



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Constitution, Europe, External Affairs and Culture Committee

Thursday 18 December 2025

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
34th Meeting 2025, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Jamie Halcro Johnston (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Patrick Harvie (Glasgow) (Green)

*Stephen Kerr (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Mackie (Scottish Government)

Angus Robertson (Cabinet Secretary for Constitution, External Affairs and Culture)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 18 December 2025

[The Convener opened the meeting at 08:30]

Transparency of Intergovernmental Activity

The Convener (Clare Adamson): Good morning, everyone, and welcome to the 34th and final meeting of the Constitution, Europe, External Affairs and Culture Committee in 2025.

The first item on our agenda is to take concluding evidence on the transparency of intergovernmental activity and its implications for parliamentary scrutiny. We are joined by Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture, and Chris Mackay, the deputy director for constitution and UK relations at the Scottish Government. I welcome you both to the committee.

We will go straight to questions, cabinet secretary. Can you tell us how the United Kingdom's commitment to reset relationships has developed between the four Governments in the United Kingdom and how that is impacting parliamentary business here, including the legislative consent motion process? What is your overall impression of the effectiveness of relations with the UK Government?

The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson): Thank you for the invitation to discuss this and other matters.

There has definitely been a change since the last UK general election, certainly rhetorically. Immediately after the election, and for some time, UK Government ministers were very keen to stress their understanding of how suboptimally the predecessor UK Government had approached intergovernmental relations, how that was not sustainable and how there needed to be a change—and that they were committed to making it.

At the start, that often required little more than simply meeting. It was previously the case that, often, across a wide range of subjects, meetings never took place or were cancelled, or documentation was not provided for them. As for the contents of meetings when they were held, the process simply was not working. That was the view of not only the Scottish Government but the

Welsh Government and Northern Irish colleagues. The incoming UK Government stressed that it understood that that was the context of intergovernmental relations and that it wanted to change that.

That led to a flurry of introductory meetings, which I took part in with the Secretary of State for Scotland and—from memory, in terms of my policy areas—ministers in the Cabinet Office and the Foreign, Commonwealth and Development Office. All of them said the same thing: that they wanted a reset in relations with the devolved Administrations and with the European Union, and that the UK Government was committed to resetting relations with both.

After the initial meetings, we began to see a pick-up in the meetings of the different formats of intergovernmental relations. I am sure that the committee is aware that the IGR structures include a format in which the Prime Minister and the heads of devolved Governments meet. Under the previous UK Government, it was more often than not the case that the Prime Minister did not attend at all. However, the incoming Prime Minister has attended and has continued to attend.

Those meetings have been held regularly with the heads of devolved Governments. There are also interministerial standing committees, finance interministerial standing committees and portfolio-specific interministerial groups. Those have all been meeting—some of them have been meeting for the first time—and that is a significant improvement.

That is step 1—rhetorical acknowledgement that things were not working well and a commitment to making them work better. The first part of that commitment is that we should be meeting. There is then a broad range of how well that is working, and perhaps we will come on to that as well.

I acknowledge that there are areas where there is good and improving dialogue. The Government minister that I speak with most often is Nick Thomas-Symonds of the Cabinet Office, who has responsibility for negotiations with the European Union. He has been the lead UK Government minister dealing with the UK-EU agreement. I met the previous Secretary of State for Scotland, and I have met him again in his new role at the Department for Culture, Media and Sport. Not long ago, I met with Michael Shanks, who is one of the UK energy ministers. I will stop there, because you will, no doubt, want to get on to how those meetings and processes work, and I can perhaps share some insights on that as well.

The Convener: Something that has come up repeatedly at the committee is the United Kingdom Internal Market Act 2020. We have done a lot of work on that, and we see that some of the Labour

members in the Welsh Assembly are now raising queries about that act. Do you think that the views of this Parliament are reflected in any progress that has been made in negotiating around it?

Angus Robertson: No, I do not, because the current UK Government, having said before it was elected that it would repeal the internal market act, did not act on that commitment to repeal the act when it took up office and overlooked two votes in this Parliament for the repeal of the act. The position here is the same as that of the Welsh Labour Government. The issue is not about making the internal market act work; it is about repealing it and making the common frameworks mechanism work. That mechanism precedes the IMA, which is the Trojan horse in the devolved settlement. Since the new UK Government took office, we have seen it reviewing the internal market act. The formulation that it uses is that its preference is to “foreground” the common frameworks. I think that that is the UK Government’s way of saying that it would, as a matter of course, prefer to deal with these intergovernmental matters through the common frameworks route but that it wants to keep the internal market act in reserve. That position has been resisted very strongly by the Scottish Government, which still believes that the IMA should be repealed.

Convener, you have drawn attention to the fact that, in a letter that was sent earlier this month, a significant number of Labour members of the Welsh Senedd express the same view as we do. I am sure that the committee has seen the correspondence. They go into some detail in criticising the UK Government’s continuing involvement in areas of devolved responsibility and say that that is not what the UK Government should be doing.

I have always taken the view—I have given evidence on this to the committee—that where there is a willingness to make common frameworks operate, they can and they should operate, and the internal market act is a Trojan horse in the devolved settlement. It was a political project and it was there to undermine devolved Governments and Administrations. Sadly, it is being continued by the current UK Government.

The Convener: Thank you, cabinet secretary. We will now have questions from the committee.

Stephen Kerr (Central Scotland) (Con): On the reset, cabinet secretary, you mentioned a change of tone in rhetoric and public comment, but you also mentioned meetings. The statistics and the facts would seem to suggest that, since the formalisation of IGR structures post 2022, the number of formal meetings has been pretty consistent. According to the briefing that the committee has received, there were 25 meetings

between July 2024 and July 2025, which was the first year of the new Labour Government. There were 23 meetings between January and December 2022, but there were 35 between January and December 2023. That shows that there has been an increase in the number of meetings since the inception of the formal IGR structures.

You also mentioned meetings with the Prime Minister. According to the data, the number of formal meetings that the current Prime Minister has had with the First Ministers is about the same number as Rishi Sunak had when he was Prime Minister. What has actually changed?

Angus Robertson: The first thing is that we have had the formation of the portfolio-specific interministerial groups, which is where a lot of the real work is done right across Whitehall departments, and meetings of all of them have taken place. I do not think that that was the case previously—I think that there were some Government departments where there had been no meetings at all. That is to be welcomed, because it means that a mechanism has been agreed for how we could and should be meeting. That is up and running.

To be honest, I am more focused on what goes on during the meetings and the on-going effort to find solutions to common challenges and to help one another to understand where we are coming from. That matters to the Government and its priorities, and it matters to you, as parliamentarians who want to scrutinise that process.

Before I came to this meeting today, I thought about how best to illustrate how some of that works. There is a tension between wanting to have maximum transparency and, as is the norm in intergovernmental relations domestically and internationally, being able to protect a space in which to have on-going discussions about how negotiations are progressing, for example. With your indulgence, convener, I will briefly talk the committee through how that has worked for the UK-EU agreement.

The committee understands that much of that agreement takes place in a devolved space. Much of what we have now learned about what the UK Government has agreed to at a headline level is in a devolved space, and we are now seeing the beginnings of outcomes—again, often in the devolved space. It is therefore important that devolved Administrations are part of the process of formulating the negotiating position and are part of an on-going understanding of how things are going and where these things have got to.

It is a mixed picture, however—that is what I want to share with the committee. There was an

initial meeting between myself, Nick Thomas-Symonds and, from memory, colleagues from other devolved Administrations, although perhaps that happened at a different time. Nick Thomas-Symonds was keen to share with the Scottish Government the UK Government's hopes of a UK-EU agreement, and I shared our perspectives. There were a number of areas in which we had shared priorities, such as wanting to get back into Erasmus+, wanting to secure an agrifood deal, wanting to restore freedom of movement for younger people, and so on. I raised the issue of creative Europe being an area of priority for the Scottish Government, and there was, of course, the standing item of importance to Scotland, which is fishing.

That was the introductory meeting, at which I shared the Scottish Government's position. However, as it was a matter of negotiation, I said that it would be important for us to be updated on how negotiations were proceeding throughout the process. Nick Thomas-Symonds took that to heart, and we met again in Edinburgh. At that meeting, we were joined by a Welsh Government minister, who came to Edinburgh, and by the First Minister and the Deputy First Minister of Northern Ireland, who joined online, and we went through an update on how things had been going. The update was pretty high level and did not contain a lot of detail. In that meeting, I asked why the other side in the negotiation—Maroš Šefčovič was negotiating on behalf of the Commission—had a negotiating mandate agreed with the member states of the European Union and a mechanism for updating them. They actually had the paperwork. I said, "Can we have the same as they have? If it works for them and is a good thing for them, why would it not be for us?" Nick Thomas-Symonds said that that was an interesting suggestion and that he would take it away.

08:45

When we got to the end of his update, I asked Nick Thomas-Symonds why there had been no update on fisheries, because at that stage we were able to read about negotiations on that area in the newspapers. He gave a high-level answer about the UK Government's wish for "long-term stability" for fisheries but said that he was not in a position to go into the details of what might emerge from the negotiations. From memory, that meeting took place towards the end of the week preceding the agreement. It took place only a few days before the agreement was reached, leaving just a weekend.

Most people who have been around the block in politics understand that, particularly in a European context, nothing is agreed until everything is agreed. I acknowledge that that is a challenge for

the UK Government in making sure that it can go through the negotiating process and reach the best deal possible. However, our European colleagues are fully apprised of the situation on an on-going basis.

The next thing that we heard about was the agreement. No paperwork had been shared, although it had been asked for and a commitment to consider sharing it had been made. We learned that there had been an agreement on fisheries, among other things. A number of committee members raised that at the time and were very unhappy about it. At the same time, we learned that the UK Government had not included accession to creative Europe as part of the negotiating process.

There are a number of things to take away from that. First, there is a process of engagement, which is right and proper, but the process is not as good as it could be. Secondly, it makes me think about how we share information about such processes with the likes of this Scottish Parliament committee and others, such as those relating to fisheries and agricultural questions, so that there is an awareness of what has been raised and the direction of travel, and so that people can be held to account by checking, for example, whether Scottish Government ministers have raised things, asked for things to be considered as a priority or asked the UK Government questions in order to understand what is and is not possible.

I say that in order to give a detailed insight into how some of this works, Mr Kerr. As a follow-up, this week I had a phone call with Nick Thomas-Symonds on the morning of the announcement about Erasmus+, which was pretty fully reported in *The Times*.

Stephen Kerr: Was it reported before he phoned you?

Angus Robertson: Yes. I think that the call lasted less than 10 minutes. I asked what I imagine most of you would have wanted to know in relation to Erasmus+, which is how it will work in the context of Scotland's different funding structure for universities. Mr Thomas-Symonds did not know but undertook to get back to me.

Again, the interaction is good, but it would probably be better if we could do it before things are in the newspapers. I am somewhat surprised—that would be the diplomatic way of saying it—that we could not get an answer at that stage on things that are self-evidently and obviously of devolved interest and responsibility. Scotland's funding structure for universities and students is not a secret. However, having a constructive tone and wanting to be in touch are common priorities for both the Scottish Government and the UK Government, which both

want accession to Erasmus+. There is no criticism of that, but we still need to understand some of the details thereof. There is a bit of colour to how all of that works.

I am putting that on the table because it will lend itself to consideration of how we, as a Government, can report to you about those meetings in those different formats and how we can conduct our meetings with you in a way that is content rich but that does not undermine our ability to have intergovernmental discussions. As I have already said, although domestic and international custom and practice around those meetings is that they are private, we must, at the same time, get the balance right so that we can be held to account for what does or does not take place as part of those processes.

Stephen Kerr: From what you have just said, I take it that the Scottish Government knew that fisheries were part of the set of negotiating cards that the UK Government was playing with the EU.

