

Scottish Affairs Committee

Oral evidence: [Fisheries Bill](#), HC 1787

Wednesday 9 January 2019

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Hugh Gaffney; Christine Jardine; Ged Killen; John Lamont; Tommy Sheppard.

Questions 77 - 129

Witnesses

I: George Eustice, Minister of State for Agriculture, Fisheries and Food, and Anne Freeman, Deputy Director for Domestic Fisheries and Reform

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

George Eustice, Minister of State for Agriculture, Fisheries and Food, and Anne Freeman, Deputy Director for Domestic Fisheries and Reform

Q77 Chair: Welcome back again, Minister. You are a regular attendee at the Scottish Affairs Committee, and you are always welcome. We thank you very much for agreeing to help us out with this very short inquiry into the Fisheries Bill and its application to Scotland. Just for the record, can you say who you are—well, we know who you are, but perhaps you could introduce your colleague and say something by way of a short introductory statement, Minister.

George Eustice: I am George Eustice. I am the Fisheries Minister, and to my right is Anne Freeman, who is leading our work on our future fisheries policy and is part of our fisheries team. Would you like to give your precise title, Anne? I cannot remember it now.

Anne Freeman: That is fine. Good afternoon, everyone. My name is Anne Freeman. I am Deputy Director for Domestic Fisheries and Reform within DEFRA.

George Eustice: As you will be aware, the Fisheries Bill cleared Committee stage shortly before Christmas and will be coming back for Report we hope at some point early this year. I know there are lots of areas you want to cover, but in particular the Bill does the crucial things that we need to do to become an independent coastal state again: the power to create and manage quotas ourselves, and the power to control access to our waters and license foreign vessels to fish in our waters, as well as many other issues, including at the very front in clause 1 a number of important commitments to sustainable fishing.

Q78 Chair: Grateful. That was very short and concise and very helpful. Thank you, Minister.

A couple of introductory questions: we had the Cabinet Secretary in front of the Committee through video-link earlier today, and it was a helpful opportunity to ask him his views about the Bill. There were a couple of things that emerged that maybe you could help us with. He said that he wrote to you at the beginning of December about some of the concerns the Scottish Government have had about this Bill. He has not received a response yet. I am presuming that he will, with a courteous Minister like yourself, obviously. Is there anything within that correspondence that you can maybe help us with, regarding some of the issues and points that the Scottish Government have a concern with?

George Eustice: I have several bits of correspondence, so I am not sure. Which were the particular issues? I know he has an issue with clause 18.



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Chair: The letter of 4 December. Maybe Ms Freeman can help us with that.

Anne Freeman: Yes. I think the letter makes a number of requests about aspects that the Scottish Government would like us to add to the Bill. It also raises some concerns about clause 18 of the Bill, and seeks some clarification about those. That is the letter.

Chair: Yes, I think that must be it.

Anne Freeman: It is, yes.

George Eustice: On those particular issues then, first, we worked closely with all of the devolved Administrations to include all of the elements that they wanted in the Bill. Certainly when we had our initial discussion, I think Wales and Northern Ireland wanted us to include powers for them to have grant-making powers, to have a successor scheme, for instance, to the EMFF scheme at the moment. At that point, the Scottish Government said they did not want us to include those. Our understanding was that they were hopeful at the time—and perhaps Fergus Ewing was hopeful—that they would have time in the parliamentary planning for the Scottish Parliament to bring forward its own legislation. That is how they intended to do it, but we understand that that probably now is not the case. They have asked us therefore to include those powers in common with Wales and Northern Ireland at later stages to the Bill.

Q79 **Chair:** Is this something you would be happy to entertain?

George Eustice: Yes, we would be. There is a slight issue though that at the moment the Scottish Government are withholding Legislative consent motions, so there are elements here that we work with them on and are in the Bill, but to create lots of new powers for them when they are withholding a Legislative consent motion is slightly problematic. It is not impossible, but it is rather incongruous to be saying, “Can you put this and that and the other in the Bill?” while at the same time they are withholding a Legislative consent motion.

Q80 **Chair:** There were a number of amendments during the Committee stage of the Fisheries Bill that were provided by the Scottish Government and I think you were of the view that you could not accept them. Is that because of the LCM impasse, or could you give us your reasons why they were unacceptable to you?

George Eustice: I know that last time I was in front of the Committee it was in the context of the Agriculture Bill. There are certain parallels between the nature of some disagreements over what is reserved and what is devolved. You will recall that in the context of the Agriculture Bill there has been lively discussion around the World Trade Organization schedule and the powers that the UK Government need to demonstrate compliance with that. The Scottish Government have some differences with us on that.



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In the context of the Fisheries Bill, the primary concern that Fergus Ewing raised is around clause 18, which simply gives the UK Government, strictly in the context of international negotiations, the power to create and set catch limits—so effectively to create a quota for the whole UK. That function is currently done by the European Union. In future, in terms of our international negotiations both with the EU and with Norway, the Faroes and Iceland, we would need, as the UK, to have that ability to create quota, just as the EU currently does.

The Scottish Government are arguing that they are obliged in any event to abide by an international agreement. I understand that argument and we do not dispute it, but the point is that the Scottish Government alone are not in a position to create quota for the whole of the UK; only the UK Government can do that. It is a very similar argument to that which we have been having on WTO in the context of agriculture.

Q81 Chair: It sounds very similar to some of the issues that we were kicking around with the Agriculture Bill, where it seems like the Scottish Government have a view that because they are responsible for implementing the regulations of the UK Government, they see this as very much a reserved power. What are you doing to resolve that?

George Eustice: It is very difficult, but there are lots of areas in the Bill where we are absolutely upfront that these are devolved matters and we are not making any attempt to interfere in that. There are areas where we have some challenges—for instance, the Joint Fisheries Statement—where we all accept that there is a need for some UK-wide frameworks, but we recognise it is devolved, and we are going to have to just work through our differences.

Q82 Chair: The outstanding issues that are contested are clause 18 and clause 28, would that be right? I am looking at Ms Freeman. I think these were the ones that were highlighted by the Cabinet Secretary.

