



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 9 January 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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CONTENTS

	Col.
TIME FOR REFLECTION	1
TOPICAL QUESTION TIME	3
Post Office Employees (Potential Wrongful Convictions)	3
XL Bully Dogs (Regulation of Ownership)	6
Flooding (Grants).....	9
URGENT QUESTION	13
Stewart Milne Group Ltd (Administration)	13
CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE REPORT: “HOW DEVOLUTION IS CHANGING POST-EU”	17
<i>Motion moved—[Clare Adamson].</i>	
Clare Adamson (Motherwell and Wishaw) (SNP)	17
The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson).....	21
Alexander Stewart (Mid Scotland and Fife) (Con).....	25
Neil Bibby (West Scotland) (Lab)	29
Alex Cole-Hamilton (Edinburgh Western) (LD)	32
Kate Forbes (Skye, Lochaber and Badenoch) (SNP)	35
Jamie Greene (West Scotland) (Con)	37
Alasdair Allan (Na h-Eileanan an Iar) (SNP)	39
Alex Rowley (Mid Scotland and Fife) (Lab).....	41
Keith Brown (Clackmannanshire and Dunblane) (SNP)	43
John Swinney (Perthshire North) (SNP).....	46
Mark Ruskell (Mid Scotland and Fife) (Green).....	48
Jackie Dunbar (Aberdeen Donside) (SNP)	50
Martin Whitfield (South Scotland) (Lab)	52
Emma Harper (South Scotland) (SNP)	54
Foysoil Choudhury (Lothian) (Lab).....	57
Maurice Golden (North East Scotland) (Con).....	59
The Minister for Culture, Europe and International Development (Christina McKelvie).....	61
Donald Cameron (Highlands and Islands) (Con)	64
DECISION TIME	69
CHANGING PLACES TOILETS	70
<i>Motion debated—[Jeremy Balfour].</i>	
Jeremy Balfour (Lothian) (Con)	70
Evelyn Tweed (Stirling) (SNP).....	72
Alexander Stewart (Mid Scotland and Fife) (Con).....	74
Paul O’Kane (West Scotland) (Lab)	75
Tess White (North East Scotland) (Con)	77
Stephen Kerr (Central Scotland) (Con)	78
The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd).....	80

Scottish Parliament

Tuesday 9 January 2024

[The Presiding Officer opened the meeting at 14:00]

Time for Reflection

The Presiding Officer (Alison Johnstone): Good afternoon. The first item of business this afternoon is time for reflection, and our leader today is Professor Bob Akroyd, moderator of the general assembly of the Free Church of Scotland.

Professor Bob Akroyd (Moderator of the General Assembly of the Free Church of Scotland): Presiding Officer and members of the Scottish Parliament, good afternoon.

John C Maxwell, author of "The 21 Irrefutable Laws of Leadership" asserted:

"Life is a matter of choices, and every choice you make makes you."

In 2024, every choice you make here makes you. Every choice you make makes our nation and impacts our people.

Two thousand years ago, a large crowd was given a choice. There were two prisoners: Barabbas, a convicted murderer, and Jesus, a preacher and miracle worker. One could be released; the other would be crucified. The response was unanimous: "Not this man, but Barabbas."

George Bernard Shaw once said:

"Why not give Christianity a trial? The question seems a hopeless one after 2,000 years of resolute adherence to the old cry of 'Not this man, but Barabbas.'"

Shaw's conclusion was striking:

"Yet it is beginning to look as if Barabbas was a failure".

The way of Barabbas is strangely contemporary. Like Frank Sinatra, Barabbas did life his way. The way of Jesus is completely different. He went around doing good by putting others first. He even gave his life as a ransom for many. The verdict then was, "Not this man." Has much changed? G K Chesterton once said:

"The Christian ideal has not been tried and found wanting. It has been found difficult; and left untried."

As 2024 commences, you confront many problems. Much wears us down and much weighs us down. This is true for you, as legislators, and true for your constituents. Jesus invites us personally:

"Come to me, all you who are weary and burdened, and I will give you rest."

He bears our burdens. He is willing and able to help. Jesus gets us.

For more than 20 years, I volunteered with Bethany Christian Trust, and I currently serve as a chaplain at Saughton prison, here in Edinburgh. I have seen Jesus meet people. He does take away their burdens and he does give rest. Jesus meets people exactly where they are, but he does not leave them where he finds them. The change is profound and lasting.

Why not give Christianity a trial? Consider Jesus's life, consider his death and consider his resurrection from the dead. You can change your mind about Jesus. Your first answer does not have to be your final answer. Every choice you make makes you.

Let me close with a benediction: the blessing of Aaron. May these words warm your hearts and enlighten your minds as you make choices with profound consequences.

"The Lord bless you and keep you; the Lord make his face to shine upon you and be gracious unto you; the Lord lift up his countenance upon you and give you peace."

May God bless you all.

Topical Question Time

14:03

The Presiding Officer (Alison Johnstone):

The next item of business is topical question time. In order to get in as many questions as possible, succinct questions and responses would be appreciated.

Before calling the first question, I remind members of the sub judice rule and request that members not make specific references to cases that have been referred to the courts.

Post Office Employees (Potential Wrongful Convictions)

1. **Foyso Choudhury (Lothian) (Lab):** Thank you, Presiding Officer. Happy new year to you and to everyone in the chamber.

To ask the Scottish Government what action it can take to ensure that all people who were potentially wrongfully convicted as a result of the reported Horizon scandal are supported in coming forward if they wish for their conviction to be overturned. (S6T-01726)

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): The Horizon scandal is rightly causing great concern, and it is important to recognise the tireless work of campaigners who have led efforts for justice. Anyone who is wrongly convicted as a result of the Horizon scandal should have their conviction reversed and be entitled to compensation. The Scottish Criminal Cases Review Commission has already referred seven cases back to the appeal court for a fresh appeal, and in two of those cases, so far, the convictions have been overturned on appeal.

However, we are looking at what more can be done, and we are considering the idea of a pardon scheme. I am conscious that the United Kingdom Government has created a compensation scheme that requires a conviction to be reversed by an appeal court before someone can receive compensation. Therefore, today, I have written to the UK Secretary of State for Justice to ask for a meeting to discuss how best we can work together to ensure that anyone who is wrongly convicted as a result of the Horizon scandal can have their conviction reversed and still be entitled to compensation.

Foyso Choudhury: By the end of 2023, only 16 people in Scotland had come forward to have their conviction overturned. There are many more people who were not convicted but for whom the false accusations severely impacted their reputation, career and mental health. The full

number of victims in Scotland is not yet known. What discussion has the Scottish Government had with the Crown Office and Prosecutor Fiscal Service regarding the number of people in Scotland who were potentially wrongly prosecuted? Does it expect to be liable for the cost of compensation?

Angela Constance: Mr Choudhury is quite right to point out the massive personal impact on all the people who have been affected. The Scottish Government will have discussions with a full range of justice partners, and it is imperative that, in the Parliament, we stand up for everyone in Scotland who has been affected by the Horizon scandal.

It might be useful to quickly intimate the proactive steps that have already been taken by the Scottish Criminal Cases Review Commission, which, on receipt of information on people who might be affected, has written proactively with information to about 80 people who could be affected and has encouraged people to make applications to the criminal conviction review body.

It is important that we send out a message to those who believe that they are a victim of a miscarriage of justice that they should make an application to the Scottish Criminal Cases Review Commission, which is continuing its work. It is important to say that the appeal court is continuing its work, too.

The actions of the Scottish Criminal Cases Review Commission are the first systemic effort of any jurisdiction in the UK to contact all the individuals who have potentially been affected.

Foyso Choudhury: I was expecting an answer on whether we are liable for compensation.

The Post Office has set aside £244 million in compensation for potential victims. Many victims have now died without having been able to claim the compensation or to clear their names, yet Fujitsu, the company that created the Horizon system, has not faced any financial implication and has reportedly been awarded more than 150 Government contracts since. What discussion is the Scottish Government having with the UK Government regarding the responsibility of Fujitsu in the scandal?

Angela Constance: As I intimated in my original answer, I have written to the UK Government today about how we can work together and take matters forward.

On the issue of compensation, it is important to recognise that anyone who is convicted because of the failings of the Horizon information technology system can apply for compensation via the scheme that has been set up by the UK Government. It is important that we encourage and support people to do so. The scheme is

available for anyone to apply to if they have been a victim of a miscarriage of justice, where their convictions were reversed on appeal out of time, or if they have spent time in prison as a result of a wrongful conviction or charge.

Fergus Ewing (Inverness and Nairn) (SNP): Does the cabinet secretary agree that any conviction that resulted from the introduction of the flawed Horizon system must be unsafe and flawed and should be quashed? Will the Scottish Government, working with the UK Government, consider introducing emergency legislation, if necessary, so that the greatest miscarriage of justice of our time can be redressed? Finally, in order to ensure that everyone whose life has been ruined gets compensation, will the cabinet secretary consider taking proactive steps, either by herself or through an agency, to reach out to every sub-postmaster and sub-postmistress in Scotland who might have been affected, to make sure that they get the compensation that they richly deserve?

Angela Constance: As I intimated in my original answer, the Scottish Government is open to taking further action. First and foremost, we want to take the action that will be most effective for those here, in Scotland, who have been impacted by the scandal, and we have an open mind about the best way forward. We will, of course, work with the UK Government, which has particular responsibilities in that regard.

I intimate again to Mr Ewing that the action taken by the Scottish Criminal Cases Review Commission has been proactive. In spring 2020, the commission decided, as a matter of policy, to make all reasonable efforts to locate those who might have been affected and to encourage them to apply to the commission to have their convictions overturned. That is the gateway to ensuring that people receive the appropriate compensation.

I assure Mr Ewing and other members that we are looking at a wide range of issues because, first and foremost, we want to play our part in standing up for the people in Scotland who have been affected. It is our responsibility to play our part in helping to right the wrong that was undertaken by Post Office Limited and the scandal that surrounds it.

Russell Findlay (West Scotland) (Con): It appears that, during his three years as justice secretary, Humza Yousaf did not hold a single meeting about the Post Office Horizon scandal. That scandal is now firmly on the agenda because of a television drama.

Former police officer Mary Philp was not convicted but went to her grave wrongly accused of theft. Her daughter Myra, who has campaigned

doggedly for years, wants to know when all Scottish victims will have their convictions quashed and their names cleared, and she points out that the powers for that lie with Scottish ministers.

Angela Constance: I will certainly endeavour, on behalf of this Government, to work collaboratively to ensure that everyone in Scotland who has been affected can access justice and can right any wrong that has been done.

It is unfortunate that Mr Findlay has sought to overly politicise the matter when the problem has been in the making since 1999 and was caused by a UK-wide body—the Post Office—that has been scrutinised under reserved powers by successive UK Government ministers. He is correct in saying that the Post Office cannot prosecute in Scotland. Only the Crown Office, which is independent of politicians, can prosecute in Scotland. If the scandal shows us one thing, it is the value of having an independent prosecution system, not one in which a vested interest such as the Post Office is able to pursue prosecutions. Hundreds of people are now living with the consequences of that, not only in Scotland but across the UK.

XL Bully Dogs (Regulation of Ownership)

2. **Jamie Greene (West Scotland) (Con):** To ask the Scottish Government whether it will reconsider its position on further regulating the ownership of American XL bully dogs in Scotland, in light of reports that widespread rehoming from England to Scotland is raising public safety and animal welfare concerns. (S6T-01718)

The Minister for Victims and Community Safety (Siobhian Brown): The Scottish Government is concerned to hear reports of XL bully dogs being moved to Scotland for rehoming. I have made it clear to the United Kingdom Government that there should be no impact on Scotland as a consequence of the policy that has been implemented. The UK Government's response said that if an XL bully owner from England or Wales travelled to Scotland and sold or otherwise transferred or abandoned the dog to someone in Scotland, it is unlikely that that would be an offence.

The criminal law should provide clarity on whether an offence has been committed. The unintended consequence of the UK Government's policy is that we are now seeing an influx of XL bully dogs to Scotland. It is important to ensure that Scotland does not become a safe haven or a dumping ground for XL bully dogs from England and Wales.

I confirm to Jamie Greene and the Parliament that, in the light of recent events, ministers are urgently reviewing the policy on XL bully dogs.

Public safety will be paramount in our deliberations, and Parliament will be updated on a timetable for any policy change imminently.

Jamie Greene: The unintended consequences that we are seeing are a result not of the UK legislation, but of this Scottish Government failing to take action, which has led to the situation in which there is a huge amount of anecdotal evidence of rehoming across the border into Scotland. There is an online Facebook group with more than 20,000 members, where people are discussing the issue day in, day out. I understand that they are very well meaning. As an animal lover, I understand the sentiments behind some of the rehoming, but we do not understand its full consequences or what will happen.

The First Minister was very clear yesterday when he said to the media:

“I think it is important for us to make very clear that Scotland is not a safe haven for XL bully dogs.”

I agree with him. Will the minister now explain to the public what action this Scottish Government will take to ensure that the rhetoric on the subject is followed by action?

Siobhian Brown: Given the lack of notice of the decision from the UK Government, and in the context of the different approach to dog control, I and officials have been reviewing the evidence on the situation in Scotland. We have met a wide variety of stakeholders over the winter to consider the evidence and their views on what work would be best in the Scottish context and to consider any unintended consequences. I have met the Scottish Society for the Prevention of Cruelty to Animals, the Dogs Trust, the dog control coalition, individual clinical dog behaviourists, a victim of a dog attack, the Kennel Club, Blue Cross and the Edinburgh Dog and Cat Home. I met the Communication Workers Union this morning and Police Scotland on Thursday, and I have met the National Dog Warden Association. I have also instructed officials to undertake regional engagements with local stakeholders to look at ways for partners to work together to improve operational responses and enforcement and to aid community engagement to help to promote more responsible dog ownership. As I said in my first answer, the matter is under urgent review at the moment.

Jamie Greene: I say to the minister that it has been under urgent review for months. I am going to be frank, because I have been raising the issue in the chamber for months. Everything that we warned might happen is, sadly, now happening. Over the weekend, we saw the utterly horrific story of a dog that was trafficked from England to Scotland. There was an unsuccessful attempt to sell it online and the dog was then, horrendously, beaten to death and left on the street. I would not

want to be the minister in charge of a policy who dithered and delayed on the issue for longer than was necessary, leading to another tragedy. Before it is too late, will the Scottish Government please announce a ban on these dogs before a single life—human or otherwise—is lost?

Siobhian Brown: Whereas the UK Government announced its decision to ban this dog breed with no advance notice or consultation—

Jamie Greene: Months ago.

Siobhian Brown: —we are approaching the matter in an evidence-based manner. *[Interruption.]*

The Presiding Officer: Let us hear the minister.

Siobhian Brown: No new breed type has been banned in the list for more than 30 years, and it is important to listen carefully to the views of dog control experts in order to inform our policy approach in the area. As I said in my first answer, the matter is under urgent review and the Parliament will be told about any policy change imminently.

Pauline McNeill (Glasgow) (Lab): The Scottish SPCA has said:

“There is no need for a caring owner in England or Wales to move a dog to Scotland, as they have until January 31 to register their dogs and comply with the conditions for exemption.”

Any owner moving a dog after 31 December will be committing an offence.

Jamie Greene said that there is evidence that XL bully dogs are being brought to Scotland. How will we prevent that if Scotland appears to be a safe haven? Does the answer not lie in Scotland being more aligned with England and Wales to ensure not just that we prevent such movements, but that we protect the welfare of dogs, some of which are being destroyed on the back of the policy?

Siobhian Brown: As I have said, urgent consideration is being given to the matter. I would say to any dog owner that they will need to understand the effect of any possible ban that is introduced in Scotland. At this time, any purchase of an XL bully dog would be made in a context that may suggest that it would be preferable not to acquire such a dog at the present time in Scotland.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): As everyone is, I am appalled by dog attacks. However, the answer does not lie in adopting such hasty and simplistic regulations. In the same way, the Dangerous Dogs Act 1991 has not worked. Will the minister therefore consider amending the Control of Dogs (Scotland) Act 2010, which I

introduced and which intervenes early when there are behavioural problems with any breed of dog, to make it more effective, as it places the blame and responsibility where they lie—on the breeder and the owner, not the dog?

Siobhian Brown: A working group has been considering current legislation. I understand that the Welfare of Dogs (Scotland) Bill that has been introduced by Christine Grahame aims to highlight and raise awareness of responsible dog ownership—which, I think, we can all support. The Government welcomes any proposals that seek to improve animal welfare, and I look forward to working with Ms Grahame on the bill.

Flooding (Grants)

3. **Willie Rennie:** To ask the Scottish Government whether it will provide funding for grants for those households and businesses flooded during storm Gerrit, in light of it providing such funding for those affected by storm Babet. (S6T-01721)

The Minister for Community Wealth and Public Finance (Tom Arthur): I recognise the efforts of local recovery partnerships, which have worked so hard to respond to storm Gerrit, and I express my sympathy for those who have had their lives disrupted by flooding.

The Scottish Government is committed to playing our part in supporting communities through such events. The Scottish Government provides £42 million annually to local authorities to fulfil their flood risk management obligations, and we have committed an additional £150 million over this parliamentary session to improve flood resilience. We also support communities through the Scottish welfare fund, through which grants can be provided to low-income households for emergencies such as flooding.

Storm Babet was a highly unusual weather event. Given the almost unprecedented Met Office red warnings for rain, we have provided additional grant support for households and businesses that have been flooded in affected local authority areas. However, we are sympathetic to the situation following storm Gerrit, and we will continue to engage with affected councils.

Willie Rennie: That is not good enough, because for my constituents who were flooded out of their homes just days after Christmas, the situation was just as traumatic as it had been for the people in Angus who received grants, so I ask the minister please not to insult them by saying that the situation in Angus was exceptional. If someone has two foot of water in their house when they wake up in the morning, that is exceptional. Will the minister therefore reconsider the decision?

Tom Arthur: I recognise very well the sentiment that Willie Rennie expresses on behalf of his constituents: for any individual household that is affected, the event will be traumatic—especially just days after Christmas.

Willie Rennie asked me to reconsider my decision. I clarify, in case he did not infer it from my answer to his original question, that a decision has not been taken. We are giving the issue careful consideration. We have engaged with Fife Council, which is preparing reports as we speak, and we will give the matter further consideration, in due course.

As I said, we are very sympathetic to the situation that is faced by Mr Rennie's constituents, and we are giving careful consideration to what more support can be provided.

Willie Rennie: I will take that as a kind of “yes”, which I hope it is.

I hope that the minister is not just flannelling me, because people are flooded out of their homes now, and their businesses have been destroyed. Mohamed Khalid lost his business when water surged into his shop, destroying stock and expensive fridges and freezers. Matt Hooper woke up to two foot of water around his bed, and his fridge was floating in his living room. He is now homeless. Both have tried to get help, but none has been available. Will the minister come to Cupar and tell them to their faces that he is not going to give them money, or that they will get the money—the sooner, the better?

Tom Arthur: The Cabinet Secretary for Transport, Net Zero and Just Transition, Màiri McAllan, and I will be happy to engage directly with Willie Rennie. As I said in my original answer, I express my deepest sympathy to all who have been affected by the flooding. As I also said, we are giving the matter careful consideration and will continue to engage with our partners in local government to consider what more support can be provided.

