

Scottish Affairs Committee

Oral evidence: Scotland's place in Europe, HC 595

Wednesday 7 December 2016

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Members present: Pete Wishart (Chair); Deidre Brock; Margaret Ferrier; Chris Law

Questions 176-210

Witnesses

Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, Professor Anton Muscatelli, Chair, Standing Council on Europe, Scottish Government, and Ian Mitchell, Head of External Affairs in the Scottish Government.



Examination of Witnesses

Michael Russell MSP, Professor Anton Muscatelli and Ian Mitchell.

Q176 **Chair:** Could I thank our three witnesses for appearing before the Scottish Affairs Committee as part of our ongoing inquiry into Scotland's relationship with Europe? Just for the record, if you could tell us who you are, who you represent and anything in the way of an opening statement. We will start with you, Minister.

Michael Russell: Thank you. I am Michael Russell. I am the Member of the Scottish Parliament for Argyll and Bute and Minister for UK Negotiations on Scotland's Place in Europe.

Professor Muscatelli: I am Anton Muscatelli, University of Glasgow, and here as Chair of the Standing Council on Europe established by the Scottish Government.

Ian Mitchell: I am Ian Mitchell. I am Head of External Affairs in the Scottish Government.

Michael Russell: Thank you very much and thank you for the invitation to contribute to the Committee's inquiry into Scotland's place in Europe. This is my first opportunity to address the Committee since the referendum result on the membership of the European Union. At the time of the referendum, the post I have did not even exist but as a result of that referendum, and particularly the vote in Scotland, I have been asked by the First Minister to lead discussions with the UK Government on Scotland's future relationship with the EU to ensure that Scotland's position is protected.

It is clear that the vote in Scotland reflected what we thought to be the case. The people of Scotland wish to continue to have a strong relationship with the European Union. Crucially, they see the benefits of EU membership and do not wish to lose them. Nevertheless, the UK as a whole voted to leave and the Scottish Government have perforce to address that reality and to secure the best possible outcome for Scotland. I am sure we will get into the detail of what that relationship might be but I want to note here that I have some concerns. I feel that presently we are drifting rather than steering towards a hard Brexit, perhaps the very definition of what Scotland voted to avoid. There is a great deal of uncertainty in this respect. The Scottish Government are clear that our relationship with the EU and our place in the single market, to which I suspect we will return, must be protected.

The First Minister has been clear from an early point and as well as appointing the Standing Council on Europe, that I am sure Anton will talk about shortly, she set out five key interests for Scotland that require to be protected: our democratic interest, the need to make sure that Scotland's voice is heard and our wishes respected; our economic interest, safeguarding free movement of labour, access to the single



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market of 500 million people and funding that our farmers and universities depend on; our interest in social protection, ensuring the continued protection of workers and wider human rights; our interest in solidarity, the ability of independent nations to come together for the common good of all our citizens to tackle crime and terrorism and deal with global challenges like climate change; and our interest in having influence, making sure that we don't just have to abide by the rules of the single market but we also have a say in shaping what happens.

Looking ahead, the Scottish Government is preparing for whatever form of Brexit takes place to ensure that our interests are protected. We are acting decisively to help counter economic uncertainty. As part of the programme for government, the First Minister announced a £500 million Scottish growth scheme, following on from her announcement in August of a £100 million capital acceleration programme to stimulate the economy. We have set up a dedicated post-referendum business network service. We are implementing a four-point plan to boost trade and exports, ensuring that our European friends know that Scotland remains fully open for business.

Our aim is to get the best deal for Scotland and to protect our relationship with the EU and the rest of the world. We would define that best deal, first of all, as continuing membership of the EU; secondly, that the UK itself should ensure the softest of Brexits; but thirdly, if that cannot and will not be done, to ensure that Scotland has that status and is able to enjoy those privileges. I welcome the opportunity, of course, to listen to and work closely with this Committee and indeed anyone from inside and outside the world of politics who shares that goal and that is also a task I am undertaking.

Professor Muscatelli: I would simply add that, as the Minister said, the First Minister asked me to chair a Standing Council on Europe immediately after the referendum outcome. It brings together considerable experience, considerable talent from across a whole spectrum of expertise and interests to respond to a national issue that I think transcends everyday politics.

We will basically have three roles. The first is to provide expert advice on securing Scotland's relationship with the EU. The second is to consider the impact of any proposed changes to the UK's relationship with the EU and Scottish interests. The third is to advise Scottish Ministers through negotiations in order to secure Scottish interests and objectives. We have done that by setting up work streams that range from the economy and financial key sectors like financial services to social protections and human rights and higher education and research, all key areas in which Scotland's relationship with the EU might be impacted.

I want to conclude by saying that we are essentially a technical expert group. We are not a political group. It is a wide-ranging group of people, many with no political interests, and our role, of course, is not to



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formulate policy but to advise Government in the formulation of policy as and when they require.

Q177 **Chair:** Thank you. Mr Mitchell, do you have anything else to add or contribute?

Ian Mitchell: No, I have nothing to add. Thank you very much.

Q178 **Chair:** Thank you for your opening statements. Can I start with a couple of very brief questions as to where we are? At the very beginning of this process, following the referendum on EU membership, the First Minister stated that she would take all possible steps and explore all options to give effect to how people in Scotland voted. I think that was clearly understood as securing a continued place within the European Union. Is this still pretty much the Scottish Government's intention?

Michael Russell: Absolutely, it is the Scottish Government's intention to do so. The Scottish Government believe they do so with a triple mandate. The first mandate essentially comes from the result of the referendum in Scotland, which was 62% to remain and 38% to leave, so there is a clear majority to remain. The second part of that mandate comes from the Scottish elections in 2016 where the SNP was elected to Government. I was elected in Argyll and Bute on a manifesto that specifically said—and it is not often that politicians remember every word of their manifestos—that the triggering of another independence referendum could come in circumstances if Scotland was dragged out of Europe against its will. The third part of that is a mandate from the Scottish Parliament. On 28 June, the first debate after the referendum result, the Scottish Parliament asked, indeed mandated, the Scottish Government to take all the necessary steps and to look at the options for retaining our relationship with Europe.

