



HOUSE OF COMMONS

Scottish Affairs Committee

Oral evidence: Scotland Office Annual Report and Accounts and the Work of the Scotland Office, HC 464

Wednesday 14 October 2015

Ordered by the House of Commons to be published on 14 October 2015.

Written evidence from witnesses:

- [The Scotland Office](#)

[Watch the meeting](#)

Members present: Pete Wishart (Chair); Kirsty Blackman; Mr Christopher Chope; Margaret Ferrier; Chris Law; Maggie Throup.

Questions 1-100

Witnesses: **Francesca Osowska OBE**, Director, Scotland Office, and **Michael Chalmers**, Director and Solicitor to the Advocate General, gave evidence.

Q1 Chair: Welcome to the Scottish Affairs Committee; we are very grateful for you both coming along today. If you would like to introduce yourselves and say what you do, and if there are any initial statements that you want to make to the Committee, please feel free to use that time.

Francesca Osowska: Thank you very much. I am Francesca Osowska. I am Director for the Scotland Office and I am also Principal Accounting Officer for the Scotland Office and the Office of the Advocate General. I have no opening statement, other than that I am very pleased to appear before the Committee to answer questions on the Scotland Office and the Office of the Advocate General Annual Report and Accounts for 2014-15.

Michael Chalmers: Thank you. My name is Michael Chalmers. I am the Director of the Office of the Advocate General and the Solicitor to the Advocate General. Similarly, I have no opening statement to make but am happy to answer any questions the Committee may have.

Q2 Chair: Thank you very much. Obviously, we are here to talk about the Annual Report, which we have all digested and know inside out and back to forward, and so on. We are grateful that we are able to ask you a few questions about what is included in the Annual Report.

One of the things that struck me—perhaps you could explain to me how this works—is that there are 100 staff currently employed within the Scotland Office. Is that correct, roughly 100 staff?

Francesca Osowska: Across the Scotland Office and the Office of the Advocate General, yes.

Q3 Chair: Across the estate that is operating the Scotland Office. None of them are permanent. Does that create any difficulties or problems or issues for you? I would imagine it must, and why has the decision been taken that they have no permanent staff in the Scotland Office?

Francesca Osowska: Maybe I will kick off on that and I will ask Michael to comment and give a perspective from the Office of the Advocate General. Since devolution and since the creation of the Scotland Office this has been the case: that the Scotland Office does not itself directly employ staff, but we second or take staff on loan from other Departments. Part of that is pure economics, efficiency and practicality; to run a full scale HR system for such a small office would be inefficient. By tapping into the resources of other Government Departments—for example, in the Scotland Office in London most of our staff are on loan from the MoJ, but we also benefit from arrangements with the Cabinet Office—we can access external expertise and indeed access external HR expertise, which is effective and efficient for us. Members of staff, once they are in post within the Scotland Office, I feel are fully part of the Scotland Office team, so if the question is about allegiance, there are no difficulties there. Michael, do you want to say something?

Q4 Chair: Just before Michael comes in, if you don't mind, it is not about allegiance and I don't think that is the issue. It is just being able to build up a staff capacity when none of them are permanent and most of them seem part-time. Are they shared with other Ministry Departments or are they exclusive to the Scotland Office?

Francesca Osowska: They are exclusive to the Scotland Office.

Chair: Seconded from other Departments?

Francesca Osowska: They are seconded or on loan from other Departments. They have direct line management throughout the Scotland Office in the case of my staff, and for Michael in the case of OAG staff and they are answerable to Scotland Office Ministers, so that line of accountability is very direct.

Q5 Chair: Are there any plans to get permanent staff in place, given you have significant and substantial pieces of work to consider as we go forward in the session? Are you happy and relaxed about the current arrangements with the—

Francesca Osowska: Yes, I believe the current arrangements work very well, because we are able to bring in staff from other Departments and benefit from their expertise.

Michael Chalmers: Yes. It is similar for the Office of the Advocate General, in that what I require to run my office is staff that have public law expertise and Scots-qualified lawyers. It is a relatively small office. We have about 36 lawyers. It helps the resilience of my office to be able to draw from a larger pool. So, the Office of the Advocate General is part of an association of Government legal offices, together with the Scottish Government Legal Directorate, Scottish Parliament lawyers and Scottish Law Commission lawyers. All of these offices together draw from the same pool of staff but, yes, as Francesca has outlined for the Scotland Office, we have staff fully dedicated to working in our office. They do not move between offices day to day; they are on a reasonably long-term secondment and that operates as quite a successful model for us because it helps the resilience of not just our office but the other legal offices I mentioned. It also means that staff interchange and it helps their development of legal skills. In fact, adding the perspective of working for another administration is helpful as well.

Q6 Chair: How many staff does the Office of the Advocate General have then?

Michael Chalmers: We have 36 legal staff and I think it is 46 in total.

Q7 Chair: The last year, as I think we touched on, has been a particularly trying year, with lots of pieces of significant and substantial work, particularly the referendum and the Smith Commission. What do you see as the main issues and challenges and the main thrust of your work as you go forward over the next year or two years in the parliamentary term?

Francesca Osowska: Thank you for the question. Again, I will speak for the Scotland Office and allow Michael to speak for the Office of the Advocate General. In terms of the Annual Report, obviously that sets out five objectives for 2014-15. For the Scotland Office, I think our work continues in that vein. We have a strong constitutional role, primarily in relation to the Scotland Bill, which, as you are aware, is passing through these Houses at the moment. That is a key priority for the Scotland Office. In addition we continue to be the voice of Scotland in Whitehall, so our work with other Government Departments across Whitehall, in terms of ensuring that they appreciate the devolution settlement and that they are conscious of the Scottish context, will continue. Similarly, we are the voice of the UK Government in Scotland and, again, we work co-operatively with other Government Departments who have reserved responsibilities in Scotland to ensure that the UK government can work effectively in Scotland.

Q8 Chair: Just before we go to Mr Chalmers, do you have any sense of the balance? I am quite intrigued by seeing that you are the voice of Scotland and Whitehall and the voice of the UK Government in Scotland. How would you see that balancing out in terms of the commitment to either of those fine offices?

Francesca Osowska: In terms of numbers of staff?

Chair: No, not in terms of numbers of staff but about how much time or effort. Do you see yourself primarily as the voice of Scotland in Whitehall or do you see more of a role as being the voice of the UK Government in Scotland? How would you characterise the effort that is put on to each of those very laudable aims and objectives?

Francesca Osowska: I think we treat them equally. If I were to take those objectives along with our constitutional objectives—which, as I mentioned, include the Scotland Bill, but also include responsibilities in terms of Scotland Act orders and LCMs—then I would say that we give those equal weight.

Q9 Chair: Mr Chalmers?

Michael Chalmers: Yes. The role of our office is to provide Scots law advice to the whole of the UK Government. Our objectives reflect that, so that includes litigation for UK Government Departments in Scotland. It includes giving Scots legal advice to all UK Government Departments, particularly on Westminster Bills, for example—but not restricted to that—and also supporting the constitutional objectives that the Scotland Office shares. Obviously that would include the Scotland Bill and legal work on the Scotland Bill but it also includes a lot of the stuff that goes on below the radar.

Francesca mentioned Scotland Act orders; so, lawyers from my office will work closely with lawyers in the Scottish Government to make sure those orders proceed smoothly through each of the Parliaments. I suppose an example would be the section 30 order that we put through in the early part of this year to change the competence of the Scottish Parliament to allow legislation for 16 and 17 year-olds to vote at next year's Holyrood elections, so there is a lot of that sort of working below the radar that we continue to do and we see ourselves as part of the good operation of devolution and government for Scotland.

Chair: Thank you. I think we will have a little discussion about some of the Budget issues that are in the Annual Report. I know Margaret Ferrier has a couple of questions on that.

Q10 Margaret Ferrier: Yes. Looking at the 2015-16 budget for the Scotland Office it was set at £5.8 million in the 2013 spending round, but the most recent main estimate asked Parliament to approve an additional £3 million for capability enhancement. What are these additional funds for?

Francesca Osowska: Could you tell me where in the Annual Report you are looking?

Margaret Ferrier: At the administration costs; it shows the administration costs of the Scotland Office and the Advocate General.

Chair: It is a table: "Scotland Office and OAG".

Margaret Ferrier: A graph and a table, yes.

Chair: We are not sure of the page number. We will get to the page so that you know what we are referring to. It is in the "Main Estimates Memorandum: Enhanced Capability" at page 3. Do you have what we are referring to?

Francesca Osowska: No, I don't and, Ms Ferrier, I am sorry but the acoustics are quite bad in here, so I did not catch all of the figures that you outlined.

Margaret Ferrier: It was set at £5.8 million in the 2013 spending round but the most recent main estimate asked Parliament to approve an extra £3 million for capability

enhancements, so what we are looking to see is: what are those additional funds going to be used for?

Francesca Osowska: In terms of the outturn for 2014-15—and I am referring to page 54 of the Annual Report—the total combined outturn for the Office of the Advocate General and the Scotland Office was £7.7 million. You will appreciate that that did include an uplift from the original budget setting process that occurred in 2010. At that point, a referendum was not anticipated; a lot of the work in terms of 2014-15 has been the follow through or was related to the referendum, so the work in the run up to the referendum, contributing to the Scotland analysis papers for example, supporting Ministers as they gave public information to inform the debate about the referendum, and that explains the increase in that provision.

Q11 Margaret Ferrier: These public Ministers, are you meaning UK Ministers?

Francesca Osowska: Yes.

Margaret Ferrier: Not Scottish Government?

Francesca Osowska: No.

Q12 Margaret Ferrier: The Annual Report and Accounts show that general administration costs rose by about 8% from £7.2 million in 2013-14 to £7.7 million in 2014-15. Why do you feel the general administration costs are rising? Is there another reason, other than the referendum debate that was taking place?

Francesca Osowska: No. As I said earlier, the very initial budget was set in 2010 as part of that spending review. The referendum was not anticipated at that point and this increase represents the resources dedicated by the Scotland Office to supporting the work of the UK Government, overall, in informing the referendum debate.

Q13 Kirsty Blackman: The Scotland Office had allocated to it and spent an extra £3 million helping UK Government Ministers with information about the referendum, mainly?

Francesca Osowska: In terms of the increase, there are a number of different figures being talked about here. It might be helpful if I wrote to the Committee after this hearing to set out the sequence of events, because there were uplifts granted and changes in the Budget made from the original 2010 provision at different periods, including during the course of 2013-14, so I do not think it is entirely correct to say it was a single jump of £3 million. In terms of what that money delivered and the outcomes that the Scotland Office delivered, I would refer the Committee to chapter 3 of the report. That sets out quite a detailed analysis of the outcomes and the outputs from the five objectives set by the Scotland Office, and certainly part of that work and a focus of that work in 2014-15 was in relation to the run-up and then the after-events—including the Smith Commission—of the referendum.

Q14 Chair: It would be helpful if you write to the Committee to explain properly what that £3.3 million did account for. What we are hearing is that this might have been the figure that was used for the referendum campaign, for the “No” campaign, and used by UK Ministers to take part in the referendum. Would that be roughly a correct characterisation of that spending?

Francesca Osowska: I don't think it would be, if you don't mind. What I am saying is that, if we look at page 54 of the Annual Report and Accounts, then you see the trajectory of the Scotland Office and Office of the Advocate General accounts. You can see, in terms of general administration costs, that they have more or less been around the £7 million. That is why I feel it is important that I write and set out the explanation of the £3 million figure.

Chair: Please do.

