could not enforce it against imported goods from England or Wales?

Michael Gove: We would have to look at what the legislation said. However, for the sake of argument, if it were the case that certain goods were banned in Scotland, it would be the case that they would be banned in that jurisdiction whether they were Scottish or English manufactured.

Angela Constance: That is quite revealing. I will leave it there just now, convener.

Dean Lockhart (Mid Scotland and Fife) (Con): My first question relates to the policy objectives behind the bill. This committee has heard evidence from a number of stakeholders that maintaining free trade across the UK is essential to protect jobs and livelihoods in Scotland. In fact, you mentioned that some 550,000 Scottish jobs rely on that free trade.

On the other hand, the Scottish Government has said that the bill is not required and that instead it will pursue a policy of keeping pace with new EU legislation, which will likely create new trade barriers between Scotland and the rest of the UK. Mr Gove, can you share your views on the adverse impact of new regulatory barriers? Can you confirm the analysis that it would be Scotland that would suffer the most economic damage if we were to lose free trade access to the rest of the UK internal market?

Michael Gove: You are absolutely right, Mr Lockhart. The first thing to say is that the principle of the continuity bill introduced by the Scottish Government, as I understand it, is entirely to keep pace with EU legislation. Let us imagine that the EU were to legislate in certain areas and the UK were not, or that the UK were to legislate for higher standards—as is entirely possible—but the Scottish Government were not to do that because it thought it more important to keep pace with the EU. The consequence of that would be divergence that would create strains on the internal market and would work against the interests of Scotland's businesses and consumers. As you rightly point out, Mr Lockhart, given the scale of trade in Scotland with the rest of the UK internal market and the dependence of so many businesses and jobs on that trade, that would have an adverse effect. The bill is there to protect Scotland's jobs, protect the access of Scottish consumers to goods from elsewhere in the UK and to do so in the context of a devolved settlement.

In addition, it should be said that whatever admirable ideas emerge from the EU, I am sure that if they were to be very good, they would be adopted by the UK. Were they to be adopted by the Scottish Government simply for the sake of keeping pace with the EU, Scotland would not secure any additional market access to the EU as a result, but market access to the rest of the UK might be impeded.

Dean Lockhart: Thank you for that answer. Would you be concerned that the continuity bill could create significant new barriers to trade and, ultimately, cost jobs in Scotland?

Michael Gove: Yes.

Dean Lockhart: My next question relates to the hypothetical concern that the UK Government might lower regulatory standards in the context of future free trade agreements. When we look at the evidence and the revealed preference that you mentioned earlier, in many areas, the UK already has higher domestic standards than the EU, for example in respect of health and safety, maternity leave and paternity leave, to name but a few, and the first major free trade agreement signed by the UK Government following Brexit—with Japan—did not result in any lowering of regulatory standards. Can you expand on the UK Government's strategic priorities in negotiating future free trade agreements and indicate whether maintaining world leading regulatory standards will be central to the UK Government's approach to those agreements?

Michael Gove: You are absolutely right to say that we see our role in shaping the international trade agenda, not just to promote free trade, but also to promote high standards, and whether that is looking at supply chains overall to ensure that we are permitting the highest environmental or animal welfare standards or whether it is encouraging other nations to adopt the high standards that we have in relation to employment and social rights, we believe in maintaining and enhancing those standards. We will not sign free trade agreements that compromise those standards. You are quite right to say that although the EU has provided a floor for certain standards over the course of the last few years, the UK Government, under Conservative, coalition and Labour prime ministers, has always aimed higher than the EU has.

Dean Lockhart: That is extremely helpful.

Patrick Harvie (Glasgow) (Green): I, too, want to ask Mr Gove about some of Professor Dougan's evidence from last week, in the hope that this time we might get an answer that is more than just, "Oh no it isn't."

Professor Dougan said that, in the EU, when issues around regulatory divergence crop up,

"it effectively flags up to the European Commission that there is a trade barrier, that it is a legitimate trade barrier, and that maybe the Commission should think about harmonisation. In that way, the emergence of legitimate trade barriers acts as a kick-start to the process of political dialogue, whereby the member states and the other EU institutions begin to think about just how serious a problem it is, what the best solution is ... The problem with the bill is that mutual recognition is not being used as a way of identifying problems so as to help find a political solution ... In effect, the bill is saying, "We have identified a problem, and we are going to"—[*Official Report, Finance and Constitution Committee*, 23 September 2020; c 21-22.]

solve it by sweeping away devolved competence. You can surely understand, Mr Gove, why no Scottish parliamentarian with a fundamental

respect for the right of the people of Scotland to choose a Government of their own interests would simply sweep aside Professor Dougan's concerns and consent to the bill.

