



HOUSE OF COMMONS

## Scottish Affairs Committee

Oral evidence: [Intergovernmental relations: 25 years since the Scotland Act 1998, HC 149](#)

Monday 22 April 2024

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Members present: Pete Wishart (Chair); Alan Brown; Sally-Ann Hart; Christine Jardine; Douglas Ross; Michael Shanks.

Questions 354-409

### Witnesses

I: Rt Hon Mr Alistair Carmichael MP, former Secretary of State for Scotland, 2013-15; Rt Hon David Mundell MP, former Secretary of State for Scotland, 2015-19



## Examination of witnesses

Witnesses: Mr Alistair Carmichael MP and David Mundell MP.

Q354 **Chair:** Welcome to the Scottish Affairs Committee and our ongoing inquiry into 25 years of devolution. We are delighted to be joined by a couple of colleagues, both former Secretaries of State, who will now introduce themselves with a short introductory statement.

**Mr Carmichael:** Thank you, Chairman, and thank you for the invitation to attend. We have watched the proceedings thus far with interest. It is an interesting and timely investigation for the Committee to have. Having been part of the movement to see the creation of a Scottish Parliament in 1997, with colleagues in the Labour party, the Churches and local authorities through the constitutional convention, and having then been part of the discussions around the setting up of the Calman commission, which led to the Scotland Act 2012, and then the Smith commission, which led to the Scotland Act 2016, I think it demonstrates what I believe—Des Browne always disputes this—Donald Dewar described as a process rather than an event.

Devolution in the United Kingdom is inevitably like that; it is always asymmetric because of the relative sizes of the constituent parts of the United Kingdom. Personally, although I have always been a supporter of devolution, I am by instinct a federalist. As I look around all parts of the United Kingdom, my family in England are as badly served by a highly centralised model of government from Whitehall as anybody in Scotland. Hopefully the process will continue and will bring to other parts of the United Kingdom the benefits that we have had.

It is also interesting to observe how it has developed in Scotland and Wales, and of course in Northern Ireland, whose devolved Assembly had different roots. As the changes come, I think the existence and the operation of the process becomes more important. Sometimes you can get by just on personalities working well together, but if that does not happen you find that the process becomes more important. There is always a balance to be struck. There is a risk that you end up with a process for the sake of process, so it has to be driven by the outcome.

Of course, in recent years, we have had Brexit. That does bring some areas where perhaps there needs to be a fresh look at things—for example, the question of agricultural support payments. We came out of the European common agricultural policy, and we now effectively need a United Kingdom common agricultural policy, because we have policy going in different directions and at different rates in different parts of the United Kingdom. Personally, I do not think it is satisfactory that DEFRA, for example, should hold the ring for the United Kingdom as a whole, while still prosecuting England's case. We need to find some mechanism for dealing with that sort of issue.

There is also still the question of finance. In terms of agricultural support payments, Scotland gets something in the region of 17% of what the



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United Kingdom has as a whole, but that begs two questions. First, 17% of what? Secondly, what do you do when the world changes? You have seen already the impact of Ukraine pushing food security up the political agenda. That 17% might work now because it has worked for quite some time, but it will not necessarily remain like that going ahead.

What I believe Donald Dewar referred to as a process rather than an event continues to change and to evolve. As part of Scotland's voice at Westminster, I am fascinated to see how that goes, and I look forward with interest to seeing your own conclusions on it.

**Chair:** Thank you ever so much for that. Over to you, Mr Mundell.

**David Mundell:** Thank you, Mr Wishart, and it is a pleasure to appear again before this Committee. The inquiry is timely, as in May it will be 25 years since the first election to the Scottish Parliament. I was very honoured to be elected to that first Parliament as a regional Member for South of Scotland.

From what I have seen of the evidence the Committee has taken, its initial analysis is that the period from 1999 through to 2007 did not really see a full exploration of intergovernmental relations, because essentially matters were dealt with through internal Labour party channels. At that point, Gordon Brown was obviously a very significant part of the Government. We then had a period where we had a change of Government at Westminster, compared with the arrangements at Holyrood. I think that flushed out the need for these mechanisms to come into play, and during that period there was a greater development and evolution of the process.

In 2014, we had the very significant event of the independence referendum in Scotland, and in 2016, we had the significant event of the Brexit referendum. Those are two of the most impactful political events that have happened in our lifetimes. It is inevitable that those events put any existing mechanism or process to the ultimate test.

Q355 **Chair:** Thank you both ever so much for your concise comments. I almost feel like we do not need to ask any more questions now, but we will give it a bash. You both shared the Scotland Office for a couple of years. Did you get on well together when you were sharing an office, given your differences?

**Mr Carmichael:** Before and since—we have our differences. I flatter myself that over the years I have tried as far as possible to work on a personal level with colleagues in Parliament as well as I can. Unnecessary disagreements do not really help anyone.

Q356 **Chair:** You both covered a particularly fascinating period.

**David Mundell:** Of course, we were greatly helped by having Christine Jardine as part of the operation to smooth the waters and keep the coalition on course.

**Chair:** You were there in a very interesting and fascinating period of the



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devolution journey. You have mentioned, of course, the independence referendum and the reset of intergovernmental relations. What did both of you make of what you observed of the condition of intergovernmental relations when you were Secretary of State? Did you feel that they were working adequately, or were you frustrated that you were not able to get that type of engagement and they were not doing the job that you felt they should be? We will start with you, David, if that's all right.

**David Mundell:** Obviously, I became Secretary of State after the independence referendum and the 2015 UK general election. I would say, in reflecting back on the period—I think this has been said by others in evidence—the Edinburgh agreement, the agreement that led to the referendum, was possibly a high point in those relations, because a potentially extremely contentious issue was taken up and agreement was reached. There have been many disputes about the referendum, but there have been few about the conduct of the referendum, the process that led to the referendum. I found, in the period immediately after I became Secretary of State, that there was a genuinely positive overall working relationship with the Scottish Government and that we were able, through the mechanisms that were in place, to pursue a constructive relationship.

I always tried to separate what I would call the practicalities from the politics. It is inevitable that there is politics, particularly when you have different parties and when you obviously have a very different approach to the constitution. There will always be politics. Everybody on this Committee, and Alistair and I, are familiar with how politics works. I remember, in the days when Alex Salmond was First Minister, the Scottish Government always wrote to the UK Government late on a Saturday afternoon and—surprisingly—that letter then appeared in the next day's Sunday papers.

**Mr Carmichael:** That was before the current difficulties with the Royal Mail.

**David Mundell:** Indeed. So we knew how the politics operated. I myself tried to separate the politics—the politics that was engaged between the Governments, the parties in this House—from the practicalities, and that worked pretty well up until the Brexit period. Brexit was an event of such political moment that it was much, much more difficult to do that in that context.

Q357 **Chair:** That is a very good point and something that we are hearing repeatedly in this inquiry. Most of our witnesses have been keen to describe and explain to us that there are three different and distinct periods of devolution. First, there were the one-party-in-power arrangements that we had very early on. Then there was a second period, when there was divergence in Scotland and Edinburgh, which Alex Salmond curiously describes as a “golden” period of intergovernmental relations. Then there is the period that you describe, Mr Mundell. I will come to you, Mr Carmichael, because that was what Alex Salmond did tell us about that period even though an independence referendum was going on. Is that how you felt when you were Secretary of State? Did you



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see that as a good period for intergovernmental relations, or has that been exaggerated to some degree?

**Mr Carmichael:** Well, that was not one distinct period. Given the events that led up to the completion of the Edinburgh agreement in 2012, that was a productive period, and it was productive because there was a political will to make it productive, I would hope that the golden age of intergovernmental relations is yet to come. Then, once you were into the campaign—we all remember what the campaign actually was like—there was a sense that the politics did sometimes get in the way of good government, and some things became issues because, frankly, it suited people to make them issues.

I was thinking about it over the weekend; I do not remember the exact circumstances, because it was quite involved, but at the time of the introduction of contracts for difference in the energy market, there was a concern about the switching off of the renewable obligation certificates, which preceded contracts for difference. That was something where the administration had been devolved, although it was legislatively competent to the United Kingdom Government in Westminster.

I remember the frustration felt by many in Government here that the then Energy Minister in Scotland would say, "Yes, of course we are going to do this, so it can all be done in lockstep," but somehow or another it never quite happened. I cannot remember whether the administrative devolution was withdrawn or whether it was eventually resolved, but something like that that really should be an administrative detail dealt with by officials suddenly became embroiled in the political level with Ministers, spads and goodness knows who else.

We are charged as Members of Parliament and Ministers to run government, but at the same time we are politicians; these tensions will always arise. As a whole, the process of that referendum was quite an achievement for everyone, and I think that history will judge it as a positive exercise.

Q358 **Chair:** Is that your experience, Mr Mundell? Were there generally good relationships during that?