Angus Robertson: The only thing that was confirmed was the UK Government's position. From memory, I prompted Mr Thomas-Symonds to tell me the UK Government's position on negotiations—indeed, he did not volunteer the information—which had been in the newspapers. He said that the UK Government favoured long-term stability for fisheries but gave no insight into what that might mean.

Stephen Kerr: And you knew nothing about the 2038 deal, which was apparently struck in the morning.

Angus Robertson: No.

Stephen Kerr: Whether Scotland will bear some of the reported £8 billion that it will cost for the UK to be part of Erasmus+ has never been discussed either.

Angus Robertson: No.

Stephen Kerr: As you have rightly said, there is a different formula and business model for the universities up here, none of which has been considered.

Angus Robertson: Indeed.

Stephen Kerr: Talking about a reset is fine, because I know that that is politics—a lot of politics is window dressing, and there has been a lot of good window dressing about the reset—but I do not think that very much has changed in practical terms. Having read the submission you have made to the committee as part of our inquiry, I am really interested to hear exactly how it can be made to work better.

At the end of the day, as you well know, Angus Robertson, I am a unionist; I want the union to work optimally and, currently, I do not think that it

could possibly be stated that it does. There must therefore be a better way of doing this. You are at the front end as a minister; your viewpoint is of particular interest to the committee, because you are a Scottish minister, which adds to the interest level, of course.

You are familiar with the work of Andrew Dunlop and the review of intergovernmental relationships that was undertaken. Commissioned by Theresa May, continued by Boris Johnson, and finally published by the Johnson Government, it led to the formalisation of the IGR structures and meetings that we have now. That was a real reset, in the sense that something emerged that had not emerged previously. What aspects of Dunlop's review do you feel have not been adequately addressed?

I am interested in your view on Dunlop's work. I am a bit of an enthusiast for what he had to say, because it seemed most pragmatic and functional in addressing the undoubtedly problematic relationships that existed between the UK Government and the devolved Administrations. I am interested to know your take on Dunlop and, where the recommendations have not been implemented, on how delivering them in full might create a genuine or actual reset in the way in which the UK Government and the devolved Administrations work together.

Angus Robertson: I will first share my observation on Dunlop, and I will then ask Chris Mackie to come in—with your permission, convener.

The thing that I find most interesting about Dunlop relates to funding. I note that the UK Government did not follow the Dunlop recommendations on arrangements for spending in devolved areas. The Dunlop review recommended that there should be agreement between the UK Government's departments and relevant devolved Governments on any funding bid to encourage cross-border collaboration or working. That does not happen. In fact, that is the opposite of what is being pursued on local growth funding. We might come back to that issue because, curiously, the current UK Government is taking a different approach in Wales from that which it is taking in Scotland, and we might wonder why.

Nonetheless, Mr Kerr asked about Dunlop, and that is one of the most interesting points.

Stephen Kerr: What about the structures that he suggested?

Angus Robertson: He talked about a number of things. He said that there should be a senior Cabinet position with responsibility for constitution-related matters. In practice, that has happened.

Under the last UK Government, Michael Gove was seen—

Stephen Kerr: But there has not been the creation of a new office of state.

Angus Robertson: I would say that the organisation of the UK Government is for the UK Government.

Stephen Kerr: Yes, but what is your view?

Angus Robertson: My view is that it is a good thing that there are senior members of Government who have responsibility for intergovernmental relations and that there is a clear locus. However, having said that, I think that it is really important for the heads of Government to understand that the matter is important to them and is not just something that is palmed off to somebody who is thought to have the political smarts to deal with Scotland, Wales and Northern Ireland.

The other Dunlop recommendations included a new Cabinet sub-committee on cross-Government strategic priorities—

Stephen Kerr: He also recommended an independent secretariat.

Angus Robertson: Yes. The first thing that I would say about that is that there is currently a secretariat, which sits within the Cabinet Office. It includes, among others, a seconded civil servant who works for the Scottish Government.

Mr Mackie will speak for himself as a senior civil servant, but my understanding from what has been reported back to me is that there are no concerns about the way in which those arrangements—such as the ability to schedule intergovernmental meetings, provide the necessary background information and make the logistical arrangements—work in practice. The secretariat exists.

Stephen Kerr: But it is not independent. It is part of the Cabinet Office.

Angus Robertson: As I said, it involves not just civil servants operating to the UK Government but civil servants who work to the Scottish Government. They are not independent of Government—of course not, because this is about intergovernmental relations—but the Scottish Government's view is that it operates appropriately.

Stephen Kerr: This is important. So the Scottish Government is agnostic about having an independent secretariat.

Angus Robertson: No. We are saying that there is a secretariat and that we are content with its functioning.

Stephen Kerr: Really?

Angus Robertson: I will hand over to Mr Mackie to—

Stephen Kerr: I am surprised to hear that, frankly, given the evidence that the committee has received. I would have thought that the Scottish Government would want to have an independent secretariat.

Chris Mackie (Scottish Government): I have two points. On the Dunlop review, it is important to clarify that the new structures flowed out of the jointly commissioned review that reported in 2022, which was a four-nations review. The Dunlop review was not a four-nations commission, but obviously—

Stephen Kerr: No, it was a precursor.

Chris Mackie: Yes, and due regard was given to it.

On the secretariat, we acknowledge that it is not a full independent secretariat that is housed in a different building with a seal round it, as you might expect for a public inquiry, for example. However, the secretariat acts independently, even though, for convenience, it is housed in the Cabinet Office. We have a great deal of confidence in the secretariat acting impartially across the different—

09:00

Stephen Kerr: Can you call a meeting of those IGRs?

Chris Mackie: Yes.

Stephen Kerr: You can call those IGR meetings.

Chris Mackie: It obviously relies on each of the other Governments agreeing to it, but it is not led by the UK Government. It is a rotational meeting.

Stephen Kerr: And it is ad hoc.

Chris Mackie: Ad hoc?

Stephen Kerr: Yes. There is no structure or schedule of meetings. It is not like the Council of Ministers in the European Union.

Chris Mackie: A presumption is written into the IGR review about the regularity with which the meetings should take place.

Stephen Kerr: But they are not held that way, are they? We have data that shows that some of the meetings are pretty regular, in that some of them are held once every four months, but some of them are held once a year and some of them are not held at all.

The advantage of an independent secretariat would be that, in the same way as we get with the EU Council of Ministers, it would create a

regularity, an independent setting, an independent agenda and all of the stuff that the Scottish Government does not have. I would have thought that you would be in favour of that.

Angus Robertson: I understand the point that Mr Kerr is making, and I am sympathetic to the aim that he is sharing with the committee of making sure that intergovernmental structures operate as regularly as necessary and that they are not subject to a lack of the agreement on whether they should take place or be cancelled that makes an on-going professional and successful working relationship operate.

I concur with Mr Kerr that this is a work in progress. In acknowledging that there is a secretariat and that it involves Scottish Government civil servants as well as civil servants who are acting for the UK Government, I think that, if improvement is to be made, it is not because of the nature of the secretarial agreements. It is about the willingness of the UK Government and/or individual Government departments to take part in meetings; that is the bottom line.

We can come back to some other examples that Mr Kerr might like me to share with the committee about discussions with different Government departments. With some, they would appear to work very well, but not with others. The Cabinet Office has broached that issue by saying that it is keen to hear about when other UK Government departments are not meeting, are not prepared to meet or will not schedule meetings. The secretariat is not an impediment to all that. It is about the willingness of UK Government departments.

Stephen Kerr: No, but it could be a catalyst to creating exactly that. You identify the problem—

Angus Robertson: I would keep an open mind on that. It should be in everybody's interests to make the processes work as well as they can. All that I am sharing with Mr Kerr and the committee is the perspective of Scottish Government ministers and our civil service colleagues who are part of the processes on a daily basis that the secretariat is not thought to be where there are any shortcomings in how we make the IGR process work as well as it can.

Stephen Kerr: I accept that the structure is not the be all and end all; we are interested in the outcomes. However, I put it to you that, from a Scottish Government point of view, it would be useful if the process had an independent heartbeat rather than it being so ad hoc. I know that ad hocery is the British way of doing things, but that sometimes creates spaces and gaps that cause their own issues.

That is why I have fixated this morning on the need for an independent secretariat that has the shared authority of the UK Government and the devolved Administrations to make everything happen. At the moment, we do not have transparency, we do not have agendas, we do not have minutes, and we do not have communiqués. There needs to be a mechanism that is independent of the Governments that creates that transparency and accountability that does not exist for us as parliamentarians. Do you agree with what I have said?

Angus Robertson: First, I will reinforce the point that I am very open-minded to Mr Kerr's points and the outcomes that he wants to achieve.

Secondly, I want to put a bit more colour into how everything works. I would not want to give the impression that the secretariat is the only route through which intergovernmental relations operate. More often than not, it will involve a direct ask between the directorates of the Scottish Government and their vis-à-vis United Kingdom Government departments to secure a bilateral meeting. As I have already shared with the committee, that sometimes works and sometimes does not work.

For the committee's benefit, I will give some background on that, so that it is aware of how challenging that can be. We have a new Secretary of State for Scotland, who—for the avoidance of doubt—I have known for a long time and is somebody I get on well with personally. As one might expect, when the secretary of state assumed office, an introductory meeting was requested, which was on 10 September. A reply was received on 23 September, offering a meeting on 13 October. On 24 September, the meeting was agreed for 15 October. On 7 October, the UK Government postponed and suggested 11 November, which was then agreed. However, on 10 November, the UK Government postponed, initially to later on 11 November and then to—I quote—"the future". We asked for potential future dates and have received no response to date. That is one example.

A second example in my area of responsibility is covered by a concordat between the Scottish Government and the Foreign, Commonwealth and Development Office, which includes a provision for annual meetings between the Cabinet Secretary for Constitution, External Affairs and Culture and the Foreign Secretary. That is by way of important context and background. I have known the new Foreign Secretary, Yvette Cooper, for a long time and hold her in high personal regard. Three approaches have been made for an introductory meeting, and no response has been received. After the third attempt, there was an unsolicited ask from the FCDO for an introductory call

between me and a junior minister. I would put that on the not-really-working-well end of the scale.

If Mr Kerr is suggesting that a secretariat might have some locus to make things work in the bilateral arrangements, I have an open mind on that and will take that away. Some of what I have said will probably come as news to UK Government ministerial colleagues. We are all very busy people: things are cancelled, and it is not always easy to reschedule. I get all of that. However, although I acknowledge the rhetorical reset, it should concern some UK Government ministers that, taken in the round, the sum total of the situation—the meetings schedule, the securing of bilateral meetings and ensuring that interministerial groups are meeting when important things are on-going—continues to be suboptimal.

There are other processes under way that really impact on us. We, as a Government, are often learning about things that have been agreed on our behalf in devolved areas. A recent example is trade talks with the United States on important provisions around pharmaceuticals. Mr Kerr knows that our approach to the providing of medication to the public is different in Scotland from the rest of the United Kingdom. Again, we would have thought that a UK Government would involve devolved Administrations in such considerations, but the first that the Scottish Government learned about it was with the publication of the agreement.

Stephen Kerr: That is exactly why I am afraid. I know that it is probably boring to anyone who is watching the committee's proceedings, but architecture, structures and processes are critical underpinnings to the flow of communication. I sympathise with Angus Robertson given the couple of stories that he has told about the lack of availability for meetings, and I am sure that he is right that that will be news to both of the ministers he identified. However, it suggests that something is inadequate about the current structures and processes.

Neil Bibby (West Scotland) (Lab): Good morning. Mr Kerr cited the UK Government's response to the committee, which sets out that there have been around 25 interministerial standing committee meetings and interministerial group meetings since the new UK Government was elected. You mentioned that other meetings happen outwith the bilateral meetings and that requests are made. You mentioned two examples of meetings that have not yet been arranged. Outwith those 25 meetings, how many other bilateral meetings have taken place between Scottish Government ministers and the UK Government?

