

# Scottish Affairs Committee

## Oral evidence: Scotland's Place in Europe, HC 595

Wednesday 14 December 2016

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Members present: Pete Wishart (Chair); Deidre Brock; Mr Christopher Chope; Margaret Ferrier; Chris Law; Ian Murray; Anna Soubry; John Stevenson.

Questions 211-293

### Witness

I: Rt Hon David Mundell MP, Secretary of State for Scotland.



## Examination of witness

Witness: David Mundell MP.

Q211 **Chair:** Secretary of State, welcome to the Scottish Affairs Committee and we are very grateful that you are here to join us this afternoon. We remain immensely disappointed that you are not joined by your colleague, the Secretary of State for Exiting the European Union, who we have given several invitations to attend this Committee. We would hope to question him just about the specific interest in issues in Scotland, but we have you, which we are extremely grateful for. Just for the record, state who you are and anything in the way of a short opening statement.

**David Mundell:** Thank you, Mr Wishart. I am obviously David Mundell, Secretary of State for Scotland, and I am very pleased to be with the Committee to discuss the Government's work following the vote to leave the EU. As I said to members of the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee—whom Mr Davis will appear before—when I myself appeared before them in October, the Government are committed to engaging widely and hearing a range of perspectives. The evidence gathered by Committees in Westminster and Holyrood will be an important contribution to that.

I would like to start by giving a brief update of progress in some written evidence I submitted to the Committee in September on behalf of the Government. As we prepare to leave the EU, it is vital that we engage widely. I know this inquiry has placed great importance on just that, including representatives from farming, fishing, academia and the health sector. It is vital their interests are understood.

My ministerial colleagues and I have held approximately 100 meetings with sectors from all parts of Scotland to hear directly from them about their interests and we are continuing to do that. Most recently I met with the Convention of Scottish Local Authorities and I am very pleased to be able to say that early in the New Year I am taking part in my first joint engagement with Mike Russell, the Scottish Government Minister, when we will meet the Royal Society of Edinburgh together to hear their issues and concerns.

It is clear from our various engagements so far there is a desire for stability and certainty from all sectors. As you discussed with Mr Russell last week, there is also an appetite across sectors to make the most of the opportunities presented by leaving the European Union. We have established the Joint Ministerial Committee on EU Negotiations with devolved Administrations, chaired by the Secretary of State for Exiting the EU. The Committee had met monthly since the JMC plenary in October and our first two meetings have been very constructive, with discussions on market access, justice and security, trade and initial outlines of priorities from the devolved Administrations.

The JMC discussions have been supported by bilateral meetings at both ministerial and official level and engagement in other forums such as the Finance Minister's quadrilateral and the British-Irish Council. At



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ministerial level there have been over 20 meetings since June between UK and Scottish Government Ministers to discuss issues relating to our exit from the EU. The Government are committed to getting the best deal for Scotland and the whole of the UK.

It is important the UK is unified in its approach to maximise the impact of our negotiations and make sure we do not put up any barriers to trade within the UK. The Government will look closely at anything the Scottish Government put forward as we shape the UK's position. As Mr Russell set out to the Committee last week, we anticipate that the Scottish Government's proposals will be published before Christmas. I have agreed with Mr Russell that we should discuss the Scottish Government's priorities for negotiations with the EU at the next meeting of the JMCEN in January. I hope I will be able to elaborate on these points and answer any questions you have.

**Q212 Chair:** Thank you, Secretary of State. We are very grateful for that opening statement. By way of a couple of general opening questions, as you know, Scotland voted overwhelmingly to remain in the European Union, 62% to 38%, with every local authority area voting in favour of remaining in the European Union. Could you tell us just a little bit about what you are doing personally to ensure that Scotland's voice, Scotland's result is being properly respected?

**David Mundell:** It goes without saying, Mr Wishart, that we probably have a different perspective on the result, because I would start by pointing out that obviously the question on the ballot was whether the United Kingdom should remain as a member of the EU. The United Kingdom as a whole voted to leave the EU. That was the decision and that is the decision that this Government will implement. We want it implemented in the way that ensures we get the best possible deal, as I have said, for Scotland and the rest of the United Kingdom and my job is to ensure we do exactly that. But it is also to convey into the system, as I have done since 24 June, views and opinions expressed by people across Scotland, right across Scotland, by the Scottish Government and by others as to the Scottish perspective on leaving the EU. That is what I am doing.

**Q213 Chair:** The Scottish perspective? It is not the Scottish voice, the Scottish desire. The fact that we voted in such numbers to remain has been progressed by your Department. We all accept that there was a 62% to 38% vote to stay, so Scotland had a particularly strong voice when it came to what it desired as a nation. I will try to put the question again: what are you doing to ensure that what Scotland voted for—I know it was a UK-wide result and we accept all of that, but on the particular Scottish voice, when it comes to its desire to remain within the European Union, what are you doing to ensure that is being respected and progressed in Government?

**David Mundell:** If you are asking me am I arguing that Scotland should, as part of the United Kingdom, not leave the EU then I am not arguing that case because I am a democrat who has accepted the result across



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the United Kingdom in relation to the decision of people across the United Kingdom to leave the EU. If there had been a vote on 18 September 2014 that Scotland left the United Kingdom, even though I had not voted for that, I would have respected that result and sought to implement that result. But of course in that referendum people voted clearly and decisively to remain part of the United Kingdom and the decision about leaving the EU was taken on a United Kingdom basis. Obviously it is very important that issues and concerns of direct interest to people in Scotland are conveyed into the process.

It is also important from the point of view, if I may say so, of this Committee and others that we respect the views of everyone in Scotland. 38%, over 1 million—400,000 possible SNP supporters—voted to leave the EU. These people's views are not just to be disregarded or placed in the bin as an inconvenience. They were part of the process, but the process overall was a UK-wide one. The UK decision was to leave. The UK is leaving and we want to do so on the best possible terms for Scotland and the rest of the UK.

Q214 **Chair:** Let us try it another way. I know Mr Law wants to come in and I will come to him in a minute. Given Scotland's vote and given the result in Scotland—I know about the UK and I know you obviously want to talk about the Scottish independence referendum, but let us try to stay, if we possibly can, on what Scotland voted for in the EU referendum. Do you believe because of the scale of the vote in Scotland—and I know there were 1 million people who also voted to leave the European Union—there is a case for a differential relationship with Scotland in the European Union?

**David Mundell:** I believe Scotland is part of the United Kingdom that voted in that referendum. The question was whether the United Kingdom should remain in the EU. There were not caveats placed on the vote that somehow, for example, if myself or someone who wanted to remain in the EU at the time of the vote did not get the outcome I wanted, it would open the door again to Scottish independence. I think it is an important point: I do not want to talk about Scottish independence because I feel that issue has been—

**Chair:** I think you will test the Committee if you continue to bring it up. Nobody has mentioned Scottish independence apart from yourself, Secretary of State.

**David Mundell:** That issue has been resolved. I think it is a fact, Mr Wishart, that within three hours of the result being declared, the First Minister of Scotland announced that she was going to set in train a process that would bring forward a consultation on legislation for another independence referendum. I did not put that issue on the table, but it is and unfortunately remains on the table and therefore it will be commented on.

Q215 **Chair:** Secretary of State, I think you are going to test the patience of this Committee if you continually and consistently go on about Scottish



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independence. You might have some people who will support you in that, but this is about Scotland's relationship with Europe. Can we please, as much as possible, stay on the issue at hand, which is Scotland's relationship with the European Union?

