



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Meeting of the Parliament

**Thursday 17 November 2022**

**Session 6**



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# Scottish Parliament

Thursday 17 November 2022

[The Presiding Officer opened the meeting at 11:40]

## General Question Time

### National Health Service Winter Pressures (Meetings)

1. **Annabelle Ewing (Cowdenbeath) (SNP):** To ask the Scottish Government when it last met NHS Fife, Fife health and social care partnership and Fife Council regarding winter pressures. (S6O-01564)

**The Minister for Mental Wellbeing and Social Care (Kevin Stewart):** The Cabinet Secretary for Health and Social Care met Fife Council, NHS Fife and the Fife health and social care partnership in April and May this year to discuss winter pressures. In October, he convened a meeting on the issue with all local and health authorities and all health and social care partnerships. In addition, Scottish ministers meet directors of health and social care monthly—most recently, on 14 November.

**Annabelle Ewing:** I take the opportunity to praise our hard-working, front-line social care staff.

The fact of the matter is that, as we approach the key winter months, care packages are simply not being arranged timeously by those in Fife Council who are responsible. That causes consequential longer stays in hospital, extremely lengthy waits for vital adaptations, and much stress and anxiety for vulnerable individuals and their families. Given the very serious situation in Fife, will the minister undertake to raise the matter today with the chief executive of Fife Council and ask him to explain what on earth is going on?

**Kevin Stewart:** Currently, many areas in the country are experiencing a shortage of care-at-home capacity, due to annual leave, sick absence and long-standing recruitment and retention issues, which we are helping partnerships to work through. Given what Annabelle Ewing has said, I am happy to write to Fife Council and the health and social care partnership, and I will get back to her with their response.

I assure the chamber that the cabinet secretary and I are meeting partnerships, councils and boards regularly to ensure that we do our level best for everyone during this winter. I, too, put on record my thanks to all the health and social care staff across the country who are working so hard at this moment.

**Willie Rennie (North East Fife) (LD):** A letter to the council will really not cut it. Social care in Fife is in absolute crisis. I have one constituent who was stuck in hospital and wanted to go home but was being pressured to go and live in a care home that they did not want to move to because no social care package was in place. That case is not isolated—the issue is happening all over Fife. When is the minister going to get a grip?

**Kevin Stewart:** We are doing all that we can to help with the pressures across the country at the moment. We are still in a pandemic period. There is a huge amount of pressure on our NHS and our social care system. There is greater frailty and acuity among folks, which we all have to recognise.

I say to Mr Rennie and other members that, if folks want to bring cases to my attention, we will follow up and look at those. As I said, we are engaging regularly with local government, health and social care partnerships and health boards. If we know about such scenarios, we will check on them and see what can be done to alleviate some of the difficulties that folks have faced.

**The Presiding Officer (Alison Johnstone):** I require questions and responses to be more concise.

**Roz McCall (Mid Scotland and Fife) (Con):** I will try to be concise. The High Valleyfield medical practice in West Fife closed in 2017. NHS Fife took over its running and has tried to fill the general practitioner posts but has, unfortunately, been unable to do so, leaving 4,000 patients in Culross, Newmills and Torryburn without a main GP. Will the minister explain what provision will be put in place, as winter approaches, to cover seasonal need in that already pitiful situation?

**Kevin Stewart:** I am not aware of the situation in High Valleyfield. As the member will be aware, GPs are the cabinet secretary's responsibility, not mine. I will take the member's question to him and will respond her in writing about that situation rather than give a false narrative here today.

### Rural Depopulation (Impact of Carbon Offset Schemes)

2. **Emma Roddick (Highlands and Islands) (SNP):** To ask the Scottish Government whether it has made an assessment of the impact of carbon offset schemes on rural depopulation. (S6O-01565)

**The Cabinet Secretary for Net Zero, Energy and Transport (Michael Matheson):** The Scottish Government is committed to taking action to ensure that increasing levels of natural capital investment in Scotland deliver benefits for rural communities and the wider society, in line with the

just transition principles and our land reform objectives.

That commitment is set out in more detail in our interim principles for responsible investment in natural capital, which were published in March, and sits within the context of our wider population strategy “A Scotland for the Future”, which includes actions such as the establishment of a Scottish rural community immigration pilot.

**Emma Roddick:** Private investment in natural capital may be helpful in enabling the action required to fulfil our ambition to address climate change, but it must be responsible and must take full cognisance of the needs of surrounding communities. Will the cabinet secretary set out how the Scottish Government will ensure that the voices of local communities are heard as we leverage private investment in addressing the climate crisis, so that that is pursued in accordance with our land reform ambitions?

**Michael Matheson:** In our national strategy for economic transformation, we set out very clearly that we will develop a high-integrity, values-led market for responsible investment in natural capital. By “values-led”, we mean that the market will support our commitment to community engagement and benefit and to a just transition.

To achieve that, we will work with communities and with market stakeholders to promote and strengthen the interim principles that were published earlier this year. We will do that by developing best practice through projects such as the one by Highlands and Islands Enterprise and Argyll and Bute Council on carbon markets, through community wealth building and through making links to our land reform policies and legislation in the coming years.

**Mercedes Villalba (North East Scotland) (Lab):** We will never reverse rural depopulation without tackling the centuries-old inequality of land ownership in Scotland. Instead of promoting carbon offsetting for a wealthy elite, is it not time for the Scottish Government to introduce a land cap so that our natural resources will work for the many, not the few?

**Michael Matheson:** The member will be aware that we are going to bring forward land reform legislation during this parliamentary session, in order to ensure that we have robust measures in place for the way in which land is managed in Scotland. We will, no doubt, debate such issues as that bill passes through Parliament.

### **Industrial Injuries Disablement Benefit (Replacement)**

**3. Marie McNair (Clydebank and Milngavie) (SNP):** To ask the Scottish Government whether it will provide an update on its progress with its

plans to replace industrial injuries disablement benefit. (S6O-01566)

**The Minister for Social Security and Local Government (Ben Macpherson):** The Scottish Government has continued to successfully deliver new and complex benefits in challenging circumstances, an achievement acknowledged by Audit Scotland in its social security progress report published in May. We intend to update Parliament early next year on the timetable for further benefit delivery, which will include the replacement of the industrial injuries scheme by employment injury assistance.

**Marie McNair:** Is the minister aware of the decision by the Department for Work and Pensions to close the United Kingdom office that processes industrial injuries disablement benefit? That has caused significant concern, including worries about the loss of expertise, help and support for those making a claim, including many who are terminally ill and those who are making a claim because of mesothelioma.

The benefit is being transferred to Social Security Scotland. Will the minister meet me, the Clydebank Asbestos Group and others to discuss how the new service should be designed to ensure that it meets applicants’ needs and that they get the dignity, fairness and respect that they have been denied by the DWP?

**Ben Macpherson:** I am concerned by any DWP cutbacks and by the potential impact on people who rely on industrial injuries disablement benefit. Social Security Scotland takes a different approach to the benefits that we currently deliver, for example by investing in a local delivery service that is based in communities across Scotland and offers advice and support to people applying for assistance.

I am aware of the important support that Clydebank Asbestos Group provides to people with asbestos-related diseases and their families. I would be happy to arrange to meet Marie McNair and that group, and I thank her for the suggestion.

### **Car Clubs**

**4. John Mason (Glasgow Shettleston) (SNP):** To ask the Scottish Government what role car clubs can play in reducing the number of private cars in Scotland’s cities. (S6O-01567)

**The Minister for Transport (Jenny Gilruth):** Car clubs are going from strength to strength in Scotland. They have the potential to reduce reliance on private car ownership, reduce inequalities and help to protect our climate. Collaborative Mobility UK’s 2021 report found that the average car club vehicle in Scotland replaces 17 private cars. We have a commitment to reduce the number of kilometres that are travelled by car

by 20 per cent by 2030, and car clubs can play a role, in combination with other interventions, in supporting sustainable travel.

**John Mason:** I thank the minister for that answer. Can she update us on the progress that is being made on the mobility credits scheme? What role can car clubs and daily rental vehicles play in supporting that programme, thereby reducing the number of private vehicles on the road?

**Jenny Gilruth:** Following the commitment to pilot a mobility and scrappage scheme as part of our work to cut transport emissions, I can advise that work on the design of that scheme and what it might deliver is currently being finalised. The proposed pilot will seek to give direct financial support to lower-income households and empower them to make different choices about how they travel.

I am really keen to give the people who will take part in the pilot as much ownership of the decisions as possible, in order that they feel confident that they have the right options to choose from that will best meet their travel needs and their interests. That may include car club membership or the daily rental of low-carbon vehicles, alongside public and active transport options. I will be happy to update Mr Mason and Parliament once the pilot scheme proposal has been finalised.

**Graham Simpson (Central Scotland) (Con):** I am glad that the Minister for Transport recognises the value of car clubs, but they are a bit patchy across the country. Will she commit to doing an audit of all car clubs to see where they are and what their range is?

**Jenny Gilruth:** I thank Mr Simpson for his supplementary question. It is worth pointing out that Transport Scotland provides assistance to car clubs across the country. To date, that programme has supported eight community transport vehicles with a value of up to £400,000. There is additional support across the country in relation to how we can better support zero-emissions transport, but I am happy to take the member's question away and discuss with Transport Scotland officials the valid point that he makes.

#### **National Performance Framework (Proposed Changes)**

**5. Michelle Thomson (Falkirk East) (SNP):** To ask the Scottish Government what its response is to the reported proposals from the Carnegie Trust to strengthen the national performance framework and make it Scotland's wellbeing framework. (S6O-01568)

**The Minister for Mental Wellbeing and Social Care (Kevin Stewart):** The national performance framework is Scotland's wellbeing framework.

Increasing wellbeing is central to its purpose, with the 11 national outcomes setting out the type of country that we want to be. I welcome the Carnegie Trust's latest report on the next steps for the NPF and look forward to its engagement as part of the forthcoming review of the national outcomes.

**Michelle Thomson:** I thank the minister for his response. I am sure that, like me, he welcomes the open letter to the First Minister from 115 charities, businesses and others, which contains suggestions to further our commitment to creating a wellbeing economy. However, the fact that various powers such as employment law are reserved to Westminster has been described by Patricia Findlay from the Fair Work Convention as "undoubtedly a barrier" to our ambitions.

Will the minister ensure that, in any response to the Carnegie Trust or to the 115 signatories to the open letter—or, indeed, at the forthcoming wealth of nations conference—it is understood how much of a brake on our wellbeing ambitions not being a normal independent country is and that we seek power for a purpose: to make a fundamental shift in people's lives?

**Kevin Stewart:** I welcome that recent letter, which calls for a transition to a wellbeing economy. Scotland is leading the way in putting national wellbeing at the heart of our decision making, and I agree with the member that progress is hampered by our not having a full range of powers, including over employment law.

The national performance framework sets out the strategic direction for making progress towards the national outcomes, but that is undermined as the United Kingdom Government increasingly bypasses devolution to take public spending decisions in a wholly devolved policy area. That fundamental change undermines a central plank of devolution. Decisions on public spending in devolved policy areas should be taken by the democratically elected Parliament and Government of Scotland.

#### **Rail Infrastructure in South Scotland (Expansion)**

**6. Craig Hoy (South Scotland) (Con):** To ask the Scottish Government what plans it has to expand rail infrastructure in the South Scotland region. (S6O-01569)

**The Minister for Transport (Jenny Gilruth):** Our railways help us to meet our strategic transport objectives, and the decarbonisation of rail passenger and freight transport will help us to cut transport emissions and meet our climate change targets. In addition, they support our economic and social wellbeing. As the member will know, I recently reopened Reston railway

station, in Berwickshire, following a £20 million investment, and we are investing £15 million in another new railway station at East Linton, in East Lothian.

**Craig Hoy:** I thank the minister for that answer and for coming to a recent meeting at which we discussed these issues. Does she agree with me that, to achieve net zero, it is vital to provide transport connectivity for areas such as East Lothian, which is one of the fastest growing in Scotland today? Does she welcome the calls by the Rail Action Group East of Scotland for a train connection for Haddington? Will she agree to meet representatives of RAGES, to get Haddington back on track?

**Jenny Gilruth:** I very much agree with the sentiment of Mr Hoy's question. We had a very positive meeting last week, and, as Mr Hoy will know, I met members of the RAGES campaign group when I reopened Reston railway station, earlier this year. I will be more than happy to meet the member and the RAGES group to talk about connectivity in relation to the specific issue at Haddington, which we discussed last week.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** The Auditor General for Scotland said that there has been a 30 per cent increase in capital costs in Scotland directly as a result of Brexit. Can the minister advise us how that will impact on extending the Borders railway line through Hawick and beyond?

**Jenny Gilruth:** The Scottish Government has already allocated up to £5 million through the Borderlands inclusive growth deal to assess the benefits and challenges of extending the Borders railway. That funding will be released on the achievement of agreed milestones and in line with the processes that apply to all growth deals.

Christine Grahame is right to point to the inflationary pressures that are currently hampering and challenging a number of capital projects, particularly in transport. We know that Brexit has also impacted on the availability of materials and costs, and those inflationary pressures are additional.

The Minister for Business, Trade, Tourism and Enterprise and I met representatives of the Borderlands partnership on 6 October to discuss how to advance the proposed work. Following that, we jointly wrote to the United Kingdom Government on 21 October, asking it to give urgent consideration to progressing the deal commitment. We now await a response from the UK Government to that urgent letter, and I will be happy to update the member and Parliament when we hear more from the UK Government on this important matter.

## **Rural Communities (Access to Dentists)**

**7. Donald Cameron (Highlands and Islands) (Con):** To ask the Scottish Government what action it is taking to ensure that people living in rural communities can access a nearby dentist. (S6O-01570)

**The Minister for Public Health, Women's Health and Sport (Maree Todd):** A record number of people—more than 95 per cent of the population of Scotland—are registered with a national health service dentist. Across key treatments, NHS dental services are at levels of activity that are comparable to levels last seen before pandemic restrictions were introduced.

We understand that, in certain remote and rural areas, NHS dental access is challenging. That is a historical position, which has been exacerbated by Brexit controls, as well as by the unique difficulties following the pandemic. We have therefore put in place additional recruitment and retention incentives to maximise the opportunities for newly qualified and trainee dentists to work in areas such as the Highlands.

We continue to work with health boards to deliver on the responsibility for NHS dental services in their area, and we know that the respective health boards are working hard to ensure that patients continue to have access to NHS dental services.

**Donald Cameron:** The Dalriada dental practice in Campbeltown is struggling to fill a dentist's vacancy and, as a result, it has temporarily ceased to provide non-emergency treatment. Its patients now have to make a 2.5-hour round trip to Lochgilphead. Will the minister investigate the matter urgently and consider including Kintyre on the list of geographical areas that are eligible to apply for the recruitment and retention allowance in order to help the practice to attract a new dentist and resume all of its services, thereby allowing people in Campbeltown to access dental treatment in their own community?

**Maree Todd:** I assure the member that I am more than happy to look at that issue. We are aware that, when dentists leave practices, the posts are difficult to fill. As the member indicates, we have introduced a rural area recruitment and retention allowance, which reflects the particular challenges in attracting dentists to work in more remote areas. I am more than happy to consider that issue for the member.

## First Minister's Question Time

11:59

### Shipbuilding (United Kingdom Government Contract)

**1. Douglas Ross (Highlands and Islands) (Con):** Earlier this week Rishi Sunak announced a £4.2 billion contract to build five type 26 frigates on the Clyde. It is a decision that will protect and strengthen our Scottish shipbuilding industry. The UK Government contract will support 1,700 jobs at Govan and Scotstoun alone, with a further 2,300 jobs in the wider supply chain. Will the First Minister join me in wholeheartedly welcoming this huge investment in Scottish jobs and our economy by the UK Government?

**The First Minister (Nicola Sturgeon):** Yes, I do welcome the announcement, and I welcome the recognition of the skills, the talent and the expertise on the River Clyde. Of course, while the relevant responsibilities continue to lie in the hands of the UK Government—albeit with Scottish taxpayers contributing to the cost—it is absolutely vital that Scotland benefits fully.

I welcome the decision, and I take the opportunity to congratulate BAE Systems. I have campaigned over many years for the future of Govan shipyard, which used to be in my constituency and is now in the constituency of Humza Yousaf. However, although I welcome the award of the contract, I am duty-bound to note that the original proposal, back in 2010, was not for five new vessels; it was actually for 13 new vessels. It was said then that all that work would be undertaken on the Clyde.

Therefore, let us welcome the award of the contract but let us not rewrite history in the process.

**Douglas Ross:** I will take that—that is about as good as it gets when it comes to the First Minister supporting decisions by the UK Government.

The award of the contract represents a massive boost to Scottish shipbuilding, and it is possible only because we are part of the United Kingdom. *[Interruption.]* Scottish National Party members do not like it, but an investment of such a scale in engineering and manufacturing jobs would not be possible if the SNP got its way. If the nationalists ever managed to separate Scotland from the rest of the UK, these Royal Navy ships would almost certainly be built elsewhere and the highly skilled Scottish jobs lost.

Members should not just take our word for it. Earlier this week, we heard from Keith Hartley, who is a professor of economics and a defence

expert. He has advised the United Nations, the European Commission and the European Defence Agency. He said:

“I don't see a future for a Scottish warship building industry in an independent Scotland.”

First Minister, he is right, is he not?

**The First Minister:** Before I go on to the detail of that, I will make a general point that I have made before in the chamber. If Douglas Ross wants to have a debate about the benefits or—as he would see it—otherwise of independence, I would really welcome that. Let us have that debate and then let us let the people of Scotland decide the outcome in a referendum. If Douglas Ross was really confident in his arguments, he would have the courage to have that debate not just in the safety of the parliamentary debating chamber, but out there, in towns, villages and communities all over Scotland.

I believe that the expertise and the skills of our shipbuilders on the River Clyde are world class, and I believe that they would compete successfully for work across the world, regardless of the constitutional future of Scotland. That is the confidence that I have in our shipbuilding industry.

Before Douglas Ross tries to argue against that, I point out in relation to some of the work that was announced this week for Harland & Wolff, for example, that, at one point, the UK Government intended to hand all of that overseas and to complete the contract internationally. Therefore, the point has been made on that matter.

Of course, an independent Scotland, like independent countries all over the world, would, as a full member of NATO, have naval capabilities of its own—capabilities that could and would be served and improved on by our world-renowned shipbuilding industry and expertise. The difference between me and Douglas Ross is that I have confidence in our industry in all circumstances—he clearly does not.

**Douglas Ross:** So, who should the public trust on the economics of shipbuilding—a First Minister who cannot build a single ferry for £250 million or a defence expert who has advised the United Nations?

Of course, the First Minister has to deny the facts, because the independence movement is sinking—it is absolutely sinking. *[Interruption.]* She is up separation creek without a paddle. We know that there would not be any major ships built if she got her way.

Let us look at the First Minister's appalling record on failing to build essential ferries for Scotland's island communities. The UK Government has delivered seven ships in Scotland during Nicola Sturgeon's time as First

Minister. How many has the SNP Scottish Government delivered over the same period?

**The First Minister:** Douglas Ross regularly and rightly challenges me on the delay to the delivery of the ferries, but he should perhaps be careful what he wishes for in the exchange that we are having today. On the vessels that he is lauding and that I have welcomed the announcements on, back in 2013, the UK Government said that the first of those vessels would come into service around 2020. Earlier this month, it was reported that the first type 26 will not come into service until October 2028. That is eight years after the proposed date. *[Interruption.]*

**The Presiding Officer (Alison Johnstone):** Members.

**The First Minister:** There we go, on timescales.

**The Presiding Officer:** Let us hear one another, please.

**The First Minister:** Let us turn to costs. The Secretary of State for Defence, Ben Wallace, has said that, over the lifetime of the programme, the cost will be £233 million more than was forecast. Perhaps Douglas Ross should turn some of these questions to his colleagues south of the border if he wants to come here and make a big issue of these things in the chamber.

**Douglas Ross:** Answer the question.

**The First Minister:** I have just answered the question. Douglas Ross asked me about delays in costs. *[Interruption.]*

**The Presiding Officer:** Thank you, members.

**The First Minister:** I think that I have just answered his question pretty fully.

I have two final points to make. First, if Douglas Ross really believed what he just said about Scotland's independence movement, he would be desperate for an independence referendum. The fact that he is running scared of an independence referendum proves him wrong.

Secondly, I welcome the announcements this week for the Clyde, but it is a fact that most people across Scotland and, indeed, the UK who are watching television right now will be watching the chancellor on his feet in the House of Commons announcing significant, deep, real-terms cuts and tax rises. That is the price of a Tory Government, and that is why an increasing number of people in Scotland want this country to be independent. *[Applause.]*

**The Presiding Officer:** Thank you, members.

**Douglas Ross:** Anyone who is watching the chancellor's autumn statement will look at what that is delivering rather than the narrative from the

fibbing First Minister, who has been caught out many times. The narrative from the chancellor today is about a UK Government that is increasing benefits and pensions in line with inflation, increasing spending on health and education, delivering £1.5 billion of extra support to Scotland, and investing in the future of our economy.

The First Minister had a very long narrative but zero answers. What I am desperate for in the chamber is, finally, an answer from Nicola Sturgeon. She did not answer the question because her Government has delivered one ferry in the same time in which the UK Government has delivered seven warships. That is seven warships compared with one ferry. The UK Government will now build another five frigates in Scotland, but we do not know when the SNP will complete and deliver a ferry.

The SNP's failure is having a real impact on people and livelihoods throughout Scotland.

**The Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison):** Really?

**Douglas Ross:** Yes, really. *[Interruption.]*

**The Presiding Officer:** Excuse me, but I am simply not having members shouting at one another across the aisles. Can we please hear one another when we are speaking?

**Douglas Ross:** The Cabinet Secretary for Social Justice, Housing and Local Government is not just shouting at me; she is shouting at the island communities, which are crying out for support from the First Minister and the Government.

Before I was interrupted by the cabinet secretary, I was going to say that half of Highlands and Islands businesses have said that ferry cancellations are posing a risk to their future. Just this week, we have heard from islanders who are again enduring food shortages. The First Minister might not want to admit that her shipbuilding record has sunk the case for independence, but will she at least accept that her Government's failure to replace lifeline ferries is doing massive damage to our island communities?

**The First Minister:** I have said on many occasions that the impact on our island communities of the delays to the ferries is deeply regrettable, which is why the Government, with Ferguson's shipyard, is putting so much focus on delivering the ferries.

When Douglas Ross comes to the chamber and lauds five type 26 frigates, he is right to do so—I have welcomed that announcement—but, before trying to make a comparison with ferries, he probably should have reflected on the fact that the first of those type 26 vessels will come into service

eight years after it was planned to do so and at a significant cost overrun. If he wants to trade these things, he should at least understand the facts that he is basing his arguments on.

I have already talked about the impact on our island communities, and I repeat that, but what is having a significant impact on the lives and the livelihoods of people across Scotland is what the Chancellor of the Exchequer is currently setting out in the House of Commons. If Douglas Ross wants to talk about the interruption to food supplies across the whole of the UK that has been caused by Brexit, perhaps we might focus on that—*[Interruption.]*—or on the £55 billion black hole at the heart of the UK finances, caused largely by a combination of Brexit and Tory economic mismanagement, which the chancellor has just said is being filled by tax rises and spending cuts—more than half of it by spending cuts. Budgets for this Government, set at a time when inflation was 3 per cent, are now being eroded by inflation at more than 10 per cent, which is having a devastating impact on people, businesses and public services across our country—

**The Presiding Officer:** Briefly, First Minister.

**The First Minister:** When we consider all of that, Presiding Officer, it is no wonder at all that Douglas Ross did not want to come to this chamber and talk about any of the harm that the Conservatives are doing to people across Scotland.