Angus Robertson: I can answer that question only about myself, but I am happy to update the committee more generally. I have been provided

with confirmation that I have met UK Government ministers at least 24 times since the change in UK Government, but the total number of meetings will be a significant number.

Neil Bibby: Is it your responsibility to gather the data across Government on how many meetings there have been between UK Government ministers and Scottish Government ministers?

Angus Robertson: I think that it is actually the Deputy First Minister who has governmental responsibility for intergovernmental relations. I have responsibility for the constitution. My civil service colleagues keep a note of all the details.

It is also fair to acknowledge that some UK Government ministers, because of their area of responsibility, are very committed to meeting regularly. Nick Thomas-Symonds, who is responsible for Europe, is a good example of that. I observe that, more often than not, I tend to meet Scottish and Welsh UK Government ministers. It is perhaps the case that they have a better sense than others that they should be meeting about things—that is just my perception.

I am sorry, but to keep my answer brief, I do not have the full number of meetings, Mr Bibby. If the committee wishes for us to make the best stab at a global number, I am happy to then provide that number.

Neil Bibby: That would be good.

Chris Mackie: We can certainly take that away. There is no centrally held list of UK and Scottish Government meetings other than the one that is included in the normal run of regularly published transparency data on ministerial meetings. Those meetings are included in the data that is regularly published in arrears.

Neil Bibby: That information would be helpful, because we are currently talking about perceptions. It would be good to get full information on which ministers, across different departments, are meeting and when.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I think that, when the committee went to London, most members went to hear evidence from a number of sources. My take, which might not be exactly the same as those of other committee members, is that the approach to intergovernmental meetings is an absolute shambles. I think that I mentioned while I was down there that ad hocery characterises all the different structures. The tier 1 meeting never happens on the same day as the other meeting—whatever it is called. Meetings are held only at the behest of the UK Government, when it decides that it wants to hold them, and there is no independent secretariat in many cases. That is all completely ad hoc.

09:15

I agree with much of what Stephen Kerr said, but I do not agree that we will find the answer in creating new structures, because it is not the structures that underpin this complete failure. The UK, as a unitary state, is almost unique—it is not a confederation or a federation. It is completely unable to manage the process of devolution. I am not a unionist, but I have said that, if I was, I would want devolution to work. You would think that everyone would want it to work.

It seems to me—I am interested in the cabinet secretary's view on this—that the approach is underpinned by an attitude of contempt for the devolved settlements and an imperious approach to power sharing. There is no co-ownership of the structures or the processes. There is no agreement on them at the start—they are just decided at the whim of the Government of the day. That is not the case for every other country that you would care to examine, including Belgium, Germany and France, which take a different and more sustainable approach.

Until the attitude changes, and until there is not this fear of or contempt for the devolved Administrations, things will remain the same. Of course, the attitude varies depending on which party is in power—I mention the attitude towards Wales in relation to the pride in place programme, for example, which shows the asymmetric approach when a different party is in power.

This is an absolute shambles. It will not be properly addressed until there is—what do the Europeans call it?—a co-produced or agreed process, with structures, in which everyone is involved and takes ownership. That is not what happens just now. My view is that things will not change until that happens, but I am interested in the cabinet secretary's view.

Angus Robertson: I hear Mr Brown using the word “shambles” and I have used the word “suboptimal”; I am not sure that they are that far apart. I agree very much with him that this is not primarily about structures. Notwithstanding that one should keep an open mind as to how structures might work—that is fine—I agree that the key underlying issue is the attitude towards things.

The term that Mr Brown was looking for from a European context was “codecision”, which is the decision-making process between European institutions. That approach is certainly not what happens in intergovernmental relations.

As I think that I have said to the committee before, we have come to the end of the rhetoric about reset having any validity, because now we are down to the content and the quality of intergovernmental relations. I have no doubt that

the attitude in Westminster is that devolved Administrations and Parliaments are subordinate and that one should do as much as is necessary to help intergovernmental relations to work when it is in one's interest and to ignore them when it is not. That is the reality of things.

Mr Brown drew international comparisons. I have discussed the issue with colleagues in other European countries that have quasi-federal devolved structures and they are aghast about how the system works in the UK. “Ad hoc” sounds like a formal way of describing things, but it has most certainly been suboptimal.

Regardless of whether one is for or against Scottish independence, or of whether one wishes to have a more federal situation, which is what a previous UK Prime Minister suggested we would be having after 2014, we are very far away from that. Can we try to get some of this to work better? Yes—I am trying, as are other colleagues. A lot of it would not be that difficult, such as the European stuff.

I reflect on my earlier point that there has to be trust between Governments in an intergovernmental structure. That is a very important element of how it can all work. However, unless one tries it, things will never get better.

In fact, in a European context, the approach is going backwards. Keith Brown could have reminded the committee that, in the past, Scottish Government civil servants took part in the annual fisheries negotiations in Brussels, in the room—they were there—but that is not the case now; we just get a read-out of what has been agreed without any on-going discussion about what has been considered. That has gone backwards from pre-devolution custom and practice, and it is worse.

Keith Brown: I do not at all disagree with what has been said. To my mind and in my experience, the best period for intergovernmental relations was during the Cameron years, which involved not a structure but an ethos that was called the respect agenda, which seemed to work to a large extent. When it comes to trust and respecting confidences, there has never been a recorded instance of any Scottish Government minister, of any stripe, betraying or disclosing market-sensitive or political information. You would think that that would be enough to get some trust, even given that the fundamental constitutional aims of the Scottish Government and of the UK Government are so different.

The question really is, how will we get there? Will it take another election before there is a genuine attempt to address the issue, or will it perpetuate itself?

Angus Robertson: It is impossible to operate in a multinational state in which 85 per cent of the population lives in one constituent part. The Government of the United Kingdom operates, in effect, as both an English and a UK Government, and sometimes does not understand the difference between the two. That is the difference between the United Kingdom and all other federal or confederal systems of which I am aware. I am not aware of a working federal or confederal system that has sustained a state with such a divergence in size, which brings a divergent view on which part is the most important.

That is why I believe that Scotland's optimal form of governance is as an independent country—like every other country of a similar size that is a member state of the European Union. That is the best way to do things. Then, for example, if negotiations were undertaken on our behalf as an EU member state, as is the case in the EU on trade—individual member states are part of the process that draws up the negotiating position; they are kept fully apprised of the situation with regular meetings of their permanent representatives in Brussels as the process is ongoing, the documentation being shared not just with those representatives but with the member states in their capitals; and agreement is then reached involving the member states—the process would be different from what happens in the UK.

For people of a unionist persuasion who have said that they wish the UK structures to work, that poses a big challenge, because we can see better custom and practice elsewhere and we can see that that does not operate in the UK. Mr Brown is right to ask what will bring about an attitudinal change, which is what is required. I am not seeing that and, with the passing of time and the rhetoric of a reset being well and truly in the rear-view mirror, people such as yourselves on the committee and others in this place—and perhaps members of the Westminster Parliament—will be asking ever more difficult questions about those processes.

Keith Brown: That was evident on our visit to London. I forget the name of the committee whose members we joined for a meeting, but the big casualty for us was the lack of transparency at parliamentary level about what is going on between the Scottish and UK Governments.

I understand the difficulties that the Scottish Government has because it is not in control of much of this, but the bottom line is that the punter does not have a chance of finding their way through all the conventions, the ad hocery and all the rest of it, which is also usually wrapped in confidentiality. From a punter's point of view, there is no real transparency. They cannot see whether

the Governments are working together, or where, if necessary, to apportion accountability or blame.

We discussed a bit in London the prospects for a joint committee of the two Parliaments—even one that resurrected the old Scottish Grand Committee, which would not be practical at all. There was a bit of exploration of different methods by which we could try to increase transparency, one of which included all the devolved Administrations and parliamentarians, and those from Westminster. I do not think that that would lead to the breakthrough that we want, but would the Scottish Government support that kind of initiative?

Angus Robertson: As I have shared with the committee before, I am sympathetic to the transparency point on wanting to ensure that you have enough information to do your work of holding the Government to account and—by extension in this context—being able to understand how the intergovernmental processes work. We discussed just a moment ago the fact that the Scottish Government publishes information about interministerial meetings. That exists and is public. It is perhaps not published in a format that lends itself to being able to see where things are not happening, which is an obvious area that you would wish to pursue.

As I have said before, I am keen for us to provide you with information so that you can interrogate what the Scottish Government is doing on European Union alignment. I will take away that point in relation to our processes, but I assure the committee that I am keen to discuss the issue with Welsh and Northern Irish colleagues, because what is true for here is true for there. Perhaps there are processes in Wales and Northern Ireland that we do not undertake; I would want to know what those are. Perhaps there are self-evident approaches that we might take that would help better inform colleagues in the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly in this respect.

It will make a difference only on the margins—I agree with Mr Brown on that—but having transparency will make it ever more difficult for people not to do what they are supposed to do. The Foreign Office provides an absolutely classic example of how the arrangements have not worked for me, because one needs only to look at how long I have been in office and ask how many times I have held an annual meeting with the Foreign Secretary—not a junior minister—and that will tell you that concordats or intergovernmental agreements, structures and processes are not working as they have been set out to operate.

The Convener: Mr Brown used the word “contempt”, which sounds like an active term to use. Is “ambivalence” closer to the mark? We also

heard in London that the devolved nations are not on the radar of some Whitehall departments.

Angus Robertson: I am coming increasingly to the view that, for most, it is the total absence of any conscious consideration whatsoever of how office holding in the UK Government actually requires one to deal with devolved Administrations. That is as true in areas of devolved responsibility as it is in reserved areas. A moment ago, I gave Mr Kerr an example of trade negotiations to make agreements on pharmaceuticals. Addressing how that impacts on Scotland, where we have free prescriptions, is an obvious area where Scotland needs to be a part of the processes.

I am therefore of the view that the approach is less an active decision and more a case of not taking the matter seriously at all and of having an absolutely thoughtless mindset. That goes back to the question of how that can be so and to my observation about the UK being unique as a multinational state that has 85 per cent of the population in one part and a Government that operates as an English and UK Government at the same time. Will that ever change? No, I do not think so.

09:30

The Convener: Mr Halcro Johnston and Mr Bibby have indicated that they want to come in. Do you wish to speak on this area or to raise a new area?

Jamie Halcro Johnston (Highlands and Islands) (Con): Some of what I want to raise fits into this area.

The Convener: I will first bring in Mr Harvie, who has been waiting a while, and then I will bring in Mr Halcro Johnston and then Mr Bibby.

Patrick Harvie (Glasgow) (Green): Good morning. Minister, you have talked about both the improvements that have happened and the inadequacy of where we have got to. What you described is a sub-optimal shambles, to combine your words and those of Keith Brown. I would like us to think for a moment about the extent to which improvement has happened. Am I right in thinking that nothing has in any way locked those improvements in? Even devolution cannot be fundamentally locked in, but it is solid to the extent that an incoming UK Government that wanted to reverse it would find it technically, legally and politically difficult to abolish devolution. It is not impossible, but it would be very difficult. Has anything happened that would make it difficult for an incoming UK Government to go back to the hostility that we saw before?

Angus Robertson: The simple answer is no. I would also pray in aid the continuing presence of the United Kingdom Internal Market Act 2020 on the statute book as an example of there having been a pre-election acknowledgement that there was an attempt to subvert the devolution process and the new UK Government, on attaining office, then wanting to retain that legislation in its back pocket in order to continue the bad practices.

Patrick Harvie: It sounds as though the improvement that has happened rests on good will, both at an individual ministerial level, as well as in the general Government-to-Government vibe.

Angus Robertson: That is correct.

Patrick Harvie: Does the Scottish Government see any plausible way of locking in the improvement that has happened so that future UK Governments would still be required to work in as collegiate a way as can be achieved?