Francesca Osowska: However, in answer to your question, Mr Chairman—in relation to “Was this a way of the Government funding the ‘No’ campaign?”—this was to fund the activities of UK Government civil servants, in line with the civil service code. All activities undertaken by civil servants in my Department would meet a propriety test, yet I think you would agree that in the run-up to a referendum, obviously when Ministers want to be more visible, when we need to ensure that there is a good flow of public information—for example, via the Scotland analysis papers—that increases our activity and that is why there was an increase between the 2013-14 outturn and 2014-15 outturn.

Q15 Mr Chope: I am looking at page 54 as well, where you have the plans for 2015-16—and we are talking today about the work of the Scottish Office, not just looking at what was happening before—and there it says that there is a figure of £8 million for the 2015-16 plan, as against the outturn for last year of £7.7 million. There is an increase of £1 million there despite the fact that obviously there is no longer a referendum. What is explanation for that?

Francesca Osowska: Again, thank you for the question, because I think it does bear explanation. No, we don't have a referendum in 2015-16, but what we do have is the continuing work of the Scotland Office to deliver on some of the events after the referendum. You will be aware that the Smith Commission report was delivered in November. There was an agreement that a draft Bill would be brought forward as soon as possible. That draft Bill was introduced into these houses the day after the Queen's Speech, and that legislative process, which commenced effectively on 19 September 2014, has had a great bearing on the work of the Scotland Office. We have put resource into that to deliver in a very compressed timescale from concept to delivery of a Bill, so the resources for 2015-16 support that work; it is a key priority of the Scotland Office to deliver that Bill. In addition, earlier in the year, the Treasury did have a review of the Scotland Office provision and agreed that the original trajectory of budget provision set for the office in 2010 needed to be adjusted for this fact.

Finally, in terms of the Scotland Bill specifically, as well as the staff resources that are needed to deliver it, which I have mentioned, in addition there are some costs in relation to the drafting of the Bill that add into our costs. That is the explanation. It is also worth saying that obviously these are plans. As you will know, there is a spending review process going on at the moment. The Treasury have yet to announce departmental provision and so we don't know whether that will be fulfilled.

Q16 Margaret Ferrier: The Annual Report and Accounts show that the grant payable to Scotland rose from £26.1 billion in 2012-13 to £20.2 billion in 2014-15. Excluding the impact of devolution, is the next spending review settlement likely to mean any cuts for Scotland?

Francesca Osowska: In terms of this coming spending review?

Margaret Ferrier: Yes.

Francesca Osowska: I am afraid I cannot answer that. Obviously, the Treasury are considering the spending review at the moment and they will make their announcement on the spending review in due course, and we will see what that means for the Scotland Office.

Q17 Margaret Ferrier: The Scotland Office is going to play no part, then, in the spending review process?

Francesca Osowska: No. We have had discussions with the Treasury; sorry, I should have explained that. The Treasury have discussions with all Departments in advance of them finalising their decisions. We have obviously had these discussions with the Treasury in terms of what the Scotland Office will be doing and the Treasury will then take decisions on the most appropriate budget for the Scotland Office, and I await those decisions eagerly.

Q18 Mr Chope: This is about the cash reserves. Who administers the Scottish cash reserves that are created to mitigate potential volatility in tax receipts?

Francesca Osowska: This is the mechanism by which funds are paid to the Scottish Government?

Mr Chope: Yes, £135 million in a year or something.

Francesca Osowska: Yes, the Scotland Office administers that, and that is a consequence of the 1998 Scotland Act.

Q19 Mr Chope: Do you think the Scottish Government should have more discretion over when to draw upon that Scottish cash reserve to go alongside its power to make discretionary payments into the cash reserve?

Francesca Osowska: It would not be appropriate for me to comment on whether the Scottish Government should have a more discretionary role in the procedure. However, what I can say is that, as a process, this has been in place since devolution. All payments relating to both the block grant and changes to the grant are made to the Scottish Consolidated Fund and administered through the Scotland Office. As I said, that is a consequence of the 1998 Act. Each month, the Scottish Government calculates the amount required to fund its various bodies covered by the grant, and the Scotland Office requests the funding from the Treasury and it is transferred to the Scottish Consolidated Fund. Treasury is responsible for a cash management programme, which means that funding cannot be drawn down in advance of need, and I think that system has worked very well up to now.

Q20 Mr Chope: Do you think it is easily understood by the people in the United Kingdom, collectively?

Francesca Osowska: Again, I am not sure I could comment on that. I understand it, but then perhaps I am slightly more steeped in it than the average person on the street. I think the point is that it works and it works well, and if the average person on the street—if there

is such a thing—does not understand that, does it matter? The Scottish Government receives the funding that it needs on time.

Q21 Chair: Just on this issue, there is always a fight and a fuss about perceived underspends; we have had that in the Scottish Parliament in the course of the past few weeks. Are there any plans or provisions where this money could be carried forward if there is an underspend that has been identified within the Scottish Government budget? It is 0.6% that needs to be taken forward. Is there any flexibility in that that would allow the Scottish Government to spend much more if there is an underspend at the end of a parliamentary session?

Francesca Osowska: In terms of any underspend by the Scottish Government and carryover, that is really a matter for discussion between the Scottish Government and the Treasury.

Q22 Chris Law: I want to ask some questions surrounding the future of income tax collection in Scotland, which is due to start next year. I want to know: is HMRC ready for its implementation and has it identified Scottish taxpayers, and all of them?

Francesca Osowska: My view on that—and you will appreciate that I don't want to speak overly for HMRC—would be yes. We know that HMRC will be writing to those that they have identified as Scottish taxpayers, based on postcode data. There is very good working between HMRC, the Scottish Government and Revenue Scotland. We have seen already this year the devolution of two taxes as a consequence of the 2012 Act—stamp duty land tax and landfill tax—and I think close working between the Governments allowed that to be delivered. Indeed, on the day that the new taxes commenced, the chair of Revenue Scotland, Dr Keith Nicholson, wrote to Edward Troup, who is the Tax Assurance Commissioner for HMRC, and said, “On what is a historic occasion for Scotland, I wanted to take the time to pass on my gratitude to you and the staff of HMRC for the incredible effort and collaborative working that has been instrumental in seeing a smooth transition from the UK taxes to the devolved taxes today”.

Q23 Chris Law: Thank you. Can I ask you, what efforts have been made to ensure that Scottish businesses are ready and that Scottish businesses are fully on board?

Francesca Osowska: I can point to two strands of activity. One of the roles of the Scotland Office, as I mentioned earlier, is obviously to lead some of the engagement on behalf of the UK Government overall in Scotland. As an organisation, we do engage regularly with the business community and we are able to by this means—through seminars, through emails, through our ongoing contacts—provide this information to them. I also know that HMRC are undertaking their own stakeholder engagement and business community engagement to ensure that businesses are prepared for the change.

Q24 Chris Law: Let us suppose HMRC costs increase—for example, diverging tax rates increasing through customer contact or possibly prompting people to attempt to gain the system. Which Government is going to be liable for these additional costs?

Francesca Osowska: I would need to have a discussion with HMRC and get back to you on that.

Q25 Chris Law: What preparatory work have you done for the new devolution of income tax? Is there anything that you have in place already, or have you just learned from the experience of the small devolution of the tax powers just now? What are you doing to ensure that we are going to be in a position to pick up the new income tax powers in the next few years?

Francesca Osowska: As I have set out, I think we did learn a lot, and Revenue Scotland and HMRC learned a lot, from the devolution of the previous taxes. Work continues on that basis and the Scotland Office has a continued dialogue with HMRC, who are leading on this issue for the UK Government. We have a dialogue and asked for assurance on this work and that assurance is given. Again, if the Committee requires further information on that, we can provide it.

Q26 Kirsty Blackman: In terms of the Scottish rate of income tax coming in and the mechanism for adjusting the block grant going forward, how is that going? Has a decision been taken or an agreement been taken on the mechanism for adjusting the block grant, going forward?

Francesca Osowska: Again, I don't want to appear evasive, but you will be aware that there are discussions being conducted between the Scottish Government and the Treasury at the moment in terms of the fiscal framework. Those discussions are ongoing and I cannot comment any further. We know, for example, from the devolution of stamp duty land tax and landfill tax, that block grant adjustment mechanisms can be agreed and are used, and the same will be true for the Scottish rate of income tax.

Q27 Chair: How many of your staff are going to be allocated to working on the fiscal framework? What type of resource is the Scotland Office going to be putting into this whole major piece of work that we are going to have to undertake in order to ensure this is going to be done properly?

Francesca Osowska: I think it might be helpful, in terms of understanding responsibilities, to say that the Scotland Office is responsible for the overall passage of the Scotland Bill that is now going through Parliament. We also have oversight and are interested in how all of the recommendations from the Smith Commission report are delivered. You will be aware that there were recommendations that were non-legislative recommendations—in terms of intergovernmental working, for example—and one of the other aspects of the Smith Commission report was to put in place a new fiscal framework to reflect the new arrangements. Treasury leads on that piece of work. The Scotland Office's role is to make sure that we connect the fiscal framework conversation, discussions and agreements with the legislative process.

Q28 Chair: When it comes to the fiscal framework, then, your role is to be the conduit between the legislation and work with the Treasury, and the Treasury will take the lead in putting together the fiscal framework, in partnership with the Scottish Government? Is that a rough way to look at this?

Francesca Osowska: Yes.

Q29 Maggie Throup: That leads very nicely on to the questions I have for you about the Smith Agreement and the Scotland Bill 2015. Members of the Smith Commission disagreed with the UK Government's position that the Scottish Bill 2015 delivers the Smith agreement, so what steps did the Scotland Office take to try to find a consensus when turning the Smith agreement into the legislation?

Francesca Osowska: If I start at the beginning, as you said, the Smith agreement was a cross-party agreement and turning any sort of agreement, which is not based on written legislation, into a draft Bill can be quite challenging. Obviously, since the Bill was published it has been through a number of amending stages, including Committee days in this House. The Report stage for the Bill is coming up in due course. All through the process, from the heads of agreement to the draft clauses published on 22 January, to the introduction of the Bill the day after the Queen's Speech, we have taken feedback from the Scottish Government, from stakeholders, and from a range of interested parties to refine the Bill. The Bill will be further refined as it passes through this House and indeed comes to its final stage. I know that you are seeing Ministers from the Scotland Office later today, I am sure they would happily talk to you about this as well. But I think in the Scotland Office our role, certainly as officials, has been to listen to the evidence presented in terms of whether the current clauses meet the Smith Commission. We are confident that they do. We are working behind the scenes on some outstanding areas following representations from the Scottish Government that will allow further amendments at report stage.

Q30 Maggie Throup: The Smith agreement called for improved intergovernmental working, so has the working relationship between the UK and the Scottish Government changed in light of the Smith agreement's recommendations?

Francesca Osowska: That particular recommendation is one of the recommendations I was thinking about when I referenced non-legislative recommendations to look at how intergovernmental working can be improved. There have been a series of meetings at official level to look at the memorandum of understanding on intergovernmental working to think about some of the international issues in terms of intergovernmental working. Those meetings have been very constructive; they involve the UK Government and the devolved Governments for Scotland, Wales and Northern Ireland. It is important, obviously, that all parties sign up to any revised agreements and those discussions are ongoing. I believe this Committee commented on intergovernmental relations recently, and certainly the views of this Committee will be considered in the further work that we will be doing on that.

Q31 Maggie Throup: Thank you. How will the devolution of welfare, as proposed in the Scotland Bill, impact on the work of the Scotland Office?

Francesca Osowska: I will maybe ask Michael to say something on this as well because, in terms of the welfare clauses, OAG are playing a very key role. The welfare provisions in the Smith Commission—those recommendations were some of the most significant along with the tax powers. In terms of the Scotland Office's work, we work very closely with DWP and the Treasury to ensure that we are able to bring forward legislation that delivers those commitments while maintaining obviously the social security reservation. It is an area where we have had a lot of dialogue with the Scottish Government. We continue to

listen to that dialogue and to work on the clauses at the moment. Michael, is there anything you want to add?

