



Scottish Affairs Committee

Oral evidence: [The Referendum on Separation for Scotland](#),

HC 140-xx

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Members present: Mr Ian Davidson (Chair); Mike Crockart; Graeme Morrice; Pamela Nash; Sir James Paice; Mr Alan Reid; Lindsay Roy

Questions 5179 - 5318

Witnesses: **Right Hon David Lidington MP**, Minister for Europe, Foreign and Commonwealth Office, gave evidence.

Q1 Chair: Could I start this meeting of the Scottish Affairs Committee by welcoming you here, Minister? I understand there was no Scottish Office Minister available today, and we agreed that we would go ahead without them in the circumstances. We understand that normally all these papers have been drawn up in consultation with the Scotland Office, which is obviously playing a major role in all of this. Could I start off by asking you to outline for us what you believe the benefits are to Scotland of being part of the European Union as part of the United Kingdom?

Mr Lidington: I would start with questions to do with voting weight and influence. If we look at representation in the qualified majority system of the Council of Ministers, the United Kingdom, as one of the large member states, gets a significant weighting. The smaller countries find that with far fewer votes they have to struggle harder if they want to try to assemble either a qualified majority for or a blocking minority against a particular proposal.

Secondly, I would point to particular examples where the United Kingdom, taking full account of and representing forcefully the interests of Scotland, has achieved significant results that have benefited Scotland. I would cite, for example, the consistent approach that we took as a UK Government in getting the EU as a whole to resist unfair subsidies to Norwegian salmon that were in competition with Scottish salmon. I look at the way in which we ensured that the interests of Scotch whisky producers were taken into account by the EU as a whole in its European negotiations with other countries, such as Singapore and Korea, over free trade agreements.

I think there are good examples of where the UK has used its influence and weight within the European Union to Scotland's particular advantage, and it remains the case. If

we look at the recent negotiations on mackerel quotas, the UK Government are always very alive to Scottish interests, as much as to the interests of any other part of the UK, and we press those interests as part of the UK position.

Q2 Chair: Surely, the Scottish case would have been so strong on things like Norwegian salmon and Scotch that they would have won their case anyway, and being part of the UK was not necessary for the victory on those issues.

Mr Lidington: From my experience over the last four years of attending Council meetings and dealing with the European Parliament and with the Commission, it is a fact of life that the larger member states are the ones who, for the most part, tend to make the weather. You will usually find that in practical terms small member states look for allies among the bigger players to try to get something they want. It is by no means guaranteed that a particular interest will triumph without the forceful representation and the leverage that membership of the UK provides.

Another point is that in terms of diplomatic coverage the UK maintains a large presence in Brussels through the UK permanent representation. Staff there deal all the time with the Commission and the Council secretariat, and have staff particularly assigned to working with MEPs from all member states, especially those with chairs or rapporteurs on committees that matter to UK interests. We have full embassies in every single one of the other member state capitals, so we keep abreast of what those Governments are thinking and saying. We talk to them and try to persuade them of the importance of UK, including Scottish, interests. One of the challenges for Scotland, were Scotland to become an independent country, would be setting up from scratch an entire diplomatic network in Brussels, in Europe and, for that matter, globally that would reproduce the sort of representative coverage that the UK provides already.

Q3 Chair: Surely, in the same way as the armed forces would be divided by people choosing which one to serve with, Scotland would not be starting a diplomatic service from scratch. There would be Scots in the diplomatic service at the moment who would want to serve a separate Scotland. There is no reason why a separate Scotland should not be able to intervene on the sorts of issues it wanted to just as vigorously by doing it directly as it does by doing it via the UK. Surely, the argument would be that by doing it on their own behalf, rather than getting somebody else to do it for them, they would have more impact.

Mr Lidington: Clearly, if Scotland became independent, it would be open to members of the UK diplomatic service who wanted to volunteer to go and work for a Scottish diplomatic service to do so. Obviously, it would be a much smaller number of posts than would be possible under the UK network, but they certainly could not and would not be compelled so to do. I think there are important questions for the Scottish Government to answer about how many posts they would plan to have around Europe and the wider world. Do they envisage that they would have representation on the same scale as, for example, Denmark with 78 embassies, compared with the UK's 267 worldwide posts, Slovakia with 68 and Ireland with 55? Those are other small European member states. It is for the Scottish Government to say how they would fund the start-up costs of such a diplomatic network and how extensive or small such a network would be.

You are right, Chair. Of course, the Government of an independent Scotland would be free to argue the case for its interests in the EU, on the assumption that an independent Scotland were accepted as a member of the EU, which we may come on to later. On that assumption, for the sake of argument, Scotland could put forward its interests, of course, in just the same way as other smaller member states do. My experience of the way the EU works in practice is that the greater leverage, voting power and representation that the large member states—the UK, Germany, France, Italy and Poland—have means that they are more able to make the political weather, and better able to defend and advance their national interests and set the EU agenda, than are smaller member states.

Q4 Sir James Paice: Can I take you back to your answer about the benefits of Scotland being part of the UK within the EU, and play devil’s advocate? One area where the Scottish Government argue vociferously that they could do better is in the context—you will not be surprised to hear me say it—of the CAP, where it is no secret that the Scottish Government did not share the objectives of the UK Government in the recent changes. The present Minister in Scotland consistently says, effectively, “We would have got more subsidy for Scottish farmers if we had been acting separately.” How do we respond to that?

Mr Lidington: I do not think that is borne out by the evidence, partly because, as I said previously, the larger member states are the ones that tend to set the agenda, but also because the Scottish Government in making that case overlook the very significant questions about the common agricultural policy that would have to be addressed in trying to set the terms for any accession by an independent Scotland to the European Union. When the countries of eastern and central Europe were admitted to the European Union, there was a big argument and negotiation in 2004 and 2005 about how quickly they should be given access to their full entitlements under the common agricultural policy. What was eventually agreed in the 2005 multi-annual budget settlement was that they should transition gradually over a long period of years towards full entitlement. Even the terms of the 2014-20 multi-annual financial framework do not provide for those countries of central and eastern Europe to get to their full entitlement. For Scotland to be accepted as a new member of the European Union would require every single one of those countries to agree a view about the terms under which Scotland should receive agricultural payments. It would be asking a lot of a country like Croatia, Hungary or Slovakia to say that Scotland should leapfrog them in the queue and maintain 100% access to CAP payments when those countries, which by then would have been full members for at least a decade, would not benefit in the same way.

Q5 Sir James Paice: Are you suggesting it would be possible that for an independent Scotland, assuming it did join the EU at some stage in the future—I will come back to whether and how—the level of subsidies going into Scottish farming could fall, at least for a period of time?

Mr Lidington: It is certainly possible. There is absolutely no guarantee that an independent Scotland could negotiate the agreement of every other EU member state, which is what would be necessary, on a formula that would allow Scotland to continue to receive the same level of agricultural payments that she does today. Even if the current levels were to be maintained, you have to look at how that might work out in practice

when set alongside other budgetary changes that would be necessary if Scotland were at the table as an independent country rather than as part of the UK, particularly over the UK budget abatement.

Q6 Mr Reid: As you know, fishing is unique in that the vast majority of the fishing activity in UK waters is carried out in Scottish waters. How is that Scottish voice represented in Europe as part of the UK delegations?

Mr Lidington: It is represented in various ways. First, every UK Government Department, including the Department for Environment, Food and Rural Affairs, is under a clear obligation in assessing the position the UK should take on any proposed EU measure to consult the devolved Administrations if that EU measure refers to anything that touches upon devolved competencies. DEFRA will talk, in respect of any aspect of fisheries negotiations, as a matter of course to the Scottish Government at official and, if necessary, ministerial level.

Secondly, it is usually the practice now for the Scottish Government to say that they would like to attend Fisheries Councils as part of the UK delegation. The terms of the concordat agreed between the United Kingdom Government and all three of the devolved Governments provides for a presumption that those requests should be accepted, if any of the devolveds want to be there. It sometimes happens that I have been in Brussels at the same time as a Fisheries Council is going on. I am there for a General Affairs or Foreign Affairs Council. I look into the big conference room in the UK delegation suite and it is absolutely packed, standing room only, because there are officials, and usually Ministers as well, from Scotland, and often from Wales and Northern Ireland too. That opportunity is given.

If you look at the way in which UK Ministers have acted—I mentioned mackerel earlier, but we can look at issues like gaining access to Faroese waters, negotiations on the exchanges of fishing opportunities with Norway and access to their waters, preventing more effort reductions in the cod recovery zone, or application of the Hague preference—I think you will find that the concerns and interests of Scotland and the Scottish fishing industry in particular were fully taken into account and represented in the UK position. Certainly in the last round of CFP negotiations we got results which the Scottish fishermen's organisations warmly welcomed.

Q7 Mr Reid: If situations arise where the priorities of the Scottish Government are different from DEFRA's as they affect English waters, how will they be resolved?

Mr Lidington: Ultimately, because membership of the EU is a matter of international relations, it is for the United Kingdom Government to take a view on what is in the best interests of the United Kingdom as a whole. I hope, Mr Reid, you will take this in the right spirit. It is not as straightforward as saying that there might be a conflict of interest between DEFRA and the Scottish Government. There would be particular interests from Wales and Northern Ireland as well that will have to be taken into account, and particular priorities that they will wish UK Ministers to have regard to. I know that my colleagues in DEFRA have consistently tried to ensure that Scottish interests are very forcefully

represented. The fact that we are a big player in the EU—we have voting weight in the Council and we have diplomatic coverage to reach out, understand and collect allies around the table—has worked to Scotland’s advantage.

Q8 Mr Reid: What about smaller EU countries with a fishing interest—for example, Denmark? How does the UK’s representation of Scotland compare with how Denmark tries to secure its interests?

Mr Lidington: It would be wrong of me to start to express opinions on how successful or unsuccessful I thought Danish Ministers had been on behalf of their interests. They always speak up strongly on behalf of Danish interests, but if one looks both at the results of the most recent rounds of fisheries negotiations and at the way they were welcomed by Scottish fishing organisations, you have evidence that through the UK Scotland was able to get a good deal in a negotiation that ultimately was decided on the basis of qualified majority voting. I think there is much less assurance that Scotland as one small member state would be able to get the same kind of deal on her own.

Q9 Chair: Surely, there is no proof either way that Scotland would get a better deal on its own or a worse deal on its own. All of this is hypothetical, is it not?

Mr Lidington: You can never predict the future, but I would quote Aneurin Bevan who said, “Why look at the crystal when you can read the book?” The evidence is as I have described it. If you look at fisheries and, for that matter, at financial services, where there is a hugely important Scottish interest, and if you look at whisky, you will see again and again that UK Ministers and UK officials in Brussels and around the world have been active in promoting Scottish interests, and have achieved considerable success in so doing.

Q10 Mike Crockart: I want to turn to the subject of the opt-outs which have been negotiated over many years as part of the UK’s membership of the EU. Can you describe the array of opt-outs that we have as part of the UK?

Mr Lidington: There are two key treaty-based opt-outs and a third item to do with the budget that is not written into the treaty but is written into legislation and can only be altered by unanimous vote. The two big opt-outs are over the single currency and the Schengen area of freedom of movement of persons. On the single currency, it is written into the treaties that the United Kingdom is free to decide whether or not to join the euro. If you look at those member states who have come into the European Union since the euro was created, all of them as part of their accession negotiations and accession treaty had to accept a binding obligation to join the euro—not immediately, because they have to commit themselves to reaching the economic criteria necessary for joining the single currency, but they have to accept a binding treaty commitment, binding in international law, to join the euro.