16:00

Michael Gove: Which competences would the bill sweep aside?

Patrick Harvie: We have heard many examples of policy areas where potential divergences might be seen as politically legitimate, but about which the UK Government could decide otherwise. The first policy area mentioned in the white paper was building regulations, which have been fully devolved since the start of devolution and were separately administered even before devolution.

There is no basis for saying that a divergence that would potentially create a market or trade barrier in the UK could not be justified by the Scottish Government in public policy terms, and yet there are no exemptions or derogations for achieving sustainability, social justice or other public policy objectives, whereas there are in the EU. Why is there a difference?

Michael Gove: There is nothing in the bill as far as I can see that undermines high-quality building standards in Scotland or anywhere else in the United Kingdom. There is a mischaracterisation of what happens in the EU. European Union law had direct effect in the United Kingdom for as long as the United Kingdom was in the European Union and until the transition period ends. If it is the case that any part of the European Union or any individual or Government of a member state acts contrary to European Union law, then infraction proceedings begin and the European Court of Justice decides on that. That is why there are a variety of things that either the Scottish or the UK Governments might want to do but cannot do while we are in the EU.

To take a case in point, I mentioned earlier that if we wanted to ban the sale of fur, we could do that outside the EU but not while in it. As Angela Constance mentioned, the *cassis de Dijon* principle is at the heart of the single market and is essentially a non-discrimination principle. I do not understand, first, what the problem is with having rules governing the UK internal market that are more flexible than those of the European Union, and secondly, where any existing devolved competence is infringed by the legislation. We have not seen any examples of that yet, but I am alert and alive to any that might be raised.

Patrick Harvie: Clearly, we have not seen them yet is because the bill is not yet in place, but as I said, even the white paper mentions clearly devolved competences.

If the bill was passed in its current form and the UK took a view that an example of regulatory divergence caused a trade barrier that had to be resolved in that imposed way, and the Scottish Government said, "No, it is a reasonable, legitimate trade barrier. We think it is politically acceptable," would the Scottish Government have the power to say, "No, we are going to stick with our divergent policy", or would it be overridden?

Michael Gove: What sort of thing were you thinking of?

Patrick Harvie: I have already given you an example. Do you want me to give you more examples?

Michael Gove: The example that you gave did not apply, so I would like an example that is relevant.

Patrick Harvie: If you want to understand why building regulations are included, you should perhaps ask Mr Alok Sharma, who refused to give evidence to the committee.

Michael Gove: There is no impact on the higher standards of building regulations in Scotland or anywhere else in the UK. Let us have a real example.

Patrick Harvie: If the Scottish Government or the Scottish Parliament introduced a regulation on anything, whether it was the composition of goods or the manufacture of pretty much anything in Scotland, and the UK took the view that that created a regulatory divergence that was unacceptable, where does the power lie to judge the political acceptability of that divergence? Does it lie entirely with the UK or would it, as in Europe, be a process of negotiation and compromise? The bill seems to achieve nothing by way of negotiation or compromise, nor indeed does the process of developing the bill.

Michael Gove: You are completely wrong about the European Union. If a Government passes a law that runs contrary to EU law, the former does not prevail. For example, the *Factortame* judgment is not about negotiation and compromise; it is about the direct effect of EU law, so you are wrong in that regard.

On the prior question, I am still looking for a hard or concrete example of a devolved competence or the exercise of a devolved competence that is infringed. Please put forward a specific example of a devolved competence where the bill would, in your view, lead to that devolved competence not being able to be exercised appropriately.

Patrick Harvie: Various members have already explored specific examples, and I am aware of the time. I have given you one set of examples, on building standards. That issue was flagged up by

the UK Government in the white paper. You simply said that that is not an issue, but I am not sure why, then, it would have been raised by your Government.