The Presiding Officer: I am keen to get more questions in, so let us have more concise questions and responses.

Maurice Golden (North East Scotland) (Con): Funding is critical to support communities that are recovering from storms and the associated flood damage, but so is long-term planning and management in order to mitigate the impact, to build up resilience and to share best practice. Watercourses cross council boundaries, and local authorities might be reluctant to instigate measures that do not have direct local benefits. Without an holistic approach being taken to river basin management, communities will be left to suffer. Will the minister investigate plans to establish an organisation that would be

responsible for river basin management and which would also be accountable to communities?

Tom Arthur: I thank Maurice Golden for his supplementary question. He will appreciate that the specific matters that he raised in his considered question lie within the responsibility of my colleague Màiri McAllan. I will be happy to ensure that the member's remarks are passed on to Ms McAllan, who will, I am sure, be happy to engage with the member and provide a written response.

Maggie Chapman (North East Scotland) (Green): I have been contacted by many constituents across Angus and south Aberdeenshire who have lost much as a result of repeated flooding over recent months. Drainage systems are no longer adequate, other flood prevention measures are insufficient, and crisis funds and insurance do not cover the losses that are being experienced. Given that flooding is becoming more prevalent and severe, what is the Scottish Government's long-term plan for flood prevention and mitigation to ensure that people can continue to live and work safely in affected areas?

Tom Arthur: No country can mitigate the risk of flooding entirely, but since 2008 the Scottish Government has made available £42 million per year for local authorities to invest in flood risk management actions. As I said earlier, that is in addition to £150 million that is being made available over the course of this parliamentary session to support delivery of flood resilience measures.

We have been working with stakeholders to develop the first flood resilience strategy for Scotland, with communities at its heart, which will form an integral part of shaping a climate-resilient Scotland. The strategy aims to initiate a transformational change to flood management in order that we can adapt our places and set Scotland on a long-term course towards sustainable flood resilience. We will move to a public consultation in due course, and our intention is to publish the strategy later this year.

Stephen Kerr (Central Scotland) (Con): I rise as a member whose constituency has a very high level of flood risk. Despite what Willie Rennie said, we have all seen the lamentable lack of support that has been given to residents and businesses in Brechin. Answers to freedom of information requests that I have in my possession show that, even as late as last month, Angus Council was still struggling to find capacity and resources to even begin to pick up the pieces.

My question is very simple. Why is the Scottish Government so slow at responding to these crises? What lessons can it learn from the rapid

response that we saw down south to storm Henk? Is not it time that ministers got their act together—*[Interruption.]* I see members on the Government front bench laughing at this question. That is a ridiculous response, and the minister should be ashamed. Is not it time that ministers got their act together on flood emergency response—full stop?

Tom Arthur: I compare and contrast Mr Kerr's question with the original question from Willie Rennie, which was absolutely focused on the interests of his constituents. It is a shame that Mr Kerr chose to try to score a political point on the matter.

This is a serious issue that affects all countries. We have established a task force that has met on multiple occasions to respond to the particularly exceptional challenges that resulted from storm Babet last year. We are committed to working with our local authority partners and local recovery groups to ensure that we can improve our flood resilience, both in the long term and in responding to specific challenges. However, as we recognise from the events, climate change and its implications are not simply a matter for the future: they are with us here and now, which makes it utterly lamentable and shameful that the United Kingdom Conservative Government has so drastically watered down its commitment to net zero.

The Presiding Officer: That concludes topical questions.

Urgent Question

14:29

Stewart Milne Group Ltd (Administration)

Douglas Lumsden (North East Scotland)

(Con): To ask the Scottish Government what discussions it has had with the administrators of Stewart Milne Group following the news that the firm, which employs over 200 people, has been placed into administration.

The Cabinet Secretary for Wellbeing Economy, Fair Work and Energy (Neil Gray): I thank Douglas Lumsden for securing this important question. I know that there is considerable interest from colleagues in the north-east and across Scotland in this matter.

I was very sorry to hear that Stewart Milne Group had ceased trading after 49 years. Our thoughts are with the affected employees and their families at this very difficult time. This morning, I met representatives of the administrator, Teneo, and made it clear to them that I want every possible support to be offered to affected staff, contractors, suppliers and home buyers. The people who are affected by the announcement are, of course, our immediate priority. The Scottish Government is providing support through partnership action for continuing employment—PACE—which is our initiative for responding to redundancy situations. By providing skills development and employment support, PACE aims to minimise the time for which individuals who are affected by redundancy are out of work. The administrators have confirmed that they are working closely with PACE to provide people who are being made redundant with the relevant information.

Douglas Lumsden: I am pleased to hear that the Scottish Government is taking the matter so seriously. This is dreadful news for the 217 direct employees of Stewart Milne Group, but there will also be serious concerns for all those connected with the supply chain, including contractors and self-employed tradespeople. Will the cabinet secretary confirm whether help will also be made available to people who are not directly employed by Stewart Milne Group but who now face the prospect of losing their livelihoods due to its collapse?

Neil Gray: We understand that approaches have already been received from potential recruiters for employees who have lost their jobs or who are at risk of losing doing so. Moreover, PACE has asked the administrators to distribute opportunity information to the affected employees.

Douglas Lumsden will be aware that the redundancy payments process is a matter for the redundancy payments service and the Insolvency Service. Douglas Lumsden raised a clear point about the announcement's impact on self-employed subcontractors. I will write to Kevin Hollinrake, the responsible United Kingdom Government minister, asking him to look as sympathetically as possible at their position. I understand that the process will be difficult for them, and I will ask the UK Government to look at their situation favourably.

Douglas Lumsden: I would like to highlight another group of people who will be concerned by the development, who are the customers of Stewart Milne Group, including buyers who have placed deposits and are awaiting their keys, and home owners who have moved in and might have remedial work outstanding. Some owners will also have concerns that paths and roads that were due for adoption by local authorities have not yet been completed, and they will be unsure of where that burden might fall. I presume that the administrator, Teneo, will be the first point of contact. However, what further advice can the cabinet secretary offer to people who are living in what might be described as building sites, and to those who have saved up for deposits and are now seeing their life savings being put at risk?

Neil Gray: I raised those issues in my conversations with Teneo this morning. Douglas Lumsden will understand that we are coming at the situation within 24 hours of its happening—as is Teneo—so the picture is still moving. In that regard, I will be happy to ensure that, as the situation develops, I provide as much information as I can and that colleagues across the chamber, who I understand will be interested in the matter, will be as well briefed as possible.

My understanding is that Teneo is in discussions with the National House-Building Council and others on ensuring that the point that Mr Lumsden fairly makes about the difficult position in which people find themselves—in some cases, in limbo—can be resolved. That will be a challenge, depending on the circumstances. However, as soon as I, and the administrators, have more information, I will do everything that I can to ensure that colleagues are kept up to date.

Kevin Stewart (Aberdeen Central) (SNP): Stewart Milne Group has been a significant employer and house builder in Aberdeen and the north-east for nearly 50 years, and its loss will have a significant impact on the communities that I and other members represent.

I am pleased to hear from the cabinet secretary that he has already been in touch with the administrators. Other Scottish National Party parliamentary colleagues and I have already

written to them, too. I am pleased to hear that some moves have been made to garner the facts about what will happen not only to the company's employees but to people who have invested in homes. I would appreciate receiving continued updates on that. Will the cabinet secretary seek to ensure that NHBC guarantees stand for people who are currently in Stewart Milne homes? Will extra effort be made to find jobs for any apprentices who currently work with Stewart Milne Group?

Neil Gray: I thank Kevin Stewart and other members for their interest in the matter and the correspondence that they sent to me last night. Stewart Milne Group was based in Aberdeen but, given the company's interests, the repercussions will be felt across Scotland.

Kevin Stewart raises two very important issues, one of which is NHBC guarantees. My understanding is that Teneo is in discussions with the NHBC on the practicalities and how those can be further communicated. As soon as I have further information on that, I will make sure that Kevin Stewart and other colleagues are kept up to date. Secondly, Kevin Stewart makes a very fair point on employment prospects for the staff in general, but in particular for apprentices. I imagine that their skills will be in high demand, regardless of where they are in the country. We will continue to do all that we can through PACE to ensure that employment opportunities are furthered as quickly as possible.

Daniel Johnson (Edinburgh Southern) (Lab): Since 2007, Scotland's average annual rate of housing completion has been almost 5,000 lower than it was in the previous decade. It has been reassuring to hear the answers about the tragic loss of jobs following the closure, but we must also raise concerns about housing capacity overall. How many uncompleted planning consents does Stewart Milne hold? How many houses are currently mid-construction and remain uncompleted? Given that the factors behind the closure are not unique, what dialogue and actions is the Scottish Government undertaking to ensure that we support other house builders who may be facing financial issues?

Neil Gray: As I outlined in my answer to Douglas Lumsden, we are still within 24 hours of Teneo taking on the administration of Stewart Milne Group and we—and Teneo—are trying to get the full facts of the situation as quickly as possible. I hope that Daniel Johnson will forgive me, but we will need some time to get the answers to some of his questions.

Those are questions that we have asked, and we are looking to get further information on those areas. Those issues will be of particular interest to the administration process, because they will be

part of the marketing of any assets that might be available. I hope that there will be interest in ensuring that work on some of those sites can be taken forward by other parties. However, that is a matter for the administration process. As I did for Douglas Lumsden and Kevin Stewart, I offer Daniel Johnson further briefings as information becomes available.

Willie Rennie (North East Fife) (LD): The combination of the Liz Truss budget and the massive cuts to the social housing programme is partly responsible for what we have seen in relation to Stewart Milne. That situation is a symptom of a housing sector that is in crisis. Last month, the Government rejected the plea for it to declare a housing emergency. Does the situation with Stewart Milne not indicate that the Government was wrong last month and should now change its mind?

Neil Gray: With all due respect to Willie Rennie, I am really sorry that he chose to politicise the matter at this stage, not least because Stewart Milne, as it went through the sale process, said that the issue was to do with the wider UK housing market.

Of course we will do all that we can to ensure that we continue to invest in house building in Scotland, understanding the critical role that it plays not just for the economy but for our social infrastructure. In the face of a declining capital budget from the UK Government, we will do all that we can to ensure that we respond as best and most effectively as possible.

The Presiding Officer: I regret that I am unable to take further questions from members as we must protect time for forthcoming items.

Constitution, Europe, External Affairs and Culture Committee Report: “How Devolution is Changing Post-EU”

The Presiding Officer (Alison Johnstone):

The next item of business is a debate on motion S6M-11698, in the name of Clare Adamson, on behalf of the Constitution, Europe, External Affairs and Culture Committee, on “How Devolution is Changing Post-EU”. I would be grateful if members who wish to speak in the debate were to press their request-to-speak buttons. I call Clare Adamson to speak on behalf of the committee.

14:39

Clare Adamson (Motherwell and Wishaw) (SNP): Presiding Officer, could you confirm how much time I have for my opening speech?

The Presiding Officer: You have 12 minutes.

Clare Adamson: Thank you very much. I put on record my thanks to our committee clerks, colleagues from across other legislatures and all those who gave evidence to our inquiry. I welcome the opportunity to open this afternoon’s debate on behalf of the Constitution, Europe, External Affairs and Culture Committee on its report, “How Devolution is Changing Post-EU”.

The report is the third in a series of significant reports that the committee has published on the constitutional changes arising from the United Kingdom’s having left the European Union. It is an important report for the Parliament that builds on our previous work on the UK internal market and the impact of Brexit on devolution. I thank my committee colleagues for their constructive and consensual approach and their perseverance in dealing with some highly complex and technical issues.

It might be useful for me to briefly remind members of the background and context that informed our work in producing the report. While the UK was part of the EU, there was little regulatory divergence within the UK due to the statutory requirement to comply with EU law in areas such as animal health, food safety and the environment. Outside the EU, that statutory requirement no longer applies in Scotland. Consequently, much higher levels of regulatory divergence internally within Great Britain and the UK and between GB and the EU are now a possibility. Given the Windsor framework, Northern Ireland has a different set of rules.

The key question for us as parliamentarians is what impact the new constitutional arrangements are having on our core legislative and scrutiny

functions. Where does responsibility now sit for making law that was previously made in Brussels? Who decides whether UK-wide legislation covering a devolved area is appropriate? How do the public, businesses and other stakeholders know which Parliament and Government they should engage with? What happens if there is regulatory divergence between England, Scotland and Wales in the context of the United Kingdom Internal Market Act 2020? If there is regulatory divergence, how does business keep updated on what regulations apply to it?

There are many other questions that we could ask, but that should give colleagues a flavour of the complexities that are involved. If, as legislators, we find that daunting, how can we improve public understanding of the changes in our constitutional arrangements? For example, what about raising awareness among small businesses that wish to expand and export to new markets? What about an environmental lobbyist that seeks to allocate limited resources in influencing the legislative process?

We examined those issues, and our report focuses on four main areas: intergovernmental relations; common frameworks; the Sewel convention; and delegated powers. I will focus on the first three areas, and the deputy convener will focus on delegated powers in his closing speech.

The committee notes the view of our adviser, Professor Keating, that there is now

“a complex landscape of intergovernmental mechanisms, which has grown incrementally rather than following from a clear constitutional design.”

We note that there was

“considerable clarity, consistency and consensus in how the regulatory environment was managed within the UK prior to EU-exit. After EU-exit there has been significant disagreement between the devolved institutions and the UK Government regarding how the regulatory environment should be managed within the UK.”

The committee also notes that that

“lack of consensus, clarity and consistency ... has considerable consequences for the effectiveness”

of this Parliament in carrying out our core scrutiny and legislative functions.

Further, the committee notes:

“Without consensus at an intergovernmental level in areas such as Common Frameworks and the use of delegated powers by UK Ministers in devolved areas, there is a significant blockage to effective parliamentary scrutiny. For example, with regards to transparency and the timing and level of information provided to Parliament.

But even where there is consensus at an intergovernmental level there remains a risk that the Scottish Parliament’s core functions are diluted. As we have noted previously the increased significance of intergovernmental relations within a shared governance

space raises substantial challenges for parliamentary scrutiny.”

We consider that those challenges are structural and systemic, and are not just a consequence of political disagreements between Governments. Consequently, we recommend the need for a new memorandum of understanding and supplementary agreements between the UK Government and the devolved Governments, which should specifically address how devolution now works outside the EU. That should be based on a clear constitutional design, including consideration of the principles of subsidiarity and proportionality, and it should give us more clarity.

I turn to the consideration of common frameworks. We noted that there appears to be a consensus among the UK Government and the devolved Governments that common frameworks provide an effective mechanism to manage regulatory divergence within the UK internal market. The committee’s view is that there needs to be much greater clarity around how regulatory divergence, which is a key principle that underpins devolved settlements, will be managed through the common frameworks programme. In particular, there needs to be clarity around how the market access principles of the United Kingdom Internal Market Act 2020 are intended to work in those circumstances.

We therefore believe that there is a need to re-articulate the definition and principles of the frameworks in the light of experience to date and the new constitutional landscape.

John Swinney (Perthshire North) (SNP): I am enjoying Clare Adamson’s thoughtful and substantial speech. Has the committee considered what the respective roles of the United Kingdom Government and the devolved Governments should be in settling the contents of common frameworks? It strikes me that, without there being appropriate opportunities for the devolved Governments to be able to protect the rights of the devolved settlements from the United Kingdom Government, which, ultimately, as we have found out through the use of section 35 of the Scotland Act 1998, has a final say over many aspects of the constitutional exercise of authority, and unless that protection is given to devolved Governments, the common frameworks will be as meaningless in the future as they are today.

Clare Adamson: That is one of the aspects that we have considered. The committee looked at how the common frameworks are developed, and we noted that there is a lack of transparency. That is very much civil service driven, and the implications for both Parliaments and the other devolved Parliaments that are engaged in the process are opaque to us at the moment. I recognise John Swinney’s concerns and the

particular example that he has raised. The committee did not consider that specifically, but we may return to it.

As I said, the committee believes that there is a need to re-articulate the definition and principles of the frameworks in the light of experience to date and our constitutional landscape. It recommends that there should be a new memorandum of understanding between the UK Government and the devolved Governments that should include a supplementary agreement on common frameworks, which should include clarity on their purpose and give further transparency to the process.

Finally, I turn to our consideration of the Sewel convention. The committee has stated previously that that convention was “under strain” following the UK’s departure from the EU. Although the Scotland Act 2016 gave statutory recognition to the convention, that did not alter its status, and it did not become judicially enforceable. There continues to be considerable debate about whether the convention should be strengthened in law and subject to judicial review, whether it can be strengthened on a non-statutory basis or whether no strengthening at all is required.

We note that there is clearly a fundamental difference of viewpoint between the UK Government and the devolved Governments regarding the operation of the Sewel convention. It is also clear that that has led to a deterioration in relations between the UK Government and the devolved Governments. The committee’s view is that that level of disagreement on a fundamental constitutional matter is not sustainable, particularly in the context of what is an increasingly shared space at an intergovernmental level.

We note the view of UK ministers that

“it is sometimes necessary for the UK Government to act in its role as the government for the whole of the UK.”

We also note their view that

“it is necessary that the UK Government can fulfil the role of the UK’s national government”.

We are unclear what “necessary” means in that context and note that that is not stated in either the memorandum of understanding or the devolution guidance notes. It is also unclear how “necessary” relates to “not normally” and what the threshold is for necessity in justifying overriding the devolved consent of this Parliament or that of the Welsh and other devolved Parliaments. It is essential that we have an opportunity to hear from the UK Minister for Intergovernmental Relations to discuss the findings of the committee’s report and his written response to our previous letters.

Finally, I want to mention an event that happened yesterday at the University of

Strathclyde, where we brought together academics, practising lawyers, former civil servants and postgraduate and PhD students from across these islands—from Queen’s University in Belfast to Durham University and the University of Liverpool, to name a few—to discuss the findings of the report and examine the issues in further detail. There will be a published note from that meeting and a podcast that was chaired by Professor Andrew Tickell, with me and my deputy convener, Donald Cameron. I commend those to the Parliament.

I move,

That the Parliament notes the conclusions and recommendations contained in the Constitution, Europe, External Affairs and Culture Committee’s 5th Report, 2023 (Session 6): *How Devolution is Changing Post-EU* (SP Paper 453).

The Presiding Officer: I call Angus Robertson. You have up to 11 minutes, cabinet secretary.

14:51

The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson): Thank you very much. Happy new year to you, Presiding Officer, and to members right across the chamber.

Like Clare Adamson, I am delighted to participate in this important debate about the report by the Constitution, Europe, External Affairs and Culture Committee. I thank all the committee members and the clerks for what is an extremely thorough and forensic piece of work, and I commend it to all members who have not yet read it.

The report’s conclusion should surprise no one in the chamber. Brexit has ushered in an unprecedented assault on the powers of this Parliament and on the whole system of self-government that was endorsed decisively by people in Scotland in 1997. The Scottish Government was not alone in predicting the negative impact of Brexit on devolved institutions. Indeed, the Welsh Government has also sounded a clear and consistent alarm at the UK Government’s approach to devolution and intergovernmental relations since 2016. Sadly, those fears have come to pass, as the committee’s report lays bare.

