



European Union Committee

Uncorrected oral evidence: Brexit: Devolution Inquiry

Wednesday 1 February 2017

1.20 pm

Watch the meeting

Members present: Lord Boswell of Aynho (The Chairman); Earl of Kinnoull; Lord Selkirk of Douglas; Baroness Suttie; Lord Whitty; Baroness Wilcox.

Evidence Session No. 4

Heard in Public

Questions 35 - 44

Witnesses

I: Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe; Frank Strang, Deputy Director of the EU Hub and Analysis team, Scottish Government.

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Examination of witnesses

Michael Russell MSP and Frank Strang.

Q35 **The Chairman:** Minister, you are very welcome. We are hugely grateful to you for coming. We are sorry for the slight flurry to get here, but I think we have caught our breath. The important thing is to establish a relationship and feel that that can continue. Our work as a Committee, here and elsewhere, in the light of the decision of the UK referendum in June, has been to make sure that bits that are hugely important, either to parts of the United Kingdom or related countries and areas such as the Crown Dependencies that work in parallel, are adequately considered and that, above all, the machinery and system are geared towards dealing with that. If possible, we need to make sure that we find practical solutions in the interests of people and not just simply in terms of some rather dry floating of argument. That is motherhood and apple pie, but it is important to remember that that is how we have to work it.

We have had some very productive discussions today and with your colleagues in Holyrood. In parallel, we have continuing membership of the ECUK, which is the consultative machinery, which I have always found very constructive. This is my third visit to Holyrood, and I am anxious that that should continue. It may even move to a future relationship in a new situation. We are quietening the halls outside.

Michael Russell: They are Scotland's putative rural leaders.

The Chairman: I heard that and make no further comment. One or two of us who have an agricultural background perhaps should declare an interest. I do.

Lord Whitty: Yes, I do, too.

The Chairman: Indeed, Larry was a Minister in that department. I do not know if you want to say anything initially. You are the one with the really short timescale, so I do not want to make this difficult. We can lead off as soon as you wish.

Michael Russell: I would only thank you for coming. I welcome the opportunity to accept your invitation. Let me stress at the very beginning that we are endeavouring to reach a compromise agreement with the UK Government on the issues that we will discuss today. There is very genuine work under way. When I was asked to do this job last year, as Lord Selkirk knows I came from being Education Secretary for a period, doing other things, and was asked to come back into government to do this.

The First Minister asked me to do three things. One was to be the lead negotiator, which is what I am endeavouring to do in a process that is not yet satisfactory. We will come on to that. The second was to look at the existing options. We put a great deal and continue to put a great deal of time and effort into those. In December, we published a substantial piece

of work, which has been well received, I have to say. You may not agree with every word of it.

The Chairman: It was very well written.

Michael Russell: It is important to present these things well, but also to have content. The content essentially lays out three options, the first of which would be for the United Kingdom to remain part of the single market. We do this accepting that the United Kingdom, in that definition, has voted to leave but that Scotland did not vote to leave, and very substantially. No area of Scotland voted to leave, which, as a Scottish Minister, is clearly very important to me. As I said, the first option would be for the United Kingdom to remain in the single market. The Prime Minister decided on that matter herself. She did not consult the negotiating committee, which was due to discuss that matter 48 hours later.

The second option is for Scotland to remain in the single market by means of the EFTA/EEA option, and we believe that is viable. It is not easy, but it is viable. As part of that, we see a necessity for increasing devolved powers in a variety of areas, which we can talk about. We have put on the table a clear set of proposals, which are still in play in the sense that we have had a meeting of the JMC plenary as recently as Monday, at which we agreed to intensify the process of discussion of these proposals and to consider the proposals from the Welsh Assembly Government, which are of course also endorsed by Plaid Cymru. There is a range of proposals—sensible, well worked-out proposals—on the table, which we believe should lead the UK to present a differentiated series of options in their Article 50 letter.

We are concerned that we are now presumably less than 60 days from the triggering of Article 50. It could be less; there was speculation yesterday that it might be on the same day as the European Council on 9 March. I can tell you, hand on heart, I have seen no draft or even preliminary paper that tells me what will be in the Article 50 letter. Now, given that the JMC (EN) has been established in order to attempt to come to an agreed UK position on Article 50, that strikes me as strange, and not only strange but rather difficult. We are doing our very best. We will go on doing our very best. We will keep working with the UK Government and with the other devolved Administrations, but this has neither been an easy process; nor does it seem to me a process that has yet been fully honoured by the UK Government.