George Eustice: To conclude on clause 18, I draw the Committee's attention to 18(2), which is very clear that a determination can be made only for the purpose of complying with an international obligation of the UK. It is explicit that it is only to be used in a reserved power context and where the exercise of that reserved power is incontrovertible. It goes on then to have a power or a requirement and a duty to consult under clause 19. Although clause 19 does not require consent, it does require a process of consultation.

Indeed, that has been the norm for the last 20 years under our existing devolution settlement. We take a UK-wide delegation to the December Fisheries Council currently; Fergus Ewing attends as part of the delegation and speaks in the trilateral with the presidency and the Commission on issues that are of particular interest to the Scottish fleet. We have quite well-established ways of working on that. Clause 28—

Q83 Chair: It was probably me that got that wrong, Minister. It is clause 18



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and clause 19, so my apologies for that. I do want to come to clause 20 though, because it is clause 20 and clause 29 that concern powers that have been given to Wales and Northern Ireland. That is right, isn't it?

George Eustice: Yes.

- Q84 **Chair:** Which you have said that the Scottish Government were of the position not to accept. What the Cabinet Secretary told us about that today—again, I am just interested in your view on this—was that because fisheries is fully devolved, and the management of fisheries is fully devolved, there is no need for these powers, and the Scottish Government have the freedom of operation to create some of the issues that are contained within these clauses. Is that your view?

Anne Freeman: They already have the powers, yes.

George Eustice: They have the powers, yes.

- Q85 **Chair:** This is pretty much an erroneous issue then about their non-acceptance of these powers, or am I missing something? If they can do this anyway, why do they need to have these powers in this Bill?

George Eustice: I think they could, through secondary legislation—

Anne Freeman: We understand that the Aquaculture and Fisheries (Scotland) Act 2013 allows them to change the grant-making powers. I think it is a question of just pragmatism and time, and as the Minister said earlier, we could legislate on their behalf to do that. That is where we are having discussions at the moment—about whether we do that for them.

George Eustice: I see, so they have powers under Scottish legislation.

- Q86 **Chair:** Yes, but just within the context of the Fisheries Bill, you feel this measure would be required on the face of the Bill. Is that roughly right, yes?

Anne Freeman: For England.

George Eustice: It is for England, yes. I think that is also the case for Wales and Northern Ireland, which is presumably why they asked for it.

Anne Freeman: They have their own powers as well, but again, pragmatically they asked us to do it, just for time.

Chair: I will come to another introductory question, but I know Mr Duguid is keen to come in, as always, on fishery issues.

- Q87 **David Duguid:** I will try to limit my interventions, but I want to clarify or seek confirmation on this. Clause 19 states that the Secretary of State must consult with the different devolved Administrations. I think the Cabinet Secretary earlier seemed to think that the word "consult" could basically be as simple as sending a letter saying, "Here is what we are going to do" but I would take that to mean to "inform". The word



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"consult" to me always involves a dialogue back and forth. Would you agree with that?

George Eustice: Yes. This came up quite a lot at the Committee stage about the nature of our devolution settlement. We do not have a federal system; we have a system where things are either devolved or reserved. There are areas where things are devolved, but where it makes sense for us to work together. In those cases, we have memoranda of understanding, concordats and we work jointly to work through our issues. But when push comes to shove and there is a disagreement, then the final default is that it is either devolved or it is reserved. That is how our Constitution works.

That does create some challenges in fisheries, because you have this rather uneasy juxtaposition between something that is on the one hand fully devolved in terms of its management and enforcement, but on the other hand is absolutely bound up in an international negotiation that takes place annually and that is absolutely reserved. That does create challenges, but they are not particularly new challenges. We have had those and wrestled with them for at least 20 years, and we have put in place a range of different forums to consult and agree things jointly.

Q88 David Duguid: As a member state of the EU, we are a member state of the UK, so that relationship between the UK Minister and the Scottish Government Cabinet Secretary has always been there, but as we come out of the EU, we come out of the CFP, and both of those roles—in terms of influence on the fisheries industry—become elevated.

George Eustice: They do. That is why there is quite a lot of importance placed in the Bill on both the Joint Fisheries Statement and the Secretary of State's statements, because in the absence of an easy way to join up this contradiction between things being devolved and reserved, we have to put in place frameworks as best we can and agreed those. That is what this Bill sets out.

Q89 Chair: I think it is also fair to say what we heard from the Cabinet Secretary today about just how productive and fruitful the working relationship is with your Department. Knowing you as a Minister, I can understand that that would be easy and accommodating, and I think that is a really good and positive thing to hear in this Committee.

Could I ask about the independent coastal state and what is in the political declaration regarding access to waters? To me the text seems very straightforward and clear: "Within the context of the overall economic partnership, establishment of a new fisheries agreement on, inter alia, access to waters and quota share ... to be in place in time to be used for determining fishing opportunities for the first year after the transition period". Any reading of that—and tell me if I have this wrong—would suggest that there will be a trade-off in terms of access to fishing waters with agreement on a future trade deal with the European Union. What am I reading wrong in that part of the political declaration?



George Eustice: I think it is simply the fact that what it describes there is a fairly normal feature. There is something called a framework agreement between Norway and the EU that is multiannual and has headline principles that will guide the annual negotiation. Recognising in any fisheries negotiation that the key variables are sharing arrangements for the quota, the overall size of the cake, the overall size of the catch, which is driven by the science, and finally, mutual access to one another's waters—the trade-off between who gets what share and who gets what access is the crux of any fisheries negotiation.

All that is really a statement of the obvious, in a way, and a framework agreement will have to set out the sharing arrangements. We are clear that we want to depart from relative stability and move to something based more on zonal attachment, but also access. In a nutshell, the headline of a future framework agreement is likely to be a presumption that they will still enjoy some access to our waters—

Q90 **Chair:** Yes. I do not think there is any dispute about that, but it is open to so many interpretations. We have had the French President's take on all this and he has stated very clearly that in return for a trade arrangement and a deal with the EU, access to UK fishing waters would be expected. We have left it in this state and condition where it could mean anything to anybody, even though it says something very specific.