The force of the report’s conclusion is, of course, made all the more powerful by the fact that it is unanimous. It was supported by members from the Scottish National Party, the Scottish Conservative and Unionist Party and the Scottish Labour Party. I hope that the willingness to rise above party political considerations that is evident in the report will encourage colleagues from all sides of the chamber to engage in a way that

allows this Parliament to speak with one voice on the threat that it faces.

The thoroughness and quality of the committee’s work means that it cannot be dismissed as what some are fond of saying is nothing more than “manufactured grievance”. It is nothing less than a clear warning of the need for a unified response from this Parliament to the threat that Scotland’s devolved institutions face.

John Swinney: Before the cabinet secretary develops his argument, I wonder whether I could take him back to his opening argument about the actions of the public in Scotland in supporting the devolved settlement in the referendum of 1997. We risk losing sight of the significance of the democratic consent that was given to the settlement in 1997, which in many ways was reinforced—much against my wishes—in the referendum in 2014. I commend the committee members for what they have said in the report about the attack that has been made on devolution, and I point out that at no stage has the consent of the public in Scotland been sought for those changes. Is the cabinet secretary concerned about the implications of that for the democratic consent of the public in Scotland that was given in 1997, which has been disregarded in the period since the referendum in 2016?

Angus Robertson: John Swinney makes his point clearly and persuasively. I am really keen that, given that the report was agreed unanimously—all the political parties were in agreement—we hear those points echoed from all sides of the chamber.

I have heard in some questions at various points during this session of Parliament a sense that the UK and Scottish Governments are jointly responsible for there being bad intergovernmental relations. However, it is crystal clear to us that the problem that we are dealing with is the UK Government’s approach. We need the other political parties in the chamber to support the Scottish Government to ensure that we can support the devolution settlement.

To reinforce John Swinney’s point, we, as parliamentarians, have a shared responsibility for protecting the integrity of this institution, which has served the people of Scotland for more than a quarter of a century. After all, we are here because the people of Scotland voted for this Parliament. It is their mandate that has given us democratic self-government in Scotland, and there is no mandate or justification for the steady erosion of the devolution settlement that we have seen since the Brexit referendum.

The committee’s report recognises the severe strain that the operation of the Sewel convention has been under since Brexit. It is essential for the

effectiveness of the convention that it is scrupulously observed when there are policy disagreements between the Scottish and UK Governments, especially on matters of significance. The opposite has, in fact, occurred, with the convention being set aside in areas in which there are differences between the Scottish and UK Governments, and the powers and responsibilities of the Scottish Parliament are being adversely affected, most notably by the United Kingdom Internal Market Act 2020. That is precisely the circumstance in which the convention was intended to operate as a safeguard for devolution.

Until 2018, we saw scrupulous observance of the convention by UK Governments of all stripes. Since then, however, the convention has, in the words of the Welsh First Minister, Mark Drakeford, “withered on the vine”. It is worth noting that routine breaches of the Sewel convention are a comparatively recent development. The convention was strictly observed—barring one quickly rectified error—for most of the first two decades of devolution. From there being no breaches between 1999 and 2018, the convention has now been breached 11 times. “Not normally” now appears to be emptied of all meaning.

Martin Whitfield (South Scotland) (Lab): Is that not what the convener was seeking earlier in relation to the definition of “not normally”? In the period up to 2018, the only breach was an error—that is what “not normally” means.

Angus Robertson: Indeed, it is.

I encourage the member and other colleagues who have views on how governance in the UK might be improved to share them. I believe that the issue has been addressed in part by the Brown commission, but it needs to be made explicitly clear that there are to be no exceptions to the Sewel convention. That would certainly be progress. I have not read in the commission’s conclusions calls for an absolute endorsement of the Sewel principle in all circumstances, but that would be extremely welcome.

I go back to the committee’s—

John Swinney: Will the cabinet secretary give way?

Angus Robertson: I ask Mr Swinney to forgive me, as I will overrun if I take an intervention at this stage.

The committee’s report states:

“It is essential that we have the opportunity to hear from the UK Minister for Intergovernmental Relations to discuss the findings of this report”.

To date, the committee has received no response, despite the urgency of its request and an

indication of the importance with which the matter is viewed in Whitehall.

The report also raises concerns about the rapid growth in the use of delegated powers, which allows the UK Government to legislate in devolved areas. The Retained EU Law (Revocation and Reform) Act 2023 is just one example of that. As the committee notes, that is a recipe for confusion, a lack of transparency and a blurring of the lines of accountability.

We recognise the merit in the committee’s recommendations regarding new intergovernmental agreements on how the use of delegated powers should work, particularly in their recognition of

“the constitutional principle that devolved Ministers are accountable to their respective legislatures for the use of powers within devolved competence”

and the fact that the

“Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.”

Those principles are fundamental to the effective operation of the devolution settlement. On one level, they are so self-evident that they should not require further explanation.

As I have noted, the Scottish Government sees merit in the recommendation that agreement be reached on the use of delegated powers by UK ministers in devolved areas. However, new or revised rules, structures and agreements can be fully effective only if all parties are committed to following them. That means following the rules consistently, not just when it suits. It means respecting the important principles of collaborative working that were agreed by all four Governments as part of the review of intergovernmental relations. It means respecting the Scottish Parliament and having a shared interest in making the devolution settlement operate as intended, in the way that the people of Scotland voted for decisively in 1997.

The report argues that there is consensus among the UK and devolved Governments that common frameworks provide appropriate mechanisms for managing regulatory divergence across the UK. Although I acknowledge that the UK Government remains formally committed to the development and implementation of common frameworks, I respectfully challenge the committee on one point. If the UK Government shares the view that frameworks offer the right mechanism for managing post-EU exit regulatory divergence in the UK, why on earth did it impose the United Kingdom Internal Market Act 2020 on this Parliament? The act is incompatible with the principles and approaches of common frameworks, as it replaces respect for devolution

and progress by agreement with unilateral decision making and the undermining of devolution by strength. Scotland's deposit return scheme is the clearest example that we have seen of how work on the common frameworks has been undermined.

Common frameworks and the principle of respect for devolution and the powers of the Parliament that underpin them could be the basis for a respectful and co-operative approach to devolved regulatory policy. Common frameworks still offer an alternative to the unworkable centralisation, rigidity and disregard for devolution that are embodied by the 2020 act, but only if all parties are prepared to adhere to the rules. It is hard to see—at least at present—how the committee's recommendation of a new common frameworks memorandum of understanding would operate if some actors are not prepared to play by the agreed rules.

The committee is correct in noting that all of that means that the Scottish Parliament faces an unprecedented set of challenges in performing its vital scrutiny role. The challenge of adapting to EU exit was always going to be vast in scale and complex, as, equally, were the demands on Scotland's Parliament. However, where we are today is the result of choices. It did not have to be like this. It was a choice to proceed with the folly of a hard Brexit and to ignore the wishes of people in Scotland. It was a choice to use Brexit to launch a sustained campaign to undermine the powers of this Parliament. It is a choice to simply ignore agreed constitutional norms, processes and structures wherever and whenever they are considered to be inconvenient. In those circumstances, devolution cannot function as intended and this Parliament cannot operate as it should.

I congratulate the committee again on its excellent report, and I hope that, across the chamber and in all parties, we can work as parliamentarians to address the vital questions that it raises.

The Deputy Presiding Officer (Liam McArthur): I can confirm to members that we have no time in hand for this afternoon's debate, so members will have to stick to their speaking allocations.

15:03

Alexander Stewart (Mid Scotland and Fife) (Con): I am delighted to open the debate on behalf of the Scottish Conservatives. At the outset, I state that the Scottish Conservatives are clear about the importance of devolution. The principle of devolution and the location of decision making

are of great importance to the health of any functioning democracy.

Moreover, devolution has become an important part of Scotland's political history over the past two decades. During that time, we have seen Governments of different colours in the Scottish and UK Parliaments, and Scotland has taken an increasing number of devolved responsibilities. Intergovernmental working between ministers and civil servants from different Governments has become the norm in Scottish politics.

However, since the UK's decision to leave the EU, the previously well-understood devolution process has become less certain. There has been an increase in conflict between the UK Government and devolved Administrations. To some extent, that was to be potentially expected. Leaving the European Union was the biggest constitutional change that we have seen since the Scottish Parliament was re-established, and it was always going to test the devolution settlement in ways that it had not been tested before.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): Will the member take an intervention?

Alexander Stewart: I want to make a little progress, but I will come back to the member.

Philip Rycroft told the committee that

"you have to see Brexit as a break point in all sorts of ways ... it will require a reconfiguration ... of how ... relations are managed."—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 14.]

That is why I welcome today's debate, which provides the Parliament with the chance to clearly set out a vision for how devolution should work post-Brexit and how we should manage that.

As a member of the Constitution, Europe, External Affairs and Culture Committee, I welcome the publication of the committee's report, which has shown how the devolution settlement is changing post EU.

Kate Forbes: The member said that the post-Brexit period was a test for intergovernmental relations and democracy. Has the UK Government passed that test or failed it?

Alexander Stewart: That is a good question to ask, because, as I said, there has been conflict and it continues. That period is still on-going, and we need to look at what we can achieve in the fullness of time. I hope that we can bridge some of the gaps. That is my aspiration, but there is still some friction in the process, which needs to be ironed out.

The report provides an important perspective on the challenges facing the devolution framework.

John Swinney: Will Alexander Stewart give way?

Alexander Stewart: No, not at the moment.

The report also sets out a possible vision for tackling some of those challenges. It received input from the UK Government and the Scottish Government, and numerous stakeholders participated. I hope that ministers will be able to consider all the issues that were raised with great interest and in good faith.

Whatever devolution looks like in the future, it must allow disputes to be properly resolved. The continued success of devolution depends on that. Despite the number of disagreements between different levels of Government in previous years, the current formula for dispute resolution provides a new way of addressing them. In practice, the good and right thing to do when tackling such disputes has been to consider them at the lowest level possible. The UK minister talked about that.

Our committee also heard evidence that simply referring each disagreement to a formal process would provide good initiative for civil servants to work closely together. The introduction of a statutory footing in various aspects of intergovernmental relations needs to be raised, as disagreements between Governments have become more frequent since Brexit. We know that. Indeed, the possibility of some form of statutory dispute resolution process was first talked about long ago. However, placing those intergovernmental structures into statute could limit some of the dialogue between the different levels of Government. Any future devolution statement must have flexibility. Such flexibility could give us a real chance to move forward.

The convener mentioned our event at the University of Strathclyde yesterday. I commend and congratulate all those who attended it, because it brought a focus from not only academics but legal practitioners and politicians to talking about what we are doing and how we will go forward. Many of them came up with ideas and opportunities for how that might take place.

John Swinney: Will Mr Stewart give his opinion on the question that I put to the convener about whether there should be changes to the intergovernmental frameworks to enable the devolved Governments to better protect the devolved settlements than has been the case until now because of the United Kingdom Government's overriding power? If that is not to be the case—

The Deputy Presiding Officer: I call Alexander Stewart.

Alexander Stewart: The convener partly answered Mr Swinney's question about how that would happen. There has been and continues to be a need for the UK Government to understand and accept what happens in the devolution

process and the way in which that is managed, but I fundamentally believe that we can find a way forward. There must be a way forward to ensure that we can work collaboratively and take a holistic approach to making things work.

The committee's report makes recommendations. It talks about the need for a new memorandum of understanding to be developed. That would be a good way of trying to manage the situation going forward. For that recommendation to be successful, it needs a positive approach. That option would keep some of the advantages of the current system, which need to be considered.

We have already discussed the internal market, which I have no doubt will continue to be discussed in many speeches in the debate. The committee heard numerous opinions on the United Kingdom Internal Market Act 2020 and how it relates to the devolution settlement. The Scottish Government stated in evidence that the act is a

"wide-ranging constraint on devolved competence",

and we have heard that from the cabinet secretary today. However, we have to acknowledge that the act will have an effect on the economy, and we must understand that.

The committee heard evidence that significant divergence can

"be expensive for businesses, disrupt supply chains and, ultimately, reduce choice for consumers."

We also heard about the important issue of

"what divergence would mean for the effective delivery of business on both sides of the border."—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 6-7, 8.]

We have to understand that exports to the rest of the UK continue to increase, and now make up 61 per cent of Scottish exports, and that about two thirds of imports come from the rest of the UK. That is vitally important, as we talk about jobs and trade in the United Kingdom.

The possibility of regulatory divergence between different parts of the United Kingdom that responds to the different needs and circumstances is an important principle. However, the principle must not come at the expense of preventing the UK internal market from operating effectively. The operation of the internal market is therefore vitally important to the success of the economy in Scotland.

When we look at how devolution will work in the future, we find that there may be significant changes compared with where we have been. Devolution has been a success in the past, and Brexit cannot be seen as a complete failure. Some people believe that, and I have no doubt that we will hear that today, but I automatically think that

there is potential in where we want to take that. We need to think about the principles of the devolution settlement that we will create under Brexit.

The committee talked about a “shared space” between the UK and Scottish Governments after Brexit, which is vital. Along with other members of the Constitution, Europe, External Affairs and Culture Committee, I will continue to push for that approach at all levels of Government, to continue the success. By working together, we can achieve things in a much better way.

The Deputy Presiding Officer: Although I always encourage interventions, I urge members to try to keep them as concise as possible.

I call Neil Bibby.

15:12

Neil Bibby (West Scotland) (Lab): Thank you, Presiding Officer. I wish you and every member across the chamber a very happy new year.

I join the convener of the Constitution, Europe, External Affairs and Culture Committee, Clare Adamson, in thanking the clerks to the committee for their diligent work on drafting the important report that we are discussing today on devolution post-EU. I was not a member of the committee during the stakeholder witness sessions of the inquiry, but I thank all those who gave evidence on the subject last year and commend all committee members who have been involved in producing what is a consensual report.

This year, we will mark 25 years since the creation of the Scottish Parliament, following the Scotland Act 1998, which was introduced by the previous Labour Government. Devolution has, of course, evolved over that time, with this place gaining two significant sets of additional powers, over taxation and welfare, which have made the Parliament one of the most powerful devolved institutions in the world. However, as has been said, when the Parliament was created, the United Kingdom was a member of the European Union and no one envisaged that changing.

Implementing EU law was a legal requirement and there was, as the committee notes,

“considerable clarity, consistency and consensus in how the regulatory environment was managed within the UK prior to EU-exit.”

Our withdrawal from the EU has therefore undoubtedly created the most challenging and complex period for devolution since 1999.

John Swinney: Mr Bibby made the important point that two additional tranches of powers have been allocated to this Parliament. I would contend—I think that Mr Bibby would agree—that

that was a result of democratic pressure within Scotland to acquire those powers, as was the 1997 referendum. Does he think that it is a serious democratic issue and problem for Scotland that those powers have been eroded in the aftermath of Brexit and that the people of Scotland have not been asked about that?

Neil Bibby: I will come on to that. There are clearly concerns about how devolution has been undermined in recent years post-Brexit. In terms of the democratic way forward, the next UK general election—at which the Labour Party will set out our plans—will be an opportunity to reset the relationship between the UK Government and devolved Governments and to resolve some of the issues that we are concerned about.

As the Institute for Government has stated, we have been left with a big zone of regulatory uncertainty, which has created a need for greater co-operation between the Government’s new institutions and, to be frank, a new culture of shared governance. That was echoed by Professor Hugh Rawlings, a former director of constitutional affairs at the Welsh Government, who told us that

“devolution depends, at a fundamental level, on understandings of trust between Governments.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 12.]

Scottish Labour very much agrees with that. We believe that the people of Scotland and the rest of the UK will be best served by a culture of co-operation and trust between our Governments, instead of a culture of conflict. The people of Scotland have not had that in recent years, and the next UK elections, as well as the Scottish Parliament elections, will be an opportunity to reset the relations between the UK and Scottish Governments.

Scottish Labour recognises that there was a deterioration in relations between the current UK Government and all the devolved Governments post-Brexit, particularly under Boris Johnson. We also recognise that, even before Brexit, there was a poor relationship between the Conservative and SNP Governments, as noted by the Smith commission in the committee’s report. We therefore agree with the committee that there must be better intergovernmental and interparliamentary relations to deal with the overlaps between reserved and devolved powers.

There should be a new memorandum of understanding, and I agree with the cabinet secretary when he says that, when agreements are made, they need to be adhered to. The memorandum of understanding between the respective Governments is right to state that they will seek to alert each other to relevant developments within their areas of responsibility,

as soon as practical and, wherever possible, prior to publication. It is important that ministers as well as civil servants work closely together to iron out potential problems before they can arise, but we question whether there really is the political climate and will from Government ministers to make that a reality.

To help that, we also believe that greater transparency of intergovernmental working can lead to better outcomes and help Parliaments to hold Government and ministers to account. It is clear that we need a new approach, a new relationship and new ways of working.

As has already been mentioned, unlike intergovernmental relations more generally, the Sewel convention worked relatively very well prior to Brexit. Consent was withheld on only one occasion out of 140 between 1999 and 2015, and that one occasion was followed by a compromise. However, as the cabinet secretary said, it has been breached significantly and on numerous occasions by the Conservative Government in recent years, particularly under Boris Johnson. The Labour Party in Scotland, Wales and across the UK does not believe that it is acceptable for UK Governments to legislate in devolved areas without consent. We need to return to the situation in which the UK Government respects and adheres to the Sewel convention.

The best indicator of future behaviour is past behaviour. The Labour Government not only created devolution but defended it and would do so again. However, more than that, and as the convener said, we recognise the need for structural reform and the need to strengthen the Sewel convention legally. As Professor Jim Gallagher told us, the breach of the Sewel convention in relation to the United Kingdom Internal Market Act 2020 was

“an error of constitutional significance”

and it

“leaves the argument for strengthening the Sewel convention unanswerable.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 5.]

That is why the UK Labour Party’s commission on the future of the UK, which was initiated and welcomed by Keir Starmer, recommends that there should be a new statutory formulation of the Sewel convention and that it should be legally binding. It should apply to legislation in relation to devolved matters and explicitly to legislation that affects the status or powers of the devolved legislators and executives. It should not be restricted to applying normally; it should be binding in all circumstances.

The next UK general election, whenever it comes this year, will be an opportunity to elect a

Labour Government that is committed to defending devolution and making the UK better for Scotland now and into the future. It is important for us to recognise, as the committee has done, the importance of governance in England. Widespread devolution in England, as proposed by the Labour Party’s commission, could change the face of the UK and the context for devolution for Scotland, Wales and Northern Ireland for the better.

I am pleased that the report details the support for common frameworks among the Scottish Government, the Welsh Government and a host of academics. I hear what the cabinet secretary said about the UK Government’s position, but it has at least acknowledged the role that it could play. In the previous debate on the United Kingdom Internal Market Act 2020, I spoke about the need for new, effective and agreed common frameworks to protect devolution and manage potential divergence across the UK.

