



European Union Committee

Uncorrected oral evidence: Brexit: Devolution Inquiry

[Monday 6 March 2017](#)

4.20 pm

Watch the meeting

Members present: Members present: Lord Boswell of Aynho (The Chairman); Baroness Armstrong of Hill Top; Baroness Browning; Lord Green of Hurstpierpoint; Baroness Kennedy of The Shaws; Earl of Kinnoull; Lord Liddle; Baroness Prashar; Lord Selkirk of Douglas; Baroness Suttie; Lord Teverson; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

Evidence Session No. 11

Heard in Public

Questions 102 - 114

Witnesses

I: The Rt Hon the Lord Forsyth of Drumlean, former Secretary of State for Scottish Affairs; The Rt Hon the Lord Wallace of Tankerness QC, former Deputy First Minister of Scotland.

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Examination of witnesses

Lord Forsyth of Drumlean and Lord Wallace of Tankerness.

Q102 **The Chairman:** Good afternoon. I do not think that in five years of chairing this Committee I have had the pleasure of welcoming for a public evidence session two Members of your Lordships' House, but we are delighted that Lord Wallace of Tankerness and Lord Forsyth of Drumlean are here to assist us with our inquiry into the implications of Brexit for devolution. We have also been in touch with the SNP, because we were interested in getting a representative sample of political opinion, apart from the configuration in our House. The SNP made the point that we recently met Mike Russell, who is of course the SNP Brexit minister in Holyrood, so we have had a view from it. But we want to flesh this out a bit and to have a political opinion from those who are experienced in our House and Westminster and who have direct and close knowledge of the Scottish situation, although we need not strictly confine ourselves to that. I should also say thank you very much, Michael—if we may go back to first names, because we are used to that, and Jim equally—for your submission, which we will put into the can. No doubt you will want to speak to it in due course.

We are following the usual rules of engagement. This is a public session on the record. We will send you a transcript. We will invite colleagues to declare any interests relevant to the inquiry before they ask their first question. We will be as businesslike as we can, but I hope also that we can make this as informal an exchange of views as possible.

Perhaps I can kick off by referring to two headline speeches by the Prime Minister. The first was, as it were, to the United Kingdom as a whole—the Lancaster House speech—followed up by the White Paper. Then there were her specific remarks in Scotland over the weekend about the situation as it applied to Scotland. All of that is in the context of Brexit. Could you both, in whatever order you find most convenient, give us some understanding of the political, economic and legal implications for Scotland, and, if appropriate, for the other devolved nations, of the Brexit model that the UK Government are pursuing?

Lord Wallace of Tankerness: Thank you, Lord Chairman, and thank you for the invitation. As I intimated to the clerk, I am completely taken by surprise at the speed at which the Bill is going in the Chamber. I have amendments in the next group, but I will do my utmost to answer some of your questions and then I will probably come back, or write.

The Chairman: Of course. We will recuse you if necessary, but we will perhaps ask you to follow up in writing.

Lord Wallace of Tankerness: Absolutely. I would be more than delighted to do that.

Lord Forsyth of Drumlean: I can give you answers.

Lord Wallace of Tankerness: Michael has answers.

This question almost goes to the fundamentals of your view of the outcome of the referendum. I do not want to rehearse all the arguments from before the referendum, but when I read the Prime Minister's speech I thought that it was rather having your cake and eating it. Of course we all want certainty and it is important that she started to flesh out the Government's approach. Of course we want a stronger Britain and a fairer Britain but—I am going from cakes to puddings—the proof of the pudding will be in the eating.

One problem that I find with the Prime Minister's approach is that she tends to think—I am a democrat and I accept that there was an outcome to the referendum—that the whole of Britain is now all suddenly behind her approach. She said in that speech that the British people believed that what we have done "leads towards a brighter future for their children—and their grandchildren too". Quite frankly, I do not believe that what the Government have embarked on will lead to a brighter future for my children or grandchildren. Just as, if the referendum had gone the other way, I would not have expected Michael suddenly to think that a European Union future was the best for Britain, I do not accept that the course that we are set on is the best for Britain. That is what has happened and it is the course that we are embarked on, but I do not think that she should pretend that we are all behind her on this mission and think that we are embarking on an absolutely wonderful journey.

I welcome the Prime Minister's commitment to the United Kingdom, to working with the devolved Administrations and to asserting that some powers will go to the devolved Administrations, although we will no doubt come back to that later. She said in her speech, "No decisions currently taken by the devolved administrations will be removed from them". That is very welcome. It should have gone without saying, but I welcome the fact that it was said. It flatly contradicts what the First Minister of Scotland said in the speech that she gave last week to the David Hume Institute: that Brexit was being used as cover for Westminster to completely undermine the Scottish Parliament and the devolution settlement. I see no evidence of that whatever. The Prime Minister makes it very clear in her speech.