The same is true of Schengen. We remain outside Schengen. Our right to remain outside Schengen is set down in the treaties and protocols to the treaties. Again, it has been a matter of course that in the accessions from eastern and central Europe every new country as part of its accession deal has had to say it will seek to join the Schengen

agreement in due course, when it meets the criteria and can be accepted by the existing members as a Schengen participant.

Linked to Schengen is the right of the United Kingdom, again written into the treaties, to decide whether to opt in to or to opt out of individual directives and regulations covering justice and home affairs. Any European legislation over criminal justice and any European legislation over greater police co-operation is something where the UK Government can make a decision on the merits of the case whether or not it is to our advantage to take part. As members of the Committee know, there is lively and legitimate debate, measure by measure, about where the British national interest lies. We, Ireland and Denmark are the only countries that have such a right to opt out of that legislation.

The other point to make—we may want to come to this—is that we have grounded in EU legislation a budget rebate, which, uniquely among other budget rebates in Europe, is permanent unless there is unanimous agreement that it should be changed. A number of other countries have rebates, but they are all time-limited and they expire automatically at the end of each multi-annual budget period.

Chair: We will come back to rebates later on. We have a set of questions scheduled for that.

Q11 Mike Crockart: You said that the two major ones are the euro and Schengen. Are you aware of other opt-outs that the Scottish Government would have to negotiate that are specific to the circumstances in the White Paper?

Mr Lidington: What the Scottish Government appear to be saying is that they can have some of the freedom they have at the moment within European law, which would not apply if they were at the table as an independent country. The most obvious one is the issue of fees for higher education. It is quite clear in terms of European law that, if you are a member state of the EU, you have to treat nationals from other EU member states on exactly the same terms in access to services and goods as you treat your own citizens. Therefore, Scottish universities would be under an obligation to charge students from the UK, as—in these hypothetical circumstances—a different member state, no more and no less than Scottish, French, German or Swedish students.

The Scottish Government argue, as I understand their case, that they can have their cake and eat it, and that they can continue to impose differential levels of fees on English students. I simply say that the best advice I have is that that is not possible under European law, unless the Scottish Government, as part of its terms of joining the EU as an independent state, were able to negotiate a unique Scottish opt-out. At the moment it does not seem to me that the Scottish Government are facing up to that reality. It would require the unanimous agreement of every other country around the table, including the UK, and including everybody else, that that exemption should be made.

Q12 Mike Crockart: We have established that for the euro and Schengen very few countries have managed to get an opt-out.

Mr Lidington: There are very few. The EU institutionally tends not to like opt-outs; it avoids them wherever possible.

Q13 Mike Crockart: We are now adding one on higher education fees, which does not exist in any other European member state.

Mr Lidington: No.

Q14 Mike Crockart: What about the situation in the White Paper where we have a common regulatory framework for financial services? Putting to one side the difficulties about whether a currency or monetary union is even possible, were it possible and were it negotiated what would the EU's reaction be to that? Would that require further opt-outs?

Mr Lidington: If you were a separate EU member state, you would need to have in any case a central bank of your own and a financial regulatory authority of some kind to meet the normal criteria on EU monetary rules, but you would of course also be bound by the decisions of the European regulatory authorities—the EBA and so on—because there would be a single rule book for European financial services. I think that the Scottish financial services industry is much better off with the negotiating weight of the UK Government and the entire UK financial services sector at the table, taking account of specific Scottish interests, rather than trying to argue the case on its own. As home to Europe's global financial services centre, we are respected as a source of real expertise in these matters. I know of many occasions when detailed negotiations about financial services directives have gone right up to the final ECOFIN meetings with the Chancellor of the Exchequer talking to his Finance Minister opposite numbers. The UK Chancellor can go into a room with the German Finance Minister or the French Finance Minister and agree a deal that in practice most of the rest of the EU then accepts. It is quite difficult to see any small member state being able to talk terms to Germany or France in quite the same way.

Q15 Mike Crockart: That is a slightly different point, more to do with the strength of your negotiating position. What I am trying to get to are the complexities that would be involved in the accession negotiations that would have to happen, and the extra opt-outs that are being proposed. A system where you have a common regulatory authority and a shared central bank does not exist in any other part of the European Union, and would not be acceptable.

Mr Lidington: As far as I am aware, that does not exist anywhere else. Legally, it would be possible for everybody else to agree that an exception should be made for Scotland, but there would need to be unanimous agreement for such an exception to be made.

Q16 Chair: There is no reason why that should not be done, is there? Why shouldn't everybody just agree with Scotland's case?

Mr Lidington: The reaction from a lot of member states is likely to be, "Why should we make exceptions, because if we do that for one applicant country on any particular issue it will invite a similar list of requests for opt-outs and special deals from other candidate countries for EU membership, or from existing EU members?" There tends to be quite strong institutional resistance to doing that.

Q17 Mike Crockart: I could go on about further opt-outs.

Mr Lidington: I have mentioned justice and home affairs. That is an important one.

Q18 Mike Crockart: Cross-border pensions is one that has come up; potentially we would be looking for an opt-out because of the impact that would have on the UK more than any other area. I would like to leave that, if we can, because we are limited for time, and turn to the question of structural funds. As I understand it, we are now at the start of a round of structural funds that runs from 2014 to 2020, so how that is allocated among the constituent parts of the United Kingdom has already been set out. What would independence negotiations mean for structural funds going forward?

Mr Lidington: Again, if Scotland wanted to keep the current actual level of structural fund payments, they would have to seek some sort of special deal. The figures show that, in the 2014 to 2020 round, the United Kingdom Government, as a matter of policy and trying to ensure rough equity between different parts of the UK, allocated €228 million, or about £200 million, more to Scotland for that seven-year period than Scotland would have been entitled to under the basic EU distribution formula.

Q19 Chair: Can I be absolutely clear about that? You are saying that under the normal EU structure Scotland would have got a certain amount, but, as part of the UK, the UK gave Scotland more than would otherwise have been the case.

Mr Lidington: Yes. Each member state received its overall package, which was set down by a formula agreed in the multi-annual financial framework negotiations. Within limits, each member state has certain freedom to alter the strict distribution formula in respect of the different areas within its own territory. UK Government Ministers sat down and looked at what the EU formula would mean if it was simply applied equally across the board to all parts of the UK. The Government came to the view that this would mean more money going to parts of England than they felt was justified, so we ended up with a UK formula. We made use of that flexibility in the system basically to give more money to Scotland and other parts of the UK that we felt would come out with a bit less than they might have had through the EU formula. That was at the expense of other parts of the UK, notably parts of England, who would have got more had the EU formula been applied in full. Scotland got direct benefit in terms of extra structural funds because of that flexibility permitted within the UK. If they had been on their own, they would simply have had the standard EU formula applied to Scotland.

Q20 Chair: I want to be absolutely clear about this because it is obviously an important point. So much of the other debate is “Yes, you could” or “No, you couldn’t,” or a “He said/she said” dispute. I want to be absolutely clear that what you are saying to us is that, as a result of being part of the UK in the European Union, Scotland got more structural and cohesion funds than Scotland would have got had she been a separate member of the European Union.

Mr Lidington: Our best assessment is that an independent Scotland for this new seven-year financial period would have received €228 million, or £200 million, less than it is actually getting as part of the UK.

Chair: That is a positive reason. It would be interesting to see whether or not any of that appears in the press tomorrow, or indeed at any other time.

Q21 Mike Crockart: These are European regional development and social funds which are aimed specifically at local jobs and local growth.

Mr Lidington: Indeed.

Q22 Mike Crockart: So it would have a direct impact on investment in infrastructure and businesses.

Mr Lidington: It would be likely to have a direct impact on investment and on employment.

Q23 Graeme Morrice: Maybe we can go back to basics on the whole question of EU membership. My understanding is that it is the official policy of the UK Government that, in the event of Scotland becoming an independent country, it would be the residual UK that would continue in EU membership, and Scotland, as a new member state, would have to apply to join the EU if, post-independence, a newly elected Scottish Government so chose. Is that a correct understanding of the situation?

Mr Lidington: Yes. The overwhelming weight of expert legal advice and international precedent points to the UK being recognised as the successor state. If the Committee wants some actual examples of precedent, we could look at the division of Bangladesh from Pakistan. Pakistan continued and it was Bangladesh that had to join international organisations afresh. We could look at the fact that Russia inherited the old responsibilities and rights of the Soviet Union. We can look at Ethiopia and Eritrea; it is exactly the same thing. Ethiopia was the continuing state and Eritrea the new one. Most recently, we have Sudan and South Sudan. There is plenty of international precedent. As the Committee knows, the UK Government have published the legal advice that we commissioned on this.

Q24 Graeme Morrice: It was suggested by the First Minister that he had acquired some private legal advice to suggest that Scotland as a newly independent state could continue EU membership. I presume that is fantasy.

Mr Lidington: Well, I do not want to be the least offensive to the First Minister.

Graeme Morrice: Please do.

Mr Lidington: I have seen little evidence of rigorous legal thinking on this point, nor has there been any kind of persuasive response from the Scottish Government to the very clear statements by the President of the European Commission, Mr Barroso; the President of the

European Council, Mr Van Rompuy; the Government of Spain and others. They have made it very clear that in their view, not just the view of UK Government advisers, Scotland, if she became independent, would have to seek afresh membership of the EU and, logically, membership of any other international organisation to which an independent Scotland wished to belong.

Q25 Graeme Morrice: The refusal by the Scottish Government to publish this supposed legal advice would suggest that perhaps there was no legal advice at all.

Mr Lidington: I think it is a question that the First Minister needs to answer. If he claims that legal advice exists, let us see it.

Q26 Graeme Morrice: I accept, Minister, that you are not here to answer for the First Minister of Scotland. In terms of our understanding of this situation, you are saying this is the overwhelming view of people out there. Is it the unanimous view of the EU institutions and member states that an independent Scotland would have to apply afresh for EU membership?

Mr Lidington: Not every EU member state has made a public comment on this matter. Of those who have, I know of no institution and no member state Government that has said an independent Scotland would definitely simply continue as a member of the European Union. Those who have spoken out, including the Presidents of both the Commission and the European Council, have said very plainly, “No”; Scotland would be welcome to apply and go through negotiations, but that work would have to be undertaken.

Q27 Graeme Morrice: Accepted. What would be the process of negotiation for an independent Scotland applying to join the EU?

Mr Lidington: Scotland would have to apply under article 49 of the treaty. If she applies, the European Parliament and national Parliaments are notified of that application. The Council—the national Governments of every EU member state; all 28—has to agree unanimously not just on the principle of Scottish accession to the EU but on all the detailed terms of that accession. All of the subjects we talked about earlier in this meeting to do with whether or not Scotland was in the euro, or was obliged to join Schengen, the future of the justice and home affairs opt-out and so on, plus any extra opt-outs or privileges—whether over budget rebates, tuition fees or whatever—that the Scottish Government wished to seek, would have to be agreed unanimously by every EU member state. There would then have to be a vote in the European Parliament at the end of the process to approve a new accession.

Not only do all 28 EU Governments have to agree the final package in an accession treaty for a new member, but they all have to go through the appropriate methods of national ratification. In the case of the UK, for example, for any new member state coming into the EU we would have to agree to that membership and all the terms of it, but then there has to be an Act of Parliament—primary legislation—before the accession of that new member state is ratified. Different member states have their own rules on this. Some may choose to have referendums, some may rely on primary legislation, and others may have a faster process.