We have a serious issue, but the potential use of new common frameworks is a serious solution with serious support. Clearly, there are concerns, which the report looks at, about how they can be approved, but we agree with the committee and the Welsh and Scottish Governments that new, effective, more transparent, improved and agreed common frameworks should be seriously considered, discussed and taken forward.

Unlike the Scottish Government, we recognise the importance of the UK internal market to Scotland’s economy and businesses. We recognise, as the committee has done, that divergence can be expensive for business, and we must raise awareness of the United Kingdom Internal Market Act 2020 and common frameworks. It is crucial that business stakeholders are involved in developing new regulations.

Do you want me to close, Presiding Officer?

The Deputy Presiding Officer: I want you to close.

Neil Bibby: We welcome the report, and we look forward to setting our own plans to support self-government for Scotland and shared government across the UK.

The Deputy Presiding Officer: I call Alex Cole-Hamilton.

15:20

Alex Cole-Hamilton (Edinburgh Western) (LD): Thank you, Presiding Officer. Happy new year to you and to colleagues across the chamber. I am grateful for the opportunity to debate the report and for the unanimity that it has commanded across the committee.

It is no secret that, when the United Kingdom voted in 2016 by a slim majority to leave the European Union, it broke my heart and the hearts of many Liberals across the country, not only because this country's membership of the European Union represented a kind of liberalism and internationalism that is in my bones but because we knew the chaos and damage that would be wrought as a result of Brexit. Brexit has placed enormous strain on the British economy and our society, and, as the committee report outlines, it has placed great strain on the very mechanisms that were designed to underpin devolution.

However, it is important that we recognise that there were issues with devolution before Brexit blasted its way into our politics and our lives. Indeed, in 2015, the Smith commission singled out the problem of "weak inter-governmental working", and the relationship between Scotland's two Governments was repeatedly raised as a problem in that agreement. It stated:

"There needs to be greater respect between them",

with "them" being the two Governments. Anyone who has followed Scottish politics in recent years—and, indeed, since 2015—would see that our two Governments have failed the measure of the test that was set to them by the commission.

The Smith commission also stated that, at a fundamental level, devolution depends on understandings of trust between Governments. However, that trust has been undermined by both of Scotland's Governments.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I am grateful to Alex Cole-Hamilton for giving way, and I hear what he says, but I am curious as to whether he will at any point give up on the moral equivalence that he seems to be drawing between the two Governments concerned. One Government appears to be restricting our powers, and the other Government—or rather, the other Parliament—seems to have to pick up the pieces from that.

Alex Cole-Hamilton: I am grateful to Alasdair Allan for his intervention. I will certainly cover the substance of that as I expand on my remarks, but I note that I am not trying to draw moral equivalence. I understand that there has been reckless behaviour by the Tory Government, but there has been reckless behaviour by the SNP Government as well. The faults of this terrible Conservative Government have been legion, and it has undermined devolution. However, the SNP-led Government loves nothing more than to be affronted by whatever perceived slight it feels from Westminster in any given week, because that is politically expedient for it.

Let us be honest—neither the SNP nor the Greens have any interest in reforming either devolution or the United Kingdom. That would undermine their efforts to sow grievance and hostility towards this broken system. In truth, reform is the thing that the nationalists fear the most. The Conservatives at Westminster and the SNP at Holyrood have put their narrow party interests before country and engaged in petty squabbles in an attempt to fire up their base. That is the sort of tired and divisive politics that we must grow out of and leave behind.

Only the Liberal Democrats have a plan to deliver the transformative constitutional change that would protect and strengthen devolution. We fundamentally believe that Scotland's future lies in a reformed and federal Britain. That vision is built around the belief that power works better when it is devolved closer to the people that it serves. It means having foolproof systems that would see the Scottish and UK Governments working together and resolving disputes maturely instead of hunting for friction and sowing grievance. Our reforms would include a proportional voting system, a written constitution and an end to the unelected House of Lords.

Scottish devolution should have been the poster child for a federal vision of Britain. Instead, division has characterised the past 16 years, and in no way has Scottish devolution commended that vision or the extension of the devolution project to the region of England.

In contrast, the first eight years of Holyrood's existence were characterised by compromise and consensus. They were years of coalition between my party and Scottish Labour and led to a great many progressive reforms. *[Interruption.]* Presiding Officer, I am finding it quite difficult to concentrate because of the chuntering to my left.

The coalition between Scottish Labour and my party led to a great many progressive reforms, including free personal care for the elderly; the creation of the bus pass; the smoking ban; and the McCrone deal, which transformed teachers' pay and conditions.

Let us not forget that devolution must include giving more powers to local authorities, which means rolling back the SNP power grabs from councils that have seen communities being asset stripped by this Government. We need to see local power in local hands, which means properly funding our local councils, not taking them to the brink of bankruptcy.

Brexit forced a reassessment of the devolution settlement and of the ways in which our Governments work together, but the rancour and acrimony that that process caused arguably led to further harm when our two Governments were

forced to work together during the pandemic that followed. Brexit and the pandemic have shown us the deficiencies in how those two Governments work together when left to their own devices, which screams of the need for us to further codify frameworks for dispute resolution and to have intergovernmental rules of engagement. All that must be embedded in a properly written constitution for a reformed and federal Britain.

The Deputy Presiding Officer: We move to the open debate.

15:26

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): Many members have already outlined some of the core issues that the report highlights. It is worth noting that the report received unanimous support from across party lines, because what we have seen—particularly since Brexit, although that may just have brought an existing risk to the fore—is a result not of the political disagreement that inevitably takes place in every democracy but of structural inadequacies.

I will begin there because, although there has been unanimous support for the substance of the report, we do not have unanimous support for the resolution. The report highlights, loudly and clearly, that the legal safeguards for devolution are insufficient to protect the, albeit limited, powers and functions of the Scottish Parliament from a hostile Government in London. For those of us—which I hope would be everyone in this chamber—who believe that Scotland is wealthy enough, clever enough and big enough to make our own decisions about the matters that affect the people of Scotland, the question is how we can ensure that our legal safeguards are made more robust. I have one answer to that question, which I think is the only resolution that will safeguard Scotland's powers. That answer is, of course, independence. The question for the other parties is what they believe would be sufficient to safeguard those powers.

My second point is that this is ultimately about democracy and the citizens of this country. The Scottish Parliament was established by, and retains, popular support. The devolution settlement was designed to safeguard precisely what citizens had voted for in a democratically recognised contest—a referendum. Therefore, irrespective of which party is in power, either south or north of the border, we have a duty to ensure that the legal safeguards of devolution are sufficient to deliver what the people of Scotland voted for in a referendum that was bigger than any particular party.

My third point—and one that many members have alluded to—is that Brexit disrupted the

devolution settlement. Alexander Stewart called it a test, which I think is an excellent characterisation. Alex Cole-Hamilton spoke about how Brexit forced a change to devolution, which is true. Whether or not we voted for Brexit, it had a massive impact because it posed to the UK Government the question of where it felt power should lie. Critically, the UK Government chose to answer that question alone. It did not decentralise the power to answer the question. Instead, it chose at every turn not just to centralise power to the UK Government but to erode power that already existed at a Scottish Government and Scottish Parliament level. That inevitably led to increasing conflict, as others have said.

However, I repeat that this is not a question of politics. Indeed, it is the Labour First Minister of Wales who has so often captured what many of us have been thinking. Some of his words have already been quoted. On legislative consent, he said:

“When it became inconvenient for the UK Government to observe Sewel”—

one of those safeguards—

“they just went ahead and rode roughshod through it.”

He added:

“More recently, I am afraid, the Sewel convention has withered on the vine.”

On the United Kingdom Internal Market Act 2020, he said:

“I would dispute the use of the Internal Market Act for these purposes.”

In that case, he was referring to Scotland's deposit return scheme. He added:

“if they were to invoke it, there will be ... serious questions for the UK Government.”

In Scotland, we will always disagree along political lines. Indeed, we should disagree, whether outside the Parliament or inside it. We will disagree on policies and on personnel, or who should be in power. We will disagree on many things. We will disagree once again in the lead-up to the next election. However, one thing that we cannot disagree on is the fact that devolution is under incredible strain and that just talking about it is insufficient. We need to ensure that safeguards are in place, not just to protect it but to enhance it.

Right now, we are doing a disservice to the citizens of this country, who are watching devolution continuing to be eroded. They voted for the Scottish Parliament, which is bigger than any party that occupies it. They are supportive of further powers. That is greater than any constitutional position that we may take. The last point is that they expect political parties to deliver for them. Where we see the UK Government riding

roughshod over the Scottish Government when it comes to spending money or making decisions, we are at great risk of having ballooning bureaucracy that does them a disservice. For those reasons, I support the report.

15:32

Jamie Greene (West Scotland) (Con): Within two weeks of my joining this Parliament, in 2016, Scotland was thrust into its second constitutional referendum in two years. Many of us in the chamber bear the scars of debating amendments to the first incarnation of the EU continuity bill. I will not rehearse that saga or the Supreme Court finding on its legality, but that context is important because it created the post-EU legislative no-man's-land that we are yet to resolve, as the report makes clear. The whole conversation has often been simplistically reduced to a political one—which has, I am afraid to say, often been driven by anti-UK rhetoric.

The second EU continuity bill, which phoenixed out of it all, while technical in nature, was itself motivated by politics and not required by law. Technically, it did not give this Parliament any new powers. Instead, it gave Scottish ministers the ability to fast-track procedures to adopt EU regulations. It was the vehicle by which this Parliament could directly transpose EU law into Scots law. Politically speaking, however, it was a mechanism by which SNP ministers could tell Europe that Scotland prefers to align with its direction of travel than with that of any Westminster Government, whatever our views on that. Any future approach to the doors of Brussels institutions would be met with an inquisition on whether and, if so, how Scotland had aligned with European values and standards.

The so-called keeping pace powers of that bill clearly served three potential purposes. The first was to lay down a marker that Scottish ministers would not simply acquiesce to any perceived post-EU power grab by Westminster. However, I would contest that any such power grab has occurred primarily because the mechanism for adopting EU laws in the UK never required in-depth devolved scrutiny in the first place. There simply never was a committee of this Parliament that scrutinised every EU directive before its adoption in Scotland.

Secondly, in theory, the continuity bill could have facilitated in Scotland the systematic alignment of EU laws and directives in their fullest interpretation, in so far as competency allowed. That has not happened either.

Thirdly, however, the powers were simply an enabling mechanism to allow Scotland to borrow ideas from Europe at will and case by case. If I was being generous, I would say that that was

perhaps the most useful and sensible of the bill's three purposes.

We must not forget that, when the UK was a member state of the EU, every directive was scrutinised word by word and was subject to layers of analysis, raked over with a fine-tooth comb by Westminster committees—notably in the House of Lords, which formed not one but five dedicated committees solely to scrutinise EU law. Of course, the SNP refuses to sit in that house—as is its prerogative—and has thus denied itself a seat at that table.

In response, therefore, to the supposed position that, post-EU, devolution is suffering, I simply ask ministers what has been done with the powers that are contained in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021; how much keeping pace has been achieved; and how many of the 243 EU directives that are currently progressing through Brussels the Scottish Government is actively looking at adopting in Scotland. Civil servants in Scotland have produced numerous white papers on independence—itsself a hypothetical scenario—but virtually nothing on the reality that we currently live in.

Not everything that comes out of Europe is bad, but neither is all of it good. The problem is, how would we know? What is the Scottish Government's position on the new EU toy safety directives, on the new anti-greenwashing directives or on the EU directive on data collection for short-term lets—which, by the way, is an issue that the UK Parliament has already considered? Which of those policies do we prefer: the UK law that has already been enacted or the EU one that does not yet exist? What about the European health data directive, which plans sweeping and radical changes to laws that govern personal data and sharing of that data across the EU? What is the SNP's position on that? Are we keeping pace? Would we even want to keep pace?

We have teams of experienced civil servants from Scotland in Brussels, but I have yet to see a single keeping pace briefing from them to MSPs on any current legislative analysis of the EU. Even if, for the purpose of this debate alone, we were to accept that Scotland might be better off aligning with some of those laws, we cannot have that debate if the starting position is "UK bad, EU good".

A sophisticated law-making machine would be needed to drive that sort of law making, and I seriously doubt whether this Parliament would even cope with on-boarding the mammoth weight of such a volume of legislation. Such is our limited capacity, we can barely get through our own domestic legislative agenda. We have neither the expertise nor the capacity to convert the new

constitutional arrangement to devolution's advantage. Rather than running and re-running the two very tired arguments on either side of Brexit or even the independence debate, why are we not using this chamber constructively to identify opportunities for Scotland to best use the powers that hitherto rested in Brussels but now live in our two Parliaments?

Even the hardiest of pro-EU or pro-independence activists would concede that they have missed an opportunity in Scotland. The cabinet secretary might even find some enthusiasm for the adoption of the odd EU policy, to our collective benefit. I would rather debate the merits of policy proposals with the Government than argue over hypothetical power grabs. You may call me old-fashioned, Presiding Officer, but this is supposed to be a Parliament, so let us debate the substance of those new laws rather than simply lament their absence.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Happy new year, Presiding Officer.

I recognise the considerable work of the CEEAC Committee, which reported in October on the changing constitutional relationships in the UK. In its report, the committee concludes diplomatically that

“whereas constitutional change prior to EU-exit was implemented across the UK on a largely consensual basis this has not been the case after EU-exit.”

That goes to the heart of the matter. The kinds of changes that we have seen to the way that devolution works are not the product, as previous changes were, of some kind of conversation between the UK Government and its counterparts in Edinburgh and Cardiff, but are the work of a UK Government to which the previous political consensus about devolution does not now wholly extend.

It is as well to note that in the view of Professor Jim Gallagher, the former director general for devolution at the UK Cabinet Office, the UK constitution—in so far as there actually is one—has now been “stretched beyond breaking point” by Brexit.

One concrete example of all that, which other members have discussed, is the Sewel convention. From the re-establishment of this Parliament in 1999, right up until the Brexit referendum, the convention was engaged more than 140 times. Only once in that period did the UK Parliament even attempt to legislate in a devolved area without Scotland's consent. The Sewel convention is now, however, clearly history: Westminster now regularly seeks to make law in devolved areas, regardless of what Scotland's elected Parliament might think.

When that is taken together with other developments, we see that there is now a clear trend: we now see the UK Government spending, in devolved areas, public money that would, in the past, have unquestioningly been left to this Parliament to allocate. The United Kingdom Internal Market Act 2020 and the Subsidy Control Act 2020 place effective restrictions on Holyrood's agency to do things differently—a restriction that has, apparently, been endorsed today by Alexander Stewart—and we have seen a section 35 order made to prevent royal assent being given to a Scottish act.

Then, we have the Retained EU Law (Revocation and Reform) Act 2023, which—to be fair—eventually had its so-called automatic sunset clause abandoned when the UK Government finally realised that it was about to unpick so much of the UK and Scots statute books that it would threaten a legislative meltdown.

It is not easy to avoid the impression that, even after 25 years, elements of the Westminster machine continue not to fully understand devolution. Interestingly, the CEEAC Committee report points out that the lack of clear structures for governance of England contributes somewhat to that on-going confusion.

Members should have seen the warning signs some time ago, when it became clear that Westminster was regularly unclear about whether it was speaking as the English Parliament or the UK Parliament. An early example was when the then Speaker of the House of Commons, John Smith, said, on receipt from us of the “Articles of Union” in 1707, that

“we have catch'd Scotland and will bind her fast”.

I quote that remark because it betrays a view that in some quarters has not been entirely consigned to history, and which certainly has an impact on the way in which the rules of devolution shift mid-game in our own day. Indeed, Professor Rawlings told the committee:

“there was profound ambivalence on the part of the UK Government as to the extent to which the other Administrations had a legitimate part to play in the governance of the UK. Without that shared understanding of what the roles of the various Administrations could be, productive intergovernmental relations were not likely.”—*[Official Report, Constitution, Europe, External Affairs and Culture Committee, 9 March 2023; c 20.]*

Anyone might have hoped that there would be—as there was in the committee, on the report—political consensus in the chamber that the pressures on this Parliament from Westminster since Brexit do not represent good government, regardless of what our individual differing constitutional politics might be. Indeed, there was a time when even the Tory party promoted people who, although they were politically unionist, would

stand up for Scotland's distinctive institutions and her right to pursue policy differently. Sir Walter Scott and John Buchan are conspicuous examples of that tradition, although I concede that they are by no means the most recent.

These days, however, the refrain from the Tories in here, with a number of honourable exceptions, is to ask why Scotland should ever do anything differently from England—a question that is, tellingly, never posed the other way around. Meanwhile, in the UK Government, we have a Secretary of State for Scotland whose view of this Parliament is, I am afraid, perhaps more dismissive than that of any of his predecessors in that office since the first Earl of Seafield.

Constitutional reform is supposed to be about first principles, but that is not how constitutional change works in the UK. Layer upon layer of new and byzantine qualifications to devolution have been laid on one another in an effort to square the Brexit circle.

This Parliament and the Senedd in Wales are not even considerations in the UK Government's mind in any of this. It is as well that we all just say that.

15:44

Alex Rowley (Mid Scotland and Fife) (Lab): I thank the committee and its clerks for their work in publishing such a detailed report. On reading it, my first take was that it contains complex and often technical discussion on how our two Governments and two Parliaments work together in the interests of the people of Scotland and the UK, which is now even more complex following Brexit.

The committee's adviser, Professor Michael Keating, said that there is now

"a complex landscape of intergovernmental mechanisms, which has grown incrementally rather than following from a clear constitutional design."

As the chair of the House of Commons Public Administration and Constitutional Affairs Committee told our committee, it had considered how devolution works before Brexit. It is worth noting that, in his view, little progress has been made.

Professor Nicola McEwen said:

"Changes were already afoot before Brexit came along, with the new devolution settlement making things a lot more complex and interdependent given the split between devolved and reserved powers."

She added that the impact of Brexit created

"a completely new constitutional landscape within which devolution is framed."—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 16 March 2023; c 2.]

As the committee stated, fundamentally there remains an on-going intergovernmental disagreement regarding the extent to which the executive and legislative autonomy of devolved Governments and legislatures has been undermined by the constitutional arrangements that were put in place post-EU exit.

Such matters are often complex and are often technical, but the key point is that, if the two Governments are to make progress and reach agreement, both must be committed to the principles of devolution and be willing to cooperate to find agreed solutions.

A point that is made many times in the report, and an example that other members have mentioned, came from Lord Smith, who stated that there needs to be greater respect between both Governments.

Professor Jim Gallagher stated that the United Kingdom Internal Market Act 2020

"was an error and that it would have been possible to deal with questions of regulatory divergence and that, in practice, it will be possible to deal with such questions, if there is the political will to do so between the respective Governments."—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 4.]

Sadly, not only has that not happened but—I suggest—it has often felt as though the two parties in Government have been determined to use the constitution to create division, conflict and confusion, all in the pursuit of their own political ambitions.