I do not know whether the First Minister is setting this hare running to cover over some of the shortcomings and some of the arguments that she has been making for indyref2, but it should be well and truly knocked on the head.

I also note that the Prime Minister said in her speech on Friday, "And yet the SNP propose Scottish independence, which would wrench Scotland out of its biggest market". It struck me that if you replace "SNP" with "Conservative Government", "Scottish independence" with "Brexit" and "Scotland" with "UK", it would read, "And yet the Conservative Government propose Brexit, which would wrench the UK out of its biggest market". I never thought that irony was one of the Prime Minister's stronger suits.

Lord Forsyth of Drumlean: I thought the Prime Minister's speech was excellent, because it provided clarity.

The Chairman: By the speech, you mean the Lancaster House speech.

Lord Forsyth of Drumlean: Yes. I have been somewhat surprised by some people arguing that the Brexit vote meant that we should somehow stay in the single market and so on. I participated in the campaign and took part in a number of debates with people on either side, and both sides made it quite clear that leaving the EU would mean leaving the single market.

A point about the position vis-à-vis the devolved Administrations—I guess you want to focus particularly in Scotland—is that we had an embarrassing phase when the First Minister of Scotland tried to muscle up to people in Europe and was told quite plainly that the UK was the member state and that the EU was not inclined to carry out negotiations with parts of the member states. I thought the speech and the subsequent developments were clear.

Clearly it is important that the Scottish Administration are involved—a Joint Committee has been set up with David Davis, and they attend those meetings—but, sadly, one of the parties has as its agenda the destruction of the United Kingdom, and the destruction of the single market that is the UK, in favour of maintaining a single market in Europe while remaining part of the UK as a stepping stone towards that process. So it has been difficult for Ministers, but I hope that as the process continues it will settle down.

Q103 **Baroness Kennedy of The Shaws:** I want to press you a little harder on this. In the Lancaster House speech, the Prime Minister committed to working with the Administrations of Scotland, Wales and Northern Ireland to deliver a Brexit for the whole United Kingdom. Is it possible to respect the referendum results while taking into account the very divergent views across the nations of the UK? We saw very different responses to this. How do you reflect that divergence?

To push this a little further, is it possible for the nations and regions of the UK to have differentiated terms around the exit from the EU, as has been debated, or is a consistent approach across the UK the only viable solution? The business of Northern Ireland is now playing out and creating anxiety. What is your assessment of the Scottish Government paper on Scotland's place in Europe? What in the paper do you agree with and what do you take issue with? That is a lot to ask at once and I will take you back to bits of it. First, how do you deal with the fact that the responses have been so different in different places?

Lord Forsyth of Drumlean: The question on the ballot paper in the referendum was about whether the UK should leave or remain part of the EU. It did not differentiate in any way between the regions and nations of the UK. It seems as absurd to argue that Scotland, for example, should have some kind of opt-out and be in the single market while the rest of the UK was not as it would be to argue that London should be

differentiated. There is no provision in EU law for this kind of arrangement.

In the case of Scotland, if we were to follow the proposals in the paper that was presented by the Scottish Government, we would inevitably see divergence between Scotland and the rest of the UK in matters of trade and regulation, which would inevitably result in some sort of internal border. It is very difficult to see how this could conceivably be workable. Today, for example, we learned that two of our big financial institutions are involved in what is described as a merger but is actually a takeover by Standard Life of Aberdeen Asset Management. Why is that happening? Because fund management businesses are finding that people no longer wish to pay their fees for performance that is less effective than for people who are buying index funds, so they are having to cut their costs.

One of the big costs that Standard Life said it had, and this came up in the Scottish referendum campaign, was its compliance costs, which it said amounted to about £50 million. Under the arrangement proposed by the Scottish Government, if Standard Life remains in Edinburgh it will be subject to single market regulations in compliance costs and it may differ from those south of the border, which is where most of Standard Life's customers are, which adds to the cost of regulation. So why would it not move to where its customers are?

Baroness Kennedy of The Shaws: There seems to be an option here. Rather than being dogged that the referendum was simply about in or out, when you have a division with 52% on one side and 48% on the other and two of the nations of the UK—Northern Ireland and Scotland—voting fairly decisively to stay in, that argues for a soft Brexit rather than the hard one that you yourself are pressing for.