Angus Robertson: There is a Westminster convention that no future Government can be bound by a current Government. That is the first thing to understand in terms of how the UK parliamentary and governmental system operates. To that extent, existing arrangements are not “locked in”—to use Mr Harvie’s term—in perpetuity. However, the intergovernmental relations that we now have are, as Mr Mackie said in evidence earlier, part of a process that involved devolved Administrations. So, yes, it rests on the good will of Governments working together.

There are agreements in place. However, notwithstanding the rhetoric, there is a range of examples, which I have given in evidence, that show that the agreements are not working. There are examples of areas where meetings have not taken place at all or where relations with the UK Government are, frankly, performative. There is a particularly bad example in relation to the recent UK child poverty strategy, which I would be happy to update the committee on if it wants another example of very bad practice. That is the difference between saying, “We are interested, theoretically, in working with one another and we will keep one another updated on things”, and us learning about those things either in newspapers the day before they are officially launched or on the day in a press release.

Patrick Harvie: Can I suggest a change that—although it would not absolutely lock them in, as you are right that we cannot fundamentally bind future Governments—could make it more likely that improvements to the relationship would persist? We could make some changes around the public discussion of the intergovernmental space. Most of what we have talked about in relation to intergovernmental relationships was

about what you described, quite legitimately, as the private space that is required for Governments to discuss issues that are not yet in the public domain.

I respect the fact that there will always be a need for that, but there is no public space in which the intergovernmental decisions that happen in the grey area in the split between devolved and reserved matters are actually held accountable. When we talk about transparency we usually talk about whether there are minutes of meetings or whether reports will be produced, rather than about whether there is any public process at all.

I can make a comparison. Here, within the Scottish Parliament, during the whole period in which there has been a minority Government, that Government has needed to negotiate every year with other political parties about the budget. That negotiation has needed some private space, but no one would pretend that that private negotiation is a substitute for the public scrutiny that takes place in committees before, during and after the budget process.

Would having some mechanism for the devolved Scottish Parliament committees and UK Parliament committees to meet jointly and to call the ministers that they wish to call to answer questions in public create a built-in incentive for some sort of dialogue? That would not necessarily require formal co-decision but could ensure that people are on the same page. You gave the example of Erasmus+. If ministers who were about to make such an announcement knew that they would be asked in public about Scottish funding arrangements, they would have an incentive to ensure that they knew the answer.

Angus Robertson: There are a couple of things there.

First, I have a thought about Mr Harvie's original question about locking things in. I know that the committee has looked at the issue of the Sewel convention being only a convention. One way of driving profound change through Whitehall would be to put that on a statutory footing, because Government departments in London would know that they were literally unable to continue acting in the way that the previous UK Government in particular acted. We have egregious examples of the convention being observed only in the breach and absolutely not being taken seriously. Such a change would be a start, but Mr Harvie would be right to say that that would deal only with the issue of legislative consent motions and not with the daily intergovernmental relations that he went on to talk about.

Patrick Harvie: It would also require a change to UK legislation to make that happen.

Angus Robertson: Indeed.

Patrick Harvie: I am suggesting a process of joint parliamentary scrutiny that would actually give ministers in both Governments some incentive to behave better.

Angus Robertson: I understand that and will answer it in a couple of ways.

First, as I said to Mr Kerr, I am open to workable suggestions about how intergovernmental relations can work better. I want to leave the committee, this Parliament and my UK Government colleagues in no doubt that we are committed to trying to make the structures work as well as they can. That is no substitute for being a sovereign state, and we are having to find workarounds, but we are open to thinking about new ways of doing things.

I hope that you will forgive me for saying that I would like to see the detail of how some of that might work, because I am sure that UK Government ministers would say that they would expect to be questioned about that in the House of Commons. I do not know whether there was an oral statement on Erasmus+ so I am looking at my colleagues to see whether they know. They are saying that there was not, which surprises me, because that would have given an opportunity for Scottish members, or anyone else, to try to find out the funding implications.

I agree with Mr Harvie that that is still not enough and that we need a better way. I can give a commitment on behalf of the Scottish Government, and I have. I am taking away the issue of transparency and I will think about how we can provide better statistics, such as those that Mr Bibby asked about, but there is more than that.

Without getting into the territory of endangering the opportunity for getting a process under way, I will give an example and will describe it slightly elliptically, for reasons that I think that members will understand. We have been asked to take part in a pretty important UK policy process that involves considering how such a change might be managed—the terms of reference, a green paper and a subsequent white paper, which is the process of things. We were asked for our input into something that is important for Scotland, so we provided detailed information in relation to the process. I had a meeting about it during which it was apparent that not a single consideration had been shared with the UK Government; not a single material consideration—zero—had found its way into the apparently iterative process. Hurdle 1 was that we were asked to contribute and told that the UK Government was very interested in hearing from us, so we provided the information. I asked if we could be given an example of anything that we had taken part in that had made its way into the process. I acknowledge that unless parliamentarians are aware that that is the case,

one cannot hold ministers to account. That is why I say to Mr Harvie that I am open to thinking about ways that we can do that better.

Stephen Kerr: For Patrick Harvie's information, there was a statement yesterday in the House of Commons on Erasmus+. It has been suggested that there was not, but there was.

Patrick Harvie: Okay.

Angus Robertson: Thanks.

Patrick Harvie: The cabinet secretary has put some of the points quite fairly. I will finish by asking him to acknowledge that there is a difference between accountability and transparency. We talk about transparency in relation to providing information, but there needs to be something more for there to be accountability. Parliaments—plural—need to be able to ensure that decisions are democratically accountable, even if intergovernmental relationships improve and those improvements rest on good will, and even when things are working well, for example, if it was agreed that the UK Government would rely on common frameworks as the first port of call, rather than using the powers that are contained in the internal market act. Those common frameworks have been agreed between Governments, but they have never been signed off by Parliament. They are not required to be brought to the Parliament for approval, so there is a lack of accountability, even where there is some transparency.

Angus Robertson: I acknowledge Mr Harvie's point and agree that there is a difference between those two things. I also acknowledge that both of those are the responsibility of parliamentarians in holding Governments to account. The question is that, if things are sub-optimal, what needs to happen in order for parliamentarians to be able to hold ministers, both here and elsewhere, to account, and what format would transparency take? Mr Bibby asked a question about the number of meetings that have taken place. There is transparency in that the meetings that ministers hold are publicly signed off and available, but the information is perhaps not held in a format that lends itself to holding a cabinet secretary to account as easily as it should be.

I say again that I am perfectly content to take away any suggestions that the committee might have; no doubt you will be publishing your conclusions, considering a draft report and will think about different ways that such things might happen. I signal to the committee that I am open to hearing suggestions about how things might work better in this and any other way.

Jamie Halcro Johnston: The past 20 minutes have highlighted one of my concerns with the information that we are getting. Notwithstanding

some of the issues that the cabinet secretary discussed with my colleague Stephen Kerr and some of the practical concerns that he has, and that we all have, about the relationship, the information that we have had and the language that we have heard—particularly from Mr Brown, who used the words “contempt” and “imperious”, and from you, cabinet secretary, who used the word “sub-optimal”—highlight that, regardless of what is happening behind the scenes, the perception will always be that that relationship is not working and that there are problems, because that suits the Scottish Government. That falls into the narrative that we have seen from the Scottish Government that the UK Government is not working and the union is not working. How can we get a proper idea of the Scottish Government's position, if that is the narrative that we see all the way through the Parliament?

09:45

Angus Robertson: I do not think that Mr Halcro Johnston was a member of the committee when I narrated my first experience of common frameworks.

Jamie Halcro Johnston: No, I was not.

Angus Robertson: I will say again what I said to the committee then. This was under the previous Government, of which Mr Halcro Johnston knows that I have been very critical in general. The record shows clearly that I gave an example of dealings that I had with the then UK Conservative Cabinet Office minister Chloe Smith in relation to common frameworks. Because of my personal commitment and hers, we acted in good faith to try to find a solution to the lack of progress that was happening on common frameworks. Neither of us understood why things were not progressing. I was relatively new to office and I think that she was probably relatively new to the Cabinet Office and perhaps did not know the back story to why matters were not progressing. We saw no reason why things should not proceed. As that was the case for both of us, we asked officials to go away and make progress and agreed to meet again in however many—although not many—weeks.

We understand that, in politics, there is a contest of ideas—we know that—but I want Mr Halcro Johnston and colleagues to know that we operate in good faith in relation to these interactions. With Mr Thomas-Symonds, I discussed the gulf in custom and practice between the UK and the European Union, given how it deals with information, a negotiating mandate, documentation and all the rest of it. I acknowledged that, no doubt, there would be some people in Whitehall who might not be tremendously keen for that amount of information

to be shared, because there might be a risk of—I do not know—leaks. However, I said to him that I would be very confident that, having called for something like that to happen, those leaks would not be coming from us because, were that to be the case, the process just would not continue.

Of course, the information on Erasmus+ ended up in the newspapers before it was announced in Parliament. We knew nothing about it, so it could not have been the Scottish Government—I say that with tongue slightly in cheek, and by way of context.

My point, which is genuinely made, is that the process is in all of our interests, because we are often dealing with a lot of quite technical issues. Often, they are not matters of party-political difference at all but are about reaching the best administrative decisions or how to make systems work. There is not tremendous political advantage for anybody, and certainly not in anything performative. I agree that, on anything to do with intergovernmental relations—this is not only a Scottish, UK or European issue; it is much wider—a performative approach does not serve anybody well. It is certainly not my position, nor that of the Scottish Government that it does. However, it cannot be beyond the wit of the UK Government to understand the situation, where there are workable practices and we are working in parallel.

Another point in relation to the European Union is that, ironically, the Scottish Government can be better informed about EU-UK matters because of what we hear in Brussels than because of what we hear from the UK Government. That is an extraordinary state of affairs, and I am sure that everybody would agree that that is not the way that things should operate.

We know that there are established ways of working. Mr Kerr drew attention to how the European Union works, and he is a Eurosceptic. If it is possible for some of this to work in those ways elsewhere, why on earth can we not try that here? If there is a feeling that we should try it with a Government department to which that is particularly relevant—for example, in the European Union context—we should do so, as that would be really good.

Jamie Halcro Johnston: I accept the points that are being made, and we have all accepted that there are concerns here. The point that I am making is that it is hard to get into the things that are happening behind the scenes and how well things are working when there is a narrative from the Scottish Government that things are not working—regardless of the fact that some things are working and some things are not. Let us be clear: the Scottish Government does not want devolution to work, because the ultimate aim is independence. We know that. I am slightly

dubious about the idea that Keith Brown highlighted: that the punters have to know about this. I do not think that the punters care about this inquiry; they care about hospitals, roads and all the other things that matter.

When the Scottish Government's narrative is that, regardless of what is happening, Government relations are not working and the relationship with the UK Government is not working, it is hard to dig down into the minutiae of the issues, such as those that Stephen Kerr raised, where things could be improved. Patrick Harvie suggested that there are areas where there could be improvements.

Angus Robertson: In fairness—if Mr Halcro Johnston were to reflect on the evidence that I have given this morning—I have been nuanced in my reflections about how things work. I have pointed to examples where intergovernmental relations have been conducted in the spirit and to the letter of agreed ways working together. I have acknowledged that. I have also acknowledged that there are colleagues with whom I have a very good working relationship.

There are examples of things that are really challenging, because of timescales. I am not taking out a tiny violin and expecting parliamentarian colleagues to have tremendous sympathy for this but, where the Government has to satisfy parliamentary procedures and oversight, it really matters that we understand how things operate in different parts of the UK.

I can give Mr Halcro Johnston this assurance. I have been involved in processes where UK Government colleagues have told me, “I appreciate that this will be difficult for you. Is there a way that we can work through this?” I can give Mr Halcro Johnston the assurance that I have worked in good faith to do that.

If one has to work together on things for four or five years, one has to show good faith. If all one is going to do is to suggest that nothing works, without being prepared to work in good faith or to compromise about things, then nothing will work. That is not how things operate.

Jamie Halcro Johnston: I welcome that.