George Eustice: Yes. What it describes, I think, is what a framework agreement for fisheries management would look like, rather than a trading relationship. But will other EU countries seek to say, "The price of a free trade agreement is access to waters"? They might do, but you have to bear in mind that under Withdrawal Agreement the nature of the backstop is that we would have full control of our waters, but that there could be tariffs on our fisheries exports to the EU. That is the bottom line, as things stand. When we talk to exporters in the fisheries sector, particularly shellfish, they are less worried about tariffs, because it is relatively low on the foods we export—it is about 8%. In the context of exchange rate volatility, 8% tariffs probably do not make a huge difference. It is not welcome; they would rather it was not there.

The thing that concerns them most is border turbulence that affects distribution chains. When it comes down to it, we are in a stronger position to say, "If you want to put tariffs on fish, fair enough, but we are going to manage our own access to our own waters and we are determined to do that".

Q91 **Chair:** Lastly on this, we heard from trade representatives this morning that there is big political capacity-building around fisheries just now. It is probably experiencing its highest profile—certainly in my 18 years in the House—that we have ever seen as a feature within our democratic debate. There have been massive commitments given from this Government to the fishing industry. I remember back to the 1970s—I was a young lad then. You may not recall it, but there was a sense that the fishing industry was expendable, just there was an expectation that



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we would be leaving the CFP by 2019. There is a whole history and series of disappointments to the fishing industry. Why should it be any different this time? It is only 0.1% of the economy. Yes, it is important politically, but in terms of the grand scheme of things, it is nothing compared to the car industry and manufacturing or banking services in London.

George Eustice: It is very important to certain coastal communities and very important therefore to certain Members of Parliament, some of whom are around the table of this Committee, and therefore it has political influence. As someone who is an advocate of leaving the European Union, despite all of the arguments and turbulence we are having, I would say that when you bring responsibility for a policy like fisheries back home, Parliament steps up and new checks and balances kick in. Parliament starts engaging in fisheries in a way that it has not done for 40 years, because things have been decided elsewhere. I think that is a good thing for our fishing industry and a good thing for our marine environment.

Q92 **Deidre Brock:** Minister, I fully accept that the Cabinet Secretary spoke warmly of the relationship he enjoys with you and the work you do together, but I have to say your approach with regard to tariffs sounds a little blasé—I hope you will forgive me saying that, but it does seem rather relaxed. I wonder how much discussion there has been with the industry, how much detailed work there has been with individuals within the industry regarding the possible impact of that increase in tariffs. I know, for example, that Scottish salmon potentially could be looking at a big increase in tariffs, and that of course is a huge export for Scotland and we would like to see that protected. Can you just speak a little bit more about that, because that I find quite alarming?

George Eustice: Yes. We have extensive discussions with industry. Rather refreshingly, the message from the processing industry generally is, “Yes, we would rather have tariff-free access, but do not sell out the catching sector on our behalf”. I just wish we had more of that sort of mentality in other sectors of the economy. What they are really saying is that for those who have the highest tariffs—processed cod, fish fingers and so on—around 90% of what they produce is sold in the UK and around 10% is exported. They do export, but it is a small proportion.

The fish that we export most of—things like the shellfish—have a much lower tariff of around 8%. What those sectors are telling us is that, yes, of course they would rather not have tariffs, but if there were tariffs, provided we do not sell out our catching sector, frankly, the European Union has nowhere else to go to get those products apart from buying them from British fishermen, so it effectively starts to become a tax on European consumers.

Having said all of that, I should of course stress that the Government are seeking to get a comprehensive free trade agreement where there is tariff-free access. That is what the Prime Minister’s Withdrawal Agreement and the political declaration alongside it is all about. The



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reason I made this point, however, is that some people suspect that in the final analysis, when we get there, fisheries will be offered up in some way and traded away. The point that I am trying to get across is that because of the way that the Withdrawal Agreement is constructed, it means that in the final analysis, if we had to say, "We will have tariffs on our fish, just like Norway and Iceland do, but we will control our fisheries" then that is what we would do and our industry would be able to live with that.

- Q93 **David Duguid:** A very quick one on this idea that is often presented to us, because as you say, for those of us who represent fishing communities, it does not hold true. When we look at the UK as a whole, the contribution to the economy is relatively small, admittedly, but when you look at the communities that you and I both represent, it is very much focused in those communities. Fishing is a huge part of the community in Fraserburgh, and Peterhead in your constituency as well. Would you agree that that absolutely has to be taken into account in terms of the economy of those focused communities, rather than just the UK as a whole?

George Eustice: Yes, absolutely. Representing a Cornish seat, I know what it is like to represent a constituency that is a long way from London, and I know how people feel about priorities of Governments that are a long way from London. I am somebody who is acutely aware of that. Obviously in your particular case, Mr Duguid, I think you have something like 30% of the entire UK fishing industry in your constituency, so it certainly matters to Banff and Buchan.

- Q94 **John Lamont:** Good afternoon, Minister. My question is about the preparation of both the Joint Fisheries Statement and the Secretary of State's Fisheries Statement, and the extent to which the devolved Administrations and particularly the Scottish Government will be involved in that process.

George Eustice: It is very clear. Clause 3 is about the preparation of those and it creates effectively a legal requirement for us to produce the Joint Fisheries Statement within certain timescales. We can only produce it with the agreement of each part of the UK, so there is a legal obligation on all of us, on all Administrations, to produce one, but also because many of the aspects that will be in the Joint Fisheries Statement will be devolved. In effect, it will force us to work through our differences to achieve a consensus. That may be challenging in some areas, but it is something, as I said, that we are used to doing. That is what we have been doing for 20 years with the devolution settlement that we have, and that is effectively how the wiring of those statements work.

- Q95 **John Lamont:** This morning on our first panel when we were speaking to industry representatives, there was a concern about how potential disputes might be resolved. If you get to where—heaven forbid—there is not goodwill on both sides and we are not able to reach that agreed position, what is the dispute mechanism?



George Eustice: At the moment of course we have the Joint Ministerial Committee. I know that a lot of people say that has shortcomings, and that is why the Cabinet Office is reviewing it with a view to strengthening and improving it. This came up in Committee, about whether there should be some sort of arbitration process or dispute resolution process. I think we have to be realistic about what a judge sitting on an arbitration panel is going to bring to the show when you are in some dispute around Orkney crabs, or some agreement on how we are going to manage blue whiting in the North Sea.

