

Scottish Affairs Committee

Oral evidence: [The relationship between the UK and Scottish Governments](#), HC 1586

Tuesday 12 March 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 261 - 326

Witnesses

I: Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations, Scottish Government.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witness

Witness: Michael Russell MSP.

Q261 **Chair:** We welcome you, Cabinet Secretary, to the last session in our intergovernmental relations inquiry. We are really grateful to you for coming down here in person this morning to join us. For the record, please say who you are, your role in Government and anything by way of a short introductory statement.

Michael Russell: Thank you. I have no real introductory statement. I look forward to answering your questions. My apologies for being unable to make the original scheduled date last week owing to a debate in the Scottish Parliament. I am Michael Russell. I am the Member of the Scottish Parliament for Argyll and Bute and I am the Cabinet Secretary for Government Business and Constitutional Relations. I was previously Minister for UK Negotiations and Scotland's Place in Europe. I have a continuity role in that regard. I have been a member of the Scottish Government on and off for the last 12 years in various portfolios.

Q262 **Chair:** As I said, this is our last session and we have heard quite a lot of compelling evidence about intergovernmental relations. In your view, how would you assess the relationship that the Scottish Government have with the UK Government currently?

Michael Russell: I think it is poor at governmental level and at official level it has been better. My own view is that whatever your position on the constitution or anything else, there requires to be a functioning relationship and the problem is that the weight of Brexit has been too heavy for what was a pretty inadequate architecture in any case to bear. You are by no means the first committee to inquire into this over a long period of time. Committees of every political hue and academics of every position have drawn broadly the same conclusions, that it does not really work as a structure and it requires to change.

That is also a position that is adopted not just by ourselves but by the Welsh Labour Government and I worked very closely with Mark Drakeford when he was in my position and now he is First Minister I am working with Jeremy Miles, his successor. In Northern Ireland there has been the view, I think even at times of the unionist community, that it needed a more robust structure. We are now in a position where that structure cannot bear what is taking place and will require to change. I have my preference for change. That will not be a surprise to anybody in this room, but the change needs to be focused on a relationship of equality if we are to function properly and that is the outcome that I would seek.

Q263 **Chair:** We have heard a lot, particularly from academics, that the success of the existing intergovernmental machinery is reliant upon goodwill between branches of Government throughout the United Kingdom and this has been severely tested by the Brexit process, as you identified.



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What are the particular difficult issues that you would identify and how would you seek to resolve some of the problems that we have, particularly when it comes to the issues of Brexit?

Michael Russell: I think it is quite revealing that the JMC (Plenary) did not meet from the end of 2014 until October 2016. The only other part of the JMC structure that was really in operation during that time was the JMC(E), and that has a narrow function, which is to bring together the devolved Administrations before each European Council, but it actually became a clearing house eventually for all UK Government Departments to find out what was happening at the European Council. I have been involved in the JMC structure on and off in my ministerial career but in 2009 when I had the culture and external affairs portfolio I went to one JMC(E) in which there were—forgive me, I can't remember the exact number—21 or 22 UK Ministers, myself and Rhodri Morgan.

It had a function outside the JMC; it was a briefing space. But apart from that, the arrangement simply was not functioning. Suddenly with Brexit there was a requirement. It could have been a positive requirement to consult the devolved Administrations particularly Northern Ireland and Scotland that had voted against leaving, but it became a sort of negative requirement that was simply to get into the position that there could be an understanding of how this was going to work if it was going to work. That is where we have ended up.

Q264 **Chair:** There are different objectives between the Scottish Government and the UK Government when it comes to Brexit. Is that basically why it has fallen down, or has it not been as effective as you would like to see?

Michael Russell: The need to have a different approach was shown by the unanimous agreement to set up the JMC(EN) that was reached at the Downing Street JMC (Plenary) in October 2016 and to agree its remit. That was a specific written remit. You will have it on the record, but broadly it had two parts. One was to seek to agree the Article 50 letter and the second was to attempt to have oversight of the negotiations insofar as they affected the devolved competencies.

The difference was recognised but I think the objectives were different. They were agreed, they were written down, but then they were not fulfilled. The Article 50 letter was never shown to the committee. Neither Mark Drakeford nor I saw the letter until it was submitted. I saw it on the afternoon it was submitted when it was released to the press.

In terms of oversight of negotiations, the word “oversight” has completely disappeared from discussions. There are discussions continuing about what involvement there might be if negotiations take place. For a while it didn't really fulfil its remit and what it has tended to do now is to try to firefight on issues such as frameworks, which I am sure we will come on to, issues of relationships on key areas of dispute or difficulty, and generally to keep a contact going and a conversation going, but even that is pretty defective. Last night there was no consultation or



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even information coming formally Government-to-Government. There was, of course, a briefing for Arlene Foster. There was no briefing for Nicola Sturgeon, and I think that does tell you quite a lot about it.

Q265 Chair: We have seen episodes in the past few weeks and months where there is every indication of a breakdown in the relationship, particularly the UK Government taking the Scottish Government to the Supreme Court. There was withholding of legislative consent from the Scottish Government. Do these episodes suggest to the committee that there are deep-seated problems and issues with this or are these things manageable? Is there still some form of communication?

Michael Russell: The structure does not work. The structure has ceased to work. We can make do and mend in a superficial way. At the heart of this—and there is no point in dancing around this point—devolution has always been a set of compromises built round the notion of Westminster parliamentary sovereignty. There is no hierarchy of governments in devolution. Governments have different roles. Those are defined by schedule 5 of the Scotland Act, what each Government does or rather what is reserved to Westminster and everything else is for the Scottish Government. But there is a hierarchy of parliaments and that is because Westminster regards itself as sovereign. That centre cannot hold, if I can use the Yeats phrase. It is no longer relevant in these circumstances.

I want an equality. I think that is best achieved by independence but if you agreed that it was not working and your objective was to find a better system, it would have to be based on a system in which the component parts respected each other, were able to work together, had equal opportunities and equal says and had a dispute resolution mechanism. You would have to have all those things built in and it would have to be statutory. Given that the sovereignty of the Westminster Parliament runs against that, something will have to give.

Q266 Chair: We have heard quite a lot about the Scotland Office in the course of the past few weeks and we have had former First Ministers and Secretaries of State for Scotland in front of this Committee. We were quite surprised at some of the responses we had from them, particularly Jack McConnell who was the last non-SNP First Minister of Scotland who was quite scathing about the role of the Scottish Secretary of State. What role does the Scotland Office have in supporting the relationship between the UK and Scottish Governments?

Michael Russell: It is an issue that needs to be tackled but the present Government do not appear even willing to address it. The office of the Secretary of State for Scotland was re-established in 1886 and became a Cabinet post in 1926. It was established because there was a growing measure of administrative devolution, the establishment of a variety of boards: the Fisheries Board, the Pensions Board, the wonderfully named Scotch Education Department. We had all these boards and we had administrative devolution and there had to be some oversight, so we had the political oversight.



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With the best will in the world—and I am differentiating the holder of the office from the office—that is no longer the case. There is a political structure and the two Governments need to work together. If there is a future for this, it has to be Department in the Scottish Government to Department in the UK Government. I encourage my colleagues to develop and build the process of quadrilateral meetings, which I think is very important, but when we go to the JMC(EN), without fear of contradiction, it is the Scottish Government that speak for Scotland. That is what we do on devolved issues. That is our responsibility. The JMC(EN) does not discuss other issues and I can't see the role of the Secretary of State for Scotland in that and I don't think there is a role.

That is a nettle that will have to be grasped or a thistle that will have to be grasped to say times have changed. The establishment of this role was one thing; it is no longer relevant.

Q267 Chair: A couple of models have been suggested to the Committee. I was struck by Professor Jim Gallagher who talks about a new Department that could be set up for intergovernmental relations. Lord McConnell and Lord Wallace talk of a beefed-up Department of Constitutional Affairs headed up by a powerful Secretary of State. Would that be the type of Government-to-Government relationship that you would see working more effectively?