Michael Chalmers: I am not sure there is a great deal I can add to answer your question. Obviously we are working closely with lawyers and colleagues in the Department for Work and Pensions to ensure that, in delivering on Smith, we have a workable package, but also that it is something that operates in practice in a way that is feasible.

Q32 Maggie Throup: Lastly, what does the Scotland Office perceive to be the main challenges related to the devolution of welfare?

Francesca Osowska: I don't want to state the obvious, but it is a very complex area. When devolution was first envisaged in the initial Scotland Bill we had a reserved powers model, and what the devolution of welfare does is take us into a slightly different space—I think, of shared responsibility across the UK Government and the Scottish Government. Because we obviously recognise that citizens of the United Kingdom move around and, therefore, their circumstances in terms of welfare can change, so we need to ensure that, in terms of the Scottish Parliament having additional powers in terms of welfare payments, we are able still to operate within a holistic system. That is the biggest challenge. It is a movement to a system where, rather than have the black and white devolved reserved, we are in a slightly different territory now, and personally I think it is an opportunity for both Governments to move into this shared power space. The work that has been done between DWP, ourselves and the Scottish Government has been very productive and collaborative and, certainly, I am confident that we will be able to deliver on this key set of recommendations.

Maggie Throup: I think that comes back to what I was saying before about the betterment of government working relationships.

Francesca Osowska: Absolutely.

Q33 Chris Law: Going back to this improvement in intergovernmental working relationships, can you tell me how much more you have had meetings or consultations with the Scottish Government since the Smith Commission report being published in November? Or is it pretty consistent with where it was before?

Francesca Osowska: Again—and I apologise if this does seem evasive—I did not work for the Scotland Office at the time of the Smith Commission recommendations and I don't have exact figures to give you. What I can tell you is that, since the referendum and since I started work in the Scotland Office on 11 January this year, the dialogue between myself and Scottish Government colleagues and the dialogue that I see in terms of my staff, in terms of Michael's staff with the Scottish Government, is very ongoing. Michael used the phrase "some of the below the radar work", and in this sphere I think that is where we are. We have a lot of day-to-day contact, whether it is phone calls, meetings, emails, that would not necessarily make it into the public domain. But those relationships are very strong. I would like to make them even stronger and move to a kind of more collaborative decision, if at all possible, and I am trying to show some leadership in the organisation to do that.

Q34 Kirsty Blackman: You said that, from the point of view of the UK Government, the Treasury is taking a lead on the fiscal framework negotiations. The Joint Exchequer

Committee that is agreeing the revised funding framework—is the Scotland Office part of that?

Francesca Osowska: No, it is not, but we obviously keep in close dialogue with Treasury Ministers as part of those arrangements.

Q35 Kirsty Blackman: If I can just carry on, do you know how that is going to be assigned to Scotland?

Francesca Osowska: I cannot tell you about the mechanics of that assignment. Obviously the Smith agreement gave a recommendation in terms of the kind of percentage points of that that would be assigned. That will be delivered but that is really a matter for Treasury. Again, if the Committee would like me to request information from the Treasury on the mechanics I am happy to do so.

Kirsty Blackman: I think we need to request the Treasury to come here to ask them about it.

Chair: One of the pieces that we are thinking about undertaking is having a look at the fiscal framework. We are going to discuss this with the Secretary of State when he appears in a few short minutes. Some of the answers you have given are very helpful and it helps us locate down the line the people we need to speak to, to try to get a better understanding of what is happening with the fiscal framework.

Q36 Kirsty Blackman: I have one more question about the work in the Scotland Office. In terms of English votes for English laws, what input is the Scotland Office and also the OAG having into the process of that being drawn up? What input will they have if English votes for English laws is implemented as stated, do you know?

Francesca Osowska: In terms of the English votes proposals, which are yet to be voted on again by this House, it is being led by the Cabinet Office. As part of the UK governance group, the Scotland Office feeds in comments on English votes, although we don't have responsibility in terms of policy decisions on that. Again, I might ask Michael to say something on this, if the English votes process is agreed upon, then the certification for each Bill or each clause of Bill is something that the Speaker will do, but the Government will have a role in looking at the certification process. Although that will be led by the Cabinet Office, obviously the Scotland Office—given its expertise and knowledge of the devolution settlement—will feed in to the discussions around certification of Bills or clauses of Bills. Michael, I don't know if you have anything to add?

Michael Chalmers: Yes, I would probably echo that. It is a matter—and I understand the Committee heard from the Leader yesterday—where the proposals are likely to suggest that it is for the Speaker to certify and so it will be a decision for him, yes, and the Government taking its view in respect of—

Q37 Chair: What we want to try to determine is: does the Scotland Office have a view about English votes for English laws? I know that is a matter mainly for the Secretary of State, but is there an institutional view about what has been proposed in terms of the proposals from the Leader of the House?

Francesca Osowska: There is not an official institutional view. We will deliver the arrangements that are agreed.

Q38 Chair: There is a bit of confusion because a member of Scotland Office staff—I think it was one of the Secretary of State’s staff—has given evidence to the Procedure Committee, and what confused us was whether that was the view of the Scotland Office when it came to English votes for English laws. Mr Tomkins—who I am pretty certain you are familiar with—gave a view about several issues and difficulties about English votes for English laws, but we have not heard anything from the Scotland Office. There is nothing more significant, in terms of current legislation and current pieces of work that is going through this House, than the impact this has on the Scottish Members of Parliament. So we are a bit confused whether it is Mr Tomkins’ view, it is the view of the Scotland Office, or whether there is a view at all, because we have not seen anything. I have written to the Secretary of State and I have not had the courtesy of a reply on this yet, so maybe you could remind him, and we will remind him when he is here again: could we get a reply about what the view is of the Scotland Office when it comes to English votes for English laws?

Francesca Osowska: I understand your point and I think that is something—far be it for me—that you could discuss with the Secretary of State, in terms of civil servants’ views of English votes. Our role is to implement whatever decision this House makes.

Q39 Chair: Yes, of course. As a civil servant then, we will have to touch on what has probably been the most traumatic issue in the Scotland Office in the course of the past year, and that is of course the memo that led to the Frenchgate inquiry. What we know about this—and we don’t want to touch on the legal case, because obviously this is ongoing work and this is being looked at by the court in Scotland—is that this obviously came from a Scotland Office civil servant, and what we need to know is how common is it for Scotland Office civil servants to contact overseas Governments to ask about private conversations between Governments and Scottish Government Ministers?

Francesca Osowska: In terms of the leak, obviously there has been a lot of press coverage of it. I would refer the Committee to the Cabinet Office report that set out the conclusion of the leak inquiry. It said that the Cabinet Secretary concluded that there is no evidence to doubt that he—the civil servant in question—recorded accurately what he thought he heard. There is no evidence of any political motivation or dirty tricks.

Q40 Chair: Nobody is questioning that. The question that I gave to you is: just how common a practice is this for Scotland Office civil servants to report back on conversations between foreign Governments and Scottish Government Ministers? Is this something that is ongoing all the time or is it a one-off? If it was a one-off, why was it a one-off? Could you explain to me why this was a Scottish Office civil servant who reported back and is this a common feature and a common practice in the Scotland Office?

Francesca Osowska: It is common practice for Scotland Office civil servants to be in touch with the consular corps in Scotland. That is one of our roles. They are one of our key stakeholder groups. In terms of the UK Government’s responsibilities for international affairs, I think it is important that Scotland Office does maintain a dialogue with the consular corps in Scotland, including the former French Consul General. Beyond that, I do not want to comment anymore in terms of the actual processes and procedures. There was

a document that was leaked, there has been a leak inquiry and there has been a number of follow up questions on that, and I do not want to comment on internal processes.

Q41 Chair: This is a bit alarming for us listening to that response, because I think if Scottish Government Ministers were listening to this conversation, for example, they would be thinking—probably quite rightly—if they were having conversations with foreign Government representatives that this was quite likely to be recorded and given back to the Scotland Office. What we have seen after that was a very damaging leak and a very damaging inquiry for the Scotland Office. Would that be a right assumption to make about what has happened here?

Francesca Osowska: No, it would not be a right assumption to make. As I said, the investigation team said that there was no evidence of political motivation or dirty tricks. In terms of these particular circumstances, there was an email that reported a conversation between the French Consul General and a Scotland Office civil servant.

Q42 Chair: We have had no confirmation about this email. We do not know who saw this email. We do not know who saw the memo. My colleagues have even tried to have a debate in the House to try to determine who saw that memo; who saw the email. Do you have any idea? Did you see it?

Francesca Osowska: I cannot comment beyond the Cabinet Office statement because there was a leak document that obviously breaches all sorts of propriety and integrity issues, but it is the position here that I will not comment further because to do so gives further speculation in terms of the circumstances of the leak. The Cabinet Office report and Cabinet Office statement I think closes the issue.

Chair: Thank you for that, and thank you both for coming along and answering our questions. We now have a fuller understanding of the operation of the Scotland Office, particularly dealing with this report, but thank you for your evidence this afternoon.

Examination of Witnesses

Witnesses: **Rt Hon David Mundell**, Secretary of State for Scotland, **Lord Dunlop**, Parliamentary Under-Secretary of State for Scotland, and **Lord Keen of Elie QC**, HM Advocate General for Scotland, gave evidence.

Q43 Chair: Welcome to the Committee, the first time you have been before the Scottish Affairs Committee as the Secretary of State. This is a new Scottish Affairs Committee, obviously, and so we are pleased that you are able to join us today to talk about the annual report of the Scotland Office. If you would like to introduce your colleagues and if you have any opening introductory statements that you would like to make, the Committee would be more than interested to hear it.

David Mundell: Surprisingly, Mr Wishart, I am not hearing you particularly well. I don't think I have ever imagined that I would ask for you to be turned up, but—

Chair: It was just to welcome you to the Committee. Is that better?

David Mundell: Yes, that is good.

Chair: If you could please introduce your colleagues to the Committee, and if there are any introductory statements, either yourself or any of your colleagues want to make, please go ahead and make it to the Committee.

David Mundell: Excellent. I am delighted to come along to the Committee. As you know, I was a member of this Committee for five years and very much enjoyed that time. Of course, you and I served together on the Committee, and I do remember you then adopting a vigorous approach to that role and I know that it will continue as Chair. I very much congratulate you on taking on the role of Chair. I am joined today by my two ministerial colleagues at the Scotland Office and Office of the Advocate General, by Lord Dunlop who is the Parliamentary Undersecretary of State for Scotland, and by Lord Keen of Elie, who is the Advocate General.

Before we start, I want to make a short opening statement. Since I became the Secretary of State for Scotland in May, my priority has been delivering the Smith agreement. We have enabled Holyrood to legislate for votes for 16 and 17-year-olds in future Scottish Parliament elections. The Prime Minister announced in September that we will take further steps to confirm the permanence of the Scottish Parliament. Constructive talks have been underway for months now between us and the Scottish Government to agree the new fiscal framework, which will give the Scottish Government the financial tools to support the operation of their significant new powers. I also announced last week that I want to see the full tax powers of the Scotland Bill fast-tracked to 2017. This will mean that the parties in Scotland will need to set out their tax plans in detail ahead of next year's Holyrood elections.

There has also been considerable progress on the Scotland Bill itself, Mr Wishart. It was one of the first pieces of legislation to be published following the general election. It has also been debated for five days on the Floor of the House of Commons. We have listened carefully to the serious points that have been made in these debates and have also engaged with interested parties across Scotland. I have said on a number of occasions—and I repeat today—that I will bring forward substantive amendments at Report stage that will strengthen the Bill, and take on board constructive suggestions. I am clear that the Government is delivering the Smith Commission report in full.