At the end of the day, the types of disputes that you would be working through in the Joint Fisheries Statement are policy statements. They will be disputes around policy choices and how we dovetail our respective policies around the UK. I would argue that these are only things that politicians can work through. On a good day we politicians are quite good at working through differences to achieve a consensus.

Q96 **John Lamont:** I want to return to your earlier remarks regarding the need or otherwise for a Fisheries Bill in Scotland. We touched on this with the first panel this morning, which was with the Fishermen's Federation, the Scottish Seafood Association, RSPB Scotland and the National Federation of Fishermen's Organisations. They all expressed concern that the Scottish Government were proposing not to give the Legislative consent motion to this Bill. They also said that they felt there was a vacuum from the Scottish Government in terms of fishing policy, and they went on to say that there is no real sense of direction from the Scottish Government in terms of how to take fishing forward. I represent a much smaller fishing community in comparison with Mr Duguid's, but I do represent some fishermen who have a concern about how fishing is going to move forward in Scotland. Do you share the concerns from industry experts this morning about what the Scottish Government are doing in respect of fishing in Scotland?

George Eustice: At the moment there are lots of provisions in here, including provisions around how we manage our fish diseases and biosecurity on the aquatic environment, and also including powers to change technical regulations, which are provided for for Scotland as well, at its request. There are lots of provisions here for Scotland that have been requested by the Scottish Government. There is a rather uneasy situation at the moment, because the Scottish Government have obviously taken a position after the EU Withdrawal Act that they will withhold Legislative consent motions for all Brexit Bills as a point of principle.

In the case of fisheries, I think the Scottish Government dipped a toe in the water in terms of starting the process for preparing a memorandum with a view to possibly making a Legislative consent motion. They have raised some objections at the moment that have held back that process from being completed. I am hoping that once this House, one way or the other, resolves the bigger question about the nature of our leaving the



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EU, and what that is going to look like and what type of agreement or deal there will be, if any, then it will become easier for the Scottish Government at that point to say, "Now we know where we stand on this and things have been decided, therefore it makes sense for us to agree a Legislative consent motion and return to business as usual".

It is complicated by the fact that we are not in a sort of business as usual mode in terms of our relationship with the Scottish Government because of the big elephant in the room, which obviously is the wider Brexit argument.

Q97 Christine Jardine: Good afternoon, Minister. It is nice to see you again. Why doesn't this Bill place a legal duty on the UK fisheries administrations to meet the fisheries objectives?

George Eustice: It does, in the sense that there are fisheries objectives in clause 1, which are set out, and there is then a legal requirement in the Joint Fisheries Statement to spell out how we intend to meet that. The nature and the wording in clause 1 is literally, with one or two exceptions, cut and pasted from the European regulation, so we are bringing across the environmental objectives that are in the current CFP and putting them right at the front of the Bill.

This has come up with some of the green NGOs and it is a complex area, but the difficulty in having a very rigid commitment to fish every stock at maximum sustainable yield, which is the general yardstick used, is that sometimes the environment will change in a way that you have so-called choke species. That was a big issue at the December Council this year, and it is a big problem in the west of Scotland. Unless you are going to tie up your entire fleet, there will be times when you have to make some sort of by-catch provision for some species, which means that species in that year will not be fished at MSY.

Likewise, there will be times in a mixed fishery—we have this problem in the Celtic Sea in the West Country—where you have whiting and haddock and cod that will all be at different levels of ecological health, but where you have to try to pitch all of them within ranges to ensure that in that mixed fishery you are not damaging any stock too much, although some of them might go out at an MSY rate.

The third problem is that we have to reach agreements with our neighbours, whether that is with the EU or Norway. Norway, which is of particular relevance to Scotland, follows maximum sustainable yield, but that is only one of its measures and it also uses other approaches to science and has other yardsticks. It would argue that its approach is better than ours. If Norway had an approach that it argued was better and on which we could reach an agreement, were it not for some piece of legislation that would make it unlawful for a Minister to do that, you have to ask whether, in such a scenario, it is better to do the deal and have an agreement with Norway about how we sustainably manage stocks, or better to walk away and just unilaterally do our own thing. I would say it



is always the former, even if that means that there are occasions when certain stocks might not be fished at MSY. We provide very clear objectives that we are committed to, and a legal objective and requirement to have a plan that shows how we are going to deliver on those, but with sufficient flexibility to recognise those realities.

Q98 **Christine Jardine:** What recourse would the fishing sector have if they felt that the Administrations were not meeting those objectives?

George Eustice: Environmental NGOs would probably be more likely to do it, because they are often quite litigious. Environmental NGOs or the fishing industry or anybody else would obviously be open to bring a Judicial Review against the Government or any Administration to say that they were not abiding by the Joint Fisheries Statement.

Q99 **Christine Jardine:** One thing I am curious about is that on the face of the Bill it does not have a transition period ending as the commencement date for policy. What could the implications of that be if we get to the end of the transition period and there is no agreement?

George Eustice: The clause on commencement—it is right at the end, clause 45. There are one or two provisions that are moved on a set point, but in the vast majority of cases they are to be moved by Order. An amendment in Committee sought to say that the deadline for commencing the provisions of the Bill would be December 2020. That was tabled by Mr Duguid and other amendments were put down by other Members. The impact of that would be that it would fetter the ability of a future Government to exercise the option of extending the implementation period. It would not make it impossible, but there would need to be subsequent primary legislation to obviously delay the commencement of the Bill if there was an extension to the implementation period, if fisheries was included.

For very understandable reasons, that is precisely why the amendment was put down, because from the perspective of the fishing industry the implementation period cannot end soon enough. It will always be preferable, from the narrow point of view of the fishing industry, to be in the so-called backstop, with all its contentious features, than to be in an implementation period.

Q100 **Christine Jardine:** If you will forgive me, with respect, that takes us back to the point that the Chair made about whether there is a suspicion among the fishing community that the reason the provision is not there is because the commitment to the fishing industry is perhaps not as great as it might be to other sectors.