**The Presiding Officer:** Before we move to question 2, I advise members that I would prefer it if members would please avoid language that suggests that other members are being deliberately untruthful.

### General Practitioners (Vacancies)

2. **Anas Sarwar (Glasgow) (Lab):** This week, the British Medical Association in Scotland sounded an alarm about the state of GP practices across the country. The BMA says that practices are struggling with vacancies and that GPs are

“exhausted, burnt out and cannot see the light at the end of the tunnel”.

People across the country are sick of phone lines ringing out when they call their GP first thing in the morning. Does the First Minister agree with BMA Scotland and accept its criticism that this Government is not doing enough to tackle the GP crisis?

**The First Minister (Nicola Sturgeon):** I will come on in a second to what we are doing to tackle the situation with GP services, in particular, but I accept what the BMA says about the pressure on our GPs. The national health service

as a whole is under very significant pressure—greater pressure, perhaps, than at any time in the history of the NHS. That is true for those who work in our acute sector and it is also true for those who work in primary care, including GPs, so I absolutely accept those comments from the BMA.

That, of course, is exactly why—starting from a base where we already have proportionately higher staffing in the NHS in Scotland than in other parts of the United Kingdom, and proportionately higher funding for our NHS—we have a target of recruiting 800 additional GPs in headcount terms over the next few years. So far, since 2017, we have recruited 277 of them.

In addition to that, we are supporting the wider primary care team. In recent times, we have recruited over 3,000 primary care multidisciplinary team members to help with the pressure on GPs, and NHS Pharmacy First Scotland has provided almost 3 million consultations across its network. We continue to take action to support not only GPs but the wider teams in which GPs operate, and it is right and proper that we do so.

**Anas Sarwar:** The First Minister says that more GPs are being recruited and that she is listening to what the BMA has to say about the pressures that GPs face, but she is clearly not listening to what the BMA has to say about the recruitment crisis that we have in the national health service, which predates the pandemic. She talks about the 277 new GPs who have been recruited; the BMA is saying that we are 1,000 GPs short right now. That means unbearable pressure on existing GPs, and it means that many patients are unable to access a GP. On the First Minister’s target of 800 additional GPs, we are well short. The BMA has made it clear that missing the target would be

“disastrous for Scotland and our patients.”

At the same time, the First Minister has decided to cut the budget for primary care by £65 million. That cut means taking away the ability to recruit the health professionals that GP practices need to support their patients. Dr Buist says that the cut:

“threatens to undermine practices, at the exact moment when we should be doing the opposite”.

Will the First Minister reverse the cut, truly listen to the BMA and support Scotland’s NHS staff?

**The First Minister:** Those are important issues. I will address the budgetary issue first. I do not like the budget situation that the Scottish Government faces, but the hard reality is that, this year, our budget has been eroded to the tune of £1.7 billion because of inflation. Our budget is effectively fixed: we have no levers to increase the revenue that is available to us within this financial year, so we have to make very difficult decisions. We have been open with the chamber about those decisions and, if any member thinks that we

should make different ones, they can put the case to us. What they cannot do is magic up more money for this financial year.

That is the reality that Anas Sarwar's colleagues in Wales openly recognise. They are facing tough decisions as well and are making clear that, without additional funding from the UK Government, tough decisions are inescapable. That is the reality that we face: none of us likes it, but we cannot escape it.

We have more GPs per head of population than other parts of the UK do, but we want to grow our GP workforce, which is why the target that I have spoken about and the progress that has been made against it is so important—as is the redesign and reform work that we are doing that relates to wider primary care teams. None of those things is easy. All of us acutely understand their impact on patients and the pressure on our NHS.

We will continue to support people who work in our national health service, and we will try to recruit from overseas as much as we can, which is something that Labour, inexplicably, seems to have set its face against. We will continue to take steps to support our NHS during these tough times, because that is what it deserves and what the people of Scotland expect from us.

**Anas Sarwar:** The First Minister wants to pretend that she has not been in government for 15 years and that she has not been in charge of setting the NHS's budget for 15 years. Those problems predate the challenges with the budget and the inflation crisis. I recognise that there is an inflation crisis, which is why, when the Deputy First Minister set out the emergency budget review in the chamber two months ago, we said that we would work constructively with the Government if it opened the books. It has failed to do so; it would rather hide and play politics than do right by the people of Scotland.

Those decisions have consequences. The Deputy First Minister called the £65 million cut for GP practices, which are already short staffed and under pressure, a "reprioritisation". Let us call it what it is: a cut that is having devastating consequences for staff and patients. At the same time that he is cutting funds for GP practices, the health secretary is telling people to go to their GP instead of going to accident and emergency. That is another case of the SNP telling NHS staff to do more with less, leaving patients waiting longer to be seen, diagnosed and treated.

The SNP has been in charge of our NHS for 15 years and there is a crisis in every part of it: our GP practices, our accident and emergency departments and our hospitals. Staff are crying out for help and patients are dying. Does the First

Minister accept that it is the worst it has ever been, all happening on her and Humza Yousaf's watch?

**The First Minister:** Nothing that I have said today, or at any time, takes away from the fact that the management of the NHS is a responsibility of mine and of my Government. I accept that absolutely and I take that responsibility seriously. Is the pressure on the NHS greater than it has been at any time in its history? Yes, it is—and I think that I said that myself earlier. The pressure that the NHS faces has been significantly exacerbated by the pandemic, but there are other factors at play, such as the changing demographic of our population. Governments have to work through those significant challenges.

The fact of the matter is that, although management of the NHS is our responsibility, the amount that we are able to invest in the national health service is determined by funding decisions that are taken at Westminster—funding decisions of the kind that are being set out in the House of Commons as we speak.

Labour's health minister in Wales has said:

"the fact is our hands are tied by the amount of money that we get from the UK Government, and that's the situation we're in."

How is it that Labour in Wales recognises that, but Labour in Scotland is blind to the reality, because it is so thirled to defending the Conservatives at the expense of setting out the reality?

On primary care funding, the primary care improvement fund has still increased in value to £170 million.

**Daniel Johnson (Edinburgh Southern) (Lab):** Open the books!

**The First Minister:** We have opened the books. The Deputy First Minister has made two statements setting out the savings that we are required to make to balance our books because of inflation.

**The Presiding Officer:** Briefly, First Minister.

**The First Minister:** Anybody can say that we should do things differently, but they cannot deny the reality. Even within that reality, Scotland has proportionately higher funding for our national health service than have other parts of the UK—including Wales, where Labour is in government—and Scotland has higher staffing levels. That is the measure of the priority that this Government gives, and always will give, to the national health service.

**The Presiding Officer:** I intend to take general and supplementary questions after question 6. I ask members who have pressed their request-to-speak buttons for a supplementary to please not re-press their buttons. However, members who want to ask a supplementary to questions 4 to 6

should please press their buttons at the relevant point.

### Cabinet (Meetings)

**3. Alex Cole-Hamilton (Edinburgh Western) (LD):** To ask the First Minister when the Cabinet will next meet. (S6F-01528)

**The First Minister (Nicola Sturgeon):** Tuesday.

**Alex Cole-Hamilton:** We see the cost of Conservative incompetence measured out in the budget today, which will be punishing for families and public services alike. Those on the lowest incomes are most exposed. That includes many who work in our social care sector, but the First Minister is asking all of them to wait four years for the wrong solution. Organisations are now lining up to condemn the creation of the deceptively named national care service; this week, Barnardo's was the latest organisation to warn that the huge spend that will be required risks diverting resources from front-line services.

Such organisations are right—the cost of this vast and unnecessary bureaucracy is up to £1.3 billion already and is rising, and that is before Scottish ministers trigger a massive VAT bill through centralisation. If the First Minister has £1 billion to spare, every care worker in Scotland can think of better ways to spend it. Will she withdraw the National Care Service (Scotland) Bill today and put the money for it into services and staff?

**The First Minister:** As is his right, Alex Cole-Hamilton has opposed the national care service since before parliamentary scrutiny began. That is his position, but he should not stand up here and say that he takes it because of comments that have been made in the course of parliamentary scrutiny so far. We will listen and are listening carefully to comments, and it is important that we allow the scrutiny process to continue.

The national care service is about ending the postcode lottery in adult social care, which I think all of us accept is not acceptable. It is also about better valuing those who work in our social care system. That is what we want to do, and we will of course listen to the comments that are made during parliamentary scrutiny of the bill.

In the meantime, we will continue to take action to address the challenges in social care. We have committed to increasing the spend on social care by 25 per cent by the end of the parliamentary session, and we are increasing the wages of those who work in social care. We will continue to take that action, as we will continue to progress the bill through Parliament, while listening carefully to the comments that are made along the way.

### Autumn Budget Statement (Impact)

**4. Kenneth Gibson (Cunninghame North) (SNP):** To ask the First Minister what the Scottish Government anticipates the impact will be on Scotland of today's autumn statement. (S6F-01522)

**The First Minister (Nicola Sturgeon):** The chancellor had only really begun to go into the detail of his statement when I left the office to come to the chamber, so I have not yet seen all the detail. We will assess the impact fully, but it is clear from what we know and from what the chancellor indicated before getting to his feet today that the United Kingdom Government is repeating the mistakes of the past. It appears to be reintroducing austerity, which does not work and will have significant consequences for people, businesses and public services.

The plans are likely to worsen the extreme pressures that are already being faced as a result of inflation and rising interest rates. We have called for an alternative approach that avoids prolonging the recession that the Bank of England forecasts—I understand that the Office for Budget Responsibility confirmed today that the UK is currently in recession. I hope that that alternative approach is listened to. The UK is almost unique among wealthier countries in reintroducing austerity. It is the wrong approach and it will have a significantly adverse impact on people and public services across Scotland.

**Kenneth Gibson:** On the morning of the most recent disastrous Tory budget, former Bank of England governor, Mark Carney, told the *Financial Times* that

“in 2016 the British economy was 90 per cent the size of Germany's. Now it is less than 70 per cent.”

Following that budget, £65,000 million—almost £1,000 for every person in the UK—was needed to stop a pensions fund collapse. Does the First Minister agree that the economic incompetence of successive UK Governments is why household incomes have languished since 2008 and failed to keep pace with inflation, as we face rising taxes and swingeing cuts to public spending? Can she advise us of the alternative to UK stagnation that will deliver a more prosperous, equal and fair Scotland?

**The First Minister:** Kenny Gibson is absolutely right to talk about the impact of Tory mismanagement. From the chancellor today, we are hearing about tax rises and spending cuts. According to the chancellor, more than half of the black hole will be filled by spending cuts, which will have a significant impact on public services, including the national health service.

We know that, although global factors are at play, much of that stagnation is caused by UK-specific factors. Brexit is a long-term and permanent drag on the UK economy; its effects are catastrophic. Of course, Tory mismanagement through the mini-budget—which the Scottish Conservatives now like to pretend never happened—is exacerbating that impact. People, businesses and public services are paying the price for all of that.

Finally, the alternative to Tory mismanagement of our economy is self-management of our economy, otherwise known as independence.

**Michelle Thomson (Falkirk East) (SNP):** As the First Minister has pointed out, research has proven that, far from working, the UK Government austerity programme after the 2008 financial crisis resulted in one of the lengthiest and slowest recoveries, but the UK Government seems determined to repeat the same mistakes.

Does the First Minister agree that, given that economic evidence proves that smaller, independent states recover best, the only sensible choice is to follow their path and gain full control of our economy?

**The First Minister:** I absolutely agree. Right now, we are experiencing what happens when we allow others to take decisions for us instead of taking those decisions for ourselves.

No matter how the Tories try to dress up today's statement with all of the spin that they will use, they are reintroducing austerity and they are doing so at a time when our public services have not yet properly recovered from the last period of Tory austerity. That is the reality, and the Conservatives cannot deny that.

Of course, countries across the world go through difficult times, and some of these issues are global, but most countries do better when they control their own destinies and future. That, too, will be true when Scotland becomes independent.

### Domestic Abuse Register

**5. Pam Gosal (West Scotland) (Con):** To ask the First Minister whether the Scottish Government supports the introduction of a domestic abuse register. (S6F-01534)

**The First Minister (Nicola Sturgeon):** I am aware of the consultation on a proposed domestic abuse bill and I confirm that, when the consultation has concluded, we will consider any proposals that would further our commitment to do more to support victims of domestic abuse. Of course, it will be important to look at how proposals would interlink with implementation of our equally safe strategy for preventing and eradicating violence against women and girls. Certainly, we are open

mind to any reasonable proposals that come forward.

**Pam Gosal:** The consultation for my bill, which would introduce a domestic abuse register, closes on Monday. The proposed bill would help to protect victims of that appalling crime. I will give an example: I have spoken to one woman who told me that she suffered numerous acts of violence and awful physical abuse for years. Her abuser has allegedly attacked five other women, and she believes that my proposed bill could have prevented some of those women from going through a horrific ordeal. Will the First Minister agree to meet me and that brave woman to hear why a domestic abuse register is necessary?

**The First Minister:** Of course, we will listen to and meet, when appropriate, anybody who wants to make such suggestions, and I absolutely understand that somebody who is in that situation would consider that such a proposal would make a difference.

The justice secretary met Pam Gosal, I believe at the end of August, to discuss the launch of the consultation on her proposed domestic abuse bill. We will consider the proposals in the consultation when the consultation has closed, which will happen shortly, and when they have been properly analysed. We are open minded to that.

The Police Scotland disclosure scheme for domestic abuse is in place right now. It has an important impact, but absolutely none of us should be complacent about domestic abuse or the need to do more to protect victims and potential victims of domestic abuse.

I hope that the member will take my comments in the spirit in which they are intended, which is to signify a genuinely open mind. We have a number of initiatives in place, many of them under the ambit of the equally safe strategy, which are about protecting women and girls. We need to consider carefully any proposals to ensure that they fit with that, but our minds are open and we will have further discussions as appropriate.

**Pauline McNeill (Glasgow) (Lab):** Almost 80 per cent of women prisoners in Scotland have a history of significant head injury, mostly through domestic abuse. The University of Glasgow research has shown that 66 per cent of female inmates have suffered repeat head injuries for many years, and 89 per cent of participants said that domestic violence was the most common cause. It is concerning that many of those women might return to their abusers on release from prison. What further action can the Scottish Government take on the specific issue of female prisoners who have a history of being a victim of domestic abuse, while they are in prison and, importantly, when they are released from prison?

**The First Minister:** I am happy to give further consideration to that point and to look carefully at the research that underpins Pauline McNeill's question. I think that it is the case—and that it is well understood—that many women who are in prison will be the victims of abuse and will be vulnerable in many respects. There are similar vulnerabilities for many men who are in prison as well, but we are, rightly, focusing on the issue of women right now.

The number of women in prison has reduced over recent years, and we want to see that trend continue so that those who offend are treated appropriately. The points about the support for women who have suffered domestic abuse while they are in prison and also upon their release are important, so I undertake to give the points that Pauline McNeill has raised today proper consideration and come back to her once we have had the opportunity to do so.

#### “Health Inequalities in Scotland”

**6. Richard Leonard (Central Scotland) (Lab):** To ask the First Minister what the Scottish Government's response is to the report “Health Inequalities in Scotland” by the Fraser of Allander Institute. (S6F-01535)

**The First Minister (Nicola Sturgeon):** The report confirms what I suspect most of us already know, which is that socioeconomic inequalities drive wider inequalities. That is exactly why this Government is using the powers and resources that we have to tackle that within the limits in which we operate. We are doing that in a range of ways—through social security, including the Scottish child payment; the provision of free childcare, free school meals, concessionary travel and free prescriptions; and investment in affordable housing.

We are doing that—this is just a statement of fact—with one hand tied behind our backs and without the full powers to tackle poverty while we are shackled to a Westminster system and a Tory Government that has caused economic chaos and savage reductions in real terms in our budget. I hope that we will hear something different today from the Chancellor of the Exchequer, but, as I said earlier, I fear that the continued or reintroduced austerity that we are hearing about today will deepen those impacts, while strengthening the case for more of those decisions and powers to lie in the hands of this Parliament.

**Richard Leonard:** This week's report confirmed that almost half of Scotland's personal wealth is owned by just 10 per cent of households and that there is a direct link between extreme wealth inequality and health inequality. Does the First Minister accept that the Scottish Government has the power to redistribute land ownership and

wealth but has not used that power; that the Scottish Government has the power to abolish the regressive council tax, introduce a land value tax and make land and buildings transaction taxes much more progressive, but has failed to do so; and that a wealth tax, set and administered by the Scottish Parliament through an order of council, could be pursued, but she has decided not to? When will the First Minister use the tax powers that the Scottish Government has got to reduce Scotland's extreme inequalities of wealth and fund our public services properly and progressively?

**The First Minister:** I agree with a lot of what Richard Leonard has said. I suspect that I agree with more of it than Anas Sarwar does; his face has been pretty impassive as Richard Leonard has recounted all those policies, which I suspect are not Scottish Labour policies.

The fact of the matter is that, with the very limited—[*Interruption.*] If it is Scottish Labour's policy to replace the council tax with a land value tax, I will be happy to hear that and to hear the detail of that. However, the fact of the matter is that—with our limited tax powers, of course—we have a more progressive system of tax. Our income tax, which is the tax over which we have our main tax power, although it is far too limited in terms of the overall suite of tax powers, means that, if you earn more in Scotland, you pay slightly more, and if you earn the least, then you pay slightly less tax than you would elsewhere in the United Kingdom.

If Richard Leonard wants us to be able to consider and introduce a wealth tax, he really needs to argue for the powers to lie in this Parliament to do exactly that. We will always favour progressive taxation, but we need more powers over taxation in this Parliament to give effect to that.

What we have done this week is both increase the value of and extend the reach of the unique Scottish child payment, putting money directly into the pockets of those who are at the lowest end of the income spectrum and lifting children out of poverty. That is a shining example of how we can use powers when we have powers in the hands of this Parliament.

**The Presiding Officer:** We move to supplementary questions.

#### Scottish Child Payment

**Stephanie Callaghan (Uddingston and Bellshill) (SNP):** As the First Minister has just mentioned, the Scottish child payment has been increased to £25 and extended to under-16s this week. That has been described as a watershed moment by anti-poverty campaigners. However, does the First Minister share my frustration that,

although the Scottish Government is using the limited powers that it has to support people, those efforts are frequently undermined by the actions of the United Kingdom Tory Government?

**The First Minister (Nicola Sturgeon):** Yes. That is not just a matter of opinion; it is a matter of fact. While we are putting £25 a week per child into the pockets of the lowest-income families, a Tory Government is in power that not long ago took £20 a week away from the poorest through the clawback of the universal credit uplift. That is just a fact. We will continue to act to use the powers that we have.

This week was a watershed moment. That child payment does not exist anywhere else in the UK, and it is an example of what can be done when we prioritise lifting children out of poverty and investing in their future. As anti-poverty campaigners have said this week, if the Scottish Government can do that, why on earth cannot the UK Government follow suit?

### War Memorials (Vandalism)

**Miles Briggs (Lothian) (Con):** In the early hours of Monday morning, a war memorial in front of the City of Edinburgh Council was vandalised in what was a mindless act and an appalling insult to our fallen war heroes. It has shocked and angered the local community in Edinburgh, and I hope that those who are responsible will be held to account in due course. Sadly, however, attacks on war memorials are increasing in Scotland. That is why my Scottish Conservative colleague Meghan Gallacher is bringing forward a bill to impose tougher penalties on those who attack and deface war memorials. Will the First Minister agree to consider Scottish Conservative proposals on this issue? What update can she provide on the investigation of Monday's incident?

**The First Minister (Nicola Sturgeon):** Yes, we will consider any proposals that are brought forward. I have not seen the detail of those proposals yet, but when they appear, we will give them due consideration. That is certainly important to do.

With regard to the attack on the war memorial in Edinburgh, less than 24 hours before that despicable attack took place, I, among others, was privileged to lay a wreath at that war memorial in remembrance of those who have made the ultimate sacrifice in service of their country and to allow us to enjoy the freedoms that we take for granted today.

What happened in the early hours of Monday morning is almost beyond words—absolutely despicable, sickening and disgusting. It is beyond my comprehension—I am sure that it is beyond the comprehension of any of us in the chamber—

how anybody could attack a war memorial at any time of the year, but particularly just hours after remembrance Sunday. It would not be appropriate for me to comment on an on-going police investigation; obviously, that is for the police to take forward. Where I will end these remarks, in agreement with the member, is that I really hope that those who are responsible for that despicable attack are identified and face the full force of justice.

### World Cup (Human Rights)

**Paul O'Kane (West Scotland) (Lab):** On Sunday, international teams will begin to compete for the biggest prize in world football, but they will do so in a state that denies the rights of LGBT+ people, suppresses the rights of women and has demonstrated quite clearly that it has no regard for the lives or wellbeing of migrant workers. Only a few weeks ago, Qatar's world cup ambassador branded being gay as "damage in the mind".

Senior figures of the Scottish Football Association will be attending world cup events on the day the tournament kicks off. LGBT+ people, many of whom are passionate football fans, our allies in stands across the country, the tartan army, the Scottish Trades Union Congress and Zander Murray of Gala Fairydean Rovers, of whom I think we should all be immensely proud, have voiced concern and disapproval about this world cup and have called on the SFA to think again.

The SFA has said that it is

"supportive of all measures to improve human rights conditions in Qatar",

but does the First Minister believe that members of our football governing body attending this world cup can send any other message than a validation of the human rights record of Qatar, and what message does she think that it sends to LGBT+ people, in particular, in Scotland?

**The First Minister (Nicola Sturgeon):** First, as the world cup gets under way later this week in Qatar, I think that it is a really important moment for all of us, regardless of party or anything else that might divide us, to stand in solidarity with the LGBT+ community in Scotland, in the United Kingdom, in Europe and right across the world. I hope that that will unite all of us.

The attendance or otherwise of SFA officials is a matter for the SFA. Governments should not intervene in decisions that sports governing bodies take, but I would certainly hope that anybody attending the world cup in Qatar in any capacity will take the opportunity to express solidarity with our LGBT+ community. I think that, over the next few weeks, it is even more important than sport that we take the opportunity to stand up for human

rights and the dignity of those in that community, and that we unite around that sentiment today and right throughout the period of the competition in Qatar.

#### **Department for Work and Pensions (Sanctions)**

**Natalie Don (Renfrewshire North and West) (SNP):** Figures published this week show that the number of young Scots aged 18 to 24 sanctioned by the Department for Work and Pensions has nearly doubled since 2019. That is more than 2,500 young people being denied vital support in the midst of a cost of living crisis. Does the First Minister share my view that that is immoral and that the welfare system should be there to support people, not penalise them?

**The First Minister (Nicola Sturgeon):** Yes, I do. Natalie Don is absolutely right to raise the issue. Those figures are really alarming. They are DWP figures and they show that the universal credit sanction rate is more than double the pre-pandemic level, with more than 42,000 sanctions being applied across all claims in July this year. The data also shows that sanctions are applied most to young people between the ages of 18 and 24. Despite substantial evidence showing that sanctions simply do not work and that they have long-term detrimental effects, the United Kingdom Government's sanctions policy is pushing more people into hardship and doing that during a cost of living crisis.