Mr Chairman, I would like to take this opportunity of appearing before this Committee today to provide an update on one of the more sensitive changes proposed by the Smith agreement. It was recommended in the agreement that responsibility for abortion law be transferred to the Scottish Parliament. The Commission also recognised that this issue needed to be handled sensitively. I believe that both the UK and Scottish Governments have done so. There have been a considerable number of meetings, discussions and correspondence on abortion, led by myself and Deputy First Minister John Swinney. These have involved both Ministers and officials from the UK and Scottish Governments. There have also been a number of public and private contributions from other political parties and those with an interest in this very sensitive matter, including of course during the Smith Commission process.

I understand that abortion law and whether it should be controlled by Holyrood are matters that very many people feel strongly about. I respect that. The subject has been debated very

passionately in the House during the passage of the original Scotland Bill in 1998, and again during our Committee stage in July. The Government has reflected very carefully on the points made. I can confirm today to the Committee that we will bring forward an amendment to the Scotland Bill so that abortion law can be devolved to the Scottish Parliament.

Holyrood already has responsibility for end-of-life issues. It has responsibility for the NHS and the criminal justice system. I do not see a convincing constitutional reason for why abortion law should not be devolved, and that is what has led me to my decision. What will follow is proper engagement with interested parties as both Governments take this matter forward. I have informed Deputy First Minister John Swinney of the Government's decision and you, of course, will also be aware that the First Minister has previously stated that the Scottish Government's position is that they have no plans to change the law in this area. Given the way in which this matter was handled by the Smith Commission, I will also be writing to Lord Smith of Kelvin and to the leaders of the political parties involved in the commission to inform them. UK and Scottish Government officials will continue to work closely and to consult and engage as widely as possible as we move this sensitive issue forward.

Finally, Mr Wishart, I would like to provide the Committee with a brief update on how I intend the Scotland Bill and related matters to be sequenced over the next few weeks. The fiscal framework is a vital element of the package that will make Holyrood one of the most powerful devolved parliaments in the world. Both Governments have agreed to aim to conclude these negotiations this autumn. The Smith Commission agreement sets out a number of requirements that the fiscal framework should cover, and we are committed to delivering the agreement in full. The recent communication from both Governments outlined some of the areas that are being discussed, such as administration costs and borrowing powers. It is possible that negotiations could result in amendments being tabled to the Scotland Bill. Borrowing powers are a good example of that. I am acutely aware, Mr Wishart, that you and many others will want those amendments to be debated on the Floor of the House of Commons at Report stage. While it would be premature of me to speculate the outcome of negotiations—indeed, both Governments have agreed not to provide an ongoing commentary—my intention would be to table such amendments to the Scotland Bill so that they can be debated in the House of Commons.

I hope that the Committee has found that update on those particular issues to be useful and I will, of course, be happy to answer any other questions you may have.

Q44 Chair: Thank you ever so much, Secretary of State, for a very full introductory statement. If I am hearing properly, you just made an announcement in the presence of this Committee that abortion law will now be devolved to the Scottish Parliament. Is that right?

David Mundell: I can confirm that. The Government will bring forward an amendment, in conjunction with the Scottish Government in drafting its terms, which will devolve abortion law to the Scottish Parliament. As you are aware, the Smith Commission recommended that abortion law be devolved to the Scottish Parliament and, as we all understand, there are sensitivities around that issue and that it should be dealt with sensitively and I think we have done so in our intergovernmental discussions to date. There have been discussions, for example, between the Health Minister in Scotland and the Health Minister here in the UK Government. As you may have seen in a number of media interviews, I was being repeatedly asked about this issue. There was some concern being

expressed by groups—such as Engender—about the uncertainty of the process and I felt that it was important now to clarify absolutely that abortion law would be devolved.

Q45 Chair: We are grateful for that and I do not think there will be any hesitation at all from this Committee welcoming the fact that you are going to be bringing forward these amendments. What I am interested in is the process that is behind this. I am presuming this is some sort of joint announcement of this and your colleagues in the Scottish Government will be similarly making an announcement to Parliament, or is it just yourself that is doing this on your own just now?

David Mundell: As you are aware, the Scottish Parliament isn't sitting at the moment. I am announcing that the Government has agreed to devolve abortion to the Scottish Parliament. The Scottish Parliament and the First Minister has very helpfully made clear that if abortion was to be devolved, she has no plans to change policy in relation to the area, and indeed that she wanted to consult widely with groups. We will now hopefully go forward on a basis of being able to engage jointly in the process of taking forward devolution, but obviously it was for the UK Government to confirm that abortion would be devolved, and that is what I have done today.

Q46 Chair: Thank you for that. You have clarified that and we look forward to that amendment being put forward. Perhaps you could help us then a little bit about the further process because you have said—again, a very welcome contribution—this will be done on the Floor of the House. First of all, could you tell us when you intend to have the Report stage and how many days that will now take? All this work and the many amendments that you have heard, you are saying you have reflected on in the course of the past few weeks and months, so we have quite a substantial piece of work to consider. I am presuming we are now looking at two, three, four days to be able to consider and debate this on the Floor of the House?

David Mundell: As you know, these are not necessarily matters for me, I am sure the House authorities will listen to the views of Government, Opposition and the SNP as our official third party in Westminster in coming to the decision on the amount of time allocated which, as you know, proceeds through the usual channels. As a number of these issues have obviously been debated and discussed extensively, I am hoping that the amendments that I put down will command widespread agreement and support. I am obviously committed to engage with the Scottish Government in that regard. I have spoken with John Swinney today and I have reaffirmed that commitment to share our amendments with the Scottish Government and engage with them in relation to their wording.

Q47 Chair: You could perhaps share them with this Committee then. Would you give us even a tantalising glimpse and flavour of the type of amendments that you are considering? There are several things that have been discussed and debated and I watched your evidence that you gave to the Devolution (Further Powers) Committee in Holyrood in June when you appeared in front of that Committee. You obviously heard their many concerns about the fact that what was being proposed in the Scotland Bill did not come close to meeting Smith, in terms of its objectives and the type of policy change that was required. Are you in a position to tell us what sort of amendments you are going to be looking at and what things are going to be considered when we do get this in the report stage?

David Mundell: I don't recognise not coming close to meeting Smith as the overall view of the Committee. What I do recognise is the Committee raised some very specific issues and I have engaged with the Committee; and, indeed, as you are probably aware, a couple of weeks ago I sent to the Committee the first of our proposed amendments that related to permanence. The terms of that proposed amendment was based on issues that the Committee as well as members on the Floor of the House had raised. If you were looking, Mr Wishart, for a taster then the amendment in relation to permanence might satisfy that.

Q48 Chair: Indeed. I suppose what we are looking to expect then is this drip-drip-like announcement of possible amendments that will be tabled, and this is how it is going to work. You gave the letter about permanence to the further powers. You have announced today about abortion. When is the next one going to be announced or is it going to be a constant diet up to the point where we get to the report stage?

David Mundell: It will not be like that in the sense that, as you know, there are rules and protocols in relation to the Government lodging amendments. When the Report stage is known, there will be a timetable by which the Government needs to lodge its amendments and we are very clear about that. I have explained why I think the abortion issue is different from many of the other issues that are included in the amendments and needs to be dealt with in a particular way. I wanted to give the Devolution (Further Powers) Committee—and we have heard a lot about their views in this Parliament, and I very much welcome that because I think that that is a positive demonstration of how the Parliaments can work together in terms of scrutiny—a clear indication that I took the points that they made seriously and that there was a direction of travel in terms of taking forward amendments. There are a number of amendments, for example, in terms of equalities where, again, there are a number of stakeholders, which I think both ourselves and the Scottish Government would want to involve.

Q49 Chris Law: Regarding the rules and procedures with regards to giving us information when these amendments are going to come out and over which time, I was surprised a few weeks ago to hear you on the radio explicitly stating that one of those amendments would be the permanency of the Scottish Parliament, but when you were pressed on the radio—I think it was Gary Robertson you were speaking with—you said you could not talk about any others. Which is it to be? Either you are going to tell us one at a time or are we going to get them rafted out? What are the rules and procedures with regards to telling the media and telling the public what amendments you have for us to look forward to?

David Mundell: I have told Parliament the approach that I am going to take. That approach is listening to the debate and discussion that we had in Parliament and bringing forward substantive amendments. When I was in that radio interview, we had published the amendment in relation to permanence and, in fact, I had sent it to both John Swinney and to the Devolution (Further Powers) Committee, because I felt that was an amendment that related to the Parliament rather than to the powers as such of the Scottish Government or powers to be exercised through the Scottish Parliament. I was able to speak about that amendment because that amendment had been published. I wanted to make clear today, so that there is no uncertainty, that abortion will be part of the Scotland Bill. There are a range of areas we have debated and discussed where amendments will be brought forward. I am quite clear to confirm that amendments will be brought forward in the area of welfare, but I am not announcing the detail of those amendments today.

Q50 Mr Chope: I think what the Secretary of State has just said is very welcome. Can you confirm, therefore, that all the amendments of substance will be brought forward in the Commons and there will not be any amendments of substance brought forward by the Government in the other place? Because that is what people are really concerned about: that this is the primary legislative organ and we want to see these amendments dealt with here. The Secretary of State has referred to the fact that there may be amendments arising, for example, in relation to borrowing powers coming out of the fiscal framework negotiations. They are not going to be completed until the autumn. Does that mean that the Report stage is going to be put back until after those negotiations are complete, so that the consequential amendments arising from those negotiations can be tabled for Report stage in this House?

David Mundell: I am glad you added “by the Government” to your question in relation to the House of Lords because, obviously, other Members of the House of Lords will be able to bring forward amendments in the Lords. I do listen to Mr Wishart and to other Members, and I do take on very much the fact that there are no SNP Members of the House of Lords and, therefore, it is not appropriate to debate substantive amendments in the House of Lords where the full debate can take place. I know that the leader of the crossbenches in the House of Lords is very keen to ensure that there is proper debate when the Bill goes into the Lords, in the sense that all sides are heard, but it is not the Government’s intention to bring forward substantive amendments to the Bill in the House of Lords. I want to deal with those amendments in the House of Commons where they can be subject to proper scrutiny from Members of Parliament from Scotland and, like yourself, from across the United Kingdom.

Q51 Chris Law: I want to press a little bit further about the language of the Scotland Bill about permanency of the Scottish Parliament. Upon reflection, would you not say it was a tad politically naive, and perhaps somewhat foolish, to use language such as “recognise” to describe the permanency of the Scottish Parliament?

David Mundell: What we have done is we published clauses initially in January. We took feedback and I think the Devolution (Further Powers) Committee in the Scottish Parliament recognised that changes were made. We brought forward a Bill and then we have listened to arguments and debates around that Bill. It is a perfectly normal course of legislative scrutiny and debate that the wording of Bills is changed as they progress through Parliament. As you are probably aware, I was a Member of the Scottish Parliament for six years. That happened there: Bills were produced; people analysed the wording; the wording was changed on the basis of amendments. We have taken on board, I believe, the points that were raised, both by the Devolution (Further Powers) Committee and on the Floor of the Commons, in relation to permanence and have come forward with a revised clause. That is what I see the process of. I don’t suggest that we have all the wisdom in these matters. We do look to hear suggestions from others, whether the Scottish Government, whether MPs or whether third party organisations who, as we know, have come forward with some helpful amendments as well.