Michael Russell: That exists, of course. You have one thing that exists and another thing that exists and the second one, the presence of the Secretary of State for Scotland whose office is largely irrelevant. David Lidington has the responsibility for devolution. He chairs the JMC(EN) and that has moved on. When that started it was chaired by David Davis and I think it became obvious that it was better chaired by somebody who was focused on the issues of ensuring that the relationships were kept there. But there is also direct contact between Ministers. Fergus Ewing and Roseanna Cunningham will meet with Michael Gove and—it was, George Eustice—whoever is now in that role and their Welsh counterpart on a regular basis. That is how things have developed. You just have this other appendage hanging on, which is the Scotland Office and the Welsh Office, and there is not really much point in it.

Q268 Chair: That has happened organically in the course of the past few years with the arrival of a powerful Deputy Prime Minister who has these responsibilities in Government. I was wondering, therefore, what does the Secretary of State do.

Michael Russell: I pay tribute to Damian Green because I felt he got what was happening pretty quickly. He slimmed down the JMC(EN). It had become completely unmanageable. There were Ministers and civil servants in every corner of the room. He focused on that relationship. Many UK Ministers—and this is not a criticism—do not know much about devolution. They have not had to know much about devolution. Devolution was 20 years ago. It is only old stagers like myself who hang on who remember devolution in that regard. In those circumstances, it



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really is clear now that that is the relationship and Damian got the relationship and he built that. He slimmed the committee down, but he kept the territorial Secretaries of State because I think it was embarrassing not to do so at the committee, but they are not key players in that.

The key players would be a conversation I would have with David Lidington, a conversation that Mark Drakeford or his successor would have, Stephen Barclay engaging with us in some way, the ministerial forum, which is the level below that that we have established. That would be the relationship. It may not work but there is no need for the Scotland Office to be there.

Q269 Tommy Sheppard: Cabinet Secretary, I would ask you to clarify one thing. I find that when people like you or I discuss the continuing role of the Secretary of State for Scotland, people are suspicious of our motivation. They think that perhaps because we advocate Scottish independence that therefore automatically we would not want any UK involvement in Scotland and that is why we take the position. Can I clarify that what you are saying is that within the terms of the existing devolution settlement, you feel that settlement is frustrated and compromised by the continuing pre-devolution roles that are in operation?

Michael Russell: With the greatest respect, frustrated and compromised might be putting it too strongly. I think it is not relevant to what we are doing. It does not reckon in our thinking. It is an appendage from a past settlement that is not necessary in there. There is a difference with the Secretary of State for Northern Ireland, which needs to be recognised in terms of the structure, and that is a matter for somebody else, but I think that time has passed in Wales and Scotland. I want a different structure. I would much rather not have this structure but if your aim was to have a functioning and effective structure between Governments there would be no necessity to invent that role if it did not exist.

Q270 Tommy Sheppard: Can I ask one further thing that is almost a non-political question? You have extensive experience of Scottish Cabinet in various different roles, as you say. In your experience, what is the day-to-day function of the Secretary of State for Scotland in the governance of Scotland? There are some serious reserved matters with big UK Departments, which have a remit in Scotland, the DWP being an example. Does the Secretary of State provide some sort of go-between between those big reserved Departments and the Scottish Government or would you rather just deal directly with the DWP?

Michael Russell: We do deal with the DWP. That is the issue now. That is what happens and the Secretary of State in a Department that has reserved and non-reserved functions. Michael Gove is an example. He is not, if I may use the word, blate in coming to Scotland himself and having conversations with people. He does not need an interlocutor to do that and I don't know many who do. Jeremy Hunt was lecturing in



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Glasgow University last week. If the role is interlocutor between the Scottish Parliament and the Scottish Government and Westminster, there is no need for it. If the role is representing the reserved issues within Scotland, that is being done by the Secretaries of State who have areas with UK responsibility. I don't see what the purpose is. I don't think the role has any function at all in the day-to-day functioning of Government.

Q271 **Christine Jardine:** You touched on, and Mr Sheppard has touched on it, that there could be criticism that it suits a particular narrative not to have a Scot who is a Scottish MP, who is representative of Scotland at the Cabinet table to ensure that there is a particularly Scottish aspect, a particularly Welsh aspect and a particularly Northern Irish aspect and that it is more difficult for those who would like to claim that Scotland does not have a voice in Westminster if there is not a Secretary of State for Scotland.

Michael Russell: Yes, that would be a claim. I would refute it and I would suggest that there was a model that you could follow. One that has rather interestingly just started to develop as a result, and this might be a positive thing you might take out of Brexit, some couple of months ago, I think just after Christmas, the Prime Minister asked the First Minister to attend the new UK Cabinet subcommittee on exit and John Swinney and I have been attending meetings when required. This is not a blanket invitation, but I think we have been to one meeting out of two each time it has taken place.

You could postulate that building an effective system of relationships between the Governments, which was based upon equity, maybe based on the issue—the Welsh have published a very good paper on this—of having a Council of Ministers of some sort and an engagement in appropriate UK Government structures would be more effective. The Scottish Government would be represented in that way. It would be for others to determine whether we have been constructive in these matters, but I do believe that we have taken part in all these meetings—and there have been many, many meetings over the last two and a half years—in good faith. In those circumstances you could start to construct what I think would be a more effective role.

Q272 **Christine Jardine:** Having worked through the Scotland Office, I would say that there is still a need for an administrative or functional role to be the link between the Scottish Government Ministers and the Cabinet. But one of the things that we have heard in this Committee—and you referred to it—was Lord Wallace, who has experience of both the Scotland Office and the Scottish Government, made the proposition that what we perhaps should be looking at is a Council of Ministers and that would be a way of developing devolution and moving towards a more federal structure. What would be your thoughts on the possibility of a Council of Ministers including a Scottish Secretary?

Michael Russell: You may take as read that if you are looking to establish equality the best way to do that is to have independence. That



is Occam's razor; the simplest solution is usually the best. But putting that to one side, the Welsh published a very useful paper on this last year. If people have not read it, I would commend it. I don't agree with every word of it, but it is based upon ideas that Mark Drakeford brought to the table in JMC(EN) and which I have endorsed often, which is to look at a new structure that would have effective councils of ministers, that would have dispute resolution, of which nobody had a veto, and everybody came to the table representing their interests. I think that would be a better system than the one we have now. I am not saying it is the best system. It would be a better system than we have now. I don't see the current system as being one that allows any of that to happen.

Q273 Christine Jardine: Given that as well as Lord Wallace, some MSPs who are not in the Government have expressed support for that type of process, do you think it would find general support in the Scottish Parliament?

Michael Russell: I would never predict what the Scottish Parliament was going to do but I think it should be part of the debate, undoubtedly. The important thing here is, if you accept that the current structures don't work—and without prejudice and political positioning I hope most people would begin to accept that the current structures don't work—what would replace them and what would produce a better result? That is part of what I believe is the best result of all. The Scottish Parliament needs to have that discussion. The UK Government need to have that discussion and that is a key issue in here. The JMC structure is under review at the present moment and it has been under review for the last year, I think. Nothing has come of it. Nothing at all has come of it and that is a key issue.

Chair: We are still on questions about the Office of the Secretary of State for Scotland. We are getting into other territory here. I have three supplementaries on that issue. Are they all on that issue? David Duguid.

David Duguid: It is not on the Secretary of State for Scotland, but I do have a supplementary on something Mr Russell said earlier.

Chair: Are there are opportunities in the further questions to raise that? Let's deal with the Secretary of State for Scotland and we will come back Mr Duguid.

Q274 Ged Killen: Lord McConnell in his evidence suggested that you could have a Department of Constitutional Affairs or a Department of the Nations and Regions headed up by, as he described it, a powerful Secretary of State, somebody like the Deputy Prime Minister and within that each of the Departments, the Scotland Office, Welsh Office, with Ministers in those positions. Do you think that that is something that you could support or that you think would be helpful in trying to keep that voice of devolution or of nations and regions in the Cabinet but recognising that it does not have as powerful a role as it once did?