- Q36 **The Chairman:** Thank you. If I might just comment, number one is that all of us would see this as a process that we can put to one side without further debate. We can park issues of any future constitutional arrangements, but there are clearly major areas of interest, which we are looking at, to people in Scotland and in the other devolved Administrations, and indeed in England, that interact and that tend to be overlooked in this. We have to concert those, and you did not major on this, with our European partners as well. One of the things they have to know is why it is important to us that we emphasise some things.

Perhaps as a lead-in it would be useful to know whether you want to say more, beyond communiqué speak, first, about whether the tone of the joint ministerial committee was positive and constructive, and, secondly—not least looking at your Private Secretary, as we collaborated many years ago at the official level—about whether the Whitehall machinery, or the machinery of government, including of St Andrew's House, is adequately addressed to these issues yet or needs more resources.

My biggest worries are two. One is that we might run out of time in the process, because, as you say, there are 60 days before the button is pushed and then two years after that, unless extended. The second is that something might be overlooked in some way in the process, not adequately addressed or at least saved until it can be dealt with later. What is your take on that? That is a very general question really.

Michael Russell: It is. I think we will come to consider the repatriation of powers at some stage during this. There are details to be discussed on how that mechanism might work, how you would avoid things being overlooked and how long that would take. As you will know, Ivan Rogers gave evidence to a Westminster Committee this morning and gave a fairly strong steer that he did not believe this was possible to achieve in the timescale that was given.

On the question of civil service resources—that is part of it, but not all of it—there are clearly some very complex issues to be worked through. As I have made clear to David Davis—and I have to say I have a good relationship with him on a personal basis—we are not emulating the creation of a major empire. I have a small and efficient team, which I feed into all other parts of government, and I work with other Cabinet Secretaries. We are endeavouring to be fleet of foot. This is a challenging issue, largely because of the range and scope of it but also because it has not been done before, and there is a huge literature developing on it. I often compare it to the island of St Kilda, as they used to say; it was the smallest spot of ground upon which most had been written. Brexit is now the idea on which most has been written.

The Chairman: I hope we will not have to evacuate it.

Michael Russell: I would be happy to debate how that happened and the similarities, but we need to clear away quite a lot of stuff and to work on what is really important. We have tried to do that in this paper. If I could just take issue with the point you made about the constitutional settlement, given that we are talking about a range of real powers, it is not possible to differentiate between the constitutional issues, in terms of where those powers lie, and this debate. Assuming that the UK leaves the EU—and I make that assumption—very substantial powers will be repatriated. Where those powers go will be integral to the relationship between the various parts of this island and how power is exercised. Integral to the matter is the whole issue of the devolved settlement and how that will be opened up automatically by this.

The Chairman: For the avoidance of doubt, I was trying to park what

you might call a macro-constitutional issue as to whether or not Scotland wished to become independent. That is what I meant. If we put that issue aside—there may be a world of difference between members of the Committee on that, as you would anticipate—you are then clearly into the very serious business of looking at what has to be looked at in the devolved settlement. As you rightly say, some powers flow back from Brussels and other powers that are held in Whitehall at the moment and are reserved may wish also to flow out, if that makes sense. Conversely, at least you need to think how you are going to work and, borrowing Euro-speak for a minute, whether you might want to share some competences and things.

Michael Russell: That will become the crucial issue on this, as will be whether the transfer of those powers means that Westminster increases its powers. For example, in agriculture, the framework is transferred from a European framework to a UK framework rather than the powers transferred to the devolved nations, which have a competence on agriculture. They then willingly pool that sovereignty, if you put it that way, to take part in a shared framework. That will become the crucial issue in that area.

The Chairman: I do not want to monopolise this. Lord Selkirk, I know you know each other from the past.

Q37 **Lord Selkirk of Douglas:** I am very grateful that you have spared your time as a busy Minister to come and answer our questions. May I express the hope that, although our policies on the issue of independence may be different at a national level, it is very helpful for us to have meetings so that we can be up to date in understanding each other's positions? A lot may happen very quickly, in a somewhat underseen way. We do not know, but that will unfold. Can I ask you about the powers if, for a moment, we put to one side that Scotland is not independent at the moment? Which powers in the immediate future should be repatriated, in your view? I think you mentioned agriculture. Would that extend to fisheries? What others?