What I heard from that response, all this stuff about independence, which is well-tested and we know your views on all that, is you do not believe and accept that there should be a differential relationship for Scotland when it comes to leaving the EU. Is that right or wrong?

**David Mundell:** That is wrong. I believe that we should proceed on a fact-based analysis of what the outcome we would want to seek from the negotiations is. I believe that if the facts demonstrate that there is a benefit from and a need for a differentiated Scottish position, then that should form part of the negotiating process. What I do not believe is that your starting point should automatically be that there should be some separate Scottish arrangement.

As I think we will probably come on to in the discussions, if we look at the two significant issues, the single market and migration, all the information I have currently before me—but I have always been open to hear new information and new arguments—indicates that the issue about access to the single market is the same across the whole of the United Kingdom. It is vitally important we get the best possible access.

Likewise in relation to migration, it is important for all parts of the United Kingdom that we will continue to be able to have people come to the United Kingdom to provide vital work in our country. Neither of these issues, as I see them, are specifically Scottish and therefore you would not necessarily look for a Scotland-specific solution. But if evidence was brought forward, and we want to proceed on a factual basis, then of course—and I was convinced of that—I would argue for that.

Q216 **Chair:** Before I come to Chris, just a last question on this. That was a bit of progress and that was quite a helpful response. Thank you for that.

You said in your initial opening remarks that you wanted a solution that was good for the United Kingdom and good for Scotland. Just say that we get a solution, let's say the hardest of hard Brexits, which was clearly not in Scotland's interests and it was expressed through its Parliament in all the sectors—or most of the sectors in Scotland—that this was not appropriate or suitable, what happens then, if we have a solution for the UK, but one that does not seem to suit Scotland as well?

**David Mundell:** I do not think, and I have said this many times on the record, that these terms of hard and soft Brexit are helpful. What we are going to look to achieve is a unique and bespoke agreement for the United Kingdom and for all parts of the United Kingdom. We are formulating a negotiating position at the moment to achieve that. The effort and the focus is to ensure that we do that and that we work together as one United Kingdom, the devolved Administrations, the UK Government with their reserved interests in Scotland, Wales and Northern Ireland and England to ensure that we do that. But I am open, I



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have said it before, to a differential arrangement for Scotland if it can be factually shown that there is a benefit to Scotland from doing that, not just an ideological view that Scotland should somehow be different.

**Q217 Chris Law:** Just to explore it a little bit further, I was looking last night at your own constituency, which again voted majority to remain and you campaigned quite vocally, along with Ruth Davidson, to remain. Would you describe yourself now as a born-again Brexiteer, because in your role as Secretary of State for Scotland, everything you have said is taken from a UK perspective, but are you not supposed to be championing the rights of the people of Scotland, who have voted overwhelmingly to remain in the EU? Therefore the best possible deal has to come from that.

**David Mundell:** I just do not agree. I think we are not going to agree on the premise. I do not think that is evidence-based. We had a United Kingdom vote. I do not want to try the Committee's patience, but I am going to come back to that repeatedly because that was the vote. It was a vote across the whole of the United Kingdom in terms of whether we should leave the EU. Scotland having voted previously—I will not try Mr Wishart's patience again by pointing it out too much—Scotland had voted to remain part of the United Kingdom and this was a United Kingdom-wide vote.

My job is to ensure that as we move forward we get the best possible deal for Scotland and indeed the whole of the United Kingdom. We may be in different places on that issue, because I want the United Kingdom to work, I want Scotland to prosper. I want the United Kingdom to prosper because I believe Scotland will prosper most by being part of a successful United Kingdom.

**Q218 Chris Law:** Just to go back, to make it simple for you, can you tell me of another Scottish MP that supports your position?

**David Mundell:** Another Scottish MP? You know that I am the only Conservative MP.

**Q219 Chris Law:** No other party, no other MP supports your position on this?

**David Mundell:** I am sure there are 300-odd MPs in the Government who would support my position in relation to this matter because this is a United Kingdom Parliament. The position I am in is on being a democrat. I do not want to try anybody's patience, but if there had been a yes vote on 18 September 2014, I would have respected that decision. Despite everything I had said prior to that referendum about my concerns about what independence would mean for the people of Scotland, I would have sought to make it work. That is what has happened now. We have had a vote, which I did not vote for, but the people of the United Kingdom as a majority did and I am seeking to make it work for the people of the whole of the United Kingdom and for Scotland.

**Q220 Chair:** What I am interested in is the consistency. You are not just a Scottish Member of Parliament, you are a very distinguished one. You are



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also the Secretary of State for Scotland. Could I just refer you back to a couple of things you said on the single market, because it is important that we understand where you are and the type of voice you are giving to the UK Government? You said on 13 July the best deal for Scotland involves clearly being part of the single market. Then you also gave evidence to the Scottish Parliament in October stating that access to the single market can continue in a way that does not involve tariffs or barriers and you were giving all sorts of messages that your preferred position would be that Scotland remained part of the single market. Is that no longer your view now?

**David Mundell:** I am very clear that we want to have the maximum possible access to the single market. I do not see there are any inconsistencies in my remarks. I believe that is the best possible outcome for Scotland—to have that maximum access to the market.

Q221 **Chair:** This is about membership of the single market, so you are for access to the single market, not membership of it?

**David Mundell:** I am not going to take lectures from anyone on terminology, given the confusion we have seen in the last few days on the Scottish Government position in terms of membership, access, involvement with the single market. I would like to be in a position once the Scottish Government has published their proposals that we are all on the same page working together with our colleagues in Wales and Northern Ireland to achieve the best possible access for the UK. I think Mr Russell has made it very clear that you cannot be a member of the single market unless you are a member of the EU and he acknowledges that we will not be a member of the EU. Therefore we are looking for alternative solutions that deliver for Scottish businesses the best possible access with the minimum of tariffs and barriers so that they can trade in the EU.

Q222 **Ian Murray:** Secretary of State, you used the terminology the “same page” in reference to the Scottish Government. Do you think they are on the same page and do you think it would be much better if they are not on the same page to be on the same page to try to deliver the best deal for Scotland?

**David Mundell:** I thought we were on the same page, Mr Murray. I did say it might be a big page and one might be at the top and one might be at the bottom. But if the debate is about access, then yes, we should be on the same page because that is how we will achieve the best possible outcome.

Q223 **Ian Murray:** Do you think whichever page you are on, the Scottish Government will make sure they are on a different page?

**David Mundell:** I hope they do not. I have found that a lot of engagement we have had between officials particularly has been very productive and people have a common understanding of what the issues are, the issues that Scotland will face out of the EU. A huge amount of work has gone on. I am very much looking forward to hearing what the



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Scottish Government's position is if, as I anticipate, something is published before Christmas because I would like to take that forward.

Politically attractive as it is focusing on inconsistencies and things that have been said in the past, I do not think it would necessarily be helpful in achieving what is best for Scotland. I hope they come forward with something that is workable, that is credible, that is able to be taken forward. I would want to work closely with them and support that.

**Q224 Anna Soubry:** Secretary of State, is it the case that as the Secretary of State sitting in the Cabinet, the reality is, given the vote across the whole of the United Kingdom in all its variances—it is worth noting Northern Ireland voted remain, not just Scotland—is it your experience that lots of people, especially the main players, are having to come together to work out the very best way now going forward, putting aside whatever their stance was during the referendum campaign? Is that your experience?