**David Mundell:** Yes. Obviously there were individual issues that came up, and the Scottish Government would want to put themselves in a favourable light and the UK Government in an unfavourable light. Part of the job that Alistair and I did was to ensure that the facts were available and that we were not acting in an unfavourable light. However, it was not as intense then as I think it became, in the sense of "Scottish Government good, Westminster Government bad," which did develop in subsequent years. What we were trying to do was work in the most constructive way that we could.

We did want to develop good personal relationships. I was in a fortunate position, having been a Member of the Scottish Parliament, to have worked in Holyrood with Nicola Sturgeon, John Swinney, Alex Neil,



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Roseanna Cunningham—the people who were the principal Ministers in the Scottish Government—so it was always possible in those periods.

Q359 **Chair:** Can we focus on that, because this is something that has come out quite powerfully in a lot of the evidence that we have acquired? It was all about the personalities: if the people were able to get on, there was a more productive outcome in terms of working together. Sometimes when the personalities did not get on, it challenged the structures just that little bit more, and the structures became more important to being able to accommodate differences of opinion. Do you think that we have got it about right in terms of the structures in place to accommodate people not getting on and differences in personalities when you look at what we have just now?

**David Mundell:** The process has evolved. If there are fundamental differences between individuals and personality clashes, that will not be straightforward to accommodate, because a large part of politics is about relationships and doing deals, if I can put it that way. It is about reaching accommodations and having trust and respect.

The relationships are important. I had a particularly good relationship with Mr Swinney, for example, and felt that if we did get to a dead end, we could have a frank discussion about whether it was possible to get out of it. Sometimes it was not possible to get out of it because the politics of the situation were insurmountable, but we could have a frank discussion about the situation and I found that very positive.

I don't know if he referenced it in his evidence, but Alex Salmond had a very good relationship with George Osborne, and during that period of Government that was an important way of being able to discuss issues and concerns.

Q360 **Chair:** How do you value that, Mr Carmichael?

**Mr Carmichael:** Political will is a big part of this. I think back to my time in the Scotland Office. I inherited a joint working party, which Angela Constance and I co-chaired. It was productive and it did work well. It never achieved everything that either side would have wanted it to, but with a bit of professionalism and political good will, you could achieve that. It doesn't always work like that, but the picture is always going to be mixed.

Q361 **Chair:** Lastly from me, because we are interested in the infrastructure and how it all comes together: did JMCs actually meet during your time as Secretary of State?

**Mr Carmichael:** Yes. They tended to be pretty much set-piece occasions; I don't think I ever looked at the in-tray and thought, "My goodness—we need a JMC to sort this lot out." They tended to be showpieces, where everybody came with their press releases already written. That shows the importance of getting the balance right in structures, but even the best structures in the world will not work if the personalities are determined not to make them work.



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Q362 **Chair:** We were all around during the Calman commission and the Scotland Act 2012. I remember Mr Mundell teasing me about Antarctica during the conversations around that. But one of the major innovations from the Calman commission was the dispute resolution mechanism. Did either of you ever invoke or use that in your time as Secretary of State?

**Mr Carmichael:** I struggle to remember an occasion when we actually invoked it, but that is not to say that it didn't happen.

**David Mundell:** The occasion I recall was around the 2012 Olympics. There were issues as to whether some of the ancillary activity to the Olympics should carry with it a Barnett consequential. I see Christine nodding in recollection of that.

**Mr Carmichael:** Wincing, I think.

**David Mundell:** The view of the Scottish Government and, I think, of the Welsh Assembly Government was that housing that had been provided initially as accommodation for the Olympics was actually housing.

Q363 **Christine Jardine:** Can we touch on something that you have both mentioned, which is the personal relationships and how they developed? We understand that while David Cameron was Prime Minister, he took the time to build personal relationships with the First Minister through one-to-one meetings without officials present. Can I ask you both, individually, whether you observed that and what its effect was on the relationship? How important was that, pre-2012, to building up what Alex Salmond, with no hyperbole at all, has referred to as "a golden age"?

**Mr Carmichael:** You would have seen that more closely, Mr Mundell; I was toiling in the Whips Office at that time.

**David Mundell:** Yes. It doesn't surprise me that Alex Salmond would feel that he had been part of a golden age.

There were strong relationships. George Osborne had a very strong relationship with Mr Salmond. David Cameron was very respectful of Mr Salmond, and respectful of the fact that Mr Salmond had achieved a majority in the 2011 election and that that was therefore the basis on which to take forward referendum discussions.

Across the piece, I think that David Cameron's style, in relation to a range of matters in which he was involved in government, was to engage with those with whom he was dealing. Some people were easier to engage with than others, but he came into office on the basis of what we had said in the 2010 manifesto about wishing to pursue a respect agenda with the devolved Administrations, and I believe that he delivered on that.

Q364 **Christine Jardine:** To what extent do you think that that approach continued under Theresa May, particularly in the relationship with Nicola Sturgeon? Do you think it changed? If so, why?

**David Mundell:** I can only give my own observation. My first impression was that Nicola Sturgeon and Theresa May had a mutual respect. Theresa



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was the second woman Prime Minister and Nicola was the first woman First Minister of Scotland, so I think there was a mutual respect. But there is no doubt that over the period in which Nicola Sturgeon was First Minister of Scotland, she became much more difficult to deal with.

When I was a Minister, I feel I worked quite effectively with her, even on very contentious issues. For example, there was an issue about making changes to discretionary housing payments in Scotland to accommodate the so-called bedroom tax. I worked closely with Nicola on that, and that was possible. But in the post-Brexit period, my impression was that Nicola Sturgeon became much more strident and difficult to deal with. She might well argue that that was her standing up for Scotland or her agenda, but the dealings became much more difficult. We went down a route—we may come back to this later in relation to other matters—of what I would describe as a much greater Scottish exceptionalism.

In the initial period for which I was involved, both as a Minister and as a Secretary of State, the general view was that working together was the best way to achieve outcomes. In the latter part of my tenure, certainly, the view from Edinburgh was “We are just going to do everything ourselves, because we can.”

**Q365 Christine Jardine:** That is very interesting, because you have already mentioned Brexit as a potential watershed for the change of relationship. I am picking up from what you were both saying about 2012 and the run-up to the Edinburgh agreement—and certainly from other evidence we have had—that that was a very smooth period, with a good relationship, as Mr Carmichael has said, and the political will to get things done, but in the period from 2012 to 2014, that changed. We now see very much more of what I think one of you referred to as “Scottish Government good, UK Government bad,” and vice versa, all the time.

Since 2012, to what extent do you think that there has been a shift in the relationship and the respect between the two Administrations that has potentially damaged both?

**Mr Carmichael:** I think the political drive that came with the 2014 referendum inevitably had an impact on the relations, and I think it will be a long time before we get back to anything like the quality of working relationships that we have had in the past. As long as the constitution remains at the front and centre of the political debate, for anyone of any party, that becomes a divisive issue. It pushes everybody back down into their silos, and it makes moving on in a more collaborative way that much more difficult because it reopens the wounds.

But I am a great believer. I am a Liberal Democrat, so I am essentially an optimist, and I think that time is a great healer. Now that we see a broader range of views emerging from a number of different parties and within the yes movement, I have a sense that there may be scope for us to get away from constitutional identity politics and back towards more ideological politics.





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**David Mundell:** On reflection, I think there was a naive expectation, certainly in Whitehall, that it would be possible to move on after the referendum. That was dispelled the day after, when two things happened. First, those people who had been calling for independence continued to call for independence, despite the fact that we had just had a referendum. Secondly, it was the beginning of a period of conspiracy theory and open mistrust.

As part of the so-called vow, as you may recall, the Government had agreed to table a motion in Parliament, but because Parliament wasn't sitting, it wasn't possible to table the motion. This was immediately identified as bad faith: that somehow the Government had already gone back on their commitments in relation to the referendum and what would happen subsequently. But I do think that the Whitehall machine was probably naive in thinking that the referendum would be definitive, and that we would move on and not discuss these issues subsequently.

Q366 **Michael Shanks:** It is good to see you both; thank you for your time. In your time in office, was it the Scotland Office, the Prime Minister or a combination of both that led on intergovernmental relations generally? Do you think that that has changed over time?

**Mr Carmichael:** It was a combination, frankly, because you would have the discussion within Government about whatever the issue was, and then you would decide how best to approach it—whether you wanted the initiative to be seen to be coming from the Scotland Office, the Prime Minister, the Treasury or wherever else. Sometimes that worked; sometimes it didn't.

The Scotland Office was quite an important part of that whole matrix. There was a very clear determination in Government that the no campaign should win the referendum—that was Government policy—but sometimes when we talk about these issues, language matters, and sometimes it can jar to a Scottish ear, so everything had to be sense-checked. That was a very important part of the work that the Scotland Office did.