Q52 Chair: I want to move on from amendments, and we are grateful that you have clarified once again that they will be taken on the Floor of the House, because I think that is very important and what you will find from us is a real welcome to that announcement. Can I just say to you that those four days that were spent in the Committee stage of the whole House

were immensely frustrating? We tabled hundreds of amendments and all the time they were completely rejected by Government. The Government never brought forward any amendments of their own. It was almost like a waste of time going through all of that, debating this thing, without changing the Bill one bit. My understanding and experience of Committees of the House, whether upstairs or in the House, is that is where you amend the Bills. To wait until the Report stage to do all this work, it seems like we have wasted our time going round this. Why didn't you bring forward amendments at Committee stage? Why didn't you accept some of the very sensible amendments that were brought forward by Opposition parties and left all this to do in the Report stage now?

David Mundell: That is not my interpretation, Mr Wishart, of how Parliament has operated through the Committee stage of Bills on the Floor of the House. Indeed, in relation to the European Union (Referendum) Bill, which was a piece of legislation also dealt with on the Floor of the House, amendments were put forward. They were debated and discussed and then the Government brought forward amendments at Committee stage. That is normal practice. What was debated was ultimately based on what was put forward in amendments. I am not going to rehearse the arguments that we had at the time about the merits of debating full fiscal autonomy, but we spent a large amount of time debating that. I think that you will find, when I bring forward the remaining amendments, that they are based on having listened to the points that were made. In fact, if I may say so, one of the facts that influenced me most in relation to what I have announced today in relation to abortion was the way in which that matter was debated in the Chamber, but I do not think that it would have been appropriate to have taken the amendment that was put down. There were also a number of amendments, I have to say, particularly that were put down by Labour colleagues, which I think Mr Swinney and the Scottish Government were rather pleased that I rejected and, indeed, along with yourselves, voted down in the Lobbies.

Q53 Margaret Ferrier: Just a quick one on that. Does the Secretary of State believe that—you use the term “substantial” amendments, so we look forward with bated breath to them—these revised clauses will suffice or will we be hurtling towards a second referendum in the future if they do not satisfy the majority of the people in Scotland?

David Mundell: I listened to the First Minister of Scotland at the weekend and she certainly tried to give the impression that we were not hurtling towards a second referendum. If I interpreted her comments correctly, there were no automatic levers that would create a second referendum. I believe that the people of Scotland have made their decision. Over 2 million people in Scotland voted to remain part of the United Kingdom and I believe that decision should be respected. I don't believe that there should be any talk of a second referendum. What I believe the focus rightly should be on is on the Bill, whether the Bill delivers the Smith Commission in full, and I am satisfied that when it completes its parliamentary progress it will have done so.

Margaret Ferrier: Okay, we look forward to that.

Q54 Chair: Secretary of State, we are going to come back to other issues to do with the Scotland Bill. Obviously we want to discuss with you the fiscal framework because this seems to be the major issue that needs to be looked at. There are a couple of things that we want to examine with you on that just now. Just more of a general question, you are new to this job—obviously you were a Scotland Office Minister before becoming Secretary of State, but this is to try to help the Committee when we have our dealings with you. We are now in a very

changed environment. We understood what the Scotland Office was about during the referendum. It was about making sure that Scotland stayed within the United Kingdom, and we have heard the amount of resource that was spent on that in our previous session. We knew roughly what the Scotland Office did. What on earth is the Scotland Office for now, and do you see yourself more as Scotland's man in the UK Cabinet or the UK Cabinet's man in Scotland? How do you characterise yourself when you look at these things?

David Mundell: My starting point is that Scotland has two Governments and two Parliaments. I have certainly had the honour to serve in both Parliaments. Going into the referendum, the United Kingdom Government was in favour of Scotland remaining part of the United Kingdom. I think we all recognise that the referendum was most certainly, in my view, the most significant political event of my lifetime. I think it was wholly appropriate that the United Kingdom Government that supported Scotland remaining in the United Kingdom clearly set its position out. The Scottish Government, of course, supported Scotland becoming independent and used considerable resources itself to make that case. Again, I recognise that.

I see three principal roles in relation to the Scotland Office. The first is obviously in relation to the constitution and the issues around the Bill and the devolution settlement. We hold the UK Government's expertise in regard to that within the Scotland Office. Secondly, yes, I am Scotland's voice in Whitehall and our job is to make sure that Scotland's voice is heard in decisions that are made in Whitehall, in the Government. Thirdly, we are to be the voice and the ears of the UK Government in Scotland because, as I explained, Scotland has two Governments and it is wholly appropriate that the views of both Governments are heard, but also that we engage widely in relation to the activities of the UK Government across Scotland.

Q55 Chair: That is very helpful. We know what the Scotland Office was about during the referendum because we were seeing it all the time, but within the new political environment just now where we have a majority Scottish National Party Government in Scotland, we now have 59 Members of Parliament in this House who are members of the one party. Therefore, how do you see your role changing to reflect and respond to this new dynamic within Scotland, particularly what you are observing here in the House of Commons?

David Mundell: I respect the decision of the people of Scotland in relation to the election that took place in May. I very much welcome the opportunity to work with all new Members of Parliament. I made that offer very clear to all SNP MPs, because there are many areas in which we can work constructively for constituency interests or in the interests of Scotland as a whole.

I think I have said this, and I do not want to be overtly political in this session, I do not recognise and I do not believe—and I do not think you probably do either, Mr Wishart—that the SNP does speak for everyone in Scotland. Fifty per cent of people voted SNP and I very much commend the SNP for being able to achieve that level of support. It was a formidable achievement and it was a very well executed campaign, but 50% of people did not vote for the SNP, so their views within this Parliament are entitled to be heard as well. Across the election, the First Minister, Nicola Sturgeon, effectively campaigned for a Scottish National Party/Labour coalition UK Government. That was rejected. What was elected instead was a majority Conservative UK Government, and that is a decision of the people across the United Kingdom. Obviously that is the basis on which we are proceeding, but I am always sensitive to what the views are of people in Scotland. I want

to hear and understand what they are. We are not always going to be in agreement. You and I are not always in agreement, although most of the time we are able to conduct our business pretty amicably. That is where I see that we are.

I welcome the SNP Members holding me to account and holding my Government to account—holding our feet to the fire. That is very much part of your role within Parliament and I also welcome, if I may say so—although it is not really my remit—the new thinking that new Members are bringing to the institution. I think that is always good and that is happening. We have a significant number of new Conservative Members. They are coming into Parliament and thinking, “Things could be done better. Things could be done differently.” That is to be welcomed.

Q56 Chair: I don’t think it would be quite right to characterise anybody wanting an SNP/Labour Government from the Scottish National Party, but we will leave that aside just now. You probably know that we have been going around Scotland just now asking the people of Scotland what they want from the Scottish Affairs Committee. This is why I come back to what your role is down here in taking forward these things. What we heard—and I am sure some of my colleagues will back this up—is a general frustration that they feel maybe we could look at some of these things, but we don’t have that access to Whitehall in order to raise issues that particularly concern them. You have, Secretary of State, and I think there is more of a requirement for you to make sure that, for things like the announcement on renewable obligations, for example—you represent a rural constituency, as I do—given the impact that this has on a number of SME businesses and the fact that so much of this industry is in Scotland, which has been so highly economically impacted because of this, somebody takes this up and champions that. Would that be something that you would be looking to do just to make sure that Scotland’s interests, when it comes to this vast resource that we have in renewable industries, will be looked after and would you be prepared to take on Cabinet colleagues in that respect?

David Mundell: I have had extensive discussions with Cabinet colleagues in relation to renewable obligations, but I think we need to be clear in relation to onshore wind. My position in my constituency, ahead of the general election, could not have been clearer in relation to my views in relation to onshore wind. The Scottish Conservative and, indeed, the UK Conservative position could not have been clearer. I think the industry had a pretty clear understanding of changes that would be made in relation to onshore wind.

Chair: But the industry in Scotland did not vote for that.

David Mundell: I myself have been out and about extensively in Scotland. The point that I have taken on board—which I have conveyed directly to my colleague Amber Rudd—is that we need certainty. What the industry across the piece finds most difficult to deal with is uncertainty. Therefore, I have urged her to make clear her position and arrange a number of matters as quickly as is possible, so that there can be certainty within the industry across the piece and people understand that in relation to investment decisions.

Q57 Kirsty Blackman: In terms of the percentage that was mentioned earlier, you are right that the SNP only got 50% of the vote in Scotland, but parties that got 80% of the total vote in Scotland together all voted for amendments to the Scotland Bill. There is only one Government MP in Scotland. I understand that it cannot be said that the SNP speak for everybody, but the combined weight of 80% of the votes in Scotland is quite hefty voting for

amendments. In terms of the role of the Scotland Office and being Scotland's voice in the UK Government, what action does the Scotland Office take and do you particularly take to hear the views of people of Scotland on what they believe and what they think should be happening? You have a number of MPs here who represent Scottish constituencies but, as you say, they did not get all of the votes. Those votes that you do not feel are adequately represented here, how do you hear their views?

David Mundell: We seek to get out and about as much as we possibly can. As you may know, I was in Aberdeen recently meeting with both the city council and Aberdeenshire Council, which were both very constructive discussions, if I can say it for the record. I have been almost the length and breadth of Scotland. At Mr Law's suggestion—again, which I acknowledge—we were engaging with the Dundee City Council in relation to looking at bringing the city of Dundee into the City Deal process. We had a very useful discussion with them, and the neighbouring Angus and Perth and Kinross Councils, as to how that might be done and I very much look forward to hearing their proposals. I had a very, very good meeting with Perth and Kinross Council—and, again for the record, can I commend them on their approach to Syrian refugees and their preparedness to be instantly ready to move forward on this issue? I have been out and about extensively; Andrew has as well, and maybe you want to say a bit more about that.

Lord Dunlop: In the five months I have been in office, I think I have totted up something like nearly 150 organisations, businesses, trade unions, charities and trade bodies that I have met and meeting elected representatives, like yourself, to discuss very important issues like the City Deals, which I think we are both keen to see taken forward.

Q58 Chris Law: Obviously, I am listening to what both of you are saying about how you have been listening to the voices around Scotland; you have been around them visiting. There are two issues, really, one going back to renewables. How can it be said that you are reflecting the voices in the renewable industry when we have just recently had information at this Committee that over 5,000 jobs will be lost—over £3 billion in investment—and our commitment to renewable energy in Scotland will fall behind target as a result? That is one example. Another example that I would like to ask is in terms of foodbanks and the increase in the foodbanks and the dramatic increase in recent years. Surely you have been listening to people like Citizens Advice Scotland. Can you give me some information again on how the UK Government is responding to that when we are looking to have welfare cuts rolled out very shortly?

David Mundell: I do not think any objective person could suggest that I have ducked the issue of foodbanks. Not only clearly have I engaged with the Trussell Trust and others; I have spent a considerable amount of time before the Scottish Parliament's Welfare Reform Committee. I accept it is probably an issue on which we are not going to agree, because I believe the issues relating to the use of foodbanks are complex and cannot be put down to any single cause. Nobody wants to see people in our country living in poverty or feeling the need to use foodbanks. We are always going to see people in crisis and we do need to have the support around them, but working together, this Government, the Scottish Government and local authorities, I think we can do better and I am determined to play my part in it. I have listened and I have met with numerous bodies and organisations and I do feed that into colleagues. My colleague Priti Patel also recently met with the Scottish Parliament Welfare Reform Committee and has committed to go back to the Committee to directly debate and discuss issues with them, and I think that is very much to be welcomed.

In relation to onshore wind, again I have to say I have a different view. I believe that we have reached a point where onshore wind does not need any more public subsidy in order to proceed. We have large-scale development across many parts of Scotland, which is not supported universally, and we have developers still coming forward who believe that they can proceed on the basis of a commercial arrangement. Therefore, I do not believe that the Government needs to continue that subsidy. Of course, we will continue to listen to the renewable issue and, of course, we will listen to communities in the islands, as I have done in my recent visits.