As we are short of time, I have one final question. You appear to me to have the bearing of someone who is required to ask for consent but who does not ultimately care whether consent is given. Can you reassure the committee and the Scottish Parliament that the UK will not pass this legislation in respect of devolved areas without the consent of the Scottish Parliament?

Michael Gove: Under the Sewel convention, I do not normally proceed with legislation that touches on devolved competences without the consent of the devolved Administration. So far, we have managed to secure legislative consent motions for lots of bills, including, I believe, the Agriculture Bill and the Trade Bill, and we are grateful to the Scottish Parliament and the Scottish Government for that. However, leaving the European Union is not a normal occurrence; it is an exceptional one. I hope that we will secure a legislative consent motion, but of course it is vital that we safeguard the UK internal market.

Patrick Harvie: So you do not actually care whether we consent or not.

Michael Gove: Oh, I do. That is why I am appearing at the committee and why we are having this conversation. As the various bogus arguments against the bill are exploded, I hope that more and more people will realise that it will be a useful and indeed helpful piece of legislation that strengthens devolution. As such, I hope that, as people have cause to reflect, support for the bill will be forthcoming from Holyrood. Nothing would give me greater pleasure.

Patrick Harvie: And if it is not, you will not legislate—

The Convener: We need to move on, Patrick, to give other members an opportunity to ask questions.

George Adam (Paisley) (SNP): Mr Gove, you mentioned that the United Kingdom is more than the sum of its parts. Obviously, one of those parts is Northern Ireland. There has been much discussion with regard to Northern Ireland and your current proposals for the UK internal market. The European Parliament has been clear that it will not ratify any EU-UK deal unless clauses 42, 43 and 45 of the bill are dropped. The European Parliament has gone as far as saying:

“Should the UK authorities breach—or threaten to breach—the Withdrawal Agreement, through the United Kingdom Internal Market Bill in its current form or in any other way, the European Parliament will, under no circumstances, ratify any agreement between the EU and the UK.”

My question is quite simple and straightforward: are you going to drop clauses 42, 43 and 45, and, if not, why not?

Michael Gove: No, we are not. The reason for that is that we want to ensure that the UK internal market is secure in the event of a non-negotiated outcome in the conversations that we are having with our European friends and partners over the future relationship. Those specific clauses are there to safeguard the UK internal market, and they touch on a set of specific areas. One is export declarations from Northern Ireland into Great Britain. The Northern Ireland protocol exists to defend the UK internal market and to grant unfettered access for goods from Northern Ireland to the rest of the UK, and to help the UK to support the EU in protecting its single market. It is a compromise in that regard. However, there is no need for export declarations from Northern Ireland to Great Britain. The protocol does not protect the single market, but it does bear on unfettered access.

We also want to make sure that, when it comes to the definition of goods at risk of tariffs in the event of a non-negotiated outcome, as appropriate, those goods that are not at risk and that are destined for Northern Ireland consumers do not face tariffs. If we cannot secure an agreement, we want to be able to be in that position. We also want to make sure that the state aid provisions, which apply quite properly in Northern Ireland, do not have reach-back to the rest of the United Kingdom. However, we hope that we will secure agreement in the negotiations with the EU on a free trade agreement. If, for any reason, we do not, we hope that those issues could be resolved in a joint committee.

George Adam: So we are on a wing and prayer there. You are not willing to compromise by dropping clauses 42, 43 and 45.

During your answer, you mentioned that it was a compromise, but, surely, the compromise would be to work with Europe and find a way to get round it and drop clauses 42, 43 and 45.

Michael Gove: Yes.

George Adam: Therefore, you believe that that compromise could be made.

Michael Gove: We believe that the joint committee is there in order to find an agreement and make sure that the Northern Ireland protocol and the withdrawal agreement work in everyone's interests, but we reserve the right to protect the United Kingdom internal market if we do not get agreement.

George Adam: With the greatest respect, that is not what I asked. I asked whether you would look at compromising on clauses 42, 43 and 45. In

this life, Mr Gove, you do not always get what you want.

Michael Gove: No, but sometimes you get what you need, and what we need is this legislation.

George Adam: On the same point, as the Scottish Government has already said, Scottish Government ministers' responsibilities under the ministerial code could be breached. Paragraph 1.3 of the ministerial code says that

"The Ministerial Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice and to protect the integrity of public life."

If we take that into account, as well as the conversation that we have had up until now, are you asking the Scottish Government to breach its ministerial code?