What I would say is that within that operation, if David and I had any concerns, we always expressed them; we took them out. I would expect, more often than not, that we would be accommodated in some way.

**David Mundell:** The other player was the Cabinet Office. They saw themselves—perhaps they still do, although Mr Gove has moved an element of that to his Department, DLUHC—as guardians of the overall devolution settlement: the settlements within Wales, Northern Ireland and Scotland, and to an extent within England. They were therefore also part of the picture. I certainly saw that there had been some comments from Professor Ciaran Martin. He was in the Cabinet Office.

There is a legitimate discussion going forward as to the respective roles of the Cabinet Office and the individual Offices for Scotland, Wales and Northern Ireland. My strong view, which I expressed at the time and continue to express, is that the Scotland Office should essentially be the



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guardian of the devolved settlement in Scotland, in the sense of having the repository of knowledge and expertise on it, rather than there being a split between the Scotland Office and the Cabinet Office.

Q367 **Michael Shanks:** Perhaps not surprisingly, when we took evidence from Alex Salmond, he absolutely saw his equal as the Prime Minister, not the Secretary of State for Scotland. Do you think that that is where we have now got to: that the First Minister's relationship with the Secretary of State for Scotland is less important than with the Prime Minister? If so, what does that mean for the mechanics of intergovernmental relations? Does it always have to be at that senior level for things to happen?

**Mr Carmichael:** There is quite a lot to unpick there. This is where we come back to the divergence of personality and policy, isn't it? If I had my federalist ideal, you would have a Department of the nations and regions that would be the guardian of all the devolution settlements, because you would have lost that different speed in different parts of the country, and that asymmetric nature. In the early days, we thought that that might be possible, but we are now some way away from that. We have the territorial Departments for a reason and for a purpose.

David is right about the constitutional responsibility within that list of ministerial responsibilities, and about the Cabinet Office being the guardian of devolution across the whole United Kingdom. That should actually be the concern of every Department. It should be the thread that runs through every aspect of Government policy. It should not just be left to one Department to say, "Oh, but remember that we've got a devolved settlement here." Sometimes that is the case; sometimes not.

In the early days, there was a mindset in Whitehall that when you asked something about Scotland, the stock response was, "Oh, we don't deal with Scotland any more; it's devolved." The quality of drafting of legislation in those early days suffered as a consequence. I can remember some really poor examples. One of the Bills for which I served on a Standing Committee said, "In Scotland and in England, these will be matters dealt with in the High Court." In England the High Court is a court of civil jurisdiction, but in Scotland the High Court of Justiciary is a court of criminal jurisdiction. That was how sloppily things were drafted. I remember that in the Civil Contingencies Bill, there were no powers for Scottish agencies to speak to UK or English agencies. That was a consequence of the mindset that you found in Whitehall.

**David Mundell:** I think you also have to accept that the politics comes into play. We would all acknowledge that both Alex Salmond and Nicola Sturgeon were politicians known UK-wide. I recall Mr Salmond making a great song and dance about the fact that Gordon Brown had not spoken to him.

**Mr Carmichael:** Tony Blair would probably have done the same, in fairness.



**David Mundell:** It was therefore a thing, and Scotland was being done down because Gordon Brown had not spoken to Alex Salmond. There was always a degree of politics in it, and my impression was that both Prime Ministers I served under would always speak to the First Minister if there a matter of import was raised in relation to Scotland. There was never any level of access. If it was clearly a political matter, as it was in 2017 with Nicola Sturgeon's request for section 30 powers to have another independence referendum, it would be dealt with in a slightly different way. If there was some major event or significant issue in Scotland, the Prime Minister was always accessible for the First Minister.

Q368 **Michael Shanks:** On the personalities, whoever we are getting evidence from, it always seems to come back to this. You said earlier, Mr Carmichael, that the best structures in the world mean nothing if people are not willing to make it work. Do you think we have got to a point now where those relationships have broken down and there is not that mutual trust at all any more, partly because we have two Governments—in Scotland and the UK—that do not seem to want devolution to work? What do you think is the route out of that?

**David Mundell:** Like Mr Carmichael, I was reflecting over the weekend. We talked earlier about how perhaps the Scottish devolution settlement had not bedded in as much during the initial period. We have an example in the United States where they have had a system for over 200 years and if there are significant political differences, it still brings the system effectively to a halt and they have these shutdowns. Ultimately, where there are diametrically opposed views and there are political benefits—perceived or otherwise—of creating a dispute, it is always going to be difficult to find a way through, whatever the processes that you have in place. I hope that, in those circumstances, it is incumbent on those involved to take a step beyond the immediate political priority and look for what is in everyone's best interests.

**Mr Carmichael:** Without going into too much detail on who we are talking about and the personalities and all the rest of it, I think it is fair to say—and this is certainly true if you look at both the Government in Whitehall and the Government in Holyrood—that differences often start within Governments. When Governments want to manage internal political differences, the politics quite often takes you to a place where you will manufacture difference between the Governments. I suspect that historians, when they come to write "The Story of British Politics: 2023-24", will identify that as having been a characteristic of how things proceeded at this time.

**Chair:** Christine, do you want to come back in?

Q369 **Christine Jardine:** Yes, something occurred to me about the period of increasing difficulty between the two Governments after 2012.

Alistair, you touched on the fact that it has become all about the politics of identity. We were very proud in Scotland in the first 10 years of devolution that we moved away from the traditional two-party model or three-party model, and we had this rainbow Parliament in 2003 to 2007.



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Then we went back into a much more structured party dynamic settled on very firm lines, which became even more entrenched with the independence referendum. Since that time, it has been really the only issue of debate between the two Governments of any note, and everything else has almost seemed to be subsidiary to it.

As we near the end of both Parliaments and there is a potential for change, do you think we are about to move into a different age, where we will accept that the devolution settlement is the will of the people and start to work more positively again? Are you optimistic about that?

**Mr Carmichael:** I refer you to my earlier comments on the subject of optimism. That will depend on the outcome of the elections across the United Kingdom as a whole and in Scotland. I hope it would, because I do not see devolution as something to be frightened of, and I do not see it as a staging post to something else.

If I have any regrets about the campaign I was part of before the Scottish Parliament was set up, it would be that we did, perhaps, make it too much about the distinctiveness of Scotland, and less about the fact that it was a better way to govern Scotland. For the same reason, I want to see people in other parts of the United Kingdom governed better—I want to see more power taken away from Whitehall and given to communities in Manchester, Newcastle, Birmingham or wherever else. If you see it all on the basis of your identity, you will not necessarily get the best political outcome.

I think one of the weaknesses of devolution, as it has worked in Scotland, is that we now have a system of government in Scotland that is more centralised on a Scotland-wide basis than it ever was in Whitehall. That process of centralisation has galloped on apace. I think it produces much worse outcomes. You know, Scotland had seven police forces, and maybe it didn't need seven, but we are not well served by having just one, or an ambulance and fire service. In terms of the service outcome for the different parts of Scotland, the truth of the matter is that the further away you get from Edinburgh and Glasgow, the worse the level of service becomes.

I speak with some passion because I have just spent the weekend visiting my family on Islay, and I look at the absolute shambles that is Caledonian MacBrayne at the moment. My fear is that the northern isles may just be 10 years behind unless we learn from the mistakes of what has happened on the west coast. You learn from these mistakes only if you engage with the community and you have a Government who listen to what the community say they need, rather than giving them what the Government themselves think they want.

Q370 **Christine Jardine:** Do you think Westminster has become afraid to say what it thinks about Holyrood because of the dynamic in the debate? Should we be more proactive—not in interfering, but in voicing an opinion?

**Mr Carmichael:** What do we mean by "Westminster" here?



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**Christine Jardine:** I mean Scottish politicians who come down to Westminster.

**Mr Carmichael:** My experience is that Scottish politicians of all parties have been fairly relaxed over the years in opining on matters that are not, strictly speaking, within their constitutional responsibility—the eagle-eyed among you will have noticed that I have just done exactly that, spurred on by my experience of talking to my family and neighbours from my childhood. I do not think that is necessarily a bad thing, because we can all bring a perspective to it. However, if that is all you do, you are, frankly, failing your constituents.

When I was elected in 2001—as you were, Mr Chairman—one of the things I felt was that, as the first generation of politicians who were elected to the House of Commons from Scotland not having sat here before devolution, there was a job of work for us to do in terms of defining the role of the Scottish MP at Westminster. I like to think that in our own way, we have done that. Let's just say that keeping predominantly to dealing with those matters that I am elected constitutionally to deal with, I do not find it difficult to fill my working week.

**David Mundell:** I do not want to take us down a tangent in relation to the performance of the Scottish Parliament over the last 25 years. I am disappointed that the excitement and positivity, which was genuinely around in 1999, does not exist any more. I meet few people who are positive not about there being a Scottish Parliament but about what they see it delivering on a day-to-day basis. That is very disappointing. When we were there on the Mound in 1999, the expectation was maybe too high, but it was not that education would crash or the health service would not be recognisable and all the other issues that we see.

