

Scottish Affairs Committee

Oral evidence: [Secretary of State for Scotland, HC 154](#)

Monday 11 December 2023

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Members present: Pete Wishart (Chair); Alan Brown; Wendy Chamberlain; David Duguid; Christine Jardine; Mark Menzies; Douglas Ross.

Questions 1-99

Witnesses

I: Rt Hon Mr Alister Jack, Secretary of State for Scotland, Office of the Secretary of State for Scotland, John Lamont, Parliamentary Under Secretary of State, Office of the Secretary of State for Scotland, the Lord Offord of Garvel, Parliamentary Under Secretary of State, Office of the Secretary of State for Scotland, and Parliamentary Under Secretary of State, Department for Business and Trade, and Laurence Rockey, Director, Office of the Secretary of State for Scotland.

Examination of witnesses

Witnesses: Mr Alister Jack, John Lamont, Lord Offord of Garvel and Laurence Rockey.

Q1 Chair: Welcome to the Scottish Affairs Committee. Today we have the Scotland Office team, led by our Secretary of State, Alister Jack. Secretary of State, would you mind introducing yourself and your colleagues, with anything you wish to provide by way of a short introductory statement?

Mr Jack: Good afternoon, Chairman. I am, as always, delighted to appear before the Scottish Affairs Committee to update you on the work of the Scotland Office and the United Kingdom Government. I am joined this afternoon by my colleague John Lamont and by Laurence Rockey, who is director of the Scotland Office. Hopefully, in the next half an hour we will also be joined by Malcolm Offord, Lord Offord of Garvel, who is our Minister in the House of Lords and is currently taking questions there. When that finishes, he will be straight here—that's the plan.

Since I last appeared before you in May, we have had a very, very busy period. The UK Government continue to invest heavily in Scotland's communities and key industries. Since May, we have committed to more locally driven projects across Scotland. That includes six more levelling-up fund projects, four new levelling-up partnerships and a funding boost for seven towns in Scotland. These announcements take the total UK Government investment in levelling up in Scotland to £2.7 billion. We are dealing directly with local authorities and helping to ensure that funding supports local priorities and local projects. Both the local authorities and the communities they serve have welcomed this investment and the jobs it will create with some enthusiasm. They have also welcomed direct engagement with the UK Government. I believe, as I have said before, that this is real devolution in action.

In addition, we have announced two investment zones, for Glasgow and for north-east Scotland. Our investment zones programme, backed by up to £160 million of funding per zone, has huge potential to turbocharge local economies, like our freeports programme. We are making good progress now on upgrading the A75. Along with freeports and the investment zones, it is a good example of the collaborative working between the UK and Scottish Governments.

We also continue to support our oil and gas sector as we ensure our energy security and our transition to net zero. We have given the go-ahead for drilling to begin in Rosebank, the UK's biggest untapped oil field. We have backed a further 27 oil and gas licences and have committed to an annual round of new licensing. The Prime Minister announced during his visit to Scotland in July that the Acorn project in St Fergus is one of two projects best placed to deliver the Government's objectives under track 2 of the carbon capture, utilisation and storage scheme.



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I should not need to remind the Committee that all this investment is on top of a record block grant funding settlement for Scotland. That funding has just been boosted in the autumn statement by a further £545 million of Barnett consequentials, so I believe there can be no excuse that the Scottish Government struggle to balance their books when they set their Budget later this month. That may be something we return to.

I know that this Committee has taken a keen interest in the promotion of Scotland abroad. The UK Government's evidence to the Committee and our response to your findings clearly show our commitment to this. St Andrew's day illustrated that beautifully, as our high commissions, our embassies and our consulates around the world organised a range of events that celebrated Scotland.

As Secretary of State, I have continued to work closely with the FCDO to ensure that the Scottish Government are able to play an appropriate role in promoting Scotland overseas. Foreign affairs is reserved under the Scotland Act, and it is important for the United Kingdom to speak on the world stage with one consistent voice. It is wholly unacceptable for the Scottish Government to promote foreign policies that are at odds with those of the United Kingdom Government. It risks causing confusion and damages the UK's standing in the world.

I move on to the subject of exports and the efforts we have made to boost Scottish exports. That has been greatly helped by new trade deals. Since May, we have ratified deals with Australia and New Zealand and have signed the protocol of accession to the CPTPP, the trans-Pacific trade bloc. CPTPP will bring huge opportunities, especially for our food and drink sector. I saw that myself during a recent trip to Vietnam, where sales of Scotch whisky, as everyone will be pleased to hear, have already increased fourfold and are still growing.

Finally, may I note that, since May, we have marked the 25th anniversary of Royal Assent for the Scotland Act 1998? I know that the Committee has taken a close interest in the workings of devolution, even though, as I have said before, nationalists do not necessarily support devolution because they actively seek to destroy it, but as Secretary of State for Scotland it is my job to uphold the devolution settlement and to ensure it operates as it should. That is why I acted to block the Scottish Government's gender recognition legislation, which would have had an adverse effect on the GB-wide Equality Act. I was very pleased that the Court of Session in Edinburgh found in my favour and confirmed that section 35 is an integral part of the devolution settlement. Upholding that settlement is a role I take incredibly seriously, and I will continue to do so. With those remarks, I will conclude.

Q2 Chair: Thank you ever so much for your very concise opening remarks, setting the scene. I think you have covered most of the issues that we will certainly want to ask you about in this session.

I will deal with a couple of points you mentioned in your introductory statement, because I think they are the most relevant and probably the



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most interesting to the Committee. They are, as you rightly identified, the use of section 35 and the further letter that we saw from the Foreign Secretary yesterday, which was issued to the Scottish Government. I can tell that you are not just pleased, but really pleased, about the outcome at the Court of Session.

Mr Jack: I am, yes.

Q3 **Chair:** Does that encourage you to think of more possible uses of section 35?

Mr Jack: No.

Q4 **Chair:** Not at all? You would not be tempted—now that you have found that this is an instrument that can be utilised if there is legislation you do not like or things you might disagree with—to just reach for that power?

Mr Jack: No. It is interesting that you make that point. It is not an unfettered power, as the judgment made clear; it has been used once, in nearly 350 Acts that have gone to Royal Assent. It is alongside the power of section 33, which is for legislation that is outwith competence. In this case, section 35, which sits in the Act, is for legislation that has adverse effects. It is the first time that the Law Officers have judged that to be the case, and obviously as a result I did not hesitate to use it.

If the Scottish Government make good legislation, listen to the advice of their Law Officers and do not go outwith their competence or create adverse effects within the United Kingdom, I see no reason for us to go to court again. But if the boundaries are being pushed, it is right that the Law Officers advise me, in my position as Secretary of State, to act. I will always act if that is the case, but I can tell you, as we look out now at the future timeframe of legislation coming forward, that I do not see anything currently in the advice that I have in front of me that would lead to us returning to court, thank goodness.

Q5 **Chair:** That is reassuring, and I think the Scottish Government will be listening very keenly and intently to what you say about the future use of section 35. I think Lady Haldane made it entirely and abundantly clear: this is a matter for you, isn't it? It is entirely your judgment when it comes to certain things. With the GRR Bill, had you been the Secretary of State in Theresa May's Government, would you similarly have invoked section 35?

Mr Jack: Yes.

Q6 **Chair:** You definitely would have, even though that was the intention of the UK Government? You will remember, back in 2019, your manifesto commitments and programme for government were that the UK Government would legislate for the whole of the United Kingdom. You would still use section 35 about a specific Act in the Scottish Parliament when it came to GRR there?

Mr Jack: Due to the adverse effects on the GB-wide Equality Act, I would have used section 35 whoever the Prime Minister was.



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Q7 Chair: So it would have made no difference whatsoever if the UK Government intended to legislate in that field or area.

Mr Jack: No. Intending to legislate does not butter any parsnips: you have to deal with the law as the law is at the time. Legislation that may be coming may not come: not all legislation that is promised happens, as we all know. You deal with the legislation in front of you and you deal with the law as it exists at the time. That is why I would have taken the decision I took in any of those circumstances: because the advice I would have would be, "This is causing confusion and adverse effect with GB-wide legislation."

That is what section 35 is there for. It is very important to understand that it is there to protect devolution; it is there to strengthen devolution. The Scotland Act, which was voted for by MPs of all parties back in 1998—SNP MPs voted for it as well—has it there so that when legislation is passed by any devolved Administration that cuts across legislation on a UK or GB-wide basis, we are then able to stop it. I think it is perfectly sensible. Lady Haldane did note that "far from being an impermissible intrusion upon the constitutional settlement, section 35 is an intrinsic part of it." That is really the point I want to make.

Q8 Chair: I did note that, and you are absolutely right. But I am just wondering: you have dealt with section 35, and you do not foresee any situation or position in which you might reach for it again, certainly towards the end—

Mr Jack *indicated dissent.*

Chair: You are shaking your head.

Mr Jack: I do not see it, on the legislation we see coming forward. Often, I have been asked why we did not fix the legislation before we got to that point. The answer is that there were many, many amendments at stage 2 and stage 3 of the Bill, and some of those amendments might have changed had they been accepted by the Scottish Government.