I take the opportunity to call on the UK Government to urgently review its sanctions policy along with the other punitive policies within the universal credit system such as the five-week wait, the two-child limit and the benefit cap, and to focus instead on supporting people rather than punishing them when they are already struggling so much.

#### **Forth Valley Hospital**

**Alexander Stewart (Mid Scotland and Fife) (Con):** The First Minister will be aware of the difficulties that are being faced by Forth Valley hospital, with five consultants leaving in the space of two weeks and the facility being described as a "war zone" and a "toxic" environment. The health board says that any concerns raised by clinical or other staff groups are taken seriously and that there is no attempt to cover up, but the reality is that I continue to have to make representations to the board as further whistleblowers come forward seeking assistance. They are saying that the culture within the hospital regarding bullying continues and that there is no meaningful change by the senior management. That is, frankly, a shocking situation to occur in any hospital, so what action can be put in place to ensure that the facility is safe and fit for purpose?

**The First Minister (Nicola Sturgeon):** The safety of any hospital is paramount, and I know that the Cabinet Secretary for Health and Social Care is engaged fully on those issues.

I will make two points: first, when a whistleblower raises concern, that concern must be treated with the utmost seriousness and thoroughly investigated. Secondly, the chief operating officer of NHS Scotland has met NHS Forth Valley's chief executive to discuss the concerns that were raised.

The Scottish Government is supporting Forth Valley to develop a robust and cohesive action plan for improvement, and a national planning and performance oversight group met earlier this month to discuss the next steps. I know that the health secretary will continue to keep members updated.

**The Presiding Officer:** That concludes First Minister's question time.

## Points of Order

12:45

**Liam Kerr (North East Scotland) (Con):** On a point of order, Presiding Officer. On Tuesday 15 November, I asked minister Lorna Slater:

“When did ministers first become aware that they were using a figure that, to quote Scottish Government officials, had not ‘been properly sourced’?”

She responded that

“ministers became aware of the issue on Tuesday 8 November”.—[*Official Report*, 15 November 2022; c 6.]

Emails that are in the public domain reveal that civil servants wrote to at least two ministers in October 2020, saying that, to their knowledge,

“the 25 per cent estimate has never ... been properly sourced”.

Therefore, the information that minister Slater provided to Parliament two days ago does not, apparently, accord with the facts. Parliament has been misled, again.

On Tuesday, I also quoted section 1.3.(c) of the ministerial code, which is on how ministers who mislead Parliament should respond. To the best of my knowledge, the only correction to the record has been made by the First Minister, after I called her out on her previous use of misleading energy consumption statistics.

Apparently, none of those members who misled Parliament on the 25 per cent claim have acted. This Government appears to hold the ministerial code and the honour and privilege of office in utter disdain. The implications of ministers consistently and brazenly misleading Parliament are huge, as are the implications of ministers not acting in accordance with the ministerial code after having done so.

Presiding Officer, I am concerned that a perceived lack of integrity by Scottish ministers in not abiding by our processes and codes risks bringing the Parliament into disrepute and undermining your position as Presiding Officer. Is there any way, therefore, that you can preserve the trust that is placed in us in this Parliament by ensuring that Government ministers abide by all aspects of the ministerial code, particularly section 1.3.(c)?

**The Presiding Officer (Alison Johnstone):** Thank you. The member will be aware that the ministerial code is a matter for the Scottish Government, but it is clearly of paramount importance that members, including ministers, give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity.

I believe that members are fully aware that the Parliament has a corrections procedure and of how that works. The current mechanism that is available to me through standing orders reflects the procedures and practices that Parliament itself has agreed. If there is a view that they should be revisited, the matter should be raised with the Standards, Procedures and Public Appointments Committee.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** On a point of order, Presiding Officer. I seek your guidance on the procedures around correcting the *Official Report* after what we have just heard from Liam Kerr, which is, frankly, astonishing. The energy minister at the time and the current Minister for Business, Trade, Tourism and Enterprise were informed in 2020 that that statistic of 25 per cent had no basis. It is important that Parliament gets the proper facts.

At the same topical question time exchange on Tuesday 15 November, the minister, Lorna Slater, said:

“The figure relating to Scotland having 25 per cent of Europe’s offshore wind potential was first set out in a 2010 publication, and it is now outdated.”—[*Official Report*, 15 November; c 6.]

The First Minister’s spokespeople have also said that it was

“quoted accurately at the time”.

How can the Scottish Government confidently say that the figure was correct in 2010 when it was told by civil servants in 2020 that it had not “been properly sourced”? Quite simply, nobody knows where the figure came from. In truth, the statistic has always been make-believe, but to suggest that it is outdated would sound to any reasonable person as though it had been true at some point. I am concerned that, in an attempt to excuse the original falsehoods, the Government is now creating fresh falsehoods to cover its tracks.

Presiding Officer, I seek your guidance on what mechanisms exist to correct the record on whether you have been approached by the Government on the point that, rather than being outdated, the statistic was never accurate to begin with.

**The Presiding Officer:** I thank Mr Cole-Hamilton for his point of order, but I have already ruled on the issue in my response to Liam Kerr. The procedures that are in place have previously been agreed by this Parliament. The corrections mechanism exists, and I am sure that members understand what it is. Mr Cole-Hamilton has made his points on the record.

**Russell Findlay (West Scotland) (Con):** On a point of order, Presiding Officer. On Tuesday, you provided a statement to the Parliament in response to a woman being ejected because of

the colours of her scarf. You apologised and explained that it had been an “error”, but we still do not know why that happened to an innocent member of the public. Is any form of investigation being done into this sorry episode? A key question is whether any members or parliamentary staff ordered or encouraged security staff to act in that way.

**The Presiding Officer:** I thank Mr Findlay for his point of order. Some of the matters that he raises are not matters for the standing orders and, therefore, are not matters for me to rule on from the chair. I made my views on the matter very clear in my statement to the Parliament on 15 November, so I refer Mr Findlay to the *Official Report* of that date.

## Higher Education Workers Dispute

**The Deputy Presiding Officer (Liam McArthur):** The next item of business is a members’ business debate on motion S6M-06216, in the name of Katy Clark, on the higher education workers dispute. The debate will be concluded without any questions being put. I invite members who wish to participate to press their request-to-speak button now or as soon as possible.

### *Motion debated,*

That the Parliament notes the recent industrial action by university staff following the closure of the UNISON higher education pay ballot on 19 August 2022; further notes that staff at the University of Glasgow, Edinburgh Napier University and Robert Gordon University represented by UNISON, which include cleaners, administrators and library, catering and security workers, most recently took strike action on 3 and 4 October; understands that the Universities and Colleges Employers Association’s (UCEA) final offer of 3%, or 7.2% for the lowest paid workers, is sub-inflationary as the current CPI rate is 9.9% and the current RPI rate is 12.3%; considers that UCEA’s offer has been imposed on university staff despite being subject to a live dispute with the trade unions, and that such impositions also occurred in 2021 and 2020; understands that the trade unions, University and College Union, Educational Institute of Scotland-University Lecturers’ Association and Unite, are at varying stages of consulting or balloting their members for action in the same dispute; believes that industrial relations in the sector have deteriorated to an unacceptable level; notes the view that the staff do incredible work and deserve to be recognised fairly and paid properly; further notes the belief that the Scottish Government must urge universities and UCEA to take meaningful steps to negotiate a fair resolution to these disputes, and notes the calls on universities and UCEA to return to the negotiating table in the interests of workers and students.

12:53

**Katy Clark (West Scotland) (Lab):** It is a pleasure to speak to this motion on the higher education workers dispute, and I thank all the members who gave the motion cross-party support.

As the motion notes, several universities have already had strike action in recent months, and many more staff across the country are currently being balloted. The most recent Unison strike took place on 4 October, when Unison members—mainly cleaners, administrators and library, catering, security and other support staff—took part in action. Further action is due to take place on dates later this month at Edinburgh Napier University, Glasgow Caledonian University and Robert Gordon University.

Those workers will be joined by members of the Educational Institute of Scotland-University Lecturers Association and of the University and College Union, who all have strike dates in November. The UCU action will be at every single

one of the 17 Scottish institutions, on three dates later this month, and will involve up to 8,000 members.

Further ballots are on-going at many other institutions, including the University of the West of Scotland, in the region that I represent. Unite the union, too, is balloting its 2,000 members across 11 institutions. We therefore face disruption at universities across Scotland, with staff—many of whom are on low pay—taking action despite the loss of income that that will involve for them. In addition, of course, students are being impacted.

University of Glasgow members were also on strike but, earlier this month, they accepted a breakthrough pay deal, which will involve overall pay rises of between 6 and 12.9 per cent this year, and a pay increase of £2,332 for the lowest paid.

However, the Universities and Colleges Employers Association says that it has made its final offer to staff, of a below-inflation pay award of 3 per cent for most higher education workers, and a 3 to 9 per cent award for some of the lowest paid. Given the rate of inflation, those are pay decreases in real terms.

The strikes are about pay, but they are also about other terms and conditions. The UCU held two ballots: one for strikes on pay and conditions; and the other for strikes on pensions. In the pay and conditions ballot, 81.1 per cent voted yes, on a 57.8 per cent turnout. In the pensions ballot, the yes vote was higher, at 84 per cent, on a 60.2 per cent turnout.

The UCU says that, on average, the cuts to pensions are in the region of 35 per cent, and that those are going ahead despite being based on an outdated valuation of the pension fund. The UCU also estimates that, in the jobs in which it organises in the sector, pay has been cut by about 25 per cent in real terms since 2009. Unison estimates that, for its members, the cut has been about 20 per cent during the same time period.

About one third of university staff in Scotland and across the United Kingdom are on precarious, fixed-term contracts. Some of those workers have been on those contracts for upwards of 30 years.

The average working week in education is now more than 50 hours, and UCU Scotland says that, in a survey that it conducted in June 2021, 76 per cent of respondents reported an increase in workload during the pandemic. A further, more recent UCU survey, from March this year, found that two thirds were considering leaving the sector due to poor pay and conditions.

In response to debates of this nature, Scottish ministers normally say that the institutions are independent and that the terms and conditions of the staff are not the responsibility of the Scottish

Government. However, the Scottish Government provided more than £1 billion in funding to Scottish universities last year. Those institutions are substantially funded by the Government.

In addition, the sector generates income. The UK university sector generated income of £14.1 billion last year.

It is estimated that vice-chancellors took pay packets of an estimated £45 million. For example, the principal of the University of Edinburgh is reported to have a salary of an estimated £363,000 a year, and the principal of the University of Glasgow is reported to have an estimated salary of £368,000 a year.

Education is fully devolved and the Scottish Government is responsible for the model in our higher education system in Scotland, which is one of endemic low pay, poor conditions, excessive executive remuneration, casualised contracts and the marketisation of the sector.

I urge the Scottish Government, as a major funder of the sector in Scotland, to get directly involved in these disputes; to urge universities and the University and Colleges Employers Association to take meaningful steps to negotiate a fair resolution to the disputes; to ensure that the fair work convention is the minimum standard for accessing funding from the Scottish Funding Council; and to look at how that convention can be strengthened and, as a priority, investigate and report to this Parliament on employment conditions in the education sector, particularly in higher education.

We have a system in which students are treated as consumers and in which many workers are on temporary contracts and paid a pittance while vice-chancellors award themselves record pay packets. It is unsurprising that workers across the country are demanding improved pay and conditions. The Scottish Government cannot claim to be a bystander in the disputes. The Government funds Scottish universities by more than £1 billion each year. It has a responsibility to ensure that staff are paid well and have proper conditions of employment and that the universities, which are provided with funds, act as good employers.

13:02

**Graeme Dey (Angus South) (SNP):** As we are all too well aware, industrial disputes are invariably messy, and often unpleasant, affairs. Overambitious, ill-judged and seemingly entrenched positions are taken at the outset, when everyone knows that ground must be, and ultimately will be, ceded by the protagonists.

Right now, with workers in so many employment sectors understandably pressing for pay increases to address spiralling inflation, the landscape for attracting support and sympathy from the public for pay claims is pretty congested. A number of public sector disputes are rumbling away across the United Kingdom and the brutal truth is that sympathy for the likes of nurses and firefighters may be greater than that for university staff. That is absolutely not to say that that group does not deserve a fair but affordable increase that takes account of the cost of living—far from it. It is simply an observation.

Universities do not function and students do not secure an education without cleaners, administrators and library, catering and security workers, never mind the teaching staff. That it is why I am certain that the Scottish Government will actively encourage Scotland's universities to engage with the unions and to apply fair work principles. However, as Katy Clark acknowledged, universities are autonomous bodies.

Universities must be alive to the public relations damage done to them by protracted disputes with staff, especially where there are parallel issues, such as the pensions issue that is having an impact on non-teaching staff at the University of Dundee.

There is no aspect of industrial relations in which fairness is so much to the fore of the public mind as that of pensions. Because of the background that I came from, I am instinctively inclined towards the cause of employees who oppose threats to their pension expectations. In another life, I worked for 30 years in journalism. It was not just the Maxwell scandal that left its mark: long-serving and far from well-paid journalists saw their non-contributory pension schemes removed while the legitimate terms and conditions of others were labelled as “pension liabilities” as if those were unreasonable burdens and not entitlements after many years of sterling service.

There is not the slightest doubt that the initial approach taken by the University of Dundee to its superannuation scheme was cack-handed, to say the least. It does not look good to attack the pension rights of staff who are far from being the best remunerated in an institution, especially when those staff are predominantly women, the gender worst served by pension provision.

In fairness, I get the university court's concerns over the growth in pension responsibilities—let us call them that—and the increase in employer contributions. However, that was the kind of ill-judged starting position that I referred to earlier.

We have seen some progress—not as much as staff might want or be content with, but some progress. We now need to see that being built on,

with similar momentum taking hold on the salaries front both at Dundee and across the sector and, as I said, both sides recognising that ground will have to be ceded.

13:05

**Michael Marra (North East Scotland) (Lab):** I declare an interest as a member of the Universities Superannuation Scheme from my 15 years working in the Scottish higher education sector.

I thank Katy Clark for bringing the motion to the chamber for debate today. As she knows, I am happy to give the full backing of Scottish Labour's education policy, particularly for the sound recommendation that funding that is delivered from the Scottish taxpayer through the Scottish Funding Council should be guaranteed on the baseline of the fair work convention. The universities should adhere to that. It is a sound suggestion and the minister should address it in his remarks.

It is absolutely right to say that employers should get back round the table on all the disputes that Katy Clark highlighted, and also on the dispute that Mr Graeme Dey highlighted. However, we know that pay disputes across the public sector are being driven by a global economic climate that has, to be frank, only been worsened by the grotesque incompetence of the Conservative Government, which is in Parliament today asking citizens across the UK to pay the cost of its right-wing ideological economic fantasies.

The staff in our universities, whose situation we are debating, are victims of that incompetence, too. The impact of inflation is now compounded by the tax hikes and service cuts that the chancellor has announced in the past hour. We have to ask our universities to recognise that climate and they must strain every sinew to find the resources to strike the right pay deal for our lecturers and support staff across Scotland. Their work is crucial not just today, for the students that they work with, but to the future of our country.

As members have highlighted, industrial relations are strained. As a Dundonian and as a former long-term employee of the University of Dundee, it has become a matter of great concern and, to be frank, a shameful sight to see that industrial relations there have deteriorated to the level that they have. The pension cuts for the lowest paid part of the workforce, who are predominantly female, are completely unacceptable. The management must get round the table with all the campus unions immediately.

We must also recognise in this debate what the Scottish Government has done to increase the

budget pressures on our universities. The resource spending review slashed funds for tertiary education in the years to come by 8 per cent with, as yet, no indication of the balance of the cuts between colleges and universities. That means that the universities do not yet know the real scale of the cuts that they will face, which makes planning for their future workforces, projects and investments impossible. The minister should provide clarity on that as soon as possible.

This is not just a short-term issue that has arisen in recent months. The Scottish Government has provided no increase to the funding of Scottish student education for 13 years and, as a result, it is fair to say that the balance sheets of most Scottish universities are deeply worrying. That is reflected in the comparative performance of our universities, as I have covered in the chamber on numerous occasions. The recent research excellence framework results show the universities in Scotland not improving at the pace of universities across the UK.

In the *Times Higher Education* world university rankings that were published just yesterday, there are three outstanding Scottish universities in the world's top 200. A decade ago, there were five. That is a reflection of the direction of travel in Scotland, which is a very worrying one for the future of our country.

The people who make the universities' success possible are the very employees whose working conditions we are discussing today. Scottish Labour calls for new negotiations and a deal for all those workers that protects their futures and the future success of Scotland.

13:09

**Stephen Kerr (Central Scotland) (Con):** I note the contents of the motion, and I find myself broadly in agreement with what is being said, fundamentally, in the debate, which is that the university principals and administrations should get together with the representatives of their workforces and resolve the dispute. At the heart of all these matters are the interests of the generation who depend on the good work that is being done in our universities and colleges, not only for their own individual success but for the future success of our country.

I listened to Michael Marra, for whom I have enormous respect, and I would gently suggest to him that he should perhaps check the detail of what the Chancellor of the Exchequer has actually said and, in particular, the commentary of the Office for Budget Responsibility.

Katy Clark is absolutely right when she talks about education being wholly devolved. Therefore, the minister needs to respond to any issues that

we address in the debate around the Government's performance in relation to its lack of public investment over a decade.

**The Minister for Higher Education and Further Education, Youth Employment and Training (Jamie Hepburn):** Would the member recognise that, fundamentally, this is an industrial dispute about industrial relations related to matters around pay and terms and conditions, which are inextricably interlinked with employment law, over which we do not have control and which remains in the hands of the UK Government?

**The Deputy Presiding Officer:** I can give you your time back, Mr Kerr.

**Stephen Kerr:** It is intrinsically interlinked with the fact that the Scottish Government has been underfunding the further and higher education sector in this country for 10 years. That is the framework in which these issues are being addressed. This is a wholly devolved matter, and the buck stops with the Scottish Government and with the Minister for Higher Education and Further Education, Youth Employment and Training in particular.

The further and higher education sector, upon which we all depend for our future prosperity, needs greater levels of sustainable funding. For far too long, the Scottish National Party Government has neglected the further education and higher education sector. Because of that, there have been budget cuts year after year. There have been cuts to the number of college students across Scotland and a cap on the number of Scots permitted to attend universities. The university sector has had to go across the globe, sometimes involving itself in what I can only describe as dubious international schemes to raise money, potentially undermining the independence and integrity of those very institutions, many of which are world class.

That is contributing to the strikes by lecturers and other staff at Scottish universities and colleges, who are concerned about their pay, working conditions and pensions. Since 2010, university funding per student has fallen by 9.4 per cent in real terms, according to the Scottish Government's own figures. In response to written question S6W-01165, the Cabinet Secretary for Education and Skills told us that, in 2010-11, average university student funding was £6,525 in real terms, whereas the figure now is £5,703.

The effect of those cuts is clear. As Universities Scotland has made clear, the fact that funding from international students' fees is set to overtake funding that the Scottish Government makes available to Scotland's universities next year is evidence of those international students' fees now cross-subsidising Scottish students' places and

the teaching budgets of higher education institutions.

We have also seen the effect of the SNP spending cuts on Scotland's colleges. The principal of Glasgow Kelvin College has said that 80 per cent of accessible income or revenue is spent on staff costs.

As I am now running out of time, I will conclude by reiterating that the Scottish Conservatives believe that the university principals—

**Audrey Nicoll (Aberdeen South and North Kincardine) (SNP):** Will the member take an intervention?

**Stephen Kerr:** I would love to, but I do not know if I am allowed.

**The Deputy Presiding Officer:** You are winding up at the moment, Mr Kerr.

**Stephen Kerr:** I apologise—I like to take interventions, as I think members know.

The Scottish Conservatives believe that the university principals and the representatives of university employees need to get around the table, but the Scottish Government needs to take responsibility for the consequences of the decisions that it has made, based on some form of hierarchy of political priorities. Scotland's universities should be the envy of the world. Our reputation as a country stands on our higher and further education. It is time that the SNP Scottish Government gave proper funding priority to Scotland's universities and colleges, so that lecturers and staff will feel and share in the pride of being part of this great national success story.

13:14

**Mercedes Villalba (North East Scotland) (Lab):** I refer members to my entry in the register of interests, and I thank my comrade Katy Clark for securing this important debate.

As a former rep for the University and College Union—the UCU—I know all too well what struggles the staff in higher education are facing. For years, those workers have been undervalued as the UK and Scottish Governments have allowed low pay, casualisation and poor working conditions to become rife across the sector. Therefore, I stand with those workers as they take industrial action and join them in their calls for a real pay rise after years of below-inflation wage rises; for an end to precarious contracts, which lead to poor working conditions and dangerously high workloads; and for pensions that allow them to have dignity in retirement, rather than pensions that have been cut to the bone.

As I mentioned, prior to my election, I was a UCU rep. A particular issue that members faced

then, which they still face now, was the increasing casualisation of work in higher education. I would like to share some testimony from a UCU member at the University of Dundee that highlights the human impact of casualisation. I will read out their words:

“I have been teaching at universities in the UK for 5 years, teaching English and academic skills to students who want to come and study in the UK.

In that time, I have been on more than 10 temporary contracts—all of them either part-time or fractional.

Most of my students will pay more for their Masters course than I will make in a year. It is just not possible to plan a life under these conditions.

It's nearly impossible to get a mortgage because temporary contracts are seen as too risky by the bank.

You cannot afford to pay for further training and qualifications because your pay is so low.

Starting a family seems impossible when you don't know if you will have a contract this semester, or if you might need to move to another city for work.

When I got my first job at a university I was excited because I thought I had 'made it'.

Now, I would not recommend the HE sector to anyone who wants to start a family or build a stable life of any kind.

I plan to retrain and leave the sector at the next opportunity, and I know I'm not alone.”

The UCU member whose testimony I have shared is not alone. The issues that they face reflect the systemic challenges that university staff face. As we have heard, at the University of Dundee senior management are pushing through pension cuts without holding meaningful negotiations with the affected workers or their trade union representatives in Unite, Unison and the UCU. The Scottish Government has refused to engage, despite the fact that it has often emphasised the importance of fair work. The First Minister, the education ministers and even their officials all failed to meet a delegation of workers and their Unite representatives in Parliament just two weeks ago.

**Jamie Hepburn:** I can only respectfully suggest that such an invitation never made its way to me. I have met the unions that represent workers at the University of Dundee, and I have met and spoken to folk from Dundee on the ground. Therefore, I am sorry to say that what Ms Villalba said is news to me. If that delegation wants to write to me, I will be happy to consider meeting it.

**Mercedes Villalba:** I thank the minister for that intervention and for his commitment to meet the workers. I will pass that on. The invitation was extended to every MSP in Parliament and I raised it at First Minister's question time. I even gave the time and place. I can only apologise if the minister was not paying attention that day.

Where is the fairness in low pay, in casualised contracts and in the pension cuts that university staff in Dundee and across Scotland now face? How can it be right that universities that receive so much public funding are able to defy the Scottish Government's fair work principles without being held to account?