Q59 Chair: This is the issue and the difficulty we have about your role and about what you are here to serve. I know we only got 50% of the vote but the Scottish Conservatives only got 14% of the vote—the worst result in 150 years in standing for Parliament. Yet you are in charge of all this, and I think the frustration that we observe from people who are involved in the renewable sector is, “Who is going to stand up for us? Who is going to be there to make sure that our interests are going to be represented and progressed and promoted?” They have been coming to this Committee and we will take this up, but it is immensely disappointing to hear you say that you are not going to do anything because you have an ideological position that is at odds with the majority of Scotland.

David Mundell: I have not said that, Mr Wishart, but I find equally disappointing the number of people who come to see me who say, “We objected to this windfarm development, our local council objected to this windfarm development, but the Scottish Government in Edinburgh drove through that development.”

Chair: People voted for that.

David Mundell: I find that very disappointing in relation to democratic accountability. However, in relation to renewables in Scotland, we are engaging with Scottish renewables. Of course, I expect them vigorously to make their case for public subsidy. Of course, they would do that, but on some issues there is a divergence of view and we are ending the public subsidy for onshore wind from next May. We were very, very clear about that ahead of the general election.

Q60 Chair: So the renewables industry just has to get on with it because they are not going to be supported by the Secretary of State who is working for them in Whitehall.

David Mundell: I do not recognise that statement.

Chair: This is what we have been hearing and we hope you look at our report and we will look forward to hearing you respond to this.

David Mundell: We will respond in detail.

Q61 Chair: It is not just the renewable industry, it is people like Citizens Advice, people like Parkinson’s UK, who are saying, “Will our man in Whitehall stand up and fight for us, fight against some of the austerity measures from the UK Government that are impacting upon some of the poorest people in Scotland? Will our Secretary of State be there at the Department for Work and Pensions to represent the Scottish view on this?”

David Mundell: What we have debated and discussed—there is little point in going over the whole referendum argument again, is there?—is that we have agreed that some matters are reserved matters that are the responsibility across the whole of the United Kingdom. On those issues, we will have a UK Government position. That position might be different from the Scottish National Party position. It might be different from individual organisations' positions, but it will be determined on a UK level.

Chair: But the people of Scotland want you to fight for them.

David Mundell: I know that you have a different position in relation to the Government's economic policy, and you have the opportunity to debate and presumably vote in relation to that later on this evening. That is what the debate and discussion that takes place in this Parliament was. But when we had the general election, the alternative proposition put forward by yourselves, and to an extent the Labour Party, was rejected by people across the United Kingdom.

Chair: Well, it wasn't in Scotland. Maggie Throup, you have a couple of questions.

Q62 Maggie Throup: To change the subject slightly and bring us back to the Smith agreement, which called for improved intergovernmental working. How has the working relationship between the UK and the Scottish Government changed at a ministerial level as a result of that call?

David Mundell: There are two aspects to intergovernmental working. One is the personal relationships, and I think that we have developed good personal relationships with the Scottish Government. I had a very, very productive meeting on Monday—which he also acknowledged—with Alex Neil, who is the Cabinet Secretary in Scotland responsible for welfare and, in fact, as he puts it, everything else that is not listed in other ministries. We had a very productive discussion about how we could take forward the practical aspects of the transfer of welfare responsibilities. I think that that is typical of the ability to work together. I am not complacent; I do not take anything for granted. Obviously I was a Member of the Scottish Parliament with Alex 16 years ago, so I know him well and he knows me and we know where we stand. Likewise with John Swinney and the First Minister, I find the First Minister extremely good to do business with. She is someone who is very clear. Everyone knows where they stand. We may disagree but it is a very professional approach. I think at that level we are doing well.

There is a review of intergovernmental relations because back in 1999 various structures were put in place. I think Mr Wishart would agree with me that perhaps in the first eight years of the Scottish Parliament, with a Labour-led Administration, rather than issues between Westminster and Holyrood being conducted through these arrangements they were conducted through Labour Party channels. Therefore, those arrangements did not really start to develop until the SNP minority Administration in 2007. There is a need to look at their fitness for purpose so, when the Prime Minister and myself met with the First Minister and Deputy First Minister in May, one of the things we identified was, as well as the arrangements that take in Wales and Northern Ireland, that there should be more bilateral dialogue between the Prime Minister and the First Minister and that is something that we are looking to take forward. I think the technical intergovernmental relations, which are the subject of review at the moment, need to be further developed and evolved, but I find the personal relations work well even when we are not in agreement.

Q63 Margaret Ferrier: Obviously, those working relationships are vital as things move forward. Once the Scotland Bill is enacted, who in the UK Government will lead on its implementation and ensure that it is implemented effectively?

David Mundell: I will lead on its implementation, and I think that is the answer perhaps to Mr Wishart's question as to what I will do after the Scotland Bill is through Parliament. That implementation will be my priority and that is a substantive matter. I will lead on ensuring that the Bill is implemented. Obviously, in relation to the powers contained in the Bill, it will then be a decision for the Scottish Parliament and Scottish Government to make as to how they deploy those powers. It is not for me to determine that because powers have been devolved that they have to be used or have to be used in a particular way, but I will ensure that it is implemented. Of course, one of the features that is part of the Bill and was part of the Smith Commission agreement, which all of the parties signed up to, was the fact that in areas like welfare there would be shared space.

Margaret Ferrier: That is what I was going to ask you about next.

David Mundell: In that shared space, we have to have rules or protocols—or however you want to phrase it—for working together to ensure that that takes place smoothly.

Q64 Margaret Ferrier: How do you envisage people not being disadvantaged because of that shared space?

David Mundell: I am absolutely clear because from the first meeting of our Joint Ministerial Group on Welfare—which I co-chair with Alex Neil and of which Roseanna Cunningham and John Swinney are part, along with Priti Patel and Greg Hands from the UK Government—the first decision of that group was that end users, service users, should not be prejudiced by this process. Nobody should find one day that, because the Scottish Government were administering the system, it had been switched off or because the UK Government had made a change on behalf of the Scottish Government or however, that service users should not be affected. That is our absolute commitment. Obviously an example I often cite is that stamp duty land tax was transferred to the Scottish Parliament and the Scottish Government. If the Scottish Government had not set in place the proper systems, then they would not have got the money, they would not have got the stamp duty tax revenue, and that would have been their problem. When you are dealing with service users, you cannot have that.

Both Governments are absolutely committed to doing that. There has been really, really good close working between the DWP and Scottish Government officials. We have shared experiences. Again, it is not telling tales out of school. Not everything the DWP have done over the years has gone smoothly, so they are able to convey experiences of saying not just, “This is the way to do it”, “This is just the way not to do it”, in terms of preparing for change. I think that that part is working well.

I am genuinely disappointed that the wording we tried to use in relation to working together, particularly on welfare issues, was interpreted as a veto. It is not a veto. There is no intention or inclination to stop the Scottish Government doing whatever they want in relation to topping up benefits or doing things differently in the areas for which they are responsible. There just needs to be a mechanism for working together because, in very

simple terms, the DWP systems cannot make a change on Monday. A view can be taken: we want to change this, we want to pay additional child benefit and we want to pay it from Monday. Well, it just would not be possible. We need to have a mechanism and, therefore, as I have made clear, that is an amendment that I am reflecting on in relation to having wording that does not give anybody any fear that there is a veto, that allows shared space working.

Q65 Chair: Is this another announcement that we are going to get?

David Mundell: It is not an announcement. I have said that before.

Q66 Chair: So we could look forward to an amendment coming forward that will clarify what was perceived as a veto, is that what you are saying just now?

David Mundell: I am saying that I do not recognise that the existing wording is a veto—

Chair: Well, obviously, you do because you are going to change it.

David Mundell:—but I recognise that other people have suggested that it might be a veto and, therefore, that is a clause where we would want to look at different wording.

Q67 Chair: We are moving on from the reflecting stage to the reflecting and changing stage, would that be a proper characterisation of where we are?

David Mundell: That is how I would characterise the move from the Committee stage to the Report stage.

Chair: Thank you for that. So it is two announcements we have had and, if we are lucky, by the end of this session we might even get to three or four. We will get a good sense of the type of amendments we are going to be debating when we get to the report stage. I know Kirsty Blackman has a couple of questions on the fiscal framework, which I think we all recognise is a major issue in all of this.

Q68 Kirsty Blackman: It was mentioned that there is a plan to conclude the negotiations by autumn. I would like to know about what progress has been made so far on agreeing the fiscal framework, particularly in relation to the adjustments that will be required going forward in future years.

David Mundell: My colleague Lord Dunlop has been leading from a Scotland Office perspective in the fiscal framework discussion, so he will answer Ms Blackman's question.

Lord Dunlop: The Chancellor and the Deputy First Minister met in the spring to agree how the fiscal framework negotiations would take place and how they would proceed. Since the beginning of July there have been four meetings of what is known as the Joint Exchequer Committee, with the Chief Secretary for the Treasury leading for the UK Government and the Deputy First Minister leading for the Scottish Government. I think the meetings that have taken place so far have been very constructive and good progress has been made. Obviously, one of the key issues that have been part of those discussions has been the block grant adjustment mechanism. As the Secretary of State said, both Governments set off down the track with an agreement that we should aim to reach agreement this autumn

and I think I am confident that such agreement will be reached. I think the First Minister herself reflected a similar sentiment recently.

Q69 Kirsty Blackman: Autumn is quite often a moving feast in political terms. In terms of a draft fiscal framework that will be available for the public to view, do we have any further idea on a date or is it just autumn at the moment?

Lord Dunlop: Obviously, when you are involved in a negotiation it is difficult to be absolutely specific about what the end point of that negotiation is going to be, particularly when I think both Governments have agreed that nothing is agreed until everything is agreed. We are working through all the issues and, as you will have seen from the joint statements that are released after every meeting, you will see the topics that we are covering at every meeting. The Deputy First Minister said recently in front of the Scottish Parliament that, as these are negotiations, you need to have the space within which those negotiations can take place. It is very difficult to provide a running commentary on all the detail of that, but obviously, for the reasons that have been discussed already with substantive Government amendments being made in the Commons, we are very keen to see those negotiations concluded as quickly as we can.

Q70 Kirsty Blackman: If you don't mind, I have another few questions on this issue. In terms of the Scotland Office, do you have a seat during those negotiations?

Lord Dunlop: I am there in a capacity as an adviser to Treasury Ministers.

Q71 Kirsty Blackman: A bit more technical: in terms of the no detriment clause and compensatory payments, is it envisaged that there will be an independent body that will arbitrate on those matters?

Lord Dunlop: Clearly, governance is one of the issues that are very much part of the discussions and that particular issue was discussed at the last meeting, which was on Friday. The thing to say about all of these negotiations is that we are not starting from a blank sheet of paper, because the Smith agreement did set out quite a number of features that should be reflected in the final fiscal framework agreement. One of those features was that it should be implementable and sustainable, and that you should not keep coming back and negotiating or having to negotiate every five minutes and the more we can put in place a mechanism that avoids disputes, rather than trying to have a mechanism that resolves disputes after they have happened, but these are discussions that are ongoing.

Q72 Chair: I believe there are disputes about where we are just now and I am sure you are more than aware of some of the comments from the Scottish Government, such as their unhappiness about the progress of fiscal framework, about the whole process, so the Scotland Bill has been put in some sort of jeopardy because there cannot be an agreement. I know the Secretary of State said there is not going to be a running commentary when it comes to discussions about fiscal framework, but when can we see some substantial plans about how this is going forward? We know the first year is relatively easy in terms of how the block grant adjustment is going to be made, but the "indexed appropriately" beyond that, are we any clearer about what that means and how we are going to work out these indices as we go forward after the first year?