One issue, which I know you have tried to raise in the past, Chairman, is that there is still a missing piece in the relationship between the two Parliaments. Joint working has been previously suggested, and joint Committee inquiries. We have dabbled in that. We might come on to the Sewel convention. I felt it should be formalised in Westminster procedures. There is a missing part even in the intergovernmental side of things in terms of MPs and MSPs working together. Obviously, Mr Ross is in the unique position at this time of straddling both Parliaments, but even in terms of accountability for intergovernmental relations, that lack of joined-up-ness by the Parliament is not quite effective.

I remember that, particularly in discussions that involved Mr Russell around European matters, I would report back that we had had a very positive discussion and Mr Russell would report back that the end of the world was nigh because of the malfeasance of the UK Government. But we were not both put up together by our respective colleagues to find out what the position was.

Q371 **Chair:** It has not been for lack of effort from this Committee to try to forge those joint working arrangements and relationships.



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**David Mundell:** No. I acknowledge that you yourself have tried to do a great deal on that.

Q372 **Chair:** I am grateful for that acknowledgment. It is also surprising given that there are now joint responsibilities for a range of social security-related issues and other matters that are now within the joint responsibility of the Scottish Government and Westminster. Perhaps that is something for our successor Committee to look at in the new Session of Parliament to see if these links can be formalised and put in place more vigorously.

I want to come back to the job that both of you guys held. It is surprising that the role of the Scotland Office has received so little attention throughout its 25 years. I think it has changed quite dramatically from our early days in 2001, when we were still getting used to devolution, to what the Scotland Office has become.

When this Committee looked at the constitutional arrangements a few years ago, we suggested that the Scotland Office should perhaps be reviewed. I think we proposed that a place in the Cabinet for all the nations of the UK would probably be a preferable outcome for the management of constitutional affairs. I know that was something that you supported, Mr Carmichael, before you got your feet under the table in Dover House. Is the Scotland Office imperative to the ongoing arrangements of devolution? Would we be able to live without it, as you presumed back in 2007?

**Mr Carmichael:** It would have been an act of recklessness to get rid of it in 2013 when, as you so delicately put it, my feet went under the table in Dover House. In the early days it struggled—I think all the territorial offices did. Over the weekend, I remembered some enterprising journalist putting in an FOI request for Helen Liddell's diary when she was Secretary of State for Scotland and the story of the week was that she had an hour or two every Wednesday for French lessons. We all had good fun with that knockabout sort of thing.

The Government of the day struggled with it in exactly the same way. The Scotland Office was folded in, at different points, with Northern Ireland, with Transport and, I think, with Defence. That illustrated rather well the way in which it struggled to assert its place in Whitehall. When you get to that federalist situation, the existence of territorial offices certainly does need to be looked at again, but for as long as the constitution in Scotland remains a live and dominant issue, it is difficult to see how we get from here to there.

Q373 **Chair:** It is not just this Committee that has suggested that. PACAC, when it looked at it in 2018, said exactly the same thing.

**Mr Carmichael:** Under Bernard Jenkin, yes.

**Chair:** We have had Douglas Alexander and Des Browne at this Committee, who shared their responsibility as Secretary of State for Scotland with other Cabinet responsibilities.



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**Mr Carmichael:** You will remember, Mr Chairman, that when we were both elected, people would say, “Do we really need MPs at Westminster any more?” Then Tony Blair went off and started a war in Iraq and people saw that there was a useful purpose in sending Members of Parliament from Scotland to the House of Commons. That has developed over the years.

When we do get to the point of having an office of nations and regions, though, whatever you call it, it has to be constructed in such a way that if the constitutional issue ever comes to the fore again in the way that it was when we were both there in 2013 to 2015, we have a mechanism that is sufficiently plugged into Scotland—civic life in Scotland, local government in Scotland, and the whole wider range of things.

If I have any criticism of my historical predecessors, it is that they left the stage of public life in Scotland too much. Weeks after I was appointed, I attended the silver medal final at the Royal National Mòd. Bear in mind that this was 2013 and devolution had been around since 1999. An Comunn Gaidhealach told me that I was the first UK Government Minister to attend a session of the Royal National Mòd since the advent of devolution.

Q374 **Chair:** Do you have any reflections, Mr Mundell?

**David Mundell:** I agree that it is very important, as part of the overall United Kingdom settlement, that Scotland has a voice at the Cabinet table. As you say, during the Labour period in office that was done in combination with other Government Departments, but of course in the period in which Alistair and I served the Scotland Office took forward two major constitutional Bills, which became the Scotland Acts of 2012 and 2016, and there was a huge amount of work around Brexit and the subsequent arrangements, all of which in my view justified the role of the Scotland Office.

As Alistair said, part of the job is to be the face of the UK Government in Scotland. I didn’t attend the Mòd but I did visit and meet with every council leader in Scotland, because they hadn’t met with the UK Government in the immediately preceding years. Wherever you sit on these issues, there are a lot of direct relationships between the UK Government and local authorities in Scotland, and establishing those relationships and understanding what is possible has led, for example, in your own constituency to a very productive relationship with the council there. It has led to the development of the museum and other positive things.

**Mr Carmichael:** And city deals, island deals and all the rest of what we have seen in recent years have given a much greater force and purpose to the Scotland Office that just wasn’t there in the early days.

**Chair:** Thank you.

Q375 **Sally-Ann Hart:** Good afternoon, gentlemen, and thank you for coming to visit us this afternoon. I am going to ask a question of David first:



putting aside the political differences, why would the UK's exit from the EU increase the complexity of the devolution settlement, and how did this affect the operation of intergovernmental relations post 2018?

**David Mundell:** It did so because a number of powers and responsibilities that previously had been exercised through the EU were returning to the United Kingdom and we had to understand and evolve a basis on which those powers were to be taken forward, either at Westminster or in the Scottish Parliament. There was a huge list of such powers. I think there were about 155; others will be able to validate that. There was a very large number of powers, responsibilities and changes to the existing arrangements that had to be negotiated through the system, and also in the context of other parts of the United Kingdom, how they would be dealt with in Wales and Northern Ireland.

Q376 **Sally-Ann Hart:** I remember that when we were having conversations in our Select Committees and listening to Nicola Sturgeon at the time, the UK Government were accused of taking away and grabbing powers back from Scotland, but they were never in Scotland in the first place. They weren't automatically powers that would have been given. It was a question of how to govern on a common framework.

**David Mundell:** That goes back to your initial question about setting the politics aside. I am afraid the politics could not be set aside. I would not wish to accuse the Chairman, but I remember one session of Scottish questions where eight SNP MPs stood up to demand that the power grab be reversed—the idea was that there were all these powers that were being grabbed. Of course, subsequent reflection would demonstrate that no such powers were grabbed, but it was the phrase of the moment: “the power grab”. People would say, “The UK Government is trying to take control of Scottish agriculture,” and “The UK Government is trying to take control of Scottish food standards.” I am afraid it is an example of what became an entirely political environment, and in that environment, it is very difficult to explain a highly technical issue against a blanket power grab narrative. That was the backdrop of that period.

A lot of diligent work, it has to be said, by civil servants in Edinburgh and Whitehall took forward many of those really complicated issues: issues about what chemicals could be in paint or food colourings. They took a whole range of very technical issues forward so that they could actually be administered on the basis of a framework. Of course, when push came to shove, there was virtually no difference between the positions that the UK Government and the Scottish Government wanted to adopt in relation to the issue anyway, but it was the political firestorm of the moment: “the power grab”.

**Mr Carmichael:** I think you also have to remember the historical position. In 1997, when the Scotland Act and the Wales Act were passed and the devolution referendums were held, it was the universally shared assumption that the United Kingdom would remain part of the European Union. You see the difficulties that it has caused in Northern Ireland, in relation to the Good Friday agreement, not to have the United Kingdom as



part of the European Union, but there are also difficulties in other parts of the United Kingdom. If you take out some of the processes that you had through the European Union, you must inevitably find a mechanism to compensate for them.

The United Kingdom, as a single market, is massively important for Scotland and Scottish producers of food and drink, and all sorts of industry. But if you think about how you administer that single market in the context of a devolution settlement, where the administration of agricultural policy, for example, is devolved, you must find a mechanism for replicating in some way on a UK scale what you previously had on an EU scale. I do not think that we have got that quite right yet; there is still work that can be done here.

**Q377 Sally-Ann Hart:** But that should not be a problem for Scotland. Scotland does not share a border with the EU, so I fail to see how that is a problem for Scotland. Anyway, moving on—

**Mr Carmichael:** It is a problem for Scotland that you now have things that were decided at an EU level being decided at a UK level, where the people making the decision are also part of the competence, if you like. To go back to my earlier example, DEFRA must be not only the English Government, but the UK Government at the same time. These are not insuperable problems—they are all capable of resolution with some care and good will—but that was one of the consequences of our decision to leave the European Union.