One of the jobs I have been asked to do is to help develop those options, which are broadly an undifferentiated option, we just leave with the rest of the UK—that would be unacceptable and would not answer the mandate or the tests that the First Minister has set—to move forward with an independence referendum, the draft legislation of which is being consulted on, or to find a differentiated option. It is the work that is continuing on those that will result in the publication of some more detail later this month.

Q179 **Chair:** We know very little about the Government's intentions for withdrawing from the European Union and details have been sketchy and patchy but we have started to get a few basic themes about some of its thinking. In your view, is it possible with the Government's main intention, which obviously is still to take the UK outwith the European Union, that Scotland could somehow secure its place within Europe with the UK being out?

Michael Russell: That is exactly the issue that we are now examining. The JMC (EN) has been established and no doubt you will want to talk about the effectiveness or otherwise of the JMC structure. The next



meeting is immediately after this meeting and will be the second meeting. The Scottish Government need to find and are looking for a way to secure the relationship that it has been mandated to try to secure. I don't think anybody expects that to be an easy process but two things are very clear. One is the view that comes from the EU that the UK must follow due constitutional process, so we must find a way in order to influence the UK's stance to include the options that Scotland wishes. The second very clear thing is that we must make people aware, widely in Europe and elsewhere, of the Scottish situation and what Scotland requires. It is not simply a matter of politics. There is a huge matter of the economy in this.

There is a variety of phrases for single market membership: the Welsh use the phrase "full and unfettered access"; I think the Labour Party at Westminster uses a very similar phrase about "tariff free access". Essentially, being able to be involved means respecting the four freedoms and of those, important as they are, the most important to Scotland is freedom of movement and without freedom of movement Scotland would have a very considerable problem.

Q180 Chair: We are familiar with the First Minister's tests, which she has reiterated several times, and we heard from you that the five tests are central to the Scottish Government's views on what a continuing relationship with the European Union would be. Could you talk a little bit more about what the vision of that type of relationship would be, whether that is within the UK or without?

Michael Russell: I think we have to start with the assumption that there is nothing exactly like that at present but then there has never been a departure from the EU in this way. Greenland is another question but a very different question. I don't think precedent in this matter helps us at all. What we have to do is to look at the range of substate arrangements that exist in Europe—and I think there are over 30 of them—to ask if any of those work, could they be adapted; to look at the range of involvements in the single market. The EEA situation is one that we will consider. I don't want to declare for any of them because there is a range of options that we will be publishing but it is quite clear that there are possibilities in order to do that and it is to be involved with, to have access to, to observe the single market that becomes a really big issue. There is a parallel issue of the customs union.

You could look at a spectrum of options that start with full membership and flow all the way to complete lack of involvement with any of the European institutions. I think you have to look at this and say: what are the things we need to achieve, where does that fit on that spectrum and how can we create the circumstances in which that works? It will require goodwill, and we have entered into discussions with the UK in goodwill. It will require a lot of discussion with European and other partners. It will require a recognition of the need for differentiation, but differentiation will happen anyway. Barnier's objectives, as you know, include issues around



borders, which concerns Northern Ireland and Ireland, the issue of Gibraltar and the Cyprus issue. There will be differentiation no matter, but there may have been differentiation promises made. We don't know because they haven't been published. The principle of differentiation appears to me to have been accepted. What we now need is to put flesh on those bones. That is what we are engaged in and we hope the United Kingdom will work with us on that matter.

Q181 Chair: Just on that, Professor Muscatelli, are these five tests underpinning the work that you are doing in shaping your advice to the Scottish Government? Is that what you have been tasked to do?

Professor Muscatelli: Indeed, and those five tests are the ones that the First Minister set out very clearly and the ones with which the Standing Council certainly engages very readily. As the Minister said, we are looking at the whole variable geometry that is the EU at the moment and the EEA. You are looking across a shape around both the EU and the single market that has changed considerably over the years as the needs have evolved and we are looking at that. We are also looking at the variety of different models that could perhaps inform the Government's deliberations when it decides on what options to take forward.

Q182 Chair: Just lastly on opening questions, we know that the Scottish Government are shaping up their proposals about what they would see as a favoured outcome leading up to the triggering of Article 50. I know you are probably not going to be in the position to declare to this Committee exactly what that is going to be but perhaps you could give a sense of the priorities that you have identified in shaping up these proposals and even if you are in a position to tell us how long we are expected to wait before we are going to see these.

Michael Russell: I hope we will be able to publish something in the run-up to Christmas. I suppose we are in the run-up to Christmas so within the octave, to speak in religious terms. I think we are getting very close to that but I don't want to declare a date here.

It is obvious that there are a lot of possibilities. The real issue here is to put those possibilities out on the table and then to say this will require considerable negotiation between ourselves and the UK, between the UK and the 27, so this will have to be a collaborative effort. We hope that the UK Government are being true to what the Prime Minister said when she met with the First Minister in July, which was that Scotland be fully engaged and fully involved and that she would welcome our views and ideas. There was some contradiction in the position of the Chancellor last week who was saying, on the one hand, he welcomed our views and ideas and then, on the other hand, saying he didn't really want them. That is not where we should be.

I do think that we need an openness to this and we would hope that there would be an openness to sit down and discuss these options with us, mindful of that triple mandate and of the need to ensure particularly



free movement of labour. There are other issues and we may go into some of those. There are issues of not just to hold on to the rights we have but to make progress with some of the dynamism in Europe, but the most important thing is the single market.