Michael Russell: It is a very important question. Let us divide it into three. The first area is the present competences and devolved areas. We would not expect the competences of the Scottish Parliament to be diminished. Where there is a competence in a matter that is devolved, and we are dealing with agriculture, fisheries, education, health, justice and environmental protection amongst others, those powers should automatically be transferred. I do not want to dabble in politics, but it was a campaign promise from the leave campaign that they would automatically be returned.

There may then be repatriated competences in devolved areas. You might look at these and say that if we were to remain a member of the single market through the EEA route, you would need to devolve certain things to allow that to happen, such as employment law and health and safety legislation. There would then be a requirement to ask whether there are other competences that would be important, either to protect

existing rights or to allow Scotland to continue to exercise those within the EEA context. The main issue there would be to give Scotland legal personality.

Now, you may or may not know that the EFTA/EEA route actually allows you to have trade treaties. Of course, there are devolved Administrations—Belgium is the best example, but there are others—that can enter into international arrangements affecting their devolved competences. In order for that to happen, you would need to allow Scotland to have legal personality, so there are a range of powers. You should start with the assumption, and to be fair the Prime Minister has made a clear commitment that nothing that is presently devolved will be undevolved, so to speak.

The Chairman: They will not be snatched back.

Michael Russell: That is comforting, but it is a promise that we will not take your purse. These things are here. We then need to say what is next, and those are the areas that we are now talking about. At the very least they have to be the areas where there is devolved competence, but more is required.

Lord Selkirk of Douglas: Would you accept that under the Calman and Smith commissions, quite a lot of powers have already been devolved by the legislation that followed?

Michael Russell: I would not accept that “quite a lot” have been, with respect. I would accept that “more” have.

Lord Selkirk of Douglas: To the best of your knowledge, have all those powers been used?

Michael Russell: I think they are being used. Some of them will be used at different times. With taxation, for example, the rate will be set in two weeks’ time, presuming the budget goes through, so those powers are being used, but I am not sure that the Scottish Parliament should have to account for saying, “You have used all your powers now, so we will give you a few more”. A range of powers are required in order to achieve outcomes. It is not a question of whether you use them every day; it is whether the outcomes that you need to achieve can be achieved with the powers that you have, or not.

Q38 **Lord Selkirk of Douglas:** Can I ask you about devolution of the financial settlement? These new circumstances are quite likely to arise; in fact we think they will almost inevitably arise. What effect will that have on the financial settlement? Do adjustments need to be made to it accordingly?

Michael Russell: Quite obviously, if you transfer a devolved competence, you have to transfer the resource that matches that devolved competence, an example being the partial devolution of social security and benefits, which is in the process of taking place. It has been difficult. All discussions between Governments about money are difficult, but you will have to have a negotiation about transferring those sums.

Again, there was much speculation during the campaign itself about the amount paid and how it would come back and be spent on things. We know that a very substantial part of that is going to be spent on borrowing and increased borrowing costs, but, yes, you cannot have devolved competences without more resource or more tax-raising powers.

Lord Selkirk of Douglas: Do you accept that because a lot may happen very quickly it is highly desirable that contact is maintained between your department and Whitehall?

Michael Russell: Absolutely. We are endeavouring to have that relationship. Indeed, I spoke to the Secretary of State for Scotland briefly this morning. We have strong positive discussion, but it has to be meaningful. It is not enough simply to say, "We are talking". We have to be talking about something and we have to be talking about how we resolve issues.

The Chairman: If I can just add one little point to this issue of devolved powers and financial settlement, there is likely to be a mismatch, to some extent—and I am not trying to score points with it—between the existing pattern of EU funding for agriculture particularly and what would be derivable from the Barnett formula. The issue with what I would call rejigging the financial settlement, without disturbing it or creating difficulty or turbulence, is all part of this and in parallel with the actual legal side of it, is it not?

Michael Russell: You would have to say that if we are repatriating the powers for agriculture, we are repatriating them on the basis of the present settlement on agriculture, because that is what it relates to. It is not a question of Barnett-ising funding for agriculture at this stage. As the UK Government have made clear, there is at least a two-stage process here. The first stage is taking the powers and bringing them back. Where they go is what we are talking about now, and therefore about making them work. There are difficulties in that. For example, you have to change the common agricultural policy. You then have to adjust those powers in the light of what people actually want and what politicians have promised. Those are the two stages. The funding of the first stage will depend essentially on the existing expenditure in Brussels and the money that flows back. It will be in the second stage when you will be looking at how that would move forward, but that may take a long time.