**Q378 Sally-Ann Hart:** Talking about political differences, there is a degree of politics, you say, that came in post-2014. As the UK Government began the legislative process to bring the UK out of the EU, was intergovernmental conflict always inevitable given the political differences between the two Governments over Brexit, or could conflict have been mitigated through closer intergovernmental working? Would it have helped if the SNP, for example, put Scotland and people first, rather than its own political agenda?

**David Mundell:** I understand the point that you are making, but I am very much of the view that it was inevitable. You just need to take a step back from the 2019 general election campaign, where the SNP position was, “Stop Brexit,” and the Conservative position, which was the position of the Government that subsequently formed, was, “Let’s get Brexit done.” There is quite a difference there in terms of what the approach was. The Scottish National party wanted to stop Brexit; I do not think that that is in dispute. It became clear that the process of discussion as to how we did Brexit was seen by some as a way of stopping Brexit by just being as obstructive and unhelpful as possible.

My own reflection on what changed in the discussions is that Mike Russell in particular, who led many of the discussions, ultimately did not have the authority in the discussions to actually reach agreements. On a number of occasions, we felt that we had reached an agreement, and Mr Russell returned to Edinburgh to find that what he thought he might be able to

agree could not be agreed, because it was not politically expedient. It was a very political time, and that was a huge challenge.

To be frank, as I am sure you will want me to be, if you recall in that Parliament, the Government did not have a majority, and that was challenging to any discussion that we had with the devolved Administrations, because the UK Government could not necessarily ourselves deliver what might have been discussed or agreed—it might not have been possible to get that through Parliament. That is a challenging environment in which to be working. If you then throw in a good dose of politics, it makes it even more difficult.

**Q379 Sally-Ann Hart:** I will come to Alistair in a moment, but to follow on from that, the European Union (Withdrawal) Act 2018 was passed without the Scottish Government's consent. Should it have had their consent? How did you as Secretary of State for Scotland represent Scotland's interests in the UK Government during that time?

**David Mundell:** Part of my representing Scotland's interests was that I believed that the Scottish Parliament should have the opportunity to debate the issue, because I felt it was important that everyone got their view on the record, but it became clear that for political reasons there was not going to be a legislative consent motion. In my view—others may disagree—it fell within the “not normal” process, because this was an extraordinary event in terms of the events contemplated by the devolution settlement. As Alistair said, in the initial settlement, leaving the EU was not contemplated. I felt and believed that there was nothing inconsistent in having the opportunity to debate a Sewel motion and the motion being debated in the Scottish Parliament but not succeeding, but the Government then reflected on that and decided that they could proceed anyway.

One of the things that was more unfortunate, which touches on what we were touching on before, Mr Wishart, was that there was not actually enough time to debate that issue in this Parliament. It was unfortunate at the time that the Government's view and why they had concluded that they could proceed without the Sewel motion were not held up to sufficient account and scrutiny at the time, but I think within the spirit and the letter of the Sewel convention of the legislative consent motion, we were right to take the decision that we did.

**Q380 Sally-Ann Hart:** Alistair, putting aside your party's position on EU membership, in the 2018 debate on the EU (Withdrawal) Bill, you said that there had been a lack of good faith in the negotiations between the two Governments—the UK Government and the Scottish Government. How could good faith have been fostered between the Governments? Do you think that it could have been?

**Mr Carmichael:** You will have to remind me of the context. I am sure that they were sage words, but you are testing my recollection.

**Sally-Ann Hart:** Let me go back into my notes. It was to do with the debate—it will take me some time to find it—



**Mr Carmichael:** Let's try to deal with it as well as we can. How does good faith work in politics? It makes all sorts of things possible. Good will—good faith—allows people who genuinely want to find a solution to go out and to find it. Sometimes we manage to do that in politics, and sometimes we struggle to do it. When you have a constitutional issue, whether it is Brexit or Scottish independence, the difficulty is that that becomes the focus of absolutely everything, and the end then starts to justify the means. It is on that question about the means that I am afraid you often see that element of good faith diminishing.

Q381 **Chair:** Let me just help the Secretary of State out here, because I have the quotation.

**Mr Carmichael:** Sadly, I'm not any longer.

**Chair:** It was during the 2018 emergency debate called by the SNP on the EU (Withdrawal) Bill: "The context for this debate is the abject failure of the Scottish Government and the United Kingdom Government to reach agreement. It is apparent to all who look on from the outside that there has been a lack of good faith in the negotiations between our two Governments." Those were your sage words.

**Mr Carmichael:** Sage words indeed. I am sure that they stand the test of time; in fact, in that context, they probably answered the question.

It would have been better if Governments had been able to take the political heat out of the issue, but for a whole range of reasons—the support of the then Government in Westminster wanting to "get Brexit done", as they said, and the Government in Edinburgh seeing "getting Brexit done" as a lever that they could pull to make it easier to achieve Scottish independence—that is where you had that lack of good faith.

If you want to look at the various issues—I have touched on one already—there are ways around these things; there are mechanisms that can be put in place. But if it is more important for you to achieve your constitutional aim than it is to get a working mechanism that gives security and stability for the future to farmers and crofters, I am afraid that that is where you get taken to.

Q382 **Sally-Ann Hart:** Or to deliver on a decision that the majority of the public—not in Scotland, but in the UK in general—made.

I have one question that is not related to the EU, which I put to both of you. Standing back and looking at devolution, whether it is mayoral or Scottish devolution, it is very easy for the Scottish Government, let us say, to never have to take responsibility or account to Scottish voters for decisions or failures in education or in the NHS, for example, and to blame the UK Government. How do you think the Scottish Government could better take responsibility or have to account to Scottish people for the decisions made, so that they are not always let off the hook by blaming the UK Government?

**Mr Carmichael:** Do you want to kick off or shall I?



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**David Mundell:** Obviously, if Mr Ross was leading the Scottish Government, it would be in a much better position in relation to these issues. I don't necessarily agree with the question, in the sense that the Scottish Government are accountable in elections in Scotland. I think the whole "Scottish Government good, Westminster Government bad" thing—you know, "The pothole in my street is Westminster's fault"—has worn thin and I think the public in Scotland have seen through that and are demanding, certainly from the people I speak to, to know how the decisions of the Scottish Government are taken, why they have taken them and what their agenda is compared with what people's real priorities are.

**Mr Carmichael:** I think your question reflects a frustration that we have all felt at times and it's not unique to the SNP Scottish Government; I remember the early days of the Tony Blair Government having exactly the same phenomenon. I would reflect that those in politics who start off as Teflon tend to end up being Velcro, and they pick up absolutely everything. You go from a state where nobody gets blamed for anything to a state where they are blamed for everything, but that's true of politics as a whole.

I would challenge your assertion, though, that the Scottish Government are not accountable. Certainly, the conversations that I had over the weekend with people I was at school with on the subject of ferry services to the west Highlands suggest very much that they are and will be accountable. Indeed, I would just observe in passing that, if they were not, we would not have Mr Shanks sitting among our number today.

**Chair:** Indeed, there is the Scottish Parliament and Scottish democracy.

**Sally-Ann Hart:** Thank you, Chair, and I hope I didn't offend you.

**Chair:** No, of course you would never offend me, Sally-Ann—of course not.

**Douglas Ross:** Good afternoon to our witnesses. I want to pick up on a number of things that have been said so far today. Perhaps I could begin with you, Mr Mundell.

A lot has been said about personalities, and just before we moved into the public sitting, this Committee was informed that one of the personalities involved—Nicola Sturgeon—contacted the Committee late last week to postpone her appearance next Monday. She is someone we definitely want to hear from, but for reasons certainly outwith her control, she will not be attending next Monday. However, you served in Parliament with her from 1999, when you were both in Opposition. You would have viewed her from Westminster when she entered Government as a Minister, and she was the First Minister during your initial period as Secretary of State for Scotland. She is the only First Minister you dealt with—I think that is correct. How did you view your relationship with Nicola Sturgeon, and how did things change, if at all, during her time in office and your time in office?



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**David Mundell:** I hope that she will give evidence to the Committee, because obviously she has been a very significant part—

**Chair:** Just for clarity, that was discussed in a private session, and I would have hoped for the confidence of that conversation to be maintained. But, just for the record, Ms Sturgeon has agreed that she will come to this Committee when she becomes available.

**Douglas Ross:** In fairness, that wasn't confidential, and it certainly would have been public next Monday when there was an empty chair, so I do not think we are breaking any confidences in saying that. Perhaps Mr Mundell can continue.

**David Mundell:** In any event, I think it is very important that she does attend, because she has a lot to contribute to this discussion and debate—probably contrary to some of our respective contributions. I found initially that she was a very professional person to deal with and that we could do business. I gave the example of the discretionary housing payments in relation to the so-called bedroom tax. I attended a number of events—I always attend a number of events—with her, and in those situations, she was always very professional, and I think we worked respectfully together.