The growing marketisation of higher education has involved universities prioritising profit over people. We must think bolder and transform our education system in the way that we transformed public health with the creation of the national health service. That means aspiring to have a national education service that is universally available from cradle to grave, that provides well-paid, secure and unionised jobs for its staff, and that makes lifelong learning a reality for all.

13:19

**Richard Leonard (Central Scotland) (Lab):** I refer members to my entry in the register of interests, and I thank Katy Clark for bringing this important question back before Parliament.

Once again, we are debating higher education at the very point when our trade unions are on the brink of industrial action. Once again, we are debating higher education as we witness a fierce political attack on the democratic freedoms of workers and their organisations. Make no mistake: it is an attack that is so extreme that simply witnessing it is not enough. This is no time for neutrality; this is a time to step up and actively defend those workers, those trade unions and those fundamental human rights and freedoms.

Nor can we be neutral on the fate of our universities. Just last week, I visited the new advanced research centre at the University of Glasgow. I listened: I listened to university teachers, who told me about the rise in precarious employment. I listened: I listened to students, who told me about the difference that access to higher education was making to their lives, but how hard their struggle was. New capital investment in our university buildings is important, but we also need equally bold new human investment in our university staff and students.

That reminds me that, as we contemplate the aftermath of this afternoon's budget and as the SNP-Green Government contemplates yet more cuts to college and university funding, we should never forget that there are those who will use financial cuts not as a side effect but as an intended consequence to limit the choice that is open to working-class students.

**Stephen Kerr:** I rise to point out that the chancellor's announcements today mean that, from next year, the Scottish Government will have

£1.5 billion more to spend on education and on other public services.

**Richard Leonard:** As people always say about budgets, the devil will be in the detail. We shall see over the next few days what that really means on the ground.

**Michael Marra:** In the accompanying notes for today's budget, the OBR has reflected the fact that household income in the UK is expected to fall by 7 per cent this year and 7 per cent next year. Is that not the situation that workers in universities face as a result of the UK Government's economic policies?

**Richard Leonard:** Yes, I agree with Michael Marra entirely. As I was saying, that is also the challenge that faces students from working-class backgrounds, who are much less likely to get the opportunity.

In the time that I have left, let me turn to look at the UCU's demands, which are, in my view, very modest. All that it is looking for is a meaningful pay rise and action to address pay inequality; an agreed framework to eliminate precarious employment practices and to tackle dangerously high workloads; an entirely affordable reversal of the 35 per cent cut to university workers' pensions; a reinstatement of the universities pension scheme; and a recognition that those are deferred earnings.

We say to the outstanding leaders of the UCU—Jo Grady and Mary Senior—and to other higher education trade unions in dispute that they and their members have our 100 per cent support. We say to the Scottish Government that of course we understand the importance of the autonomous status of our universities, but they are not private businesses—they are public institutions that are subject to public legislation, influence and regulation, and they are funded with public money. I ask the Minister for Higher Education and Further Education, Youth Employment and Training: what is it going to take, and when is he going to act?

Finally, in our democracy, trade unions are a line of defence for working people, but I hope that the day will come soon when they will be not just a line of defence but an alternative line of advance. I hope that they will be a vehicle through which people can participate in the running of our universities, our colleges and all our public services and, yes, in the running of our industries as well, so that the people who know what works—those who create the wealth, including the wealth of knowledge in our education system—are no longer all the time defending but have their status transformed. That would herald a new era of mutual aid and mutual respect, a new era of social and economic responsibility, and a new era of progress for working people in this country.

**The Deputy Presiding Officer:** I now invite the minister to respond to the debate.

13:25

**The Minister for Higher Education and Further Education, Youth Employment and Training (Jamie Hepburn):** I thank Katy Clark for lodging the motion, which raises important issues that it is entirely appropriate for us to debate in the Parliament.

At the outset, I place on record my thanks to those who work in our universities, be they our lecturing staff or support staff. They keep campuses running smoothly and ensure that students are supported and get the education that they require. In that context, I recognise that the past few years have not been easy for many sectors, including the university sector, in working through the Covid-19 pandemic, so it is all credit to those who have worked in the sector not only that they have sustained it but that it has continued to be the envy of the world.

I was surprised to hear Stephen Kerr say that the sector “should” be the envy of the world; he should know that we have world-class and outstanding excellence in our universities, and I am sure that Mr Kerr’s suggestion that it might be otherwise, in saying that they “should” be the envy of the world, was inadvertent—they are the envy of the world.

In respect of workforce relations right now, my clear view is that workers in our universities should continue to be supported. That is vitally important. We rely on them to help our institutions to continue to rebuild and bounce back in the post-Brexit and post-Covid economy; to help us to move towards net zero; to respond to the imperatives of upskilling and reskilling; and to continue to deliver world-class teaching, research and knowledge exchange.

**Stephen Kerr:** How on earth are those workers going to do that when the SNP Scottish Government is cutting public funding to universities and colleges? For example, on the financial prospectus that the SNP proposes, the principal of Glasgow Kelvin College, Derek Smeall, has said:

“the impact looks at this early stage to be likely to mean a reduction in my workforce of 25 per cent by ... year 5, which is 2027.”—[*Official Report, Education, Children and Young People Committee*, 21 September 2022; c 14.]

That is what the SNP has got on offer to the sector, so, although the minister talks about bouncing back, how is the sector supposed to do that when the SNP is not funding it properly?

**The Deputy Presiding Officer:** I can give you the time back for that intervention, minister.

**Jamie Hepburn:** What the member fails to mention—it is important that we place this in its proper context—is that today, as things stand, the Scottish Government’s budget is worth £1.7 billion less than when it was published in December 2021. The framework that we laid out through the spending review is predicated on what we expect to be available to spend through the public purse as a consequence of decisions that have been taken by Mr Kerr’s party in government. That is the reality of what we have to deal with, and we will seek to rise to the occasion and do what we can to continue to support the sector, both universities and colleges, right now.

I heard Katy Clark say—I think that she was saying this positively—that we invest £1 billion in our university sector. To be precise, it is £1.1 billion. That is a substantial investment.

**Michael Marra:** We all sympathise about the current financial situation, and I addressed some of that in my speech. The minister has to recognise that the amount of money that the Scottish Government has provided for Scottish students has not increased for 13 years. Is that not part of the root cause of the issue of terms and conditions for Scottish workers in universities, which is what we are talking about?

**Jamie Hepburn:** Actually, this year, we have seen an uplift in the teaching grant to universities being delivered through decisions taken by the Scottish Funding Council, so we continue to invest. We will also continue to invest in the substantial package of student support that we have in place, which, of course, enables Scottish students to attend university without having to pay the excessive and exorbitant fees that students in the rest of the United Kingdom have to pay.

Let me return to the industrial dispute, which is, after all, the primary focus of today’s debate. I am sorry if this disappoints Ms Clark, but I will be consistent with what I have said before. It is fundamentally the case that the Scottish Government is not a direct party to the negotiation process. We do not have the ability to intervene directly, or to determine, dictate or participate in how the negotiations will be taken forward.

**Katy Clark:** Will the minister give way?

**Jamie Hepburn:** I will give way in a wee second.

This point is important and has not been looked at or set out by any member thus far. Of course, some disputes are local, such as the Dundee one or the issues at Glasgow. However, for lecturers, the framework for negotiations is not Scotland specific; it is UK wide. That is the context and the reality that we are dealing with. We will seek to continue to influence matters and to engage, but against that reality.

**Katy Clark:** Does the minister accept that the model for the higher education sector in Scotland is, as I outlined, one of endemic low pay, poor conditions, excessive executive remuneration, casualised contracts and marketisation? Does he accept that it is the Scottish Government's responsibility to ensure that the model is acceptable to the people of Scotland? Will he look at fair work and at how employment practices can be improved in the sector?

**Jamie Hepburn:** Of course, I accept the responsibility that we have to bring our influence to bear to improve on those matters. I recognise that there are issues not only in this sector but right across the labour market in terms of how it is structured. I remind Ms Clark that, fundamentally, many of those things come back to employment law and how the labour market is regulated more widely, which is not directly in our gift.

**Katy Clark:** Will the minister give way?

**Jamie Hepburn:** I have given way a number of times.

**The Deputy Presiding Officer:** The minister has taken a number of interventions. It is only reasonable to listen to his responses and not provide a running commentary on them.

**Jamie Hepburn:** I assure you that the running commentary has not put me off my stride, Presiding Officer, but I appreciate the sentiment.

Let me come back to the process of negotiation. I accept that there is a role; I am not trying to abdicate that responsibility. I have sought to engage at every turn with the institutions, through Universities Scotland, and with the unions representing the workforce to urge them to come together to negotiate and come to a settlement that is fair and that supports the workforce. In that regard, Mr Dey is correct in his estimation of our involvement. We are involved and we are seeking to bring our influence to bear.

Since I became the minister with responsibility for higher education, I have undertaken and discharged that responsibility on a regular basis, engaging with all parties. Just last week, I spoke with the UCU. On 27 October, I spoke with Unite and Unison. This week, I have written to the Universities and Colleges Employers Association and copied the letter to Universities Scotland, continuing to urge them to engage with each other to ensure that the matter is resolved in a satisfactory fashion. On the Dundee situation specifically, again, I have regularly engaged with unions and management. If Ms Villalba wants to contact me about another chance to engage with workforce representatives, I will be happy to do so.

Let me conclude, Presiding Officer, as you probably want me to do now. I take our

responsibilities to all workers in Scotland seriously, including those who work in our academic institutions. We are serious about advancing a fair work agenda and seeing the fair work framework put into place. Through the Scottish Funding Council and our efforts, we will strain every sinew and pull every lever in our hands to make sure that we further that agenda. However, fundamentally, this situation requires further engagement and dialogue between management and the workforce to be successfully resolved. I assure members that I will continue to play my part in engaging with both parties to try to bring it to a successful resolution.

13:34

*Meeting suspended.*

## Portfolio Question Time

**The Deputy Presiding Officer (Annabelle Ewing):** Good afternoon. The next item of business is portfolio question time, and the portfolio is education and skills. If a member wishes to request a supplementary question, they should press their request-to-speak button or enter the letters "RTS" in the chat function during the relevant question.

Question 1 is from Mark Griffin, who is joining us remotely.

### National Qualifications (Appeals)

**1. Mark Griffin (Central Scotland) (Lab):** To ask the Scottish Government whether it will provide an update on the processing of appeals for the 2022 national qualifications exams. (S6O-01556)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** Outcomes for priority appeals, where outcomes were needed for progression to further education, higher education, employment or training this year, were issued to centres by the Scottish Qualifications Authority on 5 September. Outcomes for the remaining 2022 appeals process were issued on 31 October, with some appeals having been expedited to 15 October for learners who were accessing the Universities and Colleges Admissions Service early applicant process for 2023 for courses such as medicine or dentistry. The SQA published a high-level summary of the 2022 appeals outcomes on 3 November, and it will publish a more detailed report in December.

**Mark Griffin:** With one third of appeals in 2022 having been successful, the process has helped to ensure fairness and to mitigate the on-going effects of the global pandemic. With the pandemic still affecting young people's education, can the cabinet secretary say whether she agrees that the SQA should commit to an appeals process for 2023, based on valid and reliable alternative evidence of demonstrated attainment?

**Shirley-Anne Somerville:** The SQA still has a number of decisions to make, particularly about the appeals process. It is currently undertaking consultation, research and evidence work to explore the implications of the appeals process last year and how appeals have worked in previous years. The SQA's work in that area is ongoing. The SQA will keep in close contact with the national qualifications 2023 group, which includes a number of stakeholders such as learners, to see what the group's views are before it makes any decisions for 2023.

### English as an Additional Language (Support)

**2. Miles Briggs (Lothian) (Con):** To ask the Scottish Government what support it provides to learners of English as an additional language. (S6O-01557)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** The responsibility for the provision of support for children and young people who have English as an additional language rests with education authorities. Under the Education (Additional Support for Learning) (Scotland) Act 2009, education authorities are legally required to identify, provide for and review the additional support needs of their pupils. That includes pupils who have English as an additional language. The Scottish Government has provided statutory guidance to education authorities and schools to support them in fulfilling their duties. English as an additional language has been specifically identified as a potential additional support need within the code of practice.

**Miles Briggs:** In the past decade in Edinburgh, the number of children in schools who are new to English has increased from 595 to more than 760, and children who require early acquisition of English as an additional language has increased from 800 to more than 1,800. However, we have not seen an increase in English as an additional language teachers in our schools. What assurance can the cabinet secretary provide that councils such as Edinburgh will be given the funding that is needed for English as an additional language teachers so that we can make the most of our multilingual classrooms?

**Shirley-Anne Somerville:** I appreciate where Miles Briggs is coming from with his question about ensuring that we are providing support for pupils for whom English is an additional language. As I said in my original answer, many of the responsibilities to identify need and ensure that the correct support is available lie with local authorities. The Scottish Government and, indeed, Education Scotland work very closely with our local authorities to ensure that anything that can be done at the national level to assist with that is done.

There are a number of ways in which funding is given to local authorities, through general expenditure or for particular education aspects of policy. Many of those go through the Convention of Scottish Local Authorities, and there is an agreement with it about how that money is distributed. However, I will certainly ensure that, in future years, we bear in mind the importance of the issue, as we have done in the past.

**Michael Marra (North East Scotland) (Lab):** The question is particularly important given that

today is international students day, when we reflect on the contribution that our international community makes in Scotland and on the position more broadly as our students go around the world. To be frank, the cabinet secretary's answer is not good enough. The number of teachers of English as an additional language in Scotland has decreased by 82 per cent since 2008. It is clear that the system that she outlined is not working and that the Government needs to take an active role in addressing the problem. What more can she commit to do in order to put in place a Government programme to sort out the situation?

**Shirley-Anne Somerville:** The Government continues to invest in teachers and in the teaching estate. Teacher numbers are at their highest since 2008, and the most recent figures available show that more than 16,000 pupil support assistants are providing invaluable support to pupils, including those with English as an additional language.

#### **Further and Higher Education Institutions (Fair Work First)**

**3. Maggie Chapman (North East Scotland) (Green):** To ask the Scottish Government whether it will provide an update on how further and higher education institutions that receive public funding via the Scottish Funding Council are expected to implement fair work first principles. (S6O-01558)

**The Minister for Higher Education and Further Education, Youth Employment and Training (Jamie Hepburn):** The Scottish Government strongly believes that all employers should practise fair work. The Scottish Funding Council asks institutions that receive public funding to comply with fair work first criteria through a number of mechanisms, and the criteria were included in the institutional funding letters that were issued in May 2022 and in the conditions of grant for non-core programme funds. In addition, the SFC outcome agreement guidance for the academic year 2022-23 asks institutions to demonstrate how they are meeting fair work first criteria.

SFC accounts directions require colleges and universities to report on fair work practices that have been developed in agreement with their workforce and on the progress that colleges and universities have made on implementation. The SFC is due to receive the 2021-22 accounts from institutions at the end of this calendar year.

**Maggie Chapman:** The minister will be aware that effective voice is one of the five dimensions of fair work, as defined by the Fair Work Convention, which says that the gold standard of effective voice is employers having clear recognition of and respect for strong trade unions.

Yesterday marked the end of 12 weeks of strike action, and today is day 613 since the pensions dispute between Unite the union and the University of Dundee began. Workers are going back to work without any resolution. University management has comprehensively failed in its obligations—

**The Deputy Presiding Officer:** Ms Chapman, can we have a question please? Thank you.

**Maggie Chapman:** —under the fair work effective voice criterion. Management has refused to engage with the unions.

**The Deputy Presiding Officer:** Ms Chapman, I really do need a question. Please get to the question.

**Maggie Chapman:** Does the minister believe that it is a fair work practice to in effect derecognise campus unions? What can he do through the SFC outcome agreement discussions with the University of Dundee to ensure that workers' voices are heard and that workers are treated with dignity and respect—

**The Deputy Presiding Officer:** Ms Chapman, I think that we have got the gist. Thank you very much.

**Maggie Chapman:** —in work and in retirement?

**The Deputy Presiding Officer:** Ms Chapman, thank you.

**Jamie Hepburn:** As a former fair work minister, I take such issues seriously. I agree that trade union recognition and the organisation of workers through trade unions are an important mechanism for effective voice.

Throughout this dispute, I have urged both sides to continue constructive and meaningful dialogue. I have engaged regularly with management and trade unions, and that is on-going. Most recently, I spoke on 3 November with Iain Gillespie, the university's principal, to encourage further dialogue between the university and the trade unions. That followed previous engagement with him and the trade unions more widely.

**Pam Gosal (West Scotland) (Con):** Colleges need £25 million for life-cycle maintenance for 2023-24, and a further £250 million is needed to make all Scotland's college buildings wind and watertight. Does the minister agree that a warm and dry environment that is suitable for learning is the bare minimum that staff and students should expect? Will he make room in the budget to ensure that bare minimum of working conditions for college staff and students?

**Jamie Hepburn:** I am aware of challenges that we face in our college estate. We have asked the SFC to take forward a programme to set out the priorities for investment. I await that, and we will

respond once after I have received it. I recognise the challenges, and we will continue to invest. The significant uplift in the capital grant this year demonstrates our commitment to investing in the college estate. I recognise that more requires to be done, and we will continue to engage with the sector on that basis.

#### **Probationary Primary Teachers (Full-time Employment)**

4. **Colin Smyth (South Scotland) (Lab):** To ask the Scottish Government what proportion of 2021 graduate probationary primary teachers have secured full-time employment in Scottish state schools after completing their probation. (S6O-01559)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** For primary teachers in the 2020-21 cohort of teacher induction scheme probationers, 70 per cent had secured full-time employment in a publicly funded school in Scotland by the time of the September 2021 census. Statistics on the employment of the 2021-22 cohort of teacher induction scheme probationers will be published on 13 December.

**Colin Smyth:** Primary teachers who carry out their probation in Dumfries and Galloway have one of the lowest rates of permanent employment. Only three teachers—just 6 per cent—of the 2020-21 cohort secured a permanent teaching position. One of the many teachers who is stuck on the supply list wrote to me and said:

“Myself like many others have worked hard to get to where we are. Teachers are feeling very undervalued at the moment and so many are currently looking at leaving the profession. I feel like my life is on hold and I cannot plan for the future. Do you think this is fair?”

Cabinet secretary, there is a problem across Scotland, especially in rural areas. What additional steps will the Government take to support local authorities, particularly in rural areas, to fill teaching vacancies and enable those newly qualified teachers to pursue the career that they want? My constituent is right to say that it is not fair.

**Shirley-Anne Somerville:** The recruitment and retention of teachers is a matter for the local authority as the employer. However, at a national level, we clearly have a role in supporting our local authorities. That is exactly why I took the step of ensuring that we provided additional permanent funding of £145.5 million per year to support the recruitment of extra teachers. In the past, local authorities told me that one of the reasons that they could not allow permanent contracts was that some of our funding was temporary. I have changed that; the funding is now permanent, so local authorities should be allowing contracts on a permanent basis.

**The Deputy Presiding Officer:** Three members are seeking to ask a supplementary question. I will take all three questions, but I hope that there will not be endless sub-clauses before we get to a question.

**Willie Rennie (North East Fife) (LD):** To give the cabinet secretary credit, she did baseline that funding, which has helped to mitigate some of the problems. However, there continues to be a mismatch between the number of teachers who are available and the number of posts that are available. What changes is she making to workforce planning? What discussions has she had with the universities? What further steps will she take to make sure that those people find jobs?

**Shirley-Anne Somerville:** I continue to be in close contact with unions and teachers directly, whom I have heard from, once again, quite recently, about some of the challenges that they face with regard to permanent contracts. We are looking at the numbers that are required for initial teacher education. At this point, those deliberations are still on-going, but that feeds into our wider workforce plans, through which we are looking at the number of teachers who are in the system at the moment and at the requirement for additional teachers in different places. That work obviously includes people in our university sector who provide the initial teacher education. Once the work is completed, those figures will be published in due course.

**Stephen Kerr (Central Scotland) (Con):** The cabinet secretary’s response is really not good enough. None of her responses to the question have been good enough, because we know that thousands of newly qualified teachers have left the profession or are on temporary contracts. The figures that have been reported by *The Times* should be a source of shame for the cabinet secretary. We have a situation whereby teachers have reached the end of their tether, so they have quit the profession, or they have been left in limbo for too long on temporary contracts. Those issues have been raised for years in this chamber and it simply is not good enough for the cabinet secretary to sit on her—

**The Deputy Presiding Officer:** Could we have a question, please, Mr Kerr?

**Stephen Kerr:** I promise that I will get to the question.

It simply is not good enough for the cabinet secretary to sit on her hands. What will she do now to fix it?

**Shirley-Anne Somerville:** Clearly, as I have already stated in my previous answers, we have done a lot, particularly this year. The change that we have made amounts to £145.5 million. Again, I stress to all members that they are perfectly

entitled to challenge the Scottish Government on that, but none of the questions today have recognised the role of councils in looking at the permanency of the issue and the fact that they have responsibility for recruitment and retention. I take my responsibilities very seriously, and that is why I took the decision that I did not long after getting into post. However, councils also have a responsibility around recruitment and retention, and I feel that the members do not recognise that. Certainly, Mr Kerr did not.

**Evelyn Tweed (Stirling) (SNP):** I welcome the support that the Scottish Government is providing for the continued employment of teachers. What is the latest pupil teacher ratio? How does it compare with the ratio in the rest of the UK?

**Shirley-Anne Somerville:** The ratio of pupils to teachers is at its lowest since 2009, with more teachers than at any time since 2008. We have the most teachers per pupil of any UK nation. The most recent comparable statistics are for 2021, and they show a pupil teacher ratio of 13.3 for Scotland, 18 for England, 19.2 for Wales and 18 for Northern Ireland.

#### **Disabled People Leaving School (Positive Destinations)**

**5. Pam Duncan-Glancy (Glasgow) (Lab):** To ask the Scottish Government what it is doing to improve positive destinations for disabled people leaving school. (S6O-01560)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** Since November 2020, we have invested funding of up to £175 million through the young persons guarantee to create additional opportunities, with a focus on those furthest from a positive destination. That includes up to £90 million for local authorities through local employability partnerships, which are focused on early intervention and prevention by providing supported employment opportunities, training and employer recruitment initiatives.

The Scottish Government is also committed to introducing Scotland's first national transitions to adulthood strategy in this parliamentary term, to ensure that there is a joined-up approach to supporting our disabled young people as they make the transition to adult life.

**Pam Duncan-Glancy:** When it comes to positive destinations for young disabled people, the picture is not good. Six months after leaving school, disabled people are twice as likely not to be in education, employment or training than their non-disabled peers. At the age of 16, the aspirations of disabled and non-disabled young people are the same; by 26, disabled people are three times more likely to feel hopeless, no matter

what they do. We are failing them at a time when we should be helping them to fulfil their dreams.

Does the cabinet secretary agree that, to improve positive destinations for disabled people leaving school, a national transition strategy with a plan for all young disabled people should be put on a statutory footing, thereby giving everyone a fighting chance at a future?