Lord Forsyth of Drumlean: You might make that argument. If you look back to the Scottish referendum, in the doorstep produced by the Scottish Government to explain how an independent Scotland would work there is a paragraph that warned that one of the consequences of voting to remain in the UK would be that there would be a referendum on Europe and that the UK might vote to leave. There was nothing in there about how it might be possible to have other arrangements. People knew what was happening.

I find it pretty offensive, actually, when we have had the biggest ever vote in our history—more than 17 million people voted to leave the EU—that in Scotland we constantly hear from the First Minister that 1.6 million people voted in Scotland and that that was a majority. But 1 million people in Scotland voted to leave the EU—and, by the way, the political party with the biggest percentage of supporters voting to leave the EU was the Scottish National Party. Nicola Sturgeon and other nationalist politicians participated in the debate on a UK-wide basis, appearing on national television programmes arguing the case for the UK remaining in the EU, and they lost. Now, with all due respect to Baroness Kennedy, those who lost are trying to rewrite the rules of the game and rerun the whole thing. Both in Scotland and in the rest of the UK, all the

opinion polls show that two-thirds of the electorate wish to get on with the process. They are not saying, "Should we have some special deal for bits of the regions?"

The case of Northern Ireland, with regard to open borders, is completely different. If people cross from the Republic of Ireland into Northern Ireland and take up employment, they will be operating illegally. Quite how you would have a different set of rules within the UK, and how employers would be expected to process that with the back door open in Scotland for immigration occurring outwith the controls that apply to the rest of the UK, I do not know. What is more, the Scottish Government have not been able to come up with any answer to that, despite producing the paper that you refer to.

Lord Wallace of Tankerness: Obviously it was a United Kingdom referendum and we got a United Kingdom result. That was the basis on which Parliament passed the legislation, and I do recall that during the Scottish referendum some people from my former constituency said that if Scotland declared independence, Shetland might want to review its relationship with Scotland and the rest of the United Kingdom. They were told quite firmly by the Scottish Government that this was a pan-Scotland referendum and that all parts would be affected by it. So there was a slight lack of consistency in their arguments.

However, you cannot ignore the differences. That is the point I was making earlier about the Prime Minister's approach. You hear from Ministers that we must all be behind this very narrow approach that they are pursuing with regard to a hard Brexit, and they are showing no willingness to—"compromise" is the wrong word—be sensitive and to explore ways in which they can address some of the concerns and feelings of people who feel they are being left out or left behind in this march towards a hard Brexit. That is why some imagination might be very helpful here.

For example, Scotland has devolved powers in relation to justice. Is it beyond the wit of man or woman that Scotland could have an arrangement with the European Union countries with regard to the arrest warrant? That might be possible. Scotland has a fully devolved higher education system. Could there be an arrangement between Scotland and the European Union on Erasmus? As we have responsibility for innovation, could there be arrangements for Horizon 2020? That could happen post the formal negotiations, or it could be part and parcel of the negotiations. We should not shy away from these things.

We are in uncharted waters, but that can sometimes be an opportunity. People may say that we cannot do that because it has never been done before, but let us see if there are opportunities to do things that would show sensitivity. It would not detract from the fundamental position of leaving the European Union. In fact, it might go a long way towards strengthening the Union. I do not wish to see—and I know that Michael would not wish to see it either—the cement that binds the union of the United Kingdom being weakened.

Lord Forsyth of Drumlean: May I comment briefly on that? The Erasmus programme includes Turkey and Israel and a number of other countries. It has nothing whatever to do with the single market. Of course some accommodation will need to be found for the European arrest warrant, but that should be done on a United Kingdom basis, and I am sure that the United Kingdom as a whole would wish to participate in Erasmus.

What is at issue here is a proposal by the Scottish Government that part of a country is involved in the single market and the rest is not. Not only is that anathema to the Prime Minister but it would seem that it is also anathema to the Spanish and many other European nation states. It is a non-runner. What is going on here is that the Scottish nationalists are simply trying to pick a fight and find a grievance. Their ultimate destination is the destruction of the United Kingdom. There was an absurd speech by the First Minister when she said that there is a power grab going on at Westminster to take away the Scottish Parliament's powers. This was in the context of fishing and agriculture. Her agenda is to get these powers, which are provided under the Scotland Act, and then hand them back to Brussels when she gets independence. What we have here is a political campaign that is making it extremely difficult for the people Jim has mentioned, those who want to see a constructive engagement. We do not have a constructive engagement because, I am afraid, the First Minister and the Scottish Government have another agenda.

Lord Wallace of Tankerness: Perhaps I may comment on that. I was giving examples that are worth looking at. Reciprocal health rights could be another example, because, again, health is fully devolved. Let us be imaginative. Let us look at ways in which we can address the issue. Michael is putting it wholly in the context of the single market, but Brexit goes far further than just taking us out of the single market. He and I would disagree on that. I agreed with parts of the Scottish Government's paper. The best outcome would be for the United Kingdom as a whole to be a member of the single market. That is the optimum position.