Q9 Chair: We will not go over the history of the passing of the Act. I am just wondering: you have laid section 35 aside, but you have other provisions at your disposal to deal with pieces of legislation that you do not particularly like that are passed by the Scottish Government. You have the provisions under the Internal Market Act, for example, and of course you considered the deposit return scheme to fall foul of those. Would you be tempted to use some of the powers that you have at your disposal to deal with other matters in the Scottish Parliament that you did not like?

Mr Jack: On the deposit return scheme, which you refer to, over 1,000 businesses wrote to us and explained the damage it was doing to their business model—particularly craft breweries, small retailers and many others. It was a very badly crafted plan. It was a plan that copied the one Jacinda Ardern had in New Zealand, which was then junked by the next Prime Minister. He dumped it because it was not working. I do think a

deposit return scheme can work, but I think the one that was planned was not going to work—

Q10 **Chair:** Would you use powers that you have available?

Mr Jack: Where I have to use the power is where, within the UK internal market, you do not have seamless trade. I want to give one small example of where the deposit return scheme went wrong. Ken Murphy, the chief executive of Tesco, made this point on behalf of all the online retailers—all of them, united—in an article in *The Grocer*. He said that, for anything that was recyclable, the responsibility was on them to get all those goods back, and pay the deposit to the elderly, the infirm, the disabled, those in rural areas without a car and so on. He said, “We can’t do that, so we won’t sell any of those products online to those people any more.” Do you see the point I am making? The onus was on them to then take those products back to get their money back from a vending machine. That alone was damaging the retail industry.

Chair: I am less interested in the mechanics of the deposit return scheme—

Mr Jack: Well, I am explaining what the UK internal market does.

Q11 **Chair:** Yes, I know, and you have explained it very clearly. What I am trying to ascertain is whether you would be tempted to use the power that you have under the provisions of the Internal Market Act to deal with pieces of legislation.

I am thinking of farmers in my constituency who are a bit concerned about the Agriculture Bill in the Scottish Parliament. It may give Scottish farmers some sort of competitive advantage across the United Kingdom. Would you, as the Secretary of State, intervene to say, “No, we can’t have this; it impacts on the internal market across the United Kingdom”? Would you reach for these powers to ensure that that could not happen? Would you do that?

Mr Jack: The Internal Market Act is underpinned by the principles of mutual recognition and non-discrimination. Those are the principles that underpin the single market within the EU, and what we want within the UK—and this is critically important for Scotland, because 61% of our trade is with the rest of the UK—is seamless trade across the United Kingdom, so that our businesses are not put at a disadvantage.

Q12 **Chair:** So would you be tempted to use the powers?

Mr Jack: As I was going to say, these are ongoing issues. We are in discussion with the Scottish Government about these things all the time—about what should be excluded and what should not be. I think the bar for exclusions has to be incredibly high. For instance, one of the live issues at the moment is glue traps for rodents. If the Scottish Government want to ban the sale of glue traps, they can do that. If they want to ban the use of glue traps, they can do that. They do not need an exclusion from the Internal Market Act.

Q13 Chair: So glue traps are safe.

Mr Jack: They can ban the sale and use of them if they want to. That does not mean that the rest of the UK has to do that. Mutual recognition means that, if a business in Glasgow imports glue traps from somewhere else—made in Wales, for the sake of argument—and then sells them to a Norwegian business or Iceland, it is important to note that you can still carry on that trade. But you cannot sell them in Scotland, and people cannot buy them in Scotland to use them in Scotland, and therefore the Internal Market Act—

Chair: We do not have much time, Secretary of State. We know how they operate; we know what glue traps are.

Mr Jack: You're not liking my answers very much, because they are all common sense.

Q14 Chair: We are just trying to get through the business if we can, if that's all right, and I am trying to get answers to the questions that we want to put to you. You have arrangements and provisions that allow you to overturn Acts or pieces of legislation passed by the Scottish Parliament, yet, as you describe it, you have set yourself up as almost a self-styled referee, honest broker and arbiter of legislation that is passed by the Scottish Parliament.

Mr Jack: No, that is completely wrong. Regarding section 3 and section 35, we take the advice of the Law Officers; that is what anyone in my position has to do. On the UK Internal Market Act, Lord Offord, who has joined us, has a role in the Department for Business and Trade relating to the Act. It exists to allow us to maintain seamless trade across the UK, so that there is not unnecessary divergence. It is there to protect businesses, which protects jobs and trade. That is all it is there to do. You say that we are the arbiter; the UK Government, ultimately through the Office for the Internal Market, will take those decisions; that is why that office was set up.

Q15 Chair: Thank you. We will move on. Last time you were here, we discussed your unhappiness with how the Scottish Government were communicating to international Governments. You gave us a list of what you assumed and said were transgressions, and of course we are all very much aware of the letter that the Foreign Secretary issued to the Scottish Government today—

Mr Jack: Yesterday morning.

Chair: Yes, it was yesterday morning; you are absolutely right. There is now an added threat: the Foreign Secretary is seeking to entirely block the Scottish Government from having these types of meetings and arrangements. He has even said that he is of the view that the Scottish Government should be turfed out of UK embassies and high commissioner buildings. That is when the Scottish Government have said that they would be more than happy for a UK official to attend those meetings. Are you seriously going to follow through on that threat?



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Mr Jack: On the Foreign Secretary's letter, which I was cited on and fed into, I support it 100%. There is a very simple principle here; all Ministers in the United Kingdom, irrespective of whether they are Ministers in a devolved Administration or the UK Government, when they are overseas and meet Ministers from foreign countries, must have an official, a civil servant from the Foreign Office, present to take notes so that there can be no confusion. That is the protocol for all of us.

Q16 **Chair:** But the Scottish Government accept that.

Mr Jack: Well, the Scottish Government do not accept that, because the 16 October letter sent by James Cleverly, which may not have come into the public domain, made it very clear that they resisted that on the First Minister's meeting with the Icelandic Prime Minister. That is why the first letter went out on 16 October.

This follow-up letter is because the First Minister in COP, in his agenda, chose to meet someone who the UK Government did not believe should be met, which was the President of Turkey, Erdoğan—you know the story. The warning to the Foreign Office was given at the very last minute; there was not time for the Foreign Office official to get there, but there was time for the First Minister to get there, so his team must have known about the meeting a little bit more in advance. But it was not the only offence. It was—

Chair: Can we deal with—

Mr Jack: No, I must make this point, because you are making out that it was a one-off. Without Foreign Office officials present, there were meetings with Ursula von der Leyen, Charles Michel, the Prime Minister of Lebanon and the acting Prime Minister of Pakistan—

Chair: But you meet people at international—

Mr Jack: So there were five different occasions where meetings happened with foreign Ministers without an official. It is not complicated: if there are not to be any sanctions, all the Scottish Government have to do is take Foreign Office officials to their meetings. That is all we are asking. That is incumbent on me and on every other Minister in the United Kingdom, and everyone else seems to be able to do it.

Q17 **Chair:** There is what the First Minister says about the meeting with Erdoğan that you referenced. The other meetings that you mentioned—

Mr Jack: The other four? Yes.

Chair: They are not in Lord Cameron's letter, so—

Mr Jack: No, that is because I kept them up my sleeve for you today, Mr Chairman.

Chair: In relation to the pertinent meeting, the First Minister said that it was rearranged at short notice by the president's team, and that the FCDO official "chose not to stay with the Scottish delegation the whole day, and

because of that they ended up missing the meeting". Do you accept that?

Mr Jack: Well, I heard that, and—

Chair: You don't accept it?

Mr Jack: Well, as Her Majesty once said, recollections may vary. What I what I would say is this: I have heard directly from the Foreign Office about what they feel happened, and I have also added another four incidents, which I kept fresh for you today.

Q18 **Chair:** Will you give the details to the Committee?

Mr Jack: You don't need details for the Committee; all you need to do is go to the First Minister's X account—or Twitter, or whatever they call it these days—and they are all there, with photographic evidence. Enjoy it at your leisure.

Q19 **Chair:** Surely it is the nature of these international meetings that you bump into people—

Mr Jack: No, that is not how the rules work. There is a protocol—

Q20 **Chair:** So you are saying that the Scottish Government rearranged these meetings with these people that you say are now going to be included in further correspondence—

Mr Jack: No, there will be no further correspondence. You are putting words into my mouth. The correspondence is there, and it is very clear: the Scottish Government, if they want to have facilitation and logistical support and everything else overseas, must have an official from the Foreign Office present at those meetings. That is incumbent on all Ministers from the United Kingdom, irrespective of whether they are a Minister in a devolved Administration or a Minister in the United Kingdom Government. Those are the rules, and all we ask is that they stick to the rules that everyone else sticks to. It is not complicated, and it should not be that difficult.

Q21 **Chair:** Lastly, are you serious about that threat of withdrawing Scottish Government officials from UK embassies and high commissions? Is that a serious and live threat that you have put forward?

Mr Jack: It is very clear in the letter.

Chair: That is fine. We decided that we will split the time equally among members. I started my time at 3.05 pm, and went to 3.20 pm—*[Interruption.]* We started at five past, Mr Ross; thank you ever so much for helping us out with time-keeping arrangements, once again. Wendy Chamberlain.