**Shirley-Anne Somerville:** I recognise the work that has been undertaken by Pam Duncan-Glancy on the bill on this issue, and I recognise that it is an on-going process. We absolutely support the bill's intention to improve the transition for disabled children and young people. We are at a point where we need to collectively consider where matters stand, given the consultation and work that are on-going. However, I genuinely look forward to working collaboratively with Pam Duncan-Glancy on the issue, as do my colleagues Clare Haughey and Christina McKelvie, who are working on the bill and the wider issues around transitions.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** I welcome the update from the Scottish Government on what it is doing to improve positive destinations for disabled people leaving school. How many people are accessing modern apprenticeships and how does the number compare with pre-pandemic numbers?

**Shirley-Anne Somerville:** Skills Development Scotland has operational responsibility for our modern apprenticeship programme, and it publishes quarterly official modern apprenticeship statistics, including the number of starts, with a full-year report being available at the end of each financial year.

The most recent statistics were published on 8 November. There were 12,593 modern apprenticeship starts by the end of quarter 2—which shows considerable progress towards getting back to pre-pandemic levels—and 1,822 modern apprenticeship starts in the second quarter have a known disability or have self-identified with an impairment, a health condition or a learning difficulty. That number is up from 1,334 at the same point last year, which is an increase of 36.6 per cent.

#### **Safety at School (Teachers and Pupils)**

**6. Russell Findlay (West Scotland) (Con):** To ask the Scottish Government what it is doing to keep teachers and pupils safe while at school. (S6O-01561)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** The safety of our children, young people and staff in school is of paramount importance. The Scottish Government and partners across education advocate for

schools and local authorities to work with pupils in identifying the underlying reasons for inappropriate behaviour.

We all want pupils to behave in a respectful manner towards their peers and staff, and we have produced guidance for local authorities and schools to prevent exclusions and manage behaviour. However, it is for schools to decide what action should be taken, depending on the individual circumstances of each case.

**Russell Findlay:** In Renfrewshire, over a single year, 36 teachers were assaulted by pupils, with 28 of those attacks being in primary schools. Violence has reached such extreme levels in one Glasgow secondary school that teachers have voted for strike action because they do not feel safe. There remains a real risk that proposed Scottish National Party budget cuts to justice will lead to the loss of police officers in school. Will the cabinet secretary explain how cutting campus cops will help teachers to stay safe?

**Shirley-Anne Somerville:** For the avoidance of doubt, and particularly for the benefit of Mr Rennie, we do not have campus cops in our schools. Mr Rennie has left the chamber, but he has had an interest in this area in the past. We do not have campus cops in our schools. We have police officers who work with a school—primary or secondary—on issues that are of interest and use.

It is important, of course, to ensure that police officers support our schools wherever necessary. Where there is a requirement for a police officer to carry out that type of role in a school, they do just that very well and with great support at the moment. We will continue to support our teachers to ensure that no one is suffering verbal or physical abuse in our schools.

Schools and local authorities have an absolute responsibility to decide what actions should be taken. Those actions might include involving the police, if that is appropriate, but that is a decision for the school. That would be very different from using pupil equity funding to support joint work with a police officer.

**Martin Whitfield (South Scotland) (Lab):** Where does violence in schools sit with the Scottish Government in terms of the green-amber-red risk register?

**Shirley-Anne Somerville:** I said in my previous answer that there is absolutely no excuse for violence in our schools. All forms of violence are absolutely unacceptable. There is a clear policy, at Government level and, I think, at local government level, that that type of behaviour is absolutely unacceptable. That is why we have in place the guidance that we have, and it is why we continue to have very close dialogue with the unions and

local authorities to see whether anything else can be done on the issue.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** On the back of Russell Findlay's question and the cabinet secretary's answer, can we have an update on when we should expect the next iteration of the behaviour in Scottish schools research—BISSR—and how the findings of the first research impacts on Scottish Government policy?

**Shirley-Anne Somerville:** I am pleased to confirm that, after a delay caused by the pandemic, we have recently awarded the contract for the next phase of behaviour in Scottish schools research to ScotGen Social Research. Officials are working with analysts and the contractor to make arrangements for the fieldwork, which will start next year. They expect the research report by the end of 2023.

### Support in Schools (Staff and Pupils)

**7. Claire Baker (Mid Scotland and Fife) (Lab):** To ask the Scottish Government how it is ensuring adequate support provision is available for staff and pupils in schools. (S6O-01562)

**The Cabinet Secretary for Education and Skills (Shirley-Anne Somerville):** All children and young people should receive the support that they need to reach their full potential. I recognise the critical role of all school staff in achieving that aim, and remain committed to supporting them in their work.

Local authorities are responsible for identifying and meeting the additional support needs of their pupils. We are working closely with local government partners, through the additional support for learning project board, to ensure that we continue to see progress in the delivery of the recommendations from Angela Morgan's review. An updated action plan and progress report will be published shortly.

**Claire Baker:** The latest Scottish Government figures show that over 12,000 children and young people accessed school counselling services during the last six months of the past year. What assurances can the cabinet secretary offer regarding the continued provision of pupil support services? Can she guarantee that the Government funding that came with the national mental health strategy for the school counselling service, which is due to be reviewed in March, will be continued? The need is obviously there. Many of the counsellors are on fixed-term contracts, and we need to make sure that they have some certainty so that the service can be maintained.

**Shirley-Anne Somerville:** I strongly recognise the work that has gone on in our schools, and particularly the work of the school counselling

service, which, as Claire Baker said, the Scottish Government had committed funding for. The funding for that is in the health budget and not the education budget. As we move into the new budget process for the next year, ministers across Government will be analysing how our budgets should be spent. On these issues, the Minister for Mental Wellbeing and Social Care and I will, of course, be in close contact about what will happen in future years.

I recognise that the scheme has been important and significant. It is not the only scheme out there to assist children and young people, but it is one that we will look at in the budget process.

### **Early Learning and Childcare (Argyll and Bute)**

**8. Jenni Minto (Argyll and Bute) (SNP):** To ask the Scottish Government how many children in Argyll and Bute are currently receiving funded early learning and childcare. (S6O-01563)

**The Minister for Children and Young People (Clare Haughey):** The most recently published figures showing numbers of children receiving funded early learning and childcare at the local authority level are included in the Summary Statistics for Schools in Scotland report for 2021. That was published in December 2021 and showed that, in September 2021, there were 1,303 registrations for funded ELC in Argyll and Bute, a rise of 4.6 per cent from the previous year. The figure for September 2020 was 1,246.

In December, the Scottish Government will publish the Summary Statistics for Schools in Scotland report for 2022. That report will include figures to show the number of child registrations for funded early learning and childcare in September 2022 at national and local authority level, including Argyll and Bute.

**Jenni Minto:** I have had the privilege of visiting the wonderful outdoor ELC facilities at Lochgilphead in my constituency and I have seen the benefits to children's education that they provide. Will the minister advise what the Scottish Government can do to promote outdoor education for nursery-age children?

**Clare Haughey:** Outdoor play and learning is already an integral everyday part of ELC in Scotland and we know the benefits of high-quality outdoor play for children's positive physical and mental development. It is our vision that children in Scotland's ELC sector will spend as much time outdoors as they do indoors, and time outdoors will happen every day in every setting. As outlined in the "Best Start: Strategic early learning and school age childcare plan for Scotland 2022-2026", which was published on 6 October, we will continue to work with our partners to build on the range of outdoor learning support for providers

that we put in place during the pandemic. That will include publishing a new chapter of our popular "Out to Play" ELC practitioner guidance series in the new year, entitled "caring for our outdoor places". The guidance will set out sustainable ways to explore, look after and care for our outdoor spaces.

**The Deputy Presiding Officer:** There is a supplementary from Sue Webber.

**Sue Webber (Lothian) (Con):** Argyll and Bute is leading the way when it comes to funding following the child with some of its cross-border early learning childcare placement arrangements, offering real flexibility to suit the child and, equally important, the working parents and carers. However, that is not the case nationally.

I have a constituent who lives in south-west Edinburgh but works as a teacher in East Lothian. The care available to her from the City of Edinburgh Council does not suit her work or her commuter challenges and she might be best suited with a placement in a neighbouring authority—for example, East Lothian. Does the minister agree that, given the pressures of juggling work and childcare, local government should be looking to remove obstacles and make it easier for families to access the 1,140 hours that they need by actively encouraging local authorities to facilitate cross-boundary placements?

**Clare Haughey:** Provider neutrality is absolutely central to our approach to delivering ELC, which means that parents and carers can choose to access their child's ELC entitlement in any provider that meets our key quality criteria, whether that is a childminder, a private or third sector setting, or a local authority nursery. I would certainly be happy, if Sue Webber wants to write to me with the specific details, to come back to her on anything that we can do to assist.

**The Deputy Presiding Officer:** That concludes portfolio questions on education and skills. There will be a short pause before we move on to the next item of business to allow front bench teams to change positions, should they wish.

## Brexit (Impact on Devolution)

**The Deputy Presiding Officer (Annabelle Ewing):** The next item of business is a debate on motion S6M-06732, in the name of Clare Adamson, on behalf of the Constitution, Europe, External Affairs and Culture Committee, on the impact of Brexit on devolution.

14:58

**Clare Adamson (Motherwell and Wishaw) (SNP):** First, I thank the committee clerks, our advisers and all those who gave evidence and submissions to our inquiry for their interest and support.

“There shall be a Scottish Parliament.”

Six simple words, but almost exactly 24 years ago, the Scotland Act 1998, the statutory underpinning of our Scottish Parliament, became law. First lines of legislation are seldom memorable, but I would suggest that that was an exception.

The most recent Scotland Act, enacted in 2016, was intended to deliver, in the words of Prime Minister David Cameron,

“one of the most powerful devolved parliaments in the world.”

However, the impact of Brexit, as well as that of United Kingdom legislation following the UK’s withdrawal from the European Union, cannot be overstated. The conventions that underpin devolution are coming under strain—that is the key message from our inquiry.

Our report “The Impact of Brexit on Devolution” was informed by evidence sessions that were themed on legislative consent, which is the means by which a devolved legislature indicates that it is content for the UK Parliament to pass a law on a devolved area; on the UK-EU trade and co-operation agreement, or TCA; on the implementation of the protocol on Ireland/Northern Ireland; on retained EU law, with a bill that is currently passing through the House of Commons; and, of course, on intergovernmental relations—a theme that runs through all those topics.

We chose to focus on three areas—regulatory divergence, the Sewel convention and delegated powers, which my deputy convener will cover in his summing up.

Although technical in nature, our report is about how we legislate and what we regulate. There are implications for our everyday lives, including how we do business, how we protect the environment and how we ensure the safety of both the products on our shelves and the food on our plates.

Our earlier report, which was published in February, highlighted the tension that can exist

between open trade and regulatory divergence. In this report, we looked at the extent to which regulatory divergence is limited both within the UK internal market and between the UK internal market and the EU single market. We addressed the possibility of different policy and legislative priorities within the four nations of the UK, and the extent to which devolution needs to evolve to allow for that.

When the UK was a member of the EU, options for divergence within the UK in devolved policy areas within EU competence were minimal. The statutory obligation on the UK was to comply with EU law. Now, of course, that obligation no longer applies, except in the case of Northern Ireland—although the Northern Ireland Protocol Bill, which is currently being passed through the UK Parliament, might change that, too. We should also note that the policy of both the Scottish Government and the Welsh Government is to keep pace with Europe.

A much higher level of regulatory divergence both within the four parts of the UK and between the UK and the EU is now possible. There are, however, commitments to non-regression in environmental standards, labour rights and social responsibility in the TCA, which in that way seeks to establish a level playing field between the EU and the UK on trade and investment.

However, it is important to note that divergence is allowed under the TCA. Professor Catherine Barnard spoke of “active and passive divergences”—the former can arise from a deliberate policy choice and the latter from the fact that the UK no longer needs to follow EU-level decisions. However, our businesses must comply with EU law to be able to sell into Europe, so we do not know the extent to which the non-regression principle and level playing field provisions might limit regulatory divergence.

**Willie Rennie (North East Fife) (LD):** I am listening carefully to what the member is saying. Did the committee come up with examples of divergence in practice that are causing harm right now? I cannot find any great examples of that, so the whole exercise seems to be rather futile.

**Clare Adamson:** I suggest that it is not. The examples were in the evidence that was given to the committee, so I refer him to that evidence. The situation is extremely fast moving and, as we are considering these issues, other things are put on the table, such as the Northern Irish Protocol Bill. Although technical, it lays out the challenges that we might face.

The Northern Irish protocol, which was negotiated within the Brexit settlement, is a further complicating factor. Dr Lisa Claire Whitten said:

“the UK must keep Northern Ireland aligned with any changes made to the EU legal instruments included in the scope of the protocol”—

a process that is described as “dynamic alignment”. To date, it has involved 300 instruments and it suggests that UK-EU divergence will in time lead to divergence between Northern Ireland and the rest of the UK. The fundamental question is the extent to which the devolution settlement can accommodate that divergence. Dr Whitten suggested that the Scottish Government’s commitment to align with EU law where appropriate could mean

“potentially opting into the same divergence trajectory”

as Northern Ireland under the protocol.

John Thompson and Sons, a Belfast-based business, said:

“the challenge for Scotland is, how do you follow”

EU

“regulations when you are under the UK single market rules?”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 30 June 2022; c 20-21.]

During a visit to Brussels in June, we heard first hand of the EU’s concerns for the integrity of the single market and about whether divergence could impact safeguarding the public in areas such as animal health and food safety.

That brings me to the Retained EU Law (Revocation and Reform) Bill. I will not say too much about it now, given that the committee will take evidence on the legislative consent memorandum next week. However, the Welsh Government has said:

“any proposals to deregulate in a way that could reduce the important social and environmental protections and high product standards that consumers and workers in Wales have come to expect are not acceptable.”

There are clearly substantive differences between the UK Government and the devolved Scottish and Welsh Governments. That raises questions concerning the capacity of the UK to potentially accommodate four different regulatory environments within a cohesive internal market while complying with international agreements; whether existing institutional mechanisms are sufficient to resolve differences or disputes between the four Governments; and how devolution should evolve to address those questions.

I turn to the Sewel convention, which is the mechanism for obtaining the consent of a devolved legislature where the UK Parliament intends to pass primary legislation in a devolved area. The convention established that the UK Parliament would “not normally” legislate in areas that are devolved without the agreement of the

devolved institutions. The Institute for Government observed that, prior to 2018,

“consent had been withheld by one or other of the devolved legislatures on just nine occasions”—

in Scotland’s case, only once—and that

“the UK Parliament had never passed legislation without consent”

when the relevant provisions fell within the scope of Sewel. However, since 2018, six Brexit-related bills have been passed at Westminster without the consent of this Parliament.

Dr Chris McCorkindale, the committee’s adviser, noted that, pre-Brexit, the convention was understood to have

“both a policy and a constitutional arm”

and was respected as a

“constitutional rule that protected devolved autonomy and facilitated shared governance”,

in which any

“decision to withhold consent was the exception rather than the rule”

and against which

“UK legislation in devolved areas would only be made where that legislation was”

felt

“necessary on the part of the UK Government or where it was invited ... by the Scottish Government.”

In Professor Nicola McEwen’s view,

“The paradox of the Sewel convention is that it only functioned as a principle and process that fostered a culture of cooperation so long as its limits were untested.”

The committee believes that there is clearly a need for public debate about the issues, and we have launched a call for evidence to encourage businesses, civic society and the wider public to join that debate. In the meantime, I welcome this afternoon’s debate.

I move,

That the Parliament notes the Constitution, Europe, External Affairs and Culture Committee’s 5th Report, 2022 (Session 6): *The Impact of Brexit on Devolution* (SP Paper 223).

15:08

**The Minister for Culture, Europe and International Development and Minister with special responsibility for Refugees from Ukraine (Neil Gray):** The Scottish Government welcomes the committee’s thoughtful, important and unanimous report, and I join the convener, Clare Adamson, in thanking members and the clerks for their work on it.

The report clearly demonstrates that the impact of Brexit on devolution has been entirely negative. In the committee's words,

"there are fundamental concerns which need to be addressed by the Scottish Parliament in relation to how devolution works outside the EU."

The causes for the concerns are clear: the Sewel convention has been undermined, the views of this Parliament have been ignored and UK Government ministers have given themselves powers to intrude into devolved matters without a need to and without our consent.

None of this is surprising. After all, the slogan of the Brexit campaign was "take back control". It was always hard to believe that the UK Government would take back control, following its imagined subservience to the EU, only to share powers and decision making with the devolved Governments. Devolution was always going to suffer from the instinct to hoard power in Whitehall, combined with the continued claim by Westminster of unlimited parliamentary sovereignty.

It is crucial that those consequences of Brexit are widely understood. The Scottish Government therefore fully supports the committee's recommendation that

"there needs to be a much wider public debate to address the fundamental questions arising from the impact of Brexit on how devolution works."

In my remarks, I will concentrate on the two areas of particular concern that were identified by the committee: the Sewel convention and UK ministers' power to act in devolved areas.

First, the report lays out clearly the damage that has been done to the Sewel convention since Brexit. Until the 2016 referendum, the Sewel convention had been observed consistently by UK Governments and Parliaments since 1999. The convention was therefore functioning as intended, protecting the competence of this Parliament and the Scottish Government from unwanted actions by the UK Government in using the still-unlimited powers of Westminster on areas of responsibility that are vested here.

As the report sets out, that has not been the case since 2016. On six occasions, the UK Government has sought the consent of this Parliament and has then ignored our views. On each of those occasions, after this Parliament refused its consent, the UK Government claimed that circumstances were "not normal" so that it could proceed with its preferred route and set aside our inconvenient disagreement.

However, the circumstances of those bills are precisely what the convention was intended to prevent. To take the most prominent and

damaging example, the United Kingdom Internal Market Act 2020, which was in no way necessary for the implementation of Brexit, changed the competence of this Parliament—indirectly, through the market access principles, and directly, by reserving subsidy control. Those are exactly the kinds of changes to our competence that the Sewel convention was designed to prevent.

The view of the Scottish Government is that the convention can have no force if it can be—and is—set aside by the UK Government on the ground that it wants to impose its preferred policy approach on the Scottish Parliament against our express wishes. The convention can provide no meaningful protection for this Parliament if, after the Scottish Parliament has made its decision and refused consent, the UK Government can decide retrospectively that circumstances are "not normal".

**Martin Whitfield (South Scotland) (Lab):** Does Neil Gray agree that, although the power does not lie in this place, the need for a legislative consent motion should appear far more fully at the front of a bill at Westminster, so that all members of the Parliament down the road are aware of the need to seek the consent of the devolved authorities?

**Neil Gray:** Martin Whitfield speaks with some authority, having served in that house "down the road", and I agree that that would be a very useful measure for bringing to the attention of colleagues down the road the implications of what they are debating and deciding. That would be a novel prospect for colleagues down the road to consider; however, I do not hold my breath for that coming about, given the disrespect shown to this place and to other devolved Governments and Parliaments, particularly since Brexit.

The UK Government has, therefore, downgraded the convention from a constitutional rule, which a convention should be, to an optional process that it might observe if it wishes. We are now faced with the Retained EU Law (Revocation and Reform) Bill, which will repeal important regulations and safeguards that have been built up through 47 years of EU membership. This Parliament has made clear its desire to align with the high standards of the EU, and we have passed our own UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. There must be severe doubts, to say the least, that the UK Government will change its bill to exclude devolved matters, whatever the view of this Parliament or of businesses and people across Scotland.

The process of Brexit has therefore done severe damage to the Sewel convention, as the committee's report makes clear. However, we should be clear that it is not Brexit itself—disastrous though it is for Scotland—that has

enabled that constitutional damage, but the fundamental design of the UK system, which allows the UK Government and Westminster to impose and overrule in such a way.

**Willie Rennie:** The minister will know that I was a strong supporter of the keeping-pace powers. However, thousands of legal instruments go through Europe on a regular basis. How many have involved keeping pace through the Scottish Parliament's process?

**Neil Gray:** Across the Parliament, we want to continue to align with the European Union as closely as possible. Unfortunately, the actions of Westminster have made it very difficult for us to do that in all cases. However, we will always seek to ensure, as far as possible, that we can maintain the high standards of EU regulation—in spite of the fact that we are expecting a bin fire of regulation from Westminster. I hope that Willie Rennie will support that purpose, in spite of the fact that his UK colleagues support Brexit and not returning to the EU yet.

That downgrading of Sewel was a deliberate choice by the UK Government. In the Scotland Act 2016, before Brexit and four Prime Ministers ago, it could have set out binding legal safeguards for Sewel and this Parliament, as was recommended by the Smith commission. It chose not to do so but to enact a far weaker form of safeguard that provides no legal protection at all. Wherever colleagues stand on the question of Scottish independence—and there is a majority for independence in this chamber, as elected by the people of Scotland—that should concern us all.

I am also grateful to the committee for highlighting the growing power of UK ministers to act in devolved areas. The Delegated Powers and Law Reform Committee has also done important work on that subject, and particularly on the UK professional qualifications bill, as is covered in the report.

Like the overwhelming majority of people in Scotland, the Scottish Government opposes Brexit, which has been imposed on us. Given that imposition, practical legislative matters must be addressed. In our approach to Brexit legislation, which we would clearly rather not have, we have accepted that there can be circumstances in which UK-wide or Britain-wide secondary legislation might be the most appropriate way to legislate. That was particularly true when faced with the volume and time constraints of the legislation resulting from Brexit. Pragmatically, we were therefore able to accept concurrent powers in Brexit legislation when those were accompanied by understandings that allowed this Parliament to scrutinise the exercise of those powers.

However, as the report makes clear, such concurrent powers are becoming more and more common in legislative proposals from the UK Government. It is crucial that any such powers have the right statutory protections for the Scottish Government and for this Parliament. Once again, the retained EU law bill will be an important test of the UK Government's willingness to take account of the views of this Parliament and of the Senedd. The bill contains extensive powers for UK ministers to act in devolved areas without the need for consent. That is completely unacceptable and leaves Sewel in absolute tatters. The best course of action would be to scrap that bill altogether. Failing that, it must be amended to prevent any further undermining of this Parliament.

Back in 2016, the UK Government promised that the powers of this Parliament would be enhanced and expanded because of Brexit. Like all the promises made about leaving the EU, that has proved to be the opposite of the truth. Far from enhancing this Parliament, Brexit has seen the UK Government and Westminster undermine and constrain our powers and responsibilities. The wishes of the people of Scotland have been ignored and Brexit has led to the end of the Sewel convention as a reliable and binding rule of the constitutional order. It has led to UK ministers taking powers to act in devolved areas without consent and has demonstrated that the UK is not a voluntary union of equal partners.

The Scottish Government believes that there must be a wide public debate in Scotland on all those matters and that serious consideration of the best future for our country, including independence, is the only way to overturn the damage of Brexit, the democratic deficit and the undermining of this Parliament by Westminster. We therefore welcome the report and support its recommendations for such a debate.

15:18

**Maurice Golden (North East Scotland) (Con):** As a member of the Constitution, Europe, External Affairs and Culture Committee, I begin by extending my thanks to the clerks and to all who provided evidence to enable the committee to produce the report "Impact of Brexit on the Devolution Settlement". As exemplified in the report, the evidence covered a wide range of emerging legislative and constitutional developments brought about by Brexit.

The report and the evidence presented to the committee highlight that the devolution settlement has faced a number of challenges as a result of the UK leaving the EU. As we continue transitioning into a new legislative framework and new constitutional arrangements, it is critical that we keep the devolution settlement central to the

decision-making process and continue to develop and evolve it to best reflect the interests of Scotland's people and its two Governments.