However, with regard to the Scottish Government's proposal that Scotland could separately become a part of the single market, I have doubts, to use a Scottish phrase. You can see the superficial attraction, and some might think it is possible, but I believe it has been put up to be knocked down and to stoke up resentment when it does not happen. It has been suggested that we could become a member of EFTA, but we have to be a member state. It has been said that the Faroe Islands are trying to get in, but they are not in yet. At one stage it was suggested that the United Kingdom should become a member of EFTA and then disapply the rules to everywhere bar Scotland, which seems to be a flight of even further fancy. There will be huge potential political and legal difficulties.

Part of the Scottish Government's White Paper seems to say that with one leap we would be free. However, on thinking it through, if Scotland

was part of the single market and had to observe all its rules without any locus in determining those rules, how would we have trade within the United Kingdom? They say that it would all be fine and that there would be no need for a customs post at Gretna, but I wonder.

If England and Wales—let us leave Northern Ireland to one side—outwith the single market decided that they would have regulations that were less onerous than those that Scottish manufacturers and service providers had to adhere to, how would Scottish manufacturers get on in trying to export to England, where there might be a lower ceiling and cheaper manufacturing? It would not work. I notice that one member of the First Minister's Standing Council on Europe, Charles Grant, who knows quite a bit about the subject, has said that it would be very hard to make work. However, that does not mean that in other areas we should not try to seek ways in which we could be much more imaginative. I am conscious that the Minister is on his feet in the Chamber.

Q104 Lord Green of Hurstpierpoint: To some extent, this takes us into territory that we will probably end up covering in later questions. However, we have started down the track and I would like to carry on.

This question is not about what is desirable, about which there is clearly a great deal of controversy, but about what is technically feasible with regard to Scotland having a separate economic settlement or relationship with the EU from the rest of the UK. It is difficult to conceive of goods and manufacturing exports without the implications of a hard border between England and Scotland, which I doubt anyone wants to see. However, if you look, first, at immigration and, secondly, at services, there are on the face of it several alternatives that are less binary. In the case of services, for example—even financial services, to which Lord Forsyth referred—you can imagine a different regulatory environment in Scotland that was more equivalent to the EU than the UK.

I repeat that this is a question about what is possible, not what is desirable. For example, Scottish firms could have a limit that was deemed to be a regulatory equivalent and that therefore could continue to trade within the EU without setting up local subsidiaries, a situation that might not apply to the rest of the UK. In the case of immigration, yes, you would have to pass legislation, as the note points out, but it would seem perfectly workable for Scotland, subject to that legislation, to be able to employ on a different basis. If someone then surreptitiously filtered it down into the rest of the UK, they would be breaking the law in the same way as someone from the Republic going into Northern Ireland would be breaking the law. Could those two possibilities not exist?

I repeat for the third time that this is about what is possible. Whether either of those things is desirable is clearly a separate question.

Lord Wallace of Tankerness: I would like to think further about the question of services, which is greater than the question of financial services. On the immigration side of it, one's immediate reaction is that it would be very difficult, because people will come in and want to flow between Scotland and England. But if we pause for a brief moment, we

have a Migration Advisory Committee, which, with regard to tier 2 visas, has a separate list of job specifications for Scotland.

There has been some criticism as to how well it has worked, but there is a differentiation already there in our current arrangements. When I was Deputy First Minister in the Scottish Government, Jack McConnell, to his credit, managed to agree with the Home Office the Fresh Talent initiative, whereby foreign student graduates of Scottish universities were given visas for two years beyond graduation to enable them to work in Scotland. It was discontinued, but it seemed to work at the time, and now it has been brought back, ironically for universities other than in Scotland.

Given that we are told that we are going to have a soft border with the Republic of Ireland, one has to ask whether there is going to be any hard border or whether in fact it will be the employer who has the responsibility for checking on immigration status. If that is the case, and in order to meet particular Scottish needs, you could do this by national insurance number or something to do with HMRC, so that someone who turned up in England who had been given their number in Scotland would be spotted immediately because that number would be known, and that would in no way affect national insurance contributions. There are possibilities, and I do not think we should shy away from examining them, but that would require imagination and proper co-operation between Governments, not grandstanding.

I must excuse myself from the room, but I will probably come back.

The Chairman: Thank you. We understand. We may need to pick up the gaps later on.