I believe that, up and down Scotland, people have had enough of division; indeed, they are exhausted by the constant bickering between the two Governments and they want a change in approach, in attitude and in focus. Labour is the party of devolution. Labour in Government delivered the Scottish Parliament with the backing of 75 per cent of voters in the 1997 referendum. An enormous majority showed the strength of feeling in the country that Scotland needed greater power and control over issues that impact on Scottish people

People who support independence say that devolution is not enough to resolve the issues that Scotland faces and that only an independent Scotland is capable of achieving that. Those who are entirely opposed to independence say that devolution is a failed experiment and that the UK Government should have supremacy over all areas of the UK. I agree with the comments that Anas Sarwar made in his new year speech yesterday, in which he said:

"Devolution was never meant to be about two Governments fighting with each other and ultimately failing Scots."

Nor, in my opinion, was devolution meant to be about which flag we stick on a piece of legislation, or about simply moving power from one centralised institution to another.

Devolution is supposed to be the opportunity for the interests and concerns of the Scottish people to be better represented, and for decisions to be made at the level at which making them makes most sense, whether that is in communities, local authorities, regions or the individual countries that make up the UK, or at UK level. That is why Labour is clear that we need co-operation over conflict, so that we can build a Scotland that thrives in a coalition of neighbours, rather than a Scotland that is the only loser in an endless and pointless tug-of-war.

All members have a responsibility to the electorate to ensure that devolution is no longer used as a weapon of division but as a tool for delivering for the people of Scotland. The people of Scotland deserve no less.

15:50

Keith Brown (Clackmannanshire and Dunblane) (SNP): I joined the committee in September 2023, which was after the evidence-taking sessions had taken place but before the publication of the report. However, I have been a member of the Parliament since 2007, and I think that it is fair to say that the impact of Brexit on the Parliament is clear for all to see. I offer a little corrective to what Alex Rowley and Alex Cole-Hamilton are trying to portray—I do not know why they want to excuse what the Tory Government does, but they do. They may remember that when the Labour Party was in control of the Scottish Parliament along with the Liberal Democrats, Jack McConnell commissioned a report that showed that there was widespread ignorance of and indifference to our institution across the whole of Whitehall. That was under a Labour Government in the UK during the time that Labour was in power in Scotland.

It has often been said that power devolved is power retained. Although that has always been true, it is also true that, when the UK was a member of the EU, there was a degree of protection for the rights of Parliaments, such as ours, situated in larger EU states. That provided a framework of intergovernmental relationships that more or less worked as intended—although, of course, my preference has always been for Scotland to be an EU member state in its own right. When I say that I am an internationalist to my bones, I do not mean, as Alex Cole-Hamilton does, that I was an internationalist until Brexit happened and then I gave up on opposing Brexit; I opposed Brexit, and I oppose Brexit now.

As expressed in the conclusions of part 2 of the committee's report, it is clear that devolution looks very different outside the EU compared with when the UK was a member state. The committee notes that there was considerable clarity, consistency and consensus in how the regulatory environment was managed within the UK prior to EU exit, whereas, after EU exit, there has been significant disagreement between the devolved institutions and the UK Government regarding how the regulatory environment should be managed within the UK. Jamie Greene is utterly deluded if he thinks that the UK Parliament would provide proper scrutiny of EU legislation. There is probably no academic whom he could cite who would back up that point of view. The UK Government has not provided that scrutiny in the past and it has done as much as it can to undermine Scotland's ability to carry out such scrutiny.

As well as a change in the legislative framework, there has been a change in the attitude of the UK Government, which has already been mentioned. Muscular unionism is now the norm. That is very redolent—for those who can remember that time—of the mid-1990s, before the Tory Government, which was one of the most strident and least tolerant, was thrown out. As well as that change in attitude, many members have mentioned the UK Government's willingness to override the Sewel convention. I remember the vow that we would have the strongest devolved Parliament in the world. Gordon Brown and David Cameron told us that. Part of that was to have the Sewel convention enshrined in law. Within a very short period of time, the Tory Westminster Government had moved on to saying before the Supreme Court that the Sewel convention was merely a self-denying ordinance—something that it could decide whether it wanted to observe. That is how quickly devolution has changed under this Conservative Government.

Much of the problem comes down to the ad hoc nature of the British constitution, whereby conventions and general principles apply until, of course, they do not apply. There is nothing hard and fast about how the UK operates. Although we are used to that by now, we should not put up with it. We should not normalise the idea that the holder of one of the most important offices of state in the UK—the Foreign Secretary—is just somebody plucked from elsewhere without being elected. There is also the proroguing of Parliament and the various other rules, which are not really rules.

The UK used to say that it was a model democracy—the mother of all Parliaments—and that it supported the separation of powers, but at the same time, we had the Lord Chancellor, who was in the Executive, the judiciary and the legislature. There has never been a separation of

powers in the UK Parliament. Since the independence referendum, we have been repeatedly told that we are the most powerful devolved Parliament in the world. However, we have heard from the cabinet secretary of 11 times that the UK Government has run roughshod over the Sewel convention.

In 2016, David Cameron claimed that the Scotland Bill, once enacted, would deliver a very powerful devolved Parliament. Speaking to the House of Commons Liaison Committee last July, Rishi Sunak said:

“actually, the Scottish Government, as far as I recall from when I last looked at this, is probably the most powerful devolved Assembly anywhere in the world”.

It is as if, if they say it often enough and loud enough, people will eventually believe them, but that quote from Rishi Sunak gives the game away. In saying

“as far as I can recall”,

“when I last looked at this”,

and “probably”, I do not know whether he could have caveated it any heavier. The reality is that it is simply not true—this Parliament can be overruled and is being overruled by Westminster. The use of section 35 powers has had—

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Will the member give way?

Keith Brown: I will do, if the member can be brief.

The Deputy Presiding Officer: Jim Fairlie, briefly.

Jim Fairlie: Alex Rowley, Alexander Stewart and Jamie Greene all said that it is our fault in this Parliament that the devolution settlement is not working, but I have a quote from the Law Society of Scotland’s written evidence on devolution to the Rural Affairs and Islands Committee:

“We note that there are no domestic legal constraints on the powers of the UK Parliament or the UK Government concerning common frameworks ... we note that the devolved governments will be bound to such common frameworks either because they have agreed to them or because they are bound by law.”

Does that not emphasise the fact that power devolved is power retained?

The Deputy Presiding Officer: That was not brief.

Keith Brown: It was not brief, but it is true. I was just about to mention section 35. The real effect of section 35 being exercised is the chilling effect that it will have on this Parliament and the Scottish Government when it considers what future legislation it wants to take forward for the people of Scotland. That would apply to any party in the Scottish Parliament.

Despite all the warm words about how powerful the Parliament is, the Tories in this Parliament have cheered the UK Government every step of the way. They do not see themselves as representatives of this devolved institution; they see themselves as agents of the Tory party and the Tory Government in Westminster. I am sure that that is a fundamental betrayal of the electorate that sent them here in the first place. They have cheered every step of the way of the UK Government riding roughshod over the democratically expressed views of the Scottish people.

In the meantime, I support the report. I echo the concerns that it expresses, and I commend its recommendations to the Parliament.

15:57

John Swinney (Perthshire North) (SNP): I begin by commending the Constitution, Europe, External Affairs and Culture Committee on an outstanding report, which is a seminal moment for this Parliament and this parliamentary session for two reasons. First, the convener has managed to draw together shades of opinion right across the parliamentary spectrum in a report that unanimously concludes that, as a consequence of Brexit, the powers of this Parliament have been undermined by the actions and response of the UK Government. I do not say that to be provocative—I say it to recognise and admire the strength of conclusion that has been arrived at by the thinking and contribution of members from across the political spectrum.

The second reason that it is a seminal moment is that we are beginning to confront the democratic difficulty that Scotland now finds itself in. In 1997, the devolution referendum resulted in the overwhelming consent—the utterly gobsmacking level of consent—of the people of Scotland to the establishment of the Scottish Parliament. Attracting that degree of consent from the public in Scotland was an absolute triumph for the founders and architects of devolution.

Arguably, as I said in my intervention on Mr Bibby earlier, the independence referendum in 2014 indicated, much to my concern and distress, that people in Scotland at that stage did not want Scotland to be independent. I think that it is a reasonable conclusion to draw that they reaffirmed their support for devolution.

Along came the Brexit referendum in 2016. The Scottish people voted decisively against Brexit, but Brexit was forced down their throats by a Conservative Government that was determined to pursue the approach that it has taken. However, in so doing, it has undermined the democratic consent that was given by the people of Scotland

in 1997—nobody has addressed that argument yet. Fundamentally, the people of Scotland have had the settlement that they voted for comprehensively and overwhelmingly in 1997 undermined by a Conservative Government that is pursuing the implementation of Brexit, which people in Scotland did not vote for. That has had implications for devolution that people in Scotland never consented to.

If we need evidence of what that undermining of the devolution settlement looks like, it looks like the disregarding—the rendering as meaningless—of the Sewel convention, given the number of times that it has been breached since 2018. If Mr Greene thinks that the Scottish Parliament would be able, without interference from the United Kingdom Internal Market Act 2020 and the UK Government, to do all that he asked it to do, he is living in fantasy land. All that we need to look to is the deposit—[*Interruption.*] Mr Greene has shouted out to me that we have not even tried. We have tried things such as the deposit return scheme. For heaven's sake, glass recycling is such a constitutional threat that we cannot be allowed to get on with it because of its threat to the internal market act. That act is being used to erode the Parliament's ability and confidence to legislate in areas of its devolved competence. As a former minister, I can imagine what the advice to current ministers about the ability to confidently legislate will be like. Various caveats will be put in by civil servants for good reason—because of the precedent that has been set by the malicious actions of the Secretary of State for Scotland in undermining the deposit return scheme.

This is when I get to people such as Mr Rowley. Mr Rowley knows that I hold him in the highest personal regard and admiration. However, I am very disappointed by his speech today. He tried to take the Alex Cole-Hamilton approach to the debate, which flummoxes me entirely, in trying to equate the determination of the Scottish Government to act within its legislative competence with the right of the Secretary of State for Scotland to act on a malicious and unfounded basis in eroding the deposit return scheme. I cannot fathom that. I cannot see how he can equate those two actions.

The debate prompts a big question, which my colleague Kate Forbes has put to Parliament today. What do we do about this? Do we return to our tribal backgrounds and criticise people—maybe I have just spent the past four and a half minutes doing exactly that—or do we step forward as a united Parliament, as the committee has done under the leadership of my colleague Clare Adamson, and say that this is the moment when we all have to say that the Parliament is in jeopardy and is under threat and that we have to realise the scale of that threat and do something

about it together without trading our different views? If that requires me to change my behaviour, I will do so for the occasion. We have to recognise that the Parliament's powers, which our people voted for decisively in 1997, are being eroded in front of our eyes.

If a different Government occupied the front bench, it would still struggle with the issues that I am raising because of the internal market act and what has been done to undermine devolution by the back door. The people of Scotland have not been asked. The question for this afternoon is: are we prepared to rise above that and defend our Parliament and the democratic decision of the people of Scotland in 1997?

16:03

Mark Ruskell (Mid Scotland and Fife) (Green): I thank colleagues and the clerks for producing an absolutely critical report.

In the first debate of 2024, I wish for a return to a normal, functional relationship between the UK Government and the devolved Administrations across these islands. It is quite clear that, when we were in the EU, EU membership worked for the whole of the UK. It delivered the certainty that business needed, and it kept us in a single market with clear rules while protecting and enhancing our rights as citizens. Instead of adopting a steadily growing consensual body of European law, we now increasingly face political turmoil and uncertainty in the UK. As Professor McEwen told the inquiry, issues that are discussed at the technical level under common frameworks can easily become political.

We have already heard an example of that from John Swinney. As he has just outlined, the devolution settlement that the vast majority of Scots voted for in 1997 and again in 2014 no longer exists. There has been a fundamental shift of power to the UK Government. Ironically, although the mantra of Brexit was about taking back control, the devolved Administrations now have far less latitude for divergence than we had under the UK's EU membership.

That in itself is a huge loss, because one of the strengths of devolution has been that it has been a big laboratory of ideas and has given us the opportunity to innovate on policy and to test and develop new policies such as the smoking ban at devolved level. I am concerned that we are now entering a period in which there will be a chilling effect on any new policies that are brought forward at the devolved level.

With the growing powers that came following the Calman and the Smith commissions, the landscape of devolution had started to become increasingly complex even before Brexit crash-

landed. Powers over social security and tax, for example, have been critical in allowing the democratic will of this Parliament to deliver the fairer society that people voted for, but there has inevitably been strain when the two Governments have clearly been moving in different directions.

Intergovernmental relations have yet to be fully opened up for scrutiny by any Parliament in the UK, which is regrettable because, without that transparency, we as parliamentarians cannot hold any intergovernmental process or Administration to account. I will give an example of that. Out of the 32 common frameworks that are needed now, post-Brexit, 27 have yet to be published. We have not seen them, and that clearly makes the work of Parliaments very challenging, if not impossible.

I return to the issue of the deposit return schemes that John Swinney raised and the role of the United Kingdom Internal Market Act 2020. The Scottish DRS is rightly being scrutinised by our Net Zero, Energy and Transport Committee at the moment, but the refusal of any UK Government minister to engage with that committee makes it almost impossible to understand where the scheme can go next in Scotland. In theory, deposit return schemes in Scotland and Wales can proceed without glass; an exemption has been granted for that under the 2020 act. However, the requirement for devolved schemes to match the rules of an English DRS that does not even exist has put an indefinite block on any Scottish scheme.

The refusal of UK ministers to provide any clarity about their decision, let alone their own vision for how DRS should work across the UK, has left businesses as much in the dark as MSPs. Meanwhile, empty facilities sit in supermarket car parks across Scotland, waiting for that decision, clarity and certainty. That calls into question whether the 2020 act is fit for purpose. I will quote Philip Rycroft, who many will remember as the civil servant who was responsible for delivering Brexit. In his evidence to the committee, he said:

“We had a mechanism, through the common frameworks, to deal with domains where there were cross-border issues and where divergent regimes might have caused problems either side of borders. I have yet to see any evidence that suggests that the common frameworks would not have been adequate to deal with those issues. In that context, the 2020 act was a step too far.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 7.]

Absolutely—I agree with Philip Rycroft on that issue. The internal market act was a step too far.

As Alasdair Allan has pointed out, we have an asymmetric devolution settlement in the UK, with the UK Government acting both as the Government of England and as the rule maker of a UK internal market. That is a clear conflict.

Professor Gallagher spoke to the inquiry about the role that the UK Government has in micromanaging policy for 85 per cent of the population and how that creates a cultural barrier to working with devolved Administrations, which, of course, deliver for the 15 per cent. He went on to say:

“change in the governance of England is an essential precondition for effective IGR”—

intergovernmental relations—

“for the rest of the UK.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 9 March 2023; c 24.]

It is clear that a reset is needed. Conventions that held up over the early devolution years were already under strain before Brexit. The Sewel convention should be the basic foundation for courtesy and respect between Administrations, but it has absolutely withered away. Professor McHarg said:

“strengthening the Sewel convention is fundamental, because, unless there is some protection for the devolved institutions against the unilateral exercise of Westminster sovereignty, there are no guarantees of anything.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 23 March 2023; c 2.]

When the Sewel convention does not even apply to far-reaching statutory instruments that can amend primary devolved legislation, we are in the territory of a dangerous power grab. We are seeing the exertion of not just parliamentary sovereignty but parliamentary supremacy by the UK Government, which will continue to erode the very union that that Government has pledged to protect.

I hope that this year brings reform and a much-needed reset in UK relations but, ultimately, the logic of rejoining a Europe that is based on solidarity and consensus gets stronger every day. It is the will of people in Scotland. They must be able to decide on their future once again.

16:09

Jackie Dunbar (Aberdeen Donside) (SNP): I thank the convener, the committee members and the clerks for their work on the report that is before us today.

I would rather not be taking part in this debate; I would much rather that Scotland had not been ripped out of the EU against its will and that there would be no need for it. However, we are where we are.

Today, we are worse off, more isolated and subjected more and more to the whims of an increasingly desperate UK Government. A majority of Scots voted against that outcome, but it has

been mandated by a UK-wide electorate and delivered by a UK Government.

Before I go into the detail of the debate, it is important that we reflect on one of the reasons why Brexit happened and why folk voted for it. A lot of folk simply could not see a link between how the EU worked and how it impacted on their day-to-day lives. As we try to untangle the mess that is Brexit and how that impacts on some of the more complex aspects of how devolution and this Parliament works, I hope that we can take a few moments to explain how that will impact on the lives of the folk whom we all represent.

Let us face it: as important as conventions and legislative consent mechanisms are to how we work, those terms might not mean much to a lot of the folk in our constituencies and regions. However, in practice, the challenges that the committee's report highlights mean that this Parliament and the Scottish Government are now more limited in how they can deliver for the folk of Scotland.

Let us take the example of food standards. The Aberdeen-based Food Standards Scotland, which works to protect all our constituents, used to have a clearly defined remit in relation to what is devolved. Today, however, this Parliament might not be able to insist on food standards for all products in future. That in turn means that Food Standards Scotland might be restricted in how it can safeguard the public.

The issue of different standards extends to more than just food. In my Aberdeen Donside constituency, I have spoken to numerous businesses that are worried about their ability to continue to do business with the EU, with the divergence of regulations being a key concern of many. Those businesses, including many in the wider energy industry, which should be helping to establish Aberdeen as a net zero capital, need to be able to do business in Scotland and across Europe, but they fear that, having been cut adrift from Europe, we will be anchored down by Westminster's internal market act.

The scale of the issue means that jobs and livelihoods in my constituency are put at risk not just in the immediate future but in the longer term. I have a real fear that that could undermine Aberdeen's ability to realise a just transition, which could damage our local economy for generations to come. If we truly want Aberdeen to establish itself as the global net zero capital, we need to provide the clarity and consistency that the report highlights have been sorely lacking since we left the EU.

For a lot of folk, the 2016 referendum was not just about how the EU mattered to their lives; it was about how much power they felt that they had

over their destinies. In that referendum, folk across Scotland were bombarded with leaflets and billboards that promised to "take back control". Now, after three years of broken Brexit Britain, I wonder whether they feel that they have more control than they did before the referendum. Do they feel that Brexit has worked for them or made any positive difference to their lives?

The report highlights that, through this Parliament, through us as elected members and through their ability to engage on devolved issues, folk in Scotland have less control now than they did in 2016. From everything that I have seen, I believe that Brexit has made us poorer, financially and socially. It has made it harder to attract the best and the brightest from across the globe to Aberdeen—to our universities, our national health service and our energy industry—and it has made my constituents' lives worse.

For as long as the UK still exists, the UK Government—whatever the Government of the day might be—needs to work with this Parliament to ensure that devolution works for Scotland and that we can do the best for the people we represent, so that, as we move forward, those folk feel that they have a meaningful say in shaping and determining their own destinies.

16:15

Martin Whitfield (South Scotland) (Lab): It is a pleasure to contribute to the debate. Like others, I thank the committee and its clerks, as well as the witnesses, for the extensive work that they have done not just on the most recent report but on the ones that came before it.

It is worth reminding ourselves that engraved on the threshold of the Donald Dewar room in this Parliament are the words of J P Mackintosh:

"People in Scotland want a degree of government for themselves. It is not beyond the wit of man to devise institutions to meet these demands."