Q183 Chair: We know you are going over to the JMC in the next hour or so. I don't know if you are in a position to describe the relationship that exists now between the Scottish Government and the UK Government. I think all of us in this room recall the very positive, or what seemed to be very positive, developments at the beginning of this process where the Prime Minister put in her diary to see the First Minister not just of Scotland but of all the other Parliaments and Assemblies in the UK. Since then there does seem to have been a falling away and perhaps a coldening of relationships. How would you characterise where we are?

Michael Russell: I think there has been a frustration about the lack of information and the lack of declaration of strategic objectives. If you are going into this process you really need to know what you want to get out of it, and it is not clear. Short of what appear to be two idées fixes that exist—one is control of migration and the other is to have nothing to do with courts outside the United Kingdom—there does not seem to be much principle underpinning it. I think we are trying to get that information. We entered into this with good faith. We are critical of that slowness but then so have other Administrations been.

On a personal level I have established, I hope, a good relationship with my counterpart and we spoke yesterday on the phone. The hotline is working and we are able to have good discussion. Michael Matheson will be here today because there is a paper on justice and home affairs in front of the JMC. We are making progress but it is very slow progress and we are not yet at the stage, but we will shortly be at that stage, of requiring a recognition of the need for a differentiated approach.

Q184 Chris Law: I want to turn to the constitutional implications of the UK's withdrawal from the EU. The Scottish Government have produced a draft referendum bill to prepare for the possibility that the Scottish Government concludes that "independence is the best and only way to protect Scotland's interests in the wake of the EU referendum". Immediately following the referendum, of course, the First Minister said she thought a second referendum on Scottish independence is highly likely. Is that still the case?

Michael Russell: Yes, I would say so. My view is that we are negotiating in good faith. There remain the three options on the table: broadly differentiated, undifferentiated and the option of an independence referendum. We hope to make progress with the differentiated option—I have indicated that to you—but the options have to remain there and that is the right tactic. It is also in principle the right thing to do because that is the reality. There are three options, which is to do nothing but just allow this to be done to you despite the votes of the people of Scotland and despite the economic necessities, the way in which we see ourselves,



the way in which we have developed within Europe, the important things that that brings to us, our belief in the European project. It is the right thing to do but also we have to be honest about the options facing us. I have heard Conservative MSPs particularly say, "Take independence off the table". You don't take any option off the table when you are looking at what I have defined before as an existential threat to many of the things in Scotland that are important to us, so the options remain on the table.

Q185 Chris Law: On that note, you were saying that the last period has been quite frustrating in trying to get a sense of what negotiations are going forward. Would you say that some of the criticisms that are coming from, for example, Conservative MSPs of the focus on Scottish independence and we are using the EU diversionary tactic as a tactic to bring it back on the table, is because they are rejecting, in your view, the result that we got in the EU referendum in Scotland?

Michael Russell: I think it is useful politics for them to perhaps distract from the fact that they don't really know what they are going to do and how it is going to go. I find the Conservative Party talks a great deal more about independence than I do at present. Every question in the Parliament seems to be about that. The Conservatives spend a great deal of time saying that we should be cheerful about what has taken place, that we should accept a result that did not happen in Scotland and that we should just get on with it. I think it is foolhardy to be whistling a merry tune when you are walking off a cliff. I think what you need to do is to be accurate about what you are faced with and find a way forward, and that is what we are doing. We are working very hard on that. I have been meeting each of the party leaders and I am very keen to try to find a common cause in Scotland, perhaps around some of the differentiated options.

Q186 Chair: Do you have a sense that the common cause that was established in the days and weeks after the European referendum result has perhaps dissipated somewhat? We all have in front of us a copy of the motion that was passed in the Scottish Parliament that seemed to buy in all the political parties. Has that now gone?

Michael Russell: I think "dissipated somewhat" is a modest way of looking at it. The Conservatives have become born again Brexiteers. That is all you hear, essentially, in the Scottish Parliament from them. The Liberal Party has a range of options, as ever, but I must say—and he won't thank me for saying this—Tavish Scott has taken a very strongly pro-European view in the Parliament that has been very useful. The Green Party has been working closely with us. I think the question of where the Labour Party wants to go is still out but so far they have remained within the consensus with one exception and I would put that down perhaps to a slight confusion about language on both sides. When you focus down on the single market there are now many different ways to describe the relationship we are seeking and others are seeking—I have pointed out the Welsh phrase "free and unfettered access"—but I



broadly think we are still talking about the same thing in terms of the differentiated options and I would hope that that could be maintained.

Q187 **Chair:** How important is that, because it is the position of the Scottish Government that carries the Scottish Parliament in the negotiations?

Michael Russell: I would like that to be the position because that is where we were in June. I think that would be an important demonstration of respect for the result of the referendum in Scotland and I hope we can do that. There is a clear majority in the Scottish Parliament for taking these issues forward. It is quite obvious that that exists and that may be what happens, but I would very much like to see a broader consensus and that is what I am working for.

Q188 **Chris Law:** Are there any clear red lines for the Scottish Government to pursue a Scottish independence referendum and, if so, what are they? I am sure everybody in Scotland is looking to find out what they are.

Michael Russell: I would be reluctant to use the words "red lines". We are not at that stage. We are trying to negotiate in good faith and I would not want to use that term. I would put it this way: there will clearly come a moment at which decisions have to be made between those options, both in terms of those who are considering the options and those who are proposing them. That will be the moment, when we come to it, at which we will have to make some choices but I wouldn't use the phrase "red lines" at the moment. We are involved in early discussions that are very complex.

Q189 **Chris Law:** The Scottish Government have criticised the UK Government for failing to set out their priorities for the UK's future relationship with the EU. Do you accept that it is unrealistic for the UK Government to detail the precise outcome of what it wants, given that the outcome of the negotiations will need to be agreed by both the UK and the EU?