Post Brexit, I think we did see a significant change. We saw this period of Scottish exceptionalism develop, so that everything had to be different and dealt with differently in Scotland. We had a period of obstruction, really, in relation to the Brexit decision and implementation, and generally an environment of just making things as difficult as possible for the UK Government. I do not dispute that, as a politician, you may wish to do those things, but it became an almost entirely political environment rather than one that was focused on outcomes that, certainly in my view, would benefit people in Scotland.

Q383 **Douglas Ross:** Just to reiterate for our inquiry, you are saying that there was a change so that it got progressively worse?

**David Mundell:** It became progressively more challenging to deal with the First Minister.

Q384 **Douglas Ross:** Would you say, then, that the revelation when the covid inquiry met in Scotland that there were discussions between Nicola Sturgeon and her chief adviser, Liz Lloyd, who suggested that they have “a good old-fashioned rammy” with the UK Government, is indicative of what you were seeing after that period?

**David Mundell:** I was certainly witness on a couple of occasions to rammies that involved the UK Government. As Christine Jardine said, it was all playing into a “UK Government bad, Scottish Government good” narrative, rather than asking, “What we are actually trying to do here? What is the outcome we want to achieve?”

In relation to Brexit, I held a meeting a day after the referendum with Fiona Hyslop, who was then the European spokesman in the Scottish Government. We had a discussion about whether it would be possible to



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move forward on a constructive basis. At that meeting, I was rather hopeful that that might be possible. Simultaneously, however, Nicola Sturgeon was appearing in a press conference to announce that we needed independence to defeat the outcome of the Brexit referendum, so almost from that first day the politics overwhelmed the situation.

**Q385 Douglas Ross:** To ask about the personalities, you mentioned earlier that you had good relations with John Swinney, but I noted down your saying that during a number of your discussions, Mike Russell did not have authority, so was that Scottish Government Ministers coming to negotiate with UK Government Ministers, potentially agreeing in principle, but then going back to the First Minister and not being able to progress what had been agreed?

**David Mundell:** That was my impression. We had previously proceeded where Ministers came with a remit, something was agreed and we moved forward. Obviously, there were Ministers there from Wales, and sometimes Ministers and sometimes officials from Northern Ireland. We expected those discussions to be a decision-making forum, but certainly the impression was given that the decision maker for Scotland was not in the room, but back in Edinburgh.

**Q386 Douglas Ross:** Earlier, you were discussing with Sally-Ann Hart a “power grab”. Obviously, there could not be a power grab, with the legislative and such like authority never lying in Scotland, but in some of the transfer of powers from the UK Government and this Parliament to the Scottish Government and Scottish Parliament, not all of the powers were immediately taken up. Did you find some cases strange? Powers were requested and transferred, but were not fully utilised—I am thinking about social security, when the Scottish Government were not able to get the procedures in place to deal with those additional powers.

**David Mundell:** Those social security powers came with the Scotland Act 2016. By the time that situation unfolded, no, I was not surprised, because I had been, for example, in a meeting where there was a rammy about how the Scottish Government must be transferred the powers for personal independence payments “today”. That was about 2017 or 2018. Now, we are essentially still waiting for that whole system to evolve. At that time, because of the politics, the demands were, “We must have this now,” “We must do this right now,” “We are ready to do this,” but as events unfolded, it became clear that there was not the capacity, the will or the priority to do those things. They had been noise, rather than a determination to take them forward.

**Q387 Douglas Ross:** Before I come to Mr Carmichael, throughout this session and previous ones, we have heard about the three blocks in the past 25 years: Labour in Government at the UK and the Scottish level; a minority then majority SNP Government and the independence referendum; and Brexit. There was, however, a brief period when, Mr Mundell, you were the Under-Secretary of State for Scotland, and there was still a Labour-Liberal Democrat coalition at Holyrood—sorry, no, that was from the election in 2005. As a Conservative MP representing a Scottish



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constituency at the time, how did you find having a Labour UK Government and a Labour-Liberal Democrat Scottish Executive? How different is it now for you, still being a Conservative MP but having a different UK Government and a different Scottish Government?

**David Mundell:** Obviously, things are better because we have a Conservative UK Government. I am sure there were reasons why the settlement was evolving at that time, but it was very clear in that period that Gordon Brown was a very significant player in relation to what happened in the Scottish Parliament and what happened in the Labour party in Scotland; I don't think many people would dispute that. Therefore Scottish Labour MPs didn't stand up and say the Scottish Parliament needs to have this happen or that happen; it was dealt with within those channels. I think that may be part of the issue that Alistair touched on: a lot of these issues were not as explicit as they are now.

Now, the Scottish Government make some pronouncement about unhappiness with the UK Government. Mr Wishart, Mr Brown and their colleagues make these points in Parliament as others have done in the past. However, in that period, the things that were causing tension—there was obviously tension over free personal care—weren't out in the public domain for them to be raised in this Parliament. In fact, the impression conveyed—other than by some of Mr Carmichael's more independent-minded colleagues—was that everything was sweetness and light.

Q388 **Douglas Ross:** Mr Carmichael, may I come to you now?

**Mr Carmichael:** I have no idea which of my grumbles you are talking about!

**Douglas Ross:** Indeed. You mentioned the mindset in Whitehall—

**Mr Carmichael:** In the early days.

**Douglas Ross:** —that they didn't deal with Scotland any more. Was it specifically in the early days? Did it continue? Has it got better? Has it been fully resolved, both looking from within Government, in your time as Secretary of State, and looking now, as an Opposition Member?

**Mr Carmichael:** We sort of ran the whole gamut from those very early days, when the mindset in Whitehall was, "Why are you asking me this? You've got devolution." Even in the civil service, they didn't always understand that they needed to have an understanding of Scottish institutions, law and whatever else.

Then you went from that extreme not to another extreme but to a position, in the time of the Scottish independence referendum, where, yes, everything did need to be looked at with one eye on Scottish independence, or the possibility of independence as a consequence of the referendum, and everything was seen through the prism of that. Things that would otherwise have been sensible, fairly routine administrative things—I gave you the example of ROCs closing and being replaced by CfDs; another would be the management of transitional funding under the



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CAP for Scottish farmers—became political. There was no such thing as an apolitical issue at that time; everything became political. It was like that Radio 4 game Mornington Crescent, where you always come back to Mornington Crescent. Whatever the question, the ultimate answer was always going to be Scottish independence.

Q389 **Douglas Ross:** One of the criticisms coming now from the Scottish Government is about when the UK Government spend money, in their view, in devolved areas. I am thinking of your own constituency, for example, and the Fair Isle ferry. Maybe this is not so much devolved because there are reserved and devolved competences, but obviously SaxaVord got money in the recent Budget. How is that investment viewed by your constituents? Do they really care who is paying for it, or do they just want to get that investment? Indeed, is it welcome when it comes from the UK Government because after years of waiting they have not received that funding from the Scottish Government?

**Mr Carmichael:** It is certainly welcome. Who doesn't want investment in their own community?

**Douglas Ross:** Well, it sounds like some SNP politicians don't.

**Mr Carmichael:** They can answer for themselves. You have touched there on two particular projects. One is the creation of the SaxaVord spaceport, which is enormously important from the UK perspective. It is a strategically important initiative for the whole United Kingdom, so of course it is entirely appropriate that it should be given funding from the UK Government. But if there is any money to be coming from Edinburgh, we will take it very cheerfully from them too. A canny community can play on the creative tension that there sometimes is between the Scottish Government and the UK Government.

You have offered two examples already where I have been part of local initiatives that have brought money. Let me remind you of a third. We had the situation where Shetland had a historical housing debt that was crippling our ability to run our own housing and to provide housing for our communities that we really needed. There were historical reasons for that. The money used to go—this is how the Treasury works, as you know—from the Treasury to the Scottish Government specifically with strings attached so that it went to councils to pay off their housing debt. These strings were taken off at one point, and the Scottish Government stopped giving us the money to service our housing debt. Any time we raised it, we just got a de plano no: "You made the choice not to do the stock transfers that other places did, so get on with it."

It was a £40 million debt. We were able to get £10 million from the Treasury, and because of the time at which it came, having had this de plano no for years, I think it took about 40 hours to get £10 million out of Holyrood. That is sometimes how it works. If you can get money for your community, then you should. It is part of what we are elected here to do.

Q390 **Douglas Ross:** I can cite the Cloddach bridge in Moray as a local





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example.

I want to look at a couple of issues within the Scotland Act. I will ask you both but start with you, Mr Carmichael. Obviously, everyone is suddenly an expert on section 35 of the Scotland Act. During your time, did it ever come across your desk that there may be a need, a requirement or even a reason to look at invoking section 35? We know it had not been invoked up until the current Secretary of State used it, but was there any time during your period as Secretary of State that you looked at that?