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Michael Russell: I think it is likely to be clearer and better if there are direct relationships between, for example, myself and David Lidington on issues of constitution, if there are direct relationships between Fergus Ewing and Michael Gove on issues of agriculture and fisheries. I think that is likely to be more effective. I don't see what the middle man or the middle Department is going to contribute effectively. That is just part of the evolution. Donald Dewar called devolution a process not an event. I think it is part of the process of change and we have got to the stage in the process where those relationships are easier to operate than one that is mediated by the Scotland Office. The Scotland Office does not mediate it. It would be a matter of some astonishment to some UK Secretaries of State if they thought that they had to or were expected to go through the Secretary of State for Scotland when dealing with Scottish Ministers. It just doesn't happen.

Q275 **Hugh Gaffney:** I think you have just answered my question. I was going to ask how often does the Secretary of State and the Scottish First Minister meet direct. I think you have just answered that question: do they meet direct? When it was Labour-Labour, they could pick up the phone and talk to each other but are those calls happening regularly?

Michael Russell: The First Minister and the Prime Minister communicate, as the Prime Minister also communicates with the Welsh First Minister and the Northern Irish First Minister. That would be expected. I honestly couldn't tell you how often they meet because it doesn't strike me as something I have ever thought about. What I do think about is when Jeane Freeman has an issue on health, I don't think it would cross her mind to say, "I had better talk to the Secretary of State for Scotland". She thinks, "I had better talk to the Health Minister about this". When you think about the way in which you can get results, it is a bit better to do it that way than to have to go through the committee.

Q276 **David Duguid:** Mr Russell, it was just something you said earlier about recognising the hierarchy of the sovereignty of parliaments but not the hierarchy of sovereignty of governments. Could you expand on that a bit? In your response, could you explain to me at least—I don't know if it is known by the rest of the Committee—why the Scottish Government have Ministers with responsibilities for international development, foreign affairs, international trade and other reserved functions?

Michael Russell: The second one is quite easy to answer. International affairs, as the Supreme Court judged recently, is not solely to do with the UK Government. International relations is a reserved matter but the implementation of international obligations and, for example, issues of trade are devolved and can be effectively managed in a devolved way. You could take a very purist position and say that the moment you became First Minister you gave up your passport and you only got it back when you stopped being First Minister, but that would seem strange given Arlene Foster goes to America for St Patrick's day and for other events. Carwyn Jones went to Doha some time recently, I seem to remember. All the devolved Administrations of whatever hue recognise



there is a role in international relations and in working with others. Frankly, given Brexit, my own view is that building those relationships is absolutely essential even for the maintenance of Scottish trade and development.

Q277 David Duguid: Sorry to interrupt, but does that not assume that Scotland has a separate role to play in a post-Brexit world from the rest of the United Kingdom, which is not necessarily the case?

Michael Russell: I think that you and I would disagree on that.

David Duguid: We will.

Michael Russell: I am not overwhelmed by the thought of you and I disagreeing. There is a role for Scotland to play. I would much rather it played an independent role, but whatever the role is, it is a role of direct relationship with others. Interestingly, you could argue this on a purist basis, which is to say the Government of Scotland should never deal with a sovereign Government of another country. You could argue that. I think it is wrong, but you could argue that on a purist basis. I am not sure you could argue that the Government of Scotland should not deal with Baden-Württemberg, which is a German state. You could say that Baden-Württemberg would be quite keen that that would happen.

I remember one of the people who asked to see me when I was Brexit Minister was a Trade Minister from the Cape Province in South Africa and he came to talk to me because he was worried about the effect of trading relationships between Scotland and the Cape Province in South Africa. Should I have sent him to the Secretary of State? I don't know. Maybe he saw the Secretary of State, but we were able to have a civilised conversation.

Let me come to the first part of your question. You were asking about the devolved settlement and—

Q278 David Duguid: The main part at the start of my question was why you recognise a hierarchy of sovereignty of parliaments but not a hierarchy of sovereignty of governments.

Michael Russell: That is what devolution says. Devolution says that the UK Parliament can overrule the Scottish Parliament. That is understood. I don't like it, I wouldn't like it, but that is true. That is what happened with the Withdrawal Bill and that is a cause of contention and I think it is not the basis on which you can have an equal relationship. But the UK Government cannot overrule the Scottish Government on devolved issues. They can't do it. You can go to Parliament and say to the UK Parliament, "We don't like what has happened here. We want to pass a resolution" but the Governments have clear functions. The reserved functions are laid in schedule 5 and, of course, as in all things, there will be interpretation of those and then what is not reserved is operated by the Scottish Government. That seems clear to me.



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Q279 **David Duguid:** On the trade aspect, I can totally appreciate and understand the need for Scottish businesses to have a link with either their customers or their supply chains in other parts of the world, not just in the EU but everywhere. That was something that I agreed with and I came to that agreement with—I can't remember the official title now—the Scottish affairs counsellor in the British Embassy in the US, colloquially known as the Scottish ambassador to America. We came to that agreement that the relationship is from business to business rather than from nation to nation, but it is often reported as this is Scotland talking to another country rather than somebody representing Scottish businesses. But putting that aside—

Michael Russell: Can I respond to that point? I would have to dredge my memory but on the occasions that I have been a Minister in any role travelling abroad, when you go travelling abroad on behalf of the Government you take on roles in all Departments because you are taking advantage of things. I can think of many occasions on which I have sat down with businesses in other countries and explained to them how things operate in Scotland, what opportunities might exist. I talked to Ivan McKee about a trip he had made to Hamburg and also a trip to Poland, and in both cases they were talking about supply chains for renewables. That seems an entirely fair and useful thing to do. I don't think it is a matter of representing that, "We are Scotland". It is saying, "Here is a good facilitation that we can put in place" and we have done.

Q280 **Chair:** This is not an innovation by the Scottish National Party Government. You will recall, as I do, that Labour and Liberal—the Malawi initiative set up a particular fund. I have schools in my constituency that are twinned with schools in Malawi. It is a good thing, surely, to have these types of international programmes.

Michael Russell: I had the honour of co-chairing the joint commission between Malawi and Scotland on a visit to Malawi in 2012, 2013. That was Jack's initiative. It was a very important initiative and it took place. There are relationships to be had, they are good relationships, but when you look at trade, you can look at the paper that we published on trade and also say, "Things change". Brexit changes things and, therefore, we should continue to change.

Q281 **Deidre Brock:** On the back of that, as far as I am aware, Northern Ireland has international trade devolved to it. Are you aware of any particular problems the UK Government have with that relationship? Clearly the Assembly has not sat for some time.

Michael Russell: I am not aware of them. The Welsh Government have officials in Dublin as we have officials in Dublin. They have officials in Brussels, and we have officials in Brussels. These appear to be perfectly reasonable things to do. You could take a step further. You could do what Belgium has done with its devolved governments, which is to give them legal personality and then they would be able to enter into direct trading



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links and relationships and treaties on areas of devolved competence. That would seem to me not far enough but a useful step.

Q282 **John Lamont:** Good morning, Cabinet Secretary. It is important to recognise that the Smith commission looked at all these things after the referendum in 2014 and had SNP representatives on it and you signed up to the divisions to the devolution settlement that has now been implemented. All these other things are now add-ons beyond what you signed up to in 2014-15.

Michael Russell: There were many things that we wished to see, which the Smith commission did not agree to. This was a process of negotiation and you don't get everything you want in a negotiation. I would argue, Mr Lamont, that Brexit has changed everything. Brexit is the most extraordinary event that I have seen in my political career and I think that it is entirely legitimate not just for us—the Welsh Labour Government have done the same too in a country that voted, narrowly, admitted, for Brexit—to reassess where things are. That is now where we are. There is nothing new about that. Equally, there is nothing new, as you will be aware as a former Member of the Scottish Parliament, that I espoused independence to have an equal relationship, But I also think, looking at Brexit in the close way I have seen, it puts into sharp relief what doesn't work, and it is important to talk about that.

Q283 **John Lamont:** The voters have rejected your proposals in the past. I want to move on to the development of the common frameworks, to get a sense of where you think the Scottish Government have got to on the development of the common frameworks.