Michael Russell: No, I don't think it is unrealistic to be clear about strategic objectives. I have been very clear here. Our strategic objective is the involvement in the single market. I have explained why and I am happy to explain at greater length why freedom of movement is extremely important to us. I think we need to know those things, some of the choices. The Prime Minister regularly says things are not binary; some things are binary. You have to come to a conclusion about what you want and that is what we want to hear. The Conservative amendment, as I understand it, for the motion that will be debated at Westminster today commits the Government to a plan. A plan has to have objectives; you need to know what you want to achieve. When we come to triggering Article 50, the position that the UK Government take at that moment will declare a lot of things. We need to know what those things are going to be.

Q190 **Chair:** Maybe it is not frustrating but it would seem to me that it would be given that there does not seem to be any clarity about the Government's position. They are not even prepared to talk about general



principles of the customs union or the single market. How difficult is it to negotiate with a Government that seemingly does not know what it really wants yet?

Michael Russell: I think that is pretty difficult. The reality is that we are having discussions more than negotiations at the present moment. We are looking at analysis and ideas. We have been offering from the very beginning of this process to take part in joint analysis of information. I think we are beginning to make some progress on that and I hope out of today we will have further progress and it will be clear that that joint analysis will apply across many sectors. I would call them discussions not negotiations at the present moment. You are quite right, it is difficult to negotiate with people when you don't know what their objectives are.

Q191 **Chair:** When do you get beyond the discussion stage to the negotiation stage? Is that after Article 50 has been triggered? Is there a point where we need to start to debate properly what is the priority for Scotland?

Michael Russell: The Scottish Government made it clear when the JMC structure was being set up that two things were really important, if I can answer it this way, because I am just going back a step. The first thing was agreement, so in other words when the JMC met and discussed things it would be on the basis of agreeing a position. We are nowhere near agreeing positions; we are looking at options papers. There also had to be oversight. Once the position was agreed, and that would be a process of negotiation, if it could succeed—and maybe it can't—we would have to have the confidence that that agreement would work its way through into the negotiation between the UK and the EU so there would have to be a feedback process. In the person of David Davis, that person would have to be able to take that, feed it in and bring it back, and that is negotiation. That has not started.

Barnier has made it clear, as Juncker has made it clear, everybody has made clear, no negotiations before Article 50, so none of us is negotiating in that sense. I suppose what the JMC (EN) is engaged in is clarifying some issues and perhaps working out where there are possibilities that some agreement might happen. The next stage of that is to see what the differentiations can be and some of those differentiations are so crucial to us that if there were no differentiations then I think our position would be difficult.

Q192 **Chair:** Does this impact on your work, Professor Muscatelli, given that you are not certain about the direction in which the UK is going?

Professor Muscatelli: Certainly it does make consideration of options by the Standing Council much more difficult. It would be much easier if we knew exactly what the negotiating position was of the UK Government. In that sense, yes, absolutely, but it does mean that what we have done in our work is to support the Scottish Government in looking at all possibilities, giving the potential configuration of whether it is a hard Brexit or a softer Brexit by the UK Government.



Q193 **Deidre Brock:** In reference to the JMC (EN), Minister, how likely is the prospect of an agreement between all four nations on what the UK's negotiating position will be?

Michael Russell: I am going to take another step back from there. One of the issues is the breadth of subjects being covered. The UK Government view may well be—and I don't want to speak for them—that the JMC structure deals with devolved competencies. I can't speak for the other Administrations but my view is that is not enough because freedom of movement would not be regarded as a devolved competency. It is vitally important for the exercise of other devolved competencies, for example health where 9% of our medical workforce and 12% of our social care workforce come from elsewhere; the financial sector where freedom of movement is vitally important; the tech sector; higher education—Anton can very much speak to that—is vitally important; in the research sector something like 25% of staff are European. It will be important that we agree not just on the devolved competencies, and some of those might have a measure of agreement of objectives. I am not saying we agree with the process of leaving but there might be an agreement of objectives. It will be very hard to underpin those with what we need to underpin them.

Professor Muscatelli: To reinforce, freedom of movement is exactly one of those areas where we have had a lot of discussion at the Standing Council. As the Minister said, not only is it critical to certain sectors—the health sector and the university sector—but if you look at the overall Scottish economy, its demographic decline was in a large part arrested by net inward migration by skilled labour, a lot of it from the UK.

Chair: As we found in our report when it was published last week.

Professor Muscatelli: That is critical, especially as Scotland is now in a devolved structure within the UK where its tax base is going to be critical in determining its own fiscal resources. It needs to grow the economy. It has to have that freedom of movement. Freedom of movement is critical to certain regions and nations of the UK more than it is to others, which is why, again coming back to the point about differentiation, it is going to be a key part of that discussion. It has to be because for London, for Scotland, indeed I would argue for Wales, and for the northern parts of the UK, it is going to be absolutely critical to maintain that flow of skills in order to allow growth in those economies.

Michael Russell: You can see this quite dramatically in projections from the Registrar General last week that looked at forward projections in the Scottish population under a number of different scenarios. The one that essentially cuts off EU migration shows not just the beginning of a fall in about 20 years' time but the balance of the population gets worse and worse in terms of dependent population, so this is a vital part of how we need to operate. I have seen suggestions from Conservative MSPs that in some sense any shortfalls could be taken up by young people not in employment, education and training. Anton knows far better than I do



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that the workforce is a dynamic thing, it is not a static thing, and you can't just grab a dozen people from Dundee and say we are going to fill these dozen posts in Glasgow. It just doesn't work like that, so we have a very considerable problem building up if we don't have that free movement.

Professor Muscatelli: Absolutely. There are certain key sectors where the workforce would take years to train. Take the health sector, as the Minister mentioned, to train a doctor takes seven years plus additional years within the medical profession. To think that you can change all that within a matter of one or two years is simply risible, I think.

Ian Mitchell: From an official's perspective of the JMC, I think it is safe to say it was a very slow start but now trust is beginning to build, there is a sharing of papers. We are working together on scoping, on analysis, but I have to say making the jump from that to having meaningful discussions about moving towards a negotiating position has yet to occur and that is the challenge. It is very important to look at the bottom-up sectoral analysis—I don't underplay that at all—but you also need to know what the strategic objectives are, where we are heading for, before you can have meaningful discussions about options.