Q22 **Wendy Chamberlain:** Thank you very much, Chair. I am confident that I will not take up my time. It is good to see you, gentlemen.

The IGR framework was set up in January 2022 to make intergovernmental relations work a bit easier. The main meeting that is supposed to take place from that framework is the Prime Minister and



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Heads of Devolved Governments Council, which is supposed to meet annually. I know that the Prime Minister is busy at the moment, but it last met in November 2022. Can you tell me when the next meeting is due, Secretary of State?

Mr Jack: Laurence is going to take the IGR stuff.

Wendy Chamberlain: Lovely. Thank you, Mr Rockey.

Laurence Rockey: Hi, Wendy. It is nice to be here. There is no date in the diary. You are right that the IGR review committed to having one meeting a year. We might have missed that, but the Government is completely committed to IGR. You see only one of the sub-committees not taking place. We have a huge amount of business throughout the year, and the Prime Minister meets with the heads of devolved Governments regularly, in addition to meeting them at that forum. We would certainly be keen to have that meeting in due course. As you say, there are a lot of things going on at the moment, but I suspect we can look forward to seeing that meeting in the new year.

- Q23 **Wendy Chamberlain:** It just seems that that meeting is at the top of the pyramid, and when we look further down, there are a lot of things that are not happening regularly following the review in January 2022, and we are back to an ad hoc situation. That is certainly of concern to me, but I will wait to hear what others on the Committee think.

The framework was set up, and described a “new era” for intergovernmental relations and a commitment by the four Administrations to maintaining positive and constructive relations based on mutual respect for the responsibilities of the Governments. Do we think that the lack of mutual respect is one of the challenges, in terms of why the new framework is not working?

Laurence Rockey: I do not agree that it is not working. I think that you can see a huge amount of progress. I was at IMG DEFRA—Environment, Food and Rural Affairs—recently. You can see a lot of positive and constructive dialogue. Obviously, there is a top-down view, but there is also a bottom-up view. On any kind of bureaucratic level, 17 sub-committees is quite a lot, and I think you see a huge amount of collaboration across the Governments.

I also think that you see the sheer amount of good work that is happening between civil servants at a civil service level. A good recent example would be the work that we are doing on the energy space, looking at the Windsor review of how to speed up the changes to the national grid. You see really excellent collaboration between civil servants there. Of course, we would perhaps like some more meetings in certain areas, but I think that, overall, it is working. Clearly, that is against a political backdrop.

- Q24 **Wendy Chamberlain:** Is it one of the challenges that the civil servant meetings are not necessarily seen? Michael Gove said that there needs to be a regular tempo. No matter how things appear to be working, do we accept that there is not a regular tempo, or certainly not a visible one?



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John Lamont: Can I come in? Thanks for having me. My experience with the inter-ministerial groups that I have been involved in during the year that I have been in this job has been very positive, particularly around EFRA and welfare. As you will understand, it is particularly sensitive and important that we get the transfer of additional welfare powers to the Scottish Government, and the workings of that group in particular have been useful. That is not making the headlines, but it is constructive in achieving the outcome that both Governments want, and that is an example of us working collaboratively.

Outwith the formal structure of the inter-ministerial groups, you can see examples of us working together. I recall Neil Gray, the Cabinet Secretary, working together with the council leader last week around the situation at Grangemouth. That is an example of us working together outwith the formal structure to achieve a joint approach to a challenge that both Governments are facing. You also see that with the Scottish Seafood Industry Action Group, which, again, is not formally an inter-ministerial group, but is an example of us working together. I think that our constituents want to see the Governments working together collaboratively, not conflict.

- Q25 **Wendy Chamberlain:** Absolutely, but it felt as though Grangemouth caught everybody on the hop, didn't it? I suppose my point is that if we had a regular drumbeat of meetings, that sort of environmental scanning might have taken place, and both Governments might have been better placed to respond.

John Lamont: In relation to Grangemouth, having spoken to the council leader, to Neil Gray and to the officials here in the UK Government, I think that announcement caught everybody on the hop. I do not think any extra meetings would have changed that. We now have to ensure that the workforce, and the wider community, which is clearly very anxious about what is potentially coming down the line, get the support that they need, and that any interventions this Government can make to support that community are made at an early opportunity.

- Q26 **Wendy Chamberlain:** I note what you said about the DEFRA meetings. The Chair mentioned the Scottish agriculture Bill or policy that is being brought forward, and it is good to see that number of meetings. However, if I look at this selfishly from a North East Fife perspective, higher education and tourism are both very important to my constituency, but there have been no meetings of those sub-committees. That does not feel great. Would you accept that?

John Lamont: There is a range of inter-ministerial groups that will be up and running in due course. It is important that we prioritise those areas that need to be accelerated. As I say, the meetings I have been involved in, the discussions we have had with the Scottish Government, and the engagement between officials have been very positive.

- Q27 **Wendy Chamberlain:** We are two years on. It is great to hear that those meetings are so positive, but it feels as if there are policy areas that are



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not getting the same opportunities. Another area I want to pick up on is health. With the covid inquiry taking place, covid is back at the forefront. Is it not a concern, Secretary of State, that the health group has not met since January 2022? Mr Rockey, you are looking to come in.

Laurence Rockey: I can write to confirm the situation, but my understanding is that the health group has now met, perhaps since you received that information. There is only one that has not met.

Q28 **Wendy Chamberlain:** Surely we do not need a covid inquiry at Scotland or UK level to know that preparedness for a future pandemic and working together will be very important.

Laurence Rockey: I agree, but if I may, you will have seen a huge amount of collaboration between the health services in Scotland, England and Wales through the pandemic. More IMG meetings are a good thing, but that is not an end in itself. There is lots of collaboration that goes along in addition.

Wendy Chamberlain: Okay. Accepting that there is more work to do, I look forward to hearing when the Prime Minister and council group meeting will take place.

Q29 **Christine Jardine:** In his statement, the Secretary of State talked about levelling up, and said that the £2.7 million that has been spent in total—

Mr Jack: Billion.

Christine Jardine: Did I say million? I beg your pardon—the £2.7 billion that has been spent. Freeports were key to what the Secretary of State was talking about. Grangemouth is an integral part of the Forth freeport. There is now speculation that Edinburgh airport may be sold. What steps are the Government taking to ensure that they are speaking to the Scottish Government, and collaborating in the way that we have just been talking about, on that freeport, to ensure that it is not undermined?

John Lamont: We have had discussions about that. We do not believe that the potential decision on Grangemouth will impact the freeport status. As I say, on the back of the discussions I have had with the council leader in Falkirk and the Cabinet Secretary Neil Gray, we are prepared to make whatever decisions we can to help that community. However, the decision itself does not affect the freeport status.

Mr Jack: We actually think the freeport status will help Grangemouth, and help with the challenge regarding jobs. My initial concern around the refinery was what impact it might have on the Acorn project for carbon capture utilisation and storage. I was relieved to discover that blue hydrogen is the carbon that was being captured and sent back up the Fergus pipeline to Peterhead, to be put back into the rock strata of the North sea. I am pleased to report that it has not undermined the CCUS project either. But it was a worry.

Q30 **Christine Jardine:** I want to move on to the practice of Scottish Ministers giving evidence to UK Parliament Committees like this one. What



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assessment have any of you made—you, Secretary of State, but also Lord Offord and Mr Lamont—of the practice of Scottish Ministers coming here to parliamentary Committees, or of UK Ministers giving evidence at Holyrood? Is it efficient?

Mr Jack: Select Committees will always think it is never enough, won't they? There is huge pressure on our time. I have always made myself available—I think the Chairman would acknowledge this—to this Committee, and I believe this is the Committee that I answer to. I think that is important. What is most important is that Ministers who are responsible to a Committee make themselves available to it, and that Committee can scrutinise them. That is the piece that is really important here.

When the former First Minister did "Loose Women" that Monday, you had asked her to be here that day, answering to the Scottish Affairs Committee, and when she was questioned on it, she said, "I don't answer to them. I answer to the Scottish Parliament." I do not take that approach, just to be clear. It was disappointing that in all the time she was First Minister, she never appeared in front of this Committee.

I would go back to the former—bar a few—Prime Minister Lord Cameron, then David Cameron. He offered to appear in front of the Scottish Parliament every year to answer questions, and that offer was turned down for some reason. I do not know why. He was very clear about that. He offered to go in front of the Scottish Parliament. People have different reasons why they want to see different people in front of Committees, but I believe my responsibility is to appear in front of this Committee.

Q31 **Christine Jardine:** Do you think it might improve the relationship? We have heard a lot about the relationship—the difficulty with meetings, and the difficulty with the Foreign Office and Scottish Ministers having officials with them. Do you think it would go a long way to improving the relationship between the Governments if Ministers other than you made themselves more available to Select Committees and to Holyrood?

Mr Jack: I think so, but I go back to this: I know that there are time constraints. There seems to be a trend of going back to appearing, as we are today, in person, and that is obviously the preferred outcome. Possibly a better way of dealing with this going forward, whether it is Wales, Scotland or Westminster, would be to offer appearances online, and to go back to what we learned during covid. That is just an idea. This takes a lot of time out of someone's day; you have to travel down here, appear in front of a Committee for an hour and a half, and then travel back. That is a day away. Offering to do it online might be a better solution. I don't know.