**Mr Carmichael:** I would hesitate ever to describe myself as an expert, especially in matters of law since I am now 23 years away from any legal practice. I am not an expert, but I had read the Scotland Act. I knew it was there. I had always imagined that it would be for something fairly fundamental—for example, if the Scottish Government tried to remove a military base, or something of that sort. I was aware that it was there. I can say without hesitation that it was never mooted as an option in my time.

Q391 **Douglas Ross:** Do you agree with the decision taken by the Secretary of State to invoke it on that piece of legislation?

**Mr Carmichael:** Well, the courts have said that he was right to do it and who am I to argue with the courts?

Q392 **Douglas Ross:** So it was correct?

**Mr Carmichael:** He took a challenge, presumably on advice. I thought it was politically not something I would have rushed to myself. I would have preferred to find an accommodation if that had been possible. As a recovering lawyer, I always know that courts should be taken as the last resort, because apart from anything else, the only people who ever really benefit from it are the lawyers.

Q393 **Douglas Ross:** Mr Mundell, what about during your time in office?

**David Mundell:** There was probably more consideration of these provisions because there was a period of discussion of whether the Scottish Parliament itself could instigate a referendum and the UK Government were clear that they could not. I think at one stage a Bill or a draft Bill was produced in relation to that referendum, so there was consideration of how the UK Government would respond if the Scottish Parliament took forward a Bill on holding an independence referendum, which we did not believe was within the power of the Scottish Parliament. So I was familiar with it.

Q394 **Douglas Ross:** Another area that we have looked at as part of this inquiry is the dual role of the Lord Advocate in Scotland. I think both of your parties in Holyrood are committed to changing that. There have been consultations; the Scottish Government have been consulting on it for some time. It would take an amendment to the Scotland Act here to do that, despite the historical differences.

What is your view now, reflecting back on 25 years of devolution? While you were Secretaries of State, did you at any time consider looking at



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separating the role of Lord Advocate, who is in the Cabinet of the Scottish Government and is head of the Crown Office and Procurator Fiscal Service in Scotland?

**Mr Carmichael:** We didn't, not least because we were not asked to. It is always the case in any constitutional set-up that you sometimes come across things that are messy but work. As long as they are working, people tend not to interfere with them.

As the years have gone on, the tension within that dual role as head of the prosecution service and as a Government legal adviser has become more acute. I still think it would be best done at the behest of the Scottish Government. As you say, it would constitutionally require to be done here. I think the cost-benefit analysis, politically, of a change like that being initiated from the UK Government would come down on the side of the cost rather than the benefit.

Q395 **Douglas Ross:** I think the current Secretary of State has said that if there were a request from the Scottish Parliament he would look at it, but he would not do it proactively.

Part of this conflict has come to the fore again just today. We have heard, while we have been sitting, that Northern Ireland will be included in the Post Office exoneration legislation that goes through here, but it is a very different legal set-up in Scotland. We have the strange position where the Scottish Government's position is to be part of this Bill, but the Lord Advocate's position is very much against mass exoneration. I do not know how you could square that circle.

**Mr Carmichael:** Well, she is bound by collective responsibility. That is for her to answer, not me, but like you, I have struggled to see what the answer would be.

It comes back to a point that I made right at the start about the balance to be struck between process and outcome. You need the process, so that if the personalities do not work well, you still have a process on which you can rely.

The position with the Post Office exonerations is now quite a sensible one, because the outcome will be the same for people who have been convicted in Northern Ireland as in the rest of the United Kingdom. There is a particular need in Northern Ireland to have a 12-week consultation for legislation of that sort, quite apart from the fact that they have just got the Assembly back up and running and are not short of things that they need to do because they have not been doing them for the last few years. The Scottish Parliament is not in that position. It has overseen a series of prosecutions. Granted, the blame for the Horizon scandal as a whole lies fairly and squarely with the UK Government for the last 20-plus years, but this is not about the Horizon scandal as a whole; it is about this one element of it.

I feel strongly that the whole sorry mess of the Post Office Horizon scandal has been allowed to arise because of poor accountability. The people who



need to be accountable for this must be those who took the decision, and they are accountable to the Scottish Parliament in Edinburgh. They should be getting on and doing the legislation so that the victims are not left in the same position in Scotland as they would have been in Northern Ireland and having their convictions quashed later. If there is a conflict between the Lord Advocate and the rest of the Scottish Government, that is for them to resolve, but it must not allow the victims of these wrongful prosecutions, as I would see them, to be treated worse than victims in other parts of the United Kingdom.

Q396 **Douglas Ross:** Mr Mundell, what is your view on the dual role?

**David Mundell:** Obviously any change to the Lord Advocate was not part of either the Calman commission or the Smith commission—and the Smith commission was a fairly eclectic bunch of changes—but I think that that is because the Lord Advocate was not in the same position of political disability that they are in now. When I was in the Scottish Parliament myself, the Lord Advocate rarely appeared in proceedings. There is a perception that the role has become more political. My view is that you need to deal with that perception, but it is a decision for the Scottish Parliament to make and the UK Parliament to follow through on.

**Mr Carmichael:** Bear in mind also that there were other changes happening to the way in which the Lord Advocate and Solicitor General were both appointed and to the sort of people who could become the Lord Advocate and the Solicitor General. Again, I declare an interest: Elish Angiolini was my first boss when I was a trainee solicitor. She went through the civil service route, became a solicitor advocate and then she was first Solicitor General and then Lord Advocate. She was a very strong personality doing really good, progressive and inclusive things within the legal establishment. I think that that was where the attention lay, at that point, rather than the constitutionally messy position, which for all its difficulties still worked quite well. If it stops working, though, that is when you have to change it.

Q397 **Douglas Ross:** Mr Mundell, you said earlier that you did not want to be taken on a tangent to discuss the Scottish Parliament, but because I have asked other witnesses, I will ask you both this: in your reflections 25 years on from devolution, do you think that the Scottish Parliament has met the aspirations not just of the people who set it up through the legislation, but of the people of Scotland? I think earlier you said “perhaps not”, Mr Mundell—not its existence, but how it has performed.

What could change about the Scottish Parliament? With the extensive experience that you both have in elected office, do you think that it could take models from here in Westminster or elsewhere to improve the scrutiny of the Government in Scotland, alongside what we do here with the Scotland Office and the Scottish Affairs Committee, and improve the workings of the Parliament itself?

**David Mundell:** In some senses, I don't think it is for us to tell the Scottish Parliament how it should conduct its own internal proceedings. I was very much in support of following some processes here, such as



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Chairs of Committees in the Scottish Parliament being elected and paid. I think that that would be an improvement. When I was in the Scottish Parliament, there was huge interchangeability between Committee Chairs and ministerial office. The Chairman of this Committee has been Chairman for a significant period.

**Chair:** Three successive Parliaments.

**David Mundell:** And you are elected—or not even requiring election—

**Mr Carmichael:** Acclaimed.

**David Mundell:** Yes, acclaimed. I think that one of the previous Presiding Officers was very keen to take that forward, but that the First Minister, who may appear at a subsequent evidence session, was not so keen. Perhaps that is something that she might be asked.

There are things that can be learned, as I think Alistair alluded to at the start. At the very start, there was a view that we should do absolutely everything differently from Westminster for the sake of being different. One of the earliest and most contentious debates in the Scottish Parliament was whether we would have a prayer or time for reflection. Surprisingly to me, Donald Dewar was against that because he thought it was too Westminsteresque. My late colleague Sir Alex Fergusson pursued the argument that we should, but in a different and positive way so that there was time for reflection, with different faiths coming in from different parts of Scotland.

The mode or mindset that everything must be different needs to be fully repudiated. I think the Scottish Parliament should continue to reflect on how the procedures work. It does have to deal with perception, because we see from opinion polling that a growing number of people are unhappy with the Scottish Parliament. I still have a glass half full view; it is one area in which I share Mr Carmichael's optimism. The Scottish Parliament can and should be a force for good, but it has to reflect on people's priorities and move on from this constitutional obsession and from focusing on niche issues that exist in the mind of a metropolitan elite rather than of the people of the whole of Scotland.

**Mr Carmichael:** I think it was Enoch Powell who said that all political careers end in failure. The same is probably true of all constitutional innovation: it is never good enough. Whatever we get, it is never going to be good enough, because we live in an imperfect world.

On the points that David was talking about, it is curious that people in Scotland—if there is any data to support this—would somehow or another criticise the Scottish Parliament when they have a dislike of things being done by the Scottish Government. But in fairness, I suppose that that happens here from time to time.

This whole question about, "We cannot do anything that is done at Westminster," is dangerous. You risk being defined by someone else if you say, "I will do nothing that they do," just as you would be if you said, "I



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will do everything that they do." This place needs massive reform, there is no doubt, but there are some things that work well.