It is clear from the evidence received by the committee that the best way to respect and develop the devolution settlement is through dialogue, consensual working and mutual respect. The Scottish Government must work closely with the UK Government and the UK Government must work closely with the Scottish Government in order to achieve that.

**Neil Gray:** I welcome Maurice Golden's comments about the importance of the devolution settlement being respected, but will he advise colleagues how he expects that respect agenda to be continued if Westminster Governments continue to ignore the Scottish Parliament and the Senedd refusing legislative consent in areas of devolved responsibility?

**Maurice Golden:** I say from personal experience that, when I was chief whip during the Brexit period, my opposite number, Graeme Dey, was regularly briefed by the UK Government and I was kept in the dark. He used to inform me of what legislation was progressing. I think that that shows the respect between the two Governments.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Will the member take an intervention?

**Maurice Golden:** I need to make some progress.

There have been strains that have tested elements of the devolution settlement. I will take the Sewell convention, which the minister raised, as an example. Since Brexit, its application and interpretation have clearly been tested in a new way. The recent review of intergovernmental relations that was undertaken jointly by the UK Government and the devolved Administrations recognises those challenges.

However, through dialogue and conversation, those strains can be resolved. The introduction of new intergovernmental machinery for engagement is designed to promote collaboration and avoid disagreements. Where disagreements still exist, a new dispute resolution mechanism has been put in place to address them, and a number of the witnesses who provided evidence noted the importance of that new process as a mechanism that could address any future disagreements between Governments.

The SNP has made much of the impact on devolution of the United Kingdom Internal Market Act 2020. However, the UK Government is clear that, through the implementation of that act, it wants to protect the devolution settlement and work with the devolved Administrations on the principles of mutual respect, trust and respect for

the reserved powers of each devolved Government.

The SNP claimed that the 2020 act would green-light the UK Government to halt progress in the setting of regulations and standards, but, to date, there has been no rollback on regulations. In fact, in areas such as the environment, the UK is making even firmer commitments than the EU.

**Jenni Minto (Argyll and Bute) (SNP):** Is it fair to say, though, that the European Union sets minimums and that, as a member of the EU, we could expand our environmental targets?

**Maurice Golden:** The reality is that the UK Government is going further than the EU requires. That is the opposite of what the SNP has suggested. The reality is quite different.

Since Brexit, the Scottish Parliament has received a host of new competences. It will be at the Scottish Government's discretion to decide how it will deal with retained EU law that is devolved, and where and when it might want to align with EU law. That, in turn, could create regulatory divergence between Scotland and the rest of the UK, but, to date, no major tension has arisen. That might be largely because the Scottish Government has not chosen to align with newly introduced EU law despite it being its stated default policy to do so.

At some point in the future, there will, no doubt, be situations in which constructive dialogue is required. Through existing common frameworks and the introduction of new ones, if required, it will be possible to resolve any tensions within the devolved settlement by managing regulatory divergence on a consensual basis.

The evidence that the committee has heard on the Northern Ireland Protocol Bill highlights a number of challenges regarding the devolution settlement. Again, however, progress is being made on that issue. The Prime Minister's stated position on the subject is that he wants to find a negotiated settlement with the EU, and he is confident that, with "goodwill and pragmatism", a breakthrough can happen in negotiations over the protocol. It is clear that it is taking time for Scotland's two Governments to come to terms with the new constitutional and legislative arrangements that have arisen as a result of Brexit. This is work in progress, but, critically, that work is progressing.

As we move forward, legitimate issues regarding the impact of Brexit on the devolution settlement still exist. Those issues are surmountable, but parties must want to work together to resolve them. The UK Government has a clear incentive to ensure that, as a result of Brexit, the devolution settlement is protected. Can the same be said of the Scottish National Party

Government? Its actions and rhetoric regarding Brexit show that it will take every opportunity to sow division for the sake of its own political grandstanding. There is a clear choice for SNP members: they can act in their own political interests and their obsession with separation or they can act in the interests of the Scottish people and engage in the process constructively.

15:25

**Sarah Boyack (Lothian) (Lab):** I add my thanks to all those who gave evidence to our committee, and I acknowledge the vital work of the committee clerks.

Many of us did not want to be here, in this place, dealing with the consequences of the UK's departure from the EU. The current workload of the CEEAC Committee demonstrates the on-going fallout, which is the result of actions by the UK Conservative Government. Whether this was done intentionally or by accident, the impact of Brexit on the UK's constitutional settlement was not taken into account. It was not considered by the UK Government during the Brexit process, nor has it been since. I hope that Maurice Golden's optimism is informed. It is not what you say; it is what you do.

There were two broad areas in the committee's inquiry: regulatory divergence and the Sewel convention. There has been some good debate about the Sewel convention this afternoon, which I want to follow up. We also voted unanimously to condemn the measures on the Northern Ireland protocol proposed by the UK Government. That was in June this year, and it was due to our collective concerns about trade, international law and the integrity of the Good Friday agreement. The Northern Ireland Protocol Bill is just one of the pieces of legislation that has been introduced by the Tories at Westminster that challenges not only trade and cohesion but—as Clare Adamson said—our constitutional settlement.

**Martin Whitfield:** Sarah Boyack mentions the Good Friday agreement. Does she agree that one of its strengths was that it was, in essence, an international agreement, reached with co-operation across a number of countries and interested parties, and that one of the challenges of Brexit is that we now appear to have a wall when it comes to discussing the solutions to our problems with our neighbours?

**Sarah Boyack:** That is absolutely right. It is incumbent on the Conservative Government to acknowledge and accept that.

That is why we need change. It is a matter of ensuring parliamentary accountability and transparency. I would say to my colleague Martin Whitfield that it is not just people in this Parliament

who are concerned. We might consider the work being done by the Delegated Powers and Regulatory Reform Committee of the House of Lords—its secondary legislation scrutiny committee. One of its reports was called "Government by Diktat" and another was called "Democracy Denied?". There is concern across the UK. Stella Creasy's powerful speech on the Northern Ireland Protocol Bill in the House of Commons brought the issue to life; the concern is not just among us in this chamber.

Securing unanimity on our committee report tells us something about the cross-party work that we are doing in this Parliament. It is not just about the cross-party work, however; we also need work to be done by the Scottish Government. Willie Rennie's point was a really important one. At our committee meeting this very morning, we were discussing the need for open and transparent reporting by the Scottish Government on the use of the keeping pace powers—and, critically, on where the keeping pace powers are not being used. That requires work.

I wish to follow up on the comments that colleagues have made about the Sewel convention. Its origins were in the passage of the Labour Government's Scotland Bill in 1998, when Lord Sewel said that the UK Parliament would not normally legislate on devolved matters without the consent of the Scottish Parliament. It is interesting how successful that has been since 1999—or, actually, since 2018, as the number of occasions on which the Parliament has refused its consent is on the increase.

Previous to that, we had a mechanism for dialogue between the UK and Scottish Governments, at both ministerial and official levels, which enabled shared policy objectives to be achieved as quickly as possible. The work that was done to put the convention into the Parliament's standing orders in 2005, following the report on the convention by the Procedures Committee, was constructive.

However, as others have said, the evidence is clear. Professor Aileen McHarg pointed out that the Sewel convention

"has been severely tested by the Brexit process and its ongoing legislative aftermath."

We have had the experience of people working together across parties—the Calman and the Smith commissions changed the powers of the Parliament—but there has been a constitutional failure to respect the devolution settlement after Brexit. Things cannot be allowed to go on as they are. We need action. I was not surprised when the minister said that independence is the only solution, but we all know that independence would be Brexit times 10.

Let us focus on change that we can deliver now that would make a difference. We need to increase transparency and accountability, and not just between the Governments. We need greater transparency to enable our Parliaments in Scotland, Wales, the UK and Northern Ireland to hold our Governments to account. Over the summer, Scottish Labour published a paper that proposed a duty to co-operate, because, increasingly, there are policy areas where we need to work together. For example, we suggested a governance council on energy to enable a joint approach to be taken, encompassing the powers that we have on planning and the reserved powers that relate to the grid, to make sure that we can deliver the low-carbon affordable renewables that we all aspire to have. We should replace the House of Lords with a directly elected senate of the nations and regions.

We need to send a clear message to the Tory Government. The committee's report was unanimous. The UK Government's lack of respect is unacceptable and we need urgent action to deliver transparency, accountability and scrutiny. I would like the Scottish Government to do the heavy lifting at the ministerial and Government level. We need to work hard across our committees to hold our Scottish Government and the UK Government to account, to reflect on where we want to align with the EU and to debate those areas in which we do not want to do so.

Our constituents, our businesses and our environmental campaigners need such transparency. Members across the chamber must work to that end and must send a clear message that change is needed—and is needed urgently.

15:31

**Willie Rennie (North East Fife) (LD):** Clare Adamson probably thought that I was being critical of the committee's report in my intervention on her—far from it; it was Brexit that I was calling “futile”.

Brexit has also been incredibly damaging. We have seen the facts and the evidence on that that have emerged in the past few months. Europe's largest stock market is now in Paris, not London, for the first time since records began.

The Centre for European Reform did a study in which it looked at the impact of Brexit on the UK's economy and compared the UK's record with the records of similar countries. The conclusion was sobering. In the final quarter of 2021, gross domestic product was 5.2 per cent lower, investment was 13.7 per cent lower and the goods trade was 13.6 per cent lower. Our performance on GDP, investment and the goods trade was

worse than it would have been if the UK had remained in the EU.

Mark Carney, the former governor of the Bank of England, said that, in 2016, the size of the British economy was 90 per cent of the size of the German economy. Now, it is less than 70 per cent of the size of the German economy. He went on to say that the devaluation that was associated with that did not bring an upside of more competitive exports. The barriers that we put up at the borders sabotaged any such improvement.

Michael Saunders, who recently left the Bank of England's monetary policy committee, said:

“The UK economy as a whole has been permanently damaged by Brexit.”

It is interesting that those problems have been created by trade barriers, restrictions on immigration and low confidence, rather than by divergence. Today, we are talking primarily about the consequences of divergence, but my point is that I think that the damage that has been done so far has been done as a result not of divergence, but of all the other factors that I have mentioned.

What is striking about the devolution aspects of the debate is that those do not seem to have moved on in three years. We are still discussing the same issues that we were discussing three years ago and many years before then. We are still at the stage of discussing possibilities rather than firm problems. The words “may”, “looks like” and “could have” are littered throughout the report.

However, the hyperbole—on both sides, I have to say—is as striking as it was three years ago. On the one hand, it is claimed that there are massive ramifications for devolution. On the other hand, it is claimed that Brexit freedoms will free the United Kingdom. Neither of those things has materialised.

**Neil Gray:** Does Willie Rennie accept that there has been a clear impact on devolution, given the six areas that we have talked about in which legislative consent has been refused by the Scottish Parliament but that the Westminster Government has continued to progress, and the probability of its continuing to do so on the Retained EU Law (Revocation and Reform) Bill?

**The Deputy Presiding Officer (Liam McArthur):** I can give Willie Rennie the time back.

**Willie Rennie:** My main point is that we have not really had debates about the substance of divergence. I understand that there are technical issues, and I understand the real problems with the Sewel convention. I get all that. However, the issues around divergence have not materialised in the way that has been claimed. The reasons for that are pretty clear. If we look at the pressures that are being applied to the United Kingdom, we see that they are quite significant.

We have not really had the benefits of the Brexit freedoms. Members should look at what George Eustice said this week when he condemned the Australia deal. There are no massive benefits from Brexit, as was claimed there would be. We have done only three trade deals. One—the TCA—was with Europe, one was with New Zealand and the other one was with Australia. We have not really gained much more. In fact, what we have is, obviously, more restrictive than what we had with Europe, and Australia and New Zealand are hardly models for success. My point is that we have not really benefited from the apparent Brexit freedoms.

We have also not had the degree of divergence that was talked about. When I challenged the minister on how many times the keeping pace powers had been used, he was not really able to say. Thousands of instruments go through the European Commission, and he was unable to say that. We do not really have a worked-out process. I will return to that later on.

I have opposed Brexit. I have been very clear about that. I believe that, in an interconnected world, theoretical independence is a complete folly. Brexit has introduced bureaucratic and physical barriers at ports, which have slowed down and often prevented trade. That is not because of any divergence issue—as far as I can see, divergence has not really happened yet. The reality is that powerful forces drive the United Kingdom, Scotland, Northern Ireland and the EU into alignment, whatever the constitutional arrangement.

The first and most powerful force is the need to trade. The EU is a massive market for the United Kingdom's goods, and vice versa. Manufacturers are not going to introduce two production lines in order to trade separately, with UK standards and European standards. They will meet the best standards and sell to both. That is pretty clear, and the report highlights that.

The second force is the Northern Ireland dynamic alignment. That means that the UK will be constantly conscious of the regulations as they impact Northern Ireland and therefore as they impact the United Kingdom.

Finally, the non-regression arrangements in the trade and co-operation agreement mean that there is a degree of pragmatic alignment between the EU and the UK.

Those irresistible forces mean that divergence, although theoretically possible, may turn out not to be as traumatic as first feared. I have already highlighted that Brexit is still incredibly damaging, but we have not even got started on divergence, if it ever happens. Equally, the Brexit freedoms are

unlikely to be as dynamic and beneficial as first promoted.

That begs the question: why did we bother with all of this? What was the point of Brexit if we are not going to get any of the benefits?

Equally, the argument about using Europe to drive towards independence is folly, because we should not use European issues to drive independence. We should learn the lessons of Brexit, which has already caused chaos in trade and economic damage.

I think that the whole process is futile. It is a fact that we still do not really know—the report highlights this—how much divergence there has been. If we do not know that, does that really affect our daily lives? I am not sure that it does.

I hate politics sometimes, because it is all bloody fabricated. The whole thing is just inflated. The inflated arguments and hyperbole do not really help the argument.

**The Deputy Presiding Officer:** I may need to save you from yourself, Mr Rennie. I would be very grateful if you could begin to wind up.

**Willie Rennie:** I will conclude.

As members would expect, my answer to all of this is that federalism is the answer. There should be an agreement between the nations and regions of the UK to work together, to continue to push towards alignment with Europe and to ensure that we work together to remove trade barriers so that we can all grow together. For goodness' sake, let us not go down the path of independence.

**The Deputy Presiding Officer:** Thank you, Mr Rennie. We now move to the open debate.

15:40

**Jenni Minto (Argyll and Bute) (SNP):** I, too, would like to thank those who took part in our round-table discussions and submitted evidence, the clerks for their diligent work and my fellow committee members for leaving party allegiances at the committee room door to allow us to scrutinise the important subject of the impact of Brexit on devolution. As Sarah Boyack said, we really did not want to be here.

I am going to stray slightly into the committee's evidence session last week on the Retained EU Law (Revocation and Reform) Bill. I asked about the practical impact of that legislation on the normal person in the street—how would they be affected? Perhaps Mr Rennie would like to listen to what Dr Kirsty Hood KC said. She noted that, over the past 47 years, EU legislation

“has become woven into so much of our law ... It is difficult to imagine a sector or area of the law in which there has not been an impact of some kind. Although that impact

might not always be obvious to people during their daily life or daily business”.—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 10 November 2022; c 23.]

I believe that the same can be said for the impact of Brexit on our devolved settlement. Each decision around Brexit is related and each piece of legislation is related, and they have impacted or will impact on our devolution settlement.

As our committee’s convener laid out in her introduction, we gathered evidence on legislative consent, the implementation of the TCA and the Northern Ireland protocol, retained EU law and intergovernmental relationships.

During our evidence session on the TCA, I was struck by a response from Professor Ian Forrester to a question about collaboration and co-ordination between the Parliaments and Governments of the four nations of the UK. He took a slightly different view from that of Maurice Golden when he said that there was perhaps an elephant in the room, suggesting that there is a difficulty in

“the UK Government’s approach to relationships with other countries”,

which

“hinders the resolution of the daily problems that neighbours have to confront”.—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 26 May 2022; c 24.]

Reading the report and reviewing some of the evidence that we heard, I reflected on the fact that setting the right tone and building constructive relationships—whether between the EU and the UK, or across the devolved nations—is key to making the best of a bad situation. Perhaps we need to confront that elephant in the room. That is true for both economic and political reasons.

**Martin Whitfield:** I think that a really essential element of this discussion is about relationships. Would Jenni Minto agree that perhaps it is for the Parliaments rather than the Governments to try to build those relationships—in particular, to get over the challenges of legislative consent?

**Jenni Minto:** Yes. As I said, we have to have stronger relationships not only between Governments but between Parliaments, as I will touch on later.

As our report says, some of our witnesses highlighted the impact on the UK economy of divergence from EU regulatory standards. The EU is the largest single market in the world. Data from 2019 shows that the value of Scotland’s manufactured goods exports to the EU and the rest of the world was higher than the value of exports to the rest of the United Kingdom. Businesses in Scotland therefore need to be aware of any divergences, as they may in effect

stop goods and services getting into the EU market.

Dr Zuleeg told us that

“as long as there is an economic relationship, what is decided in Brussels matters hugely to the UK economy and UK businesses.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 26 May 2022; c 10.]

I would argue that, as long as Scotland is part of the UK, what is decided in London matters hugely to the Scottish economy and Scottish businesses.

For example, as Willie Rennie has already mentioned, the UK’s flagship post-Brexit trade deal is not an example of

“global Britain at its best”.

Rather, it is

“not actually a very good deal”,

according to former environment secretary George Eustice. Many of us have known that for a long time. However, now that a former Conservative environment secretary has fessed up, there can be no credible dispute about it. That admission came in a week when the London stock market was eclipsed by Paris as Europe’s largest—that is not the Brexit bonus that the people of Scotland were promised.

In her written evidence, Professor McEwen highlighted the Scottish Government’s “productive relationship” with the Department for Environment, Fisheries and Rural Affairs compared with the more “strained relationship” with the Department for Business, Enterprise and Innovation. I find that inconsistency in the UK Government departments’ relationships with Scotland very concerning. How can that lead to the best decisions being made?

The committee heard that both the Scottish and Welsh Governments have raised concerns in recent legislative consent memorandums about the lack of meaningful engagement prior to the introduction of UK bills. For example, in relation to the Northern Ireland Protocol Bill, the Welsh Senedd notes that the lack of engagement

“plainly breaches the principles in the Intergovernmental Relations Review that sets out how the UK and devolved governments should work with each other.”

The committee took evidence on the operation of the Sewel convention, as was debated earlier. My comment in response to Martin Whitfield’s intervention is that the House of Lords Constitution Committee believes that

“it would be desirable for all efforts to be taken to resolve substantive disagreements”

on legislative consent matters

“before a bill is introduced to Parliament”.

In that committee’s view, that

“could be achieved through the more robust arrangements for joint working (including the new dispute resolution process) agreed as part of the review of intergovernmental relations.”

I began by suggesting that the elephant in the room is the state of relationships between legislators across the UK and the UK Government’s relationship with the European Union. I am pleased that, in its conclusions, the committee has acknowledged that, and has already shared and discussed its report at the recent interparliamentary forum in Cardiff. Importantly, the committee is also extending the discussion more widely and will launch a significant committee inquiry that will allow businesses, civic society and the wider public in Scotland to engage in these very important issues.

15:46

**Oliver Mundell (Dumfriesshire) (Con):** I would normally start a speech such as this one by saying what a pleasure it is to have the opportunity to speak in the debate, but the hours wasted in the previous parliamentary session listening to Michael Russell ranting about Brexit continue to traumatise me. Never in the history of devolution has so much faux outrage and grievance been shoehorned into the same contribution—and I mean the same contribution, because, as members who were present will know, literally the same speech was delivered under a slightly different debate title on a near-weekly basis.

I make that point for a serious reason, as I believe that it highlights a major missed opportunity for the Parliament and, indeed, the Scottish Government, to influence the detail and practical realities of leaving the EU. Instead of working constructively in Scotland’s interests as part of team UK, the strategy, as is so often the case, was to stoke maximum grievance.

**Neil Gray:** I find Oliver Mundell’s comments astounding, because I am old enough to remember—and because I sat in the House of Commons at the time—that, when the Scottish Government put forward suggestions of a compromise, they were rejected out of hand by Theresa May. That was right before she set out her statement at Lancaster house—the statement that set out her self-defeating red lines. On what basis can he suggest that the Scottish Government did not approach Brexit from a constructive basis and that it was not simply disrespected by the UK Government?

**Oliver Mundell:** The Scottish Government’s approach was to block Brexit; it was not about making the best of a situation, albeit I accept that it did not want that situation. The approach was about blocking and disrupting the process throughout, working behind the UK Government’s

back with EU politicians and officials, and trying to stoke grievance and promote independence, rather than build consensus in the UK. That is very disappointing, and it is disrespectful to the people of Scotland. We continue to see that approach now, as we seek to build and rebuild trust and improve intergovernmental relations.

The truth is that the same bad-faith actors—albeit minus Michael Russell—retain their seat at the table. Scotland’s interests are represented by a Scottish Government that not only does not want Brexit to work but does not want the UK to work and that is led by a First Minister who does not believe in devolution. All that is against the backdrop of a wider political debate that has been poisoned by a toxic nationalism that tries to tell us that leaving the EU has been disruptive, while simultaneously telling my constituents that border checks on their doorstep would be nothing to worry about.

The same people tell us that the recent financial turmoil could have been avoided, while they promote a half-baked currency plan for an independent Scotland—talk about hypocrisy. [*Interruption.*] From a sedentary position, and right on cue, some members might be asking why this matters and how this relates to today’s debate. The truth is that it is exactly why the mechanics of our constitution and interparliamentary workings are under strain. I do not deny that Brexit has added to that, but it would be wrong to ignore the far more significant tensions that are at play. My firm view is that they find their root in the uncharitable and undemocratic way in which senior SNP leaders refuse to accept the decision of the 2014 referendum. Rather than our country being set on a course of unity, we have had more division.

**Alasdair Allan:** I am not sure whether Oliver Mundell intends at any point to turn his attention to the report that we are debating, but does he acknowledge that that report, which we should be talking about, represents the views of not merely politicians but people who gave evidence from organisations such as the Law Society of Scotland and the Hansard Society, who said that a number of the UK Government’s constitutional developments of late represent something that is close to a constitutional crisis?

**The Deputy Presiding Officer:** I can give Oliver Mundell the time back for the intervention.

**Oliver Mundell:** I do not deny evidence that the committee has received, but our job is to work out how we got to this point and what is causing the problem. We cannot have an environment of meaningful and constructive co-operation when, in the negotiations, one party’s sole aim and reason for existing is to ensure that such discussions do not work.

I recognise that the committee has put in considerable effort to produce the report and identify areas for further exploration, but that does not in itself deliver the political will or the environment to take matters forward. Like other members and—I believe—the vast majority of Scots, I want both of Scotland's Governments to work together to make the Parliament and devolution work well, but I recognise that some members are more interested in next week's Supreme Court ruling than in following through on the hard work that it will take to make the report's recommendations real.

In such an environment, what hope do we have? The saddest thing is that I do not believe that my constituents expect anything to change any time soon, and, while the SNP continues to put its own narrow political interests and its desire to divide our communities first, neither do I.

**The Deputy Presiding Officer:** I call Alasdair Allan, who has a generous six minutes.

15:52

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Like others, I thank all those who made the committee's report possible, including all my fellow committee members, the clerks and the many experts who gave evidence, as I mentioned. I will not be so unwise as to attempt to speak for all committee members, but I think that it was creditable that we managed largely to reach consensus in our conclusions.