Q194 **Chris Law:** I want to explore that point a bit more. Angela Merkel made it clear yesterday there will be no cherry picking to be had with negotiations with the EU. Freedom of movement is a key part, one of the four key principles of the EU. Do you think it is possible the Scottish Government could have a relationship with the EU where immigration would not only be devolved but would be allowed full access to Scotland but not to the rest of the UK?

Michael Russell: Yes. There are examples elsewhere of shared jurisdiction on migration. Canada and the Canadian provinces are one. Quebec had that quite some time ago. You require to set up systems to manage that but you can manage it with some ease, in fact. It is not a major deal-breaker. You can do it; the question is do you want to do it. Scotland is not full up, as you know. If I may use an example in my own constituency, we are losing population faster than almost any other part of Scotland. Scotland is tilting on its axis and the population is moving east and it is falling in the west. One of the great things that has happened in recent months in Argyll and Bute has been 61 Syrian migrant refugees coming to live in Rothesay and Campbeltown. That has begun to add to the population and it is the only conceivable way in which we can increase the population. There are many parts of Scotland in which the presence of EU nationals, short or long term, is the only conceivable way in which it will have a sustainable economic population, at the present moment.

Q195 **Chris Law:** Would that mean, therefore, Scotland could have a soft border with the rest of the UK as Northern Ireland does with Ireland?



Michael Russell: Absolutely. There are many ways in which you can do this: electronically; you can do it with passports; you can do it in a lot of different ways. In all of these issues it requires the political will to say we are going to try to do that and then you negotiate the way in which you do it. If you start off with the assumption that it can never be done then you won't make any progress at all. There are examples elsewhere and they work well. There is a particular fixation with migration. I understand that we have very different circumstances but it can be resolved like any other issue if you have the will to resolve it and if you apply intelligence to it.

Q196 **Deidre Brock:** Minister, as you mentioned before, the Scottish Government have said that they would expect arrangements for engagement between the UK and Scottish Governments to enable oversight of the negotiations with the EU. Has the door been firmly closed on the idea of Scottish representation on the UK negotiating team or is that still held out as a possibility?

Michael Russell: No discussion has taken place on the details of that. I think it is too early for that. We are not entirely sure what that negotiating team looks like. I think the assurance we have is in the JMC structure that this is part of the process, because the JMC (EN) has published terms of reference. It is about agreement and oversight, flexible interpretation of those issues, but because that is in there, and we accept people at their word that there will be engagement and feedback, we hope that that would be a part of it. What we then add to that may be discussed and is likely to be discussed in the future.

Q197 **Deidre Brock:** With regard to the shared analysis, the Institute for Government stated that, "A shared evidence base on Brexit options and challenges should be created across the four governments to inform the discussions". You suggested that is starting. How can the discussions continue without full access to that shared evidence base?

Michael Russell: You also have to set principles. You have to understand what you are trying to achieve and you need to know what the principles are that are guiding you, and I think it is a balance between the two that has been a considerable issue. There is ongoing work. We are further ahead with analysis in certain sectors today than we were a month ago and certainly than we were two months ago. There is considerably more to be done but slowly that is underway and it is at different levels in different places and in different subjects. There are one or two areas in which there has been quite active engagement between Ministers and officials; there are some areas where there has been virtually none. It is a question of encouraging that to take place, but nothing in government moves consistently ahead. There requires to be actions taken.

Q198 **Margaret Ferrier:** The UK Government have stated that they want the best possible access to the European single market whereas the Scottish Government seem to think it is essential that we have membership. How



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different are these two positions?

Michael Russell: The answer is we wouldn't know because there is no definition from the UK Government about what they mean. In the strictest sense, membership is only possible if you are a member of the EU, so on this trajectory of the UK leaving and a differentiated position being found for Scotland but Scotland continuing to leave in that regard, membership is not possible. There are layers of this.

The next layer is EFTA-EEA involvement. It is a type of membership but you don't get to make the decisions. Iceland and Norway, for example, are in Schengen. They have, in a sense, a bigger involvement in Europe than the UK has in borders, but the EEA process does not allow you into the room to make the decisions. There are discussions but no decisions. In addition, there are some things it does not cover, such as agriculture and fisheries and some other areas. That is the next circle, EFTA-EEA membership.

There is a different but parallel model in the Swiss involvement. EFTA-EEA membership is dynamic, so when regulations change in Europe they change in those countries and their parliaments will pass them not absolutely automatically but pretty automatically. They also pay for access, which I think was the confusion in the questions about paying this week. They pay a subscription but it is not used in the programme to which it is applied; it is used more widely. But they have that involvement. Switzerland's arrangement is not dynamic. It is done by 100 and something treaties and I don't think there is any likelihood it will be repeated because it is very difficult to keep it going. There are armies of civil servants that fly backwards and forwards from Switzerland to Brussels trying to update this all the time. They also have a dispute about free movement at the moment, of course, which is quite an interesting and difficult issue.

Then you begin to move into other areas. Turkey is within the customs union but it is not within the single market. You have arrangements such as the CETA treaty that covers some areas and not others but is in no sense single market, does not embrace freedom of movement. Then you go all the way to no involvement at all. On that spectrum, membership strictly speaking is only for those who are members of the EU. That is why there is a range of other language. As I said, the Welsh Government use "free and unfettered access". I think the UK Labour Party is using a phrase that includes "no tariff" or something like that. We have used "involvement in" more than anything else.

I am sorry to be a little complex in that but it is a difficult one. The ideal for us is membership and we should never lose sight of this. The ideal position, if you want any of those, is to be a member of the EU. There is not another position that is as good as that. Michel Barnier made that clear yesterday. There is a very clear statement from a whole range of European politicians that says nobody should do as well as a member who is not a member. That is how the system works and that is how it is



going to work, so then it is a hierarchy of decision-making that is called into effect. I know Anton has had discussions about that hierarchy and how it works.