The Chairman: I have one other point to make, which I will make briefly because I want to bring in colleagues. In terms of post-Brexit international representation, should we take on fisheries? As the UK we would have to deal with third countries such as Norway. In your model, if fisheries were to return to the devolved nations, would you see that they would be, as it were, coming together by agreement to produce a single negotiator with a single solution? I appreciate that there are differences in interest, to some extent. We have reported separately on fisheries and I am not the expert on it. There are differences of interest, but on the

other hand if you are Norway looking at the UK, it wants to have a single negotiation.

Michael Russell: It may wish to have, but that may not be possible. One would have listen very carefully to the fishing interest. I represent a constituency with a strong fisheries interest in Argyll and Bute. There was huge animosity towards the common fisheries policy, which drove a very substantial vote in that sector.

The Chairman: I think there is a difference between Scotland and England.

Michael Russell: There is a very substantial difference in that regard. I have talked to the Scottish Fishermen's Federation and to local fishing interests, along with Fergus Ewing, our relevant Cabinet Secretary. I would want to make sure that they were happy with the dispensation. Now, if they believed that that dispensation was simply going to mirror the common fisheries policy with a UK authority, and in their view, because they have a very strong view about this, simply trade away their rights yet again, they would be very vociferous about that matter. Fishing interests are capable of being very vociferous indeed.

Frank Strang: If I may, Chairman, just because I am in my comfort zone and I fish personally, I would use that to underline one of the points here, which is your two-stage point. If there were to be any UK framework, it would need to be in the second stage. In other words, there is nothing inconsistent between a UK framework and devolved powers, but we have to choose. That is important. We are not saying no UK framework necessarily, but you have to make that choice. That is really important.

The Chairman: I think we have that message now: that it is important.

Lord Selkirk of Douglas: We produced a report on fisheries that made very clear that fishing interests must not be marginalised.

Michael Russell: Absolutely, and that will require accepting that fishing is a devolved competence and, therefore, the decisions about what happens on fishing in Scotland have to be made in Scotland.

Lord Whitty: Could I just take you back a bit? Clearly when you produced your document you were still hoping that the UK Government would stay in the single market. You and I were on the same page on that, but it has not happened and will not happen. The prospect of Scotland being within the single market, separate from the rest of the UK, is a much more complicated requirement and will probably have to be accompanied by some devolved powers changing as well. Most of the evidence that we have received, and my understanding of it, is that it may be legally possible, just about, and there are different opinions on that, but it would be very difficult politically, in the sense that the EU would not agree it, the EFTA powers may not agree it, and the UK Government may not agree it. In practice, it would be very difficult to

operate, because of the differential position between Scotland and England. Is your position that you really believe that your plan B, as it were, of separate single market status for Scotland, is a runner? Do you have a plan C for a different sort of differentiation?

Michael Russell: No, I believe it is a runner and that many, many people also believe it is a runner. Let me start fairly high up with Carl Bildt's view on the matter. He appears to think it is a runner, and he is somebody who knows something about a whole range of things. There are many people who believe it can be done.

Now, I think you are right to identify the political issues. Therefore, it becomes a matter of political will to achieve it. I hope the Scottish Government will be judged on their plans in the same way as the UK Government will be judged on their Brexit plans, because there are many aspects of the UK Brexit plans on which you can say, quite fairly, that people say, "This cannot be done. It is impossible to do. It will not happen". If that is a judgment in the UK, I accept that it might be a judgment in Scotland, but we are in the same boat.

The key issue here is the willingness of the UK Government to discuss this matter and to find a way in which it is framed within the Article 50 process. If, at the end of that Article 50 process, it is not possible to negotiate it, that is a different question, but it is a question of taking it to the table. Now, we know that there is interest in the differentiated positions that are being discussed for Ireland, for example, and for Gibraltar within the negotiating framework in Europe, and inevitably so. We also know that it is very important that we all observe due constitutional process. Indeed, before we published our main paper, we published a small booklet, copies of which we have left here—we do not want you to leave empty-handed—that laid out for a European audience what we believe that due constitutional process was.

We believe that the due constitutional process in this is to say that this is a set of proposals that we want to include in the negotiating process, so that we can then have them discussed. The JMC (EN) essentially has two roles. One is to come to agreement on a common UK position, but the other one is to have oversight of negotiation that involves devolved competences and issues such as this. Providing this can go into the mix at the triggering of Article 50, it is certainly more than likely that the JMC (EN) process can then be involved in helping to achieve it, which is what we would want to do.