I will try to restrict my comments to areas that the report covers directly, but it is worth adding some context by way of update. As we have heard, the committee has more recently taken evidence on the UK Government's Retained EU Law (Revocation and Reform) Bill, which is likely to have dramatic effects on the statute book in Scotland and on who gets to amend many parts of it.

It was difficult for us to find any legal or constitutional commentators who viewed the bill with anything other than polite but evident astonishment. The bill repeals, via sunset clause, 4,000 or perhaps 5,000 extant UK laws over the next 12 months. The exact number of laws that are up for the axe is not clear, as the UK Government recently admitted that it had only just discovered 1,400 more laws that it had forgotten all about.

Whatever the number, a great many of those laws—at present they are unidentified—cover devolved areas. Many such laws will become amendable by a UK minister, rather than by this elected Parliament, using proposed so-called Henry VIII powers. That name does an injustice, if such a thing is really possible, to a man who—

thankfully—never managed to legislate in Scotland himself.

To quote our report:

"The Committee's view is that the extent of UK Ministers' new delegated powers in devolved areas amounts to a significant constitutional change. We have considerable concerns that this has happened and is continuing to happen on an ad hoc and iterative basis without any overarching consideration of the impact on how devolution works."

As noted by the committee's adviser, Dr Chris McCorkindale, Brexit

"has posed a number of significant challenges to the effective functioning of the UK constitution."

In his view,

"territorial tension has been exposed and exacerbated by the relatively weak constitutional safeguards for devolved autonomy".

All of that means that Brexit is testing to the point of destruction constitutional norms, including those that undoubtedly exist even in a state so bizarrely lacking a written constitution as the UK. The conventions were already under significant strain at a political level, given that UK Prime Ministers, however brief their tenure, have publicly stated that their aim has been to "ignore" Scotland's Government.

Other members will, no doubt, speak today about the various other areas that we cover in our report, such as the UK-EU trade and co-operation agreement, the protocol on Ireland and Northern Ireland, the changing concept of retained EU law and broader intergovernmental relations. In concluding, I will concentrate on one particular area: legislative consent.

As the committee convener set out, there was a time when the Sewel convention—the assumption that the UK Parliament would not normally seek to legislate on devolved matters without the Scottish Parliament's consent—went virtually unchallenged as an idea. However, since the Brexit referendum, there has been a complete breakdown of the convention. Notwithstanding the convention's former political importance as one of the principles behind devolution, the UK Parliament has now begun regularly and routinely to ignore this Parliament when we refuse to consent to being legislated for.

Among the most notable examples of that are such enormously far-reaching pieces of legislation as the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020, the Subsidy Control Act 2022 and the Professional Qualifications Act 2022. Most controversially, and as has been alluded to, the United Kingdom Internal Market Act 2020 was likewise passed without this Parliament's consent. Now the UK Government shows similar signs of disdain for this

Parliament's view on the Retained EU Law (Revocation and Reform) Bill, despite its potentially enormous implications for the question of who makes many laws in devolved areas.

Whether the Sewel convention actually still means very much is now open to question. Indeed, many of our witnesses expressed their doubts about that. One hopes that it still has a more binding force than other conventions that exist only in the sphere of the UK Government's ministerial code, say, or perhaps the locally varying conventions around when to wave to other motorists on single-track roads.

Professor McHarg pointed out to us that

"The Sewel convention has been severely tested by the Brexit process and its ongoing legislative aftermath."

The Institute for Government's view is even more directly expressed:

"Brexit has exposed the convention's limitations as a guarantee of devolved autonomy."

That is not a trivial observation or question, and it is not just the many of us of who spent our youths campaigning for a parliamentary democracy in Scotland who are troubled by it.

As our committee's report makes clear, those fundamental concerns about Westminster's legislative intentions with regard to Holyrood, and the powers that Holyrood has in law to stop them, are questions on which, as parliamentarians, we would all do well to reflect.

15:58

**Katy Clark (West Scotland) (Lab):** I am grateful for the opportunity to contribute to the debate, and I congratulate the committee on its report, which is, as the convener said, technical in nature. I agree with the committee's assessment that fundamental concerns in respect of how devolution works outside the European Union need to be addressed by the Scottish Parliament.

As Sarah Boyack and Willie Rennie said, Brexit's negative impact has been considerable, especially on the economy. The Institute for Government has argued that Brexit has opened up a new space for disagreement in many important policy areas that were previously subject to EU law.

However, I have to say to Oliver Mundell that, given that his party put a referendum on European Union membership to the people, it should have had a plan for Brexit. Its failure to take responsibility for the position that we are in, or for the tens of billions of pounds that it has cost the economy, is why we are having today's debate.

The approach of the UK Government following Brexit could not be said to be supportive of the

devolution settlement. Although many of the most controversial aspects of the United Kingdom Internal Market Act 2020 were defeated at Westminster, the act was an audacious attempt at a land grab, as Alasdair Allan said. There are now concerns that the Retained EU Law (Revocation and Reform) Bill could give UK ministers unprecedented powers to scrap European laws, including in devolved areas, and that this Parliament will be unable to have sufficient input or scrutiny.

**Gillian Martin (Aberdeenshire East) (SNP):** On the back of what Katy Clark has just said, I note that the fact that something has not happened yet does not mean that it could not happen. The issue is that there could be a problem, and it is our duty to ensure that there is no ambiguity at all, but that there is certainty.

**Katy Clark:** I hope that I will be able to go on to address that point later in my contribution, but Gillian Martin is correct—we need frameworks that require co-operation, which Sarah Boyack talked about earlier, to address those issues. Whether or not we are a member of the European Union, we have to work with Europe. Whether or not Gillian Martin gets her way and we leave the United Kingdom, we will have to work with other UK nations, and we will need co-operation agreements. We need to get those agreements in place, because the current situation is not tenable or acceptable.

In the short time that is available to me, I will focus on one area, which is the policy relating to procurement. The approach that the Scottish Government is taking is quite unlike the approach of, for example, the Welsh Government to the Procurement Bill that is currently going through the Westminster Parliament. The overall approach of the Scottish Government, as outlined in the committee report, seems to be that the default position will be to align with European Union law. However, £1 out of every £3 of public money that is spent is spent on public procurement. Public contracts represent a significant part of the economy, and there are significant issues in terms of labour, environmental standards, direct awards, state aid and the ability of public bodies to set their own procurement policies—for example, to buy locally or to insist on trade union recognition or good terms and conditions for the workforce in the organisations with which they are contracting. The Trades Union Congress report "Levelling up the UK: the role of state aid" outlines the choices that Governments in the UK now have on state aid and procurement policy, and it says whether those choices will be ones that support industrial policy, industrial strategy, local jobs and businesses, and the promotion of high employment and environmental standards.

The Procurement Reform (Scotland) Act 2014 is stronger than the regulations that are in force in England and Wales, and it is clear from the committee report that divergence is a live issue with regard to the discussions that are taking place. In the past, the European Union cabotage regulations were used as a reason for the tendering of CalMac Ferries services. I presume that the tendering process that led to the award of the ferry contracts to Ferguson Marine Engineering Ltd took place because the Scottish Government felt unable to make a direct award.

The debate highlights the very technical aspect of many of the issues that we are discussing, which is clearly highlighted in the report that we are debating. However, it also highlights the huge potential for us to look at wider issues that impact on people's lives and the decisions that this Parliament makes day in, day out.

Yes, there needs to be improved intergovernmental co-operation. The Scottish Government needs to set high standards through public procurement, food procurement, labour and environmental standards and a wide range of other areas that the Scottish Government has responsibility for.

I believe that this debate is an important one, and it is important that we get the frameworks and issues right. However, the reason why it is important has to do with what we can deliver as a Parliament. I very much hope that we are able to flesh out some of the real challenges that we face to ensure that we deliver for working people and the people who put us in Parliament, as we go forward.

16:05

**Collette Stevenson (East Kilbride) (SNP):** I thank my colleague Clare Adamson and others on the Constitution, Europe, External Affairs and Culture Committee for their work on this important report. The impact of Brexit on Scotland's economy, democracy and society is stark. There is no group of people or sector of the economy that the Tory Government is not willing to sacrifice on the altar of Brexit.

As members will be aware from businesses in their areas, the challenges that are arising from the Tories' hard Brexit are huge. Earlier this week, I visited the East Kilbride premises of NXP Semiconductors with the Minister for Business, Trade, Tourism and Enterprise, Ivan McKee. The company does lots of great work, including making microchips, and creates high-skilled jobs in the process. However, its workforce is 10 per cent down on where it could be, with Brexit being blamed for the number of EU applicants having fallen off a cliff edge. As I raised with the Minister

for Culture, Europe and International Development yesterday, the loss of freedom of movement is also affecting staffing in our health and social care services. Post Brexit, there are massive challenges for our businesses and care services, as well as for EU nationals living in Scotland.

As the committee's report sets out, a fundamental consequence of Brexit is the threat that it poses to the devolution settlement, with the UK Government ignoring, disrespecting and overriding this Parliament. The Tories' United Kingdom Internal Market Act 2020 is a keystone of their intention to ride roughshod over the devolution settlement.

Brexit has ripped Scotland from the good governance of the EU single market and placed it in a chaotic UK internal market that cannot accommodate differences among the four nations. That 2020 act was just one of six major pieces of Brexit-related legislation that this Parliament rejected and Westminster imposed. That showed, yet again, its disdain for the democratic wishes of the people of Scotland.

When I read the committee's report, paragraph 49 jumped out at me. I will, for the benefit of members, read the quote, from the Boris Johnson and Liz Truss backing former minister Jacob Rees-Mogg. In a statement to the House of Commons, he said:

"As we maximise the benefits of Brexit and transform the UK into the most sensibly regulated economy in the world, we must reform the EU law we have retained on our statute book."

He added that doing so would allow us to create

"a new pro-growth, high-standards regulatory framework that will give business the confidence to innovate, invest, and create jobs".—[*Official Report, House of Commons*, 22 June 2022; Vol 716, c 866-867.]

I am sure that all members can agree that the main growth in the UK has been in inequality and that there has been nothing sensible about British economic policy recently.

Furthermore, the talk of high standards is nothing but rhetoric from the UK Tory Government, whose actions paint a different picture. The UK Government is ploughing ahead with the Retained EU Law (Revocation and Reform) Bill, which, if it is passed, will see the removal of thousands of pieces of EU legislation that have been modified and incorporated into domestic law. The Scottish Government is opposed to the bill because it will put standards at risk, including rights for pregnant women at work, environmental standards and requirements to label allergens in food.

I welcome the committee's call for views, which will allow businesses, civic society and the wider public to have their say on how devolution should

evolve post Brexit to meet the challenges and opportunities of the new constitutional landscape. I encourage stakeholders in East Kilbride and right across the country to have their say. For now, we need to make the most of where we are by dealing with the challenges that have been created by the hard Brexit that Scotland did not vote for and which was implemented by a Government that Scotland did not vote for.

Not only have the wishes of the people of Scotland been ignored by both the Conservatives and the Labour Party, which endorses Brexit, but the role of this Parliament is being diminished by power grabs. Those are yet more examples of the cost of Westminster control. Faced with the grim reality of Brexit Britain, only independence offers Scotland a way to rejoin our friends and neighbours in the European Union and the chance to retain EU-wide protections on the environment, food standards and workers' rights.

I look forward to the people of Scotland exercising their democratic right next year and choosing the fairer and greener future that independence will bring.

16:10

**Mark Ruskell (Mid Scotland and Fife) (Green):** I join other members in welcoming the debate, and the excellent report informed by expert and learned opinion, which come at a point when the full horror of Brexit is really just beginning to unfold.

None of the Brexit outcomes thus far have been surprising in any way. The UK Government repeatedly warned itself about the economic implications of leaving the single market and ending free movement and about the sectors of the economy that would be damaged by a hard Brexit, the businesses that would take flight and the risk of recession.

What I find ironic is that the UK was so influential when it was a member of the EU, but so bad at explaining the benefits of that influence at home. It also saddens me that the UK was such a champion for the rule of law in the EU but it is now so willing to disregard the rule of international law when it comes to the TCA and the Northern Ireland protocol.

The arguably very British value of respect for the rule of law is now clearly being championed by others, including the Irish, in the EU. I, like more than half the members of this Parliament, hope that Scotland will be able to join Ireland as an independent state within an interdependent European family of nations and that, in time, the rest of these islands will follow in our footsteps and rejoin the most successful project for peace and prosperity in world history.

The British contribution to the *acquis* of European law and policy has been immense, so it would be an enormous act of self-harm if the Retained EU Law (Revocation and Reform) Bill results in a Brexit bonfire of the very laws that we wrote. There are so many protections and rights that we rely on, which, unless saved, will fall off the cliff edge in December next year. Laws on issues from equal pay to nature protection must be saved and retained.

If the UK Government lights the bonfire, there will be a desperate scramble to save laws from the engulfing flames. It will put huge pressure on every democratic institution, every Government department and every minister and parliamentarian in every Parliament across the UK. It is clear that the Retained EU Law (Revocation and Reform) Bill should be scrapped and individual laws should be prioritised for reform.

For example, Governments urgently need to change the energy performance certificate system to deliver a step change in green heating. The Energy Performance of Buildings (Scotland) Regulations 2008 come from the EU directive on the energy performance of buildings, but when the UK left the EU it did so without putting in place any way to change the regulations, which has left the Scottish Government now desperately trying to find a legislative route through a Brexit mess.

Therefore, there is work to be done, but it must be careful work, not a slash and burn spurred on by ideology—otherwise, we will see yet another epic failure of statecraft from the UK Government.

We are in anything but normal times, but there needs to be respect between the UK and the devolved Governments. The Sewel convention, which a number of members have mentioned, has, in effect, been abandoned. Prior to that, it had been used 140 times at Holyrood to obtain consent, which was withheld on only one occasion. However, it is clear that it has now become merely an obligation to seek consent of this Parliament, rather than actually to obtain it. Despite any contrary view that Holyrood might have, the box always get ticked and the UK Government carries on regardless.

Parliamentary oversight is a cornerstone of our British democracy, yet post-Brexit legislation is coming before both Parliaments and the Senedd with broad, sweeping ministerial powers that have a strong focus on secondary legislation. A feast of Henry VIII powers is now ready for UK ministers; even the powers to amend primary legislation itself without consent are now on the menu.

With much of that post-Brexit legislation, there is absolutely no clarity about how secretaries of state would use the powers—it is anyone's guess what

the powers are for and what the policy objective is. Meanwhile, stakeholders fear a regulatory race to the bottom; businesses are unsettled; and certainty has eroded even further at a time when we really need stability.

For us parliamentarians, that makes scrutiny nearly impossible. However, Tory MPs should be very wary in what they ask for, because when they take their turn in opposition, there will be very few powers for them to use to challenge Government policy under these Brexit bills. Such a lack of scrutiny rarely makes for good decision making, regardless of who is holding the ministerial pen at the time.

I will not let the Scottish Government completely off the hook in the debate either, because we, as a Parliament, need to see our Government step up and realise the keeping pace commitment totally transparently. The Government should set out regularly what it will align with in both legislation and policy, and it needs to set out its approach to forthcoming EU legislation and the European Commission work programme as early as possible.

The role of Parliaments in holding their Executives to account has never been more important. There is a need for Parliaments across these islands to work together even if their Governments currently struggle to do so. We may have lost the European Union machinery that strived to build consensus among its decision makers and stakeholders, but the European values of openness and democracy are now more important than ever and we should uphold and defend them in this Parliament.

**The Deputy Presiding Officer:** Gillian Martin will be the final speaker in the open debate, after which I will expect everybody who has participated in the debate to be in the chamber for the closing speeches. You have a generous six minutes, Ms Martin.

16:17

**Gillian Martin (Aberdeenshire East) (SNP):** I welcome the report, which drills into the reality of Brexit for devolved Parliaments such as ours. I convened the Environment, Climate Change and Land Reform Committee at the time when we exited from the EU. The committee was swamped by last-minute statutory instruments and LCMs from the UK Government, with no detail of their implications and next to no time for scrutiny of any of the common frameworks that were proposed. I knew then that devolution and the role of this Parliament were, either by design or by lack of regard, in grave danger of being seriously diminished. I suspect that it was the latter rather than the former, but the consequence is the

same—the dilution of our ability to manage devolved affairs.

As convener of that session 5 committee and convener of the Health, Social Care and Sport Committee in this parliamentary session, I have raised concerns about the lack of a statutory requirement in UK bills to seek the consent of Scottish ministers when legislating in devolved areas, the lack of opportunity for Scottish Parliament committee scrutiny and the inability to make recommendations in relation to such decisions. My concerns were made worse when the environment committee repeatedly invited the then minister, Thérèse Coffey, to answer our questions but was ignored—we did not see her once during her tenure despite those invitations.

I want to bring into sharp focus the somewhat procedural aspects of the report in relation to an area that affects my constituents, which—no offence—can seem dry to the onlooker: food standards and the arrangements around regulatory alignment, or otherwise, with the EU, which recommendation 54 of the report outlines.

The withdrawal from the EU has had disastrous consequences for growers in Scotland. Some of those consequences were immediate and remain in effect, and are proof of the Scottish Government and Scottish Parliament's lack of involvement in the exit deals and the subsequent legislation relating to agriculture. The report made clear that there are substantive differences between the views of the UK Government and those of the Scottish Government and the Welsh Government with regard to future alignment with, or divergence from, EU law.

I want to drill further into one sector in which no divergence in standards exists, but around which there are massive problems in the trade and co-operation agreement: the seed potato sector.

Seed potato farmers, in particular, have had the rug swept from under them by Brexit. Before Brexit, Scotland exported around 20,000 tonnes of seed potatoes—worth close to £13 million—to 18 EU countries, with quite a lot of them coming from my constituency. The 2020 trade and co-operation agreement with Europe failed to include equivalence on seed potatoes, and the Scottish Parliament and Scottish Government had no say in the matter. Seed potato farmers have since taken huge losses, and they are extremely angry about that enormous oversight by the people who negotiated on behalf of the UK Government. Imports of seed potatoes from the EU to the UK were made possible, with DEFRA permitting it, in effect, crowding out Scottish farmers from the domestic market. After six months and huge pressure from the sector, that arrangement was not renewed—it was allowed to lapse, but not

before it had done massive financial damage to our farmers.

We were told by Brexiteers that there would be huge benefits to agriculture. To them, I say, “Tell that to the Lind family in my constituency”—three generations of seed potato growers who are working to keep their business alive after being subjected to massive losses. The ramification of significant prohibitions on Scottish seed potatoes going to the EU has been the creation of a vacuum; our seed potato growers have lost massively, with the trade being picked up by Irish growers, despite Scottish seeds conforming to the same grades and disease tolerances that the EU demands. In fact, because they are of better quality, seed potatoes from Scotland are more in demand than those from Ireland, particularly from eastern European farmers.

The neglect of the seed potato sector represents just one part of a Brexit trade agreement in which Scotland had no say and of which we had no opportunity for scrutiny. At the end of 2020, Westminster’s failure to include an agreement with Europe on equivalence for the sector in the co-operation agreement was an omission that has cost Scottish growers dearly. The worst of it is that that did not need to happen. If Scottish ministers and Scottish Parliament committees had been involved, it might not have happened.

I want to record my support for the sterling work of Martin Kennedy and Andrew Cannon of NFU Scotland. They continue to demand that the UK Government sorts out the issue. I sense their growing frustration every time I meet them—not least this summer at the Turriff show, when I had a small window of opportunity to make the same demands of the Minister for Farming, Fisheries and Food, Victoria Prentis, who is no longer in post. She simply blamed it all on the EU, which did not go down at all well with the north-east farmers in the room—if members have ever been in a room with angry north-east farmers, they will certainly have known about it.

A great number of Brexit-related bills have been passed at Westminster without the consent of at least one of the devolved legislatures, and the EU exit agreements have all been reached without consideration of devolved competences.

I welcome the committee’s report, which lays bare the myriad ways in which Brexit could erode devolution. As I said, in agreement with Katy Clark, we should always be mindful of “could”—just because the worst has not yet happened, it does not mean that the post-Brexit constitutional arrangements between Westminster and the devolved nations could not give rise to it. That is what we are here to sort out. We all need to be

round the table with consent obtained before decisions and never after the fact.

**The Deputy Presiding Officer:** We move to closing speeches. I advise members that we have a fair amount of time in hand, so interventions are encouraged. With that, I call Foysoyl Choudhury for a generous six minutes.

16:24

**Foysoyl Choudhury (Lothian) (Lab):** It is a pleasure to close the debate for Scottish Labour. I thank the committee and staff for the work that has gone into the report, which is on a complex subject. I also thank the people who gave evidence to the committee to allow the report to be produced for the Parliament’s benefit; their contributions are much appreciated.

We have heard from my colleague Sarah Boyack about how the Sewel convention has come under threat in recent years and is in urgent need of further clarity, particularly when it comes to secondary legislation.

The committee report is clear that Brexit has been a significant shock to the relationship between Westminster and the devolved nations. The witnesses who were heard by the committee painted a picture that showed how the initial cases of breaking the Sewel convention for reasons of urgency have, in effect, made it easier for the convention to be broken down. However, as the report also makes clear, the convention was built on unstable ground to begin with.

The phrase “not normally” was perhaps always destined to end up as the subject of contention. However, it is Brexit and its associated legislation that have provided the pressure that has shaken the convention. Alasdair Allan made that point very well.

If our devolved nations are to function together again after the strained recent years, a renormalising of relationships is required. Sarah Boyack has already highlighted some of the ways in which Scottish Labour believes that that could happen. As she noted, there needs to be greater transparency in how intergovernmental relations happen; otherwise, we are just substituting devolved Parliaments for devolved executive supremacy.

As the committee has highlighted in this and other recent reports, the common frameworks between the devolved nations need to be reinforced but, crucially, they also need to be answerable to the devolved Parliaments. That will be particularly important as the nations diverge. I recognise Willie Rennie’s optimism about the lack of divergence. However, my colleague Katy Clark

highlighted how it could happen in relation to procurement.

As a current example, the First Minister attended the inaugural Prime Minister and heads of devolved Governments council on 10 November. What has been said about that in this Parliament? What was said at that meeting by the Scottish Government, on behalf of the Scottish people? Do they not deserve to know? Do we not deserve to know? I have said before that the Parliament cannot operate in the dark, but we are again being asked to do so. Although that is not an inevitable consequence of Brexit, Brexit has fostered the development of that culture of executive secrecy.

As Martin Whitfield and Jenni Minto have suggested, we as parliamentarians should have a form of solidarity with our colleagues in the other devolved Parliaments and in the Westminster Parliament. I am grateful to Jenni Minto for highlighting recent engagement through the interparliamentary forum.

It is in all our interests that such meetings and discussions do not take place behind a veil of secrecy. We are elected to represent our constituents' interests, and it is in our constituents' interests not only that the common frameworks operate effectively but that the discussions that affect them are transparent and open. The public will be able to have faith in the devolved settlement only if they can see how it functions.

I sincerely hope that both the UK and Scottish Governments will take that to heart in the coming years, as we try to find the best way to navigate through our new international context.