Lord Forsyth of Drumlean: Could I deal with that question? What everyone seems to forget, and which is implicit in your question, is that if you are in the single market, which is the Scottish Government's proposal—let us leave aside the fact that many member states would object to it and there is no basis for doing it, but let us assume it is possible—the regulations apply to all businesses, but only 5% of all Scottish businesses actually export. We therefore have 95% being bound by regulations that they would have no say in or ability to alter. That strikes me as an extraordinary proposition from the one part of the UK where unemployment is going up and where the growth of small businesses has been a disaster.

Why would you want to do that? If the answer is because of the trade opportunities, let us take Scotland's most important export—whisky. Whisky, I believe, is subject to a 150% tariff in India, and the Indian market is enormous. Even if that tariff were reduced marginally and we had more access to the Indian market, there would be enough business to keep all the distilleries in Scotland going till the crack of doom just supplying India.

Why would you wish to sacrifice the opportunity to export to the rest of the world and to free your businesses of regulation? Everyone says, "This is all exaggerated". Let me give you an example. I declare in the register of interests that we let out part of our property in Scotland for holiday lets. Just this weekend I had a letter from the agency telling me that under EU regulations, even though this is used only for weekly holiday lets, we have to complete an energy survey and show that on every advertisement that we make in relation to the property. What is the purpose of that? And, of course, there is absolutely nothing that we can do about it. I suppose that as members of the EU we could argue our case in Brussels, but the Scottish Government are proposing that we should be bound by these regulations and have no say. I simply do not see the utility of this.

Lord Green of Hurstpierpoint: I was talking about feasibility rather than desirability.

Lord Forsyth of Drumlean: It is always feasible to shoot yourself in the foot, but it is not desirable.

Lord Teverson: I understood that, within the UK as a whole, 30% of companies exported. Certainly in Cornwall a huge proportion do, and they are mainly SMEs. I do not understand the 5% figure for Scotland.

Baroness Kennedy of The Shaws: It relates to business rather than numbers of companies. It is using two different measures.

Lord Forsyth of Drumlean: Anyway, it is a minority. We can argue about whether it is 5% or 10%.

The Chairman: We can explore it by correspondence if that would be helpful. If we have cleared that subject, we will go on to the next line of questioning.

Q105 **Earl of Kinnoull:** We have touched a little on powers coming back from Brussels, and I wonder if we can get a bit deeper into that. The Prime Minister committed to "working very carefully to ensure that—as powers are repatriated from Brussels back to Britain—the right powers are returned to Westminster, and the right powers are passed to the devolved administrations of Scotland, Wales and Northern Ireland". First, which competences do you feel should be transferred down, and how should that be done? I would be quite interested to know whether you have had any thoughts about onward devolution. You will remember Clause 33 of the Smith commission agreement on the devolution of the Crown Estate, which has not yet taken place. Secondly, do you feel there are any powers that are currently reserved back here that, post Brexit, should be transferred to the devolved Administrations?

Lord Forsyth of Drumlean: No, is the answer to the last question. I cannot think of any. But there is a huge opportunity here in agriculture and fishing for the Scottish Government and the rest of the United Kingdom to regain control and devise a regime that suits the interests of UK producers. Perhaps here I should declare an interest as a director of a

company that has a fish processing and catching interest. The Scotland Act 1998 is absolutely clear that matters that are not reserved are devolved, so there is no question in my mind that responsibility for fishing and agricultural matters in Scotland will go to the Scottish Parliament. It is a great source of bewilderment to me that the Scottish Government are not arguing that case, and arguing it passionately. Instead, they have talked about Westminster making a power grab to take powers away from the Scottish Parliament, when the implication of the restoration of these powers to the UK, including employment and other matters, to the UK will be that under the terms of the Scotland Act Scotland will have a real say.

There is a niggle here, which is that it is important to maintain the UK single market. If we get a deal with the European Union, that will doubtless cover matters, and if we have access to the single market as opposed to membership of it there may be issues to do with quotas and other matters that will mean that the UK as a whole has to behave in a particular way.

In the old days, in ancient times, when I was Scottish Secretary, we used to have Joint Ministerial Committees at which these issues were thrashed out. So although responsibilities will go to the devolved Administrations, it will be necessary to have a co-ordinated approach in areas such as fishing and farming in order to maintain the single market, or in order to maintain a sensible policy vis-à-vis conservation, catching efforts and the rest. It seems to me to be a win-win position for the Scottish Parliament and the devolved Administrations.

Earl of Kinnoull: That is very helpful. Later questions may go down the same route, so I might leave it there.

Lord Forsyth of Drumlean: Chairman, do you want to adjourn until Jim Wallace comes back?

The Chairman: I see that he is speaking now. We will probably carry on, if that is all right.

Lord Forsyth of Drumlean: I will try to cover his position.