Lord Dunlop: I am not sure I would accept the characterisation about unhappiness about the discussions. From my perspective, the discussions, as I say, have been very productive and good progress has been made. Having said we should not have a running commentary of the detail of that, I think I will resist the temptation to provide a running commentary.

Q73 Chair: You must get the sense of the frustration and, again, the Scottish Parliament Devolution (Further Powers) Committee had a look at this, too. They were finding it very difficult to get a sense of where we are, how close we are to agreement, how it is going to work beyond the first year. Have you any idea about how these indices will be working and how the block grant adjustment will take shape after the first year?

Lord Dunlop: Obviously, the Smith agreement did talk about the need for an indexation mechanism and, clearly, the discussions we are having are looking at a range of options for how the block grant adjustments in future years would be indexed. Those discussions are narrowing the options down, but I think the key principle to get across is that Scotland should neither lose nor gain from the process of devolution itself. Obviously how the powers are subsequently used and the policy choices that the Scottish Government makes thereafter, that will have an impact on the performance. Clearly, I think it is absolutely right that the Scottish Parliament has greater fiscal responsibility and should gain from its policy choices that are good and be accountable for those that are less good.

Q74 Kirsty Blackman: Perhaps, Secretary of State, moving slightly on from the fiscal framework; in terms of the Scotland Act 2012 the Scottish Minister has limited borrowing powers. In terms of the fiscal charter, there is going to be limited exercising of statutory powers. Obviously the fiscal framework has to fit into this. In terms of going forwards with these three things, will Scottish Ministers remain free to borrow up to the agreed limits no matter how much or how little the UK Government is borrowing?

David Mundell: Without giving a running commentary, which I alluded to in my opening remarks, borrowing is something that is subject to discussion in the fiscal framework discussions.

Q75 Chair: I think what we are trying to understand is: what trumps what, the fiscal charter or the fiscal framework? If there is going to be limited borrowing and then we are going to have to be subject to UK fiscal charter when it comes to creating a balanced budget and going into surplus, will this not have an impact on our flexibility in the fiscal framework?

David Mundell: What I would say is Mr Swinney and the Scottish Government are part of these discussions and—without giving a running commentary—these may be the sort of issues being raised as part of that discussion. Everyone is conscious and aware of those issues.

Q76 Chair: It is a very simply question; it is not a running commentary, we understand that, but what trumps what: the fiscal charter or the fiscal framework, in terms of how the Scottish Government can operate?

David Mundell: I think the Scottish Government and Mr Swinney will be discussing that issue as part of the fiscal framework today.

Q77 Kirsty Blackman: Just one more on that—we are discussing the fiscal charter today; we have a 90-minute debate this evening—will the fiscal charter limit the borrowing powers of the Scottish Government further than they are already limited?

David Mundell: There is a discussion about how borrowing powers in Scotland should go forward beyond the Scotland Bill. I set that out in my opening remarks but, as Lord Dunlop said, I am sure it is very helpful indeed—in relation to the Devolution (Further Powers) Committee and yourselves—to express views as to what you think should be part of that framework, because I am sure Mr Swinney, and I am sure the Chancellor, will take cognisance of that from both positions. There does need to be space for a discussion. Both Mr Swinney and the Chancellor have confirmed that the fiscal framework, which I think was part of Ms Blackman's initial question, will be subject to public scrutiny in both Parliaments. There will be an opportunity to go through it. Of course if the Scottish Government are not in agreement with the fiscal framework then, presumably, they will not sign up to it.

Q78 Mr Chope: I would like to follow-up on that. Will this fiscal framework contain a route map to full fiscal responsibility?

David Mundell: No.

Q79 Mr Chope: Why won't it? Surely the only way we are going to be able to promote the Union successfully, on both sides of the boarder, is by introducing more clarity and responsibility for where the money comes from and who is responsible for spending decisions. At the moment, my constituents are resentful of the fact that they are effectively paying subsidies so that people in Scotland can enjoy free prescriptions, free tuition fees, and free long-term care for the elderly. If the Barnett formula, which exacerbates that transfer of resources from England to Scotland, is to stay in place, that is going to be a continuing recipe for conflict. Is not the cleaner cut to do away with the Barnett formula and give the Scottish people and the Scottish Government full fiscal responsibility, which is what I understand they would like to have? They do not want to say they want to take it instantly, but they would like to have it in the future. Is that not something that we should be containing within this fiscal framework?

David Mundell: As I said to Mr Wishart earlier, we had an extensive debate about full fiscal autonomy. Sir Edward Leigh made a very strong case for it, but I am not persuaded. I am not persuaded by the fact that that would leave Scotland with a £10 billion black hole that could only be filled by additional taxation or cuts in services. I do not think full fiscal autonomy is a good deal for Scotland and, therefore, as Scotland's man in Whitehall, I cannot countenance taking that proposal forward.

Q80 Chair: I think it is a very interesting philosophical question, what we are seeing here, with elements of the Conservative party, nearly all the Members of Parliament from Scotland supporting this, we have the fiscal framework in place, is there not a sense of inevitability that we are moving towards full fiscal autonomy regardless of the figures that you put, which are, of course, hotly disputed by Scottish Government and the Scottish National party? Is the fiscal framework not really just the route map—as Mr Chope said—to ensure that at some point we

get a sensible division of fiscal responsibilities and we do secure a position of Scotland effectively being self-governing fiscally?

David Mundell: I respect your view or your aspiration that that should be the case, but I do not agree with it.

Chair: We will leave that then.

Mr Chope: Can I have one more go at that?

Chair: Yes, please.

Q81 Mr Chope: In that case, why are we messing around with increasing borrowing powers for the Scottish Government? Because at the moment Scotland is being subsidised by the rest of the United Kingdom, and many of the people in the rest of the United Kingdom would say, “If they are already being subsidised, why are we giving them the power to borrow in addition to that? Why are we talking about extending borrowing powers without thinking about giving them the responsibility with full fiscal responsibility?”

David Mundell: I think the first thing to say is that under the Smith agreement we are moving to a position where the significance of the block grant and the Barnett formula is diminishing, as over 50% of the Scottish Parliament’s budget will now come from taxes that are paid by Scottish taxpayers. That is a key feature of increasing the fiscal responsibility of the Scottish Parliament. I think overall, if you believe in the Union, as we do—and I am sure you do too—it is about striking the right balance. It was only just over a year ago that over 2 million people voted to stay within the United Kingdom. A key part of staying within the United Kingdom is that pooling of risk and resources that is so vital and is a vital feature of the United Kingdom. Full fiscal autonomy would completely remove that element of pooling and sharing of risks and resources, which is part of the solidarity, I believe, of the United Kingdom.

Chair: Do you want another shot, Christopher, or are you satisfied with that?

Q82 Mr Chope: I do not think he has answered the question about borrowing. Why do we need to give them more borrowing power?

David Mundell: The Scottish Parliament under the last Scotland Act already has borrowing powers—I think cumulatively capital borrowing powers of 2 billion. What we are discussing is: what is the appropriate level in the new fiscal environment that we are discussing in the Smith Agreement? But as I have said, I do not want to provide a running commentary of those negotiations.

Q83 Chair: What this Committee is interested in doing is having a look at the fiscal framework, and I am pretty certain that, as part of our ongoing work programme, we will want to look at this and revisit this. What we have to determine from you from this session, so we can start to design a follow-up, is: when would we be best to do this? When will the “running commentary” block stop, and when can we start to do some real, substantial work about what is involved with this? I know it is Government to Government, which is fine and that is to be expected, but there must be some sort of scrutiny in this, and we have not been

able to secure his. I know the Scottish Parliament's economy committee has had a stab at this but perhaps we are in a better place because we can get access to you very easily, the Treasury Ministers. Could you advise us when we should start to look at this, because it is a piece of work that absolutely needs to be done?

David Mundell: Later in the autumn.

Chair: Later. Is that it?

David Mundell: That is the only advice that I can give. The commitment I can give—because I am sure it will be helpful—is that my colleague, the Chief Secretary of Treasury, for example, has committed to go to the Scottish Parliament's Devolution (Further Powers) Committee. I am sure he and the Chancellor would be pleased to come before this Committee. There will be an opportunity to scrutinise the framework. Both Governments need space to be able to reach the necessary agreement, but they will be open and accountable for the agreement that they have reached.

Q84 Chair: There is no point in us starting an inquiry, and trying to have a report, and having a look at this issue if all we are going to get is, “We cannot give a running commentary of where we are.” I think we will need your advice on that. If you are saying “autumn”, then we are going to have to come back to you and write to you about when would be the best time to pick this up and have a look at this.

We are grateful for the work of Lord Dunlop on all this. Obviously it has been quite detailed work, and I respect the fact that you have been looking at this very carefully. I see that you are flanked by two of our noble Lord friends here, and we have a question for Lord Keen in a minute but I want to make this observation. The way that you have been operating, particularly in Scottish questions, is obviously Lord Dunlop is in the unelected other place. How is this working out and operating? I don't think we have been in a situation before where there has been a sole Secretary of State and House of Commons as part of the Ministerial team. Is this the reason why we are seeing colleagues—quite rightly—coming along and answering questions at Scottish questions for us just now, because obviously we do not have access to the good offices of Lord Dunlop when we want to ask these questions?

David Mundell: Lord Dunlop, of course, answers questions in the House of Lords on behalf of the Government, so he is not entirely free from that responsibility. I am very grateful to colleagues across Government for supporting me at Scottish questions. I hope that in relation to a number of the questions that come forward, because they have those departmental responsibilities, they are able to give an authoritative response to Members. I think that we have come to a good arrangement because we are part of one Government. Although responsible for the Scotland Office, I see myself as part of one Government and I am very grateful to have the support of colleagues.

Q85 Chair: Absolutely. I know you are not over endowed with Scottish colleagues when it comes to answering questions in the House of Commons. But is there an issue at all about the fact that you are the only Conservative Member of Parliament from Scotland and you have to answer these questions on behalf of the operation of the Scotland Office to Members of Parliament from Scotland?

David Mundell: I enjoy Scottish questions. I have enjoyed it from both sides of the floor. I think it is an important element of the parliamentary timetable because we are able, in that time, to bring a sole focus on to Scottish politics in that half hour slot. As you have seen, I am happy to answer questions on any subject before me. I think it is useful to have colleagues with me who can answer specific questions that have been raised. I think everything is important to keep under review, so if there are suggestions about improving Scottish questions then I am happy to take them on board.

Q86 Chair: Maybe this Committee will come up with some suggestions and proposals for that, but thank you. We have a question for Lord Keen and it is to do with the evidence session we heard yesterday from the Leader of the House about English votes for English laws. We do not know what the view is in the Scotland Office. I am assuming it is the Government response and that the Scotland Office is reasonably relaxed about English votes for English laws, even though it has such a dramatic impact on you as a Member of Parliament, me as a Member of Parliament, and my colleagues here. We are curious because one of your advisers has been giving evidence to the Procedure Committee. I wrote to you, Secretary of State, which I have not received a reply to, so obviously you are considering your response. Was the evidence that was given by Professor Tomkins the view of the Scotland Office, or was he acting outwith the confines, and is there a Scotland Office view about this? Are you relaxed about becoming what we consider to be second-class status in the House and being locked out of several sections of legislation as it goes through?

David Mundell: There are a number of points there. First, obviously I was aware that you asked a question to officials. What I am very disappointed about is that you have not received my response because in the intervening period I have had it checked that it was sent in the postal system. I am not suggesting that it is at your end, but what we will do is we will get you a copy. I signed that letter off myself, so I recall doing so, and I confirmed to you that, first, Professor Tomkins—as he confirmed in the evidence that he gave to the Procedure Committee—was not acting in a capacity as adviser to the Scotland Office on that issue, and had not given advice; and indeed to also confirm, as you probably anticipated, that the position of the Scotland Office is the position of the UK Government.