Scottish Labour is the party of devolution, and we will always defend and seek to strengthen it, both in Government and in Opposition. We believe that the interests of the people of Scotland are best served when the Scottish and UK Governments work together in co-operation, but the Tories and—I must say—the SNP have been bad for devolution, because they have preferred a drive of grievance over effective intergovernmental relations.

Jim Fairlie: Will the member take an intervention?

Martin Whitfield: Let me make some progress.

It is right that some of the strong contributions that we have heard today have drawn on the report. Mark Ruskell accurately quoted Professor

McHarg from paragraph 127 of the report. Professor McHarg went on to say:

“we need to try to get back to the situation that we were in pre-Brexit, in which parliamentary sovereignty still existed in principle, but its operation in practice was constrained.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 23 March 2023; c 2.]

There has been a breakdown. It is interesting that the committee and many contributors to the debate have talked about structural failures and the fact that we need to build structures to protect the devolved Parliament, but it comes back to my point that the political interaction has caused the damage to the structures.

Jim Fairlie: We keep hearing rhetoric from all the other parties that it is the SNP’s fault that devolution is not working. However, when NFU Scotland wrote to the committee in December 2021, it said:

“it is the clear view of NFU Scotland that the principles now embedded in the UK Internal Market Act (IMA) 2020 pose a significant threat to the development of Common Frameworks and to devolved policy.”

Such statements come not from the SNP but from outside organisations including NFU Scotland and the Law Society of Scotland.

Martin Whitfield: I am grateful for that intervention, but that is not what I said. I said that there has been a failure by two Governments to create the space in which the Sewel convention—which I will speak about later—can sit. Those two Governments have failed in their interactions to create the space in which intergovernmental discussions can take place and move forward.

It seems challenging to me that a group in this Parliament says that the Scottish Government is not at fault for anything—

Alasdair Allan: Will the member take an intervention?

Martin Whitfield: Not at the moment.

A group in this Parliament says that the Scottish Government is not at fault for anything, and a group down the road says that the UK Government is not at fault for anything. I will echo what a number of members and the committee report have said: we need a reset. Without that reset, we will not get anywhere, we will not serve the people of Scotland and we will not have the wit to put powers close enough to the people who suffer the consequences of the use of those powers, in order that we can make a difference. Unless we are, after 25 years, mature enough to do that—John Swinney was right to point to a democratic deficit—we will be in a terrible cul-de-sac that we cannot get out of for the people of Scotland.

John Swinney: Will Mr Whitfield make it clear whether the Labour Party will, if it is returned to government in 2024, abolish the United Kingdom Internal Market Act 2020?

Martin Whitfield: To that and a number of points—I am conscious of time—[*Interruption.*] I want to address the point about the Sewel convention, which is important, because it speaks to one that Alexander Stewart made in his opening speech. There are unwritten rules and spaces in which people who play by the rules can discuss and meet. The Sewel convention sat in that area, where there was an agreement. The cabinet secretary agreed with me that, until 2018, we had perfect evidence of “not normally”.

Alasdair Allan: Will the member give way?

Martin Whitfield: No, I will not give way any more.

We had a convention that operated because Governments and politicians played by the rules. That has failed and now needs to change. To go back to the quotation that is enshrined in the Parliament, we need to be able to pass power down so that it is as close to the people who matter as possible. That includes this Parliament passing power down to local authorities with proper support, so that, to answer the democratic deficit, when people vote for an individual, political party or group that comes together, they are able to hold them to account for their actions.

I recognise that time is tight, so I will make one last comment. To turn to paragraph 201 of the report is to speak to the heart of what needs to happen:

“The Committee notes that this lack of consensus, clarity and consistency in how the regulatory environment is now managed has considerable consequences for the effectiveness of the Scottish Parliament in carrying out its core legislative function and role in holding the Scottish Ministers to account.”

That is what we are responsible for in the Parliament, and that is what we should speak to.

16:21

Emma Harper (South Scotland) (SNP): Like other members, I thank the CEEAC Committee, its clerks, the convener, who is in the chamber, and the advisers for producing this important report.

The report highlights the point that devolution is under relentless attack from the UK Government. The committee’s inquiry highlights widespread concerns about the future of devolution, given the approach of the current UK Government. The inquiry has shown that, since the UK left the EU, the UK Government has been intent on regulatory divergence across the UK. The report has also shown that the UK Government is disrupting

intergovernmental relationships not only across the UK but with European countries and others across the world.

The Scottish Parliament was reconvened because the people in Scotland voted for it, but the Westminster Government is rolling back that democratic process, and that must be called out. The Scottish Parliament's ability to legislate on devolved matters should be restated. Evidence to the committee indicated that the UK Government viewed itself to be superior to devolved legislatures. However, there must be recognition that there is no hierarchy of Governments. Each has its own powers and responsibilities. There should be a commitment to working together with mutual respect and co-operation among the Governments of the UK as equals.

I am a member of the British-Irish Parliamentary Assembly, as you are, Presiding Officer. The BIPA promotes intergovernmental relations. It aims to bring together parliamentarians from the different legislatures in Scotland, England, Ireland, Wales, Northern Ireland, Jersey, Guernsey and the Isle of Man. Members come together to discuss legislation. We share ideas, hear from experts and promote good and positive intergovernmental relationships. We look at current and proposed legislation on how we improve the lives of people in our respective areas.

Perhaps the UK Government should learn from its BIPA colleagues and see whether we can take forward better intergovernmental work in that way. That is important. However, as the committee's inquiry and report have shown, the UK Government is systematically working to erode intergovernmental relations and co-operation through its obsession with ideological politics.

The committee's inquiry has made it clear that the Governments should co-operate through negotiation and consensus using agreed intergovernmental processes, such as common frameworks, which others have mentioned, instead of the UK Government centralising and imposing its views using the formal powers of the Westminster Parliament. There must be a return to the previous constitutional norm. The Sewel convention must always be followed and should be underpinned by proper legal duties on the UK Government.

That contrasts with the current system under which, for example, if this Parliament refuses to give consent to a UK statutory instrument, the UK Government ploughs ahead anyway. That is not consensus and, as the committee stated, it is another example of the UK Government eroding devolution.

Scotland voted overwhelmingly to remain in the EU, with every one of Scotland's 32 council areas

choosing to reject Brexit in 2016. Contrary to the better together campaign's promises in 2014 that Scotland would be an equal partner in the UK, Westminster completely ignored Scotland's wishes after the EU referendum. People, businesses and communities in Scotland are now paying a heavy price for a hard Brexit that we rejected and which has been imposed by a Tory Government that nobody in Scotland voted for.

On top of the threat to Scottish democracy, the staggering economic cost of Brexit Britain is clear. The committee inquiry has shown that, against our democratic will and in the midst of unprecedented crisis, Scotland has been removed from a market that is worth £16 billion in exports to Scottish companies and which, by population, is seven times the size of the UK. The Office for Budget Responsibility expects the UK's gross domestic product to be 4 per cent lower in the long run because of Brexit, which is equivalent to a £3 billion drop in public revenues for Scotland every single year.

Scottish Government modelling shows that Scotland's economy and its social wellbeing are disproportionately impacted by Brexit, with Scotland's GDP set to be £9 billion lower in 2016 cash terms by 2030—a 6.1 per cent cut—than it would have been under continued EU membership. There is no group of people or sector of the economy that the Brexiteering UK Government is not willing to sacrifice on the altar of Brexit.

Before I make my final point, I will pick up on what Jackie Dunbar said about Food Standards Scotland. In my work on the previous Rural Economy and Connectivity Committee, I picked up on the issue of US and UK trade arrangements. The Food and Drug Administration in America has a handbook on acceptable levels of defects, which is used in the States and which allows a certain percentage of defects in food products. In Scotland, we have no say over trade agreements—the Scottish Parliament has no input or control, and the UK Government legislates for us on that. I will not mention the relevant products to the chamber today, but I have raised them in previous debates. There are issues with mould, mites, insect parts and rat poo—I will talk to anybody later about that if they want.

My final point is about the disrespect that the UK Government has shown to this democratic Parliament. We need to look at solutions to that. There have been numerous examples of cabinet secretaries and ministers stating in the chamber that they have written to a UK Government minister and had no reply. Indeed, I have written to the Secretary of State for Scotland, who is also my MP in Dumfries and Galloway, on 19 separate occasions and I have never once had a reply,

even on casework matters. Perhaps I should hand deliver those letters to Queen Elizabeth house, which is just round the corner.

It is time for that disrespect to end and, as the committee report shows, it is time for devolution to be protected.

The Deputy Presiding Officer (Annabelle Ewing): We move to closing speeches. I note that one member who participated in the debate is not present for closing speeches, which is a discourtesy to the other members who participated in the debate and to the chair.

I call Foyso Choudhury to close on behalf of Scottish Labour.

16:28

Foyso Choudhury (Lothian) (Lab): I congratulate the Constitution, Europe, External Affairs and Culture Committee and its clerks on their substantial report. As many others have reiterated, there is unanimous support for it across the chamber, and I am glad to see that. Since the Scottish Parliament was created, in 1999, devolution has evolved significantly. Alexander Stewart spoke about devolution being

“an important part of Scotland’s political history”,

and he is right. It is now one of the most devolved institutions in the world.

From its formation, the Parliament was legally required to implement EU law in the devolved areas. Brexit changed that, and Angus Robertson began by outlining the unprecedented impact that that has had on devolved institutions in the UK. Leaving the EU had considerable consequences for the Scottish Parliament’s ability to carry out rightful scrutiny in devolved areas. Now, more than ever, we need competent Governments across the UK that co-operate and communicate to overcome that change.

As many of my colleagues have said, a key recommendation of the committee’s report is the need for improved intergovernmental co-operation. The report outlines the fact that, since our exit from the EU, there has been significant disagreement between the devolved institutions and the UK Government about how the regulatory environment should be managed within the UK. Since the UK’s departure from the EU, there has been a clear deterioration in relations between the UK Government and the devolved institutions. Clare Adamson spoke of the structural and systematic challenges that have arisen with devolution as a result of Brexit. That is true, but years of political disagreement and point scoring have also led to a stale relationship between the SNP Scottish Government and the Conservative UK Government. That political quarrel dates back

to well before Brexit and, as Alex Rowley said, we now have two parties that are determined to use the constitution to pursue their own political ambition and foster division.

Scottish Labour believes that the people of Scotland and the rest of the UK deserve co-operation and trust, not conflict, between our Governments. Currently, relations between the UK Government and its devolved counterparts can be summed up as a culture of conflict, as Neil Bibby outlined. A new approach and a reformed relationship between the UK Government and the devolved institutions are required. The upcoming general election is a clear chance to establish those, and Scottish Labour is ready to take charge.

Transparency is paramount in strengthening intergovernmental relations as we move forward. The committee’s report outlines that we need better and more open communication between the UK and devolved Governments in reserved and devolved areas. Trust and transparency are key to the success of devolution.

Alex Cole-Hamilton has highlighted the deficiencies in the relationship between the UK and Scottish Governments since Brexit. We currently have two Governments in the UK that refuse to co-operate and communicate with one another, and devolution is suffering as a result. Labour is the party of devolution—

John Swinney: Will the member take an intervention?

Foyso Choudhury: I have a lot to say—sorry.

Labour is the party of devolution, and we wish to see it strengthened, not undermined. The UK’s departure from the EU directly impacted on many areas of devolved competence. We wish to see the UK and Scottish Governments work together in a way that upholds and seeks to strengthen devolution. Sadly, that is not currently being demonstrated by either of the Administrations in charge. Instead, years of political disagreement have led to a culture of secrecy and distrust.

We cannot seek to mend our relationship with the UK Government if it continues to act in areas of devolved competence. It remains unacceptable for the UK Government to legislate in areas of devolved competence without consent. Prior to Brexit, the Sewel convention was widely upheld and applied by successive UK Governments. However, as Alasdair Allan outlined, since Brexit, the process has repeatedly been breached and the UK Government seems to consider the Sewel convention to be a thing of the past.

John Swinney: Will Mr Choudhury accept an intervention?

Foysoyl Choudhury: I am sorry, but I have a lot to say and I am watching the time.

Acts such as the UK Internal Market Act 2020 highlight the lack of respect that the UK Conservative Government now has for devolution. I share the concern expressed by committee witnesses that the Sewel convention must be legally strengthened. As Neil Bibby highlighted, the UK Labour Party's commission on the future of the UK emphasised the need for a new and legally binding statutory formulation of that convention, which must be protected in order to respect devolution and the authority of the devolved institutions across the UK.

16:35

Maurice Golden (North East Scotland) (Con): As a former member of the Constitution, Europe, External Affairs and Culture Committee, I begin by thanking the clerks and all those who provided evidence to the committee both for this report on how devolution is changing post-EU and for all the previous reports that led to it.

A number of members have identified legitimate challenges to the devolution settlement in the post-EU operating environment, and it is right that we acknowledge those. Clare Adamson, speaking on behalf of the committee, highlighted the daunting challenge for constituents and others who want to know who is responsible for what, as well as the issue of how businesses keep pace in an evolving regulatory environment. Neil Bibby stressed the need for improved intergovernmental relations, as well as the need for increased transparency. Kate Forbes pointed to how Brexit disrupted the devolution settlement and spoke about the need for safeguards that would not only protect devolution but enhance it. Martin Whitfield made a thoughtful and considered contribution of the type that leads to constructive debate. Jamie Greene's remarks focused on the continuity bill and the keeping pace powers, and he asked the Scottish Government to clarify its position on EU alignment, which is a point that I will return to.

When the committee previously looked at the theme, in 2022, it was clear that devolution and its mechanisms were evolving. It was also clear that it has taken 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. That is work in progress and, critically, it is progressing. For example, until 2022, the structures underpinning intergovernmental relations were set out in memorandums of understanding. Those have now been replaced by the structures and ways of working set out in intergovernmental review, which is a step in the right direction. The report says:

"The Committee's adviser, Professor Keating points out that 'the process is widely regarded as an improvement on the previous system.'"

Professor Nicola McEwen told the committee that, although it had not been fully implemented, there had been

"a big reform of the machinery of intergovernmental relations".

That was always going to take time but, critically, we continue to move in the right direction. As we move forward, legitimate issues regarding the post-EU devolution settlement will continue to exist. Those are not insurmountable, but all parties must work together in good faith to resolve those issues.

Although it is right to hear about and acknowledge the genuine challenges that the devolution settlement faces, we have heard—over and over again, throughout the afternoon—the usual attempts from members to sow division and use the issue for political grandstanding. Angus Robertson described Brexit as an "assault" and blamed the failed deposit return scheme on the United Kingdom Internal Market Act 2020, rather than accepting responsibility for a series of hapless blunders by the Scottish Government. The matter was equally mischaracterised by John Swinney, who used the terms "attack" and "malicious". Emma Harper went one better, talking of a "relentless attack". Alex Cole-Hamilton described that as "tired and divisive politics" and presented his federal vision for democracy in the United Kingdom.

Let us consider the United Kingdom Internal Market Act 2020. My colleague Alexander Stewart highlighted the importance of trade between Scotland and the rest of the UK and the jobs that rely on it. He recognised, rightly, that the Scottish Government is quick to attack the 2020 act—a rehearsed line that we have heard repeated today—but that it has a real problem with acting in Scotland's best interests by accepting the importance of enabling Scottish businesses to trade freely and fairly with the rest of the UK.

The SNP previously claimed that the 2020 act would green-light the UK Government to halt progress in the setting of regulations and standards, but where is the roll-back in regulations? In a number of areas, the UK is making even firmer commitments than the EU.

Regulatory alignment with the EU is another smokescreen for the Scottish Government. The reality is that no major tensions have arisen, largely because the Scottish Government has only once chosen to align with newly-introduced EU law, despite that being its stated default policy. At some point in the future, there will be situations in which regulatory divergence is proposed and

constructive dialogue is required. However, with the common frameworks, any tensions within the devolved settlement can be resolved through the management of regulatory divergence on a consensual basis.

As we have heard throughout the afternoon, challenges still exist as devolution continues to evolve post-Brexit. Many of those are legitimate and are recognised by those of us on the Conservative benches. However, many of the challenges that we have heard about this afternoon are manufactured grievances from the Scottish Government. The reality is that we want devolution and we want it to work. Can the same really be said for the SNP? It does not want devolution; it wants independence, and it sees devolution as a means to its ends.

Just this weekend, we heard from the First Minister his fantasy claim that families would be £10,000 better off in an independent Scotland. We also have the SNP's fantasy series of papers on Scottish independence, which is a complete waste of time and money. It would be far better if the SNP focused on how much better off Scottish families could be if they had a competent Scottish Government that focused on the powers available to it through the current devolution settlement.

The reality is that progress has been made and continues to be made with regard to an ever-evolving devolution settlement. If Scotland's two Governments could work together collaboratively and constructively, that would be in everyone's interests, especially those of the Scottish people.

16:43

The Minister for Culture, Europe and International Development (Christina McKelvie): Presiding Officer, I wish you and members a very happy new year and much joy in 2024.

I thank the Constitution, Europe, External Affairs and Culture Committee, its members and its clerks for producing its insightful and unanimous analysis of the steady erosion of the devolution settlement since Brexit, so ably chaired by my friend Clare Adamson MSP.

As John Swinney and others articulated, at the heart of the issues that the report addresses lies a double democratic outrage—a deeply damaging, reckless and unnecessary Brexit, which was rejected by the voters of Scotland, being used to usher in a sustained attack on the institutions of devolution, which the people of Scotland endorsed decisively in 1997.

As Keith Brown does, I remember that the EU afforded protection for devolved nations such as ours. The UK Government is undermining this

place not by the back door but by the front door. That cannot be waved away as scaremongering or stoking grievance. The committee was unanimously clear, and its unanimity is its strength.

The Welsh Government, which is a Labour Administration with different constitutional ambitions from those of the Scottish Government, is equally alive to the growing threat to devolution in Wales, and agrees on the causes: the now routine disregard of the Sewel convention—a constitutional convention that was scrupulously observed by UK Governments of all stripes between 1999 and 2018; and the imposition, without the Parliament's consent, of the Trojan horse that is the United Kingdom Internal Market Act 2020, which reduced our powers in effect and allows UK ministers to make further changes unilaterally.

John Swinney: I am pleased that the minister has made the point about the view of the Welsh Government. If we are to get to a position of unanimity, based on what the convener and her committee have provided as foundations, the position of the Welsh Government reduces the tension in the debate, because it makes it clear that, independently, a Labour Administration in Wales has come to the same conclusions as the Scottish Government and the committee about the impact on devolution. Is that not a strong foundation on which we can build some unity?

Christina McKelvie: I agree whole-heartedly.

Keith Brown also reminded us that the use of section 35 powers in denying this Parliament's democratic decisions is an outrage. As John Swinney has just said, the threat is growing of UK ministers using delegated powers to legislate on devolved matters—bypassing democratic accountability and the vital scrutiny role of this Parliament. I also agree with John Swinney's intervention on the cabinet secretary, when he said that at no time has the consent of the Scottish people been sought when changes have been made by the UK Government. Anyone who supports devolution in this Parliament—regardless of party loyalty—should be very worried about those developments.