The Chairman: Can I just check factually? You very much cast this in terms of referring to it in the Article 50 letter. I am not party to that; I have not seen it.

Michael Russell: Neither have I.

The Chairman: I have no idea whether it will have any more substance than a telegram saying, "We're off. Goodbye", as it were. You see that as being a substantive document.

Michael Russell: No.

The Chairman: There may be a related issue. Again, one is not raking into private conversations, but it is about the extent to which you have been able to take soundings in Europe, both with the European institutions and with the Parliament. You have had some constructive discussions with them on how they see this. Of course, they cannot formally engage until the thing is triggered, but if we are going to have a negotiation, you need it to be in tune with the UK Government, but you also at least need to have a constructive response from their side.

Michael Russell: Nobody is committed to this. Nobody is not committed to it. There will be a discussion. It is worth putting on the agenda in those circumstances. You are right to refer to the Article 50 letter, as such, which is why I have been trying to use the words "Article 50 process", although the letter is very important. You may well be right; we do not know. It may be a brief document, as simply brief as that, but I suspect not. Of course, there will then be a response to that, within a reasonably short period of time, which starts the process. If it is not in all the paragraphs of the letter, it has to be in the footnotes or the working documentation, which says that this is what we are going to bring to the table for those discussions.

Q39 **Baroness Suttie:** I was going to ask a very similar question to Larry's, but could I just ask for a bit more detail on the EEA/EFTA model? Have you already been gauging the potential support among EFTA members?

Michael Russell: We are not doing this and we are not pre-negotiating this, because that is impossible. Clearly there will be people who we are able to quote on both sides of this. Some people will say that this is a good idea and perfectly doable. I can quote some of those people, and we can quote some people who say that this is not doable. It is exactly the same as we see in positions taken by the UK Government.

We have worked on this extensively, the paper has been peer-reviewed before we published it, we talked to a lot of people and we have made sure we are trying to be as accurate as we can, so we believe that it is a feasible proposition that can be negotiated. That is what we are saying about it. Therefore, we believe that it should be put in that context.

Frank Strang: May I just mention our standing council? This was set up 24 or 48 hours after the vote. The great and the good, and I would have to say not necessarily people who would agree with us politically, have got their minds around this subject. There was a very challenging conversation, including with a Member of your House. That is right. It has been really challenging and it has actually really added to the quality of the proposition.

Michael Russell: It is not their document, and we have made that absolutely clear. It is our document. Yes, they have been an important part of the process, as have many others. It should go into the mix.

Q40 **Baroness Suttie:** On an entirely different subject, on a technical

question, there was previously some talk about Scottish officials being seconded to DExEU. Has that happened?

Michael Russell: No, not as far as we know. There are very many people there. It could have been done without us knowing, but, no, we think not.

The Chairman: May I ask a related question? In terms of the conduct of negotiations, there have been occasions when Scottish Ministers have appeared including, if I may say, SNP Ministers, Richard Lochhead among others. Has there been any talk of involvement in the negotiations? A separate issue was reporting and including two Assemblies/Parliaments, as well as Westminster, because the Secretary of State has given us some pretty sweeping assurances about equality of arms in the information that we actually receive vis-à-vis the European Parliament.

Michael Russell: On the two issues, the matter of involvement in negotiations is on the agenda. There is no conclusion on it; it has to be on the agenda. We have discussed it with Mark Drakeford, the Welsh Minister, who you will meet. He and I have been working very closely together. It has been raised.

In terms of information, there are protocols governing the JMC and what information is provided after the JMC to national Parliaments. For example, I am appearing tomorrow in front of the Parliament's committee with whom you had lunch, so there is a regular reporting process and there will be that. I suspect that the European Parliament will be very demanding in terms of what it wants to know. My colleague, Fiona Hyslop, gave evidence to their Constitutional Affairs Committee on Monday, and I think we are going to see a very interesting set of issues arising there. Ivan Rogers, again this morning, said that Brussels is a leaky place; a load of information will leak out of that.

I hope that the heavy emphasis we heard up until about Christmas that there was to be no running commentary has now been replaced with an acceptance of accountability, because the two things are quite different. I am not going to tell everybody every detail of every meeting I have, but I am certainly going to feel obliged to be as open and transparent as I can be. Indeed, as Lord Selkirk knows, the founding principles of the Parliament require me to do that. Lord Selkirk and I were founding members of the Parliamentary Bureau; we are required to be open and transparent in what we do, and we will be.