Q28 Graeme Morrice: That is interesting. Following the process under article 49 of the treaty, the residual UK, as the existing member of the EU, if that application came before us, would have to pass an Act of Parliament in this place to agree our position in relation to accepting, or not, Scotland's membership of the EU.

Mr Lidington: Yes.

Q29 Graeme Morrice: I think we did something similar with regard to Croatia.

Mr Lidington: We did that with regard to Croatia. The UK had to agree at all the relevant Council meetings to each stage of Croatia's accession progress, and when the treaty was finally agreed, that had to be ratified by our Parliament through primary legislation.

Q30 Chair: Can I clarify one or two points about the accession process? Is it the case that the UK would support a separate Scotland joining the EU, or not?

Mr Lidington: I think the UK Government would want to be as helpful as we could in those circumstances. We would not want to be hostile, though clearly the detail of the negotiation that would have to take place, if there were a vote in Scotland to walk away from the UK, between the UK and the Scottish Government would affect the EU negotiations. Some of the questions that would inevitably come up in EU negotiations—for example, over currency, whether there should be borders, or whether Scotland should be in the common travel area with the UK and Ireland—would have to be addressed bilaterally.

Q31 Chair: I understand the point about the negotiations. I want to clarify whether in principle it is true that the UK would not oppose Scotland seeking to join the European Union.

Mr Lidington: In principle, we would not oppose it, but obviously there would be a negotiation over terms for both separation and the EU.

Q32 Chair: I understand that. We will come on to the terms.

Mr Lidington: There is no hostility. The UK Government have always said that if there is a free democratic vote in Scotland for independence, while we would deeply regret that, we would of course accept the democratic verdict.

Q33 Chair: I want to clarify the question on articles 48 and 49, but I will let Graeme pick that up. The other point I want to clarify is the timing of this. On the timing of an application for joining the EU, is that after Scotland becomes independent or is it after Scotland votes to become independent, because there is a substantial difference?

Mr Lidington: What article 49 says about accession is that any European state which respects the values in article 2 may apply to become a member of the union. Hitherto, the

EU has acted only on the basis of independent countries. My normal layman's reading of the phrase "any European state" is that it would seem to apply to a place that has its independence already, so for Scotland to apply before becoming formally independent would be unprecedented. The EU can sometimes be ingenious in interpreting treaties, but my key point would be that for such an exception to be made—for Scotland in effect to start those negotiations before the date of formal independence—would require the unanimity of every member; anything to do with new membership has to get unanimous agreement from existing members. Secondly, the real devil is in the detail. Let's say everybody agreed we start off the day after a referendum with a vote for Scotland to leave the UK. That does not actually get us very far, because all the questions about the nature of the relationship between an independent Scotland and the UK have to be sorted out. All the questions we have been dealing with on budgets, borders, currencies and financial regulation have to be sorted out. There has to be unanimity at every stage.

Q34 Chair: Sorry, I understand all that, but the point I am trying to clarify is this: if the negotiations start the day after the vote, it is entirely possible, although possibly not likely, that the negotiations between the UK and Scotland, and between Scotland and the EU, would be complete in time for Scotland to join before there is a break. However, if the negotiations can only begin once Scotland becomes independent, there clearly will be a break and there clearly will be a time when Scotland is out of the EU, which then has implications for things such as farming subsidies and the like.

Mr Lidington: My reading of treaty article 49 and its reference to "European states" suggests that it is very difficult to see that Scotland could launch formal accession negotiations before becoming an independent country, even if some exceptional procedure were to be agreed. This is all very hypothetical. I think it is a serious mistake to assume that everything could be neatly done and dusted quickly. Our experience in recent accession negotiations, Croatia being the most recent one, is that it takes considerably more than the two years that the Scottish Government is talking about.

Q35 Chair: The Scottish Government is talking about 18 months.

Mr Lidington: I have to say that I really find it implausible that you could complete accession negotiations and 28 national ratifications all within that period of time. From memory—I look to my officials—for Croatia we were looking at about six years, and for some other countries the process took longer. It is stretching probability to the extreme to think that it could all be done in 18 months.

Q36 Graeme Morrice: On timing, you are saying that any kind of official negotiation is unlikely to happen before Scotland became independent, if the Scottish people went down that route. It would start from day one of independence, and you are saying it could take a considerable period of time. Are we talking about a few years or several years? You gave the example of Croatia. Did you say it was six years?

Mr Lidington: Croatia was six years. That might be a reasonable period, on the assumption that there was unanimous agreement. I said that the UK Government would not be hostile to Scotland joining if she were to vote for independence, but there are other

countries around the table who have separatist movements of their own and might be very uneasy about doing anything that would appear to establish a precedent for a successful breakaway, and for that territory then to be admitted to the EU as a member state in its own right.

Q37 Graeme Morrice: There is no precedent where a country that was not independent, but perhaps became independent, negotiated to become a member of the EU prior to their becoming independent.

Mr Lidington: There is no case. There is no case of any EU member state who began accession negotiations before becoming independent. No.

Q38 Graeme Morrice: We have talked about going down the article 49 route. What about the article 48 route in terms of a treaty amendment? Would that be a simpler route? Would it be quicker? Would it be practical at all?

Mr Lidington: I have heard this argument, but again it is one I find thoroughly implausible. There is an article—article 49—that explicitly deals with the process for accession of new members. Article 48 is about something very different; it is about textual changes to the Lisbon treaty. All the simplified revision procedures in the second half of article 48 are not themselves simple or quick processes. The simplified revision procedure that is the most straightforward can only be used in circumstances that are actually defined in sections 6 and 7 of article 48, so you cannot use that to make any treaty change whatsoever that you choose. While I have been a Minister, I have had to deal with a simplified revision procedure for treaty change. It was the one the eurozone wanted. Members of the Committee may remember that it proposed a one-sentence—one sentence—amendment to article 36 of the European treaties. Even that took about 18 months, for something that everybody agreed to and that did not require much in the way of detailed negotiation because it was a single sentence.

Our legal advice in the Foreign Office, and our belief, is that if you were really to stretch article 48, which I do not think is going to fly in Brussels, you could not use the simplified revision procedure; you would have to use the more complex ordinary revision procedure that is used for major treaty changes, because you would be talking about Scotland entering into obligations and rights under every aspect of the European treaties, and not the limited areas of the treaties covered by the simplified revision procedure.

The ordinary revision procedure provides, among other things, for a convention to be convened, including national Governments, national Parliaments and the European institutions. The previous UK Government took part in the convention on the abortive constitutional treaty for the European Union under the chairmanship of former President Giscard d'Estaing. That convention dragged on for quite a long time, let alone the treaty negotiations themselves. You would be into a very long drawn-out and complex process, even if you tried to use article 48, which itself would be without precedent and, therefore, I think very, very unlikely to be used. Article 49 explicitly talks about accession. The practice of the European Union is that, where you have an article in the treaties that makes a particular provision for a particular circumstance, you use that rather than trying to look at something else.

Q39 Chair: If the convention was convened, there would be nothing to stop other people adding other things to the agenda of that convention. Or would it be, if convened simply for the question of Scottish accession, restricted to looking only at that subject?

Mr Lidington: It is complex. The process is not designed for accessions, which are provided for in article 49. The process under article 48 is designed with treaty amendments in mind, with proposals to enlarge, reduce or amend the powers of the EU.

Chair: I understand that. What I was asking—

Mr Lidington: The agenda for the convention is set down. First, proposals have to come from the Government of an existing member state, from the European Parliament or from the Commission.

Q40 Chair: The point I was actually asking about was slightly different. If a convention was called, would it be restricted only to that topic, or would other states take the opportunity to load on to that convention a whole number of hobbyhorses of their own, so you could end up having a much wider discussion, and opening up a whole number of issues, which perhaps some in your own party might want to do, about existing treaties?

Mr Lidington: The treaty provisions are that the European Council basically says under article 48, “These are treaty changes that we propose.” It sends them to the convention and into the negotiating process. In political terms, since everything requires unanimous agreement, there is a negotiation. Whatever formula is sent down by the heads of Government at the beginning of the article 48 process, the reality is that it is likely to be amended if that is necessary to get the unanimity essential for it to take effect, so you cannot avoid discussion on that.

Q41 Chair: My understanding is that an existing member state would have to sponsor, as it were, this proposal.

Mr Lidington: Yes. An existing member state, or the Parliament or the Commission.

Q42 Chair: Let’s take an existing member state. Is the UK willing to be that member state?

Mr Lidington: We have not considered that question as a Government, because we simply do not think article 48 applies; we think article 49 applies.

Q43 Chair: Is that a no?

Mr Lidington: It is saying that we have not considered that, Chair. The difficulty about this hypothetical exercise is that article 48 assumes that there is a list of detailed textual amendments to the treaties, which are to be the subject of debate and possible further amendment in the convention and in a negotiation. That is quite difficult when it comes to an accession treaty, because the text of an accession treaty is itself the outcome of a process of negotiation. For the European Council to send to the convention—to start this

process of detailed amendments to the treaties to make provision for an independent Scotland to be at the table—would have to be preceded by negotiation.

Q44 Chair: I understand all that. I am asking you whether the UK would sponsor it. Are you saying that no, you wouldn't or yes, you would?

Mr Lidington: Our view is that article 49 is the right treaty.

Q45 Chair: Is that a no to article 48?

Mr Lidington: I do not rule it out—I just think it—

Q46 Chair: You are saying you do not rule it out.

Mr Lidington: I think it is utterly implausible, and we do not think that is the purpose of article 48.

Q47 Chair: I agree that it is not the purpose of article 48, but the Scottish Government are asking that that be the pursued route. I am asking whether or not the UK Government are willing to go down that route.

Mr Lidington: In that eventuality, I think our advice to the Scottish Government at that stage would be to say, “Look, it's article 49 you need to use because you're not likely to get unanimity.”

Q48 Graeme Morrice: As the Chair was saying, this is what the Scottish Government are saying, and article 48 is specifically included in their White Paper. If you think it is implausible—some of us may agree with that—why do you think they are saying it?

Mr Lidington: The assumption in the Scottish Government's White Paper seems to be that by using article 48 you get round the fact that article 49 applies to European states. There is an assumption too that somehow this will enable the process to be fast-tracked. If you look at the history of European treaty negotiations, in particular ones that involve a convention of any kind, they drag on; these are not things that can be fast-tracked at all. In these hypothetical circumstances, the views of the Council, and to some extent the Commission legal services to those institutions, will be very important at the time. The fact that such a distinguished EU jurist as Jean-Claude Piris has said in terms that article 49 is the correct article, not article 48, suggests to me that that is where the centre of opinion, as far as formal legal authority is concerned, is going to lie.

Q49 Sir James Paice: What is the actual decision-making process in terms of whether 48 could be used? If Scotland sought to persuade the Commission to use 48, because the Commission could not itself put forward the proposition, does the Commission have the power to say that 48 is not to be used? Does it have to go to the full Council? Who can veto 48?

Mr Lidington: In practical terms, anybody could veto it, because the way the EU would work in these circumstances is that there would be informal conversations. All it needs is any one member state of the 28 to say, “This is the wrong route. Go for 49.”

Q50 Sir James Paice: Would the UK?

Mr Lidington: We would want to make it possible for Scotland to join, but we think this is not the right thing. If that came forward as a formal proposition, I or my successor would want to take very careful legal advice about whether any significant legal or constitutional precedent were being set for other ways of amending the treaties, if article 48 were used in this way, rather than 49.