**David Mundell:** It is my experience that people have accepted the result, that we have had a referendum across the United Kingdom and the United Kingdom is leaving the EU. Obviously people will have different views as to how that can be best achieved and the way that will achieve the best outcome for the United Kingdom and for Scotland because I think we can all agree—and I said this to Fiona Hyslop when I met her on 24 June—there wasn't a book on the shelf where the process for leaving the EU had all been documented. I think everyone accepts that. There was not a book on the Scottish Government shelf either. It is a process that has evolved. There are different contributions to the debate and discussion. I am absolutely clear that the Cabinet is united in wanting to achieve the best possible outcome from the negotiations for all parts of the United Kingdom.

**Q225 Margaret Ferrier:** Just on that point, Secretary, you made about waiting for proposals from the Scottish Government, I think it is a bit rich to say you are waiting for proposals from the Scottish Government when we have absolutely nothing, no proposals coming yet from the UK Government about what is going to happen once we do trigger Article 50 and we are out of Europe. On there being no book on the shelf, for fear of annoying the Committee and talking about 2014 again, we had a large white book on the shelf, which is a lot more than the UK Government had.

Just going back to the question on the representation you have made on behalf of Scotland, could you maybe elaborate on what that is? Really you have no membership of the Government's Cabinet Committee on Brexit, so what involvement do you have with the Department for Exiting the EU?

**David Mundell:** Tempted as I am, I will not go down the route of the big white book, although what you said is consistent with what one of your SNP MSP colleagues said in the Scottish Parliament, that it was better to have bad legislation than no legislation. I am afraid that is not a perspective that I necessarily agree with. I am a part of the Brexit sub-committee. As I said to the European Committee of the Scottish





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Parliament, it is up to me in terms of determining attendance at that Committee, but it deals with all the significant issues, so therefore I look to attend and give my contribution to the committee as well as give my contribution directly to David Davis and directly to the Prime Minister.

We are in a regular dialogue in relation to issues that come up from Scotland from the 100 meetings we have had with all parts of Scotland, all aspects of business, civic Scotland, from young people to people from diverse backgrounds, in order that the Scottish perspective is very much at the heart of that process. That is what I see in my role as well as engaging with the Scottish Government. We have as well as the bilateral discussions, obviously we have the Joint Ministerial Committee, which the First Minister attends, that is going to meet in the New Year, and we have now the regular meetings of the Joint Ministerial Committee on European Negotiations that Mr Russell is a part of and obviously I am a part of.

What we are looking for the Scottish Government to do is to contribute on a basis that will ensure that their issues and concerns are part of the plan that Mr Davis undertook would be produced at last week's debate in the House of Commons. At the point of triggering Article 50, the Government will set out their strategic priorities and I hope—I really very much hope—that the Scottish Government will be able to say they will support those priorities when that is published.

**Q226 Deidre Brock:** Just further to Ms Ferrier's question there, the fact remains though, Secretary of State, you are not on the Cabinet's Committee for Brexit so you are often not in the room. How do you defend Scotland's corner when you are not there?

**David Mundell:** What I am not going to do, which is what I said I would not do either at the European Committee, is give chapter and verse in relation to when I am at particular meetings or not. But I am absolutely satisfied that I am able to ensure Scotland's specific issues, concerns, needs, and indeed the needs of the wider United Kingdom, are entirely part of that process.

**Q227 Deidre Brock:** How do you do that? Do you get points on to the agenda that you want raised in particular or do you look at the agenda and see there are issues you want to speak to Mr Davis, the Minister, about? How does it work?

**David Mundell:** As I said, I am not going to get into a discussion about specific meetings of that committee, but I regard it—

**Q228 Deidre Brock:** Do you not think the people of Scotland deserve to know how you are representing them on that committee?

**David Mundell:** I regard it as important to be present at that committee so that I can—

**Deidre Brock:** But you are not sometimes.

**David Mundell:** —directly put in my views in relation to issues and concerns that affect Scotland, but obviously—



**Deidre Brock:** Could I ask, are there any areas in that committee—

**David Mundell:** No, no. Well, if I could answer the question and then I am very happy to supplement it. Obviously, also around the committee there are papers produced. There is an opportunity to contribute to those papers to make sure that these issues and concerns are set out. We have other bilateral discussions. I have regular bilateral discussions with Mr Davis to set out the feedback from the various meetings that I have had and been involved in. I have issues that have been raised with me. I have the opportunity to meet with the other Ministers in his Department and of course I am a member of the UK Cabinet, which is the decision-making body in relation to this process. I contribute there and I do so on an active basis.

Q229 **Deidre Brock:** I think in the past you have mentioned that you consider the meeting's agenda and the range of issues that will be discussed and then you determine their relevance or importance to Scotland. Can I ask for examples of areas that were on that Brexit Committee's agenda that you thought were not important to Scotland?

**David Mundell:** I know the elephant trap you are trying to draw me into.

**Deidre Brock:** The very idea.

**David Mundell:** Of course all issues in general terms have an importance to Scotland and that is clear, although in relation to some of the matters, obviously the devolution settlement would impact upon those matters more so than others. But in relation to Scotland—and this is a very, very important part of this process and one that the Scottish Government itself identified—it is that you have to prioritise and you have to identify those issues that are most significant to Scotland. That is what I seek to do.

It would not surprise you that I think issues like agriculture and fisheries, issues like access to the market and issues like migration are some of the most significant issues to Scotland. The Scottish Government place a lot of importance on environment and climate change and because they do that, I want to make sure that their priorities are fully represented and I will do that.

Q230 **Chair:** You have said in the past that Scotland will receive new powers after Brexit, and I think you mentioned this in relation to agriculture and fisheries. Could you tell this Committee what new powers you expect the Scottish Government to secure after Brexit?

**David Mundell:** I tend to see powers in terms of the Scottish Parliament, Mr Wishart, rather than the Scottish Government, but what I would envisage happening is that it is identified that there are a large number of responsibilities currently exercised by the EU that will require to come back to the United Kingdom. I think that what we want to ensure is that we have good quality and proper engagement about how it is best for the United Kingdom and Scotland that those powers are exercised, because we haven't had a debate about that. It is not like the Calman Commission or Smith Commission process. This has happened. I received a letter on 1



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December from the Scottish Government, I think it was, about this issue when an MSP had raised it in the Scottish Parliament. It isn't as if there had been a lot of thought going on about it. It now needs to have that degree of thought on how we are going to take that forward with stakeholders and others.

Q231 **Chair:** Do you expect at the end of this process that the Scottish Parliament—even though your colleague mentioned many of us would worry about agriculture falling under the SNP's responsibility, and I am sure you recognise that is your colleague Adam Tomkins, but given this process—

**David Mundell:** I am sure he has validity for his concerns, given the way in which the rural payments—

Q232 **Chair:** Is that your view, that you think the Scottish Parliament shouldn't have this view?

**David Mundell:** No, Mr Wishart, my view is that the SNP Government have been completely incompetent in relation to exercising their powers in relation to the rural payment scheme.

Q233 **Chair:** Does that influence your view about these powers then?

**David Mundell:** I want the Scottish Parliament, which of course only has a minority SNP Government, to function in the way that is best for Scotland and best for the whole of the United Kingdom.