We have all sat on committees where Scottish statutory instruments have come through late, or UK Government legislation has come through late from the Scottish Government for consideration. Sometimes it is the responsibility of the Scottish Government that things are late; sometimes it is the responsibility of the UK Government. I hope that we all accept that.

I will move to another point. You have raised some concerns, issues and frustrations, and we can accept that some of them are understandable. Some of them are the same frustrations that local

authorities in Scotland have with the Government about their relationship and engagement. I am not asking the cabinet secretary for particular examples but, first, would you recognise that point? Secondly, are there areas where the relationship between the Scottish Government and local government could provide more of a guide when it comes to relationships with the UK Government?

Angus Robertson: I have regular meetings with colleagues from the Convention of Scottish Local Authorities. For me and my portfolio, that is primarily in the culture space. We have a very good working relationship, and we acknowledge where there are challenges. Libraries represent a major issue in many parts of Scotland, for example. That is a challenge for local government and it is an issue for the Scottish Government, as we want the library network to be protected, so we have an on-going dialogue. That seems to work well, but one might want to get a better understanding of some of the issues that colleagues have brought up here. I do not know, but perhaps that is a matter for the Local Government, Housing and Planning Committee—forgive me.

Jamie Halcro Johnston: It is more about your experiences. I recognise that there are differences between the two relationships, but I wanted to know whether there is anything like best practice.

A more practical issue has been raised, which has been hinted at in our conversations today. A huge amount of the work that goes on is civil servants behind the scenes. There is a recognition, probably on both sides, that some civil servants in the Scottish Government do not always understand the pressures that UK civil servants work under, and vice versa, which has implications. It was suggested that there could be more exchange and more opportunities for working together. I know that there is some exchange. We were down there just before or after a week of engagement. I wondered whether more consideration could be given to interaction between civil servants and officials, to allow both sides perhaps to get a better understanding of the challenges.

Angus Robertson: I will ask Mr Mackie to share some insights from a civil service perspective, which will probably be more interesting than me sharing my view on it.

First, though, I acknowledge that there is not a Scottish civil service and a UK civil service. There is a Great Britain civil service and a Northern Ireland civil service. Those are the only two civil services in the United Kingdom. I regularly hear my civil service colleagues say that they are off to have a meeting with their fellow permanent secretaries, or that they have just come back from

London, where they were at a particular Government department speaking with their opposite numbers, and that worked really well, or they were in another department, and that worked less well. From my interactions with UK civil servants—sorry, GB civil servants; I must get my terminologies right—I have always had the impression that there is a very professional relationship between the civil servants who work to the Scottish Government and those who work to the UK Government.

Jamie Halcro Johnston: I would not question that at all. As I say, it is more of a positive. The issue is not simply a lack of meetings—not just sitting in an office for a day—but a lack of practical experiences. What happens when a piece of legislation is delayed or the budget is put out late—things like that?

Angus Robertson: I will ask Mr Mackie to come in in a nanosecond.

Jamie Halcro Johnston: He is poised.

Angus Robertson: We should not overlook the fact that there is regular churn in the civil service. You will hear regularly about civil servants who are working to the Scottish Government moving on to the Department for Work and Pensions, as was the case with the previous permanent secretary here. There is movement throughout the grades of the civil service. There is a level of insight. Could there be more? At this point, I will pass over to Mr Mackie.

Chris Mackie: I will make a couple of points. First, working in our team, we are acutely aware of the pressures that UK Government civil servants are working under and of the fact that devolution issues are just one of the considerations that they are having to make. They also work with Treasury or Downing Street colleagues. One of the things that we try to do, certainly when we are trying to upskill civil servants across the Scottish Government, is to help people to be more empathetic about the pressures that their UK Government colleagues are working under, because that is a pathway to better understanding and collaboration. From a Scottish Government perspective, there is certainly awareness of that.

I would say that the UK Government is making a great deal of effort to improve that. It has a devolution unit in the Cabinet Office, which tries to drive improvements in the understanding of devolution across the UK civil service. I think that Jamie Halcro Johnston alluded to the recent devolution learning week, which is a series of online events for civil servants right across the UK Government and the Scottish Government, and the Welsh Government for that matter, to learn more about devolution. Earlier this year, there was the completion of a shadowing pilot, which was to

seek to match civil servants from Scottish and UK Government departments to help to drive better understanding across those departments. We are hopeful that that will run again next year—there is certainly a proposal in the works. We as a team in the Scottish Government and the Cabinet Office team are committed to improving that devolution capability across the UK and Scottish Governments.

Angus Robertson: I am sorry, but I have a snippet of insight into that, which did not fall immediately to mind. Just to confirm to Mr Halcro Johnston, I have turned up to meetings at which I recognise my civil service colleagues who I normally deal with and been asked, “Oh, here is a colleague from whichever UK Government department who is shadowing—is that okay?”, to which I have always said, “Absolutely.” I give some assurance that there are different approaches being taken to make things work better. Do they ultimately help us with our challenges? Well, they can do, but not necessarily.

10:00

Jamie Halcro Johnston: I will just add one point that is almost in line with that, which Mr Mackie could perhaps answer. It is not always a question of UK Government departments ignoring Scotland and Scottish issues; some of the big UK Government departments ignore other UK Government departments, because they are so siloed and so focused on their own areas. Is that an issue or an excuse that you accept?

Chris Mackie: I cannot speak for UK Government civil servants. When we did some work over the summer to identify how the reset was proceeding, we found that there was certainly an inconsistency of approach between different UK departments. Some of that was based on a lack of sophistication towards devolution because they had potentially not dealt with a devolution issue previously, whereas some departments had a good level of devolution capability.

You are absolutely right that, with a ministry such as the Ministry of Justice that largely deals with issues that are wholly devolved to Scotland, the interaction might be intermittent and not regular, whereas a department such as the Department for Environment, Food and Rural Affairs, which deals with a lot of EU considerations, is more adept at dealing with devolved issues. There is an inconsistency there.

Jamie Halcro Johnston: I said “siloed”, but I perhaps should have said that it is more that departments are focused on their own areas. Thank you.

The Convener: I apologise for the lozenge and the cold. I am conscious that we are over time for

what we expected for the agenda item, but Mr Brown and Mr Bibby are keen to come in. Mr Brown, do you have a question that is supplementary to what we have just discussed?

Keith Brown: Yes. It is on that last answer and on the point that you raised about ambivalence versus contempt, convener. The contempt argument was borne out by Jamie Halcro Johnston’s comments when he purported to say that anything from the Scottish National Party will be discarded because it believes in independence so there can be no improvements in the meantime. That is another example of the contempt that we saw from the previous Government.

Jamie Halcro Johnston: That is not what I said.

Keith Brown: That is exactly what you said. On the point that was made about ambivalence, a report was produced in 2006 for Jack McConnell as First Minister that excoriated the UK Government, because most departments were not even being made aware of the need to talk about devolution. When we were in London, a senior civil servant or somebody from a think tank—I forget who it was—said that, in 2025-26, we are actually only in the foothills of devolution. The prospects of any immediate change and of people standing back and taking stock of devolution seem pretty remote if senior civil servants in London are saying that we are still in the early days. It is 20-odd years since that time—surely attitudes should have moved on in the meantime, and the fact that they have not means that we will have to do something quite different to effect change. I am talking about making changes in the context of the union now—it is nothing to do with independence—in order to see an improvement.

Angus Robertson: I totally agree. Riffing off the point about different departmental realities, joining those two things together is key. I gave the example of trade agreements and the absence of meaningful interaction in areas in which there would be very significant interest or devolved locus, which is a problem in governmental terms and a matter of political discourse. We are told, “Foreign affairs are reserved, so you cannot have any external affairs,” which, as we all know, is total nonsense. However, that reflects the very same point, which is that there is a lack of understanding. However, although we are living in an asymmetrical union, our main public service broadcaster still thinks that it is accurate to report, every single day, that “the Government” is doing something or other.

Keith Brown: Or that unemployment has risen, which is not the case in Scotland.

Angus Robertson: Indeed. It talks about “the Government”, when there is more than one Government in the United Kingdom. That would never happen in Germany, Austria, Belgium and so on. If we want to circle back to the main points that we have been discussing, it is about an attitude towards how things can work.

If we are coming to the end of this agenda item, convener, I want to stress again that we will do everything that we can to try to make systems work and that I am very open to systems being included for transparency and accountability. However, with regard to the bigger picture, we need to understand that we are dealing with an attitude that has not changed that much through devolution. That is the point that Mr Brown has made, and he is correct.

Neil Bibby: There has been a lot of talk about perceptions and vibes. I asked the cabinet secretary earlier about the number of meetings because we wanted to establish some facts and because I thought that it would be helpful to have that information. However, in his written submission to the committee, the cabinet secretary said:

“The Scottish Government was not informed of the proposed UK-US trade deal ahead of the announcement.”

I know that he said earlier that he does not have responsibility for intergovernmental relations, but is the cabinet secretary’s position and understanding that the Scottish Government was not informed of the proposed deal?

Angus Robertson: It is not about the fact that there are proposed deals, in theory, or that negotiations might be under way—more often than not, those are shared in public and are a matter of public reporting; it is about the substance of the process.

I was not involved in that process, so I do not know the detail. I do not know the answer to whether any inquiries took place from the UK Government in relation to the different headline areas that might have been discussed, such as pharmaceuticals. The Scottish Government was not involved in any meaningful process whatsoever in relation to where the deal ended up.

Neil Bibby: Well, I was not involved in the discussions either, so I do not really know the extent to which discussions about the UK-US trade deal took place between the Scottish Government and the UK Government. However, I do know that, after a freedom of information request back in September, correspondence between the Scottish Government and the UK Government on the UK-US trade deal—email exchanges between the Minister for Trade Policy, Douglas Alexander, and the Minister for Business, Richard Lochhead, the First Minister and the

Deputy First Minister, and between Scottish Government and UK Government officials—was published. Just from that FOI request, we know that discussions were on-going between UK and Scottish Government officials on that particular issue. That will not be the sum total, I am sure, of the discussions that were happening in relation to the UK-US trade deal, but you talked about nuance earlier—

Angus Robertson: Yes, understood.

Neil Bibby: For the Scottish Government to say that it was not informed of the UK-US trade deal when there is evidence to suggest that extensive discussions were on-going about it shows that we need to be a bit more caveated about our statements in relation to intergovernmental relations.

Angus Robertson: I agree. Words are quite important in this.

There is a danger in a performative process by letter exchange. Being informed that trade negotiations are taking place is not the same thing as having a detailed conversation about the potential upsides and downsides of the process.

I would be perfectly happy to go away and review the correspondence that Mr Bibby has drawn my attention to, because I would be interested to see the level of detail that was part of it about what was being considered in relation to pharmaceuticals.

My issue is not necessarily about being informed. We were informed that there was a UK-EU agreement process—of course we were. We had meetings about it and I have given evidence about it. That is not the major issue. The major issue is about the content. This goes beyond the rhetoric of reset point that I was making before. It is not even as much a case of, “We know that things weren’t great before—let’s make them better now.” It is about the substance that happens as part of the process. I would be interested in the substance in relation to pharmaceuticals, just as I was interested in the substance of what was happening with fishing and the substance of having information shared with us that was not shared—yet was being shared with the European Union.

Mr Bibby is absolutely right: what matters is the substance. It is not about the performative element—if there is such a thing—of the fact that there are meetings and that we send each other letters. It is about whether the contents of letters, discussions and meetings are taken on board and whether things happen as a result of them, with better policy as a result. The outcome is surely the most important thing in all that, but I will definitely take away Mr Bibby’s point about having the best possible marshalling of information in the future.

Neil Bibby: I agree with the cabinet secretary on the importance of substance.

Angus Robertson: I am delighted that that has been minuted.

The Convener: I have a final question, cabinet secretary. In our report on the work that we have done on the Sewel convention, we recommended that there should be a memorandum of understanding. The UK Government agreed that that would be a good way forward. Has any substantive work been done on that?