I will pick up on a point that Alexander Stewart made when he talked about dispute resolution mechanisms. Wholesale legislation such as the United Kingdom Internal Market Act 2020—without discussion, never mind consent—suggests that, whatever the dispute resolution mechanisms that Mr Stewart referred to, they are simply not working. The behaviour of the Secretary of State for Scotland is a bare-faced example of that.

Jackie Dunbar asked whether Brexit has made our lives easier. The answer is no. She also asked

what “taking back control” means. Who knows? It was on the side of a bus and on billboards around the country, but who knows what it actually meant? I know: it meant taking back control from this place and all the work that we do here.

Emma Harper suggested that the UK Government take some lessons from the British-Irish Parliamentary Assembly and its processes. It should do that. The Scottish Government welcomes that idea, and we will look at it too.

However, like the majority of MSPs in this Parliament, I believe that only independence can offer protections for the institutions of self-government in this country. Since Brexit, the actions of successive UK Governments have shown how vulnerable those institutions are.

Kate Forbes picked up on that. She is absolutely correct to ask what it would take to secure our devolution powers and the legal frameworks that are needed to keep those powers safe. I recognise that others in the Parliament hold different views on Scotland’s constitutional future.

Kate Forbes and John Swinney asked what we need to do. I will end with a few suggestions on how best to protect the powers of this Parliament, even under the current constitutional settlement. Regardless of party allegiance, all of us, as parliamentarians, should be able to support those suggestions. Let us call them a reset.

First, the pre-eminence of the Parliament to decide on devolved matters should be restated, even if we still have to acknowledge Westminster’s continued claim to sovereignty in all those matters.

Secondly, there should be a recognition that there is no hierarchy of Governments. Each has its own powers and responsibilities, and those should be acknowledged and respected. They are not currently respected.

I will pick up on another point that Alexander Stewart and Maurice Golden made on the use of the United Kingdom Internal Market Act 2020. Effective internal markets are based on the principles of proportionality and subsidiarity—factors that are completely lacking in the unworkable, rigid internal market act. Surely Alexander Stewart and Maurice Golden have to accept that.

Thirdly, there should be a commitment to working together with mutual respect and co-operation among the Governments of the UK as equals. That is not a hard concept to understand, and it has been called for by just about every member who has spoken in the Parliament today. We, the Scottish Government, agree, and we are keen to work together in that way.

That commitment should be demonstrated in actions and behaviours and not just words. We

have heard about the behaviour of the Secretary of State for Scotland and the behaviour of others. I have to say that my dealings—and the cabinet secretary’s dealings with other UK Government ministers—have been very convivial and proactive. We want to work in those ways. Flowing from that, the Governments should co-operate through negotiation and consensus, using agreed intergovernmental processes such as common frameworks.

I want to pick up on intergovernmental processes. We agree that there should be a review of intergovernmental relations, which we look forward to and will support. Of course that is welcome, but no process can be effective without a genuine commitment to conducting those relationships with genuine good faith and integrity. A change of attitude and behaviour is required if there is to be genuine improvement in those relationships.

Rather than the UK Government centralising and imposing its view on the formal powers of the Westminster Parliament, I agree with Mark Ruskell that there should be a return to the previous constitutional norm that the Sewel convention should always be followed, underpinned by proper legal duties on the UK Government.

I look forward to the proposals that Neil Bibby set out in his contribution in relation to putting the Sewel convention on a statutory footing. I hope that he is in a position to deliver that—I really do. I believe that there is a lot of merit in that. *[Interruption.]* I look forward to what he has to say about the IMA when he comes to have the responsibility to do something about it. It was an easy yes-or-no question, and it has not been answered yet.

I believe that there is a lot of merit in the committee’s recommendations on new agreements and processes to promote a more respectful and collaborative system of intergovernmental relations. Before we consider those, however, we must see existing constitutional norms and rules respected. The rules and democratic decisions of this place need to be respected, as do the committee’s recommendations. We are ready to do that, and we are ready to work with the UK Government on that. I ask all parties in the chamber to work with us on that, too.

The Deputy Presiding Officer: I call Donald Cameron to close on behalf of the Constitution, Europe, External Affairs and Culture Committee.

16:53

Donald Cameron (Highlands and Islands (Con): This has been a valuable and important debate, and it is a pleasure to close on behalf of

the committee. I add my thanks to the committee's clerks for all their work on the inquiry and to our advisers, Professor Michael Keating and Dr Chris McCorkindale, and to all those who gave evidence. I should also mention, as the convener has done, yesterday's event at the University of Strathclyde, which was insightful and raised many pertinent points.

Before reflecting on contributions from colleagues, I would like to say two things. First—I will say this gently—it is a unanimous report, but I urge those who are listening or watching, or those who will read the *Official Report* later, to read carefully the conclusions of the report. In the passions that have been aroused this afternoon, as always in constitutional debates, on all sides there has occasionally been a departure from what the report actually says. Some of the language that has been used today has attributed to the committee views that do not accord with the wording of the report. The views of the committee are in the report, and it speaks for itself. I urge people to read it.

Secondly, I will briefly touch on the committee's findings on use of delegated powers by UK ministers in devolved areas—as the convener indicated I would do at the start of the debate.

The committee notes that managing a regulatory environment while the UK was a member state of the EU regularly included enacting a huge amount of secondary legislation. Much of that related to minor technical matters, and it was routine practice for the Scottish ministers to ask UK ministers to implement EU obligations through Great Britain-wide or UK-wide legislation. UK ministers are therefore, of course, correct in saying that it is long-standing practice for the UK Government to legislate in devolved areas using delegated powers. However, that was done on the basis of the devolved Governments having asked UK ministers to do so, and within the limitations of implementing EU law obligations.

The committee also notes that, before the EU exit process, it was rare for the UK to legislate in devolved areas by using delegated powers other than under section 2(2) of the European Communities Act 1972. More generally, our 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 that change has happened, and is continuing to happen, without any overarching consideration of its impact on how devolution works.

Our findings show that there has been no attempt to design an intergovernmental agreement that would govern the use of delegated powers to manage the post-EU regulatory environment. Instead, the constitutional landscape is now much

more complex, with delegated powers for UK ministers in devolved areas existing in numerous UK acts and not solely in policy areas that were previously within EU competence.

Unlike the process for transposition of EU law, there is no generic process or overarching agreement as to how the use of those powers should work. Rather, there is a myriad of statutory and non-statutory requirements for UK ministers to seek the consent of, or to consult, devolved Government ministers, or to do neither. We have therefore recommended that there should be, as has been proposed for common frameworks, a supplementary agreement on use of delegated powers by UK ministers in devolved areas, including criteria for their use.

One of the key conclusions of our work is that there is a significant risk that UK secondary legislation on devolved areas will lessen the accountability of Scottish ministers to the Scottish Parliament. In turn, that will reduce opportunities for the public and stakeholders to engage at devolved level. The Parliament therefore needs to review how it approaches scrutiny of intergovernmental relations and of the Scottish ministers in their shared role in governance of the UK.

Our view is that the starting point of such a review should be the fundamental constitutional principle that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence. Such an approach is consistent with the Parliament's founding principles—in particular, that the Scottish Executive, as it then was,

“should be accountable to the Scottish Parliament, and the Parliament and the Executive should be accountable to the people of Scotland.”

I turn to address points that colleagues made during the debate. The cabinet secretary spoke at length about the Sewel convention, among other matters. I will come to his contribution in a moment.

Alexander Stewart emphasised Scottish Conservatives' support for the principles of devolution. He noted that, in the new intergovernmental relations, the dispute resolution process has not been tested.

Neil Bibby stated that Scottish Labour wanted to reset relations between the UK and Scottish Governments, and Mark Ruskell made a similar point.

Alex Cole-Hamilton stated that devolution depends on trust between the Scottish and UK Governments and that he believes that Scotland's future lies in a reformed and federal United Kingdom.

Kate Forbes stressed how the debate was, more than anything, about structures.

Jamie Greene spoke interestingly about the continuity act that was passed in session 5 and about the substance of EU policy making, and Alasdair Allan concentrated on the Sewel convention and his view that it is under attack. Keith Brown also spoke about the convention and referred to the ad hoc nature of the British constitution.

Professor John Swinney spoke about the powers of the Scottish Parliament being eroded, and gave us his view that it is time for parties to come together and defend it.

Jackie Dunbar spoke of her experience of the effects of Brexit in her home city of Aberdeen, and referred to “broken Brexit Britain”.

Martin Whitfield spoke about the need to escape from what he described as a “cul-de-sac” and Maurice Golden spoke of what he viewed as “manufactured grievances” on the part of the Scottish Government.

It is important also to note the views of some of the witnesses who gave evidence for the inquiry. In their view, devolution was already changing even before Brexit. Professor McEwen told the committee that changes were already afoot before Brexit came along, with the new devolution settlement making things a lot more complex and interdependent, given the split between devolved and reserved powers.

It is important also to remember that further devolution has taken place since 1998—notably devolution of some taxation and welfare powers under the Scotland Act 2016.

The chair of the House of Commons Public Administration and Constitutional Affairs Committee told our committee that a lot of issues around how devolution works

“began before we left the European Union. They have remained unaddressed largely since 1998. That is because of the absence of effective and needful intergovernmental relationships and, indeed, interparliamentary relationships.”—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 2 March 2023; c 4.]

The new complexity has been recognised, and the formal system of IGR has recently undergone a number of reforms, many of which are still being implemented across Whitehall. Professor McEwen argued that their introduction has been hampered by political volatility since the reform was introduced. The new structure includes a formal dispute resolution process, and the committee noted that it had never been used by the Scottish Government and that that is also the case in Wales.

In evidence to the committee, the chair of the Legislation, Justice and Constitution Committee of the Welsh Senedd asked, in relation to public disputes between the Welsh Government and the UK Government, why they are not being tested through the committee structures that were set up as part of the intergovernmental machinery, or through the dispute resolution procedure, and when they would be tested.

The committee previously agreed that the Sewel convention was under strain. In its current report, the committee agreed that there continue to be many instances in which the devolved legislatures consent to the UK Government legislating in devolved areas through the legislative consent process. That has included some areas related to leaving the EU.

The Scottish Government’s position has been made very clear. Today, the Cabinet Secretary for the Constitution, External Affairs and Culture quoted Mark Drakeford, whose view is that the Sewel convention has “withered on the vine”. The cabinet secretary contrasted the strict observance of the convention before Brexit with afterwards, and stated that it had been breached 11 times. I think that it is important, in the interests of balance and fairness, to note the position of the UK Government. In his letter to the committee on 4 September 2023, the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, Michael Gove MP, repeated the UK Government’s commitment to the Sewel convention and stated that the UK Government has no plans to change its status. In the same letter, he set out examples of what he described as “successful” joint working.

The committee’s report is important and constructive, and I commend it to Parliament. I support the motion in the convener’s name.

The Presiding Officer (Alison Johnstone): That concludes the debate on how devolution is changing post-EU.

Decision Time

17:03

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-11698, in the name of Clare Adamson, on behalf of the Constitution, Europe, External Affairs and Culture Committee, on its report "How Devolution is Changing Post-EU", be agreed to.

Motion agreed to,

That the Parliament notes the conclusions and recommendations contained in the Constitution, Europe, External Affairs and Culture Committee's 5th Report, 2023 (Session 6): *How Devolution is Changing Post-EU* (SP Paper 453).

Changing Places Toilets

The Deputy Presiding Officer (Liam McArthur): The final item of business is a members' business debate on motion S6M-10378, in the name of Jeremy Balfour, on addressing the availability of changing places toilets. The debate will be concluded without any question being put.

I invite members who wish to speak to press their request-to-speak buttons now or as soon as possible, and I invite Jeremy Balfour, who joins us remotely, to open the debate.

Motion debated,

That the Parliament recognises what it sees as the importance of providing Changing Places toilets in suitable locations across Scotland, including in the Lothian region, to ensure that the country is as accessible and inclusive as possible; notes that the Scottish Government, in its 2021-22 Programme for Government, set out to "invest £10 million to increase the number of Changing Places toilets across the country", but notes with concern reports that no fund has yet been set up to allow this budget to be allocated; further notes that the UK Government made a similar commitment in its 2021 budget to invest £30.5 million in a Changing Places toilet fund and has already allocated the first round of funding, which amounted to £23.5 million, and is now in the process of allocating the further £7 million to complete its programme, on target, by the end of the financial year 2023-24; notes the comments made by the Scottish Government Minister for Social Care, Mental Wellbeing and Sport in June 2023, in relation to the Petition PE2027, which is currently being considered by the Scottish Parliament, who stated that "funding for the construction of Changing Places Toilets has not yet been allocated and the timeframes for the distribution of this funding have not yet been announced", and further notes the calls urging the Scottish Government to open this promised fund to ensure that Scotland is welcoming and accessible for all people with disabilities who require a Changing Places toilet.

17:05

Jeremy Balfour (Lothian) (Con): Thank you, Deputy Presiding Officer. I wish a happy new year to you and everyone in Parliament.

I am delighted to have secured this members' business debate. I thank all my colleagues who supported the motion. I understand that it will not be a topic that is familiar to everyone but, for those who rely on changing places, it is of the utmost importance. Changing places represent peace of mind while out and about, knowing that the necessary facilities are available, and people's ability to enjoy a day out without having to worry about whether they will be able to use a bathroom. Fundamentally, changing places represent the difference between inclusion and exclusion.

Changing places are not a luxury, but a necessity. They are something that every person who has a disability will probably use at sometime in their lifetime. For those who are unaware, they

are a specialised toilet facility designed for people with complex disabilities who require assistance with toileting. They are much larger than standard accessible toilets and come equipped with additional features to make using the toilet easier and more dignified for both the individual and their carer. They include a special toilet, a hoist, a changing bench and a lowered basin, among other things. Those are not luxuries; they are essential.

I am sometimes asked what has been my proudest achievement from my time in Parliament, and I take great joy in telling people that I was part of the effort that added a provision to the Planning (Scotland) Act 2019 stipulating that all new building projects of a certain size would have to have a changing places toilet. It seems like a small thing, but I genuinely believe that it has made, and will continue to make, a massive difference to the lives of people with disabilities in Scotland.

However, I note that it should not take legislation for businesses to install a changing places toilet. Other than it being the right thing to do, there is hard evidence that it can increase customer engagement. The purple pound is a real and lucrative force that should never be overlooked.

We, as lawmakers, have a duty to consider the inclusion of disabled people as a top priority. The funding of changing places toilets should be a priority for us all to ensure that Scotland is a place that is fully inclusive and fully open for everyone to participate in. That is why I find it so disappointing that the Scottish Government has decided not to prioritise changing places toilets. As with so many other issues, the Scottish National Party has talked a big game, promising support and funding for installation, but when it comes to delivery, it has let everyone down.

The 2021 programme for government pledged that £10 million would go towards installation of changing places toilets in new buildings, and towards retrofitting older premises. Two years on, not a single penny of that money has been distributed, despite a number of projects, some in my region, being ready and waiting for the money. It was incredibly disappointing to hear Maree Todd, the Minister for Social Care, Mental Wellbeing and Sport, answer a question on when the funding would finally be released by saying that there were no plans even to begin processing distribution until 2025. I remind members that it was an SNP pledge in the 2021 programme for government. That means that we will be waiting four years for funding that is desperately needed.

I was hoping that there might have been a change of heart from the SNP and that there would have been provision in the budget statement last month, but it was completely absent. We are talking about a relatively small

amount of money in the grand scheme of the Scottish budget, but it will make a massive and real difference—[*Inaudible.*]

It should also be put on record that, at this point, the United Kingdom Government made a similar pledge on £30 million for England, which has been distributed and spent and disabled lives have been changed. Why is it that the big bad UK Government is able to follow through on its promises, but the Scottish Government cannot? Could it be that one Government values inclusion and the other does not?

I am tired of rhetoric, I am tired of empty promises, and I am tired of disabled people being promised the world by the SNP but having delivered to them absolutely nothing. To be very clear, I say that this is not just about a convenient option; it is about absolutely necessary equipment to allow people with profound disabilities and their families to participate in society. The betrayal by the Scottish Government in this way will not be forgotten by disabled people across Scotland.

I started this speech by wishing everyone a happy new year. The minister can make the new year of everyone with disabilities better by releasing the money now. I implore her to reconsider when she will allow people to spend the money. We have waited long enough. Disabled people deserve more.

The Deputy Presiding Officer: I gently remind members who are looking to participate and who have not yet done so that they need to press their request-to-speak buttons.

17:11

Evelyn Tweed (Stirling) (SNP): I thank Jeremy Balfour for bringing this important debate to the chamber. In this Parliament, we aspire to a Scotland that is fair and that has dignity and respect for all at its heart. Equal access is needed for that to be a reality, and for some people access requires specific facilities. If we are to remove barriers to ensure that everyone can live their lives to the fullest extent, we must provide those facilities.

As we have heard, although standard accessible toilets are sufficient for many, they do not meet the needs of all disabled people. That creates a huge barrier for many people, their families and their carers, and prevents them from enjoying days out or making long journeys. People who need the facilities face isolation or are cutting their days out short. Some even dehydrate themselves so that they do not need to use the bathroom.

The alternatives are unsafe, unhygienic and undignified; for example, changing on bathroom

floors or in car boots. Changing places toilets provide safe, spacious and clean facilities that are designed to meet the needs of people with more complex care needs. Those facilities remove a huge barrier and enable anyone to socialise, attend appointments or even go shopping, regardless of their disability.

Unfortunately, changing places toilets provision is concentrated in the central belt and in areas with a higher population density. A black spot the size of Wales persists across the rural west Highlands. Only one changing places toilet sits in that area, in Fort William, and, unfortunately, it has relatively restricted opening hours. There is not a single changing places toilet on the journey between Crieff and Barra. That gap in provision means that people who need those facilities and live in rural areas might be less able to get out and about locally or to undertake those long journeys. With a lot of specialist medical care centralised, people who need to travel for appointments face long and very difficult journeys.

As a key point that connects much of the north and west to the central belt, Tyndrum in my constituency has been identified as a priority location for a changing places toilet. The small town on the A82 sees more than 6,000 vehicles pass through it every single day. It is a key point on many routes, just south of where the A85 and the A82 split. The community in Tyndrum has done a magnificent amount of work in identifying a site.

Stephen Kerr (Central Scotland) (Con): I am grateful to Evelyn Tweed for giving way because she is making a very impassioned and convincing speech. Will she join Jeremy Balfour in calling on the minister to announce immediate action to release the £10 million, so that the facilities that she has rightly identified as indispensable can be delivered for the people who badly need them?

Evelyn Tweed: I thank Stephen Kerr for his intervention. I will ask the minister for some reassurances further on in my speech.

The Tyndrum community has done an amazing amount of work. It has found a site and carried out a feasibility study, and it is making the necessary preparations. All that it needs now, to make the proposal a reality, is the funding.

Like many, I was delighted when the Government announced the much-needed £10 million funding that Jeremy Balfour alluded to in his opening speech. I am keen to see those funds put into action, and I have sought regular updates from the minister. The public spending environment is challenging—I completely understand that—but the facilities are vital. Delivering funds for changing places toilets in strategic locations such as Tyndrum will make a

huge impact. I call on the Government to provide information on when those funds will be available.