Professor Muscatelli: Yes, indeed, and I think this is where sometimes language gets a bit difficult and complicated, as the Minister said. When somebody says “access single market” the minimum could simply be any country that has a free trade agreement with the EU, so South Korea has access to the European single market. That is not particularly helpful. That is not the kind of model one would want to pursue. Instead, as the Minister said, what we have at the moment, as members of the EU, is membership of the single market, which in services is absolutely key. Let’s not forget that the UK is a massive exporter of services. It allows establishment rights on the part of any UK establishment elsewhere in Europe and that is going to go the moment you leave the single market unless you have in place some other arrangement that allows you that possibility. This is why I think the language here is very important.

As an economist standing here as an expert as opposed to a politician being involved in the debate, I find it very frustrating because sometimes people loosely talk about it, saying, “We can be in the EU, only better; we can have access to the market”. Well, actually, no. Being in the single market is a very different thing than being outside it because being in the EU means you have by right full and unfettered access and the rights of establishment, the ability to set up elsewhere in the EU, which in a service sector is absolutely key because that is where non-tariff barriers are much more active. If you look at the Canada agreement, a huge agreement, look at what it says about services and it isn’t anything like being part of the EU or being a part of the EEA; it is much more restrictive. These are the sort of nitty-gritty issues that people who discuss access to the single market need to be aware of.

Q199 **Margaret Ferrier:** The Secretary of State for Scotland has said that in his meetings with Scottish sectoral interests he has been “struck by the appetite that there is in Scotland for taking advantage of the opportunities that will be provided by our leaving the EU” and in particular he says “the many opportunities for the UK to create new trading links and partnerships”. How does that compare with the views that you have heard from Scottish interests?

Michael Russell: If I may quote Oscar Wilde, we obviously move in very different circles. The reality of the situation as I see it, is that there are sectors—I can think of one in particular, which is fishing—where there is an appetite for a different dispensation. They have been very critical of the common fisheries policy and many of us would agree that it has not been a success for many Scottish fishermen. I have engaged very fully, and Fergus Ewing and I have met with them on a number of occasions, I think two occasions recently. We have asked them to bring us their views about what a Scottish-regulated industry would look like and that is a



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good discussion that is taking place, so where people can come along and say that, fine.

There are one or two sectors—the whisky sector is one—that are saying, “We are broadly neutral”. They have said they are not that worried about the customs union but, of course, they don’t have to worry about the rules of origin, which I am sure Anton, as an economist, is far better to explain than I am. There is no issue for them. Whisky doesn’t have anything in it that is manufactured elsewhere and sold on, so they are quite easy in that. I do think they are perhaps over-optimistic in their view that there are some remarkable opportunities outside the EU that can only be accessed if you are not in the EU. I don’t see that at the present moment. They have mentioned free trade agreements with India, which have been difficult to get, but we saw from the Prime Minister’s visit to India that she didn’t come away with any magic and she didn’t come away with it because the sticking point is migration. It is migration for a certain group of Indian young people who want to work particularly in the tech sector and are not being allowed to work. Until that is resolved, and it is likely because it is migration it will be resolved, then that won’t happen.

Overall I speak to a lot of people about this and there is a huge way. Higher education is the third largest sector in the Scottish economy, an enormous way, both on the level of students, staff and the intangible. The intangible is the real issue at the moment. When people are applying to be partners, seeking research funding, there is an atmosphere that is developing that maybe you shouldn’t be working with some of these people because they won’t be around in five years’ time. I don’t think it is applying right across the board; I think lots of people are still getting things but there are issues in there. The Secretary of State for Scotland perhaps is wearing somewhat rose-tinted spectacles.

Q200 Margaret Ferrier: If further down the line Scotland is an independent country, are the Scottish Government in the process at the moment of looking at opportunities for trading with non-EU countries? If you have been, what opportunities are being identified?

Michael Russell: We constantly look for opportunities for trading all over the world. I am not aware of circumstances in which being a member of the EU, even in the relationship we have, has impeded our ability so to do. This is a balance of advantage question. The whole question of Brexit is a balance of advantage question. Are there such great advantages to be had in any sphere, let alone all spheres, that the process that we are going through, the dislocation, the difficulty, the damage to the economy in some sense will be rewarded by these pots of gold that we have been staring at for a long time and now we can access them? I don’t see it. I don’t know where these pots of gold are and, moreover, the people I speak to don’t know where they are either. With the exception of the fishing industry that sees opportunities in their waters, I can’t see others. There may be some mild advantage here and there, but to go through all



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this to get to that and to have the damage that we still don't know about in terms of some of the access to EU markets doesn't strike me that the game is worth the candle.

Q201 Chair: We do have the Secretary of State appearing before this Committee next week to answer some of these questions and I am pretty certain that members of the Committee will want to put these points to him. I will say for the record that we are immensely disappointed, as a Committee, that the Secretary of State for Exiting the European Union has refused to appear before us. I see he is on his feet just now in reply in this very important debate, but I think that is something that should be noted. We will continue to try to secure his attendance at this Committee but at this stage he has singularly refused to come before us and answer detailed questions about Scotland's relationship with Europe, so we are grateful that you are here today.

One last question on the access issue. If we look at the range of options that you have outlined—and I think your view about the range of options was very useful to the Committee, from the no access, the World Trade Organisation arrangement, right through to EEA to full membership, the single market and European Union membership—what point of that gradient would be acceptable to the Scottish Government?

Michael Russell: The most acceptable thing is to stay as we are, and I think we should be very clear about that and always say it. Thereafter it will be a matter of negotiation but there will be certain things that we need to secure and those absolutely are freedom of movement and the four freedoms. The point of the gradient at which those are available is the point at which we want to stick and if they are not available then there are very considerable problems for us.