I also think there would be some concern. The Scottish Government ought to be concerned about this. If you use 48 and there is significant doubt about whether it is the correct legal base, you start to open up hypothetical Scottish accession to a potential legal challenge in the Court of Justice. After all, we have had cases, particularly with the German constitutional court, where very important elements of economic and monetary union and banking union have been challenged on the grounds that an incorrect treaty base was being used, or that the EU was seeking to act ultra vires because they did not have the right under that cited article of the treaty to make the changes they did.

Q51 Graeme Morrice: This is the final question from me, you will be pleased to hear—or the final substantive question; there may be supplementaries, depending on your answers. You will be aware that President Barroso suggested that Scotland in attempting to apply for EU membership would find it “extremely difficult” to join the EU. Why do you think he said that? What are the criteria around that statement?

Mr Lidington: I think he is reflecting his experience of previous accession negotiations and his knowledge of the interests of the 28 different Governments there would be around the table. He is very aware that many complex and important matters to do with the terms of accession would have to be agreed unanimously in every last detail before an accession treaty was accepted. That takes us back to currency, Schengen, justice and home affairs and so on. He also knows that there are a number of EU member states that are deeply uneasy about any precedent being set for successful separation of part of the territory of an existing member state, and he knows how long and complicated these negotiations can be. I remember with Croatia that, even at the final Council meeting, we were still sitting round the table arguing about particular sub-clauses and whether this really was the right time to give the final green light to Croatia. Had they done enough, in their case, on justice and home affairs reform? I think he was speaking from experience.

Q52 Graeme Morrice: Therefore, what he said is credible.

Mr Lidington: Credible. This man has served as President of the Commission for eight years, and served as a head of Government before then.

Q53 Graeme Morrice: What objections do you think other member states could have?

Mr Lidington: I think that a number of other member states would hesitate before saying it was okay for separatism to succeed, but you would also have countries whose focus was less on the principle of Scottish accession than on particular aspects of the terms of entry. I find it hard to envisage member states that do not have 100% access to their CAP entitlements agreeing that Scotland should over-leap them, and I think there would be serious debate and concern among a number of other member states about any idea that Scotland should be exempt from a treaty obligation to join the euro. A number of people, not just in some other national Governments but some in the European Parliament too—those who are ardent champions of the euro—would say, “That obligation is important. Once we make an exception, too many others will want to have one as well.”

Q54 Chair: Could I raise the question of the timing of all this? Presumably, the whole thing could be much speeded up. Scotland already accepts, because of its membership of the UK, the *acquis*; all the body of law already applies. Presumably if Scotland said, “We’ll just come in without any changes,” all of that could be speeded through quite considerably. The difficulty would come if it was a question of seeking exemptions, changes and all the rest of it, but if you just wanted the cheap and cheerful, straight-in solution, surely it could be done very quickly. You would not have the delay that you had with Croatia, because Croatia had to move from where it was to fit in with the *acquis*. Presumably, Scotland is there already.

Mr Lidington: It is true that Scotland is in line with the *acquis*, but if she were joining as a member state in her own right, there would be certain other obligations she would have to enter into that the Scottish Government do not have at present. We talked earlier about the need for a central bank and financial regulatory authorities to meet the required European standards.

The hypothesis that you are putting to me, Chair, assumes that there would be automatic good will to separate Scottish accession from everybody, but the political point about the precedent of successful separatism is something we cannot ignore. The EU collectively—the institutions as well as the member states—would need assurances about how the *acquis* was being applied. For example, at the moment under various aspects of the *acquis* there has to be a designated body—a competent authority is usually the term in the directives—that each member state is obliged to have for the implementation of particular aspects of the *acquis*. Obviously, at the moment those tend to be UK competent authorities.

The Scottish Government would have to satisfy the enlargement Commissioner and his team first of all, and then all the member states, that they were applying not just in the letter of the law but in the application of the law. There would also need to be national ratifications by individual Parliaments as well, potentially by referendum if any member state chose to go down that path. There would need to be institutional changes to the EU itself. If Scotland were to be admitted as a new member, there would have to be changes in the allocation of MEP numbers in the European Parliament, and there would have to be changes to voting weights under the qualified majority system. Again, countries that thought they might lose out under either of those institutional changes might conceivably come back to the table and say, “We want something in return,” either related to Scotland or something completely unrelated to Scotland, in another EU dossier. There are many different ways in which, even with that hypothetical fast track that you propose, Chair, you could see this being slowed down. My central point is that it is foolish for there to be any

assumption in Holyrood that somehow there is a guaranteed smooth path to rapid and simple Scottish accession as a member state in its own right.

Q55 Chair: But surely the argument is, “We’re Scottish; they would want us in. We have oil. We have fish. Surely, they would fall over backwards to allow us to join.”

Mr Lidington: I think there is still in most of the EU a commitment to enlargement, but when you move from that principle to the practicalities and the detail of accession negotiations you find that national economic and political interests come to the surface very quickly indeed. For example, it might be—I am not predicting this, but it is possible—that as part of such a new accession deal another EU country comes forward and says, “We’re happy to agree to this in principle, but of course we want some additional access for our fishing fleets to Scottish waters in the future,” or, “We want some other change in the way the EU is run that gives us an advantage that we are after.” When you are dealing with 28 different Governments and Parliaments, this is a complex process and it takes time. I go back to the simplified revision procedure; even a single sentence in one article of the treaty took about a year and a half to get through. That was the simplest imaginable type of treaty change. Accession usually takes longer than that.

Q56 Graeme Morrice: Presumably, a residual UK Government might have concerns, and indeed objections, in terms of considering an independent Scotland attempting to join the EU if some of the things that an independent Scottish Government came out with acted against the national interest of the residual UK, in particular student fees.

Mr Lidington: I cannot see it probable that any UK Government would accept that students in Scotland from the UK should be disadvantaged in that way, and should lose out on a right that they would have under European law.

Q57 Graeme Morrice: But Alex Salmond says that they should lose out.

Mr Lidington: He does indeed argue that, but he would need some explicit treaty exemption from the principle of equal treatment to be able to deliver on it. It is not only the UK that would be very sceptical about allowing such an exemption. I can think of a lot of other member states who would say that that principle is too important to be sacrificed.

Q58 Chair: To be clear, any treaty change, derogation or anything similar that allowed Scotland to implement its view on student grants, fees and so on would require the agreement of the UK.

Mr Lidington: Yes.

Q59 Chair: Are you likely to agree to discrimination against English, Welsh and Northern Ireland students?

Mr Lidington: I think it improbable in the extreme.

Q60 Chair: That is a no.

Mr Lidington: If I was sitting in the chair, it would certainly be a no. Politicians are wise never to say never, but I just cannot conceive of circumstances in which a UK Government would agree to that sort of arrangement.

Q61 Chair: We want to get absolutely clear one or two points on timing. You are saying, unless I am mistaken, that the timing on either route 48 or route 49 would take more than 18 months. As you know, the Scottish Government have said they intend to have independence day on 24 March 2016. Am I right in thinking that your view is that that is not conceivable?

Mr Lidington: That would fly in the face of experience from previous accessions. It assumes that there would be both automatic good will from every part of the EU in Governments and in Parliaments, that the detailed negotiation on all this was given priority over practically everything else on the EU agenda, and that there could and would be swift agreement on all the tricky issues we have been discussing. I just do not find it believable.

Q62 Chair: That is a no.

Mr Lidington: I do not find it believable.

Q63 Chair: Can I clarify whether it is your view that dialogue, discussion and agreement with the UK has to proceed before dialogue and discussion with the EU, or that the two can proceed in parallel?

Mr Lidington: Whether they are consecutive or whether you make an attempt to do it in parallel, the key point is that important elements of the EU negotiation would be contingent upon the outcome of a Scotland-UK negotiation.

Q64 Chair: Given that the Scottish Government have said they want to have all these negotiations tied up within 18 months, do you think that strengthens or weakens their hand?

Mr Lidington: I think they would be in the position of being, in diplomatic parlance, the demandeur.

Chair: It would be the what? Sorry?

Mr Lidington: The demandeur—the one making the request. It would be Scotland making—

Chair: Right. Normally, we use only English in this Committee, except when we have Gaelic people here.

Mr Lidington: I think it would be the Scottish Government, in those circumstances, that would be anxious to secure EU entry as soon as possible, and would be trying to avoid all delay, and that inevitably puts them in a weaker position when it comes to any kind of

negotiations. Anybody round the table in Brussels who wants to extract a concession of some kind can simply say, “Well, we’re not quite ready to agree on this point,” and the pressure is on Scotland, if they want to get in as a member in their own right, to make the concession to try to accelerate agreement.

Q65 Chair: Can I clarify what you understand would be the consequences for Scotland if there was a gap between being in the EU as part of the United Kingdom and being in the EU as a separate state? Even allowing, I am assuming, for the negotiations between Scotland and the UK to drag on beyond 18 months, from what you are saying the agreement with the EU is likely to be then beyond that, so, even if they did not leave on 24 March 2016 but later, from what you are saying there would still be a gap. What would the consequences of that be in terms of, say, CAP payments, the fisheries agreement—we will come to the budget separately—Schengen and the euro?

Mr Lidington: Scotland would cease to be eligible for funding that it received by virtue of the UK’s membership of the EU. Structural funds and CAP payments would automatically cease, because there would be no provision under the treaties to pay them to territory that was outside the EU at that point. There would be quite serious questions about freedom of movement. This is really a question for Mr Salmond to answer.

Q66 Chair: You are the one who is here.

Mr Lidington: Scotland could decide to join Schengen, although not being in the EU, to be assured freedom of movement, in the same way that Switzerland and Norway are part of the Schengen zone, but there would be a question about how freedom of movement would operate. There would be the obvious question about currency in those circumstances, depending on the state of the bilateral negotiations between Scotland and the UK at that point, but the key point is that the payments, whether agricultural payments or structural and cohesion funds, would stop coming; there would be no treaty authority to pay them.

Q67 Lindsay Roy: The “Scotland analysis” papers have been very helpful. I quote from them: “The Scottish Government’s position, that the UK rebate could be ‘shared’ on the basis of bilateral negotiations between the UK and an independent Scottish state, without reopening the 2014 to 2020 EU budget, misunderstands the nature of the rebate.” I want to focus on the rebate. Is it a misunderstanding, a misinterpretation or a different interpretation?

Mr Lidington: The rebate is based upon economic measurements of the United Kingdom; it is calculated by reference to the UK’s GDP, population and so on, and the abatement is calculated in terms of money by reference to CAP pillar one spending, and to structure and cohesion spending in the older member states. If Scotland left the UK, the first thing to happen is that all the figures relating to the UK would have to be rebased to take account of England, Wales and Northern Ireland without Scotland, and the rebate would be calculated, according to the current formulae, on the basis of those new UK figures. There is simply no provision for part of the UK to leave and somehow inherit a rebate that is calculated by reference to the UK’s circumstances. What I think would happen is that Scotland, as a member state in her own right, far from inheriting an element of the UK’s

rebate, would have to contribute to the UK's rebate in the way that all other members of the EU have to do.

The figures I have are that an independent Scotland would, in the best case, pay about €2.2 billion, or about £1.9 billion, over the seven-year period 2014 to 2020 as its contribution to the UK rebate, were Scotland there as an independent country and not as part of the UK. Certainly our estimates, in the UK Government, are that, roughly speaking, if Scotland is in the EU and continues to receive CAP receipts at full entitlement, as now, for every £1 million of agricultural receipts Scotland got she would be paying out £3 million in additional costs as a result of her loss of the British rebate and her need to contribute instead towards the UK rebate.