Michael Russell: I think the frameworks is a rare example of something that we have been able—with firmness and determination and with the Welsh Government working closely with them—to get ourselves at least to an equilibrium. There have been two periodic reports, which are reports shared by the UK Government and the devolved Administrations, on the work that has been done on frameworks. Both of those have concluded that there is no need to move forward with a section 12 order in any area and that is extremely important because this bears out where we came in on this argument, which is to say we are quite prepared to discuss common frameworks and how they operate. We said that from the very beginning, but we are not prepared to have them imposed. If any frameworks are imposed we will not co-operate.

But now we are well into this process: 153 items, I think has gone down to 24, which are the core items, work is continuing on those but importantly no section 12 order. I think that has been an area where we have been able to prove that it is negotiation and discussion that will work not imposition.

Q284 **John Lamont:** By all accounts, the Welsh Government are slightly more progressed, compared to the Scottish Government, in setting up the common frameworks necessary.



Michael Russell: No, I am afraid that is not true.

Q285 **John Lamont:** The Welsh Government worked with the UK Government to secure changes to the Withdrawal Bill, which the Welsh Government ultimately backed. The Welsh Government proposed Welsh provisions for the Agriculture Bill so that the Welsh farmers had certainty after they leave the European Union, particularly on farm payments. Why is it, do you think, that Labour-run Wales is able to work constructively with the Conservative Government here and yet SNP-run Scotland seems totally incapable of reaching any sort of constructive working relationship with the UK Government?

Michael Russell: As I have just indicated, we have no section 12 orders and we have two agreed periodic reports. I think even a severe critic would use the word “constructive” in those circumstances.

I can’t agree with your representation on the Withdrawal Bill. There was a difference of opinion as to what we should do. Mark Drakeford and I continued to work, and have continued to work, very closely together. David Lidington made it very clear and formally clear that there would be no differentiation drawn between the two countries as a result of that. I think that rather gives a lie to any suggestion that Wales had got something that we didn’t get, so we have moved forward on that basis. I think a very important issue on this is Scotland—your constituents, my constituents—voted against Brexit, unlike Wales, and in those circumstances that is a key factor in our thinking and remains a key factor in our thinking.

Q286 **John Lamont:** I voted remain, but I am also a democrat and I think my constituents are very similar to me in that the majority voted remain, but they recognise that the result was different. They don’t think that my job is now trying to stop Brexit at every opportunity, which appears to be the SNP position, to ignore the referendum result in 2016, ignore the referendum result in 2014, try to stop Brexit, try to reopen the whole independence debate again. It is all about disruption and chaos with SNP, isn’t it, Mr Russell?

Michael Russell: I can’t say I am terribly surprised by that representation but for the record I dispute it in every regard. The position I am in at the present moment is this. I think that the people of Scotland were very clear to say that they didn’t want to withdraw from the EU. I stood on a manifesto that said that this would be a material change in circumstances and that is what has happened. For the last two and a half years, I have worked very hard, repeatedly, with the UK Government and with others to try to get some sort of accommodation to those positions. I think a number of observers, impartial observers too, have made it pretty clear that what has happened is a refusal to compromise on the part of the Prime Minister. When I met the Prime Minister last with the First Minister to discuss what we thought we might be discussing, which is compromised positions—and indeed this is what was being said publicly, what we actually heard was an explanation of why we simply



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were not bright enough to understand how good her deal was. Obviously she wasn't either because her deal changed.

In these circumstances, I am quite happy to argue for an opportunity for the people of Scotland to say whether they accept the Brexit deal, or they want something else. That could be a second EU referendum. I have publicly supported that and continue to do so. What I am not prepared to accept is that the people of Scotland have no say in the matter and are simply forced out of Europe against their will. That is a difference between us. It is a legitimate difference between us, and I suspect it will remain a difference between us.

Q287 Chair: On the common frameworks, and I know we have other questions on this, there was an update from the UK Government in February this year where they talked about the progress ongoing and the policy teams that have been put in place to try to develop outline frameworks. What is your understanding of where we are with this now? Are we much further forward than developing some sort of strategy towards common frameworks?

Michael Russell: That was the second periodic report, which it is within the agreement that these would be produced every three months, I think. Ian Davidson, who has been response for this at the Scottish Government, will be able to confirm that. It reflects the position not just of the UK Government but of the Scottish Government and the Welsh Government. I pay very much tribute to Ian and his team. This has been exhaustive and exhausting work to ensure that once we had boiled down the 153 to 24 we did our very best to ensure that there were working relationships. There are some areas where that has been more difficult than others. Setting the principles under which we did that was quite time consuming, and of course there will be differences.

The example of the Agriculture Bill raised by Mr Lamont is an interesting example—and Christine Jardine's point is germane here—where the presence of an agricultural council of ministers, as in Europe, would resolve that issue because there would be a mechanism to resolve that issue within that council of ministers. The present mechanism unfortunately is that when you get to the stage of disagreement it is either, "You do this, or we'll just do what we want". That is not a good basis for a relationship.

Q288 Chair: In the first periodic review there was little clarity about what these common frameworks would look like. The second one in February does not provide much more clarity at all about what will actually happen with these common frameworks. Do you have a view about what they are going to eventually look like or how they should look?

Michael Russell: I would be happy to write to you about this. It is a complex area. There is a number of stages that this is going through and I gave evidence to the Scottish Parliament's Finance and Constitution Committee, I think three weeks ago, on this and detailed this. We are



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now moving to the stage of involving stakeholders in certain of those frameworks discussions within the 24 so that they are engaged and brought into it. The Scottish Parliament's Finance and Constitution Committee, under the excellent convenership of Bruce Crawford, has been looking at this issue, held an event in the Royal Society in Edinburgh in early November about this, is going to report on it and we have invited them to be part of the process—it is a cross-party committee—of ensuring engagement from stakeholders as we take this forward. It is getting there.

As is usual in government, it is important work that is done in the background by officials. It is related to, but not exactly the same as, areas in which we have not been able to make progress. One of them is on legislative consent where we believe the system is broken, and we won't operate a broken system.

Q289 David Duguid: Going back to what you were saying earlier in response to Mr Lamont, I think both Mr Lamont and I voted remain in the 2016 referendum and have since, I believe, agreed that we should be following through on the democratic will of the British people, as was the condition of that referendum. With that in mind, do you accept that the 62% people who are often quoted as having voted in Scotland for the United Kingdom to remain in the EU may have also changed their minds?

Michael Russell: I accept that some of them may have done. I think the polling on this is quite interesting. There is a small number of people who have moved from remain to leave. There is a small number of people—a large number of people, according to the polling—who moved from leave to remain. But I think that the issue here is whether you accept that Scotland has a right to be heard and has a right to say, "We are not going to be dragged out against our will".

We could rehearse all day, and I am sure you might like to, but you and I would not make any progress on this in the end because we have a diametrically opposed view on it. I don't believe that Scottish democracy can be subverted in the way that is being suggested. I believe that Scottish democracy needs to be allowed to express itself. I have backed a second referendum for Europe. I am quite clear that I want the people of Scotland to have a chance to say whether they want Brexit to take place or not. We must agree to differ.

Q290 David Duguid: I think we will agree to differ on whether Scotland should be an independent country or not, but in terms of what numbers and statistics are used to represent what is an indicator of how the Scottish electorate would vote in such a referendum, do you also accept as an indicator the 56% of voters who voted in the 2017 general election for parties who were committed, at that point at least, in their manifestos to deliver on the result of Brexit?

Michael Russell: What I would look at is a constantly changing set of results and issues. I might point out the opinion poll at the weekend that



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showed that 53% of people in Scotland would vote for independence and 47% for Theresa May's deal, whatever that is, and it is rather difficult to tell this morning. I would point to an opinion poll published, I think by the *Mail*, today—and the *Mail* is not known for its fondness for the SNP—which shows a 19 point lead for the SNP in the Scottish Parliament elections. I think one has to keep going with how opinion is. One needs to judge it.