The Chairman: That is very helpful. We have published in the past on the Brexit process, which should be regarded as pretty much apiece with what you have just said about finding a middle way between no running commentary on one hand and simply having an ex-post view on it on the other.

Q41 **Earl of Kinnoull:** I wanted to continue down Lord Whitty's road a bit. When we were in Strasbourg 10 or so days ago, we were given a very interesting document on the variable geometry of the EU, which was all

the exceptions. The interesting thing about the exceptions is that there has always been what I call in the commercial world a brake. There has always been a set of reasons as to why we need to have a particular exception. You have explained very elegantly why you believe that it is possible, politically and everything, to do something, but there would still have to be some reasoning as to how the special interests of Scotland are different from the special interests of the UK. I am having some difficulty understanding why Scotland is different, and I wondered if you could help us.

Michael Russell: I would probably have to give you a pretty detailed seminar on history, which you probably would not want and would know anyway. There are some assumptions that I would make about the difference between Scotland and Northumberland, which underpin the very fact that we are having this discussion and that there is a Parliament in Scotland. Let me take the question head on.

I would probably point you to three, and I start unashamedly with the democratic one. You may wish to argue that this was a UK-wide vote and therefore that what Scotland votes does not count, but Scotland as a distinct unit voted 62% to 38%. There is no evidence that that has changed in the slightest; indeed, there is some evidence that the vote for remaining has increased and every part of Scotland voted in that way. There is a view that Scotland should remain in the EU. This proposal does not actually say that we should stay in the EU. I am unashamedly a remainer in that regard. I think we should have done, and I still think we should, but that is it. There is a democratic issue. There is a democratic mandate issue in what we are doing. I was elected on a manifesto promise that said that if Scotland were taken out of the EU against its will, it would be a material change of circumstance in relation to independence. I say that quite clearly. It is unusual for politicians to remember on what they were elected, but I can say that very clearly.

The second one is that we think the 62% to 38% vote is a democratic mandate. The Scottish Parliament has twice voted very strongly in favour of the option of remaining in the single market, so there is a democratic mandate. There are economic issues, which I have pointed out here. I think they are profound for the whole of the UK, but we point to the profound nature of them in Scotland. Substantial economic damage will be done if we are not part of the single market—not members of the single market. It is not the best membership.

Earl of Kinnoull: How would that differ from England?

Michael Russell: It will be as bad. Therefore, if we are capable of finding a solution as Scottish politicians, which does not create those difficulties, I am honour-bound to put that forward.

There are also two areas in which evidence exists about the particular importance of, for example, freedom of movement. I will give you an example from my own constituency again. I represent a part of Scotland that is losing population faster than almost any other; I think there is one

area that is losing population faster. If we do not have freedom of movement we will, in actual fact, continue to accelerate that depopulation. There will be whole areas of my constituency that will not be populated. That is the reality of where we are. We have a very serious situation.

We also have a dependency on freedom of movement in very crucial areas of our economy and national life. This morning, I was in Glasgow meeting health service workers. It depends which part of the health service you look at but, if it is the very cutting-edge research part, in which I was this morning, 24% of the workers come from other EU countries. They are at risk. They regard themselves as at risk. They also regard themselves as profoundly insulted by the process that is going on at the present moment. I spoke to a doctor from the north-east of Scotland this morning, who said that he could accept with reluctance, but he thought it was wrong, the view of the majority that they did not want migration of the type we have at the moment. He felt, after 20 years in the country, personally insulted by the fact that he was being used a bargaining chip by the UK Government. We believe there are profound reasons why, in Scotland, freedom of movement remains very important to us.

There are three sets of exceptions, but can I just also say that if there were no exceptions I would still be arguing this case? I believe it is constitutionally and democratically the right thing to do in a country that has voted to stay.

Earl of Kinnoull: Sorry, this is just the barrister in me, but does the freedom of movement point apply elsewhere? We all receive lots of emails from people up and down the land saying something very similar to the thread you had this morning. It could easily be the vet from Liverpool, which was one example I have had in the last week or so. I do not see how you can explain to 27 countries that it is so different for Scotland.

Michael Russell: I think you can because of the democratic nature of it and the particular dependence. I would commend this document to you, if you have not read it. It goes into some detail about what the arguments are.

The Chairman: We all have it.

Michael Russell: It goes into some detail about what the arguments are, and I think there is also recognition among the 27 of the situation in Scotland. We are not saying that that will produce any result, but there is recognition of the fact that you have a small country of 5 million people, the majority of whom—not unanimously, but the majority—have said that they want to remain in the EU and regard it as valuable to them.