George Eustice: The point I would make is that the reason it is not there in the Bill is because the Second Reading of the Bill took place before we had concluded the Withdrawal Agreement, and it was less clear at that point what the nature of the implementation period would be—indeed what the nature of the Withdrawal Agreement would be. It was because of the elements of doubt about that that we did not have



anything in the Bill. The reason it is not in there now, and the reason we have so far resisted that amendment at Committee, is that it would fetter the option that the Government have sought through the Withdrawal Agreement to be able to extend that implementation period for a few months, if that were considered necessary.

Q101 John Lamont: Fisheries management and support has been one area that the Government have identified as possibly needing a common framework. I just wondered why the Bill did not make any reference to that.

George Eustice: What do you mean by “fisheries management”?

John Lamont: I guess it is in terms of quota setting and the support that the fishing communities might get. I think the Government previously had identified that as being an area where we would need a common framework across the whole of the United Kingdom, but there is no specific mention of that in the Bill.

Anne Freeman: I think you are talking about work that was published a long time ago—work by the Cabinet Office—and it had fisheries down as an area where we might need a framework. The position has moved a lot since then. We absolutely do need a framework. We have been working very closely with devolved colleagues about that. It is a question of how you deliver that framework. As the Minister has said, we have a very good close working relationship with the devolved Administrations, particularly Scotland in this case, and we have concluded that for a lot of this you do not need a legislative framework and it would be inappropriate to put in a legislative framework for matters that are not covered by legislation. We are seeking to develop a memorandum of understanding that would cover matters like quota allocation and decisions on fisheries management issues, where that impinged on shared stock or border territory. Frameworks do not necessarily need to be legislative, and we would much rather move forward by co-operation and collaboration than legislation.

George Eustice: If your question was more around coastal communities and fishing opportunities, there is the Joint Fisheries Statement, which is predominantly around the sustainability objectives in clause 1. We also make a provision for what we call a Secretary of State statement, which would be a statement predominantly for England. That deals with socioeconomic factors for coastal communities. Indeed, during our Committee stage we gave an undertaking to consider whether we could make that more explicit for fishing opportunities, with particular reference to the inshore under 10 fleet, and also whether we could consider things such as angling interests as well within that particular statement. That statement, as I said, will be an England statement. I know the point has been raised previously, “What about Scotland?” and it would be for the Scottish Government to have a similar type of statement if they wanted to address socioeconomic issues in Scotland.



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Q102 Ged Killen: Minister, when you previously gave evidence to the Committee, you said that fishing licences for foreign vessels would be issued by the UK Government on behalf of all devolved Administrations. The Bill, however, says that devolved Administrations will be responsible for issuing licences for their respective zones. Has there been a change in the policy?

George Eustice: There has not been a change in policy. It is a complex area. It is not final yet, but I believe the direction of travel is a sensible conclusion. I will just explain how this works. In terms of negotiating access for foreign vessels to UK waters, that is clearly reserved and only the UK Government can do it. Once the UK Government have made that decision, there is therefore a legal obligation on the other Administrations to license those vessels. The conversation we have been having with the devolved Administrations is that, for understandable reasons, because licensing is devolved, they have not wanted to explicitly give up that power to license because it is part of the devolution settlement now; why would they give that up?

Equally, however, they understand that in practice, when it comes to foreign vessels, there is a legal requirement on them to issue the licence anyway, so it is a rather circular argument. What we are moving towards, I think, is an administrative solution where, with the consent of the devolved Administrations, a single licence might be issued by the NMO on behalf of everybody, provided they gave their consent. From the point of view of other devolved Administrations, that saves them the unnecessary administrative burden of issuing duplicate licences over which they would have no discretion in any event. It means we can have the clarity of a single UK licence, but it would be done through an administrative agreement rather than by a statutory requirement.

Q103 Ged Killen: It does not sound as though there is any point in the devolved Administrations having this ability to license. If you are saying there is no flexibility, they will not be able to impose different criteria on foreign ships to the UK, for example.

Anne Freeman: They will be able to, yes.

George Eustice: They could, as long as they did not cut across the international agreement, yes.

Anne Freeman: Indeed. But as the Minister says, the agreement about whether or not access will be allowed is a UK reserved matter. Obviously we will take into consideration the views of the devolved Administrations, but the actual issuing of a licence is a devolved function. We are preserving that, but as the Minister says, administratively it makes sense to allow people to have a single issuing authority for that licence, but within that there can be different licence conditions.

George Eustice: Fundamentally, I think we have to recognise that the devolved settlement we have in the context of being members of the EU



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and the CFP meant that devolved Administrations could issue licences to their own fleets. That was always the intention and nobody ever had to issue a licence to an EU vessel since they had the right to operate anyway. In the case of Faroese vessels operating in Scottish waters, UK waters, those licences were granted by the EU on our behalf. Historically they were predominantly issuing licences to their own fleet and we are obviously in slightly new territory in that we are issuing licences to foreign vessels. I think we have reached a reasonable compromise, which is since licensing is devolved, we will not legally take that power away, but it is a power that is better exercised administratively with a single licence by the UK.

Q104 **Chair:** Just to clarify—I think it is quite important—the UK Government will therefore license foreign vessels on behalf of the Scottish Government at their request?

George Eustice: Yes.

Q105 **Chair:** Would it be the case that the UK Government would just say, “This is what we have allowed into Scottish waters” and there will be an arrangement with Scottish Ministers about access to those waters? Is that correct?

George Eustice: That is right. We would be issuing a licence on their behalf, with their consent. But the slightly circular nature of this argument means that if the UK Government, for instance, reached an agreement with the Faroes that granted them access as part of an international agreement, the Scottish Government would not be able to object to that, since it is an international agreement. It becomes a rather circular argument.

Q106 **Chair:** Is that likely?

George Eustice: It is very unlikely, because what will happen in practice is in future there will be a UK/Faroes bilateral agreement and we will take a UK delegation in the way that we do currently to the December Council. I would anticipate that we would reach an agreement that Scottish officials and the Scottish Government had been part of devising.

Q107 **Ged Killen:** To follow up on that then, how will you enforce the UK EEZ to ensure that foreign vessels only fish in the zones that they have been licensed for?