Christine Jardine: Lord Offord, you wanted to come in.

Lord Offord: I have never been invited. I would love to go to Holyrood. I have asked for a pass, and I was told I wasn't allowed one. I would happily go. I cover trade, and have just been down in Australia working on the FTA—the Australian trade deal—which will be a massive benefit of



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Brexit. The SNP group voted against that deal, yet I know that the utilisation teams from the Australian embassy went to Holyrood to brief them, and they loved the deal. I would quite like to be up there to explain to them why this is a great deal, and why they should vote for it, but I have not yet been invited.

John Lamont: I agree with the Secretary of State's comments. The job of the Select Committees here is to hold UK Government Ministers to account. The job of Committees in the Scottish Parliament is to hold Scottish Government Ministers to account. As somebody who has spent 10 years in the Scottish Parliament, I think it is a fair point to make that I do not think the Committee structure in the Scottish Parliament works all that well in terms of holding the Scottish Government to account. I think the job of the Scottish Government Committee should be holding the Scottish Government Ministers to account, and not to be distracted by trying to pull UK Government Ministers up to Holyrood.

Mr Jack: I forgot we had a local expert, Mr Chairman.

Chair: Welcome to the Committee, Lord Offord. We saw you coming in.

Lord Offord: Sorry, Chair.

Q32 **Chair:** Not at all. We have a particular difficulty in this Committee because we span Scottish and UK Government reserved and devolved responsibilities, and we give numerous invitations to Scottish Government Ministers to come down. There are some who are very helpful, which is great. Some, we find, have great difficulty in coming down. Would it not set more of an example if you, Secretary of State, accepted some of the invitations that you have received from the Scottish Parliament.

Mr Jack: Well, I have. I have appeared.

Q33 **Chair:** There are two outstanding invitations, I believe, that you were given.

Mr Jack: But they are not my brief. There is no point in inviting me to go and talk about something that is another Secretary of State's responsibility, as I pointed out to them.

Q34 **Chair:** You could send Lord Offord, given his enthusiasm to go there.

Mr Jack: He has great enthusiasm, but he wants to talk about trade deals, which is fine. That is his brief. I was asked to talk about something that would be cutting across another Whitehall Department's brief, and that—

Q35 **Chair:** Was it not the DRS and GRR you were asked to—

Mr Jack: The DRS policy that has been drawn up now has been drawn up between DEFRA, the Scottish Government and the Welsh Government, and detailed negotiations have been going on. For me to turn up and give my opinion would be completely wrong, because it would be cutting across what the Secretary of State is doing at DEFRA, along with the Scottish



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Government. It just wasn't a sensible thing for me to do, and DEFRA didn't want me to do it. I said I would do it if they wanted me to, but they were very clear in saying, "Actually, we are in detailed discussions. This is not the time for you to go and give your tuppence-worth in front of a Select Committee."

- Q36 **Chair:** We are keen to have this resolved. I have floated the suggestion of a protocol and an arrangement between the two Parliaments that would make available Ministers for particular inquiries. Maybe you would support that.

Mr Jack: I agree with that completely, but it has to be in the areas that you are responsible for. I think it's really important that you take responsibility for your portfolio—as I do with you here today.

- Q37 **Chair:** I am sure that Scottish Government colleagues have heard the enthusiasm of Lord Offord to appear before them and I'm pretty certain an invitation will be winging its way—

Mr Jack: Well, he will give them a good lecture on trade deals, whether they like it or not.

- Q38 **David Duguid:** I will bring you back to gender recognition reform and section 35, if I may. Could the use or the application of section 35 in that instance have been avoided? Obviously, everything is easy with the benefit of hindsight, but do you think that it could have been avoided with more engagement between the two Governments?

Mr Jack: No, I don't. I'll tell you why. It's not once bitten, twice shy, but we did try to engage with John Swinney on the UNCRC Bill and we were told that our engagement was not welcome. I wrote to him and explained that clauses 6 and 19 to 21 were outwith the competence of the Scottish Parliament and that he should withdraw those clauses and their Bill would get through. He told me that I was—I can't remember the words he used, but it was something along the lines of mendacious in my interference, or whatever. He stood up and said it, because the letter made its way into the public domain. I'm not accurately quoting him, but it was something along those lines. They went forward and included clauses 6 and 19 to 21 and then I had to refer it to the Supreme Court; and they said that clauses 6 and 19 to 21 were out of competence. Now, we have the Bill going through the Scottish Parliament last week, two years later, and guess what? It is without clauses 6 and 19 to 21. So it has all come to pass years later, with an awful lot of taxpayers' money being spent in the courts. We didn't claim our costs, but there were costs for us and costs for the Scottish Government—totally unnecessary.

So when it came to gender recognition and we saw the number of amendments that were down and the potential effect that some of those amendments, if accepted, would have on the Bill, there was no opportunity for us to get involved; nor, after our experience with UNCRC, did we feel our involvement would be welcome, if I can put it that way, when we had already been slapped down when we tried to help the last time.



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Q39 David Duguid: As we have already heard, the Court of Session has ruled that the UK Government acted lawfully when they applied, or when you applied, section 35 to that Bill.

Mr Jack: Can I correct that? Lady Haldane said that I acted lawfully, rationally and reasonably. I was quite pleased with that.

Q40 David Duguid: That is now on record; well done for that. But not long after we heard that news, the First Minister declared something along the lines that this was a “dark day for devolution”. How does the application of section 35 go against devolution?

Mr Jack: As you know, I think it strengthens the devolved settlement; I think it strengthens devolution, because it means that devolved Administrations don’t pass legislation that upsets the equilibrium and has adverse effects on legislation that is UK or GB-wide. I think it is there to strengthen devolution, and I think that’s what the founding fathers of devolution believed. As I said earlier to the Chairman, I know that all political parties voted for it at the time. I don’t think it is in any way a dark day for devolution—quite the contrary. It shows that devolution can and does work.

It has been a very rare occurrence to use section 35. It was not a decision we took lightly—I can assure you of that—but it was the right decision to take. Consequently, future legislation will be better scrutinised by the Law Officers in Scotland and, as a result, if the politicians—the Government—are listening to the Law Officers, we will have better legislation coming forward.

Q41 David Duguid: On the use of section 35, you said it was used rarely. I think this is the only time it has been used. It is often reported as being unprecedented. Can you just clarify what you said earlier—that section 35 has been there, in the Scotland Act 1998, from the very beginning?

Mr Jack: Yes. It has been there from the very beginning, along with section 33, which does a different job—section 33 is for legislation that is outwith the competence of the Parliament, and section 35 is for legislation that has adverse effects on GB or UK-wide legislation.

David Duguid: Okay, thanks. This is the final question on section 35, you’ll be glad to hear—I’m sure you don’t want to talk about it any more than you have to.

Mr Jack: No, this is one of my favourite subjects at the moment, as you can imagine.

Q42 David Duguid: What happens next, in terms of the legal process? Or what should happen next, in your opinion?

Mr Jack: There is an interlocutor. We are now in a period of appeal, which lasts 21 days—I think it ends on 29 December. The Scottish Government have the ability to launch an appeal in that time if they desire to do so. I think they have, to date, kept their options open. I would urge them not to appeal. It was such a strong judgment in the UK Government’s favour that



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it would be a terrible mistake to appeal—it would also be a terrible waste of taxpayers' money, as I said on Friday when I was being interviewed.

My fear is that the First Minister is held to ransom by his Green coalition partners. I have noted that some of his SNP colleagues—the Chairman would be one, and Kate Forbes would be another—have said that he shouldn't appeal, and should instead let the matter drop. I agree with them. If the First Minister is bullied by Patrick Harvie, Lorna Slater and Ross Greer, that is a weakness on his part, and it will lead to an utter waste of taxpayers' money at a time when they are saying they have budget constraints. It would make no sense to me whatsoever.

- Q43 **Chair:** I was just looking at a little bit of history while you were responding to Mr Duguid—it was the Tories who opposed section 35 during the progress of the Scotland Act. I sought out the quote from Michael Ancram, who described section 35 as the governor-general power. Is that what you are exercising?

Mr Jack: The irony of that—I think that might be taken slightly out of context—is most of your colleagues now call me viceroy. I don't know whether I've moved up or down a gear. I'm not sure which is—

Chair: I think governor general trumps that a little bit.

Mr Jack: Does it? I don't know—I'll take either. It just amuses me—

Chair: We could go to the House of Lords for advice.

Mr Jack: It amuses me more than anything else. The reality is that I was—

- Q44 **Chair:** But do you not think it is ironic, the fact that—

Mr Jack: No. Well, there is an irony, as you say, in the fact that Michael Ancram made that comment. I haven't read it in its full context. The reality is that that decision was taken not because I just wanted to wield a power that existed, but because I was advised that there were adverse effects to the GB-wide equality legislation—pure and simple. There was no culture war here, nor a desire to use a power for the sake of it, nor anything else. This was a very tough decision that we took, based on strong legal advice, and that strong legal advice has been borne out.

- Q45 **Chair:** It is interesting you use the term “culture war”.