Angus Robertson: The short answer is that not as much has been done as we would like. I will hand over to Mr Mackie, who is a bit more closely involved in that. Given the length of time since the UK general election, it is a bit surprising that we still have not received that memorandum of understanding or made substantive progress.

Chris Mackie: At official level, there are discussions on-going about the memorandum of understanding and what might be in it. Scottish Government officials are working collaboratively with the UK Government to try to bring about wording that we could potentially put to ministers.

The Convener: Is there an indicative timescale for when that work might be completed?

Chris Mackie: There is hope that we could potentially have something to put to ministers shortly, on the basis that we have a looming Scottish parliamentary election, which I think changes matters. We are working as quickly as we can.

Angus Robertson: We will be happy to keep the committee informed of any substantive progress in that area.

The Convener: That would be very helpful—thank you.

I suspend the meeting for five minutes before we move on to item 2.

10:12

Meeting suspended.

10:20

On resuming—

Legal Mechanism for any Independence Referendum

The Convener: Welcome back. Under agenda item 2, we will conclude the taking of evidence for our inquiry on the legal mechanism for any independence referendum. We are again joined by Angus Robertson, Cabinet Secretary for Constitution, External Affairs and Culture, and I welcome Luke McBratney, deputy director for elections and constitutional projects at the Scottish Government.

We have heard evidence that, in the wake of the Supreme Court ruling, the Scottish Parliament does not have the competence to legislate for another independence referendum. Is there any merit in seeking to formally establish the circumstances in which a referendum could take place?

Angus Robertson: There is, for any number of reasons. First, in a democratic society, when a party wins an election on a manifesto, consent from the losing side through the acknowledgment that the Government has a right to make progress on delivering its manifesto is important for the democratic health of a country. Unfortunately, on the constitutional question, things have moved on since 2014. A range of rhetorical devices have been used to stop a referendum on Scottish independence taking place, notwithstanding the repeated election of a majority of members of the Scottish Parliament on a mandate for there to be such a referendum.

We need to separate something out. My point is not about whether one is for independence or not. As democrats, we live in a country in which referenda have been used as a mechanism for agreeing constitutional change. We have the precedent of an independence referendum and the way in which that worked. In Northern Ireland, we now have a mechanism that can determine constitutional change through the ballot box—a *de jure* mechanism. We have a *de facto* mechanism for England; given 85 per cent of the population and an overwhelming majority in the UK Parliament, if there were a move for constitutional change in England, there would be a mechanism through Westminster for such a change. However, no formally acknowledged mechanism exists in Scotland or Wales.

Convener, as I am sure you have seen, there is a long list of statements from past British Prime Ministers and leaders from across the political spectrum at Westminster—and, indeed, in the Scottish Parliament—that it is for the people to

decide on the question. That being the case, surely there must be a mechanism for it.

As a democrat, for me there is only one route, which is the ballot box and a process that is legal, constitutional and agreed, because that is a requirement for international recognition. The fact that we have already done this tells me that there is a way of doing it, but it requires those who oppose Scottish independence to acknowledge, as democrats, that people have a democratic right to determine constitutional change in Scotland.

I acknowledge that the history of Northern Ireland is not directly comparable with that of Scotland. However, it is not sustainable that, although a mechanism exists for determining Northern Ireland's constitutional future, one does not exist here. That needs to change. The mechanism does not need to be complicated, but it needs our agreement, as democrats, that the people of Scotland should be able to determine their future in relation to becoming an independent state. That is for our Parliament to determine.

The Convener: We will move to questions, and I will bring in Mr Brown first.

Keith Brown: There is a difference between the UK and Spain, for example, in that Spain does not allow a legal mechanism for a referendum on the independence of its various constituent parts. Spain also does not acknowledge the right to self-determination for those areas.

In the UK, various Prime Ministers and the Smith commission have stated explicitly the idea that Scotland should have the right to decide on its own future. That is in the Smith commission report, which the UK Government signed up to. In a recent change to the constitution of Turks and Caicos Islands, the UK Government recognised and facilitated a legal mechanism and, as the cabinet secretary just mentioned, there is a mechanism in Northern Ireland.

It seems to be the case that the UK acknowledges and apparently supports the right of Scotland to exercise self-determination, but that can be done only at the whim of a Westminster Government. When it is decided by somebody else, self-determination is not self-determination. That cannot be. If the right to exercise self-determination has to be approved by somebody else, that is not self-determination. Is that the key point here?

In summary, the evidence that we have heard so far shows that the UK says that it recognises Scotland's right to self-determination, but it is deliberately withholding Scotland's ability to exercise that right. The UK keeps jealously to its own heart the idea that only the UK Government can decide on that and, in that way, it can prevent that right from being exercised. From what we

have heard, the fact that the UK recognises the right but refuses to facilitate the exercise of it seems to be very odd in the international context.

Angus Robertson: I agree. That is contradictory, not just in terms but in publicly stated positions. As stated in June 2014, the position of the leaders of the Scottish Conservative and Unionist Party, the Scottish Labour Party and the Scottish Liberal Democrats was:

"Power lies with the Scottish people and we believe it is for the Scottish people to decide how we are governed."

Also in 2014, the Smith commission stated:

"nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose."

Another very strong quote states:

"Mandates come from the electorate in an election ... it should be the people of Scotland that decide when the next referendum is."

That quote is from Anas Sarwar.

I could go on. It does not matter whether politicians—I could go back to Margaret Thatcher, John Major, Theresa May and so on—have all said similar things, there has been an acknowledgement, even among people who do not support Scottish independence, that self-determination, which was the key point in Mr Brown's question, is an inalienable right of the people of Scotland. That being the case, being repeatedly unprepared to answer the simple question, "By which mechanism can Scotland secure a referendum on independence?" is withholding the right of self-determination.

It is a denial of democracy. A number of rhetorical flourishes are thrown into the debate, which are there to stymie, when people say that now is not the time and that things are required to be the settled will. There is a whole series of things that are absolutely and totally irrelevant to the simple question that you have asked, which is about what the mechanism is.

10:30

I think that, as democrats, we all agree and would avow that the only route for significant constitutional change is through the ballot box. The question for all of us to answer, without cavilling at that, is about how that can be secured. The good news is that we have done it. When the Scottish Parliament election happened in 2011, the UK Government acknowledged that a majority in the Parliament had been elected on a manifesto commitment that a referendum should take place, and that is exactly what happened.

We have now had a number of elections since, including those for the current Scottish Parliament, in which a majority of members were elected on a manifesto commitment that there should be a referendum, yet a referendum is being blocked. We have the de facto blocking of a referendum, and we have the de jure challenge from others who oppose independence, although not from all of them—there are some observers out there who have made other points. I have read commentary from the likes of Kenny Farquharson, a Scottish columnist who did not support Scottish independence, that there should be a mechanism.

There must be a mechanism. The issue is not going to go away. I acknowledge that there are strongly held views for and against independence, and for and against the union. However, that is not the question before us. The question is, what is the democratic mechanism at the present time? At least half the Scottish electorate support Scottish independence, and a higher percentage believe that one should be able to make a decision about it.

There is a precedent, and there are different ways in which this happens. Mr Brown mentioned other parts of the world. The National Assembly of Québec has the right to decide whether there should be a referendum, but we do not. That is perfectly possible elsewhere, and it should be possible here. The longer the current situation goes on, the more unsustainable and corrosive it gets for our democratic culture, because it is a roadblock on democratic decision making and a denial of a democratic right of self-determination.

Keith Brown: You are right to say that the various parties that oppose a referendum have not been able to state what the mechanism is for exercising a right that they acknowledge. That seems absurd, but that is where we are. In fact, none of the unionist members of this committee has offered any explanation of what the mechanism might be.

Do you have an idea of why, when it was agreed in 2012 that a referendum would be held in 2014, the UK Government felt that there was a compelling mandate? Why have we all had this “once in a generation” and “now is not the time” prevarication that we have talked about for the past 11 years or so? What do you think is in the minds of successive UK Governments that are trying to block this? Is it because they fear that, this time, people will vote for the independence of Scotland, or is there another reason?

Angus Robertson: That is the only rational explanation that I have. Let us cast our minds back to the 2011 Scottish Parliament election and the way in which the then UK Prime Minister was able to agree a process with the Scottish Government. That was done on the basis that a

majority had been elected to the Scottish Parliament on a manifesto commitment, but support for independence was considered to be in the 20 per cents. I think that the calculation for the then UK Prime Minister was that this was a concession that would lead to a no vote and would then stop the debate and end the question.

The difference now is that not only do the majority of those in this Parliament support independence but a majority in this country support it, too. I see some shaking of heads, but the average of all the independent polling that one is able to point to shows that support for a yes vote is ahead of support for no.

Even if that were not the case, that would not negate the point that I am making, which is that the difference is that the starting point for a referendum in 2025, 2026 or 2027 would be support percentages that were not in the 20s but were, de minimis, in the 40s. Recent polls have also shown that, among those who have a view on how they would vote, support is at more than 50 per cent. That is the only rational explanation as to why someone would seek to block both a democratic choice and a mechanism for exercising that choice.

I am sorry to have to say it, but I think that colleagues who support that position should look themselves in the mirror and be honest about the fact that seeking to stop a vote simply because we do not like the potential outcome does not behove us as democrats. When we go into elections, we all know that we might or might not be elected or re-elected, and we are prepared to stand for election knowing that context.

Decisions have been taken about wider constitutional issues—such as devolution—on which we have had a number of referenda. We had a number of referenda on Europe. People's views change, and I think that I am right in saying that we now have about 1 million people living in Scotland who were not able to vote in the 2014 referendum. We have also had a material change of circumstances since that vote. We were promised that, if we were to vote no, we would remain in the European Union, but we have since been taken out of the European Union, although a majority in Scotland voted to remain. That was a case of misselling.

Not only is there a strong rhetorical case for a referendum but we have the results of election after election after election. There are those who are not supportive of a yes outcome but who agree, as democrats, that the only acceptable mechanism for determining our future in governmental or constitutional terms is the ballot box. However, some are seeking rhetorical routes to put off answering an actually quite simple question.

I have another simple point. How on earth is it sustainable to have a mechanism in one part of the United Kingdom but not in another? That is just not sustainable.

Keith Brown: I have a final question. You mentioned the distinction between *de jure* and *de facto* referenda. The English legal system has a principle called *stare decisis*, which essentially means to look at previous decisions as setting precedents. The system is very strongly based on that principle, which, incidentally, is not the same in Scotland. Do you think that that principle, and the fact that we had an agreed referendum back in 2014, adds to what seems to many people, although not to everyone, to be an overwhelming argument for the Scottish people having the right to decide?

We have done that once before—it was agreed in the past. It is now at least 11 years since that happened and none of the reasons for not doing it again stack up. Does that create another mandate for a Scottish Parliament in which the majority of people support independence? If the English principle of *stare decisis* is being followed, surely that should lead to the same sort of agreement.

Angus Robertson: I must be absolutely frank with Mr Brown: I am not a lawyer and nor am I a legal academic or an expert in any sense, so I do not feel that I am suitably qualified to answer his question about English law.

I would observe, however, the Supreme Court judgment—which has been well reported—in relation to the ability of us as parliamentarians in the Scottish Parliament to decide to hold a referendum. Everything that I have seen has advised me that it is unlikely that the Supreme Court would make any different decision from that which it made before. That gets us back to the same conundrum and challenge that we have been discussing since the beginning of this session, which is that it is a matter of political will, political decision making and consensus as democrats that the democratic process should be at the heart of determining our political and constitutional future.

We have a precedent. Given that we have a precedent that we know was agreeable to the UK Government and given that we know the result would have been recognised internationally had Scotland voted yes in 2014, I am of the view that we should secure agreement through the ballot box and that that is exactly what should happen again if a majority of parliamentarians who support independence are returned to this Parliament.