The sums we have done show that there would be a considerable loss to Scottish taxpayers by leaving the United Kingdom and joining the EU as a member state in her own right. I think the Chief Secretary has estimated that, even under the best scenario, the net cost per Scottish household for 2014-20 would be about £750, and in the worst case, if Scotland did not get full access to agricultural receipts, the figure could be almost double that, so we are talking about some quite big numbers.

Q68 Lindsay Roy: What you are saying in effect is that the White Paper is misleading, in that it claims that the rebate could be negotiated between the UK Government and the Scottish Government.

Mr Lidington: The rebate would not be settled by negotiation between the UK Government and the Scottish Government. The rebate is incorporated in the EU's own resources decision, which is the revenue side of the EU budget-making process. It is a formula which is agreed by unanimity and can only be varied by unanimity—the unanimity of every member state, including the UK. The only way in which Scotland could, hypothetically, become entitled to a rebate of its own would be to secure the unanimous agreement of every other EU member state to that happening, and that would almost certainly have to be as part of a change to the own resources decision negotiated as part of a Scottish accession process. This issue is one that would have to be addressed in the course of that accession. I can see no circumstance whatsoever, knowing how tough the budget negotiations were last year, in which other member states who are contributing to the UK's rebate would happily agree to Scotland not only being spared such a contribution, but then being entitled to a rebate of her own.

Q69 Lindsay Roy: Are you confirming what I suggest—that the Scottish Government's claim is untrue? It is more than misleading.

Mr Lidington: I think it is unfounded. The most charitable explanation is that it is based upon a complete misunderstanding of how the UK rebate is calculated and embodied in EU law.

Q70 Lindsay Roy: It is a myth.

Mr Lidington: It is a myth.

Q71 Chair: It is simply factually incorrect because they have misunderstood the nature of the relationship.

Mr Lidington: I think they have completely misunderstood the EU legal position and how the rebate is cancelled, and, as far as I can see, they have provided no answer to the question as to why they believe every other member state should somehow accept that Scotland should get a slice of a UK rebate, which a lot of other member states continue to resent but can do nothing about because they can't change it save by unanimity.

Q72 Chair: To be fair in this context, because they have misunderstood the nature of it they have not understood that it is necessary to get unanimity. They have assumed this is something just to be carved up between the UK and Scotland. Can I ask you to come back to us with figures, if you could, on the loss of income to Scottish agriculture in the event of a gap? You gave us some figures. I think it would be helpful if you let us have them in due course, outlining how those figures have been reached, because we would want to discuss this with figures in Scottish agriculture, if we could.

Mr Lidington: I will be happy to write to the Committee later.

Q73 Lindsay Roy: You also suggested that the Scottish Government would have to pay a contribution towards the rebate. Have you made an estimate of that?

Mr Lidington: I do not think we have an estimate of that. Perhaps I can write to the Committee on that point as well with that detail.

Chair: That would be helpful. Maybe then you could tell us how the £750 that you mentioned as the additional cost relates as well.

Lindsay Roy: It is £700 to £1,500.

Chair: Yes. How does that relate? We are moving on fairly quickly. Has that covered the points on the budget?

Lindsay Roy: Yes.

Q74 Chair: The points on negotiation that we have not fully covered relate to Scotland inheriting the opt-out on the euro and Schengen. You are saying to us that this would require unanimity not only from the other 28 countries but also, presumably, from the European Parliament and the Commission. Would the UK Government be prepared to support an opt-out by Scotland from the commitment to the euro and Schengen?

Mr Lidington: We have no problem about the principle of an opt-out from either. I do not think it is the UK that the Scottish Government in those circumstances would have to worry about. The UK Government are all in favour of variable geometry.

Q75 Chair: To be fair, you are here. We might very well in due course seek to speak to the other 27, but since you are the one in front of us now we want to be clear. There would be no point in discussing this with anybody else if the UK were vetoing it.

Mr Lidington: In some member state capitals the fact that the UK was advocating a Scottish opt-out from the euro might be seen in itself as deeply suspicious in the course they were proposing.

Q76 Chair: I understand that point. Can you provide us with a list of EU opt-outs, derogations and so on in order that we can be clear about those?

Mr Lidington: I am happy to do my best on that. I can certainly provide a list about opt-outs and derogations written into the treaties and protocols. The Committee will appreciate that there are some derogations written into individual items of EU legislation, and, without a very big trawl through Whitehall, I cannot say this afternoon that we could definitely provide them. We will do our best to provide as comprehensive a list as possible.

Q77 Chair: One of the things I am reminded of is the question of zero rates of VAT. I am aware that the UK has derogations on a number of zero rates of VAT which are not widely applicable throughout the EU. I am not entirely clear, first, which those are, and, secondly, whether or not their continuation for a separate Scotland would have to be subject to unanimity among every other member state.

Mr Lidington: The default position in EU law is that an incoming member state has to apply VAT across the board without zero rates. We have a derogation from that provision dating back a considerable number of years, probably from when we first entered—the time of our accession—so that we can continue to apply zero rates to items such as food, books and new houses, but a new member state coming in is not entitled to have zero rates unless it has successfully negotiated such a derogation for itself. Again, it is the sort of thing that would have to be sorted out in the context of a Scottish accession negotiation.

Q78 Sir James Paice: Can you give us an example of other accessions over the last decade or so where new member states have got derogations—I am thinking particularly of food—not to charge VAT? Is it really likely that Scotland might have to charge VAT on food?

Mr Lidington: From memory, I am not aware. We will check that with Treasury colleagues and write to the Committee. Derogations arising out of new accessions tend to be, for the most part, time limited. A bit of extra time will be given to allow a country to make the transition, for example from subsidising a particularly important industry, but in practice you tend to get considerable reluctance among existing member states to allow someone into the benefits of membership without them having to accept all the obligations of membership as well.

Q79 Sir James Paice: There is a very real prospect that an independent Scotland would have to charge VAT on food if it acceded to the EU.

Mr Lidington: I think there is a real possibility of that. It is possible—I am not saying that I know this would be threatened—that any member state around the table could decide that, for whatever domestic reason, this was the thing that mattered most to them, and they wanted to make sure Scotland was not allowed an exemption from zero rates before they would agree to Scottish accession. All 28 have to agree to every aspect of an accession process.

Q80 Chair: Croatia, having just joined, has had to put VAT on food, books and new houses. Is that correct?

Mr Lidington: We will check the exact detail and come back to you.

Q81 Chair: Subject to checking the detail, food, books and new houses have had VAT charged on them in all the eastern European countries that came in.

Mr Lidington: I will check this. Most European countries apply VAT to food. We will check whether there are any other examples where newer member states have retained the sort of historical exemptions or entitlements to zero rating that we were able to maintain at the time we joined the EU.

Q82 Chair: Are you aware that it is highly likely that any discussion of the charging of VAT on food or books will simply be dismissed as scaremongering?

Mr Lidington: I am happy to give the Committee chapter and verse. In fairness, as this is a Treasury lead I will want it to be checked by them, and then we will send you a definitive piece of written advice on that.

Q83 Chair: Similarly, there is the question of 5% VAT on fuel, which was a UK derogation from the norm—was it?—because we had a special rate. Would that be something that is open to Scotland, or is that being dealt with in another way?

Mr Lidington: Rather than get drawn into something that is dealt with by Treasury Ministers in Brussels, I would like to consult them and then come back to you.

Q84 Chair: At the end of our hearings we always ask the witnesses whether or not they have any answers prepared to questions we have not asked. Are there any specific points that you want to raise with us that you feel we should have touched on but have not?

Mr Lidington: I have been given one additional piece of information that relates to a question I was asked earlier about our estimate of the probable Scottish contribution to the UK rebate. I will, as I said, write in greater detail, but our estimate is that for the 2014-2020 period, as a new member state, Scotland would have to contribute about €640 million to the United Kingdom rebate, and obviously that would have to come out of the pockets of Scottish taxpayers.

Q85 Chair: Is that annually?

Mr Lidington: No; that is over the seven-year period.

Q86 Chair: That makes it somewhat less, doesn't it?

Sir James Paice: It is less because it is only the 2014 period.

Mr Lidington: Sir Jim is right. The only figures we have to work on are those for the budgetary period that has been agreed.

The only thing I would want to say in conclusion is that I come to this meeting with no hostility at all towards Scotland, but with a genuine belief that Scotland brings huge benefits to the United Kingdom and that Scottish interests are better served as part of the enterprise that is the United Kingdom rather than through Scotland walking out and trying to make her own way. If you look at the United Kingdom Government's record in fisheries negotiations, trade agreements and deals for Scottish whisky, access for Scottish as well as other UK financial services businesses to markets around the world, and the meticulous way we have negotiated financial services legislation to protect the interests of UK, including Scottish, financial services companies, I think we can point to a very good track record.

It would be a tragedy if Scotland were to turn her back on that and walk away from that experience and record, and from the network of 267 UK posts in 154 countries and territories around the world that are there to speak up for Scotland and promote the interests of Scotland, along with every other part of the United Kingdom.

Chair: On that note, let me call the meeting to order. Thank you very much.

Examination of Witness

Witness: **James Brokenshire MP**, Minister for Immigration and Security, Home Office, gave evidence.

Q87 Chair: Could I welcome you, Minister, to this meeting of the Scottish Affairs Committee? As you are aware, we are investigating various aspects of separation, in particular the series of papers produced by the UK Government on the question and the various aspects thereof. Could we start off by asking you to outline to us what you believe happens to the land and maritime borders between Scotland and the UK if Scotland decides to leave the United Kingdom?

James Brokenshire: Mr Davidson, can I say it is a pleasure to be back before this Committee? I had not originally anticipated that I would be here in my new role, but I am delighted to respond to the analysis paper we published on borders and citizenship. At the outset, it is worth underlining that, if people in Scotland voted in favour of leaving the UK, an international border would be created where one does not exist today, and that does

have quite profound implications for Scotland and the continuing UK in those circumstances.

If I look at how we manage the UK's border at the moment, it is complex. It relies on an integrated system that is intended to manage the whole of the UK. We undertake a proactive and active response in managing the movement of goods and people between Scotland and other parts of the UK, and currently that is unhindered. If there were an independent Scotland, there would be an international border. You would have two separate countries in existence at that point; therefore, there would need to be a border between the UK and Scotland. The question is what that border means. I am sure we will come on to this. If Scotland were part of the common travel area, or if Scotland were part of Schengen, that border would take different characteristics, but at its essence there would be an international border with implications for goods, services, businesses and people. Therefore, the suggestion that in some way the status quo would continue is simply not the case.

Q88 Mr Reid: Obviously if Scotland became independent, there would be an international border between Scotland and the rest of the UK. What do you anticipate that would mean for the movement of goods and people between Scotland and the rest of the UK?

James Brokenshire: I think it is about understanding what the policies of the Scottish Government would be, and indeed whether Scotland was part of the EU. I hesitate to tread on ground you will have covered in the last session, but there is an important and significant issue about Schengen membership or not. If Scotland were part of the EU and part of Schengen, in those circumstances it would be under an obligation to secure the external Schengen border. Therefore, it could itself be under obligations to put in place border checks, border controls and everything that that brings with it. It is a question of the analysis and approach of what an independent Scotland's position would be vis-à-vis the EU and Schengen, and also any arrangements it was able to negotiate for a common travel area. I am sorry that is a rather long answer to your question, but different scenarios would have to be analysed, and I can try to talk through each of those as to what that might mean.

Q89 Mr Reid: If we assume what I think most of us regard as the best possible situation, which is that Scotland was not part of Schengen but was still part of a common travel area with the rest of the UK and Ireland, what would the presence of the international border mean in that situation?