Q202 Chris Law: I am just going to turn back to movement of people. Both the leader of the Scottish Conservatives and the Secretary of State for Scotland argued that this was of fundamental importance during the EU referendum, that it has to be in the best interests of Scotland remaining in the EU. Do you find their born-again position as Brexiteers challenging, to say the least, when it comes to asking questions of them regarding freedom of movement for Scotland and for the needs of Scotland?

Michael Russell: Yes. I think the volume of their rhetoric is probably in direct proportion to the feeling of discomfort they have at the situation they find themselves in. We had a particularly bad-tempered debate in the Scottish Parliament last week, I think, on culture. I did think that the motion and the approach particularly of their spokesperson on that was pretty destructive and he was somebody who had argued strongly for remain before. I think they are a bit disabled. They realise that their position is fairly ridiculous, but there are some casualties of this. We have about 181,000 EU citizens who live in Scotland, who need reassurance about their future and that reassurance has not come. We have worked very hard as the Government. The First Minister has held meetings. Many of us have written to EU nationals in our own constituency and have met



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with them. I have them coming to my surgeries and you may find the same experience. We are giving that reassurance but we need to hear it across the Scottish Parliament. The more we hear the Brexit rhetoric from the Tories the more jarring it is to them because of not getting that reassurance.

Q203 Chris Law: Would you want to see preferential treatment for EU citizens in the future or see the current immigration system redesigned so that EU and non-EU citizens have the same opportunities to move to Scotland?

Michael Russell: Yes. We need freedom of movement to secure that. The freedom of movement that we have now secures what we need, so in our view for Scotland it needs to be modelled upon that. We have seen a lot of suggestions about forms of migration and migration policy. What we have at the moment works for us and there is quite an important perspective on this that might be useful for the Committee to recognise. It came from David Edward in the Standing Council, which is that we should not talk about special treatment for Scotland. We are talking about holding on to the things we already have. It is not special treatment to hang on to what we have. It is a basic right to hang on to what we have and we are not petitioning for something additional, we are not asking for people to give us a special pass. What we want is the things that work for us, which we presently have.

Q204 Chris Law: I know we have touched on differential arrangements for Scotland from the rest of the UK. Can you outline possibly what it is we would be looking for?

Michael Russell: Undoubtedly it is the four freedoms; it is the freedom of movement, goods, services and capital. It is having that involvement with the single market without the membership that goes with membership of the EU. That is at the heart of what we want.

One item we have not touched on is that in order to achieve some of that there would require to be an increase in devolved powers and that is something that I think the commentators are beginning to remark on. I know the Secretary of State for Scotland is on record as saying he recognises that there are certain devolved competencies now where certain powers that are in Brussels would come back to Scotland. He has given us a guarantee. I wish others would because we have not had that from other members of the UK Cabinet. But if that is the case then there are other powers that we would need to look at, for example if you are going to guarantee social protection you will need powers of employment law within the Scottish Parliament. That is the only way you can really do it. I notice that a Conservative MP yesterday, Jacob Rees-Mogg, was talking about the possibility of cutting back on certain standards, saying that if they were good enough for India they might be good enough for the UK. I think that is rather disparaging to India who have quite high standards in certain areas, but the reality of the situation is if he is talking about undermining environmental and employment standards,



which he appeared to be, then those powers need to be in Scotland so that that doesn't happen. Environmental law, by and large, is already devolved. We would have to have employment law devolved and there would be other aspects that need to be devolved.

Professor Muscatelli: One of the work streams has been around human rights and social protections and one of the interesting things that has emerged from that work stream is the principle that one should not regress from what we already have. I think that is very much the view of the Standing Council on that type of legislation.

One of the real problems—this is commenting as an economist—in the fact that the leave campaign didn't have a vision for the type of UK economy that was to come out of leave is exactly this. The danger is that there could be a race to the bottom type economy that would then undermine many of the social welfare protections but also issues of employment protection. That does impact on the point of view that different devolved Administrations will have about that as well as the UK Parliament. That has never been debated hugely. This is one of the things about the leave decision, that it was a bit of a black box. What was the alternative model that was being proposed? In reality many different possible models, including some arguing for a soft Brexit as part of leave, which makes the whole thing really mysterious to an observer like myself. Definitely human rights and social protection is one of the key areas that we are looking at as the Standing Council.

Chris Law: We took evidence leading up to the EU referendum. We had the former Labour MP Tom Harris, who was leading for the leave campaign in Scotland, telling us there was no plan and there was no need for a plan. In fact, it would be disingenuous to have a plan, which was quite remarkable.

Q205 **Margaret Ferrier:** Maybe Professor Muscatelli can answer this one. We have had a couple of sessions on post-study work visas and demography in Scotland and I think we all recognise that we have an ageing population and a higher dependency ratio. Could you give us your thoughts on the freedom of movement of students and the possibility of them remaining once they have studied and giving back to Scotland and the economy and the benefits of bringing their cultures? Not just for students but enticing professors and lecturers into Scottish universities as well.

Professor Muscatelli: Let me start with post-study work and student visas. As you say, that was taken away. I think it was a hugely beneficial scheme and I know some of my colleagues, as university leaders, have already said that to your Committee. Let me go through one or two points here.

The importance was that it allowed those regions of the UK that attracted those students to perhaps retain them because they had a natural affiliation. Sometimes they would go on to work with a spinout company



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that came out of the university. At the moment, the only option for such students who want to remain is, of course, to apply for a tier 2 visa, which means they need to have a job offer. That dislocates those decisions and could lead potentially to some of the difficulties that have led to some of the anti-migration feelings because it has led perhaps to more of that labour going towards the south-east of England. That is a hypothesis; I can't support it.