Q234 **Chair:** It would concern us immensely that this is what you are thinking about the fact it is an SNP Government just now in the Scottish Parliament. Just because it is an SNP Government you would not want these powers to be devolved, because it is—

**David Mundell:** That is complete and utter nonsense.

**Chair:** I am glad that you are able to tell us that.

**David Mundell:** It is a complete distortion of what I said, and indeed my own record, because you know that as the Minister who took through the Scotland Bill, what I ensured was that the powers that will be debated and discussed in the Scottish Parliament tomorrow, when the draft Scottish budget is presented, were delivered regardless of who was the Government of Scotland and that Government will have the power to raise income tax on earned income in Scotland, a very, very significant power. As a democrat, as I have said before, I respect the outcome of elections in Scotland. Whoever is in Government will exercise those powers and then will be held accountable to the people of Scotland.

Q235 **Chair:** That is reassuring. Thank you for that. Just lastly on this issue then, do you expect at the end of this process of leaving the European Union the Scottish Parliament will have exclusive power over fisheries and agriculture in Scotland?

**David Mundell:** I intend to engage on that matter, but the one commitment that I absolutely give you is that there will be no re-



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reserving of any power currently exercised by the Scottish Parliament. I think you will be aware from the evidence that you have taken already in relation to fisheries and agriculture that there are different views in relation to those powers, for example, and you would, I hope, agree that it would be right to listen to those views as part of this process.

**Q236 Chris Law:** Just on that point, schedule 5 of the Scotland Act states that fisheries and agricultural powers are not listed as reserved, therefore they are devolved. Can you just give a clear commitment now? I know you have talked about not re-reserving power, so can we get a clear commitment today the UK Government will not seek to repatriate any powers linked to devolved issues after the UK leaves the EU, which of course therefore includes agriculture and fishing?

**David Mundell:** I don't agree necessarily with your construction of that question. What I am committed to is—as I have indicated to Mr Wishart—that no powers currently exercised by the Scottish Parliament would in any event be re-reserved. I am secondly committing to engagement with everyone on what the appropriate way in which the powers currently exercised by the EU are repatriated, because as you are already aware, there are different views on exactly how that would be best achieved. I am open to hearing all those views and discussions. I am not prejudging it. I am not prejudging it on an ideological basis that every power should be in Holyrood or every power should be in Westminster. I want the United Kingdom as a whole, and Scotland and the Scottish Parliament, to work in the best possible way after we leave the EU.

**Q237 Chris Law:** I just want to be clear again, because schedule 5 of the Scotland Act states that fisheries and agricultural powers are not listed as reserved, therefore you can automatically assume they are devolved. Surely it is not a question of opinion, it is just a matter of fact and we could put that to one side now.

**David Mundell:** My view, as I have expressed previously, is that the devolution settlements were predicated on the basis that the United Kingdom was within the EU and that the settlements proceeded on the basis that certain powers could be exercised by the EU. Now those powers are not being exercised by the EU we need to have an engagement, as we have had in all other changes to the powers operated and the establishment of the Scottish Parliament, as to how that is best achieved.

**Q238 Ian Murray:** Just with regards to schedule 5 of the 1998 Scotland Act, you can confirm that although agriculture and fisheries are devolved, they are not fully devolved because they come under the auspices of the European Union in terms of its regulation. Therefore would you give the commitment that if it is the case that the sectors feel as if they think that the power base lies at the Scottish Parliament, you will not lock the door on being able to repatriate those powers and then devolve, if it is the case that that EU framework is best delivered locally?

**David Mundell:** I am not locking the door to anything, Mr Murray. What I am trying to do is to display an open mind, because we need to ensure



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that those directly involved are engaged in the process and have the opportunity to express their views. We need to look at how the whole of what is a complicated jigsaw in Scotland and across the UK works. But I am not coming from an ideological basis that believes everything must be devolved or everything must stay at Westminster. I want the solution that is best for Scotland, the Scottish Parliament and the United Kingdom as a whole.

**Q239 Mr Christopher Chope:** Secretary of State, would you agree that it is going to be very difficult to maximise the power of the United Kingdom, including Scotland, in fisheries and agriculture if we don't leave the European Union and leave the single market?

**David Mundell:** Mr Chope, I often find it difficult to agree with you, but that does not mean I do not respect your views and those views will obviously form part of the debate and discussion as we go forward. But I believe that Scottish agriculture in particular will benefit from having the best possible access to the single market.

**Q240 Mr Christopher Chope:** Can I ask a different question and see if I can get an agreement on this one? Do you share my hope that the Scottish Government is committed to making Brexit work for the whole of the United Kingdom?

**David Mundell:** I hope it is. I really do. I am sure he would agree. I don't know if he was asked, but I have a very, very good working relationship with Mr Russell and I am pleased we are going to be able to move forward with this item of joint engagement. Behind the scenes, with officials working away in the Scottish Government very assiduously in terms of the research and analysis that they are doing, I think it is perfectly possible for us to reach a position where we go into triggering Article 50 with shared priorities and a shared plan. That is my objective, because that is what is in the best interests of Scotland and the United Kingdom. What is not in the interests of the United Kingdom as a whole—or Scotland, I believe—is having a fragmented approach to these negotiations and discussions.

**Q241 Mr Christopher Chope:** You agree that the United Kingdom's best chance of getting a really good deal is by remaining united on this rather than having division between different parts of the United Kingdom?

**David Mundell:** That is something we can absolutely agree on.

**Q242 Mr Christopher Chope:** In that case, do you think that the SNP agenda has been too preoccupied with trying to find division rather than unity?

**David Mundell:** I am not going to try Mr Wishart's patience, but I will just make a simple statement. I think the SNP agenda has been too predicated on putting the independence issue back on the table. People in Scotland do not want that distraction. They want both Governments to work together and get on with getting the best possible deal.

**Q243 Margaret Ferrier:** Just on the point of extra powers, will the Scottish Government have power over immigration?



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**David Mundell:** Immigration is not a power that you exercise within these powers that will be repatriated from the EU. I have said before that I do not believe that there is a case for immigration to be devolved and it was not one of the areas that was agreed as part of the Smith Commission, but we will see whether the Scottish Government make that further detailed request when they publish their proposals.

Q244 **Margaret Ferrier:** It is just that your colleague, Michael Gove, had promised after our leave vote that Scotland would have powers over immigration. I take it you don't agree with your colleague?

**David Mundell:** When we had the referendum there was a Leave campaign and a Remain campaign. I was part of the Remain campaign, but those campaigns were not run by the Government or the individual political parties, just as in Scotland the Yes campaign, as I understand it, was separate from the Scottish Government and therefore things said by the Yes campaign were not necessarily the policy of the Scottish Government.

Q245 **Chair:** Just on that, I know that immigration is not an issue for the European Union, but freedom of movement is. What we have heard, particularly from all the sectoral interests that we took evidence from, is freedom of movement is extremely important for the wellbeing of our economy. This Committee has also done population and demography, where there was a real challenge with keeping our population growth in line with the rest of the United Kingdom. If it is the case again that there is a view taken from the UK Government that freedom of movement has to stop as part of what they see as what was voted for, but there was a clear view from Scotland that freedom of movement is essential to continue to grow our economy, what would your view be there and what would you do?

**David Mundell:** First, I welcome your report and I will formally respond to that. I found the discussion that we had in our evidence session on that very helpful. I think the issues raised are helpful. As I said to the Committee, I believe these issues are across the United Kingdom.

There are other areas of the United Kingdom that are suffering depopulation or areas where people are reliant on migrant labour to provide services and work in specific industries. I believe that a UK resolution of that matter is the best way forward and the best way forward for Scotland. I hope that we will be clear that what we are seeking to do is to bring back control to the United Kingdom of who from the EU is able to come to the United Kingdom. That is what we are seeking to do. We are not seeking to bring about a position where nobody from the EU comes to the United Kingdom once we have left the EU. We are looking to have a system that we, in the United Kingdom, are in control of and that is what we are looking to do.