Otherwise, there is the next conversation, which is about the future of political culture in Scotland if we have a blocking minority. If the people who lose the election are telling those who are elected

and represent the largest group of people who voted in that election that they cannot exercise the choice that they were voted in for, that is pretty serious and it is not sustainable. It cannot go on.

What is the solution? The solution is to do what David Cameron did, which is to make a vow. We know that there is a not just the rhetorical avowal of the right of self-determination that we have already narrated this morning. There is a route by which this can happen. I would wish it to be a standing right of the Scottish Parliament to be able to determine its future whenever a majority of people elected to this place, acting on behalf of the people who have elected them to come here, determine that that is what should happen. There is no substitute for that.

It is a pretty simple question. Are we democrats—yes or no? If we are, do we believe that the public should be able to exercise a right about the constitutional future of the country—yes or no? My answer is yes to both those things. That being the case, what is the mechanism? It is time for those who cast doubt on this to be absolutely clear about *de minimis*. It has to match that which exists for one of the other constituent nations of the United Kingdom, which is Northern Ireland.

Keith Brown: Before the referendum, commitments were given, as you remember, that if Scotland voted no, this Parliament would be constitutionally protected and that it could not be abolished. The Sewel convention made law that Scotland's place in the EU was guaranteed, which turned out to be lies. However, the Smith commission was established after the independence referendum, and the unionist parties supported Scotland's right to self-determination. Were they acting in bad faith?

Angus Robertson: I think that, at the time, because it was thought that there would not be a clamour for another referendum, that was a simple thing to concede because, intellectually, if one is in favour of the right to self-determination and one is a democrat, how could one say anything other than that?

I have not spoken with any members of the Smith commission since, but I have no reason to believe that they acted in bad faith then. However, I think that, having said what they said then and given the situation in which we find ourselves now—a Parliament with a majority elected for there to be such a referendum—there is a significant inconsistency there.

The only explanation that I can alight on is not intellectual. It is a political consideration that the starting position for a referendum campaign is that, *de minimis*, 50 per cent of those who express an opinion on how they would vote—yes or no—would vote yes. Therefore, it is more of a

consideration about the risk of losing a referendum than about the principle of either democratic values or democratic processes.

I cast no aspersions on the members of the Smith commission then, but I am interested in hearing what they would say now. It would be very inconsistent of them, or, indeed, of the political parties that signed up to the commission's recommendations—including the Scottish Conservatives, Scottish Labour and the Scottish Liberal Democrats—if they now take a position that is diametrically opposed to that which they agreed to in 2014.

10:45

Keith Brown: Thankfully, we have a member of the Smith commission here.

Stephen Kerr: I return to the substance of the inquiry, which is fundamentally political. The evidence was very clear that the United Kingdom has quite a liberal and permissive constitutional arrangement—flexibility was mentioned frequently. Is it not the truth of the matter that this is about politics, and that if Angus Robertson, Keith Brown and the other nationalists on this committee and in this Parliament want to have another referendum, they have to persuade the majority of the people of Scotland? Is that not what politics is about—a battle of ideas?

Angus Robertson: Stephen Kerr is conflating two different things: first, the right to be able to decide, and, secondly, coming to a view on the principal question. Those are quite distinct.

I gently draw his attention to the percentage with which the UK Conservative and Unionist Party was elected under David Cameron and under which it delivered a Brexit referendum. That Government was elected on a percentage that was not more than 50 per cent; the percentage was, by my memory, in the mid-30s. That Government then legislated for the Brexit referendum that delivered the result that it did. I deploy that fact in my answer to Mr Kerr because he supported the Conservative Party when that Government was elected, he supported a Brexit referendum and I think that I am right in saying that he voted in favour of Brexit.

Stephen Kerr: I certainly did.

Angus Robertson: Therefore, he was able to exercise a democratic right that was delivered by a parliamentary election with the result of a percentage in the mid-30s—not the 50s.

Conflating those two things is not the right way to go about this. The basic point here is about people having the right to self-determination. They vote for a parliament to be able to have the opportunity to say yes and well as no, and that is

the best way of doing it. The reason we know that is that we have done it already, so there is precedent.

Stephen Kerr: It is a political issue, and it will be resolved—as these matters are—by people voting. We have an election very shortly, and it is up to Angus Robertson, Keith Brown and the other nationalists on the committee and in the Parliament to make the case for that. I think you will find—and some of you are honest enough in your hearts to know this—that the vast majority of people in Scotland have more pressing considerations and priorities, and that will shape how people vote.

However, this is a question of politics. Constitutional arrangements are very clear. The law is very clear. The issue should be determined—as you have said and as we would say—as a matter of democratic process. That is how it has been done in the past in this country, and that is how it will be done in future.

Frankly, the whole inquiry has been a fractious waste of time, because what we have heard in evidence time and again is what we already knew, which is that the Supreme Court judgment makes it clear that the powers rest with the sovereign Parliament of the United Kingdom. The evidence that we have received from many of the experts is also stacked heavily in the corner of those who say that the country has a very liberal and flexible constitutional arrangement, and the evidence of the past proves that.

Angus Robertson: I did not discern a question from Mr Kerr.

Stephen Kerr: No. I was taking a leaf out of Keith Brown's book and making a statement.

Angus Robertson: However, it was a very good example of the view of those people who are unprepared, as democrats, to answer the question, "What is the mechanism?" We have a mechanism in Northern Ireland. Why should that mechanism not also exist here? We can agree—

Stephen Kerr: Well, the experts—

Angus Robertson: I can agree with Mr Kerr—that might shock those who are watching these proceedings—that the UK, because it has an unwritten constitution, has flexibility, to use the word that he used, to make different arrangements. However—

Stephen Kerr: It is benign, as well. That is the thing.

Angus Robertson: The point that I am making is that we have different treatment and different statuses for the different nations of this union, and that is unsustainable. It cannot go on.

Stephen Kerr: Well—

Angus Robertson: How many elections need to return a majority to this place—there have been significantly more than the Conservative Party had secured when it legislated for a Brexit referendum—for there to be a referendum about Scotland's constitutional future?

Stephen Kerr: It is worth reading the evidence that the committee received, cabinet secretary—

Angus Robertson: We still have no answer.

Stephen Kerr: —because the disparities that you describe and the unique circumstances of Northern Ireland were well explored by our legal experts and constitutional experts.

In the interest of time, which presses on, I will leave it there. I think that I have made my view clear and I heard the cabinet secretary's answer to my question. It is a matter of politics and debate, and we are of course about to have an exciting first part of the new year, which will be all about this.

The Convener: Mr Halcro Johnston is next.

Jamie Halcro Johnston: I certainly agree with my friend and colleague Stephen Kerr. I know that Mr Brown will be shocked by that, but the inquiry has been a bit of a damp squib because we have essentially been told what we already know. There have certainly been some useful clarifying points from some of the experts, particularly on the fact that, as Mr Kerr pointed out, this is a political matter.

Cabinet secretary, before I ask my question, I want to pick you up on some of the things that you have said so far. First, on your points about independence parties, a majority for independence and a mandate, I note that, going into the previous election, both Lorna Slater, who is the co-leader of the Greens, and Nicola Sturgeon, for the SNP, suggested that those who voted for those parties could still be against independence but their vote would not be counted. That rather puts into question the idea that a majority of the public voting for those parties is a pure mandate for independence.

The argument that the better together campaign promised staying in the EU is a false one. It has been repeated, but how it has been perceived by SNP politicians has been proved to be false. What the better together campaign said was quite simple. It said that the only way to stay in the EU was to vote no, because voting yes would mean that we would leave a member state of the EU and, therefore, that we would leave the EU. That was clarified in a letter from the European Commission to a committee of this Parliament.

On the point about our being taken out of the EU against our will, I voted remain, but my will was that the result was honoured. Across the United

Kingdom, the vote was to leave, so we left. In the same way, had Scotland voted in 2014 to leave the UK, I would have wanted to see that honoured, despite the fact that, as you will appreciate—I am sure that it will come as no shock to you—I voted to stay in the UK.

Independence is not a priority for the public. I think that it was shown to be the public's seventh or eighth priority, and it may even be a lower priority than that. There is not a clamour for independence or another independence referendum at the moment.

I am sure that you will want to readdress some of those points, but I will ask my question. At the SNP conference earlier this year, John Swinney highlighted that there was a plan—it has been described as a secret plan—to deliver independence. It was the former First Minister Nicola Sturgeon who suggested that it was a "secret plan". Can you give us details of that? Can you tell us whether such a plan exists?

Angus Robertson: Again, I reflect that a member who is not in favour of independence has the opportunity to suggest by which democratic mechanism the people might be able to determine the future of their country, but that suggestion is—again—totally absent.

Jamie Halcro Johnston: Well, I am asking you, because you are giving evidence to us.

Angus Robertson: Convener, I am giving an answer to Mr Halcro Johnston's observations.

Mr Halcro Johnston said an interesting thing when he talked about Lorna Slater and others saying that a vote for the Scottish Greens—and, by extension, the SNP—was not, of itself, a mandate for independence. I agree—what it is, though, is a mandate for a referendum. Both the Scottish National Party and the Scottish Green Party, which make up the majority in this Parliament, were elected on a manifesto commitment that there should be a referendum. I would never ever pray in aid somebody voting for me in Edinburgh Central to keep the Tories out—because it is a two-horse race there between the SNP and the Tories—and say that a vote of a Labour, Liberal Democrat or Green voter who wanted to keep the Tories out was necessarily a vote for independence per se. However, I am very clear that, when a party says in its manifesto that it is committed to, and that its MSPs will vote for, a referendum taking place, it is a mandate to have that choice.

We do not need to go round the houses again on this, but it would appear that the salient point here is being lost by some. There is a difference between having the right of self-determination—and having an agreed route as democrats to be able to do that—and the pros and cons of

independence itself. Nobody on the no side of the constitutional argument has been prepared to address that gap.

Jamie Halcro Johnston: Mr Robertson, this is an inquiry into a legal mechanism, and we are taking evidence on this matter. The whole point of these sorts of inquiries—and some might question whether there is, indeed, a point to this inquiry—is to take evidence from experts and yourself. I am not suggesting that you are not an expert, or that you do not have any insight into this—that was not my intention—but the point is that we are trying to get this information.

I go back, then, to the question that I asked: is there a plan? Let us not call it a secret plan—let us call it a plan that the SNP wants to keep secret for the moment—but is there a plan for delivering independence? The First Minister was quite clear at your conference—he said that there was a precedent. When the SNP wins a majority, there will be a referendum. How is that going to be delivered? Is it simply rhetoric, or is there a detailed plan? Is there a legal path to a referendum? Can you give us more details on that? After all, I think that that is the salient point in relation to this inquiry.

Angus Robertson: Mr Halcro Johnston will not, I am sure, be surprised to learn that I am a democrat and that the Scottish National Party is a democratic party that believes in the democratic process. Therefore, the plan is based on those principles. We are standing for election to this Parliament, and if we are elected, we will pursue an independence referendum.

In any other country, or in any other circumstance, it would not be considered a strange proposition that the party that wins with a manifesto commitment to do something actually does it. In fact, in most normal countries, Opposition parliamentarians would be jumping up and down, talking about delivering manifesto commitments—

Jamie Halcro Johnston: So the secret plan is to do what you have already done but have not yet achieved.

The Convener: I just want to say that we are straying into certain areas that are to do with the election. Can we stick to the substantive report that we have done and the cabinet secretary's evidence on that?

Jamie Halcro Johnston: This is a question to be asked of the Scottish Government. The party in the Scottish Government has said not that it will push for another referendum but that there will be another referendum. There has to be some legality to that in order to deliver it; indeed, as Mr Robertson has quite rightly pointed out, it has to be a legal and acceptable referendum.