Michael Gove: No.

George Adam: You are, because, in effect, if we breach international law, that will be the case.

Michael Gove: No, I am not asking Scottish Government ministers to do that.

George Adam: But that is—

The Convener: George, I am sorry, but that is as far as you will get with that.

George Adam: Okay. No problem.

The Convener: However, you may ask one final question.

George Adam: My final question is on the idea of the devolved nations and our all living in the United Kingdom and having respect for one another. I understand that the Northern Ireland Assembly has already passed a motion to reject the internal market bill. Is the UK Government planning to ignore the voices of the devolved nations and to press ahead with legislation regardless? Some of the evidence that we have received says that the UK Government has the power to do that in the internal market bill scenario.

Michael Gove: No, we are working with the devolved Administrations to make sure not just that we can secure agreements on common frameworks, where work is going on, but that the benefits of the internal market bill can be appreciated and shared by all.

Alexander Burnett (Aberdeenshire West) (Con): Good afternoon. There has been concern that the office for the internal market will be able to overrule decisions made by the devolved Administrations. Is Mr Gove able to allay those concerns today?

Michael Gove: I hope so, Mr Burnett, but one of the things that we want to do is work on common frameworks to uphold common standards. To be fair to all the Governments of the United Kingdom, there has been continued and energetic progress on common frameworks over the past few weeks and months.

Alexander Burnett: Thank you. That is reassuring. Finally, why will that office sit within the Competition and Markets Authority, and how do you propose to appoint people to it?

Michael Gove: The Competition and Markets Authority has a UK-wide brief and its role is to ensure fair competition overall, but we would want to work with the devolved Administrations and others to ensure that its work can command confidence.

16:15

Tom Arthur (Renfrewshire South) (SNP): Schedule 2 lists types of services to which mutual recognition does not apply, one of which is healthcare services. Can you explain to the committee why healthcare services are listed in part 1 of schedule 2?

Michael Gove: Yes—it is because we want to be absolutely and unambiguously clear that our NHS is not for sale.

Tom Arthur: Is that the reason why? What would be the consequences if healthcare services were not listed in part 1 of schedule 2?

Michael Gove: Again, that provides additional clarity and emphasis—it underlines the importance of the shared commitment that all of us give to the NHS.

Tom Arthur: That is reassuring—I appreciate that.

In the bill as amended, clause 17(2) gives the secretary of state the power to

"remove entries in the table in Part 1".

Why is that power in place to allow the secretary of state, through regulations, to remove entries in part 1 of schedule 2?

Michael Gove: The power should always be there for additions to be made, too. Ultimately, the secretary of state is the decision maker, but it is obviously the case that decisions would be taken only after appropriate thought and consultation.

Tom Arthur: Okay. So, healthcare services is listed in schedule 1 and the bill confers on the secretary of state the power, through statutory instrument, to remove healthcare services. Was any consideration given to putting healthcare services on a permanent footing, so that it could not be removed from the schedule?

Michael Gove: We will always listen to any fairly expressed request from any politician or any party in order to strengthen further the protections that we give to the NHS.

Tom Arthur: Will the UK Government consider an amendment to the legislation that would ensure that healthcare services could not be removed from schedule 2 via regulations?

Michael Gove: We believe that it is already the case that there are firm protections as a result of the existing provisions in the bill, but, of course, we are always happy to discuss such matters with the devolved Administrations and others. However, I should again stress that there is no one in UK politics at the moment—nor, I imagine, would there ever be—who would wish to undermine the basis on which the NHS is constituted and its services are provided.

Tom Arthur: I entirely appreciate that, and I very much welcome the fact that healthcare services are included in schedule 2, because, to use your words, our healthcare services are “not for sale.” My only point is that healthcare services could be removed from schedule 2 not only via an affirmative instrument but via the made affirmative resolution procedure, as is provided for in clause 17(4). Why is the UK Government giving itself the power to remove healthcare services from part 1 of schedule 2 immediately after the bill is passed and for up to three months without Parliament having a say? I am curious about why that power is included. If, like me, you want healthcare services to be protected and you think that there is no likelihood of anyone wanting to sell off our NHS, why have a provision in the legislation that, following your logic, would allow that to happen?