The Prime Minister was very clear. She still wants the brightest and best, for example, to come to our universities. It is self-evident that we are going to need a seasonal workforce to come, not just to Angus and other



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parts of Scotland, but other parts of the United Kingdom in order to support our agricultural and horticultural sectors. I think it is wrong to suggest that by taking back control of immigration that that would somehow mean that people would not be able to come to the UK or to Scotland. That is not the case.

Q246 **Anna Soubry:** Secretary of State, as you know, I am a great believer in the free movement of people and I think it has conveyed huge benefits for all sorts of reasons on the United Kingdom. I think it is also fair to say that in England and in Wales there were a substantial number of people that voted leave because of the immigration issue. That does not seem to have been the case in Scotland. Do you have any reason you can give up as to why it seems that Scotland has a higher—tolerance is not the right word, I think—has a better understanding of the huge value of immigration or am I wrong in my analysis?

**David Mundell:** I think there is analysis in the Scottish social attitudes studies that have been carried out that indicates that underlying attitudes in Scotland to immigration are not that different from people in other parts of the United Kingdom. But I would accept it is not an issue that is a general part of the political dialogue or discourse in Scotland in the way that clearly it is in some other parts of the UK. Although I know from my own experience as a constituency MP that if I suggested to my constituents that we return to Labour's previous open-door immigration policy, they would not be supportive of that type of approach.

Particularly in rural Scotland—I think I said this to the Committee—I do think there has been a better case made for economic migration and a better understanding than perhaps in other areas. People understand the positive economic contribution that the migrant workforce is making and they understand the Committee's report points to areas that are depopulating, which if migrant workers were not providing those services, it is not clear who would. In that respect there is a different dynamic, but I don't think that you could say that if immigration was higher up the political agenda in Scotland that people's views would definitely be different from the rest of the UK.

Q247 **Chair:** We have heard—and maybe this will help Ms Soubry—when we had the sectoral interests just the value of immigration, whether that was universities, businesses, farmers, nurses, saying how important workers from the EU were. What you said in response was that obviously there will be immigration from the EU. It won't be free movement, but from what we have heard, we have very little idea about what the Government's intentions are towards immigration from the European Union. Apparently the points-based system that was promoted during the referendum campaign, which was favoured by UKIP, was seen to be too liberal and something had to be done that was even more excessive. Are you not concerned about the voices from Scotland's sectoral interests that we don't have access to this type of labour and the free movement that we depend upon?



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**David Mundell:** I want people from the EU to be able to come to Scotland once we have left the EU and I am confident that we will be able to achieve that outcome. We will not rehearse the Committee's report, but the challenge for Scotland remains the fact that of the people who currently come to the UK, only about 3% of those people come to Scotland. We have to understand why that is the case and how we can make Scotland attractive to people who are coming to the United Kingdom. I think that is important.

Hopefully Mr Mackay will be able to do something about that tomorrow by making Scotland attractive tax-wise to people who might want to come to Scotland. The Scottish Government have quite a lot of levers in relation to that. That is the fundamental issue: making Scotland attractive for people to come to it.

Q248 **Chair:** You will also have seen the press release from Universities Scotland again today, which again reiterated a little modest thing about allowing a post-work scheme for international students. They said it would make such a significant difference. That is in the gift of the UK Government. We have raised this several times and you have defiantly said no, there is no way that you are going to give this to Scotland. We had a debate last week. We have heard once again from the Universities Scotland. It is within the gift of the UK Government just to try to assist our academic sector, to try to ensure that we get this little bit of a difference.

**David Mundell:** I am committed to continuing to engage with universities. I am committed to continuing to look at the evidence that they can bring forward that it would make a significant difference and that is what I will continue to do. Obviously Mr Goodwill set out the UK Government's position in the debate last week.

Q249 **Anna Soubry:** This is fascinating. In relation to immigration, what you are saying, Secretary of State, is that actually Scotland's problem is that it is not attracting enough immigrants into it, I would suggest perhaps across all levels, all sectors. What reason can you advance as to why that would be?

**David Mundell:** I can only speculate, but it is not inconsistent with things that are happening around the world, where there is a huge draw from metropolitan centres on population, for example. That is the experience in other parts of the UK and Scotland. In other parts of the UK people might come initially, but then they are drawn particularly to Greater London.

I think we have to look at ways in which we can make Scotland more attractive for people to want to come to and particularly parts of Scotland. We will not rehearse the debate, but parts of Scotland where it is even more difficult to get people to come to provide medical services, basic other services, even though one might argue—which I would in relation to Dumfries and Galloway, Mr Wishart would in relation to Highland Perthshire—that there is a very, very attractive lifestyle to be





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had in coming to that area. It is still very, very difficult to get people to go.

**Q250 Chris Law:** UK Ministers have been saying for quite some time now that they want to secure the best possible access to the European single market. What does that mean?

**David Mundell:** I am going to disappoint you—probably not for the first time, Mr Law—by not setting out what the UK’s negotiating position is going to be. What I can confirm is it is a fact-based analysis that is currently going on, and going on in conjunction with the Scottish Government, to identify across the whole of the UK those things in terms of that access that are most significant and most important economically and strategically. That exercise is ongoing.

**Q251 Chris Law:** That has not really given me an answer, as you would probably expect me to say. But how is this different from the Scottish Government’s desire for Scotland to remain a member of the European single market?

**David Mundell:** What will be helpful, if indeed it is next week, since that would be before Christmas, that the Scottish Government set out clearly what it is that they are looking to achieve. I agree with Mike Russell that if you are not a member of the EU you cannot really be a member of the single market and therefore there are a range of access options. Some come with more consequences than others and we need to investigate all of those. But the undertaking I absolutely give is whatever proposals are in the Scottish Government’s document, they will be looked at and incorporated into our negotiating process. We are going to discuss them at the Joint Ministerial Council on European Negotiations in January.

**Q252 Chris Law:** Just to confirm that both yourself and obviously Ruth Davidson previously said you would fight to get single market access after Brexit. Is this still the case? Are we absolutely clear that is what you are after?

**David Mundell:** I am after access to the single market, yes, and I am sure Ms Davidson is as well.

**Q253 Chris Law:** The Secretary of State for the Exiting European Union has stated that the UK Government would consider making a financial contribution to the EU in order to secure the best possible access to the single market. Do you think there is a case for the UK to pay for access to the single market?

**David Mundell:** It is clear, as I indicated, that there are a range of options in relation to access and there are a range of consequences that flow from that. That is one option. I am not prejudging that option, but what Mr Davis has identified is that that is one option.

**Q254 Chris Law:** Is there an option that you would not have to pay?

**David Mundell:** Yes, there are different options under which you wouldn’t, because we are hoping to achieve a bespoke arrangement.



Q255 **John Stevenson:** A number of the questions I was going to raise I think have been addressed, so I just want to drift into a slightly different area. I find it slightly amusing—and alarming, to a certain extent—that we have a lot about what the UK negotiating position is, what the Scottish negotiating position is, but in all the negotiations there is always a second side to it, which is the European Union.

**David Mundell:** Yes.

**John Stevenson:** So far they seem to be remarkably quiet. Have you, in your capacity as Secretary of State or within Government, had any indication of what the European position is likely to be?