We should also define the European Union not solely in economic terms. There is a view in Scotland that this has been a good thing; we regard migration as positive for us. We do not follow the view that migration is

in some sense harmful. In fact, the evidence is that migration is economically beneficial. Migrants make a net contribution. In all those circumstances, it is the right thing to do.

I am not personally acquainted with any vets from Liverpool, but if I take them as an example, like the man on the Clapham omnibus, many of them are emailing people like me and asking if they can move to Scotland. That would be another advantage that we would have by so doing.

Frank Strang: All I was going to say is that you often talk about values and the kind of country we want to be as well, in terms of being welcoming. That is why the paper's first point is that we think that the UK should have stayed in.

Michael Russell: We still believe that that would be the right thing to happen.

Q42 **The Chairman:** Can I just pick up a theme that I have already touched on delicately, about the colleagues in Europe with whom we have been negotiating? I understand that, when Fiona Hyslop met the European Parliament Constitutional Affairs Committee, the first question was from a Spanish MEP, who said, "We rule out any special deal for Scotland". I do not think it was anticipated that that was on its merits, but it may have had a certain resonance for Spanish domestic politics. How would you respond to that?

Michael Russell: I think this was the Spanish MEP who said that we would be at the back of the queue after Turkey and various others. There is no queue. There will be politicians who, for a variety of reasons, have a variety of political views. That is political diversity. The proof of this will be in the process of negotiation. You have to be accurate about it though. A Spanish MEP, who has a well-known hostility to certain issues, says, "You will be at the back of the queue"; there is no queue. Turkey first applied in 1987, and the number of members admitted since then is considerable; they have leapfrogged, because it is not a question of timing but a question essentially of being part of the *acquis communautaire*. We have been a member for the last 40 years. Everything we do is within the *acquis communautaire*. If it is a question not of longevity of application but of being able to meet the requirements of the EU, we are there. We have done it.

Frank Strang: If I may add, Minister, it is also really important to say that we are not seeking a separate deal or a special deal. We are seeking a UK deal, which affects Scotland. That is a key point as well.

The Chairman: It is within the UK deal.

Michael Russell: We have acknowledged that. We are not a negotiating party and we have made that absolutely clear, but of course we are not only willing and able but determined to make sure that our view is heard.

Q43 **Baroness Wilcox:** This is just a question from listening to you. You

obviously have an awful lot to do and a lot of meetings to have. Where we are now, the Prime Minister having made her statement and the debate in the Commons yesterday, there is a lot more coming. I wonder whether the existing mechanisms for interparliamentary dialogue between Westminster and the devolved legislature are sufficient to deal with the challenge. If you have given it any thought, do you have any idea of what new structures you would like to see if somebody could wave a wand for you?

Michael Russell: I think you heard from Nicola McEwen this morning. She is an expert on this matter and I hope you had the chance to ask her it. The JMC structure has been examined by parliamentary committees of the Lords, Commons, the Scottish Parliament and the Welsh Assembly. Everybody has found it wanting. I was last a member of the JMC process in 2009, when I was a constitutional Minister for a year. It has not changed much, except that we now have the JMC (EN) with a formal remit, which is very interesting, because it is a much more formal and tightly written remit than any previous one had.

The experience I had in 2009 essentially remains the same: this is not a process in which there is equity of arms. It is not a process in which the four nations of the UK sit down together for an equal discussion. The meeting in Cardiff in Monday was the first time that the JMC (Plenary) has met outside London since devolution, which makes one think a little. The JMC (Plenary) that was held in October was the first to be held in almost two years, so this is not an effective decision-making structure. It is not a decision-making structure at all so, whatever happens, that requires to be changed.

If you then put into that mix the potential for transposing issues such as agriculture, there is presently a Council of Ministers in Europe, which you are right to say is never entirely equal. You can go—I went myself when I was Environment Minister—to the Agriculture and Fisheries Council. I have been to the Environment Council and to Education. When you go to those things, at least you are part of that process. There seems to be no discussion of that equal decision-making in any UK context, so this will have to be reviewed.

The Chairman: I appreciate that it may not be fair to ask for an exact template, but do you have any perspectives on how it might move towards being improved?