George Eustice: We have mechanisms for doing that already. For instance, I think there is currently an agreement with the Faroes that they can catch up to 30% of their mackerel quota in UK waters. We have well-established procedures for monitoring their catch records, for looking at their fishing activity and making sure that the nature of the activity reconciles with the catch records that they are filing, so that we can enforce that properly and know that they are catching what they say they are catching in UK waters. We already have those procedures in place.



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Marine Scotland has its own enforcement capacity, its own patrol vessels, and in England we use the Fishery Protection Squadron under the agreement we have with the Royal Navy. We have taken a decision to retain the three fishery protection vessels that were due to be decommissioned, while adding an additional four new ones into service. We also boosted capacity by entering a joint agreement with the Border Force, which has four cutters, and its staff are being retrained so that it can also do fisheries protection work.

Q108 David Duguid: I want to come in on the previous question that Mr Killen asked about licensing, on the latter point you made about the UK delegation. There will still be a UK delegation going to Faroes, for example, and the Scottish Government will be well-represented and presumably the Shetland Fishermen's Association will be represented as well in that discussion, based on recent—

George Eustice: I think in that particular section, yes.

Q109 David Duguid: Going back to the earlier question about the consent, I believe there has been a little bit of confusion over the word "consent" in this context. I want to clarify that with the devolved Administrations' consent, the UK Government will release licences on their behalf, as opposed to requiring devolved Administrations' consent at each and every licence. Is that the case, or is there still a case where a devolved Administration might say, "No, you cannot give—"

George Eustice: The precise detail is still to be worked through, but broadly speaking, I think what we are saying is as a point of constitutional principle, licensing will remain devolved, so there is nothing in the Bill that cuts across the devolution settlement. We have been very careful in the drafting of the Bill to ensure that with all of the sometimes awkward compromises that are required, we have sat the Bill squarely within our devolution settlement.

Effectively, however, administratively the UK will license on behalf of the UK, so there will not be a change in the devolution settlement, but in practice it will probably be delegated to the UK.

Q110 David Duguid: It is almost entirely a matter of administrative convenience rather than any kind of—

George Eustice: Yes. I think everybody recognises that administratively it makes sense to have a single licence issued by the UK for foreign vessels. That is administratively the sensible thing to do, but equally the devolved Administrations were anxious not to diminish the current settlement they already have, so it does not legally cut across that settlement.

Q111 Deidre Brock: You have already referenced the issue of access to waters being linked to future trade agreements, and we heard quite a lot of concern expressed about that this morning from the Cabinet Secretary. Indeed, one of the Scottish Government civil servants referred to the EU



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Council statement that spoke of demonstrating particular vigilance in protecting fishing interests and building on existing access. How relevant are the powers in the Bill in light of that to control access for foreign vessels?

George Eustice: They are very relevant because once we leave the European Union and become an independent coastal state, no foreign vessel will be able to access the UK EEZ unless they have a licence to do so.

Q112 **Deidre Brock:** Are you absolutely confident? It does concern a lot of people that, as the Chair has already said, in the face of significant interests with much larger contributions to the GDP than fishing, the voice of fishing may well be drowned out in the clamour from those particular interests.

George Eustice: I would simply say that we know what other countries that are not in the European Union do. We know what happens with the Faroes, Iceland, and Norway. They have control of their EEZ and they are not, some of them, in the EEA, but they do not automatically grant access to their waters. That is subject to annual negotiation. What we are asking is not something that is unrealistic or unheard of and could not possibly be done in the modern world. It is what happens with every other normal country that is not a member of the European Union.

Q113 **Tommy Sheppard:** Good afternoon, Minister. It is good to see you again.

I want to go back to clause 18 and the question of legislative consents and explore that a little further. Others have remarked that we had the Cabinet Secretary with us with a video link this morning and quizzed him on this. I think that it is fair to say that even under slightly provocative questioning from some of your colleagues he seemed very wary about being drawn into any stance that might be described as pugilistic. He was talking in very warm and conciliatory terms about the relationship that has been developing between your Department and his, and I think that we are all delighted that this love-in is taking place at this level.

I want to know, therefore, what the end game is in this process. At the minute we do appear to have a big impasse. I am wondering how you see getting through it. The biggest single thing about fishing, surely, is how much you can catch. There is nothing bigger than that. At the moment, clause 18 is pretty much saying that the determination about how many fish can be caught in Scotland will be made here. I know that you are talking about consultation but, nonetheless, that is pretty much as it stands. The reason why you say that, I know, is because you say it is solely the UK Government's responsibility to comply with international treaties and the TAC is going to have to be set in line with those international obligations. I get that.

You said earlier that the Scottish Government argue that they have to abide by international treaties, too. It is a little stronger than that,



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actually. The Scotland Act places an obligation on the Scottish Government to deliver on international treaties that the UK, which they are part of, has signed up to. Given that, do you see any way of squaring this circle and trying to look towards a revision of clause 18, or some codicil around it that will go some way to giving the Scottish Government the reassurance they want, which is that they will have some serious input into determining and setting quotas for the number of fish catchable in Scotland?

George Eustice: I can say that obviously they will have serious input in determining that because clause 19 has a requirement to consult. If I can say something about how we approach the December councils—this was commented on I think by Fergus himself, and the Cabinet Office is looking at what we have done in DEFRA on fisheries specifically. It is a rather unique model within the UK in that we take a delegation that has representatives from each part of the UK. This is a convention that the last Labour Government started in around 2007 or 2008, but that was in the days when there was a Labour Administration in three parts of the UK. You can imagine how much easier it is to try to get an agreement when you have the same party in power in three of the four parts of the UK. That is not the case now; we have very different Administrations in every part of the UK and, indeed, in one area we have no Administration at all. That said, we persevered with the model and I think that it has been a great success. Yes, there are times when we have to have very difficult conversations or work through our differences, but I think that it really does work. You just have to apply yourself to doing that.

In the context of the annual fisheries negotiations where those limits will be determined, Fergus Ewing will be alongside me in those negotiations. I would simply keep coming back to what I said. Subsection (2) could not be more explicit. A determination made under subsection (1) may be made only for the purpose of complying with an international obligation of the United Kingdom to determine the fishing opportunities of the United Kingdom. It is very much in terms of the global tack for the whole UK and only the UK Government can do that. That is the point that we are making— it is about legally creating the quota that reflects an international agreement that the UK has entered into, and the UK is the only one that can do that.