Michael Gove: It is the case, as we both recognise, that we want to make sure that the NHS is not for sale. The provision is in order to provide that additional reassurance. It is a bit like the amendment on minimum unit pricing of alcohol. It puts in capital letters what was always our intent.

There are some voices—I know that they are not yours—that would seek to scaremonger on the issue, and the provision is in order to provide reassurance that there is no impact—there could never be and will never be—on our NHS.

Tom Arthur: I agree, Mr Gove. I do not want anyone to scaremonger, and I think that we could avoid any scaremongering by ensuring that the protection of healthcare services is not in a schedule that could be amended by the secretary of state, as it is currently in the bill, and by ensuring that that schedule could be altered through primary legislation only. I ask you again: will the UK Government give consideration to an amendment that would ensure that healthcare

services could not be removed from schedule 2 via the secretary of state using the affirmative procedure or by the made affirmative procedure in the first three months after the legislation is passed?

Michael Gove: I take your point, and I will look at the legislation, because we want to provide people with absolute reassurance on that. Of course, the legislation has been framed in a particular way in order to make sure that our internal market can operate.

I should say that we do not believe at all—in any way—in allowing our NHS to be traded away, and there is a thicket of provisions in other legislation that safeguard the position on the NHS. I am more than happy to discuss with you and others any additional safeguards that may be thought to be required.

Tom Arthur: You recognise that the bill would allow a secretary of state to remove healthcare services from schedule 2 in the first three months of the bill being passed without a parliamentary vote, which would, following the logic, allow our healthcare services to be sold off. You do not believe that that is going to be the case, but is it not a legal possibility under the bill as it is drafted?

Michael Gove: I am glad that you acknowledge that that is not going to come to pass, because some people do take that conspiracist view. I am reassured that you do not.

Tom Arthur: It comes down to a matter of trust. Clearly, when the Government is pushing forward legislation that is regarded as breaking international law, trust is at a premium.

Jackie Baillie (Dumbarton) (Lab): Colleagues have explored the substance of the bill, but I will take a step back and ask about process, because it is fair to say that a variety of views—from polite reservations to outright hostility—have been expressed. It certainly appears that the devolved nations have serious concerns. On that basis, is there an opportunity to pause and get the consensus that is necessary, or are you just going to railroad the bill through?

Michael Gove: That is a fair point. As you rightly say, there has been a variety of different responses. We want to make sure that the committee hearing is part of that process and that people appreciate what is and is not in the bill.

We need to have the legislation in place by 31 December 2020, because that is when the transition period ends and when the single market rules fall away. However, if there is more that the UK Government can and should do to explain the intent behind the bill and build support for it, of course, we will do that.

Jackie Baillie: Let me press you on that point. As I read it, a number of the devolved nations are likely to withhold consent for the bill. Therefore, will you pause and negotiate again with them?

Michael Gove: No, we will not pause the implementation of the bill, but we will seek to properly and better understand any concerns. If there are ways in which the bill can be improved, not least in the House of Lords, we will take the opportunity to do so. The essential purpose of the bill—to make sure that we have a functioning UK internal market—is shared by the Welsh Government and the Northern Ireland Executive. Issues have been raised about aspects of the bill, and we will work in good faith with those Administrations to find an answer. However, ultimately, we need to have a functioning statute book on 1 January 2021.

Jackie Baillie: The debate on the bill also illustrates the need for new institutional architecture to make it work. I am thinking, in particular, of the dispute resolution mechanism that is needed between Governments, never mind between anyone else. Do you think that the proposals in the bill are sufficiently robust to enable that to happen?

Michael Gove: Again, that is a very good point. First, in our attempt to find consensus on the way forward, we have been working with Governments on approaches to the internal market. The Scottish Government withdrew from our internal market work strand a wee while back, which we regretted.

Secondly, on dispute resolution, in parallel with work on the bill, we are working with the Scottish Government and the devolved Administrations to look again at the structure of intergovernmental relations, and dispute resolution is part of that. While those conversations are on-going, I hope that we can find a way of having a robust dispute resolution mechanism with independent advice that people can have confidence in.

John Mason (Glasgow Shettleston) (SNP): I will ask about professional qualifications, specifically for teachers. For quite a long time, teacher qualifications have been different in Scotland, and some of our teachers are worried that, if professional qualifications must be mutually recognised, anyone could come in from the rest of the UK and teach in Scotland without meeting the normal Scottish standards.