The Chairman: We will ask you to say what you think and not to be schizophrenic. May I check one point in the list you gave when you talked about the integrity of the UK single market and when you said that if we are to have access to the European market we should at least have someone to negotiate with? Does that apply more generally to international negotiations as well? I am thinking not simply about access to fishery products but about fisheries limits, for example.

Lord Forsyth of Drumlean: I hesitate to get into the territory of fishing in the presence of Baroness Wilcox, who knows far more about fishing than I do, but the worry at the moment in the fishing community is that it will be sold out in the way that it was when we joined the EEC. It thinks that some kind of deal will be decided with Brussels. It is a complex

matter. We have different fishing limits according to which coast you are looking at—whether it is the north, the west or the south coast—and there are real issues to be decided there. If we regain control of our territorial waters, there will have to be a sensible discussion in the UK and relative to others. The point is that we will decide it. It will not be decided—as I, to my cost, experienced late in the run-up to Christmas—at Agriculture and Fisheries Council meetings, where deals are done with landlocked countries that do not have a lot of interest in what has happened to towns such as my home town, Arbroath, as a result of our membership of the European Union.

Q106 **Baroness Verma:** I just want to take you back to whether you believe that the devolved powers have the capacity and the will to significantly restructure the way in which they remain competitive, inside and outside the EU, and the way they operate with other countries. A lot of it will fall back on their ability to restructure quickly.

Lord Forsyth of Drumlean: In what context?

Baroness Verma: In the context that at the moment their argument is that they want to operate independently. Of course, if they are going to do this in the UK context, they will still have to restructure to be able to operate with their devolved powers.

Lord Forsyth of Drumlean: There will be additional responsibilities. I will concentrate on Scotland, which is the area that I have most knowledge of. The Scotland Office, as it was, with I guess no more than four Ministers pre-EU, managed perfectly well to conduct these matters. The argument for the Scottish Parliament was that it was necessary to have a Scottish Parliament and the resources of a Scottish Government in order to fill the democratic deficit.

There is an argument as to whether the Scottish Government have enough resources to achieve this. All I would observe, being totally non-partisan, is that since the May elections last year not a single piece of legislation has been introduced into the Scottish Parliament; when I was Secretary of State, there would be at least three or four Bills per year. The reason for that is because the only legislation that seems to be of interest to the Administration is whether they can have another referendum to try to change what was decided in the previous referendum. It is very peculiar that parties that are calling for more referenda are also the parties that do not accept the results of the referenda.

There are plenty of resources to take on the responsibilities. We have to try to turn the Scottish Government into engaging, as you rightly point out, in a whole number of detailed matters that will affect the lives of people in Scotland, albeit that they would rather have had a different result in both referenda, and that need to be addressed.

Q107 **Lord Whitty:** Can I take you back to agriculture for a minute? It is of course correct that what is not reserved is devolved. However, in relation

to agriculture, it is not just a question of co-ordination to ensure a degree of regulatory equivalence in a single market—that can probably be conducted through the Joint Ministerial Councils; it is also a question of money, in that all the devolved Administrations are much more dependent on CAP payments than England is, and the UK Government have guaranteed the continuation of those payments only until 2020. After 2020, are you assuming that the UK Government will continue to allocate on top of the Barnett formula to replace the Brussels subsidy to, in this context, the Scottish agricultural budget, or are you assuming that that will somehow be raised in competition with other outlets within Scotland itself? As you know, Scotland and Scottish farmers are more dependent on that money than are farmers in England.

Lord Forsyth of Drumlean: Indeed. In my written submission—I will not bore the Committee by going through the numbers again—I quoted research by Open Europe on exactly how much goes into Scotland and how much the net contribution is. The bottom line was that £2.5 billion is sent to Europe and only £1 billion comes back, so there ought to be room for manoeuvre to do better if the Governments of the day wish to do so.

One of the things that will need to be sorted out is whether this will be subject to Barnett consequences or whether there will have to be some kind of deal. My personal preference as a Scot is that there should be some sort of deal, because the relative sums are substantial. Nothing has changed, but back in the days when you just had a Secretary of State, we used to have to battle quite hard because the problems of Welsh and Scottish hill farmers are completely different from the problems of Lincolnshire grain farmers. You are quite right, and your knowledge of agriculture is considerably better than mine, but that is why I say that, yes, more power and flexibility will need to be given to the Scottish Parliament, but there will also have to be some joint arrangements on the funding beyond what applies with Barnett and the tax-raising powers.

Baroness Armstrong of Hill Top: So you think that your Europe figures cover agriculture?

Lord Forsyth of Drumlean: Yes, but you may have caught me out.