That is one of the problems in arguing against both an independence referendum and a second European referendum that you just say, "That is it, over and done with. It is in aspic". That seems to be something dangerous to do and I would want to go on reading the runes of what is taking place. Of course the ultimate rune to read is an election.

Q291 **David Duguid:** As per the 2017 general election that I have quoted the results of. Finally on this line of questioning, you mentioned a second referendum that you would be in favour of. Which second referendum?

Michael Russell: I would be in favour of giving the people of Scotland a right to choose on the issue of Brexit. There is a number of ways of doing that. I don't know what amendments are coming in front of you tonight. Your system is more complicated than ours, so you may not even know what amendments are coming before you tonight, but one of them may be on a second European referendum and I think that that would be worth supporting. Had I the honour to be a Member of the House of Commons, I would be voting for that. But if that does not happen I think the people of Scotland continue to have a right to express a view as to whether they should be in a Brexit Britain or they should be an independent country, because that is the only option. There isn't another option.

If there is another option, if the UK Government or the Opposition come up with an option—and this is germane to the area we are discussing—that says we can achieve equality between the four nations of these islands and we can make that work, that is an option that people should be able to look at. At the present moment it appears to me that the argument might boil down to whether you want to have Brexit Britain or whether you want to have an independent country. That seems to be a reasonable choice, but today—

Q292 **David Duguid:** Sorry to interrupt, but does that not actually represent two individual different second referendums? There would have to be a second referendum on Brexit and a second referendum on independence or vice versa.

Michael Russell: I think you have to wait and see how this pans out. First of all, is there going to be a referendum on the EU? I wouldn't say anything until I knew that. That matter is in your hands tonight, maybe, or next week, or maybe a month—

Q293 **Chair:** Let's just come off referendums and get back to where we should



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be, which is on common frameworks. I would like to ask you—looking at the current JMC machinery, the infrastructure that is in place just now—do you think that they could effectively establish a managed Brexit common framework and, if they cannot, what alternative arrangements would you have in place?

Michael Russell: What the common framework thing shows is that, with enough patience and goodwill, you can begin to make some progress. That is what we should have seen, for example, with issues on the Withdrawal Bill. Forcing the Withdrawal Bill down the throats of the Scottish Parliament and then taking it to the Supreme Court does not seem to me to show either patience or wisdom, and that is what actually happened.

It suggests to me also that, at the very least, we need to go back to where we started on this: a new structure for the relationships between the Governments of these islands. I have my own view of what that structure should be, but it should be.

Q294 **Chair:** I will give examples of things that we have heard at this Committee. For example, PACAC has put forward an independent secretariat to manage development of common frameworks. We have had the example of Professor Colin Reid who suggested a reporting and notice requirement to be part and a feature of the JMC. A lot of people have suggested other means to manage this common framework other than the existing JMC machinery. What are your views about what some of the alternatives are?

Michael Russell: I would only support a new structure to manage it if I thought there was to be no change to the JMC structures at all, because I do not think the JMC structures could manage it. It does not seem to me the best thing to do, to park the JMC structures on the grounds that they are so hopeless that they cannot do something and then do something else. It would seem to be much more sensible to say, "The JMC structure by universal acclaim does not work"—academic study after academic study, committee after committee.

I gave evidence to PACAC. I was surprised at the strength of the PACAC view on a variety of things. It doesn't work, so surely it should be changed in some way. You can be a radical on change, as I am, or you can be a conservative on change but surely people believe that change is needed. If that change takes place, one of the elements should be: how do you manage that relationship? The frameworks are simply the detail of the relationship on subject areas between the Governments, that is all it is, and that is the detail, the scaffolding that is around that and that is how we should understand it.

Q295 **Hugh Gaffney:** You just said change is needed. We see the Punch and Judy show every week between the SNP and the Conservative Government. That was highlighted last week at Question Time when a question was asked about who has the mandate for Scotland. You said



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earlier on that the UK is a sovereign body over the Scottish Parliament. In the background, taking it away from the public eye, what discussions have you had about the compliance and common framework rules that will be monitored and enforced?

Michael Russell: We have had substantial discussion about how the common frameworks are reached, in other words what the agreement would be. The issue of what you would have in a dispute resolution mechanism has largely been avoided by trying to get the relationship to a stage where that would not be required. I am very straight about that. It would be better to have the relationship in which you were not going to need those. That already exists.

An example I often use on this is that common frameworks are not really new. There was an issue that arose at the very beginning of devolution over the Solway and the Border Esk, the two rivers that are part of the border of Scotland and England. How were you going to have a framework that operated those rivers, navigation and fishing, more importantly, on those rivers? The solution was a very elegant one. I do not know what civil servant thought it up, but it was elegant: Scotland administers the Solway; England administers the Border Esk. I have had people who have complained bitterly to me that they required a rod licence for the Border Esk because it was under English jurisdiction and the Solway was different, but that was a neat solution.

If you are going to get this to work you need to have some neat solutions in place but governance, which is the point the Chairman has made, is very important and governance seems to me to require a structure that is better than the JMC. If you are going to change what is happening and get things into a new relationship, you are going to have to change the JMC structures.

I go back to the Welsh Labour Government's paper on this. It was a very good starting point. In our first "Scotland's Place in Europe" paper in December 2016 we also outlined changes to devolution that we thought would serve these purposes. The only people that have not brought anything to this table are the UK Government.

Q296 **Hugh Gaffney:** On that basis of common agreement, could a single body deal with the agreement of common frameworks, more than compliance with the common frameworks rules, or should these roles be split?

Michael Russell: A revised intergovernmental structure could do so. I would rather see it done by international agreement, so we would agree it with the UK as two sovereign states, but if you are not talking about that on the basis of equality, you need to have a structure that works. That is a structure of equality that could manage that. The corollary of that, I have to say, is the existing JMC structure could not do that.

Q297 **Tommy Sheppard:** A supplementary on this about the mechanisms. You will know that the Cabinet Office is having a review of intergovernmental



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relations to look at common frameworks, JMC and the MOU. When Minister Smith gave evidence to our Committee she said that no timetable or end point had been set for this review, so it wasn't possible to tell us when we might see some fruit. You have been taking part in this. Would you like to see a timetable set? Do you have an expectation of where we are going with this?

Michael Russell: I would like to see a start point set. I don't think it has virtually started yet. There is an awful lot of official contact but, as you say, I have seen no fruit. I have not even seen a green shoot as yet let alone fruit.

I have said repeatedly to David Lidington—and I am happy to say it here because I have written letters about it that have been released—this is a matter of urgency but the particular urgency on this is that we are not operating a legislative consent process presently for Brexit rules and won't do so. We have done it on one occasion for access to the Health Bill, which was an issue of whether UK citizens in other countries would have access to health and we all thought that was an important issue to make an exception on. But we are not doing that.

I have made proposals about how the legislative consent process could work. I made those certainly before the summer and certainly in the summer. Nothing has happened at all. There is a long grass review of intergovernmental structures. It has not, in my view, produced anything as yet. I have seen nothing from it. In those circumstances, I would want a sense of urgency to apply. There is no urgency.

I think we could resolve the issue of the legislative consent process quite quickly. Whether we could resolve the issue of intergovernmental relations I do not know but, given that every single report into this—academic or parliamentary from whatever source—has indicated the structure does not work, I would have thought you do not have to start from that. You have to start from saying, "What solutions have people proposed and could we make them work?" But there is that big barrier. The big barrier is parliamentary sovereignty.

Q298 **Tommy Sheppard:** Just to be clear on this, you are telling us that to all intents and purposes from where you sit there isn't really an active review going on, in the sense of there being a schedule of meetings, an agenda or milestones?

Michael Russell: I am unaware of them. I know officials meet and I know officials are working hard on our part, and I am sure officials are working hard on the UK Government's part. I have seen no fruits and I am certainly not aware of any impending recommendations of any description, and certainly there is no timetable.

Q299 **David Duguid:** Taking Brexit out of the equation, just briefly, and independence—let's not go there again—do you think the Joint Ministerial Committee forum should be a productive forum for intergovernmental



relations? If so, what would you say its main achievements have been so far? If not, what reforms or alternative approaches do you think would be appropriate?