From what you are saying, Mr Robertson, you seem to be suggesting that there is no legal plan. The secret plan—or the plan that is being kept secret, I should say—is simply to do what you have done before and hope that circumstances—

Angus Robertson: I would never presume to describe the democratic process in the way that Mr Halcro Johnston has just done. I would have thought that all of us, as democrats, would be clamouring to uphold both domestic and international democratic standards. In other words, when the people elect a Government to do something, it is empowered to get on and do it. We are in a very strange—

Jamie Halcro Johnston: I admire your dancing around the issue, but I think that we should save that for Hogmanay.

Angus Robertson: I am very disappointed by Mr Halcro Johnston, but we should—

Jamie Halcro Johnston: There is no plan, is there?

11:00

Angus Robertson: It might be helpful for the record to remind Mr Halcro Johnston that we have stood against each other in elections before and that Mr Halcro Johnston was gracious enough to recognise the victory of the SNP in that contest. In the same way, I appeal to him now: having done that in a parliamentary context, he should be doing so in a constitutional context as well.

Jamie Halcro Johnston: The point that I am trying to extract from you—[*Interruption.*] Obviously, it is frustrating Mr Brown, and I apologise for that. Essentially, the First Minister of Scotland has said that there is a secret plan. Sorry—he said that there is a plan. It was described as “secret” by a former First Minister, and we have taken that into account.

It is clear that you are not offering anything different. There is no difference from what has been offered in the past.

Angus Robertson: There is no other route to Scottish independence than through the ballot box. I am committed to that and I would hope that Mr Halcro Johnston would be committed to that as well.

Jamie Halcro Johnston: There is no secret plan?

Angus Robertson: You are putting words into my mouth, Mr Halcro Johnston.

The Convener: Can we move on? I think—

Jamie Halcro Johnston: Yes or no—is there a secret plan? Is there a plan for independence?

Angus Robertson: There is a plan to secure Scottish independence and it is through the ballot box.

Jamie Halcro Johnston: So, nothing else. Okay.

The Convener: I am very conscious of time. Two other members are waiting to come in and we have another agenda item, so I ask everybody to be concise in their questions and answers.

Jamie Halcro Johnston: I will finish, then. That was all that I wanted to establish. It seems to have amused SNP colleagues around the table. However, I think that those who voted for them or those passionate nationalists who will be watching this committee—I do not understand why they are passionate nationalists but I understand their passion in their country—will be slightly concerned that, having been told by the SNP that there was some sort of great strategy or plan, there is not one. The minister has confirmed that, so I will leave it at that.

Angus Robertson: I am sorry—words are being put in my mouth by Jamie Halcro Johnston and that is not acceptable. What I have stated—

Jamie Halcro Johnston: Well, detail it.

Angus Robertson: Convener, with your permission—am I in a position to answer the question?

Jamie Halcro Johnston: No. Clearly, you are not, otherwise we would have had an answer at some point. *[Interruption.]*

The Convener: I am sorry. This is a serious issue on a serious report that we have done a considerable amount of work on. Cabinet secretary, your views have been made clear on the record and I note your concern about being misrepresented, but we have to move on and let other members have a chance to come in.

I turn to Patrick Harvie.

Patrick Harvie: Thank you, convener. I do not know whether anybody has started on the Christmas sherry a bit early or something, but the high spirits seem to be kicking in a wee bit. Let us be realistic. This inquiry is clearly going to elicit very different attitudes and views from those of us who want to see a referendum and those who do not, and from those of us who want to see independence and those who do not. There is no particular reason why we should pretend to be surprised about that dynamic in the committee.

From my point of view—and I suspect from yours, cabinet secretary—the position whereby Scotland has been told that the people of Scotland have the right to make a decision but that they may not exercise that right is a fundamental contradiction. It is as if the electoral authorities

were telling people as individual citizens, “Of course you can register to vote, but we’re not going to print any ballot papers or open any polling stations.” People have the right to vote, but they may not exercise that right.

However, the contradictions go deeper than that. We have heard from Mr Kerr that all we have to do is persuade the majority of people in Scotland to vote for something—that is all that we are asking to have the opportunity to do—and he seems to think that that should happen through an election. Mr Halcro Johnston reminded us that an election is determined on a great many other issues and that positions on independence are not the only thing involved. An election is either a mandate for independence or a mandate for a referendum. We need to be clear that the latter is the case—that the mandate for a referendum is an election.

However, a contradiction is creeping into the Scottish Government’s position, which I want to give you an opportunity to clarify. You have talked about a party that wins an election having the right to implement its promises. At the beginning of the evidence session, you used a phrase about the situation where a party wins an election on a manifesto promise. That happened in 2007—your party won the 2007 election, but it did not, as a pro-independence party, have a majority in the Parliament, and there was no mandate for independence in the Parliament. More recently, there has been talk about whether a single-party majority is the necessary precondition for a referendum, simply because that happened to be the case in 2011.

Throughout this meeting, you have repeatedly used the phrase “a majority” in relation to parliamentarians who were elected on a commitment. You have also referred to the current parliamentary majority in favour of a referendum, which is not a single-party majority but a parliamentary majority. Will you be clear and explicit that the Scottish Government’s position is that it is a majority in the Parliament rather than a single-party majority that demonstrates a mandate to hold an independence referendum?

Angus Robertson: That is certainly the case. A majority of members in the Parliament have voted for there to be a referendum, and that counts for something. It should count for all democrats, and that should not be denied by any democrat. I do not think that votes for the Scottish Green Party, which is a party that has a manifesto commitment to hold a referendum, are worth any less than votes for the Scottish National Party or any other party when it comes to matters that are debated in the Scottish Parliament. That is why I believe that, if the Scottish Parliament votes for something, it should happen.

I agree with Mr Kerr and Mr Halcro Johnston that this question is deeply political. However, it is only political—with a capital P—because the parties that oppose independence have departed from the principled position on self-determination in Scotland that they used to have. Now, because they would rather not have a referendum at all, those parties are dancing around a number of rhetorical approaches to suggest that a referendum be held not now, but at some distant point in the future, with some imagined but not elucidated level of mandate that is different from now. The inference is that 50 per cent of the vote is not enough, and that is from a party that held the Brexit referendum after winning a percentage vote share in the 30s—and which, incidentally, has not won a national election in Scotland since the 1950s. To be lectured on democratic processes by that party is a bit rich.

I agree with the principle in Mr Harvie's question that, if the majority of parliamentarians in this Parliament wish for there to be a referendum, that is what should happen. My point is simply that, given the politics of the issue, it may be a stronger case to exactly match the precedent and circumstances of 2011. That does not discount my views as a democrat, because this is a question of principles. My principle as a parliamentarian and a believer in parliamentary democracy is that, if a majority of members in the Parliament wish something to be so and were elected with a manifesto to do that, then that is what should happen.

Patrick Harvie: I am grateful for that clarity. I was perhaps expecting a bit more pushback.

We will get into what political parties want out of the election process separately—that is not a matter for this committee. Every political party will want as many seats in the Parliament as it can win. However, I hope that, when the cabinet secretary speaks to another former member of the Smith commission—the First Minister, who I am sure he speaks to regularly—he will reinforce the danger of implying to the people of Scotland and the other political parties that, if a pro-independence majority but not a single-party majority is returned in May, the mandate that is being sought will not have been achieved. We have to avoid the situation where other political parties or the UK Government can claim that that is the case. I hope that the cabinet secretary will encourage the First Minister to be equally explicit that the mandate that is being sought is a pro-independence majority of MSPs in Parliament.

Angus Robertson: I understand the point that Mr Harvie is making, but it is also a question for other political parties. It is not a question only for the political parties that are in favour of having a

referendum, which may or may not be in favour of independence.

Helpfully, the Welsh Government has very recently published a report on the constitutional future of Wales in the United Kingdom, and it says:

“it must be open to any of its parts democratically to choose to withdraw from the Union. If this were not so, a nation could conceivably be bound into the UK against its will, a situation both undemocratic and inconsistent with the idea of a Union based on shared values and interests.”

We may disagree on the substance and how we would vote, but I am simply appealing to colleagues, as democrats, to agree that, through the ballot box in a democratic election to this Parliament, we should be able to determine a vote on the country's future. It is not that complicated. It is pretty basic in terms of democratic values, and it has the beauty of a precedent. It has happened before, so it can and it will happen again.

Patrick Harvie: Through a majority in Parliament?

Angus Robertson: Through a vote by parliamentarians.

Patrick Harvie: Thank you.

George Adam (Paisley) (SNP): Good morning. I think that we are seeing the cold, hard fear and desperation of the unionists here today as they desperately try to grasp—[*Interruption.*] Well, they sound it.

If you look at the inquiry, you see that one man's flexible constitution is another man's closed shop. Is it not the case that the UK constitution is the problem? I was going to say that it is like something written on the back of a beer mat, but that would be written, whereas we do not have anything in writing. The whole idea is that it is made up as it goes along. To use football parlance, they do not know what they are doing. They continually make things up as they go along.

Is it not the case that the UK constitution is a dinosaur compared with those of countries such as Canada and Germany, which are full federal states and treat their devolved parliaments with actual respect? Is the key and the problem here not that there is a lack of respect and that there is no UK constitution? It is made up as they go along.

Angus Robertson: I agree with Mr Adam. He is absolutely right, in general. I would draw the committee's attention to the fact—I would not be the first person to say this in giving evidence on this question to the committee—that, although it is not enshrined in a constitution, the right of self-determination for a constituent nation in this United Kingdom is written into legislation and international treaties. That is the route by which Northern Ireland is in a position to determine

whether it should become part of a united Ireland or not—and it involves not just the mechanism of how that might take place, but that it might take place every seven years.

I have said before that Scotland's position is not exactly analogous with Northern Ireland's, but the right of self-determination is an inalienable right. It is not held only in one place and not in another. Either we believe in the right of self-determination and in a family of nations that are all valued, or we do not. We have an inconsistency in that that is the de jure situation only for Northern Ireland and for England, by dint of its size. England has a de facto right of self-determination within the context of the United Kingdom because it constitutes 85 per cent of it. It is just not sustainable for it to remain so.

Should there be a mechanism? Yes. Why? It is because it happens elsewhere in this state and it happens in other comparable multinational states. It is not a difficult thing to do. We know that, because it has happened already—ergo, there is precedent, so we know how it can happen. It is disappointing that colleagues on the other side of the constitutional argument are not prepared to step up and avow the democratic principles that they say they adhere to, when we all should do so.

Democracy is not a secret; it happens in public. It involves a ballot box, people voting and people being elected to this Parliament. I am sorry to say that those who stand in the path of it are denying the democratic process and, by extension, people's democratic right to exercise the right of self-determination. That is not sustainable.

11:15

George Adam: You have brought up an important point. There has been much talk about the elections next year. We could have a scenario with nationalist Governments in Belfast, in Scotland and in Wales, yet only one of them would have the opportunity to make a move forward. Surely that is the problem with the UK constitution—it is not flexible; it is a straitjacket.

Angus Robertson: Mr Adam is again correct. Especially after yesterday's opinion poll in Wales that confirmed the leading position of Plaid Cymru and the appalling levels of support for the Welsh Labour Party and the Welsh Conservative Party, and given the polls in Northern Ireland, I have absolutely no doubt that the prognosis that Mr Adam draws to our attention regarding the likely outcomes of elections in Scotland, Wales and Northern Ireland will mean that, for the first time, there will be heads of government in three of the four nations of this United Kingdom who believe in fundamental constitutional change.

I would wish there to be a mechanism that was agreed by all. However, if there is not, I think that, as never before, we will have a debate—in England as well, given that potential and likely outcome of the elections next year—on the fact that the status quo is not sustainable, that it rests on an unwritten constitution, that it not being written in stone is not a strength but a weakness, and that it undermines democratic rights in Scotland. That is not sustainable.

The Convener: I have to draw the meeting to a close. Cabinet secretary, I thank you and your officials for your attendance at committee this morning.

I ask people to clear the room really quickly, because we have another agenda item that I hope that we will get through before we have to leave for the chamber. I wish everyone a very good Christmas and new year.

11:17

Meeting continued in private until 11:24.

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