Michael Russell: No, because at the present moment the whole situation is in flux. We are endeavouring to make the JMC (EN) work by meeting on a monthly basis, by having regular bilaterals and by ensuring that material comes from the devolved Administrations to be discussed. I do recount my experience at the JMC (E) in 2009, when I once went to a meeting at which there were 21 UK Ministers, me and Rhodri Morgan. It was not exactly an even-handed process. Even in the present structure of the JMC (EN), there are usually eight or nine UK Ministers to perhaps three Ministers from devolved Administrations—four because there are always two from Northern Ireland. Now that Northern Ireland may not be

fully there, Mark Drakeford and I could be sitting there facing what looks like a very large and rather distinguished interviewing panel.

The Chairman: I am sure, by way of encouragement, I could say that, on today's form, you will keep your end up.

Michael Russell: I do my best.

Q44 **The Chairman:** Can I go on to perhaps a final question, although, equally, if you have anything for us, please formulate it? It is about the great repeal Bill. It is there in headlines. It has not come down the track. It is quite difficult for anyone outwith the Westminster process to have any idea of quite how this is going to go, and the nature of its handling and interaction with the devolved legislations, statutory instruments and how much Parliament will get its hands on the substance. Could you perhaps tell us your understanding of that process at the moment, whether transmuted through the JMC or otherwise? Secondly, do you have any advice as to how it may go in terms of secondary legislation, bearing in mind that some powers will come back and be enacted through domestic Scottish legislation or otherwise? It will be quite important to make sure that there are no gaps, but equally no overlap. I am not at all clear myself whether Whitehall has really focused on this yet.

Michael Russell: There is a great deal of work being done and quite a lot of detail is clear now.

The Chairman: Your officials are engaged.

Michael Russell: Yes, and there has been discussion at JMC on a number of occasions. Let me tell you what I think I know, which is that the great repeal Bill will be followed by a range of other legislation. That has already been made clear. How much we do not know, but that will clearly have a big impact on the legislative programme at Westminster. We now know that there will be a White Paper on the great repeal Bill, but we do not entirely know when that will be. The Secretary of State for Scotland said last week that he thought the matter would be best handled by a legislative consent Motion in the Scottish Parliament. That would be a very complex legislative consent Motion.

We have reserved our position because, this paper argues, it could be argued in that way or it could be dealt with by legislation in the Scottish Parliament. That is a possibility, so we have not yet decided, together with our colleagues in Westminster, whether it would be handled by a legislative consent Motion, a series of legislative consent Motions or by legislation in the Scottish Parliament. One of the key elements of this is exactly as you said: the amount of secondary legislation and what it intends to do. If secondary legislation is designed to retain powers at Westminster, we would much prefer that that legislation took place in Scotland and secondary legislation ensured that those powers were retained in Scotland. There is a process of discussion. It is a massive undertaking.

The Chairman: I noticed that the Prime Minister, post Cardiff, promised

to intensify the cross-government work on it.

Michael Russell: That was the agreement of the JMC: that we would intensify the work on the Scottish and Welsh papers in the light of the impending Article 50 letter and process. We have not actually agreed to intensify work on the great repeal Bill, because that work is under way. We have to get to the Article 50 letter first and the triggering of Article 50. As I said at the beginning and I am happy to say again now, we do not have anything like an agreement on that, because we do not even know what is going to be in that.

Baroness Wilcox: I am quickly having a look at this. I like brochures. Is this written in the present tense?

Michael Russell: I think I would like to know why you are asking.

Baroness Wilcox: It says here, "Through negotiating with the UK Government, we aim to protect Scotland's interests by securing European single market membership for the UK as a whole".

Michael Russell: That is what this document says. That is what this supplement says. As Lord Selkirk has mentioned, it is a fast-moving process. We published this in December and the Prime Minister announced that the UK would not be doing that two weeks ago. I suppose we could say that we still have two more to go, which we think we can achieve, so those are in the present tense.

Baroness Wilcox: It relieved me a bit. I thought that I may have been asleep for a couple of minutes.

Michael Russell: It is possible to miss quite a lot in this just by going to sleep for a day or two.

The Chairman: Thank you. We are drawing to a conclusion, Minister. Is there anything that you want to say?

Michael Russell: No. Thank you for coming.

The Chairman: Thank you for your frankness. Thank you for setting it up. Good luck from all of us. One of the important points in this, within what is reasonable and proper, is ease of communication. If anything needs to come our way and can properly do so, we would be anxious to help with that.

Michael Russell: We would be very happy to do so and to make sure you were well informed. We believe in being quite transparent on these matters.

The Chairman: That is really helpful and enduring.

Michael Russell: Thank you very much.