Michael Russell: I am not going to talk about achievements because I think they have been very limited. We have kept talking through the difficulties of Brexit—sorry to mention the word, I will try not to. We have kept talking and that is an achievement. Every time I leave one of those meetings I am door-stepped by journalists—at least one of whom is in this room—and every time I have to say, “We are doing our best. We are continuing to talk” and we will continue to talk. I think it is far better to do that.

Let’s take independence aside: I think that is the best solution. I do think it is possible to imagine a better set of relationships but, first of all, they have to be based on principles and that is of course where we started on frameworks with Damian Green. We drew up the principles that would govern it and then we said, “How do we put those principles into practice?” The basic principle is equality among the partners, and I think you then say, “How do we construct a structure that works?”

Again, I commend the Welsh work on this. I think it has taken this on. There is a lot of academic work on this. It would not be difficult to do. It would not be difficult to revise the JMC structure, put it on a statutory footing, make sure that there was some sort of dispute resolution procedure that was fair and recognised as fair, and that the committee’s structures and remits were clearly understood. That would get a big step forward.

Q300 **David Duguid:** On that principle of having four equal nations represented equally, do you think there should be scope for England to represent them specifically?

Michael Russell: I am going to be very careful about getting involved in that argument. I may have been born in that nationalist hotbed, Bromley, but I am not going to be partial in this matter. I think it is important that there is recognition of the difference. I make this point seriously, Mr Duguid. It is not a glib point. There is a difference between representing the United Kingdom and reserved matters in the United Kingdom and representing matters that are matters devolved to the other nations but are English-specific. That distinction needs to be drawn.

Agriculture is a good example of it but there are some areas in which there is virtually no overlap. When I was Education Secretary for five years, much of that time Michael Gove was Education Secretary. We had amiable conversations most of the time, but there was no real need for us to work together because the two systems were completely distinct. Wales had a different issue. Wales and Northern Ireland operate the system of England; we don’t. We might meet occasionally but there was no great tension in that. There are other issues where there is



considerable overlap. Recognising that through a structured equality would not be difficult, in my view.

Q301 **Chair:** Isn't that the heart of the matter, though, when you have a JMC structure that involves the UK and the devolved institutions that the UK also speaks for England? Given that England is the vast majority of the population of the United Kingdom, surely just as an arithmetical proposition that is something that is going to have in-built problems.

Michael Russell: Yes. If you put into that mix the concept of Westminster parliamentary sovereignty, you have a real set of issues to address but in the second decade of the 21st century you should do that on the basis of equality between the nations of these islands. Whether that can be achieved within the current constitutional framework I doubt, but that is what the principle should be.

Q302 **Chair:** Looking back at some of the comments about the JMC, and you referenced some of the other inquiries and reports that have been produced, the set of constitutional changes, for example, like it is said to be perceived by the devolved Governments as being determinative of priorities and interests of the UK Government. We talked about your achievements and we asked specifically the Minister responsible in the UK Government last week, Chloe Smith, but she was not able to provide an example of a positive outcome of the JMC issue. She talked about racking her brains to try to find an example, but she couldn't give one. I know you have been gentle about all of this. This just doesn't work, does it, and we need to look at how we design a proper means of effectively co-ordinating the activities of all the Parliaments and Assemblies across the UK?

Michael Russell: There will be people in this room who will find this a surprising thought and will think I am being disingenuous, but I will try. If we could take this away from the day-to-day battle between the parties—Mr Gaffney was representing the First Minister's questions in a certain way—and accept the differences, if we are all agreed, and we may not be all agreed but if we are all agreed on the principle of equality: how would we make that work and how would we change the structure to do so? That would be the question. I do not think it is beyond the wit of all of us to put that in place, particularly as 20 years after devolution everybody accepts this does not work.

Q303 **Christine Jardine:** Did the UK Government's commitment last summer to holding JMC (European Negotiations) meetings on a monthly basis improve the effectiveness of joint working on Brexit?

Michael Russell: It actually has not happened. That is the issue. There was an original commitment when the JMC(EN) was set up in October 2016 that it would meet every month. It met in November, December, January, and I think February, and then not again until October. There was a commitment—and to be fair Damian Green largely honoured this—to have more regular meetings and that improved things a bit. Then they



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began to tail off again. There have been reasons for that. For example, there were two within a week in November because of the deal that was brought back, although the first was completely irrelevant because the deal was back and being discussed in Downing Street. We were not allowed to talk about it because we were not told anything about it, and some of the ways in which the committee operates just does not ring particularly true.

I do not think it is frequency of meetings. I think it is structure of meetings and a question of equity. There was meant to be, last October, a commitment for the meetings to revolve around the country. The revolution was meant to be one in Edinburgh, one in Cardiff and four in London. The orbit is a little bit skewed there, but we agreed to it. We have not met in Edinburgh or Cardiff. That has not happened.

The JMC (Plenary) has met only once outside London. It met in Cardiff at the end of January 2017. These meetings are always chaired by the UK, so there are lots of even small things in there. You could say, "Could we change how we do things?" but the big thing is the role and function and how the countries relate to each other.

Q304 Christine Jardine: Would an independent secretariat for the JMC on an agenda agreed in advance, for example, by all four Governments, help?

Michael Russell: No. That is a technical issue that might improve the functioning of each meeting. It does not address the weakness of the structure. The weakness of the structure is based upon there being an ability to overrule, no matter what happens, and this issue of dancing around Westminster sovereignty. The issue to be addressed is: can you put together a relationship of equity? I used the phrase earlier. I know you know it. Can you do it on the basis of the European Council of Ministers? Could you do it in that sort of way? The Welsh paper, for example, goes into some details on qualified majority of voting. I am not going to say I would endorse that but there are ways of resolving issues that are around. I think that is what is needed.

There is a sort of independent secretariat in the sense of the officials. There is JMC(O), which is the officials' part of it, and they do spend a lot of time talking to each other.

Q305 Christine Jardine: What would you say to the comment or the criticism that perhaps some people in Scotland, who are as opposed to independence as you are committed to independence, are concerned that any suggestion of changing the JMC or changing the relationship is what they would call mission creep and gradual independence, so that it is done without having to have the will of the Scottish people expressed in an election or referendum?

Michael Russell: There are two parts to that. I do not believe independence could be delivered without an expression of will. The other one is a natural fear from people who hold that view. People may or may



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not believe this but over the last two and a half years, with the support of the First Minister and my colleagues in Government, I have tried to be constructive and straightforward in what we are trying to achieve and that is what we will continue to do.

I have made it clear, every time I have talked about this issue to committees here or in the Scottish Parliament, that I do not resile from my support for independence, but I do not think the way we are doing things at the present moment is an effective or efficient way of doing things. We could find a lot better way. Some people from the other side of the argument might say that I was then compromising in a way that would make independence harder to achieve. It depends what criticism you are prepared to take.

Q306 Christine Jardine: Going back to the JMC specifically and its current dispute resolution, do you think it is fit for purpose?

Michael Russell: No, absolutely not. It you doubted it, look, for example, at the complaint that the Welsh Government made about money for Northern Ireland and the lack of monetisation of that money. The complaint was made within the dispute resolution mechanism and the judge and jury allowing the complaint to move forward, let alone adjudicating on it, was the UK Government, which had given the money and said, "Nothing to see here. Move along. There is no reason to consider this as a complaint". It is farcical and that is why it is not used because there is no point in using it.

Q307 Christine Jardine: Do you think a proper independent dispute resolution mechanism to work with both the UK and the Scottish Governments would have helped in the discussions of Brexit frameworks? If we had a proper independent dispute resolution mechanism—perhaps even to replace the Sewel convention—would that work better?

Michael Russell: It would be considerably better than what exists now. I was very struck, and have been for some time, by something that the Taoiseach said at the last but one British-Irish Council, when talking at the press conference afterwards about trust in relationships. He said the reason that the EU works is not just because the 28 members trust each other. It is because that trust is underpinned by a formal process of law, "I trust you but actually if we don't get on there is a means by which we can resolve it". There is no such means in the JMC. In fact, the reverse is true because they say, "Sorry, we can't accept that complaint and we are not allowing it to happen". If you accept the Taoiseach's analysis, which is a very good one, I think you have to apply it here.