Mr Jack: Well, I was accused of that at the time, and it wasn't that. The fact that it was a gender recognition reform Bill was a matter of regret to me, as I said at the time, because I know that there is a minority who will feel very sore about what has happened, and I appreciate that. But the reality is that this was entirely about the legal advice, and nothing else.

- Q46 **Chair:** So it was nothing to do with the politics of the situation and the opportunities that were presented to you to stoke those particular culture wars.



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Mr Jack: No. Nor would I take a decision on that basis. It was the same with the section 33s—I will only take the decision if I have very strong legal advice. As I suggested to the new First Minister when he came in, our legal advice was very strong and I felt that it was a waste of taxpayers' money to appeal the judgment.

John Lamont: I just wanted to add that there has been some narrative—particularly from some nationalist commentators, MSPs and MPs—that the court ruling last week was in some way made by some external body to Scotland. It is important to record that this was a decision of a Scottish court. There is just a feeling that this was some sort of attack on the devolution assessment, but this is the judiciary of Scotland upholding the Scotland Act 1998. There is no third party making an intervention here. This is the Scottish judiciary and the Scottish court making a determination.

Mr Jack: In Edinburgh.

John Lamont: In Edinburgh.

Chair: I have heard many things said about it, but I have not heard that. Thank you for that. I just want to say to colleagues that we have a bit more time because our Liberal colleagues were particularly generous with their time. If there are any interventions that anybody wants to make, please come in. Christine, if there is anything further you want to question, now is the opportunity for that—and right on cue!

- Q47 **Christine Jardine:** Not on the particular case but on the principles of section 35, following the court case and everything that happened, there was some—I would say—confusion, particularly in the coverage of the fact that it was going to be a section 35 and how it differed from section 33, which is about competence. Do you think there is any need to have a clarification of exactly which section applies to what, so that we do not get into a situation where we have an argument about whether it is competent to go for section 35 in the way we did? Now, we are still, to a certain extent, debating in public whether it was competent for the Government to call for a section 35 order when, in fact, as you pointed out, it was in the original Act. It has been there all along. The fact that it has not been used until now has possibly led people to neglect the fact that it was there and that it is quite acceptable to use it.

Mr Jack: I will let Laurence answer, but I think that there is something in what you say, in as much as it had not been used in 23, 24 years. It was something that was never really talked or speculated about, or as part of commentary or press speculation or anything else, so there has been a lot of explaining. I think I have explained a few times today the difference between “beyond competence” and “adverse effect”. I think you want to add to that, Laurence?

Laurence Rockey: I think it is a fair observation that there is a degree of confusion, and I think that parliamentarians and stakeholders being clear in communicating the differences would be helpful in that space. I would



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observe a bit of caution for the public at large, given that probably a third of the Scottish population do not necessarily know that health, for example, is devolved. The realism of getting those complicated messages across to the public in general is probably reasonably limited. In terms of the informers and the decision makers, more communication would be helpful.

- Q48 **Christine Jardine:** Do you think that there is any argument for a formal dispute resolution mechanism? Particularly when it comes to something like the Internal Market Bill, should there be a sort of formal resolution mechanism?

Mr Jack: We have the Minister for the internal market here.

Lord Offord: When it comes to UKIM, there is a new body being set up called the Office for the Internal Market. It is a completely independent body under the CMA—the Competition and Markets Authority—which in the ordinary course will examine where there is divergence happening and take evidence on that, and you might say take the politics out of that. We are actually saying that everyone understands how the single market works, right? In fact, the Scottish Government are very in favour of a single market when it comes to the EU. Well, the same thing applies to the UK, then—because we have four Administrations, we need a single market to ensure that we do not diverge, especially on trade. Therefore, if the presumption is that we will do everything together on the same basis—like we drive on the same side of the road, for example, and have the same time zone—the basic premise is that we operate in the United Kingdom as one body.

But if particular exceptional circumstances are required, that can be looked at and evidence can be given to that. I would hope that, now that the OIM has been constituted and has a chairman and a panel, it will make a contribution to that, looking at these things in advance and taking some of the sting out of those matters.

- Q49 **Christine Jardine:** One tiny last point—this may be to oversimplify things, but it is on the question about the UK Government's right to use a section 35 order. If you compare that with the fact that we take for granted the Scottish Government's right to call in a planning application, are we perhaps overlooking that that is simply the way that Government works—that when you have different spheres of Government, they have a right to question and call in other decisions?

Mr Jack: I think that is absolutely right. What we know from previous section 33 interventions and this single section 35 intervention is that the Supreme Court in the case of section 33, and now the Court of Session in Edinburgh on section 35, see these parts of the Scotland Act as cemented into that Act; to the judges it is not unusual. It is not an unfettered power, as they correctly said, but it is a power that if correctly applied is there to protect the devolution settlement, not to undermine it, and they were very clear about that.

Christine Jardine: It is simply a process.



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Q50 **Douglas Ross:** Good afternoon, Secretary of State, Ministers and Mr Rockey. Given the luxury of the time we have with the Secretary of State being so generous, I will make a commitment not to cut you off at any point as you are trying to answer, Secretary of State—as we have heard already this afternoon.

If I can continue with section 35, going back to the Scotland Act, can section 35 ever be described as unprecedented when it was actually inserted into the legislation forming the Scottish Parliament? How could it possibly be unprecedented if it was written into the legislation?

Mr Jack: The precedent was there because it was in the legislation—I get your technicality. I think when we talk about the use of it being unprecedented, that just means it was the first time it had ever been used, but the precedent was absolutely in the Scotland Act 1998.

Q51 **Douglas Ross:** And that was set by a Labour Government, supported by the SNP and other parties.

Mr Jack: Yes.

Q52 **Douglas Ross:** And at that point, they had the opportunity to say, “No, this could be an overreach by the Westminster Government on a new Parliament that is about to be formed.” But the six SNP MPs at the time were content to support the section 35 element being included in the Scotland Act.

Mr Jack: Yes. It is critical in the eyes of the courts now that we know it is there, because where there is adverse effect on UK or GB-wide legislation, there has to be the ability to put a stop to that so we don’t end up in a muddle with our laws across the United Kingdom. Ultimately—and I know the nationalists don’t like me saying this—this Parliament is sovereign; the Westminster Parliament is sovereign. *[Interruption.]* Say again, Chair?

Douglas Ross: The Chair said, “Don’t we know it.”

Mr Jack: You do indeed know it, Chair—that is why I said it. You may not like it, but it is sovereign. We saw that again when the former First Minister took the UK Government to court over who had the right under the constitution. Just as I talked earlier about foreign affairs being reserved to the United Kingdom Parliament, the constitution is reserved.

That victory we had in the Supreme Court was not just a 100% victory. I understand that 100% is as far as you can go in percentage terms, but it was overwhelming, in as much as not only did the judges find in favour of the UK Government’s position and completely against the Scottish Government’s position, but others had decided to petition alongside the Scottish Government, and they also were well and truly defeated. It was a very strong victory.

To go back to the Chair’s former remarks implying I might be some sort of governor-general, in that case the SNP papers had suggested that Scotland was an oppressed colony. Of course, that is laughable in itself, but the Supreme Court judges said that in no way was Scotland an



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oppressed colony—far from it. As a UK Government, we give huge support to Scotland, with record block grants and record spending numbers—£1.20 for every pound in England, and so on. We are all in this together and we all pull along together. What we are not doing is throwing our weight about. All we are trying to do is produce legislation that works for the whole United Kingdom

- Q53 **Douglas Ross:** I am keen to come on to the Budget in a moment, but, sticking with section 35, the Chair mentioned reports or concerns that you were stoking division and going after culture issues. Lady Haldane was very clear not to get involved in the politics. She did, as I understand it, dismiss that argument from the Scottish Government. Is that correct?

Mr Jack: Correct.

- Q54 **Douglas Ross:** On the question that the Chair put to you but did not allow you to answer, you were keen to explain that during the process of the Bill there were several amendments. I come at this as someone who sits in both Parliaments and voted on each and every one of those amendments. Can you explain, because the Chair cut you off, how it would have been possible to have discussions with the Scottish Government about an incomplete Bill that had the potential to change right up until just over a year ago from this date?

Mr Jack: Well, it was not possible to have those discussions. It would not be right for me to tell them which amendments they should pass or not pass. It is for the Scottish Parliament to make the legislation competent and then it goes for Royal Assent. Only where it is incompetent—beyond their competence in a section 33 or having adverse effects on UK/GB legislation in a section 35—will the law officers advise me to step in. It is not for me to tell the Scottish Parliament how to produce or make their legislation. As we saw with the UNCRC, when I did suggest that clauses 6 and 19 to 21 were beyond their competence, John Swinney was very quick to slap me down. And guess what—finally, two years later, the legislation has gone through and those clauses have been removed.

We can help them—the law officers here can help them—but it is not well received. If that is the case it is entirely incumbent on them to make the legislation, make it good, and then it will go seamlessly for Royal Assent.

- Q55 **Douglas Ross:** And that was the immediate criticism from Shona Robison, the Cabinet Secretary at the time, who was leading this through. When you announced that you were taking forward a section 35 order, she said that that was the first they had heard about it. But because the Bill was being changed—I don't think it would have made the Bill perfect, but it would have put in certain safeguards that would have improved potentially flawed legislation—until that Bill had passed, you could not consider it.