The key point is that those countries around the world that are looking at how to develop their economies are actively looking at how students can play that role. I will give you the example of Canada. Canada took an active decision, I think it was around 2011, that they were facing a really major demographic challenge from 2030 onwards and they sought to address that essentially through student flows. Why? For obvious reasons, that you bring people in, they are educated, they are developing their skills and then you are retaining highly skilled people who are going to add to your economy. They have set themselves targets. They are not only meeting those targets, they are exceeding them, and they are trying to be even more ambitious in the future.

This is the approach that other countries around the globe are taking to demographic and economic challenges and this is something the UK needs to think about very carefully. As we said earlier, if you completely halt migration, think of what that will do to the UK labour market at the highly skilled level and also other key sectors. It could seize up and this is a really serious problem.

Q206 **Chair:** We are grateful, Professor Muscatelli. I am just conscious of the time because I know the Minister has to get away. We have a few questions about the court case that is going on now and some of the other issues about that. Just before we do that, we have a debate tomorrow in Westminster Hall on our post-study work scheme report to which hopefully people will come along and pay attention to. I am doing a Facebook question and answer session at 2.45 on that report and the demography, so I hope people will tune into that.

Before we move on from this, I want to try to understand it a bit more. People who have a problem and issue about us securing a bespoke deal when it comes to the single market have made the claim that trade with the rest of the United Kingdom is four times as much as with the EU, as if this is some sort of good reason not to have an arrangement with the single market and the rest of the European Union. I find it hard to understand what is being suggested and proposed here. Could you help with this?

Michael Russell: There is a sort of either/or approach that is being suggested here, that in some sense you either choose to trade with the rest of the UK or you choose to trade with Europe. This is nonsense and indeed it is the opposite of the position that the UK Government are taking, which is saying that they will be able to leave the EU and be able to trade with the EU. If it has the courage of its convictions on that



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matter, then it should not be criticising anything that we say on these matters. I think also the figures are not robust on these issues. There is undoubtedly very substantial trade north and south of the border. As Anton, as an economist, knows better than I do, neighbours tend to trade more closely with each other than anybody else, but the reality is, if you start to break that down, a substantial part of that is energy. There is an energy market and there is a substantial export of energy to the rest of the UK. There are questions of things being reexported. The figures are not robust but the figures will undoubtedly show a substantially larger trade with the UK inevitably and that will continue. There will be no difficulty in that.

The reality is that in some of the models that we might talk about there is a customs union within the UK that would be one element and the single market that would be another element, and that is perfectly possible. You do have borders all over the world that have those differentials and they operate very efficiently, effectively and they are soft borders.

Q207 Chair: Thanks for explaining it because I had difficulty trying to understand what was being proposed with this trade-off between one another, so that helps. We have the last few questions. On the permission to intervene in the legal case in the Supreme Court now, what is the Scottish Government's intention with this? What do you hope to secure out of this?

Michael Russell: I am a bit constrained in talking about that. The Lord Advocate will be leading on his case this afternoon and I would be a foolish person if I strayed into his legal knowledge on these matters. Suffice it to say that there are distinctive issues of importance that the case threw up in the first case. The view of the Lord Advocate and of the Scottish Government was that it required the Scottish Government to intervene on this case. Permission was given and he will outline the basis of his case this afternoon. He has published his submissions. I think they are quite clear on what he is trying to achieve and the Scottish Government are trying to achieve so I would simply commend them to you. We are living in unusual times in which the live transmission of a Supreme Court is not only attractive and people are watching but I have a touch of regret that I will not see it this afternoon live. If we watch, no doubt we will find out.

Q208 Deidre Brock: Getting back to the Secretary of State for Scotland, he stated that the current devolution settlement is "predicated on the basis that the UK was a member of the European Union and that those devolution settlements will be changed by the United Kingdom leaving the EU". Could I ask all of you what you take from this? What discussions have there been with the UK Government about the implications of Brexit for Scotland's devolution settlement and its funding settlement?

Michael Russell: It is on the table, clearly, because any changes of the nature that the UK Government are talking about, as I have indicated, will have effects on the devolution settlement. I think he was also trying



to indicate this unitary point of view that has been expressed by others that the UK entered the EU as one nation and it will leave as one nation. It shows a very limited understanding of devolution and of how the Constitution of the UK has changed in the past 20 years, and that is really quite important. But it also shows a lack of understanding of what the UK Constitution is anyway. The UK Constitution is one that has been made by differentiation. The Act of Union is an act of differentiation. It preserved certain rights in Scotland that were not the same as things in England because it brought two things together and recognised the differences. That is also the case of devolution. Devolution is asymmetric and it is differentiated. I think that there is a unitary approach to the Constitution of the UK is, at the very best, ill informed.

Q209 **Chair:** We were watching the Supreme Court's undertakings yesterday and I was surprised when I heard the Lord Advocate's evidence to the Supreme Court when he seemed to suggest about the permanency of the Scottish Parliament and it could be overruled.

Michael Russell: Do you mean the Advocate General?

Chair: Advocate General, sorry. I always get my Lord Advocates and Advocate Generals mixed up.

Michael Russell: The BBC did too, unfortunately.

Chair: I would be interested in your views on that. I remember in the last Scotland Bill being reassured by successive Ministers that this was the permanence of the Scotland Parliament and the Sewel convention was going to be enshrined by law and it would be irrevocable. What we heard yesterday seemed to contradict and suggest that wasn't the case. Can you help us with this understanding?

Michael Russell: I am immensely tempted but I have to say to you that I do think it is best to wait to see what the outcome of the case is. The Scottish Government have joined the case. As a Minister in the Scottish Government, I really wouldn't want to say anything other than we must now wait for the outcome of the case. At some time in the future I would be delighted to tell you my impression of Lord Keen's evidence but it would not be appropriate at this time.

Q210 **Chair:** I guess we will be kept on tenterhooks, Minister. Thank you ever so much. We have finished right on 2.50 to get to your JMC. The Committee is grateful and if there is any further evidence you feel would help the Committee with its inquiry, please submit it.

Michael Russell: Thank you very much. I appreciate being asked to do it. Thank you.