Q308 Christine Jardine: If I were to summarise, would I be fair that your position is that you would say the view that there needs to be an improvement in the relationship and the workings of the JMC is not necessarily linked to independence but is simply a view that it should work better for us all at the moment?



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Michael Russell: If you would allow me to phrase it in a slightly different way, it would be a matter of emphasis rather than anything else. I believe that the aim should be to have a good functioning relationship. I believe the best way to do that is to have independence but, if that were not to happen, short, medium or long term, it would be incumbent upon all of us, and is incumbent upon all of us not to allow this failed system to continue. We should find a better way of doing it.

Q309 **Chair:** If we were to have an independent dispute system, who would oversee it and who would make the judgments?

Michael Russell: That is a matter for negotiation. It is not as difficult as it seems. Other countries allow courts to have that role. That is a possibility.

Q310 **Chair:** The Supreme Court?

Michael Russell: It could be. We have been there before. I feel quite warmly towards the Supreme Court these days, I have to say, given my experience in recent months. More likely it is to try to work on some of the ideas, for example, that the Welsh have brought up. They are a bit complex in places, but it is not impossible to do so. The impossibility is to do so if you accept that one part of that structure is sovereign and cannot be gainsaid. That makes it impossible. You cannot have an independent process of any description. If you accept that is not the case, and that there are four equal partners in the room trying to come to a resolution that is not difficult to do.

Q311 **Deidre Brock:** In fact you asked a question I was going to ask the Cabinet Secretary anyway. You have touched on this a little bit. How well the two Governments share information about policies and bills? I am thinking of the most recent example of where that seems to have fallen down a little bit is the Stronger Towns Fund announcement, which was made last week by the UK Government. As I understand it, the Scottish Government were not informed of that and I think still have not been informed—you might be able to correct me on that—as to how much money might come Scotland's way on the back of it. Could you tell us a little bit more about how those relationships work, because it does seem to have become a little more intense over the last year or so?

Michael Russell: If you look back over devolution, the relationship between officials has always been crucial in making sure there was a flow of information. Politics has ebbed and flowed. I am told by some civil servants that—and Mr Gaffney might not like this very much—when Labour was in power in Edinburgh and in power in London the relationship was not very good because they were simply being told what to do.

Our relationship wasn't that great with Gordon Brown's Government, but that was because, to be blunt, I think Gordon Brown simply did not want the Scottish Government to be seen to be doing anything that would be praiseworthy. The Cameron period was probably the easiest period of all



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because once the Edinburgh agreement was in place, there was recognition there was a formal structure and things were moving a certain way. Then it has fallen off pretty badly. I must be honest about this. The Prime Minister is not a person who seems willing to listen to what devolved Administrations want to say, still less to compromise as a result of that. You have those difficulties in place, so there is politics in it.

The official relationship tended to keep positive but has suffered greatly under Brexit, and I suspect it has suffered because of the pressure on civil servants here as much as anything else. There has been moderately good exchange of information on the issue of EU exit and no-deal exit but, frankly, I just think it is because they need to make sure that Scotland is able to deliver in certain areas that they cannot deliver. I recognise that and we have agreed that we would try to compartmentalise that and see how we could work together.

I think that, in terms of normal discourse, on announcements it is very poor. There was a convention that Bills were shared and discussed. That broke down pretty quickly in Brexit, because I think the Withdrawal Bill was only shown to us two weeks before it was published and there were major problems with it that we could not accept. A Bill of that nature, which would require legislative consent, would have been shared over a long period of time. That simply did not happen. I asked to see drafts of the Bill and the timetable. I certainly asked at the JMC (Plenary) of the Prime Minister in January 2017. We did not see it until I think early July 2017, which were very considerable problems. I acknowledge our own position in that. As a result of that, we have not shared some things that they might have expected. All I say is that I think that is a practice that we have grown shy of each other in doing so. If a Bill requires legislative consent, it is better that it is agreed as much as possible beforehand.

I have to say that Suella Braverman, when she was in DExEU, was very positive in trying to share parts of the Withdrawal Implementation Bill. I do not think that has continued but that Bill needs to be resolved. In the light of what happens today, that Bill will become pretty crucial if things go a certain way and there is no prospect of us recommending giving it legislative consent, but it would be quite useful to know where these matters were.

Q312 Deidre Brock: Certainly the Cabinet Secretary, Fergus Ewing, had expressed similar concerns over his issues with the agriculture role and the fisheries as well.

Michael Russell: Yes, and there have been a range of problems.

Q313 Chair: I am interested in your comment when you said about sharing information. When Professor Nicola McEwen was in front of this Committee she said that there is a fear of sharing information now from the UK Government because of the strained relationships, particularly over Brexit. I do not know if that is—



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Michael Russell: I used to worry about that and the fact that it was just us, until I discovered that UK Cabinet Ministers were being taken into rooms and supervised when they were reading documents. The fear of showing people things extends not simply to the Scottish Government, but there is a reluctance to share.

Q314 **Chair:** I think your opening remarks today will shock everybody when you said that there was nothing shared with the Scottish Government in advance of the statement to the House of Commons last evening. I am presuming that something has now been shared with the Scottish Government in advance of the debate today, but are we at this stage where one of the most critical votes in the House of Commons is just about to be made and the UK Government are not in a position to be able to share some of that information?

Michael Russell: I have seen nothing as yet, but I have not been in Edinburgh. I have been here so something may have happened. As of this morning, nothing had been shared.

Q315 **Chair:** Would you support something that suggested some sort of exercise that, when statements to the House of Commons are being made on critical issues that impact on the responsibilities of the Scottish Government, it should automatically be shared with devolved Administrations?

Michael Russell: The courtesy would be, as those statements were being considered, if there was a discussion and understanding of what their impact would be. I go back to the point I made about trust. You would have to get yourself to the stage where there was trust in how this would work, and there is no trust presently in how this would work, so it is not going to happen overnight.

Q316 **Christine Jardine:** One concern I have is that perhaps we need to be very careful that the debate does not just become about how bad the UK Government are and that the entire fault is on one side. Do you think that we should perhaps remain open to the possibility that there are things that the Scottish Government could do to improve the relationship?

Michael Russell: I am always open to possibilities. I suspect you are open to that possibility. Maybe I am not quite as open, but I am quite happy to consider that if there are issues with people there will be issues. The UK Government say, "Every time they come to a meeting they just moan". I am conscious of that fact. It is no secret. Mark Drakeford and I have talked about it often enough. There is nothing particularly pleasant in coming to a meeting in London and sitting there and moaning about it. I am generally of quite a happy disposition and I can be very constructive. There may be those views but, at the end of the day, the whip hand in this lies with the UK Government not with the devolved Administrations. Unless that changes, not much is going to change.

Q317 **Chair:** I know none of our Conservative colleagues are with us any



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longer, but I think one of them raised the issue last week that the Scottish Government did share their Continuity Bill with the UK Government in advance. Was that the case?

Michael Russell: I freely admit that we haven't shared. I would see that as a reaction to where we are, but others might take that amiss and say, "You should have shared it". As it happened, the issue is not sharing the Continuity Bill. The issue was taking it to the Supreme Court, which does not seem to me to have been a particularly friendly action.

Q318 Hugh Gaffney: You talked a lot about shared information, and you said you need to agree it beforehand. £92 million has come to the Scottish Government in the Barnett consequential. Has all the money been handed to local authorities who will be dealing with the majority of this money, or how much has been handed down?

Michael Russell: I do not think I would accept the analysis that all the money should be handed to the local authorities. That perforce would not be correct. I have had discussions with COSLA about how this should happen. Indeed, I had a conversation yesterday with the chief executive of my own local authority in Argyll and Bute about these issues. We have made it clear that we will want to make sure, if there was a no deal, that they were not disadvantaged insofar as we could.