Mr Jack: Correct. On those amendments at stages 2 and 3, we could not determine which ones would get through and which would not, and it was not for us to interfere. We did not rush out to judgment, either. I think the legislation, from memory, went through on 21 or 22 December. I think I



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invoked the section 35 on 17 January. There was a time of reflection, getting proper legal advice and then coming to that decision. It was not a premeditated decision.

- Q56 **Douglas Ross:** You have discussed the cost of this and the other cases that the Scottish Government have taken the UK Government to court on fairly recently. I think you said today and on Friday that the Scottish Government should not appeal because of the cost to Scottish taxpayers, and I fully support that position. What is the cost for the UK Government and the Scottish Government of this particular legal battle? There were reports in the press over the weekend that you are considering seeking costs from the Scottish Government.

Mr Jack: My understanding—I do not have the precise figures—is that the Scottish Government have spent £230,000. We have spent circa £150,000 on our legal advice. If this were to go to the Inner Court of Session, you could easily double that. If it then went to the Supreme Court, you could double that again. So it is an exponential increase. You could easily end up at the thick end of £2 million. I am talking to my legal officers now about seeking costs and I think the UK Government—I mean, we have had enough court cases. There were commentators and those who said that I should have sought costs after Nicola Sturgeon brought her unsuccessful constitutional “Who’s got the right to hold a referendum?” challenge. We did not do that at the time. I think this time I am minded, as you may have read in the press, to seek costs from the Scottish Government, and I am having those discussions with our law officers.

- Q57 **Douglas Ross:** Finally on section 35, before I move on to other issues, Mr Duguid mentioned some of the response from the First Minister. Clearly, Humza Yousaf is the leader of the SNP, but he said, when he was seeking support in the Scottish Parliament to be elected as First Minister, that he would need to work for the whole of Scotland and all Scots. His response was to say that the judgment showed that “Devolution is fundamentally flawed”, that it was a “dark day for devolution” and that “The court has confirmed that legislation passed by...Holyrood can be struck down by Westminster.” Does the Secretary of State agree that none of that is actually true and that it is a gross misunderstanding of the ruling, the legislation and the devolution settlement?

Mr Jack: Yes, I think it is totally misleading and totally inaccurate. He also said in one of his statements that he fully respected the judgment of the court, but those previous remarks he made didn’t respect the judgment of the court and therefore he made no sense.

- Q58 **Douglas Ross:** Can I move on to the other issue that the Chair spoke about at some length, which is the letter from the Foreign Secretary over the weekend? In terms of the correspondence and any subsequent response, what has been the UK Government’s immediate view on the response from the First Minister when he was interviewed about this today, and some of the arguments that he gives against letters such as this, which I think he called “petty”, being issued to the Scottish Government?



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Mr Jack: This isn't the first letter; I think I made that clear. I think it was on 14 or 16 October that the then Foreign Secretary, James Cleverly, sent a letter, because the Scottish Government had resisted having a Foreign Office official in the room for the First Minister's meeting with the Icelandic Prime Minister. There have been examples in the past and we have talked about this in the past. There is a pattern here. It's quite clear that the protocols for foreign affairs are—well, there are two things, really.

The first thing is that, as I have said, if you are visiting and meeting foreign Ministers and that meeting has been facilitated and logistically put in place by our embassies or our posts, then you have a Foreign Office official present, to take notes to record the meeting, so that there is no confusion as to what was said. That is a very high-level, long-standing protocol and Ministers in the United Kingdom, whether devolved Administration or UK Government, adhere to that, and that is important.

There is also another piece here that I have been very clear about in the past. When meeting Governments and Ministers in other countries, we speak as one voice. It is a reserved matter. A different foreign policy from a devolved Administration is not something that we agree with. It is a reserved matter in the Scotland Act, as is the constitution a reserved matter in the Scotland Act. And we believe it is important that that is respected.

- Q59 **Douglas Ross:** The Foreign Secretary's letter is very clear. You are making the example of what is expected of you, as a Secretary of State, and of your Ministers when they go abroad. Actually, this guidance is for devolved Government Ministers on overseas visits, so it's not just taking what is provided to the UK Government Ministers and telling you that it is separate guidance. It will be very similar, but it is designed for devolved Government Ministers.

I wonder if I can just confirm something. In your evidence to the Chair, you gave—

Mr Jack: I should point out that UK Government Ministers must adhere to those rules, irrespective of whether they work for the Foreign Office or any other Department. They must adhere to those rules as well.

- Q60 **Douglas Ross:** Yes. But you gave four further examples of meetings held at COP28, between the First Minister and the Prime Minister of Lebanon, the acting Prime Minister of Pakistan, the President of the European Commission and the President of the European Council. Did any of those meetings have a Foreign Office official present?

Mr Jack: No.

- Q61 **Douglas Ross:** So, it's not just that these meetings took place, but they were also in breach of the guidance that is outlined in this letter?

Mr Jack: Yes.

- Q62 **Douglas Ross:** Was there any notification to the Foreign Office that these meetings would happen, or is your knowledge about these meetings



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simply—?

Mr Jack: I would have to check on that. But on the basis that they were picked up on the First Minister's Twitter account, I suspect not.

Q63 **Douglas Ross:** So, there was unlikely to be any notification and certainly no Foreign Office—?

Mr Jack: I am not going to go 100% on that, but they were picked up on his Twitter account, so my suspicion is not. But we can write to you on that.

Q64 **Douglas Ross:** Thank you. You talked in your opening remarks about the funding settlement to the Scottish Government of £545 million extra over the next couple of years. How does that statement from you correspond with what the Deputy First Minister said to me in the Scottish Parliament a couple of weeks ago, when she was standing in for Humza Yousef when he was at COP28? We had a discussion about a number of issues. She said—I quote from the Scottish Parliament website—that Douglas Ross “has had nothing to say about” an “autumn statement that has given no money whatsoever to this Government or this country for our public services for next year.” Is any of that true?

Mr Jack: No.

Q65 **Douglas Ross:** No. So it is completely false.

Mr Jack: It is completely false. The Treasury has published the figures, and the detail is all there: it is £545 million of Barnett consequentials.

Lord Offord: If you take it through two years, it is £1 billion. If you take the last two years of Barnett consequentials, it is £1 billion, and it protects the settlement for the three devolved Administrations being 20% higher than in England. The Welsh Government have declared that they think it is a very fair settlement.

Q66 **Douglas Ross:** Just on the Budget, there has also been a very successful scheme in England and Wales for 75% rates relief for hospitality, tourism and retail. Last year, the Barnett consequentials went from the UK Government to the Scottish Government, which chose not to pass that on to these vital organisations and sectors. There is significant concern, particularly among hospitality—I met with Stephen Montgomery of the Scottish Hospitality Group just last week—that they are, again, not going to receive that funding.

Clearly, the UK Government give the Scottish Government a significant amount of money, and it is up to them to spend it. As a Scottish MP—Mr Lamont might want to come in here as well—how important do you think it is that the Scottish Government pass on that full 75% rates relief for the businesses that did not get it last year and are desperate for it this year?

Mr Jack: I would say it is very important, but you may want to add to that, John.



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John Lamont: I would agree. I think there is a growing frustration that there is additional funding coming to Scotland from this United Kingdom Government that businesses and employers do not see the benefit of in Scotland, because the Scottish Government decide to hang on to it. Local authorities in Scotland are also crying out for additional funding. They will not see the benefit of the huge block grant that Scotland is getting; all they see is their budgets getting cut more and more by the Scottish Government. So I share your frustration.

Lord Offord: I would add to that, if you don't mind. This basically demonstrates what a fair—you might even say generous—settlement the devolution system we have in this country is. You would not see this in the federal systems of Germany or the US—that Berlin would send money to the Länder without any scrutiny or accountability. That certainly does not happen in the US federal system. Effectively, what happens here is that the money goes to Edinburgh with no strings attached. It is up to the Scottish Government to decide what their priorities are.

If they decide that their priorities are to give record pay settlements to the public sector, or to make record welfare and benefit payments, they are entitled to do that. But if the result of that is that there is a big funding squeeze on local authorities, the police or education, that is for the Scottish Government to decide; it is nothing to do with Westminster. It is entirely to do with the priorities of the Scottish Government. When they come to the upcoming Budget, they have made their decisions and must put their hands up, own their decisions and take accountability for their decisions.

- Q67 **Douglas Ross:** I have two quick questions to finish on. Wendy Chamberlain mentioned a health group that had not met, and I think we have had some clarification from Mr Rockey that hopefully it has. There has been coverage in the Scottish media in the last week of the disgraced Health Secretary in Scotland, who is still shamefully in position despite his claiming £11,000 of taxpayers' money. He refused a genuine offer from the UK Government to assist in reducing waiting times in Scotland.

What is your response, as part of the Scotland Office? I know this came from a former Health Secretary, but it was a generous offer. I certainly have constituents who cannot understand why they cannot be seen in Scotland. They see this offer to potentially get them seen quicker, using the resources of the United Kingdom, and that snub by the SNP.