**The Deputy Presiding Officer:** I call Sharon Dowey—again for a very generous six minutes.

16:29

**Sharon Dowey (South Scotland) (Con):** I am pleased to bring the debate to a close on behalf of the Scottish Conservatives. I did not have the pleasure of sitting through the evidence to the CEEAC Committee, whose report shows that the impact of Brexit is very complicated. This debate focuses on only one small part of that, which is the impact on devolution.

I will highlight some points that have been raised by members from across the chamber. Maurice Golden talked about the strains that have tested elements of the devolution settlement. He mentioned the Sewel convention and said that its application and interpretation have clearly been tested in a way that they had not been before Brexit. Oliver Mundell talked about the need to put aside political differences and work constructively together to find solutions.

**Sarah Boyack:** What really struck me about Ms Dowey's colleague's contribution was that it was incredibly negative. I was looking for him to suggest how the UK Government could change its practice now, by leading the way on Brexit and listening to the concerns in our report—which were unanimous—and by coming up with solutions to remove the horrendous tensions that Brexit has created. That could get us to a point at which members from across the chamber could agree on issues such as environmental standards, food safety or the use of chemicals. There is an opportunity, but it must be seized rather than have people say that it is all too difficult. Does Ms Dowey agree with me?

**The Deputy Presiding Officer:** I can give you all that time back, Ms Dowey.

**Sharon Dowey:** Thank you.

Brexit has definitely caused challenges. There will be opportunities, but I do not think that we have seen them yet. Both Governments must come together and talk. My colleague was talking about the negative narrative that we hear in the chamber. I have been here for a year and a half and, whenever we have portfolio questions, there is always negativity towards the UK Government. We must all work together to get solutions. We need solutions to Brexit.

I am not saying that there have been no challenges, but we must work together. We were elected for the people of Scotland. We should be solving the problems that are in our gift to solve in areas such as justice, education and health.

**Alasdair Allan:** The member has listed some of the areas that are within our control. Does she appreciate that many of us who are here today are angry because the UK is seeking to override the areas that are within our devolved control by legislating in those areas?

**Sharon Dowey:** We need dialogue between the Governments, but I do not see that happening. It takes two to talk and two to come to the table and be constructive about making compromises and solving problems.

**Neil Gray:** Will the member accept an intervention?

**Sharon Dowey:** I need to make progress. I know that I am getting my time back, but I am way over time.

There were lots of good contributions. Sarah Boyack talked about the need for change, transparency and accountability. She talked about the keeping pace power and the need for a mechanism for dialogue between Parliaments—I totally agree with that. Willie Rennie spoke about the fact that the debate has not moved on in three years—we do need to move on. Jenni Minto spoke

about how Brexit is affecting the normal person in the street. She also spoke about good intergovernmental relationships with DEFRA. We need to have those relationships between more Government departments here and in Westminster.

**Jenni Minto:** Will the member accept an intervention?

**Sharon Dowey:** I will move on to my contribution, because I am running out of time. My key points are about the keeping pace power and scrutiny.

The Scottish Government's decision to align with EU law wherever possible is not without consequence. As the report notes, Professor Katy Hayward indicated

"that there is a lack of consideration in the Scottish Government's policy statement on alignment with EU law regarding the practical consequences of alignment for Scottish producers",

and that that is specifically the case

"for those exporting to England and Wales".

The professor went on to discuss

"the economic impact of the UK Government's intended divergence from EU laws in areas that are highly regulated and subject to detailed legislation in the EU, namely food safety, and plant and animal health."

Professor Hayward's view is

"that it should be made clear that the more its closest market diverges from the EU, the more difficulty there will be for Scotland if it seeks continued alignment with EU law."

That is a key point. How do civic Scotland and other relevant stakeholders know where, how and when the Scottish Government is aligning or not, and why it is choosing to do that? That creates unnecessary uncertainty. Working to a different standard for production in Scotland may negatively impact businesses' ability to compete in the UK internal market. That would cause severe damage to the Scottish economy and Scottish businesses, given that about 60 per cent of Scottish exports go to the rest of the UK. Last year, the director of policy at NFU Scotland said:

"If we were just to pick up and paste into Scotland the EU's current agricultural policy, that would be extremely detrimental to Scotland. That would stretch agricultural businesses to breaking point".—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 16 December 2021; c 15-16.]

As things stand, there is only an annual requirement to inform Parliament of when the provision has been used, which makes its use difficult to scrutinise. It is worth recognising that, when the cabinet secretary gave evidence to the Constitution, Europe, External Affairs and Culture Committee, he said that only one piece of EU

legislation has been actively considered for alignment and that, in fact, the Scottish Government chose not to align. I think that we are entitled to question why the Scottish Government is pursuing the policy at all.

We also need to ensure that we have effective scrutiny. In its written evidence, the Public Law Project noted:

"A broad Henry VIII power for the UK Executive to make law in any area of former EU competence would be constitutionally inappropriate."

I agree with the recommendation from the Institute for Government that the UK Government should share draft bills and legislation with the devolved Governments. We all desire Governments to work together constructively but, in order for them to do that, we must be prepared to enter negotiations with the willingness to compromise. Otherwise, we will end up with confusion and uncertainty. The Public Law Project also commented:

"the lack of scrutiny also produces poorer quality laws and policy."

However, the SNP Government should be doing that in the Scottish Parliament as well. There are examples of the Scottish Government using Henry VIII powers, too, and what applies to the UK Government should also apply to the Scottish Government. The Scottish Government must give the Scottish Parliament enough time to fulfil its oversight function, rather than rushing legislation through. The Gender Recognition Reform (Scotland) Bill is an example. Rushing things through does not allow us as parliamentarians to scrutinise things thoroughly.

I believe that it is in everyone's best interests for all Governments to work together. The Scottish Government must work closely with the UK Government to ensure that the Retained EU Law (Revocation and Reform) Bill works for Scotland. Despite our political differences, we must all work together for the benefit of the United Kingdom.

**The Deputy Presiding Officer:** I ask the minister to respond on behalf of the Government. You have a generous 10 minutes or so, Mr Gray.

16:37

**Neil Gray:** I appreciate your generosity, Presiding Officer. I will look to cover as much of what has been said in the debate as I can, in order to fulfil the time requirement that has been set for me.

In my opening remarks, I set out the Scottish Government's views on the important issues that are identified in the committee's report on Brexit and devolution. In these closing remarks, I want to reflect on the wider issues that are raised by the report on Scotland's place in the UK. I will also

return to the Retained EU Law (Revocation and Reform) Bill and what it tells us about the UK Government's attitude to the issues that have been raised today.

First, however, I want to respond to some points that were raised in the debate. Across most contributions, there was wide consensus on the need for respect for devolved powers and a return to respect for the Sewel convention, which has, as many members referenced, been ripped up since 2016.

In her very strong contribution, Sarah Boyack said, quite rightly, that it is not just what you say but what you do that is important. We will certainly be looking closely at what the UK Government does with regard to the Retained EU Law (Revocation and Reform) Bill, the Procurement Bill, the Trade (Australia and New Zealand) Bill, the Levelling-up and Regeneration Bill and the Energy Bill, all of which will require some form of legislative consent from this Parliament.

One area that I do not agree with Sarah Boyack on, which will not surprise her, is her comments on independence. We now know from her leader at Westminster and that of the Liberals that they do not want to return to the EU, so, regardless of the next UK Government's composition, the damage of Brexit, which she rightly outlined, will continue.

**Sarah Boyack:** Will the minister take an intervention on that point?

**Neil Gray:** In two seconds.

Independence is the only route back to the EU. That will be uncomfortable for Sarah Boyack and Willie Rennie, given their otherwise excellent speeches about the permanent costs of Brexit to Scotland. Also inconvenient for Willie Rennie is his plea not to link Brexit to independence, given that the people of Scotland are doing just that—and no wonder, as 70-plus per cent, according to recent polling, regret Brexit, which is an even greater number than those who voted to remain.

**Willie Rennie:** Will the minister give way?

**Neil Gray:** I will give way to Sarah Boyack, and I will then happily come back to Willie Rennie.

**Sarah Boyack:** Thank you so much.

The minister has not acknowledged the point about Brexit times 10 that I made in my speech, which was about all the disruption and dismantling. If anyone thinks that the 47 years of being in the EU was a long time, as the cabinet secretary said, the 400-odd years of being in the UK means that there would be massive disruption.

I particularly wish to make the point about the difference between a Labour Government and the current Conservative Government. We would not have people like Jacob Rees-Mogg in power,

making things worse; we would have a constructive, co-operative approach from a Government that aimed at working with our EU neighbours, not to fall out with them at every single opportunity, and we would be honest about where we could work together collaboratively and constructively, promoting trade and high environmental standards and delivering the fantastic transformation that we need in our economy through green and sustainable development, which, along with the importance of the environment, was mentioned in several speeches today. We would bring all of that, and that would be transformative.

**Neil Gray:** To be clear, I think that I have more in common with Sarah Boyack than Sarah Boyack will have in some respects—referring to what I am about to talk about—with her own Labour colleagues. The inconvenient truth for Sarah Boyack is that the Labour Party wishes to maintain Brexit. Granted, we want to see the back of the Tories, and I want to see their defeat at the next general election, but the Labour proposition is to maintain Brexit. It is also to do further damage to the Scottish economy by imposing even tougher immigration rules than the Tories are currently imposing, as was evidenced in recent interviews with Rachel Reeves. That is why I think that we share more in common in Scotland with our Labour colleagues than some Labour members perhaps do with their colleagues down the road. Independence is the only route by which we can get back into the European Union, to enjoy the benefits that that gives Scotland. That is why I am not surprised to see that public opinion is so supportive of a return to the EU, with a linkage to the independence debate.

Jenni Minto was also right—

**Willie Rennie:** Will the minister give way?

**Neil Gray:** Sorry—I forgot to give way to Willie Rennie.

**Willie Rennie:** I thank the minister.

While the minister is in a reasonable mood, I hope that I can persuade him to agree with me on this. Is it not the case that what the SNP is now proposing with its new currency arrangement will be outside both the UK and the EU for at least 10 years? The SNP is also now admitting that there will be checks at the border. Is it not the case that SNP members are the new Brexiteers?

**Neil Gray:** Willie Rennie appealed for me to be reasonable; he then came forward with a rather unreasonable and inaccurate intervention. I do not recognise the characterisation that Willie Rennie gave in either the first part or the latter part of his remarks. Yes, there will be an opportunity for us to break down 27 borders with our EU neighbours with regard to trade, which is of course an

opportunity that independence offers us while Brexit has put up borders to our trade. There are clearly opportunities there. I am happy to have a discussion with Willie Rennie at any stage on our economic paper and our proposals regarding independence, so that we can ensure that the public are fully informed about the opportunities that come forward from our prospectus.

Jenni Minto rightly recognised the elephant in the room regarding UK Government relationships with the EU, but also within the UK. She is absolutely right about that. The UK Government's approach to Brexit has meant that the devolved Governments have become stronger and more closely aligned, working together on far more areas, because of the lack of respect for the devolved Governments. There are a number of areas within my own responsibilities, including on Ukraine, where there was previously a very good working relationship, but where, sadly, my Welsh counterpart and I have not, of late, had the constructive engagement that we would want. That lack of respect for the devolved Governments has permeated the UK Government's approach not just on Brexit and Brexit-related issues; it has moved much further than that.

**Martin Whitfield:** Jenni Minto agreed that it should be for the Parliaments to solve such problems. Let me take the problem of legislative consent motions. Would the Scottish Government give the Parliament its support in seeking a solution on that issue?

**Neil Gray:** I am happy to hear the proposal that Martin Whitfield would look to make on how that could be done. I would be happy to have a discussion with him offline about how he feels that such an arrangement could work.

In another excellent speech, Katy Clark was absolutely right to challenge the UK Government and to say that there is a need for dialogue with the EU and with the rest of the UK. That will need to continue when Scotland is independent. Independence will provide an opportunity for such dialogue to take place on the basis of a partnership of equals, as opposed to the basis on which it takes place at the moment.

Katy Clark was also right to challenge Oliver Mundell on the lack of any plan for Brexit on the part of those who supported it, such as Mr Mundell and the then Tory UK Government.

**Oliver Mundell:** Various solutions were put forward to the House of Commons on how we would leave the EU. If the minister is going to criticise other people for not engaging seriously on what Brexit might look like, would he like to explain why he was not able to vote for a permanent and comprehensive customs union?

**Neil Gray:** It is an inconvenient truth for Oliver Mundell that, at the time, the Scottish Government suggested a compromise position to the UK Government. Notwithstanding the fact that we did not want Brexit to happen, we set out how there could be compromise that respected the fact that Scotland voted to remain in the EU. The UK Government chose to ignore that.

**Oliver Mundell:** Will the minister give way on that?

**Neil Gray:** No. I think that I have answered Mr Mundell's point comprehensively. We put forward a compromise solution, which the UK Government chose to ignore, and we are now in a situation in which the UK Government continues to ignore the Scottish Parliament and the Scottish Government. That is why the committee has produced the report that it has produced.

We also had excellent contributions from Collette Stevenson, Mark Ruskell and Gillian Martin. The fact that so many strong speeches were made serves only to highlight the debate's importance.

In considering Brexit and devolution, it is important to recognise three underlying points. First, Brexit has been imposed on the people of Scotland against their will and has been hugely damaging. Secondly, it was not inevitable that the damage of Brexit would lead to further centralisation of power in Whitehall or a weakening of devolved responsibilities—that was a deliberate choice by the UK Government. Thirdly, there is nothing in the UK's constitutional arrangements that could prevent any UK Government from doing the same thing, either for something as significant as Brexit or for any other reason.

As I highlighted in my intervention on Oliver Mundell, I was an MP at Westminster in December 2016 when the then Prime Minister, Theresa May, apparently agreed to give the devolved Governments a role in establishing a UK—as opposed to a UK Government—Brexit negotiating position. Sadly, it became clear very quickly that Mrs May had no intention of following that commitment. There was no genuine engagement on the Scottish Government's proposals for a less damaging form of Brexit for Scotland and for the UK as a whole. She chose to ignore Scotland and boxed herself in with her self-defeating red lines.

The only negotiations that would be relevant were those between various wings of the Conservative Party. The hard Brexit that we have since endured was not inevitable and the more damaging effects of Brexit on devolution were entirely avoidable. I commend Gillian Martin's remarks on the impact that the lack of engagement by the UK Government has had on

the farmers in her constituency and across Scotland.

Now, we have the Retained EU Law (Revocation and Reform) Bill.

**Oliver Mundell:** Will the minister give way?

**Neil Gray:** I think that I am pretty pushed for time. Is that right, Presiding Officer?

**The Presiding Officer (Alison Johnstone):** We have a little time in hand.

**Neil Gray:** I am happy to take the intervention.

**Oliver Mundell:** What does the minister have to say to farmers in my constituency, who have extra money in their pockets as a result of the flexibility on the less favoured area support scheme that leaving the EU has brought? Do they have to give that money back?

**The Presiding Officer:** You should wind up, minister.

**Neil Gray:** Given what Gillian Martin outlined, I imagine that the sentiments in farming communities across Scotland are similar with regard to the impact on our food producers that there has been since Brexit.

In conclusion, the Scottish Government's view is clear: only independence can guarantee Scotland's democracy and our place as an equal member of the family of nations. Others have different views but, as the report and this debate have shown, we can all see the problems in the relationships that there are within the UK and with our neighbours in Europe as a result of the UK Government's positions. It is much harder to see any solutions for as long as Scotland remains under Westminster control.

I am grateful to the committee for its important work so far, and I look forward to proceeding with the further inquiries identified, to which the Scottish Government will make a full contribution.

**The Presiding Officer:** I call Donald Cameron to wind up the debate on behalf of the Constitution, Europe, External Affairs and Culture Committee.

16:50

**Donald Cameron (Highlands and Islands) (Con):** It is a great pleasure to close for the committee and to reiterate the thanks that have already been expressed to the clerks, the witnesses, those who gave written evidence, colleagues on the committee and others who have taken part in the debate and contributed to it in a constructive manner.

I hope that what we have highlighted in the committee report resonates with colleagues,

however esoteric and technical some of the matters might seem. I think that Gillian Martin said that they are dry. I feel no need to apologise for dryness when it comes to issues relating to the devolution settlement, and I do not think that she needs to do so, either.

It is important to acknowledge that the issues in the report are relatively narrow. That is not to diminish their importance, but the report concerns the effects of Brexit on devolution, not its effects per se. Of course, Brexit has had a profound impact on various sectors and industries across Scotland—on academia, learning, culture, agriculture and many other aspects of life. We have heard very divergent views on many sides this afternoon, but our report is more specific than being simply about the consequences of Brexit. It is about the impact of Brexit on devolution and, among other things, on the working of the devolution settlement, relations between the UK Government on the one hand and the Scottish Government, the Welsh Government and the Northern Ireland Executive on the other, and, of course, the relationship between the legislatures in the UK.

Issues relating to delegated powers that are exercised at UK and Scottish Government levels are also among the issues that we considered. That is significant, because the committee is about to embark on a wider inquiry into those matters, which will follow that focused remit.

Before I respond to some of the contributions to the debate, I would like to add some detail on one aspect of the inquiry, which the convener touched on in her opening remarks—delegated powers. A key theme from our report is that there has been a step change in the approach to the use of delegated powers. When the Scottish Parliament was established, the powers of UK ministers to make secondary legislation in devolved areas were transferred to the Scottish ministers, with only a few exceptions. The committee has identified two areas of contention: the scope of delegated powers being conferred on UK ministers in devolved areas and on the Scottish ministers where those powers are concurrent; and the Sewel convention not applying to secondary legislation.

The then Secretary of State for Levelling Up, Housing and Communities stated in a letter to the Delegated Powers and Law Reform Committee:

"Powers for the UK Government to make statutory instruments ... in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution."

However, prior to the UK leaving the EU, UK ministers would principally make secondary legislation that implemented EU obligations in devolved areas, and they did that with the consent

of the Scottish ministers. The UK Government did not generally apply powers to make secondary legislation in devolved areas, although some argue that it has, nonetheless, the ability to do so. That said, there is, of course, a difference between delegated powers to deliver a legal obligation to comply with EU law and delegated powers in the same policy area without that particular constraint. The committee's view is that

"the extent of UK Ministers' new delegated powers in devolved areas amounts to a significant constitutional change",

and concerns have been raised that that is happening on an ad hoc and iterative basis without any overarching consideration of the impact on devolution.

**Neil Gray:** Given what the deputy convener of the committee has said, does he share my concern that that constitutional change, which is impacting on the devolution settlement—on the Scottish Parliament and the Scottish Government—will be made even worse with the passage of the retained EU law bill?

**Donald Cameron:** I am speaking on behalf of the committee, and the committee is certainly concerned about what has happened so far. As the convener said, the committee is also about to take evidence on retained EU law, where that issue will be very much front and centre.

In our report, we raise a range of questions that are in need of further scrutiny. They include whether it is appropriate for UK ministers to have considerable new delegated powers in devolved areas without any consideration of the impact on devolution, and to what extent there is a risk to the Scottish Parliament's legislative and scrutiny function from the post-EU increase in the size and use of delegated powers both at UK Government level and by Scottish ministers.

**Sarah Boyack:** Will the member take an intervention?

**Donald Cameron:** I will make a bit more progress first, thank you.

They also include how the post-EU limitations of the Sewel convention, as covered by the convener, need to be addressed in considering the effectiveness of consent mechanisms when it comes to secondary legislation.

I will turn to some of the many contributions that have been made during the debate. I will canter through them as quickly as possible. Maurice Golden spoke about the need to evolve the devolution settlement in the interests of Scotland and about the need for dialogue and mutual respect.

Sarah Boyack made a point about the importance of transparency and accountability, as she rightly always does.

Willie Rennie spoke about hyperbole on both sides and about the fact that we have not had a debate on the substantive issues that are at stake. His view is that divergence has not really happened and that we have not seen the benefits of Brexit that were promised.

Jenni Minto spoke about the impact of EU law. She quoted evidence that we heard last week in committee and spoke about the importance of good relations.

Oliver Mundell spoke longingly about the Mike Russell era and spoke nostalgically about his memories of those debates. *[Laughter.]* Oliver Mundell's view, which is important to note, is that the Scottish Government did not approach the matter constructively. In his opinion, the Scottish Government disrupted Brexit, stoked grievance and promoted independence. He said that that is what has damaged relations and is why tensions exist.

Alasdair Allan also spoke about retained EU law issues and the sheer amount of legislation that that would involve. He concentrated, as many others did, on legislative consent. I think that he asked whether Sewel has any residual force.

Katy Clark spoke about the need for co-operation; she mentioned procurement and said that there are choices to be made now through which divergence could happen. I think that she approves of the ability to diverge—she will correct me if that is wrong. She certainly agreed that there is a need for this Parliament to look at and debate the issues properly.

Collette Stevenson said that, in her view, the UK Government had been ignoring and disrespecting this Parliament—again, she concentrated on the Sewel convention and argued that the Scottish Parliament has been undermined.

**Sarah Boyack:** I thank the member for taking an intervention now—I realise that he is getting near the end of his time.

Does Donald Cameron, as deputy convener of the committee, accept that it might have been helpful if a UK minister had been prepared to come and visit our committee? It is constructive and it is cross-party and, although we ask difficult questions, we ask them in order to make devolution work and to make it successful.

**Donald Cameron:** Yes, I agree with that.

Mark Ruskell spoke about what he described as the irony of the UK being so influential within the EU yet so bad, in his view, at explaining the benefits of membership. He spoke about respect

for the rule of law—a subject that is dear to my heart—and the urgency of action that is required.

Gillian Martin made a very interesting contribution about her experience as the convener of two committees, dealing with the practical day-to-day issues that arise when LCMs come to a committee, and the ability of this Parliament to scrutinise UK Government decisions.

In one of the finest speeches in the debate, Foyso Choudhury spoke about the history of the Sewel convention and how it was built on unstable ground. He said that the phrase “not normally” was always going to be contentious. He, like many others, argued for a renormalisation of relations.

Sharon Dowe spoke about the need for compromise and engagement, and she said that it takes two to talk. In her view, parity is important: what applies to the UK Government also applies to the Scottish Government.

Finally, the minister made many points about centralisation as a result of Brexit, the issues arising from the Sewel convention and the fact that his experience as an MP from 2016 onwards—the Brexit years—was so important. He was standing in, very ably, for the cabinet secretary, who told the Constitution, Europe, External Affairs and Culture Committee that he would be in London to meet the UK Government. That is an example of co-operation between the Scottish and UK Governments that we can all celebrate.

There are fundamental questions about how devolution works outside the EU. We believe that we need a wider debate about the varied and complex issues that have been raised by the committee’s report. This is a debate that is not just for Governments and Parliaments; it is also for businesses, stakeholders, civic society and the wider public. We hope that the discussion has contributed to that. I support the motion in the convener’s name.

## Decision Time

17:01

**The Presiding Officer (Alison Johnstone):**

There is one question to be put as a result of today’s business. The question is, that motion S6M-06732, in the name of Clare Adamson, on behalf of the Constitution, Europe, External Affairs and Culture Committee, on the impact of Brexit on devolution, be agreed to.

*Motion agreed to,*

That the Parliament notes the Constitution, Europe, External Affairs and Culture Committee’s 5th Report, 2022 (Session 6): *The Impact of Brexit on Devolution* (SP Paper 223).

*Meeting closed at 17:01.*



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