**David Mundell:** We have seen a number of comments appear, particularly in the media. That is going to happen. That is the nature of the backdrop of the negotiations and these sorts of discussions and all sorts of speculation, most of it probably unfounded. I think what is likely is that the EU and its 27 members will negotiate in a focused and professional way and we will need to do likewise. That is why I believe it is essential that we have a unified UK position and that we all come together to work to get the best possible deal. But I think you are absolutely right, the focus is inevitably on our position, but we cannot impose or assert a position. We have to negotiate it.

Q256 **John Stevenson:** On that basis, am I correct in saying that the EU will only negotiate with the UK Government in terms of a deal for the United Kingdom and they have no intention to deal with any of the devolved powers, or are they willing to have a discussion with the devolved Assemblies and Parliaments?

**David Mundell:** The EU has made it clear that in terms of leaving the EU, they will only negotiate with the member state, which is the United Kingdom. It is obviously up to individual countries to determine what they do in relation to discussions that they may have with the UK or parts thereof.

**John Stevenson:** The discussion will be with the EU.

**David Mundell:** The discussion with the EU will be with the United Kingdom and the Prime Minister will lead those negotiations.

Q257 **John Stevenson:** Following on from that, the Prime Minister has stated that she wants to secure a deal that works for the whole of the United Kingdom. Different parts of the United Kingdom may have different needs, so yes, she negotiates a deal for the United Kingdom with the EU, but within that there are different needs in different parts of the country, London being an obvious example, potentially Scotland, potentially Wales or Northern Ireland. Do you see then once a deal has been struck some sort of analysis of further devolution of powers, whether it be to something like the Mayor of London or to the Scottish Parliament, to deal with specific needs that these parts of the country may have, for example, with regards to free movement, with regards to labour requirements or agricultural and fisheries policies?



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**David Mundell:** The examples you gave are matters that would be determined within the United Kingdom in terms of whether there was any change to the existing framework of powers or whether powers that are repatriated will be exercised at Westminster or in the devolved Administrations.

**John Stevenson:** You do not then see—

**David Mundell:** It is all speculation. I would envisage, and I might be completely wrong, so I will give that caveat, that there would be one agreement that would have parts that would relate—so you would not necessarily have a Scotland agreement, a Cumbria agreement, but if there were specific issues in Scotland, they are all part of the one big agreement.

Q258 **John Stevenson:** So you could see an agreement with the EU that had, dare I say, subsections that relate to different parts of the United Kingdom?

**David Mundell:** Most agreements have subsections in them or annexes or whatever. However, it is probably not a productive discussion because I cannot determine that, for the very reason that you have indicated, that 27 other people have a say in that and the Commission.

Q259 **Anna Soubry:** It is more likely to be by things like sector if it is going to be done in that way: financial services sector; it could be manufacturing; it could be cars and automated aerospace and so on.

**David Mundell:** I would be inclined to agree with that view.

**Anna Soubry:** It is more likely to be like that.

Q260 **Chair:** Do you think it is important that you have the agreement of the Scottish Government before Article 50 is going to be invoked?

**David Mundell:** I hope that we do have an agreement, but the First Minister herself has acknowledged that the Scottish Government, and indeed the Scottish Parliament, do not have a veto over the UK leaving the EU, but it would be much better if we were able to proceed as one unified country with a common approach and a common set of objectives.

Q261 **Chair:** What happens if there isn't an agreement with Scotland or the other devolved nations of the UK before Article 50 is triggered?

**David Mundell:** I want to put my energy, Mr Wishart, into achieving agreement.

**Chair:** I know you do, but I am just asking what happens if we are unable to secure an agreement.

**David Mundell:** The position, as I think is well understood, is that the relationship with the EU is a reserved matter and one for the United Kingdom Government.

**Chair:** So Scotland's views on this would be—

**John Stevenson:** A final point.



**Chair:** Yes, sorry, John.

Q262 **John Stevenson:** Do you think that the sensible thing for the British Government to be doing is to be keeping their powder dry with the terms of their negotiation and wait until Article 50 is triggered and we enter into proper negotiations and at that point have proper negotiations?

**David Mundell:** Of course I think that, and therefore discussing your negotiating tactics and all the details is not appropriate. Mr Davis has said that and set that out in more detail in the process. As for Scotland, Scotland has two Governments. On the basis of what the people of Scotland have agreed in a referendum, we have reserved responsibilities exercised by the UK Government and devolved responsibilities exercised by the Scottish Government. Scotland gets the best possible deal when the two Governments work together.

Q263 **Deidre Brock:** Further to that, Secretary of State, I am interested in the so-called Great Repeal Bill. That is apparently going to be the largest single writing of law since the Acts of Union, so I was wondering what input the Scottish Government and Parliament will have to it.

**David Mundell:** Yes, they will certainly have input to it. I have already agreed in relation to the Scottish Parliament with Bruce Crawford, who is the Convenor of the Finance and Constitution Committee, as I think it is now called, that there will be full engagement with his committee and the Parliament in relation to the Bill. Extensive discussions have already taken place between Scottish Government lawyers and the UK Government and indeed our own Office of the Advocate General, who is the UK Government's legal adviser on Scots law.

Q264 **Deidre Brock:** Does the UK Government intend to make changes to those EU laws as they are written into domestic law? Equally, do they intend to leave Scotland to make the changes to Scots law that will be needed so that Scotland gets it right for Scotland?

**David Mundell:** It is certainly not the Government's intention to legislate on devolved matters in this regard. What the Great Repeal Bill is intended to do is at that point that we leave the EU to freeze EU law, the body of law from the EU, and bring it into our respective legal systems, of which Scots law is obviously a very important component within the United Kingdom. At five to midnight on the date of leaving and five past midnight, the body of the law is the same and then it will be for the UK Parliament, in respect of matters reserved to it, to make changes if it wants to and for the Scottish Parliament, in respect of areas of law devolved to it, to make changes if they want to.

Q265 **Deidre Brock:** So you are saying that the UK Government could make changes to those laws when they transferred over potentially?

**David Mundell:** Our approach, which has been set out, is to take the body of law as it is at midnight on the day that we leave and freeze it so that it is then incorporated into the constituent parts of the UK and their different systems and then to disapply it. If Mr Chope, for example, was minded that we should remove certain regulations that fall within



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Westminster responsibilities, he could move to do that within the Westminster Parliament.

**Deidre Brock:** I see.

**David Mundell:** If other colleagues of yours wanted to make some changes in devolved matters, they could move that within the Scottish Parliament. We would freeze it, bring it in and then it will be up to respective Parliaments, and indeed the other devolved Administrations, to take it forward.

Q266 **Deidre Brock:** There has also been some speculation that the UK Government will take Henry VIII powers, I think they are called, in the GRB. Tell me how you ensure that Scotland's Government and Parliament are heard in structuring the statutory instruments if the UK Government does take on those powers.

**David Mundell:** What we are currently involved in is a discussion with Scottish Government lawyers and the Scottish Government more generally. I am hoping that I will be able to meet before Christmas with Derek Mackay, the Scottish Minister responsible for the constitution, because I think everybody accepts that this is just a very complicated, technical thing to do and we want to get it right. It is not in anybody's advantage to get it wrong. We want to understand how it will work within both the Westminster Parliament—by that I mean Parliament—and the Scottish Parliament. I have already had a discussion with the Scottish Parliament Administration about it as well.

Q267 **Deidre Brock:** You mentioned it is a very complicated piece of work. Could I ask how many of your civil servants are working on Brexit and what percentage of Scotland Office civil servants that represents?