Baroness Armstrong of Hill Top: I would invite you to look at some of the evidence that we have had sent in.

Lord Forsyth of Drumlean: Okay. Let us not get into an argument about numbers. Even if the figures are wrong, Lord Whitty is absolutely right that there are particular problems for agriculture in Scotland. There will be a need to look at the overall resources. As he said, the Government have indicated that it will continue for five years. I would hope that there would be more of a Brexit dividend in that respect. This applies not only to Scotland: the same kind of problems for hill farming apply to the north-east of England and the more remote parts of the country. For the first time, we will be able to have an agriculture policy that is devised on the needs of the UK, and whatever the numbers are we will have more resources available for that purpose. Clear commitments

have been given in that respect and were given during the referendum campaign.

Baroness Armstrong of Hill Top: The linked issue with this is that one of the advantages you give in your paper is that we will be able to have cheaper food because we will be able to import it. If you can bring in lamb, beef and strawberries more cheaply from New Zealand, Brazil and so on, what effect do you think that will have on the Scottish lamb, beef and strawberry industries?

Lord Forsyth of Drumlean: With no disrespect to New Zealand, the difference between New Zealand lamb, Scottish lamb and Welsh lamb is in the taste and the quality, and it is always possible to sell a quality product.

Baroness Armstrong of Hill Top: It is not nearly as good as Weardale lamb, though.

Lord Forsyth of Drumlean: Well, there you are; we have competition within the UK. Clearly we do not know what the arrangements will be with the European Union. The Government believe that they will be able to get a deal where we have complete access to the single market. If that is the case, I guess the deal will probably have aspects to it that relate to levels of subsidies, protections, quotas and things of that kind. My own preference is for a free trade deal, for the reasons you have given. Why should we discriminate against former Commonwealth countries and poor developing countries in order to maintain a protectionist barrier to support inefficient farming in Europe? On the whole, I think British farming is considerably more efficient than French farming, for example.

Lord Whitty: Yes, but it is more costly than it is in many of the countries that we are hoping to have more open borders with. The comparison is not with Europe but a comparison in opening up.

Lord Forsyth of Drumlean: I was simply making the point that it is possible for consumers to have a cheaper food bill. You pay your money and you make your choice. Do you want to protect particular types of farming in order to charge people more for their household bills? There is an opportunity here. The New Zealand case is very interesting. All subsidies were taken away and it had to completely change its methods of farming. It has been very successful, although I do not think New Zealand lamb is a patch on British lamb.

The Chairman: On that note, we might turn to some of the more nuts and bolts and machinery issues, if I can put it that way.

Q108 **Baroness Suttie:** In your written answer to question 4, you said, "I do not expect there to be a need for a legislative consent motion as I expect the Great Repeal Bill to attend to legislation on a UK-wide basis". In an earlier inquiry before the referendum, Sir David Edward took a different view on this and believed that there would be a requirement to have legislative consent Motions. If there is such a legislative consent Motion

and consent is not forthcoming in the Scottish Parliament, what do you believe to be the implications of that?

Lord Forsyth of Drumlean: None whatever. We had a great debate on the latest version of the Scotland Bill post the referendum. I think it might be Clause 2 but, anyway, it sought to enshrine the Sewel convention, which we do not always mention, for obvious reasons. However, the Sewel convention was just that—a convention—and I spent many hours arguing that it should not be put into the legislation. The Government argued that it was not a requirement because it says that the Government would not normally legislate without the consent of the Scottish Parliament in respect of devolved matters. The Government argued that that meant “normally”, that it was not an issue and that it was clear what it meant. We argued at the time that it would be justiciable and end up in the courts, and, hey ho, what happened? We ended up in the Supreme Court the other day, with the Scottish Government arguing that they had the right because of this, and the court threw it out.

I wish they could think of a different name than the great repeal Bill, but the Bill that will basically put all European legislation extant into position post our leaving the European Union cannot be described as normal. If you look at the history since the Scottish Parliament was established, you will see that it is pretty unusual for the Scottish Parliament to make their own legislation. Again and again it is Westminster that will legislate on a UK basis with a legislative consent Motion. However, I do not believe that a legislative consent Motion is required in this case. I am not a lawyer and I am not from the Government; I am here to try to help you. That is my opinion. If we conceded the principle with a Government who are determined to wreck the Brexit process, which the Scottish Government are, we would get into great difficulty and be doing a disservice to the rest of the United Kingdom.

Lord Selkirk of Douglas: I declare a past interest as both a Scots advocate and an MSP. Perhaps I may ask whether there should be a role for the Supreme Court being involved in interpreting the law relating to issues that have been repatriated; and whether, post-Brexit, in your view, the Supreme Court should remain very much in the same form, with the same jurisdiction but with some added responsibilities with the repatriation of powers.