James Brokenshire: The common travel area as it exists between the UK, the Republic of Ireland, the Isle of Man and the States of Jersey and Guernsey operates outside Schengen. The UK and the Republic of Ireland have a permanent opt-out from the Schengen border areas. There are certain co-operation issues to which we are party, but ordinarily there are no routine immigration checks on passengers travelling within the common travel area. There are certain exceptions to that. If you travel by air to Dublin, there may still be a check conducted to confirm that you are able to benefit from the common travel area, but ordinarily passengers would not be subject to those same checks; it is a free travel area.

On goods that transfer, there may well be the development of different excise or tax arrangements. As we have seen in the land border between Northern Ireland and the

Republic of Ireland, there is the potential for people to seek to exploit that. Concerted effort is undertaken on things like fuel transfers, and that abuse is very much the focus of law enforcement and other agencies. It is free travel in a broad sense within the common travel area for you as an individual. It is also worth underlining that, if you are travelling from outside the common travel area, it may not mean you do not need potentially two visas to transfer from one country to another. It is quite complex, but ultimately for citizens who are within the common travel area in general terms they would be able to conduct that free travel.

Q90 Mr Reid: The Scottish Government are on record as saying that they would cut fuel duty significantly lower than the UK rates. If that happened, what implications do you think that would have for cross-border trade?

James Brokenshire: It is incumbent on all member states of the EU, and for this purpose I will take it that Scotland is able to negotiate its way into Europe—

Mr Reid: Yes. We are assuming the best possible situation.

James Brokenshire: The best possible situation is that there are no abuses of free movement, and that is also in respect of illicit and prohibited goods; in other words, you are able to put in place policing and security arrangements. There is always a risk that when you have borders and separate countries it brings with it different bureaucracy and the potential for organised crime to exploit that. Therefore, both in the continuing UK and, I would expect, an independent Scotland there would need to be proper border policing and a focus on those people who might seek to abuse or take advantage of different rates of tax, or different bureaucracy, to try to get around that, with potential risks on either side of the border. While there is free movement of goods within the EU, that does not preclude the possibility of a member state putting in place controls to prevent crime. We have seen that in the past. One example would be that from July 2011 Denmark has deployed customs officers at crossings on the German and Swedish borders to curb cross-border crime and illegal immigration. Even if you have a common travel area, you still have to focus on potential criminality or other abuses.

Q91 Mr Reid: Having looked at the best possible situation, if Scotland was not successful in negotiating an opt-out from Schengen, what would be the implications at the border?

James Brokenshire: I do not think there has been a new entrant to the EU since 1999 that has secured an opt-out from Schengen, but putting that to one side—

Q92 Chair: Has anybody who has joined the EU since 1999 sought a derogation from Schengen?

James Brokenshire: I am not aware whether anyone has necessarily sought it. That is not to say it could not be done.

Chair: It is not quite the same thing.

James Brokenshire: I would not want to say it is not possible, but I state as a matter of fact that that has not occurred since 1999. If it was not possible, in those circumstances an independent Scotland would have to put in place its own border arrangements to secure that external border. Because the continuing United Kingdom is not part of the Schengen area, it would itself need to put in place those arrangements to have border controls, and therefore to control that land border between the continuing UK and Scotland.

Q93 Mr Reid: What would that mean in practice when people wanted to cross that border?

James Brokenshire: In essence, it would mean the controls that you would see on other land borders within the EU. For roads, that would imply border checks and crossings. You would have to have your passport and visa checked at that stage. Equally, on trains there would need to be border control guards to check that the right passport and documentation was in place. They would be the basic sorts of things you would expect if you were confronting a frontier.

Q94 Mr Reid: Take the scenario where there was a gap between Scotland becoming independent and becoming a member of the EU. If Scotland was outside the EU and the continuing United Kingdom was inside it, what implications would that have?

James Brokenshire: If there was a gap, it would depend largely on the approach an independent Scotland would seek to take on a range of policies. To take the common travel area analysis, that is predicated on broad convergence; independent countries will still maintain their own policies but with broad convergence, particularly on issues of security. It is important to recognise that the UK and the Republic of Ireland signed a memorandum of understanding back in 2011 seeking to converge our approach in relation to security infrastructure and security arrangements. It is looking at it in terms of what the approach of an independent Scotland would be. It may seek to negotiate some sort of arrangement with the continuing United Kingdom, but we would need to look very carefully at what border arrangements may be appropriate, given that you are in essence talking about a country that would be outside the EU and, therefore, our obligations in those circumstances.

Q95 Mr Reid: Having looked at the border between Scotland and the rest of the UK, let us look now at Scotland's other external borders. Again assuming the best situation—Scotland is in the EU but not Schengen—have you done any estimates of what it would cost Scotland to have sufficient border controls on its external borders?

James Brokenshire: The short answer is that we have not. What I can say to the Committee is that the total expenditure on our border arrangements, which cover things like Border Force, immigration enforcement to deal with organised immigration crime and the removal of those who should not be here, and Visas and Immigration, processing visa applications, is about £2.1 billion and involves about 20,000 people. There are officers within Scotland who conduct part of those functions, and, if it would assist the Committee, I have some figures on the number of people engaged by each of those different commands located in and based in Scotland, but that is not the whole picture. We have

offices around the globe that process visa applications. Most visa applications to come to this country are processed in Sheffield and London.

In being part of the UK there is also a benefit in having the ability to have visa waiver arrangements when you travel externally. There are no guarantees that an independent Scotland would be able to take advantage of the same arrangements that the United Kingdom currently holds. It would be for an independent Scottish state to negotiate those arrangements with other countries round the globe, and think about how it would provide those types of services externally from Scotland in terms of visa applications it might need to process for people wanting to visit Scotland.

Q96 Mr Reid: Assuming that Scotland had negotiated a common travel area with the continuing UK and with the Republic of Ireland, what implications would that treaty have for Scotland when it came to assess visa applications by people wanting to visit Scotland?

James Brokenshire: In terms of a common travel area, each country has its own rules and regulations, rightly, that it would seek to accede to, but in a common travel area there needs to be broad convergence, as I think I indicated. Therefore, we are currently working with the Republic of Ireland, in pursuance of the memorandum of understanding signed back in 2011, to look at ways in which we can further strengthen those arrangements for security co-operation. There is a joint programme of work to increase the security of the external common travel area border; co-operation to align the list of countries whose nationals do not require a visa to travel both to the United Kingdom and to the Republic of Ireland; and exploration of the potential for a possible UK-Ireland common travel area short-stay visit visa. Independent countries will have their own policies and approaches, but for an independent Scotland to be part of a common travel area it would need to negotiate that with the other members of that common travel area and, as part of that, have a broad, similar approach to ensure that the common travel area works, is supported and has that clarity to it.

Q97 Sir James Paice: Following that line, the Scottish Government have made it clear in their own White Paper that they propose to run a different immigration policy to attract more people of working age. Let us assume there is a common travel area. Is it really feasible that they could run such a different policy?

James Brokenshire: It is important to note that, in doing that, Scotland would be taking a markedly different approach from that undertaken by both the United Kingdom and the Republic of Ireland, where both countries' focus is on attracting scarce skills but they are not seeking to grow the population through immigration, which from my understanding and reading of the paper by the Scottish Government is what they are intending to do.

From a United Kingdom standpoint, we could not see an independent Scotland having a markedly different immigration policy and simply, therefore, accept a risk that people might seek to exploit that more relaxed policy and different approach and use it as a route to travel to the continuing United Kingdom. If we were faced with that scenario, we would have to put in place border controls and checks to maintain the integrity of the continuing United Kingdom, and the policies we have successfully put in place over the last few years. To think that an independent Scotland could say, "Well we want to be part of a

common travel area,” but then take a markedly different approach and assume there would not be any implications, or that we would not have to consider that, would be wide of the mark.

Q98 Sir James Paice: Can I take you back to the whole issue of the common travel area and/or Schengen? Does the Home Office have a view on whether an independent Scotland could opt out of Schengen in acceding to the EU and remain in the UK common travel area?

James Brokenshire: It is probably difficult to go much further than what I have already said. We can point to history to say that that has not occurred, but if the continuing UK was in a situation where Scotland was seeking to negotiate some sort of opt-out on Schengen, I do not think that in principle we would seek to be other than broadly supportive. From a continuing UK standpoint, having a common travel area would seem to be the most appropriate way forward, but that is predicated on the issue of coalescence and convergence on security and broad immigration policy. Obviously, if Scotland were part of Schengen it could not be part of the common travel area in those circumstances.

Q99 Sir James Paice: Can we be precise about it? If they were required to join Schengen and could not opt out, what would that actually mean? Would it mean that Scotland, and us presumably, would be required to implement full border controls, including closing off many of the highways and byways by which people freely flow over the border at the moment?

James Brokenshire: I think it would have profound implications for the ability to travel as people are able to do now within the United Kingdom, because of the obligations that would be placed on the Scottish Government to secure that external border. The EU may give time for Scotland to be able to meet those commitments and obligations, as it has done with other new entrants to the EU, but ultimately there would be that obligation to move to a position where the external Schengen border was secured and upheld.

Q100 Sir James Paice: Presumably, because that would be the UK’s border effectively, equivalent to the channel or whatever, we would also have to spend money on securing the border.

James Brokenshire: Clearly, the continuing UK would want to ensure that its border was secured in that way, so that issues of potential immigration or other abuses were properly met.

Q101 Chair: If Scotland joined Schengen there would be an obligation for Scotland to create an external secure border. There would be no such obligation on the rest of the UK to do so. It might wish to do so, but there would be no obligation on the rest of the UK to do so. Is that correct?

James Brokenshire: The obligation would be on Scotland to do that in the terms of its Schengen membership.

Q102 Chair: When you speak of a secure external border, there is the image of a fence or something similar, but presumably this is all risk-related. I am not clear what the external boundary is between Finland and Russia, say. Is it all fenced and guarded throughout hundreds and thousands of miles, or is it just a line on a map?

James Brokenshire: I confess that equally I am not familiar with the Finland-Russia border myself, but there are obligations to secure your border. The focus of that will be on rail and road crossings. Even if we look at the common travel area itself, between the Republic of Ireland and Northern Ireland it is a very different scenario. Equally, history paints a different picture, but there would be obligations to ensure that, in essence, because of the right of free movement—to be able to travel all across the Schengen area once you are within it—for those reasons there are obligations placed on member states to secure the external borders, so that it does not become a vulnerability for the whole of the EU at that point because of the free movement.

Q103 Chair: Jim was moving on to something else, but I wanted to be clear as to what “securing the border” actually means in the context of the Cheviots.

James Brokenshire: In essence, I think it means a focus on the primary routes in and out of the country—in other words, your road routes—and putting border checks and border controls in place, but also having proper border policing that examines other risks and vulnerabilities to your border in that sense.

Q104 Sir James Paice: As was touched on earlier, presumably it would mean almost certainly, for reasons of practicality, closing off a lot of current accesses. You would not put border controls on every little lane.

James Brokenshire: It is difficult to see how it could not mean that.

Q105 Chair: What does “It is difficult to see how it could not mean that” mean?

James Brokenshire: I would say yes, it means creating a border where there are border checks so that, if you cross it, you would have to have your passport or visa checked.

Q106 Chair: That would be an obligation on Scotland to close many of these routes into England.

James Brokenshire: Those are its obligations as being part of the Schengen area.

Q107 Mr Reid: We are focused on the land border between Scotland and England, but another international border would be the north channel between Argyll and Northern Ireland where in the summer yachts sail freely back and forth. What checks would Scotland have to put in place in that regard?