One of the things that works quite well, dare I say it, is the Select Committee system. The Committee system was one of the things that worked quite well in the early days of the Scottish Parliament, but I see it as something that is now creaking. Again, it comes down to personality. A lot of it seems to depend on who is in the Chair. One of the significant changes that we have brought into our procedures here was to hand the election of Select Committee Chairs over to Members as a whole. That has been a good thing. If our colleagues in Holyrood were to look at it, they might find that there was quite a lot to recommend it for them too, but that is their decision.

Q398 **Alan Brown:** Apologies for being late: I was getting tooth roots extracted, so I am in much more pain than anything I can inflict on you guys, you will be pleased to know. Mr Mundell, you were Under-Secretary at the Scottish Office from 2010 to 2015, I believe.

**David Mundell:** That's correct.

**Alan Brown:** When you started there, was there any feeling that it was chronically understaffed?

**David Mundell:** I think it was staffed for the responsibilities that it carried out. Earlier in the discussion, we touched on the changing nature of the Scotland Office and the activities of the Secretary of State for Scotland. It was staffed for the responsibilities and the way of operating that were then in place.

Q399 **Alan Brown:** Can I put the same question to you, Mr Carmichael? In 2010, the number of staff at the Scotland Office was 92. That increased to 111 by 2015, which is an increase of 21%. In this Parliament, it has gone up again: it is now over 130. That is a 40% increase since 2010, and yet we have had two further rounds of devolution since then. Does it surprise you that there are now so many staff there, even compared with your time?

**Mr Carmichael:** In my time, we absolutely needed all the extra staff we had. We brought them in from across Whitehall and they performed a very important function. That is a consequence of the fact that we had a changed political landscape at that point.

I don't know whether you were in the room to hear what Mr Mundell said, but subsequently the nature of that relationship has changed. I don't want to put words in David's mouth, but essentially he said that there was an element of disagreement for the sake of disagreement. If you are telling me that the consequence of that is more expenditure for the taxpayer on the civil service, I am not massively surprised.

Q400 **Alan Brown:** But when you left office, you didn't think, "We're short by 20 staff here: another 20% increase will be needed"?



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**Mr Carmichael:** A lot has happened since I left in 2015. Quite apart from anything else, we have exited the European Union and we have had all the challenges of dealing with a pandemic. Before you arrived, some reference was made by Mr Ross to an exchange between Nicola Sturgeon and Liz Lloyd, which characterised an approach to intergovernmental relations involving a good old-fashioned rammy. If that is how you do your politics, inevitably it affects how government operates and how government has to operate. I don't know why those extra staff are there. If Mr Jack comes to your Committee, doubtless you can ask him and he will demystify it.

**Alan Brown:** My question was whether you thought there was a need for 20 extra staff when you left office.

**Mr Carmichael:** I only knew the need that there was when I was there. I was certainly satisfied that the staff we had were sufficient, and they were very good, effective staff. A lot of things happened after that, and other people have to decide what is appropriate to meet those needs. If the needs change, your staff will change.

**David Mundell:** I argued for additional staff, and therefore I am pleased that additional staff were delivered. I felt that as the Scotland Office role evolved—for some of the reasons that we have talked about, such as ensuring that people had the expertise required, for example in relation to the devolved settlement and to supporting what were then city and growth deals but now come under the heading of levelling up—more staff were required to take that forward.

Q401 **Alan Brown:** I will move on. Changing tack slightly, Mr Mundell, when you were Secretary of State for Scotland, the now Lord Cameron cut onshore wind farms from the CfD process as part of his “cut the green crap” agenda, but Scotland had massively developed an onshore wind regime and had embraced renewable energy. Energy Ministers at the time were looking at whether sites based in Scotland could still access subsidies, even though clearly the UK Government policy was to have no onshore wind farms in England.

**David Mundell:** Yes.

Q402 **Alan Brown:** It was suggested that you opposed that and refused to release any memos or internal documentation, even under FOI. I was involved in trying to find out answers to that. Is that an appropriate use of your position, when you in effect blocked the UK Government and the Scottish Government from trying to work together to allow renewable energy development in Scotland?

**David Mundell:** The difference between the positions in England and in Scotland is that in England communities have a key role in determining whether onshore wind takes place. That is not the case in Scotland. The vast majority of those decisions are made by the Scottish Government. A large proportion of those overrule the views of local authorities and local people. We did not have—

**Alan Brown:** That's your opinion.



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**David Mundell:** Well, you've asked for it. That is why I am here: to give my opinion. You may or may not agree with it, but that is the context of the decision making.

Q403 **Alan Brown:** So in your opinion it was valid to block onshore wind farms in their entirety in Scotland.

**David Mundell:** If you look back, you will see that onshore wind farms in their entirety were not blocked in Scotland. A very significant amount of onshore wind in Scotland went ahead without taxpayer subsidy.

Q404 **Alan Brown:** You don't regret that? You don't think it was an abuse of your position to block fellow UK Government Ministers?

**David Mundell:** I regret that people in Scotland do not have the same influence on whether there is to be a large-scale wind farm in their community as people do in other parts of the United Kingdom. I think there should be a consistent approach across the United Kingdom on that issue.

Q405 **Alan Brown:** Do you think that Westminster should make further laws to cover renewable energy development?

**David Mundell:** Mr Brown, I think that you are going down exactly the route of the conversation that we have had for the past two and a half hours, where we are identifying, "Scotland good, Westminster bad." I hope that the conclusion that the Committee has drawn from Mr Carmichael's and my evidence is that that is not a very productive way to take matters forward for Scotland.

Q406 **Alan Brown:** I will jump tack again. Mr Carmichael, you were in coalition with the Conservatives. The big controversial moment for the Lib Dems was the increase in the tuition fees from £3,000 to £9,000 per annum, which went against the Lib Dem pledge. Were there any internal discussions about the pressure that that might put on Scottish universities, given the different funding models and what that £9,000 meant? Were there even any inter-Government discussions?

**Mr Carmichael:** It is interesting that you talk about internal discussions, because I discussed this recently with Lord Wallace of Tankerness. He said that the Liberal Democrats and the Labour Scottish Executive, as it then was, made the decision to abolish tuition fees in Scotland on the very clear understanding that the funding for higher education in Scotland would be maintained. The consequence for so many young people in Scotland now is that they cannot get access to the high-tariff, highly subscribed courses. I speak with some passion here, as my own son is just finishing a degree in veterinary medicine at Bristol University, because the subject choices that he made meant that he was not eligible even to be considered in Scotland.

The fact that the funding levels that were given to Scottish higher and further education by that Executive have not been maintained by subsequent Scottish Governments has created problems. But if you create



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a problem for yourself, Mr Brown, you have to solve it for yourself; you cannot just look around for somebody else south of the border to blame.

Q407 **Alan Brown:** So you never thought that any of these pressures would come from that decision?

**Mr Carmichael:** Of course we knew, but there are priorities and decisions to be made, and the decisions that your colleagues in Edinburgh have made have been to salami-slice the funding, especially of colleges but of higher education as well. If that is the decision that you and your colleagues made, then it is one for which you have to be accountable. You cannot just turn around and blame Westminster all the time. If there is a problem with Scottish politics and the standing of Scottish politics, I am afraid that that may well be at the heart of it.

**Alan Brown:** Right: so it is the Scottish Government's fault about the implications—

**Mr Carmichael:** It is the Scottish Government's decision to prioritise the spending of the money that they have. They have chosen other priorities.

Q408 **Alan Brown:** When you were involved in leaking the memo in which the French ambassador was supposed to have said that the SNP and Nicola Sturgeon would prefer a Conservative Government to come into power in 2015, did you have any thoughts about what that would mean for inter-Government relations, or was it just a political tool?

**Mr Carmichael:** That has all been fairly well debated. It was the subject of two days in the election court; I do not think that there is a great deal I can really add to that. Others would speak to whether it did have any impact on inter-Government relations. I have certainly never heard it suggested that it did.

Q409 **Alan Brown:** That did not factor into the thought process at the time?

**Mr Carmichael:** I don't really think that there is an awful lot more that I can say to help you there, Mr Brown.

**Chair:** If we could stay on what we are trying to discuss here—

**Alan Brown:** I think that with inter-Government relations there is a very significant potential impact.

**Chair:** Have you any further questions, Alan?

**Alan Brown:** I am tempted to ask more, but I can draw it to a close.

**Chair:** Christine, do you have any?

**Christine Jardine:** No, there is nothing I want to add.

**Chair:** I am keen to let you gentlemen get away by 5 o'clock. Thank you both for your time and attendance this afternoon. I think there were a couple of things you said you might get back to us on; I cannot really remember or recall. For today, thank you very much for your attendance





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and participation. I hope you enjoy the report once it is produced.

**Mr Carmichael:** I shall read it with care.