Mr Jack: I am baffled by that. Living where I do near the border, in Dumfries and Galloway, I see that, for instance, when the floods happened in Carlisle, the Dumfries and Galloway ambulances went and helped, and that has been reciprocated. People go backwards and forwards to get special treatment on certain things. We do not have a tropical disease facility in Scotland, so if you come back with some sort of foreign tropical disease, you will be treated in Liverpool or London. There is reciprocation going on all the time: there is reciprocation with organ donation, and on it goes. Why he would have turned down that help to reduce waiting times is beyond me. I am absolutely baffled by it.



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John Lamont: I agree with that entirely. As you know, Mr Ross, I represent a Borders constituency as well and increasingly I am finding that local residents who might be registered with a Berwick practice in England are receiving treatment much more quickly compared with their neighbours who are registered with GP practices in Scotland. Over the last few years, there has also been an increasing trend. It used to be quite easy to get treatment south of the border because it was more practical and easy. If you live in the far east or the far west of the Borders, it would make more sense to go to Carlisle or Berwick to get treatment. Increasingly, because of what we are told is direction from the Scottish Government, treatment must be provided in Scotland. That adds to waiting times. It makes it practically more difficult for patients to access treatment. On a whole variety of levels, it is becoming much more difficult to access health services in Scotland. I share your frustration with the Scottish Government's failure to engage with the UK Government to try to alleviate that.

Q68 **Douglas Ross:** The final topic I wanted to raise with you, Minister Lamont, concerns UK Government funding in Scotland. We had a successful visit when you came up to Moray and visited a number of organisations in Forres that have benefited from various UK Government funds. Would you be able to outline briefly some of that investment? While we have been in this meeting, Michelle Gillibrand, who you met in Forres town hall, has been in touch to seek a further meeting with you and has asked if I am able to facilitate that. What better way to make that bid and offer than at the session? Hopefully, you and your officials will be able to meet with myself and Michelle about some issues they have got and on the funding going from the UK Government to Scotland generally.

John Lamont: Certainly. I am always very happy to meet your constituents; I will have a think about meeting you again. I was delighted to see some of the projects a few weeks ago that have been supported in your constituency, and they are just a number of examples across Scotland of where the UK Government have been investing directly into local areas. I think it equates to £2.7 billion now across the whole of Scotland through the growth deal, levelling-up fund, the community ownership fund, green freeports, the community renewal fund, the UK shared prosperity fund and a whole variety of other initiatives.

I would be particularly keen and delighted to see some of the investment in sporting facilities again, which is what I was able to see in your area. Grassroots sport is a key part of ensuring that young people get a good start in life, and I am pleased that the UK Government is keen to do that.

One of my frustrations during the year in this job has been seeing this UK Government money going directly into communities across Scotland, which is undoubtedly benefiting the people that we represent, and then hearing SNP Members complaining about this being a sort of attack on devolution or other attack lines. The communities who are benefiting from this are completely baffled by this line of attack. All they see is their



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communities benefiting from this UK funding coming into their areas, and I think we should all be welcoming it.

- Q69 **Douglas Ross:** Finally, there is always great interest when we have the Secretary of State with Scotland Office Ministers at this meeting. There has been live reporting done from within the Committee Room today by Andrew Quinn, the political reporter down here in Westminster for the *Daily Record*. There are numerous concerns about job cuts within the media across the UK, the Scottish media and particularly the print media. Do you agree that, whatever we think about individual stories that go into the papers, robust reporting of our activities as Scottish MPs down here at Westminster is vital and that there is, and should be, concern about repeated cuts to that element of the media in Scotland?

Mr Jack: Yes. Absolutely. I totally agree.

John Lamont: Yes. I agree as well. In my own area in the Borders, I used to have seven or eight local newspapers. I think I am down to three or four. One of them is a great success story: *The Hawick Paper*, which is a relatively new addition to the array of local papers holding me, and all the other elected representatives, to account. I think it is a key part of our local democracy.

Chair: I think we can all agree on that one, and Andrew has been a fantastic asset in covering Scottish political affairs down in Westminster.

Mr Jack: I would want to read what he has been live tweeting before agreeing to that. I hope you're right!

John Lamont: Chairman, can I just follow up on one of the points that—

Chair: We will move on, because we are trying to be as equitable as possible with time allocation.

- Q70 **Alan Brown:** I would like to ask a question on the current inflation rate. What has the average inflation rate been across the UK this year?

Lord Offord: Inflation is down to below 5%. It is 4.7%. It was at a high of 11.4%. I can tell you that it is the same in Germany and Australia; it is not a UK issue.

- Q71 **Alan Brown:** We have had stuff about the Scottish Budget. We heard there that inflation is now down to 5% from that high of 11%. When you look at the block grants, the '23-24 block grant is £36.9 billion. The '24-25 block grant is £37.4 billion, which is an increase of 1.4%. Quite clearly, 1.4% is way below the current 5% inflation, so isn't that a real-terms cut to the Scottish block grant?

Lord Offord: Inflation runs across the whole of the United Kingdom: there is no one particular part isolated from inflation. The Budget we set—£41 billion—is a record Budget. If you take the Barnett consequential that come through, that is an extra £1 billion. The Welsh Government themselves said that when they looked at the numbers, it is an extra £15 billion a year on average.



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Q72 Alan Brown: I am interested in Scotland's Budget. It goes up only 1.4% next year, so that is a real-terms cut, isn't it—that is undeniable—compared with the inflation rate?

Lord Offord: If you then take the Barnett consequential, they alleviate. Inflation is now down below 5%—

Q73 Alan Brown: That is a one-off. The Barnett consequential next year are only 0.6%, so even accounting for Barnett, the Budget only goes up 2%.

Lord Offord: In the meantime, we have looked after the most vulnerable people in our society. Our pensions have gone up in line with inflation at the 10% rate; universal benefit has gone up in line with inflation; and the minimum wage has gone up.

Q74 Alan Brown: Can you just answer the question and confirm whether a 2% increase in the Budget still represents a real-terms cut? That is just a fact, isn't it?

Lord Offord: The reality is that all the Budgets are going through the same process, and the Scottish, Welsh and Northern Irish Governments get £120 spent on them in the devolved Administrations versus £100 in England. It is a very generous settlement.

Q75 Alan Brown: It is a real-terms cut. When the Scrutiny Unit analysed spending and the block grant allocations since 2010, it confirmed that there is now a 17% real-terms cut compared with 2010. You might be factually correct when you talk about a record settlement, but the reality is that clearly for budget increases you will always hit a new record settlement, and it is a 17% real-terms cut since 2010. Isn't that putting pressure on the Scottish Government?

Lord Offord: Scottish Government spending in the last five years has gone from £40 billion to £56 billion. That is an increase of 7% per annum. That is not austerity.

Q76 Alan Brown: There is a 17% real-terms cut—that is from the Scrutiny Unit. Are you saying that that is not austerity?

Lord Offord: I am saying that there was a 7% increase in the Budget over the last five years, when in the previous four years there was no inflation—zero inflation. Seven per cent per annum is the most generous funding settlement in the UK. That is not austerity.

Q77 Alan Brown: So you are saying that a 17% cut since 2010 in real terms is not austerity. It is quite clearly austerity.

Lord Offord: I am saying that it is quite clear that in the funding round, there has been no austerity in Scotland. There has been—

Q78 Alan Brown: It is a real-terms cut—I gave you the figures. It is a fact that there is a real-terms cut.

If we move on and look at the capital grant, it will decrease from £6.2 billion down to £5.6 billion. That is a 10% cut. Why is there a 10% cut to the capital expenditure budget given to the Scottish Government?



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Lord Offord: That is done in the round. It is done in a fiscal framework; it is done on an overall basis. In the meantime, the borrowing rules have been maintained for Scotland—

Q79 **Alan Brown:** Why the cut?

Lord Offord: I am not aware of the detail of the cut to the capital grant. I am very happy to get into the detail of that with you offline.

Mr Jack: We will write to you.

Lord Offord: Yes, we will write to you.

Mr Jack: You quoted the Scrutiny—what did you call it?

Alan Brown: The Scrutiny Unit.

Mr Jack: Who are they?

Q80 **Alan Brown:** It is a part of the parliamentary process. You should know what the Scrutiny Unit is.

Mr Jack: So the Scrutiny Unit has given you figures.

Q81 **Alan Brown:** Yes.

Mr Jack: Well, if you supply them to us, we will analyse them, because the figures we have from His Majesty's Treasury say that the current block grant of £41.6 billion is, in real terms, the highest since devolution began.

Q82 **Alan Brown:** We have covered that, because I pointed out that it is a real-terms cut.

Mr Jack: You are not liking the answer, but you have cherry-picked 2010. Our figures that we quoted, which you contradicted, are since 1999. As Lord Offord said, we have just been through a period of no inflation for a number of years. Let's get you the accurate figures as quoted by the Treasury—

Alan Brown: Let's do that. We'll move on now, if that's okay.

Mr Jack: You can, but I am just trying to put a balance into this.

Q83 **Alan Brown:** The Scottish Parliament is quite often described as the most powerful devolved Parliament in the world. Do you still think that is the case?