James Brokenshire: Establishing and agreeing where an international maritime border would be is quite a complicated issue. The Scotland White Paper talks about that in quite

general terms and says it will be a matter of international law. History will tell you that agreeing precisely where boundaries are or reside can lead to significant uncertainties for many years. I was reminded that there is still not necessarily complete agreement between the US and Canada on their maritime borders. It can be informed by history, and there are various pieces of legislation that govern fisheries rights and various other things, but setting out where, say, an international border would be between the continuing UK and an independent Scotland would involve a great deal of detailed negotiation and, I suspect, many years of uncertainty as to precisely where that would reside.

Q108 Mr Reid: If a yacht was to sail from Northern Ireland to Scotland, what would they have to do? Would they have to report to a customs house on the Scottish side? What would be the practicalities?

James Brokenshire: If a yacht or boat lands on your border, there are reporting obligations. As we do now, you have a border force that seeks to uphold that external border. One thing that Scotland continues to benefit from at the moment is the cutter fleet of Border Force; there are about five cutters that, in essence, look at interdictions against those people trying to enter illegally or transfer drugs into the country. That can be tasked on a national basis. For example, while one cutter is based currently in Scotland, if you have a significant operation you can draw upon all the resources and deploy a number of cutters to act against a specific threat, or on specific intelligence. It is having capabilities in that sense, to be able to uphold your international boundaries and borders and have the resources to do so.

Q109 Sir James Paice: I am going to move to the alternative scenario, which is that Scotland would remain within the common travel area. Can we be a little more precise about what that would actually mean for the land border between Scotland and England? Obviously, it would be demarked as it is now, but would there need to be border controls of any sort?

James Brokenshire: In a world where there was agreement between the continuing United Kingdom and Scotland—it is important to note that this is not somehow a given in those circumstances; it would need to be subject to negotiation—and if there was broad coalescence, it is possible to envisage a situation where there may not be those hard border checks and border guards in place. The difficulty is the point you highlighted, which is the stated Scottish Government policy of growing the population of Scotland by way of immigration, and therefore the significant issue that raises for the continuing UK and how we would insist on there being a border to secure the continuing UK in those circumstances.

Q110 Sir James Paice: That would be our decision rather than theirs.

James Brokenshire: It would.

Q111 Sir James Paice: Alan touched earlier on fuel duty. The ones everybody talks about in terms of other borders are tobacco and alcohol duties. Would the same apply? In a common

travel area, would it be possible as part of the negotiations for Scotland and the UK to have different rates of duty?

James Brokenshire: Yes.

Q112 Sir James Paice: That would be part of the negotiations.

James Brokenshire: The point is that that would then provide a potential opportunity for others to exploit it, which is why you are then looking at the work of your policing and your border force. The UK has the benefit of the National Crime Agency looking at intelligence and what it is telling us. It is those capabilities you would need to ensure that exploitation of those differing rates does not happen. The work of our Border Force and others in securing millions of pounds of revenue from the seizure of illegal tobacco, as you rightly highlighted, underlines the challenges that reside, and that could become more acute between an independent Scotland and the continuing United Kingdom.

Q113 Sir James Paice: I turn finally to the slightly more technical area—although in this context we shouldn’t use the word “area”—which is the dispute between what the Scottish Government have said in their White Paper and what the UK Government are saying in their “Scotland analysis” paper about the whole issue of Schengen versus common travel area. The Scottish Government are saying, “There are absolutely no grounds to believe that the EU would challenge Scotland remaining part of the common travel area rather than joining the Schengen area,” whereas the UK’s document claims that Scotland would first have to get an opt-out from Schengen before applying to rejoin the common travel area; in other words, it would first have to leave the common travel area. Do you have a further view on that? Is there a risk that an independent Scotland could find itself falling between two stools, neither part of Schengen nor part of the common travel area? There is a clear dispute between the two Governments over this.

James Brokenshire: I can point only to what the European Commission have said about the situation. If a territory leaves part of a member state, they would treat that, rightly, as a new country, but that new country would need to apply for membership of the EU. As part of that, there would need to be a negotiation of the terms of that membership, and it would need to be agreed by all member states. Therefore, if member states said there should be an opt-out from Schengen, that would need to be agreed by all member states. There is a significant challenge for an independent Scotland in those circumstances, in securing membership of the EU and on what terms. I have clearly set out that you cannot be in the common travel area and in Schengen. If that was insisted upon, they would not be able to be within the common travel area.

Sir James Paice: This is the key point.

James Brokenshire: There is also the timing of it, and the gap.

Q114 Sir James Paice: Would they have to leave the common travel area in order to apply to the EU and negotiate out of Schengen, or could they remain within the common travel area

until such point as they either had to join Schengen or got a dispensation not to join Schengen?

James Brokenshire: There could be another scenario where Scotland was able to secure membership of the EU, negotiated its way in and accepted that it might have to be part of Schengen but there would be a transition period. You could envisage a scenario where, prior to joining Schengen, a common travel area could exist in those circumstances. A number of different scenarios could apply, as well as there being a gap between an independent Scotland coming into existence and then being part of the EU, if it was unable to negotiate and secure that. It is clear that there could be a number of different scenarios, which equally make it quite difficult for the continuing UK to know and plan what the approach would be—not that we are planning or doing anything at this stage, because it is right that the Scottish people have their say.

Q115 Chair: Could I try to tie up one or two points about which I am not entirely clear? I am assuming that in general terms it is in the UK's interests to have a common travel area with Scotland, subject to the sorts of points you raised about security, crime, immigration, excise duties and the like. In general terms, the UK would not veto any opt-out of Scotland from Schengen, subject to those points being agreed. Is that fair?

James Brokenshire: I will make the customary response that we are not contemplating this line, which is what you would expect me to say, and therefore we have not done the planning or thinking on that, but in broad terms there would be equal benefit to the continuing UK and Scotland in having Scotland within a common travel area.

Q116 Chair: Can I come back to the question of immigration? We understand the Scottish Government's policy is for mass immigration to meet the cost of the pension crisis. There is no issue about migration from the EU since that cannot be controlled anyway, so we are discussing non-EU migration. If people wish to travel from Scotland to work, say, in London, as many migrants in the past have done, simply having barriers on the roads and the railways will not stop anybody, because all they need to do is leave the road, walk round and get picked up by a car on the other side of the border post and drive on.

James Brokenshire: Visa controls would need to be established. No doubt Scotland would have a different visa regime as contrasted with the continuing United Kingdom. Therefore, there would be policing and Border Force requirements to secure the border in that general sense. As we know, it is a land border and therefore routes through it will be by road, rail or across land that may not have a road or a direct connection in that sense. While we are talking here about hypotheticals, a combination of different resources could be brought to bear on hard borders—roads—with barriers and checks to see whether you have the right accreditation and visa to enter the continuing UK, or vice versa, because no doubt a Scottish Government would want to ensure that their immigration controls were upheld. There may be people who are seeking to flee removal from the continuing United Kingdom, in the upholding of our own immigration policies, and the Scottish Government would want to prevent individuals from entering Scotland in those circumstances.

Q117 Chair: In all of this I am assuming that there is a distinction between legitimate and illegal migration. Legitimate and legal migration can presumably be handled not only by the methods you indicated but also by people having to show various papers when they turn up to seek employment, and all the rest of it.

James Brokenshire: Yes.

Q118 Chair: The issue is illegal trafficking. The issue that concerns me and that I want to clarify is the nature of the negotiations there will be between the UK and a separate Scotland about the terms of entry to a separate Scotland. My understanding—I would be grateful if you could clarify it—is that, effectively to maintain the common travel area, the UK and Ireland have a deal whereby the UK has a veto over Irish immigration policy. If Irish immigration policy was unpalatable, the UK could simply withdraw from that common travel area, and the same would therefore have to apply to a separate Scotland.

James Brokenshire: I should make it clear that there is no veto. The Republic of Ireland has its own clear immigration policies that it sets itself. I suppose there is a broad sense, which has been developed over many years, on how we have co-operated and worked together in our mutual interest, so I would not characterise it in those terms in any way.

Q119 Chair: A consensus has developed, but there will be no such consensus between a Scottish Government intent on mass immigration to meet the cost of a pensions crisis and the rest of the UK. Clearly, there is an incompatibility, and I am trying to clarify whether or not a common travel area in those circumstances is policeable.

James Brokenshire: You are right to highlight what appears to be a clear divergence in immigration policy in the Scottish White Paper, which is a desire to grow skills and deal with a demographic and age-related issue through immigration. Put to one side how that would work and operate, because that would be a matter for an independent Scotland. It is difficult to see, if there is such a stark difference between a continuing United Kingdom and Scotland in those circumstances, how it would be possible for us to find acceptable terms for a common travel area, and the obligations that the continuing UK would face in seeking to secure the border between it and Scotland.

Q120 Pamela Nash: To explore that further, if Ireland decided to vary their immigration policy a bit wider from the UK policy, would that affect the common travel area as it stands?

James Brokenshire: The only way I can answer that is by saying that that has not been and is not the approach of the Republic of Ireland. We have had very good, close co-operation over many years, which obviously has great history attached to it, and equally is evidenced by the memorandum of understanding where we are looking at ways in which we can work closer together on our visa processing, some of the approaches we take on security and how we ensure that people who may be a threat to both our countries are denied entry. The direction of travel is very much in the opposite way, so it is difficult to contemplate circumstances in which there would be that stark divergence in the way we are currently seeing it.

Q121 Pamela Nash: I am not suggesting that the Irish Government are about to announce that on their state visit to the UK. I was just trying to look at the possibilities for what the relationship would be between a separate Scotland and the UK.

James Brokenshire: There is a strong sense of shared interest and approach, which has been successfully achieved for many years and is growing even stronger, between the Republic of Ireland and the United Kingdom in the common travel area relationship. The genuine challenge that we have, based on what the Scottish Government have said on their immigration policy, is how that could work in the common travel area, given the likely flows of people who might seek to take advantage of a much more relaxed immigration policy within Scotland for the sole purpose of coming to the continuing United Kingdom. That is the significant challenge and risk that a continuing United Kingdom would face. I cannot see circumstances where we as the continuing United Kingdom would not insist on having strong border arrangements to ensure that the ability to take advantage of a more relaxed regime did not have profound implications for the continuing United Kingdom.

Q122 Chair: Is it not possible to say, again distinguishing legal and illegal migration between Scotland and England, that Scotland, even though it is going to have mass immigration, is hoping to have those with certain skills and abilities who are therefore unlikely to be working in the black economy or without proper paperwork? In reality, the normal policing system of requiring national insurance certificates, paperwork and so on for England, Wales and Northern Ireland would be sufficient to cope with that. I concede that it would not be sufficient to cope with illegal travel; that would depend, however, on people who had come in with skills going to the black market for employment, which is less likely.

James Brokenshire: That would still presuppose the need for border checks and for that hard border to be there. I take one example that may assist the Committee. Looking at what the Scottish Government have said on students, and their desire to change the approach on post-study work, until 2008 Scotland had its own dedicated post-study work route—a legal route into work. It was called the Fresh Talent: Working in Scotland scheme, but it ended up being stopped because students chose to move to London and the south-east to look for work after joining the scheme in Scotland. I take that as just one example of what we have seen in the recent past where people seek to use a Scottish route to come to work and live in Scotland, and whether that would remain in these circumstances.

Q123 Chair: Would it not be possible to have the equivalent of the fresh talent initiative applying to a separate Scotland, whereby people's access was restricted to Scotland, and their certification and visa—what you will—would not allow them legally to work in the rest of the United Kingdom?