Changing places toilets make a dramatic difference to access to places such as Blair Drummond Safari and Adventure Park, which is also in my constituency. A facility was put in place there in 2017. Equal access has been made a reality there. It has removed barriers for many disabled people and their families, so that they feel included and can enjoy a day out without concern. Expanding provision in that way allows access and inclusion. I look forward to further progress being made in my constituency and beyond.

17:16

Alexander Stewart (Mid Scotland and Fife) (Con): I am delighted to contribute to the debate, and I congratulate my colleague Jeremy Balfour on having raised this crucial subject.

As a former member of the Citizen Participation and Public Petitions Committee, I remember well the petition that was lodged by Sarah Heward on behalf of the Tyndrum Infrastructure Group, whose primary aim was to build a changing places toilet in the community. I share Sarah Heward's and the group's collective frustration with the slow progress that has been made, and I echo the sentiment of the petition that

"There is currently a black hole the size of Wales in the North West of Scotland where no CPT toilet facilities exist."

Indeed, as the petition states, the situation

"does not seem representative of the kind of inclusive and accessible community that Scotland aspires to be."

About three years ago, I was liaising with a constituent about the potential installation of a changing places toilet in Stirling station. At the time, ScotRail responded by saying that the station was an A-listed building, and that it would look at the proposal and investigate it thoroughly. However, it came back to say that insufficient resources were available because of the economic environment, so things did not progress.

I was also aware that Dundee railway station was experiencing slow progress, as was highlighted in *The Courier*. *The Courier* reported that legislation was going through Holyrood that could help to prevent the type of obstruction that was being faced by PAMIS—Promoting a More Inclusive Society—which was campaigning for the installation. Kevin Stewart, the then Minister for Local Government, Housing and Planning, said:

"The Scottish Government remains committed to requiring changing places toilets in certain new developments and I was happy to support the amendment to the Planning (Scotland) Bill which would do that."

He also said that the Government was reviewing planning and building standards legislation to

ensure that identification of places that need such facilities would be required. That was back in 2019; we can see how far we have come by what Jeremy Balfour said in his opening remarks.

Changing places facilities are not a luxury—they are a necessity for the individuals who require them. The Government often trumpets its commitment to our disabled population, so it beggars belief to see that it has taken its eye off the ball on this issue—not only in the past five years, but through its complete neglect of its party's manifesto promise.

I therefore echo the sentiments of the petition that was lodged and the comments that we have heard today—that the Scottish Government must ensure that the pledged £10 million is available. I urge it to do all that it can to ensure that there is no further delay, because individuals need, and aspire to have, such facilities. Scotland should not be in the position of not having facilities for individuals who wish to travel or go about.

The decisions that we take are vitally important. The minister has an opportunity to talk about what will take place and to ensure that individuals and organisations are given the respect that they deserve, and that the commitment that was given is fulfilled. Not only are the facilities needed now, but they are, apparently, needed across the whole country, in order to ensure that people have the dignity that they wish for, and that they are given respect.

I whole-heartedly support the motion in Jeremy Balfour's name.

17:20

Paul O'Kane (West Scotland) (Lab): As convener of the cross-party group on changing places toilets, I am delighted to participate in this evening's debate. I thank Jeremy Balfour not just for securing the debate on his motion but for the work that he does more widely with the CPG and in Parliament to keep these issues at the forefront, as is vital.

The cross-party group was established to keep focus on an important issue. This evening, we have heard about how important the issue is to people who rely on changing places toilets, and to their families and carers. The group was largely inspired by the campaigners and by the people whose lived experience was the often patchy provision across Scotland.

What inspires me most when the cross-party group meets is our hearing not just about the experiences of many people in trying to attend hospital appointments or to get to the various supports that they need, but about the experiences of families with young children who

have complex needs, who want, as all members would, to live spontaneously—for example, to go on holiday, take day trips or just go to the shops. The lack of facilities is a real challenge to living with the spontaneity that everyone deserves in their everyday life.

I pay tribute to some of the people in the cross-party group—in particular, to Angela Dullely, who has been a driving force; to PAMIS, via which secretariat support for Angela has been received; and to all the individuals and organisations who have come together and pushed issues forward.

I never thought, when I became a parliamentarian, that I would spend time looking at toilets and at potential sites for them, but that is what I now do. I must say that I have become something of a geek when it comes to what is required to make a toilet a bona fide changing places toilet. I have been delighted to see many community organisations and local authorities taking the active steps that are needed to put them in place—in particular, in Rouken Glen park in my constituency, which has allowed people to use the park more freely.

In addition, I recently visited Tyndrum—which was spoken about by Evelyn Tweed and is in her constituency—to meet Sarah Heward and the campaign team there, who are bringing together local businesses and community organisations to provide a vital facility. However, what was interesting about my visit to Tyndrum is the challenge that remains when it comes to leveraging in the funding that we have been speaking about—£10 million—for communities across Scotland to begin to plug gaps. Communities, local organisations, community councils and businesses are willing to put in funding themselves and to attract funding from other organisations. However, support from Government could make a crucial difference as enabling funding or as the last piece of funding to allow a project to be delivered for a community and people more widely who wish to use a facility. What is coming across loud and clear from the cross-party group and from campaigners across Scotland is that we need a sense of urgency about that money.

We have rehearsed some of the arguments that I am sure the minister will hear tomorrow when she comes to the cross-party group. There are concerns about the length of time that it will take to get the money out the door. I appreciate that such things can take time, but campaigners would like to know what will be the criteria for getting the money. How will it be given? Who will it be given to? How will it be applied for? When will it come? That information is crucial, because if we waste more time when we do not know those things and do not deliver the money, projects will stall and will

become more expensive and, crucially, we will not move forward on the agenda.

The issue is key to the lives of many of our fellow Scots: it is about a basic human right and basic decency. It is time that we got the money out the door and into communities, where it is needed.

17:25

Tess White (North East Scotland) (Con): I, too, am delighted to speak in the debate. As a member of the changing places toilets cross-party group, I, too, pay tribute to Jeremy Balfour for securing parliamentary time and for the extensive work that he has done on this important issue over the years. I also thank PAMIS, Enable Scotland and Capability Scotland for their contributions to the CPG and their wider work.

Why is adequate, hygienic and accessible toilet provision so important? It is about so much more than being caught short; it is about equality and ensuring that all people can go out and live life as fully as possible and that no one is left behind. As Jeremy Balfour emphasised, changing places toilets represent the difference between inclusion and exclusion. It is about dignity and making sure that pregnant and postpartum women, women on their periods, menopausal women and people with special needs and conditions such as urinary incontinence, Crohn's disease and colitis are not isolated and can leave their homes without anxiety, fear or embarrassment.

Providing safe and accessible spaces is important in a dignified society. That requirement also encompasses safety, privacy and protecting the rights of women and girls to single-sex toilets, which was once again emphasised in the recent employment tribunal case *Ms V Abbas v ISS Facility Services Ltd*.

It is about ensuring that basic human needs are met—basic human needs for privacy, safety and dignity without fear. I was struck recently by a comment in Karen Ingala Smith's brilliant book "Defending Women's Spaces", in which she referred to the "urinary leash" and the restriction of movement due to lack of access to toilets. Freedom, wellbeing, quality of life and the ability to participate in public life are all facilitated by something as seemingly mundane as a toilet.

I helped to care for my two elderly parents-in-law, who both suffered from dementia. A trip out, no matter how routine, required a lot of prior planning. I know exactly which towns near my home have accessible toilets, and I know the many that do not. This topic is close to my heart, because many carers have told me that they need accessible toilets to take the people who are in their care out for visits. It is about quality of life for

those who are in danger of isolation. Accessible, clean and safe toilets are a basic human need.

Over the festive period, I spoke to constituents who shared with me their concerns and feedback that public toilets are either closed or filthy. Sadly, those that are not are rare. Toilets on station platforms are accessible only when there is a guard on duty, which is a barrier that prevents people from travelling. As my colleague mentioned, Dundee railway station did not even include a changing places toilet when it was redesigned. Thanks to Scottish Conservative campaigning, PAMIS and local activism, ScotRail eventually relented.

In the north of Scotland, fully accessible toilets are harder to come by. Many of the 267 changing places toilets are concentrated in Scotland's central belt and urban population centres. Those are, of course, much needed, but provision falls away the further north you go. As Evelyn Tweed pointed out, the issue is not just in the west of Scotland—there is a significant issue the further north you go.

I pay tribute to Councillor Lois Speed, who campaigned for and successfully secured a changing places toilet in Arbroath. Too many north-east communities do not have fully accessible toilet facilities.

In its 2021-22 programme for government, the SNP Government was right to commit, as we have heard today, £10 million to changing places toilets, but the minister, Maree Todd, has confirmed that there are no plans to allocate and distribute the funds before 2025. What is the reason for that inaction? Why is it that the SNP can go full steam ahead with its overseas office network at a cost that is just shy of £9 million but cannot deliver on a £10 million promise of funding for fully accessible toilets? Meanwhile, the UK Government has already started distributing its own £30 million fund.

The SNP Government's implementation gap has left so many people behind: people with disabilities and special needs; carers; women; and parents with children. The SNP Government must focus on its priorities and get a move on so that all people across Scotland can access toilet facilities that are suitable for their specific needs safely and with dignity.

The Deputy Presiding Officer: I call Stephen Kerr, who will be the final speaker in the open debate.

17:31

Stephen Kerr (Central Scotland) (Con): I congratulate Jeremy Balfour on bringing the motion to the chamber. I recognise his tireless

efforts on behalf of disabled people in Scotland and the passion with which he has presented his motion to Parliament this evening. Jeremy Balfour is a champion for people who would otherwise be voiceless, and I am proud to serve as his party colleague and to add my voice in support of his motion.

We have got into a pretty rotten state of affairs in this parliamentary session with the SNP-Green Government when it is prepared to say things and make promises that matter a great deal to many people and then go on to blatantly renege on those promises. It is not too strong to say that that breaks the hearts of good people.

Maree Todd: To be absolutely clear, for the record, this Government has not reneged on the commitment. The commitment in our SNP manifesto and in the 2021 programme for government was to deliver a £10 million investment in this session of Parliament. Several Conservative members have made that claim. I am sure that they do not intend to mislead Parliament and to mislead the public, but we are absolutely delivering on our commitment.

Stephen Kerr: The minister says that she is delivering on her commitment, but the Government has not spent a penny of the £10 million. It is not delivering on anything when it does not spend an amount that it announced with great fanfare, which meant so much to so many people.

I have seen for myself the difference that it makes to families when they are able to have a day's outing to some attraction or venue and know that they will be able to properly look after a family member who has profound needs. Without the use of changing places, those families would not be able to enjoy being together outside of the home. I have seen for myself what it means to parents, carers and siblings to be able to enjoy time together with all members of their family. Changing places toilets make that possible. It is transformative and not just something that is nice to have—it is indispensable and essential.

One of the most memorable days that I had when I served as the member of Parliament for Stirling was the day that I was invited to attend the opening of the new changing places facilities at Blair Drummond Safari and Adventure Park. I cannot speak too highly of Blair Drummond safari park, which is a business that adds so much enjoyment to the lives of so many people. I met families that day who were going to be able to make good use of the new changing places facilities. That is something that I will never forget, because I could see in the faces of the parents, carers and siblings just how much it meant to visit the safari park together as a family. It was made very clear to me that there was no possible way in

which that day's outing would have been possible if it was not for changing places. Things that we might all take for granted were accessible and available to those families.

I pay tribute to PAMIS and the dedicated work that it does on behalf of profoundly disabled people and their families, especially in the area of changing places.

To govern is to choose; it has always been about priorities, and that is especially true when it comes to something as necessary as making it possible for profoundly disabled people to leave their homes, be with their families and create special times and special memories. The older we get, the more we realise how important making memories is.

I have some dear friends who had a profoundly disabled son. I saw the lengths that they were prepared to go to as parents and as siblings to make their son and brother an inclusive part of the time that they spent together, making memories as a family. Sadly, their son and brother passed away suddenly, but they have very happy memories to look back on and to draw consolation from.

Therefore, I call on the minister to make good on the commitment that the Government made to families such as my friends who are depending on the delivery of the public investment in question. I think that the minister should explain, for clarity, where the £10 million is. Has it been spent somewhere else? Does it still exist as a budget line? If the money has been reallocated, she should please tell us. It is a fundamental question. Please can we have a straight answer? Where is the £10 million? That is how strongly I feel about the issue. Let us see some energy and action from the minister on the issue. I say to her: show some leadership.

I hope that the minister will take the opportunity to make it absolutely clear that she will immediately begin to deliver on what was promised to those families. They are looking to us in this Parliament for help, and we should not, and must not, fail them.

The Deputy Presiding Officer: I call the minister, Maree Todd, to respond to the debate.

17:36

The Minister for Social Care, Mental Wellbeing and Sport (Maree Todd): I thank Mr Balfour for his on-going work to promote the importance of changing places toilets, which has allowed us time in the chamber to discuss those toilets and to educate about their importance, and for his time, which many others have noted, as co-convenor, along with Mr Paul O'Kane, of the cross-party group on changing places toilets. The

debate has raised a number of interesting cases and ideas, and I look forward to discussing the issue in greater detail with members of that cross-party group tomorrow evening.

A significant amount of work is required before the fund can be opened. We have heard the criticisms of the process in England, and we are keen to learn from the challenges that are faced there. We are also keen to agree with the CPG and other interested parties, such as PAMIS, on things such as scoping, eligibility and geographic distribution of the fund—that is a crucially important aspect of getting it right for Scotland—and to determine the funding model and the management of the fund. There is also a need to create material that accompanies the fund, such as application guidance, upkeep and registration material. It is not simply a case of waving a wand and putting the money into the system.

I do not think that Mr Balfour intended to mislead the Parliament in his opening speech, but there has been no “betrayal” of disabled people by the SNP Government. We made a pledge in our manifesto rather than in our programme for government for 2020-21 to invest £10 million over the current parliamentary session. That commitment is on track despite the many funding pressures that we face and that we discuss here day in, day out. I have been very clear that the fund will begin to pay out next year, at the start of 2025.

Paul O’Kane: I met the minister’s predecessor to discuss the issue in the early days of the parliamentary session, when we began the cross-party group. On the issues that the minister rightly outlines relating to needing a fund that works and is prepared, and engaging on it, all of that work could have been done. We have been at this since the beginning of the parliamentary session. If the minister’s commitment is to have it done by the end of the session, why has it taken so long to get to this point, when a lot of the groundwork could have been done by now?

The Deputy Presiding Officer: Minister, I can give you the time back.

Maree Todd: I assure Paul O’Kane that the groundwork is being done. Our £10 million investment is three and a half times bigger than that of England on a population basis. As many have described, we also have to take into account the geography and rurality of Scotland, which requires taking a different approach.

The discussion about the north-west Highlands, which has come up a number of times during the debate, has illustrated exactly what some of the challenges are.

Stephen Kerr: Will the minister give way?

Maree Todd: I would like to complete this point, if Stephen Kerr will give me a moment. He had his time—he had more than four minutes.

Stephen Kerr: That is not for the minister to say.

Maree Todd: I would like to use my time to put across the Government’s point of view, if that is okay with Stephen Kerr.

I am lucky enough to have the Ullapool harbour changing places toilet not only in my constituency, but in the village that I live in in the rural north-west Highlands, and I know just how vital such facilities are to people throughout Scotland. That is just one of a number of examples from across Scotland that make the case for how such facilities can make a real difference to disabled people and their families by enabling them to go out and do things that others might take for granted, such as travelling to the islands or going on day trips. In the Highlands, we love to welcome visitors, and we are delighted that we can do so because of that facility.

Last September, I was pleased to confirm to the Scottish Parliament that we would make the £10 million changing places toilets fund available across the financial years 2024-25 and 2025-26. The Scottish Government’s policy position on changing places toilets is absolutely straightforward. In our manifesto, we committed to investing £10 million over the parliamentary session, and we are doing that. We understand how important it is to invest in increasing the number of changing places toilets. We also committed to supporting mobile changing places toilets to enable disabled people to access events and outdoor venues, and the Scottish Government looks forward to that commitment being delivered, too.

Stephen Kerr: It is almost more important that Jeremy Balfour, who has tried three times to intervene, is allowed to make an intervention, because it is his debate. I simply point out to the minister that none of the £10 million has been spent and none of the good that that £10 million can do has been delivered. That is the point that Jeremy Balfour made in his speech, and it is a point that many of us—including Evelyn Tweed, who has been the only SNP member to speak in the debate—have made. Our ask of the Government is very clear. When will the £10 million be properly spent? The minister has mentioned 2025. That is a year from now.

Maree Todd: I have made it absolutely clear that the fund will open at the start of next year. We have some groundwork to do between now and then. I look forward to meeting the cross-party group tomorrow evening to discuss matters such as how that money should be spent and how we

ensure that the geography is covered. We will absolutely deliver on our commitment.

We want to make sure that the fund is fair and equitable. We need to think carefully about the eligibility criteria; forgive me if I want to work with people with lived experience in order to do that. There will be a range of views, and it is important that we gather those views and consider all of them.

For members in the chamber who are not as familiar with the work that has been done to date, it is important to highlight that the new fund builds on our previous work on the changing places toilets agenda. Members might recall—Jeremy Balfour mentioned this—that the Scottish building regulations legislation that was introduced in 2019 required the provision of changing places toilets in larger new buildings to which the public have access.

Douglas Lumsden (North East Scotland) (Con): Can the minister confirm whether the £10 million of funding will be entirely within the 2025-26 budget? Is that what she is saying?

Maree Todd: No, that is not what I am saying. If Douglas Lumsden had been listening carefully, he would know that I have said several times in the chamber, today and on previous dates, that the money will be available from the start of 2025. That means that some of the money will be available in the 2024-25 budget and some of it will be available in the 2025-26 budget.

Members will be pleased to know that, in autumn 2022, we published our “Changing Places Toilets: Planning guide”, which details practical considerations for organisations that are considering installing a changing places toilet. Scotland currently has 267 changing places toilets, which is an increase of more than 25 per cent on the 209 that were available in 2019, when we introduced the new building regulations. We are making progress on the issue; we are delivering.

Evelyn Tweed: The minister mentioned rurality. Will the Government consider the need to provide a good spread of changing places toilets? In my contribution, I mentioned that there is a strong focus on the central belt.

Maree Todd: Absolutely. It is crucial that we consider the entirety of Scotland. One of the challenges that we face in Scotland is that we have a much more rural hinterland. Everyone loves to visit parts of Scotland such as the one that I live in. I want to be able to welcome everyone to that part of Scotland.

We are already delivering on our commitment to increase the number of changing places toilets.

The changing places toilets fund will only help to accelerate that progress.

I have covered the Scottish Government's position on the matter. I hope that it is absolutely crystal clear that our work in this area remains a priority, and I look forward to returning to the chamber at the appropriate time to give a further update on the fund.

In the interests of time, I thank members for their comments. As always, I will happily address individual members' concerns through my office. My door is open. I am always keen to hear from members on the subject, which is one that is close to my heart.

On that note, I am happy to close the debate.

Meeting closed at 17:45.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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