Michael Gove: No, I do not believe that the bill would allow that to happen. It has no impact on the provision of education services.

John Mason: But does it not have impacts on professional qualifications?

Michael Gove: It would not lead to any change in how Scotland would regulate its education system.

John Mason: My understanding was that although, for example, generally speaking, an accountant in Scotland—as I am—or in England and Wales can switch over and work in the other place, that is currently not the case for teachers. In Scotland, a teacher has to have a degree in the subject that they teach, I think, and I do not think that that is necessarily the case in England.

Michael Gove: I have three things to say about that. It is the case that there are distinctions in professional qualifications. As you know, Scots law is, by definition, a different legal system from that in England, therefore English lawyers cannot appear in Scottish courts except after acquiring appropriate qualifications or particular permission. In the same way, the regulation of what happens in Scotland's schools is for Scotland's Government.

Sadly, it is not the case that every teacher in Scotland has a degree in the subject that they teach. Would that it were so. One of the problems over the past 13 years has been a decline in educational standards in Scotland relative to those in other parts of the United Kingdom. That is a source of deep regret, and there is a live debate in Scotland about how we can improve educational standards.

John Mason: My final point is that if, theoretically, there was a problem with Scottish education—which I do not accept—and we were trying to improve it, one way would be to raise the professional standard of teachers in Scotland. Would we be able to do that if that was going to exclude teachers from elsewhere?

Michael Gove: Again, I think that it is entirely for Scotland to regulate who can teach in Scottish schools. However, because of the approach that the Scottish Government has taken towards action, examinations and the curriculum, we have less information about what is working well—and not so well—in Scottish schools compared with other parts of the United Kingdom. That is why I think that it is critically important that, as well as additional investment in tuition for those students who have fallen further behind, as has been put forward by Douglas Ross, we have more information for parents about how schools are performing, so that we can learn from the best schools in Scotland and support the weaker schools. I believe that that was the approach that the Scottish Government wanted to take in the past but chose not to pursue.

I agree with John Mason that improving the quality of education in Scotland is something that is close to all our hearts. We want to make sure

that Scottish children are well educated—and then, in the United Kingdom, they can take advantage of the economic opportunities that the internal market provides.

The Convener: I will allow a question from Angela Constance, because we need to get back to the bill instead of the extraneous nonsense that I have been hearing.

Michael Gove: I am sorry that you—

Angela Constance: Thanks, convener. Back we go to the United Kingdom Internal Market Bill—specifically, to clause 48, which amends the Scotland Act 1998 to explicitly reserve to Westminster

“Regulation of the provision of subsidies which are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business.”

I am talking about state aid. The Scottish Trades Union Congress said that the bill does not detail what those regulations might be or what implications there may be for devolved decision making and the devolved settlement and that, in effect, it reserves state aid to Westminster, despite that not currently being reserved in the Scotland Act 1998. It is quite hard to see how that is not a power grab by the UK Government, is it not, Mr Gove?

Michael Gove: No. It is very easy to see how it is not at all a power grab.

At the moment, the state aid rules are governed by EU law. The EU—as we know from the negotiations between the UK Government and the EU at the moment—is very interested in state aid, because it has been able to control how state aid is allocated by its member states.

When it comes to making sure that any Government approach towards state aid complies with WTO and other international rules, the Government that deals with international relations is the Government that is responsible for that. International relations are a reserved matter, so it is only right that we set the groundwork. Once that groundwork has been set, the Scottish Government will retain the power within the overall framework to provide state aid and other support for enterprises in Scotland, as appropriate. It is the case that we will take on the responsibility that the EU has hitherto had.

There will be more money to support Scotland outside the European Union. We currently send around £20 billion a year to the EU and we get only about £10 billion of that back. We will be able to spend that money for ourselves once we are outside the EU. We will be able to spend it on the people’s priorities, which means that we will also be able to support the Scottish Government in supporting those enterprises that are crucial to

Scotland’s economic future and wellbeing. It is a win-win.

The Convener: We have reached 4.30. I thank Mr Gove for his evidence. We will continue our scrutiny of the internal market bill at 9.30 tomorrow, when we will hear from the Cabinet Secretary for Constitution, Europe and External Affairs.

Meeting closed at 16:31.

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