James Brokenshire: When you look at the challenge that has been faced, as we have seen in the UK with people seeking to exploit the student route and not study but to come and work and stay on for many years, it is difficult to see how the continuing UK, which has taken steps to uphold that, could simply say that it was acceptable to have a scenario where flows could happen and a route could be taken advantage of. That puts further pressure on immigration enforcement. Having changed the regulation and the systems to

uphold a clear student route and a postgraduate route on meeting certain salary thresholds, effectively to have that exploited through a different way would put further emphasis on the need to uphold that and, therefore, the enforcement work that would be required. If you look at all of the policies together, it is that enforcement route—seeing that the continuing UK’s policies were upheld—if Scotland, in a common travel area, was pointing in a very different direction in terms of the lawful immigration route, as well as issues of unlawful immigration, that might crop up.

Q124 Chair: Can I clarify whether, in the event of a decision by Scotland to become separate, the question of—not quite harmonisation—compatibility of immigration policies would be one of the issues on the agenda?

James Brokenshire: Yes, most definitely.

Q125 Chair: That would be part of the negotiating process, along with Trident, sterling and everything else, for the period following a referendum decision.

James Brokenshire: In considering the potential for a common travel area and the negotiations that would take place, coalescence and a broad, consistent approach in relation to immigration policy would be a significant factor in informing the approach that would be taken by the continuing UK in those circumstances.

Q126 Mike Crockart: I turn now to a different subject: citizenship. I start with a fairly basic question. Ultimately, who decides who is Scottish and who is British after a yes vote?

James Brokenshire: It is for independent countries to set their citizenship policy. In those circumstances, who would be treated as a citizen of Scotland would be a matter for a Scottish Government in an independent Scotland, and who would be treated as a UK citizen would be a matter for the continuing UK Government. It is not a question of negotiation; it is a question of the state asserting who its citizens are.

Q127 Mike Crockart: Let’s look at the White Paper. The position taken by the Scottish Government is that it is based very much on residency. The address you are living at on independence day plus one decides which country you are a citizen of, so even non-Scots-born living in Scotland on independence day plus one would be Scots. Is it a legal way to go forward to declare, “Regardless of where you were born, you are now a Scottish citizen”?

James Brokenshire: I do not think you could characterise it as illegal. It would be for a Scottish Government to determine how they set their citizenship route. We have seen the White Paper; it says a British citizen “habitually resident in Scotland on day one of independence” would automatically be a Scottish citizen, whether or not that individual wanted to be a Scottish citizen. At this stage it is difficult to know, if you were in that situation, whether you would have a right to renounce that, for example. You may not choose to. It is equally a question of whether there are additional obligations that may be placed upon a Scottish citizen, which again is not clear, but ultimately in an independent Scotland it would be for the Scottish Government to determine their citizenship rights.

Q128 Mike Crockart: Equally, it would be up to the rest of the UK to decide on their citizenship, so would UK citizens resident in Scotland automatically lose their UK citizenship, or would there be potential for dual nationality?

James Brokenshire: Clearly, that would be a matter for a continuing UK Government. I would not wish to set the policy of a continuing UK Government in the future. Ultimately, the continuing UK Government would need to consider whether all British citizens living in Scotland could retain their British citizenship upon independence. As a country, I think we have always had a fairly broad approach, saying that people can be dual citizens. I would say that that is unlikely if you look back at history and the approach we have always taken to citizenship, but it would be open—

Q129 Mike Crockart: What is unlikely?

James Brokenshire: It would be unlikely that British citizenship would be taken away from someone who was a British citizen in an independent Scotland, but it would be a matter for the continuing UK in the future to continue to assess that. Certainly, from where I sit at the moment it would seem unlikely that the continuing UK Government would take any step of that kind, but ultimately it is for the UK Government to determine its citizenship rights and how they are set.

Q130 Mike Crockart: But the reality of that would be that all Scottish citizens would automatically retain their British citizenship on independence day plus one.

James Brokenshire: Yes.

Q131 Mike Crockart: And their immediate descendants.

James Brokenshire: Yes. You fasten upon an important point. One of the profound implications of an independent Scotland is that British citizenship passes to the next generation, so as the child of a British citizen you are able to apply for British citizenship, but not beyond that. If you are a grandchild not living within the United Kingdom, in those circumstances there aren't those rights to seek British citizenship. In those circumstances, it is quite profound that, if you are a British citizen not within the continuing United Kingdom, British citizenship could be passed to your children but not to your grandchildren.

Q132 Mike Crockart: We end up with a kind of bubble effect, where you have all the current UK citizens, and any of them living in Scotland who have children in Scotland would retain UK citizenship, but thereafter it starts to peter out.

James Brokenshire: Yes.

Q133 Mike Crockart: What about descendants of Scots living elsewhere in the United Kingdom? Under the plans, they would be eligible to apply for Scottish citizenship. What

would that mean for their UK citizenship? Would there be a direct effect on it, or would they just retain their UK citizenship automatically?

James Brokenshire: As I think I said, we have maintained a situation where people are able to have dual nationality, so if someone had sought to apply for Scottish citizenship—although I just question the comment about applying for this. If I can get the White Paper in front of me, I think it states a slightly different scenario from the one you have painted. It says, “British citizens born in Scotland but living outside of Scotland on day one of independence” are “automatically...a Scottish citizen.” There are two automatic routes. We then move on to the steps below that: a child “born in Scotland to at least one parent who has Scottish citizenship” is “automatically...a Scottish citizen.” There are further steps where you are able to apply. It is possible to have dual citizenship, so in those circumstances it would seem that you would have a dual citizen: someone who is a British citizen and a Scottish citizen.

Q134 Mike Crockart: Is any analysis being done as to whether that has any knock-on effect? It introduces a level of complexity that is not there at the moment. What would be the knock-on effects of that for the rest of the UK and for Scotland?

James Brokenshire: I cannot say that we have done analysis—for the reasons we are not planning for an independent Scotland—but it would be for the continuing United Kingdom in those circumstances to assess the implications of that. I am sure it would be for the Scottish Government in those circumstances to assess rules and regulations on issues such as the right to vote and other rights that attach to citizenship. There would be various consequences and issues to be considered in those circumstances either for Scotland or the continuing United Kingdom on some of the rights that attach to citizenship.

Q135 Chair: One issue that was touched on to some extent in the previous session was the level of consular support and the like abroad.

James Brokenshire: You are right.

Chair: If somebody in Scotland with joint citizenship who was paying tax in Scotland was somewhere there was no Scottish embassy, they would be able to call on UK support without making any financial contribution towards it through their taxes. I am not sure that is necessarily a position that the UK would be happy with over the long term.

James Brokenshire: Clearly, it is something that would need to be examined and considered by the continuing UK. The Scottish Government may wish to negotiate to receive the support of other countries to provide consular assistance to Scottish citizens. That is not to say that Scotland would necessarily want that to be provided by the continuing UK embassies; it could seek arrangements with the embassies or consulates of other countries, but consular support would need careful consideration. Dual citizens have the benefit of our embassies and consulates now. It may be reflected upon, but ultimately our embassies and consulates are there to support British citizens in need of assistance in foreign countries.

Q136 Chair: Can I follow up the question of entitlements? If a UK citizen was living in Scotland, would that in itself affect their entitlement to, say, UK pensions and the like?

James Brokenshire: I am straying beyond my normal role in migration and those policies. Benefits are on the basis of habitual residence—we are not talking any more about citizenship—and equally accrued rights being protected. There is quite a complicated picture and I stray beyond my area of responsibility, but it is different. It is important to understand that welfare benefits attach to habitual residence—the primary test that operates—rather than to citizenship. It is important for me to make that distinction.

Q137 Mr Reid: One benefit that is related to citizenship is winter fuel payments. At present the Government are paying winter fuel payments to British citizens living in Mediterranean countries. Would I be right in saying that if everybody in Scotland chose to retain their UK citizenship and they were above the qualifying age, they would all be entitled to a winter fuel payment from the UK Government?

James Brokenshire: I am not familiar with the current winter fuel arrangements, but benefits attach to citizenship. I am aware from my constituency postbag of cases that have arisen in different parts of the world where people seek to claim winter fuel allowance. Citizenship brings some prescribed and defined benefits. It is in that sense open to a continuing United Kingdom to assess citizenship moving forward. Therefore, while it is difficult for me to contemplate circumstances where British citizenship would change simply because someone was no longer resident within the continuing United Kingdom, it is open to Governments to change rules and regulations, but it is difficult for me to foresee that happening.

Q138 Mike Crockart: Surely, it is more likely that the change would be the entitlement—looking at who would be entitled to that benefit, removing it from being based on citizenship and perhaps making it more related to habitual residence, although there would be something to pay for making that change.

James Brokenshire: I am sure a broad range of policy issues would be created by an independent Scotland, whether or not they are issues such as the one you have fastened upon. I am sure that even more profound ones than that will be thrown up.

Q139 Mike Crockart: Are you aware of any other rights, responsibilities or entitlements that attach to citizenship?

James Brokenshire: The key issues that would need to be considered are things like the right to vote. If there were British citizens who were no longer resident within the continuing United Kingdom, what would be their entitlement to vote? Again, that is straying beyond my own responsibilities, but at the same time it is an issue that I am sure would need to be carefully considered by a continuing United Kingdom in those circumstances.

Q140 Chair: I think that has covered all the points we wanted to raise with you. At the end of these sessions, as you may remember from your previous visit, we always ask whether or not you have any answers prepared to questions we have not asked, or any points that you feel we should have covered but have not. Is there anything that falls into that category?

James Brokenshire: I believe strongly that the UK is stronger by having Scotland as an integral part of the UK; indeed, our border arrangements provide security for the whole of the UK by having this integrated approach. Borders and immigration is a complex area that requires systems that interlock and take an expansive view in that way—how we control land borders, how we control air and how we deal with maritime. Scotland benefits from some important capabilities, such as our national border targeting centre, which is a system that analyses advance passenger information about people flying in and out of this country. It identifies whether there are known individuals who would be a potential threat and prevents them from boarding aircraft. Our warnings index flags up individuals who enter this country. Scotland would need to consider those issues very carefully on independence, and the continuing UK would need to consider the implications of an independent Scotland. It is important to understand just how profound a change this would be to our security arrangements.

I would also highlight the issue of passports. The Scottish Government have said they will expect Her Majesty's Passport Office to continue to provide passports for an independent Scotland for an intervening period. If Scotland were part of the EU, there may be a requirement for fingerprints to be put into the biometric information contained in a passport. The continuing UK has opted out of those requirements. There are complexities even in the continuing passport arrangements, and there would need to be an agreement reached between Scotland and the UK to provide that type of service. Equally, statements have been made about cost. Additional costs may reside simply because of the additional fingerprint information that would need to be contained in the passport. I suppose this underlines to the Committee the significant benefits we have as the Union—as the United Kingdom—for our security and integrity as a country, with interlocking facilities and capabilities that support that.

From what I have seen of the Scottish White Paper, there is a range of complexities and of potential indications of costs and how they could be arrived at that do not appear, at this stage, to have been considered and examined. There would need to be detailed negotiations in any scenario. I think this underlines to the Committee the complexities as well as the challenges involved in citizenship, transit visas and a whole host of different issues that support the business and growth that Scotland benefits from as part of the UK.

I strongly believe that Scotland benefits from being part of the UK and, absolutely, that the UK benefits from having Scotland.

Chair: On that happy note, I will call the meeting to order.