**David Mundell:** 100% of Scotland Office civil servants work in some way on Brexit because ensuring that we get the best possible deal for Scotland and the rest of the United Kingdom is my overriding priority, even people who are processing our finance, because they are supporting the rest of the Department. I regard everybody as being engaged in this task. We have around about 60 people, which is not a lot of people. Somebody will pass me a piece of paper telling me how many people work in the Office of the Advocate General. We are working across Whitehall with the support of the Whitehall Departments.

Q268 **Deidre Brock:** Of course. What impact do you think that might be having on the other work that your civil service is supposed to be doing? What do you think is being missed because of all this complex work that is having to take place?

**David Mundell:** I would like to have had more opportunity to have pointed out to the people of Scotland the extensive devolved powers that had been handed over to the Scottish Parliament and followed through on the Smith Commission report, making it clear what the differentiation of responsibilities between the Westminster and UK Parliaments—

Q269 **Deidre Brock:** So comms have been affected. What else?



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**David Mundell:** That is a very important matter for me. In some ways these issues have become less prevalent. However, we have to accept that Brexit is a reality; it is extremely important. Going back to previous discussions, I think I would be failing in my duties as Secretary of State for Scotland if I was not making it my number one priority and ensuring that we get the best possible deal for Scotland.

Q270 **Anna Soubry:** Can I go back to the triggering of Article 50 and the Supreme Court? What provisions have you made in the event that the Supreme Court says that a consent motion has to be given by the Scottish Parliament before, or as part of, the triggering of Article 50, specifically because those devolved matters that we have already referred to that the UK Government has no power over—they have all been devolved to the Scottish Parliament—and so the Scottish Parliament has to pass its own consent motion?

**David Mundell:** I am absolutely clear that we will abide by the judgment of the Supreme Court. It is inappropriate to comment on the content of a case while it is still under deliberation, but whatever the outcome, we will abide by that outcome.

Q271 **Anna Soubry:** I am not being rude, Secretary of State: you do not have any option. Obviously if the Supreme Court says—in that event, can you tell us what then will happen? Have your officials looked at that option, in the event the Supreme Court says the Scottish Parliament must pass its own consent motion?

**David Mundell:** Those are matters for the Scottish Parliament. Neither the UK Government nor the Scottish Government can say that a legislative consent motion is or is not required. It is a determination by the Scottish Parliament. There is an established process and we will work with that, regardless of the outcome of the Supreme Court case, because that is what we do, we work with the Scottish Parliament's processes.

Q272 **Anna Soubry:** What happens if the Scottish Parliament decides that it will not vote in favour effectively of giving its consent to the triggering, the effect being it will not give its consent to us leaving the EU, because that will be the effect if they have to give a consent motion? If the Scottish Parliament refuses to vote for it, what then happens?

**David Mundell:** That is a route of conjecture that you are not going to tempt me down. What I am saying is whatever the outcome of the Supreme Court case is we will abide by that, as we have always done. As with the Scotland Act 2016 and the associated fiscal framework, for example, as well, we always work with the Scottish Parliament procedures. As I indicated to Ms Brock, we are absolutely committed to working with the Scottish Parliament in relation to any legislation, whether legislative consent is required or not, in relation to exiting the EU.

Q273 **Deidre Brock:** In theory, if that scenario unravels, the Scottish Parliament could stop the process of the United Kingdom leaving the European Union.



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**David Mundell:** My understanding is that everybody who has commented on that issue, including Mr Salmond, has agreed that the Scottish Parliament could not stop the UK leaving the European Union. What I want to achieve is us working constructively together and that is what I am seeking to do.

**Chair:** I know Mr Law has a couple of questions on that, so we will hand over on this issue.

Q274 **Chris Law:** I want to ask you about this a bit more, obviously given the Supreme Court hearing last week. Lord Sumption asked the Advocate General whether Sewel was more than a political force, given that it is enacted in statute, and I think all of this Parliament assumed that it was. Lord Keen, however, replied that the correct legal position is that Westminster is sovereign and may legislate at any time on the matter. The question is simple. Have we been sold a pup over the last Scotland Act?

**David Mundell:** To that question, the answer I can categorically give is no. The Supreme Court's views on the positions argued by the UK Government, the Scottish Government and others will be known when their judgment is released. As I have indicated, we will abide by that judgment.

Q275 **Chris Law:** Is it your position that the Sewel Convention is legally binding?

**David Mundell:** My position is that we will abide by the outcome of the Supreme Court on the points that were argued in the Supreme Court case. I am happy, once that judgment has been given, to speak to the Committee, but I don't think it would be appropriate to do so before the judgment.

Q276 **Chair:** Mr Law really requires an answer to this, because I think we were all really surprised at some of the things the top Westminster legal officer said about the Sewel Convention: "a self-denying ordinance" and "a political restriction upon Parliament's ability to act, no more and no less than that". Just a minute, Secretary of State, if you will allow me: you and I were debating this in the Scotland Bill last year.

**David Mundell:** We did, yes.

**Chair:** My understanding from that was that the permanence of the Scottish Parliament was set in place and that Sewel was on statute, that it was legally binding. Now, is that the position or is it not?

**David Mundell:** Mr Wishart, with respect, I think you will find that if you cast your eye over the debates that took place in the House of Lords during the passage of the Scotland Act, many of those issues were debated and discussed, so they are not new. The Sewel Convention is a convention that has been set out in the Scotland Bill, but it is a convention.

Q277 **Chair:** So it is not worth the vellum it was written on, the Scotland Act?



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We thought we had agreed that it was going to be in statute and this was the surprise we all had when this was said by Lord Keen.

**David Mundell:** I am surprised that you are surprised, because these issues were debated. I would commend—I know you are not its biggest fan—that you do look at some of the debates that took place in the House of Lords by some very eminent constitutionalists, who set out different views. Many of the points, although I think not the Declaration of Arbroath, that were raised in the Supreme Court case were discussed in detail in the House of Lords and your Scottish Government had access to all of that debate and discussion before agreeing with us on proceeding with the Scotland Bill and indeed the passage of the legislative consent motion in the Scottish Parliament.

Q278 **Chris Law:** This is interesting, because the Scotland Act agreed that the Scottish Parliament would be made permanent in UK legislation and that the Sewel Convention should be put on a statutory footing. However, in Lord Keen's recent submission, he argued that it was a political accord and means Holyrood should not be consulted before talks between the UK and the EU. If this is the case, why was the Sewel Convention ever included in the Scotland Act, if it is not legally binding?

**David Mundell:** The Sewel Convention was set out in the Scotland Act so that the position in relation to agreement on legislation is known and is on the face of the Bill. We are very clear about that. However, the issues around adopting a convention into legislation were, as I recall, well highlighted, discussed, debated, particularly in the House of Lords, where there was extensive discussion and debate, and amendments brought forward. I do not think that the position as set out by Lord Keen should come as a surprise. What will be the case is that now positions have been set out, the Supreme Court will make a judgment and we will abide by that judgment.

Q279 **Anna Soubry:** Mr Wishart, do forgive me. Could somebody explain who is Lord Keen in all of this? It is important—

**David Mundell:** He is the Advocate General for Scotland.

Q280 **Anna Soubry:** This is what the Advocate General said when he gave his submissions in court?

**David Mundell:** Yes.

Q281 **Chair:** What he also said is that the correct legal position is that Westminster is sovereign and may legislate at any time on any matter. What does that mean to you?

**David Mundell:** You will find, Mr Wishart—I am not going to rehearse the case—that was the position of the Lord Advocate of Scotland; that was the position of the Lord Advocate.