Q114 **Tommy Sheppard:** For the UK?

George Eustice: For the UK, yes.

Q115 **Tommy Sheppard:** In terms of the total, I understand that, but when it comes to determining how that TAC is split up within the UK, do I take it from what you are saying that that in itself might be subject to a common frameworks approach with representation from the four Governments?

George Eustice: We are not seeking to make any change at all in that regard. In terms of what happens now, we have our annual December



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negotiation with the EU where the total allowable catch is decided. Within that, the EU gives the UK an envelope of quota and what we currently do is allocate that out to each of the devolved Administrations along the lines of FQA units, so based on where the vessels are registered. Scotland then manages that quota. As it happens, Scotland and all the other parts of the UK in themselves go on to hand it out along FQA lines, but there is no requirement for them necessarily to do that. Indeed, Richard Lochhead a few years ago, when he was the Cabinet Secretary, considered the idea of departing from an FQA basis for distributing fishing opportunities in Scotland.

We are not suggesting any change. The UK Government have always allocated quota out to the devolved Administrations, and we are not suggesting any change to that at all.

Q116 Tommy Sheppard: How would you feel about a proposal that said that if you were to suggest any change, it should be subject to the consent of the Scottish Government?

George Eustice: At the moment it is something that would not just be the Scottish Government; it would obviously be every part of the UK.

Tommy Sheppard: Well, the affected Administrations.

George Eustice: At the moment, we are in a period where there is a lot of change, so we are saying that on that particular aspect, where the UK Government simply allocate out those fishing opportunities, we are not proposing any change at all to the basis on which the UK Government do that, which is a prerogative power that has always been used. It is an administrative power that has always been used.

Q117 Tommy Sheppard: I get that you are not proposing any change, but somebody might do it next week. Unless we write these things down, just saying that you are not proposing any change now is not really much of a guarantee for the future. What about a situation where we are saying that if there were to be changes in the future, those changes would have to be subject to the consent of the devolved Administrations?

George Eustice: I am going to ask Anne to come in because the White Paper did cover some of this.

Anne Freeman: In the White Paper, as the Minister has described, we have set out that we do not propose to change the way existing quota is allocated. For any new quota, we will be looking at ways in which we allocate the quota at a UK level in a different way. We will need to start a conversation with the devolved Administrations, industry and stakeholders about that. In England, we will also be allocating that additional quota to English vessels in a different way.

At the moment, the methodology is set out in the quota management rules that are agreed between the Administrations. It has worked perfectly well in the past where we have been able to come to an



agreement about how we will allocate the quota at UK level. The question is: in this future where we are hoping that we will continue to collaborate, why would we need to legislate for something that is already happening? There are established mechanisms for agreeing how you allocate quota, and established mechanisms for changing that in future if you wanted to.

Q118 Tommy Sheppard: I rather fear that answer has given me more evidence for my proposition. I understand this debate about treating the existing quota and then if there is to be additional quota you might look at new criteria and how that would be distributed rather than the old criteria. I understand that is in the context of this debate about how much quota should go to what size of vessel and what size of fleet within the industry.

That begs another question. What if in Scotland they wish to adopt different criteria—for example, for the proportion of catch that should go to boats under 10 metres—to the view that was taken in England because of the different circumstances of the fleet or whatever?

George Eustice: They can do that.

Anne Freeman: They can do that.

Q119 Tommy Sheppard: You seem to be suggesting that those decisions would be taken on a UK-wide basis and then form part of the allocation that would be given to each part.

George Eustice: They can do that now and, indeed, Richard Lochhead consulted on doing that. That is why there was a difficulty with the concordat because some of the fleet sought to move south of the border and it caused a contentious issue at the time.

The flow of quota goes as follows. There would be an international negotiation where a UK share of a total allowable catch for our stock is agreed. The UK would then apportion that envelope up to different parts of the UK, following FQA lines as we do now with no change to that methodology. It is then for the devolved Administrations to decide how they allocate it thereafter. There is no obligation on them to continue to share it out along FQA lines. It is already open to the Scottish Government even now to say, “We are going to top-slice that FQA approach” and give more, for instance, to the inshore fleet. That is an option that they have now.

Q120 Tommy Sheppard: Okay. I have one final question, my last one. You referred earlier, Minister, to the fact that the Scottish Government now are in a situation generally with regard to Legislative consent motions regarding Brexit of feeling, “What is the point anyway given that our consent may be required but if we do not give it there is no consequence to that; the UK Government are going to pursue what they want to do anyway?” Could you just for the record clarify that it is your wish and your policy to try to achieve the consent of the Scottish Government in matters relating to the fisheries Bill?



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George Eustice: Yes, of course. The basic approach with all of these Bills is where there are elements of the Bill that obviously affect other parts of the UK and the devolved settlement, then we should seek a legislative consent motion. We have done that. We wrote to Fergus Ewing requesting a legislative consent motion as we did the other devolved Administrations. We are in the usual discussion about that. I would still hope that we can get a legislative consent motion in the end, but you will be aware that the form here is that we should seek it in good faith and should seek to accommodate requirements where necessary in order to get it, but also that it should not be unreasonably withheld.

I would simply say that I think in the context of the current Brexit debate that is going on, there is obviously a lot of highly charged politics around a really big decision. I note that the Scottish Government have taken a position as a point of principle to withhold legislative consent motions from Brexit Bills. As I say, I am hoping that once we resolve the big overarching question we will find it much easier to return to business as usual. I personally do not think that the objections that Fergus has raised are insurmountable, and certainly I will be more than happy to spend time sitting down with him talking him through the various bits of the Bill and the clauses that he is concerned about, to demonstrate that the way these will be used is entirely in order and does nothing whatsoever to compromise the devolution settlement.

Q121 **Chair:** This point came up again in the session with the Cabinet Secretary about the powers on quotas and clause 18. Does that mean that this power can be used to impose quotas on currently non-quota stock like Orkney crab? That was the specific example that came up. Is that the understanding?

George Eustice: I am going to ask Anne to take this.

Anne Freeman: As the Minister has been saying, clause 18(2) is specific. It is about international—

Chair: Yes, I understand all that.