Mr Jack: Yes.

Q84 **Alan Brown:** Welfare is devolved to the Northern Ireland Assembly. Energy policy is devolved to the Northern Ireland Assembly. The civil service is devolved to the Northern Ireland Assembly. Quite clearly, the Northern Ireland Assembly has more powers than the Scottish Parliament, so how can the Scottish Parliament be deemed the most powerful devolved Parliament in the world?



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Lord Offord: I think there were 30 welfare benefits that were planned to be sent to the Scottish Government, and I think only three of them have been implemented so far, so there has been plenty of ability—

- Q85 **Alan Brown:** Why is full devolution of welfare good enough for Northern Ireland but not the Scottish Parliament? Why is energy policy devolved to Northern Ireland but not the Scottish Parliament? Why is that?

Lord Offord: That is the settlement that is agreed in the United Kingdom. We are on one island. We work in one geography and we have to solve the energy crisis together.

Mr Jack: In Northern Ireland, there is obviously a relationship with energy between Northern Ireland and the Republic of Ireland, which is not part of the United Kingdom. That explains that part. The Scottish Parliament is still the most powerful Parliament. It has more powers in the round, collectively, than any of the other devolved legislatures. The police in Wales is still reserved to the UK Government. The police in Scotland is devolved. There are many things that are devolved to the Scottish Parliament that are not fully devolved to Wales. Again, you are just cherry-picking things that suit your argument. I think you know that the Scottish Parliament has enormous powers, not least tax-varying powers.

- Q86 **Alan Brown:** Looking further afield, some of the Canadian provinces have their own immigration policy? Why could Scotland not have its own immigration policy?

Lord Offord: Because we are one United Kingdom and we need a central policy on key matters, whether it is foreign affairs, energy, the constitution, or immigration. We are joined on one island. We cannot have differentiating policies on immigration.

- Q87 **Alan Brown:** You couldn't trust the Scottish Parliament to have a different policy?

Lord Offord: No, it is common sense.

Mr Jack: What we are trying to do is not have an economic border within the United Kingdom. That is why immigration is reserved.

- Q88 **Alan Brown:** Previously, there was the Fresh Talent scheme. Obviously that was under a Labour Government, but it managed to operate a separate immigration policy for Scotland. That worked, so why can something like that not be looked at again?

Mr Jack: You know very well the UK Government's position. We believe that immigration should be reserved and we should have one policy across the United Kingdom. We are very clear about that. I know it is something that is not necessarily popular with the Scottish Government, but it is something we believe is important. We have mitigating factors such as the seasonal agricultural workers scheme, which works very well for the whole of the UK. This office took it from 2,500 to 30,000 people, and it has increased since then. It does the job it is meant to do. It works on a UK-wide basis. The people arrive in the Scilly Isles in February or March to



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pick daffodils and are picking fruit later in the year in Scotland, and they do other things on the way. It is a lot of the same people moving across the country as seasonal agricultural workers before they return home.

- Q89 **Alan Brown:** Okay. We will move on from that. There are a couple of energy matters. I have been asking about a cap-and-flow revenue mechanism for pumped-storage hydro for a number of years now. There are two schemes in Scotland that are ready to go. The private investment is there. All that is needed is this trading mechanism. I believe there is maybe going to be another consultation, but why is it taking so long? Why do the Government not just get on with it, so that we can get pumped-storage hydro up and running in Scotland with these new projects?

Mr Jack: Is this Cruachan you're talking about?

Alan Brown: There is the Cruachan extension and Coire Glas, which is a new scheme.

Laurence Rockett: The Government recognise their potential and importance and are committed to having a framework in place by 2024. We are still committed to that.

Mr Jack: I would add that this office does believe that they are good schemes, and we have pressed the case for them, but they are going through the consultation process. I believe that they are both excellent schemes that will be enabled.

John Lamont: I had the benefit of visiting Cruachan during the summer, so I fully recognise the importance to Scotland.

- Q90 **Alan Brown:** And you know how keen they are to get up and running. It is just the lack of a mechanism that is holding things back.

Let us look at another aspect of energy, TNUoS charges, where Scotland is at a disadvantage by having to pay much higher grid connection fees. That puts Scottish projects at a disadvantage.

Lord Offord: But Scottish consumers get the benefit of equal pricing. They are two sides of the same coin, right?

- Q91 **Alan Brown:** I am going to come to my point. Industry has started raising concerns that, looking forward, it thinks that to connect the north of Scotland is going to be a £20 per megawatt-hour additional cost. That quite clearly means that Scottish projects cannot be competitive with ones further south, which then means that consumers right across Great Britain are not going to get access to the lowest-cost, cheapest form of electricity generation. What are you going to do about the possible impact of these charges?

John Lamont: As you will know, Mr Brown, Ofgem is carrying out a review of this area. We expect to hear the results of that in 2025, but myself and Minister Bowie, the Energy Minister, recently chaired a joint meeting with the industry and Ofgem to hear at first hand from them what



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their concerns are. We are going to have another meeting in the new year. We have tasked Ofgem and others with various action points, and we hope to hear back on how we might be able to address some of these concerns. But it is an Ofgem matter.

- Q92 **Alan Brown:** Yes, but the Government cannot just wash their hands of it if it is going to disadvantage Scottish projects.

Lord Offord: Well, the Chancellor said in his autumn statement that this is going to be a major area for Ofgem, and we have had meetings on it. I attended the Islands Forum, the first one of which was in Orkney, and we had Ofgem on the line with the whole community there. What is happening here as part of the transition is that we need to redesign our grid system from when it used to be based on coal-fired power stations in Scunthorpe to now having renewable energy in Orkney and Shetland and Kincardine. This is part of the transition—Ofgem has to redesign the grid system, and there is a huge amount of money being allocated to that.

- Q93 **Alan Brown:** But it is not Ofgem that designs the grid system.

On one other aspect of energy, post Brexit, Energy UK estimated that the new trading arrangements for electricity are adding £1 billion a year to electricity bills. During a cost of living crisis, why do the Government think it is acceptable for a billion pounds to be added to our bills?

John Lamont: We do not accept that analysis. This Government have put in a huge amount of support to help households and businesses with the—

- Q94 **Alan Brown:** Was Energy UK wrong? What do you think the additional costs are of the post-Brexit trading arrangements?

John Lamont: Well, Brexit gets blamed for all sorts of things, and the SNP are the first to point at Brexit for a whole catalogue of things. What this Government are doing is supporting households and businesses with the extra costs of energy, and I know from my constituents that that has been a very welcome intervention. We continue to support the most vulnerable households with the rising cost of energy.

- Q95 **Alan Brown:** Good. Will you write to the Committee and explain what your assessment of the additional costs is post Brexit?

John Lamont: As I say, Mr Brown, Brexit gets blamed for all sorts of things.

- Q96 **Alan Brown:** It is a fact that the trading arrangements for electricity have changed and it adds cost, so I am asking if you could write to the Committee to confirm what that additional cost is.

John Lamont: As I say, Brexit gets blamed for many things.

Chair: Okay. I am sure we will get correspondence for Mr Brown's satisfaction. Mr Menzies has just arrived. Are you okay to take a question from Mark?

Mr Jack: Absolutely.



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Chair: He has been waiting patiently.

- Q97 **Mark Menzies:** Thanks, Chair. I will have to rush off to a DL, so I apologise for that late notice, Secretary of State. With regard to promoting Scotland internationally, a huge amount of work is going on, much of it unseen. One of the initiatives is the new Delivering for Scotland board. Could you share your thoughts on that and put a bit more light on it?

Mr Jack: The Delivery for Scotland board is one that I chair and convene with the lead officials in Whitehall Departments. The lead non-exec director, Tom Harris, joins me and Laurence Rockey, the director of the Scotland Office. What we are doing is making sure that the Whitehall Departments are across the detail on matters that affect Scotland in legislation that they are bringing forward. We are looking for advice from them, as well as solutions. It is very much me as a politician sitting with civil servants and talking about what Whitehall is doing in that regard. It is proving to be very effective. It is a real asset. Mr Rockey might want to add to that.

Laurence Rockey: Just in one sentence, it is very much about joining the wiring up to make sure that Whitehall is thinking about Scotland in the round, rather than just the individual areas. The feedback from my civil service colleagues across Departments has been very positive.

- Q98 **Mark Menzies:** So there is a big focus on trade but it also includes other areas as well.

Mr Jack: It is the MOD—obviously, there is lots in relation to Scotland on that—and DEFRA and, as you say, the Department for Business and Trade. It is everything, including science and technology—it is all Departments. The Foreign Office and the Home Office are there. Everyone is invited to it, and they all have to speak to their responsibilities and their roles, and then discussions happen and action points are taken forward.

Mark Menzies: Excellent. Thank you very much.

- Q99 **Chair:** Thank you again, Secretary of State. I hope this is not the last time we will see you in front of this Committee, although perhaps an election will get in the way of further sessions. I have always enjoyed our sessions. You have always been fully frank with this Committee and good natured and very helpful. I think you mentioned that you have been here seven times in the past.

Mr Jack: Yes, I think so. I look forward to it, as I know you do, Mr Chairman.

Chair: Indeed. Thank you for your time.