We have spent a proportion—I could tell you exactly which, but I am happy to hand that on to the Committee—of the sums that we have received. I think it is somewhat less than has been indicated there, but we are happy to say we are applying those funds in every way we possibly can. We will be out of pocket no matter what happens.

Q319 Ged Killen: Cabinet Secretary, we have had a lot of evidence about the level of awareness of devolution and Government Departments. Do you think that civil servants in Whitehall have enough knowledge and understanding of the devolution settlement?

Michael Russell: No, but it is not a criticism so much as an expression almost of inevitability. It has been 20 years since devolution. If you were a civil servant in the run up to devolution in 1995, 1996, 1997 and 1999, the odds are that many will have retired or there will not be many left who remember that. Some Departments would not be involved in it anyway. If you are in the Foreign Office you would probably not think much about devolution because it has not impinged on how you do your job. Very few civil servants stay in a job for five let alone 20 years. If you were in a Department much affected by devolution, time has gone on. You are operating in a different way. You are no longer concerned about Scotland. Almost inevitably things have moved on.

There are issues about sensitivity and expectation that because you have responsibility for a subject in England and Wales you are automatically responsible for it elsewhere, or there are elements that you need to understand are somebody else's responsibility. I know there is awareness training, but I am not sure it gets very far.



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There is also an issue about the civil service. I may be wrong about this, but I think when Philip Rycroft retires at the end of this month, he will be the last senior civil servant who has also worked in the Scottish Government. The idea of having a single civil service was, at least in part, to have an exchange. I think that fiction is probably dead now. Just as there is a separate civil service in Northern Ireland, I think we are moving to a stage of a separate civil service in Scotland. That paradoxically might be helpful because people would then recognise what their responsibilities are and be aware of other people's responsibilities.

Q320 Ged Killen: Is it not still important, though, that the civil service has at least a knowledge and an understanding because there could be all kind of implications for Scotland in day-to-day discussions that are being taken. In that light, what are the Scottish Government doing, if anything, to try to build capacity in the UK civil service for understanding devolution?

Michael Russell: We cannot build capacity in the UK civil service. What we can do is make it clear where we think there are issues that need to be addressed. There is the issue that Mr Sheppard was raising with the intergovernmental review. That is a crucial issue and it needs to be addressed by the UK Government politically, but there is an officials' part of that that also needs to be sensitised to it.

After 20 years, there is an inevitability of not as much live understanding of what devolution is that there would have been 20 years before. I do not think the Scottish Government can do much about that. The Scottish Government carry on and do their business.

Q321 Ged Killen: From the other angle, are the Scottish Government doing anything to try to build awareness within the civil service by civil servants and their knowledge of Whitehall Departments?

Michael Russell: Yes. To tell you the honest truth, our civil servants spend a lot of time here. Mine do. Of course, I spend a lot of time here too, but my officials do that and are in regular touch. As I indicated in answer to a question, it is that good relationship that has tended to oil the wheels. It is when that relationship deteriorated, I think largely because of pressure on the UK civil service as a result of Brexit, that there has been deterioration in the relationship.

Q322 Christine Jardine: I should declare or state upfront that, like others in this room, I have worked directly with the UK civil service in many Departments when I was a special adviser. While I accept that there will not be many still working who remember the process of the creation of a devolved Parliament, surely the point is that a civil servant knows their Department's responsibilities and they know their Minister's responsibilities. Those Departments that are reserved know they are reserved and those Departments that have devolved responsibilities know they have devolved responsibilities and it does not actually matter, I would not have thought, that they were around in 1997.



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You can make the same criticism, not just of the civil servants in Scotland but of a great many of the politicians. There is no great need for us all to have been around in 1997 to know what the state of play is today, and surely that is the dictating factor in the relationship. I do not think for a minute that civil servants, either in Scotland or Westminster, are not aware of their job and what their task is, and to suggest that they should have been around 20 years ago to have an understanding of the job they do today is a little unfair on them.

Michael Russell: It would be if I had suggested that but as I did not suggest that, I absolve myself of the accusation of unfairness. The point I was making—I think I used the word “inevitable”—is that it would be inevitable that there would be deterioration because people were not as sensitised to it, but I would also dispute the issue of people knowing responsibilities. It is pretty inconceivable to me, but we have had to deal in recent months with documents, issued by the UK Government, which did not recognise that there was a separate Scottish legal system. That is pretty incredible to me but that is actually true. In those circumstances, I am not blaming individual civil servants. I am saying, however, that when we think of the complexities of devolution it does not necessarily always ring bells now.

Q323 **Hugh Gaffney:** If you are not going to blame the people, what about Departments? Would the requirement for Whitehall Departments to produce devolution impact assessments for new policies help improve joint working?

Michael Russell: It might do. The issue is whether it is overlap. I think everybody should be sensitised to it and should be aware of it. If that helped, fine. I am always slightly reluctant to add to people’s workload and the more that people have forms to fill in sometimes the more the forms just look the same. I would want to see a greater sensitivity and a greater clarity.

Forgive me for saying this but there is clarity in the fact that, if there was an independent Scotland that ran its affairs and an independent England ran its affairs, we would be very clear about what the relationship was, if we can operate on the basis of equality that also clarifies things. What makes things confusing is that lack of clarity and the addition of the concept of Westminster sovereignty.

Q324 **Deidre Brock:** Cabinet Secretary, you mentioned a programme that existed for the civil service. Are you aware of the One Civil Service programme launched by Jeremy Heywood in Edinburgh in 2015? What are your thoughts on that and whether that helps to improve relations?

Michael Russell: I have not seen very much of it since then. This is one of those occasions where I do need an official next to me to say, “This is how it has worked in the civil service”. I am happy to provide that answer to you. I will ask the Permanent Secretary to tell you where that is.

Deidre Brock: The Minister from last week said she would provide us



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with information from her end, although she was not quite clear about what that might consist of, so between the two of you I think it will be an interesting answer. Thank you.

Q325 **Chair:** Can I just take advantage of having the Cabinet Secretary from Government Business and Constitutional Relations in front of us today? This is going to be a very dramatic day and I think the expectation is still that the Government will be defeated on the withdrawal agreement when presented at 7 o'clock this evening. Beyond that, there might be some short extension, as yet unspecified and defined. What will the Scottish Government do in response to this expected turn of events?

Michael Russell: Our position remains clear. We feel if there was to be approval of her deal tonight that would be very bad for Scotland. It is a very bad deal, particularly bad for Scotland in terms of freedom of movement and competitive disadvantage, ignoring the will of the Scottish people, so that is a bad deal.

Were that deal to be approved for a variety of reasons then we would make it absolutely clear how difficult that was, and we would act accordingly. If the deal is not then we are of the view that there should be a ruling out of no deal. I have spent an awful lot of my time in the last three or four months on the issue of no deal. I do think that people need to get wise to how bad that would be, and it would be very, very bad. Then to get an extension of a period of time to do something constructive, and the most constructive thing you could do is to have a people's vote and that would be what I would support.

Q326 **Chair:** Would you expect to be properly consulted and sit round the table to discuss these next steps? Would that be a bit too much to expect?

Michael Russell: The word "expect" over-emphasises. I would hope that we might not have a rerun of what we saw in January, which is telling people things under the guise of consultation. You could go much further back on this. One of the reasons we are in this—if I may use the phrase that I used in the Scottish Parliament—clusterbourach, one of the reasons we are in that mess is because of a failure at the very beginning to bring into the room the First Ministers of Scotland and Wales, the leader of the Labour Party, the leader of the Liberal Democrats, the Greens and Plaid Cymru, and sit down and say, "How can we find a way forward given the different positions?" That has led us to this absolute chaos that we are in.

Chair: I am grateful, Minister. Thank you ever so much for that. That is really helpful. There were a couple of things and I am sure your officials were taking note of the further correspondence you will give to this Committee. This not only concludes the session but this evidence inquiry. We will be preparing a report and we will make sure that you are able to see it. Thank you for coming down today.

Michael Russell: Thank you very much.

Chair: Thank you for your attendance.