**Chair:** You are going to have to show us where he said that then.

**David Mundell:** Right, I will.





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**Chair:** I look forward to seeing it.

**David Mundell:** I will drop you a note on that. The Lord Advocate went into those court proceedings on the basis that the argument was about the sovereignty of this Parliament.

Q282 **Chair:** So the UK Government's view is that Westminster is sovereign and any law that is passed within the Scottish Parliament can simply be overridden. Is that the UK Government's view?

**David Mundell:** It is the view of the Scottish Government, as submitted to that case. Lord Keen has set out the position in the court case. The Supreme Court will now determine the outcome and we will await that judgment, we will abide by that judgment. I am happy to give you further feedback in relation to the judgment. It is really important—

**Chair:** It is an opportunity to understand this. It is the powers of the Scottish Parliament—

**David Mundell:** It is really important because there is a choice; the people of Scotland have a choice. They could be an independent country or they could be part of the United Kingdom—

**Chair:** This is the thing we always come back to. We are trying to get answers from you.

**David Mundell:** They have made their choice. What has been set out in the Supreme Court should not be a surprise. I am sorry that it was a surprise, but these issues were debated at length, at extreme length, in the House of Lords.

Q283 **Anna Soubry:** I think we are treading into some dangerous territory when we confuse a legal argument and a political argument. The two are very distinct, are they not, Secretary of State? If the Lord Advocate is saying these things, he is saying them as a lawyer, he is not a politician. Is that correct?

**David Mundell:** He is not a politician. He is not a politician in his role in the Supreme Court.

**Anna Soubry:** In the Supreme Court?

**David Mundell:** He is the UK Government's legal adviser on Scots law.

Q284 **Chair:** The last point on this, because I need to move on. If we have another Scotland Bill, which is probably likely, every inclusion in the Scotland Bill, everything they wish to put, anything that Scotland gets, we should just treat that with a pinch of salt because Westminster can simply overrule that, if they want. Is that right?

**David Mundell:** That is not the interpretation I would give.

Q285 **Chair:** What is your interpretation?

**David Mundell:** My interpretation is the one that is constitutionally accepted and was the premise for the Supreme Court case and was the



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basis on which the Scottish Government entered that case and that is that Westminster is sovereign.

**Chair:** Thank you. Ian Murray, do you want one last word on this?

Q286 **Ian Murray:** Apologies, I had to go away to do some media, but one last question on this.

Ms Soubry is absolutely right. You need to syringe the politics out of this.

**Anna Soubry:** Absolutely.

**Ian Murray:** The black and white of it is that the relationship with the European Union and foreign affairs are a reserved matter, as of schedule 5 of the Scotland Act 1998, which could be repealed at any time by this place.

**Anna Soubry:** Yes.

**Ian Murray:** But by convention and by the Scotland Act 2016, it is written in law that the Scottish Parliament is permanent. So all of that, in the black and white of it, is fairly straightforward. But by convention and by the Secretary of State's words over a number of months and the Government's words over a number of months, the Scottish Parliament will have a significant role to play in the negotiations with exiting the European Union.

**David Mundell:** Absolutely.

Q287 **Mr Christopher Chope:** This is about the draft Referendum Bill, which the Scottish Government has published. Secretary of State, do you think that the EU referendum result strengthens the case for Scottish independence and a second referendum?

**David Mundell:** I am very disappointed. I am not going to try Mr Wishart's patience. I am very disappointed that the issue of independence was put back on the table within three hours of the result of the EU referendum. Along with hundreds of thousands of others in Scotland, I did not vote to remain on the basis that if it was not a remain result, we would be dragged back into an independence referendum discussion. I do not want to be having that discussion, but it is very difficult, since every day since 23 June the First Minister of Scotland has mentioned independence in some form or other.

I believe, as I have said previously, that there are two aspects to this question. Of course there could be another independence referendum; I think the more important aspect is should there be one. It is absolutely clear from all polling that has taken place in Scotland that people do not want there to be another independence referendum. It is clear from all my discussions with business and others that the issue of independence creates more uncertainty than Brexit and people want it off the table and they want us to focus on working together to get the best possible deal for Scotland.

Q288 **Mr Christopher Chope:** In agreeing with everything that you have just said, can I suggest that one way of removing this uncertainty would be



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for you and the UK Government to make it clear that there would not be, and will not be, a second independence referendum in Scotland unless there is legislative consent from the whole of the United Kingdom Parliament?

**David Mundell:** That is an interesting perspective and one that I am not going to agree with. I believe that there is an overwhelming argument that there should not be another referendum. It is clear that even people within the SNP agree with that, if media comment is to be believed, and therefore I just hope that we can get this issue off the table and that we can focus on getting the best possible deal for Scotland and the UK.

Q289 **Mr Christopher Chope:** But you would agree that ultimately, in law, it is a matter for the United Kingdom Parliament as to whether or not there is a second referendum?

**David Mundell:** It is. The Scottish Government's consultation on there being a further independence referendum acknowledges that.

Q290 **Margaret Ferrier:** I don't have a voice: it is going, slowly but surely.

The Secretary of State for Exiting the European Union said on 5 September that the UK Government had not evaluated the impact of leaving the EU on Scotland's economy. Has that evaluation been done yet—because we are three months further down the line now—and if not, when will it be done, bearing in mind that it could cost Scotland £11.2 billion per year and GDP lower as well per year?

**David Mundell:** The answer is that it is ongoing. I hope you would regard as a positive part of that that it is ongoing, in conjunction with the Scottish Government. We are working together to have a shared and agreed analysis. We might not agree on how you take that analysis forward, but we are working so that we have a shared analysis in terms of the economic impact on the relative importance of different sectors, on the relative impact to different parts of Scotland, so that we have a shared analysis on which we can base our discussions and decision-making. As I understand it, that has progressed significantly.

Q291 **Margaret Ferrier:** Will that be before Article 50 then? Will it be in the next month?

**David Mundell:** I am sure, I am confident that that work will be concluded before Article 50 is triggered, yes.

Q292 **John Stevenson:** Given all the economic forecasts that we had pre-referendum, do you think we should probably be very careful in taking any future economic forecasts with any great seriousness?

**David Mundell:** You always have to take seriously things that serious people say. Obviously, this is—as I think we have discovered in our own session today—a highly political, highly emotive issue. People are going to say things, construe things in particular ways, but it is very important that we listen to what businesses, communities and organisations within Scotland are saying about the impact. It is important that we look at economic forecasts. Unlike some others, I have always proceeded on the



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basis of a glass half full, an optimistic outlook. I believe there are real opportunities for Scotland from leaving the EU and that we should engage with those opportunities positively. But we should not disregard other information and evidence because I want the negotiations to proceed on an evidence base.

Q293 **Chris Law:** On that note about an evidence base, because you said it several times during the Committee, if the evidence that is being produced by both the UK and Scottish Governments shows that Scotland is going to be significantly worse off, what is your position going to be going forward?

**David Mundell:** We respect the outcome of the referendum, that Scotland, as part of the United Kingdom, is leaving the EU, but on the other hand we have to ensure that we get the best possible deal. I might have put those arguments to you, Mr Law, during the independence referendum in Scotland, but if the result had been a Yes vote, I would have respected that result and have worked to make it the best for Scotland. That is what I am going to do in relation to this EU referendum, full stop.

**Chair:** Secretary of State, we are very grateful to you for coming once again to get all these questions at what is always a lively session when you appear in front of this Committee. I am sure we will be coming back to you on a couple of issues as we continue with this inquiry, but thank you very much for coming along this afternoon.