Anne Freeman: For species like Orkney crab—

Chair: The non-quota species, yes.

Anne Freeman: It is not a shared stock with anyone else. There are no international obligations there, so no, we would not be doing that. If there were to be an international obligation, yes.

Q122 **Chair:** You would not impose quotas through this power on non-quota species?

Anne Freeman: No.

Chair: That is fine. That has clarified that.

George Eustice: To further clarify, because fisheries is always complex, there is the Western Waters regime, which governs, for instance, crabs



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and scallops, and some of the Scottish fleet target crabs and scallops. Those are subject to an international negotiation. Then you have in England and in Scotland local technical measures that are just for that particular legislation.

Chair: That is fine. I just wanted to clarify that was the case with clause 18.

Q123 **Deidre Brock:** I want to go on to sustainability in the industry. How do the Government square their amendment that ensures that UK fishers get a greater share of fishing opportunities than inside the common fisheries policy and how does that stack up against the Bill's objective to base fisheries management policy on the best scientific advice available.

George Eustice: That is fairly straightforward. The clause that we have added is simply placing in statute what is Government policy. It makes it now a legal commitment to pursue the objective of only continuing to grant access to the level that is agreed today if there is a clear reciprocal commitment to increase the share of the catch that the UK gets. We have been clear consistently that we would like to move to something closer to zonal attachment. It does not affect the overall total allowable catch. What it means is that the share of that total allowable catch will be a larger share for the UK in future for some stocks—for most stocks in some cases—and a smaller share for some of the EU fleet.

Q124 **Deidre Brock:** Why have the Government decided not to replicate the CFP's commitment to achieve a maximum sustainable yield of fish stocks by 2020? What was the decision behind that?

George Eustice: Largely, it is a legal drafting point, which is this Bill will not be commenced until after 2020. Parliamentary counsel, for perfectly understandable reasons, said it would be rather ridiculous to have a target that has elapsed before the Bill even commences.

What we intend to do is through the Joint Fisheries Statement, which will set out obviously how we intend to deliver maximum sustainable yield. That statement will be the right place to say when and how we intend to achieve MSY on a range of different stocks. It could be different for different stocks.

Q125 **Deidre Brock:** Okay. We can expect it on the face of the Bill, then.

George Eustice: I do not think it is right to put it on the face of the Bill simply because an arbitrary target for all species does not really work. The point about maximum sustainable yield is that stocks will come in and out of that range depending on factors, some of them natural environmental factors. The important thing is to ensure that you are pursuing sustainable fishing on all stocks consistently.

Q126 **Hugh Gaffney:** In supporting coastal communities, the Scottish Government have requested that the Bill be amended to ensure that Scotland maintains the same level of funding currently provided by the



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European Maritime and Fisheries Fund post-Brexit. When will Scotland start to receive the same level?

George Eustice: Obviously, a spending review period is about to take place this year and that will set out the Treasury's approach to funding in a whole range of areas. We have already announced some additional money in the current EMFF round to support fishing communities, and we make explicit provision in the Bill to have powers to put in place successor grant schemes. I think that I made the point in committee that before you ask for guarantees of funding it might make sense to make sure you have the legislation to pay the grant, and that is what the Bill is about. The amount of money that you, therefore, put behind those afterwards is less a matter for the Bill, and more a matter for the spending review.

Q127 **Hugh Gaffney:** Can you say how you will allocate the funding to the new grant schemes between the devolved Administrations? Will it be based on the existing payment scheme?

George Eustice: I personally would see that in the early years at least you would have something that was relatively close and familiar to the EMFF scheme, and this might be a type of scheme that would evolve and develop over time as we all found our feet. Certainly, in fisheries it is vital, in my view, that we continue to have grant support to support investment in more selective gears. If we want to fish more sustainably we have continually to refine selective fishing, and that requires us to be willing to put our money where our mouth is and support fishermen in that regard. Obviously, with the opportunities that come with leaving the European Union, we also need to make sure we have the right infrastructure in our ports and harbours, and that we support coastal communities to put in place that infrastructure to deal with the fish they are going to be landing.

Q128 **Chair:** I know you have to go, Minister, so I have just one last question. It is on the seafish levy. I note that in the fisheries Committee you opposed an amendment that suggested that this would be reviewed and looked at. Is there any good reason that you could give to this Committee for why you did that?

George Eustice: I know it is a longstanding position of the SNP so I know it is again something that the Scottish Government wanted to table, but this was looked at in some detail by the Smith Commission. They concluded that the seafish levy should remain a UK-wide levy. They looked at it and considered the case for devolving it, but what was done at that point was a special Scottish committee—a subcommittee of Seafish was created. There are Scottish representatives on the main board of Seafish—they are very influential—but there is also a subcommittee of Seafish that deals specifically with Scottish issues. Our argument is that that addresses Scotland's request to have more influence over the way the Seafish levy is spent in Scotland, and it would



not be appropriate to break up a levy board with all of the costs and disruption that would cause.

Q129 Chair: I can understand why the Scottish Government have concerns just by looking at some of the figures that are attached to the Seafish levy and how that is then distributed across the United Kingdom. You were amenable to a successful amendment in the agriculture Bill on the red meat levy. Is it not the same type of principle that applies to that? I know the red meat levy was discussed at the Smith Commission, too, but we seemed to get beyond that particular hurdle. Surely we can do something with the Seafish levy so that some of this funding could get back to Scotland.

George Eustice: It is a slightly different suggestion in that for the red meat levy, the current arrangement was requested obviously by the devolved Administrations, but with the closure of some abattoirs they found that a lot of the livestock was crossing the border. That is not really the issue with the Seafish levy. It is collected nationally and it is managed nationally.

What we are really saying is that the fact that there is a Scottish subcommittee dedicated specifically to Scottish interests means that they have a huge role in directing the way that money is spent. There is certainly no suggestion that Scottish levy moneys are being spent on the English fleet, for instance.

Chair: I am getting the sense that we are probably finished and exhausted with trying to pursue that one. I know you have to go, Minister, but we are very grateful for your attendance today to help us out with this very short inquiry. If there is anything else that you feel you could usefully add and provide to help us with this, please provide that information. Thank you again for your attendance and the way that you take the questions; I will thank you for that, too.