I do not regard these modest measures as having a significant impact, or indeed any impact, on my role as a Member of Parliament. Scottish MPs will be able to vote on every issue that they currently vote on, and they will be part of every debate and discussion that they are currently part of. Although it might not please everyone, Scottish MPs will still have the say in whether fox hunting is allowed or amended here in England. So I don't see these measures as having any impact on the capacity of Scottish MPs to carry out their duties. I certainly do not see it as creating a second class of MP, and I think that it is helpful in bringing equilibrium to the devolution settlement so that Members from England can have a specific say in relation to matters that relate only to England.

Chair: I do not want to get into a philosophical debate about English votes for English laws, because we have had several of them.

David Mundell: Yes, indeed, you have. Indeed you have.

Chair: We did have the session with the other House yesterday.

David Mundell: I thought it would be helpful if I set out my position in response to your question.

Chair: I think you have clarified for us today that the Scotland Office does not have a distinctive view on English votes for English laws, and it is the view of the Government, so I think that is sufficient for us.

David Mundell: I am supportive of that view, and I have supported that view on all three occasions that I have stood for election to this panel.

Q87 Chair: We are grateful for you clarifying that, and I think the Committee has noted that. But to Lord Keen, will you be using your offices to look at English votes for English laws, as is certified by the Speaker for the Scottish interest? What is available to you in order to be involved in this process, or perhaps say when the Speaker may have it wrong, or intervene to ensure that if there is a dispute about a certification you will be there to respond to that?

Lord Keen: Could I perhaps begin by clarifying what my role is? Obviously I am not a Member of the Scotland Office. The Office of the Advocate General works very closely with the Scotland Office but is not part of it. As Advocate General my role, like that of the Attorney General, is to maintain the rule of law. That is to respond at a rather high level, I appreciate, but, if I can bring that down to a more practical level, it means that Ministers must consult the law officers before they proceed with proposed legislation. Therefore, they do have the advice of the law officers about the legality of legislation going forward where there is an issue about its legality. In my present role I consider legislation that is coming forward insofar as it may extend to or apply in Scotland. My office will also—
[Interruption.]

Q88 Chair: Can I stop you? Sorry, Lord Keen, but there is a Division in the Lords just as you started to speak. I do not know if both of our noble Friends want to relieve themselves to vote?

Lord Keen: I am afraid we are on rather a—

Chair: Yes, I know that you are—

Lord Keen: But we will return.

Chair: Yes, if you can that would be fantastic. Sorry about that, just as we got you into full flow too, Lord Keen.

Lord Keen: It will give me an opportunity to edit my reply.

Chair: Thank you for that.

Q89 Chair: Take your seat. We had a conversation with some of your officials earlier about what was probably about the most traumatic issue confronting the Scotland Office in the last year, and that was of course the leaking of the memo. I know that was a former Secretary of State, but did you see that memo?

David Mundell: I have set out my position, Mr Wishart, on many occasions, which is that I had no part in the leaking of that memo. What took place after the leak was a Cabinet Office inquiry into the leak, and that inquiry contains all the relevant information.

Chair: We know you had nothing to do with the making of the leak, and obviously the inquiry has been conducted and is concluded, but did you see the memo?

David Mundell: All the relevant information in relation to the leak is contained in the Cabinet Office report.

Chair: I am presuming you are not prepared to answer this question. It is a straightforward “yes” or “no”; did you see the memo? Did you have access to the memo?

David Mundell: I have answered a range of parliamentary questions, Freedom of Information requests; indeed, your colleague Peter Grant held a debate in relation to Freedom of Information requests on this matter, and the position that I have set out consistently is that all of the relevant facts are contained in the Cabinet Office report.

Q90 Margaret Ferrier: Following on from that, in the Westminster Hall debate I believe you were not in appearance and that you sent a Cabinet Office Secretary to that. Why would that be, because it was a day when there were questions to the Scotland Office and you did not appear yourself to answer these.

David Mundell: It was a debate about Freedom of Information requests. That was the issue that Mr Grant raised. He was unhappy with the way in which the Scotland Office had responded to the Freedom of Information request that he had put forward. The Cabinet Office is responsible for Freedom of Information policy within Government and, therefore, it was appropriate that a Cabinet Office Minister responded to the debate in relation to the issues that were raised.

Q91 Margaret Ferrier: You were happy for them to do that on your behalf?

David Mundell: He set out the Government position. I think it was Mr Rob Wilson who responded to that debate, and he set out the Government position in relation to responses to Freedom of Information requests.

Q92 Chair: I think what surprised us a little bit—obviously we don’t want to go into the leak, but we asked the officials from the Scotland Office about this—is this. How common is it for Scotland Office civil servants to contact overseas Governments about private conversations between foreign Governments and Ministers from Scotland? Is this something that you knew about was an ongoing feature, that people would report back to you of conversations between the First Minister of Scotland, for example, and the French Ambassador, as it was? Is this something that happens regularly with the Scotland Office?

David Mundell: If you look at the inquiry report, it set out that, in terms of the actions of the civil servants involved, there was no impropriety on their part.

Chair: Do we have any more questions? Christopher, yes please.

Q93 Mr Chope: It is a semantic question, but I think tomorrow is halfway through the autumn, and autumn ends on St Andrew’s Day, 30 November. Does this mean that, with regard to the issues of financial responsibility and the financial framework, that those decisions will be reached and announced on or before St Andrew’s Day?

David Mundell: I prefer Ms Blackman's interpretation of autumn.

Q94 Mr Chope: Basically when you say "autumn", it could go into December or January if the weather is good?

David Mundell: I don't quite go that far, but I don't think that we are working to a statutory definition of autumn.

Q95 Kirsty Blackman: In terms of the role of the Scotland Office, the Scotland Office are not leading for the UK Government in negotiations on the fiscal framework. They don't appear to be leading on negotiations about welfare devolution. They are not really representing the Scottish people's views on things like post-study visas, English votes for English laws and energy regulation. The organisations that came before us, when we heard about what the work of the Committee should be, they suggested that they have a much better level of engagement with the Scottish Government than they do with the UK Government, and they find they are more approachable and easier to speak to. I am not even that sure I understand the point of the Scotland Office.

David Mundell: I thought someone might come forward with that question. I think Lord Dunlop set out how clearly and integrally we were involved with the fiscal framework. That is a very, very important arrangement for Scotland. I think I set out that I co-chair with Alex Neil a joint working group in relation to the transfer and devolution of the welfare powers. I set out how we are involved in terms of Government decision-making in setting out views from Scotland. That does not always mean that the views that are set out by the Scottish Government, or your own party, will be the views that will prevail, but my job is to set out the views from Scotland.

I think a good recent example of something that was achieved—and something that the Scottish Government and, indeed, Mr Wishart wanted to see—was the undertaking that the EU referendum would not take place on the same day as the Scottish Parliament elections. These are the sort of practical proposals that we want to try to bring forward, but there are a whole range of other things on which we look to ensure that we reflect Scottish opinion into Whitehall and ensure that Scottish interests are taken into account. I am quite happy to be held to account to that. I am certainly quite happy in relation to your own reports, which I can absolutely give an assurance that I will take very seriously. If you are able to suggest improvements in relation to how we go about engagement within Scotland and our accessibility within Scotland, I am very pleased and interested to hear about that. I am currently out and about in Scotland meeting with lots of different interests but if people don't feel I am accessible to them, I am very pleased to get that feedback and to look to improve our accessibility.

Kirsty Blackman: I really appreciate that undertaking. Thank you.

Q96 Margaret Ferrier: I think the issue is that the Scotland Office is only working, then, for 50% of the people of Scotland if you take a look at the result of the general election. Also, we heard earlier that one of the objectives of the Scotland Office was to inform the debate about Scotland's future in the UK ahead of the referendum. That was obviously going to come from a UK Government standpoint, which means that you wished Scotland to remain part of the

Union. So how can that objective cover the whole of Scotland and be in the interests of everybody in Scotland?

David Mundell: We had a debate and discussion about Scotland's future: 55% and over 2 million of people in Scotland voted to remain in the United Kingdom, which was obviously the position set forward by the UK Government. The Scottish Government set out an alternative position. I am certainly a person who has never questioned their right to do that. But what we had both done is that we had both signed an agreement, the Edinburgh Agreement, to say that we respected the result of that referendum and would proceed on the basis of that result. If Scotland had voted to become independent, the UK Government would have worked through that agreement and other arrangements to make that come about. I think that, in those terms, there is nothing inappropriate the UK Government did in terms of making its case for Scotland to remain in the United Kingdom and the Scottish Government made an alternative case. The result having been decisive, in my view, we need to move forward. That is what I am trying to do in relation to implementing the Smith Commission agreement, so that we can ensure that the Scottish Parliament has the additional powers and that we can move the debate in Scotland on to how we best use those powers in the interest of the people of Scotland.

Q97 Chair: Do you ever feel that you just get in the way of the Government to Government, in being able to get these things fixed out and sorted out with Government speaking to Government? Is there any sense of that, given the Treasurer is going to be leading when it comes to fiscal framework and all the other things that are being done?

David Mundell: I don't in any way feel that. When I spoke to the Deputy First Minister earlier, when I saw Mr Neil earlier in the week, I felt that from both sides we were adding value to the process.

Q98 Chair: We have Lord Keen back. Lord Keen, do you want to take up from where you left off?

Lord Keen: I am obliged to the Committee for releasing me, and I hope that the consequence may be a degree of brevity. In my present role I do consider legislation that is being put forward that may extend to Scotland or may raise issues with regards to the devolved settlement, and I advise upon these matters. I also sit on the Cabinet Parliamentary Business and Legislation Committee and again, in that context, advise upon any devolution issues or issues pertaining to UK legislation that is extending to Scotland. In that regard, I can say that I am the Government's principal adviser on matters of Scots law.

I am aware that you had the Leader in front of you yesterday and that he is going to bring forward further detail of the amendments that are proposed in respect of English votes for English laws, and I would not try to anticipate those. What I would anticipate—but without absolute certainty—is that, going forward, I will continue to have the same role in advising the UK Government and its relevant departments on matters that touch upon Scots Law and legislation that extends to Scots law. That may, as before, involve me in advising upon the interface between what is considered to be an English matter and what is considered to be a UK matter that extends also to Scotland.

Q99 Chair: That response was worth waiting for, so thanks for coming back and clarifying that because I think for us the concern is that there will be somebody looking out for legislation as it progresses through and the possibility of certifying.

Lord Keen: Of course, it does work the other way around because I also scrutinise proposed legislation from the Scottish Parliament to make sure that it is on the other side of the Rubicon and it is not intruding upon reserved matters.

Q100 Chair: Thank you for that. I don't think we have any further questions, and I appreciate you have a meeting at 5 pm, Secretary of State. I think to round things off then—unless there is anything further that you want to say to this Committee—is just to thank all of the team for coming along this afternoon and answering these questions. We hope to see much more of you as we go forward in the next year. I am pretty certain that, in the course of the next few months, you will have an invitation to come in front of this Committee and we will have further questions, particularly on the work of the Scotland Bill and the Fiscal Commission.

David Mundell: Thank you, Mr Wishart. I found it a very useful session. We are very happy to engage with the Committee, both formally or informally. One thing I can offer, which has worked well before, for example, is that officials can brief members of the Committee on specific issues, if that is helpful. The point I made in earlier remarks is: any report or deliverance that this Committee makes will be treated very seriously by me and colleagues in the Scotland Office.

Chair: Thank you for that, and thank you for coming along.