Lord Forsyth of Drumlean: I do not know the answer to that question, but I suspect you do.

Lord Selkirk of Douglas: I do not, either.

The Chairman: We note the message of agreement to continue in ignorance. We will reflect on the point. Thank you for being so frank about it.

Q109 **Baroness Browning:** Michael, perhaps I may ask you this question and link it to the written reply you have sent to it. It is whether the

Government are doing enough to take into account and reflect the interests of the devolved institutions. You have been very frank about your concerns about the position of the Scottish Government and the fact that they are focused on a new referendum rather than anything else. Once negotiations start, the UK Government will clearly have to carry with them and be absolutely clear about the high-profile needs in Scotland, Northern Ireland and Wales. Is it possible to do that while at the same time having to disclose information about those negotiations to a party that clearly wants to see them fail?

I notice in your answer to us on whether the UK Government are taking enough account of the devolved institutions that you say, "Yes, but the Scottish Government needs to stop campaigning against the results of the two referendums and engage constructively in getting the best outcome for the United Kingdom", which you have repeated this afternoon. If they do not do that, how is it possible to get the best deal for Scotland and for the negotiations to proceed without there being a constant risk of leaks and other things that might undermine them?

Lord Forsyth of Drumlean: That is the key question. All we can rely on is for there to be good will on the part of the UK Government, to continue the process and to hope that the electorate will punish the Scottish Government if they continue to behave in this way. There is already evidence that that is beginning to happen. The latest opinion poll shows that a majority of those who voted to remain are opposed to a second referendum on independence. A majority of people in Scotland do not want to have another referendum. I think it was anticipated not only by the Scottish Government but by commentators and others that somehow the Brexit vote would result in a great spike in support for independence. That has not happened. The polls in the United Kingdom show that two-thirds of the voters want us to get on with this. As the process continues and as those issues become apparent, one hopes that the Scottish Government will behave responsibly. It is certainly their duty to do so, and it is the duty of the opposition parties in the Scottish Parliament to draw attention to where Scotland's interests are not being identified.

It is a difficulty, and I know that both David Davis and the Prime Minister have tried valiantly to engage. It might seem a silly matter, but I have never seen a British Prime Minister visit a country that, if there are any flags around, does not fly the flag of the country. It was very striking when the Prime Minister went to Edinburgh that there were two Saltires and no union flag. Was that an oversight or was it a calculated snub? That kind of behaviour has to stop and people have to realise that there are major interests in Scotland that need to be considered.

The Chairman: Can I just for the record welcome Jim Wallace back to the Committee? For the avoidance of any doubt, although he may have picked it up, we are now turning to the Joint Ministerial Committee on the EU negotiations. We will come to your appraisal of that in a minute, but I think that Angela should ask her follow-up question.

Baroness Browning: In the light of what you have just said about the

Prime Minister's visit to Edinburgh, did you think that the tone of her speech to the Conservative conference in Edinburgh fired a shot across the bows? That is, if the idea of a referendum on independence is continued right up to the point when negotiations open, will her stance have to be different in dealing with Scotland?

Lord Forsyth of Drumlean: I think what the Prime Minister was saying in her party political speech at the Conservative conference in Glasgow—

Baroness Browning: Sorry, I meant Glasgow.

Lord Forsyth of Drumlean: —was, "Look, why don't you just get on with the day job, because there are big problems in Scotland in education and various other areas and we want to engage with Scotland?" I hope that advice will be taken. I supported having both the European referendum and the Scottish independence referendum, but I do not think I would vote for a referendum ever again, because they are extremely divisive. The Scottish referendum has been hugely divisive and everyone knows how Brexit has been divisive. However, we are where we are, and it is really time for people to pull together. There is certainly a willingness on the part of the Prime Minister to achieve that. There are great prizes to be had for Scotland, and I hope the Scottish Government will gradually come to see that.

Q110 **Earl of Kinnoull:** We took evidence from Mike Russell MSP when we were in Edinburgh. We got on to the subject of JMCs, and he clearly said that, with his experience of JMCs both while he had been Education Secretary and now that he is responsible for Brexit, that he felt very negative about them. Yet when we were in Cardiff I had the firm impression that the Welsh were quite positive about them. Can you give us the benefit of your experience of JMCs and say whether the structure that has developed over many years is quite helpful in trying to garner agreement among lots of different people with different views, or not? We have had evidence that is diametrically opposed to itself.

Lord Forsyth of Drumlean: Jim probably has more experience of Joint Ministerial Committees from the coalition Government. We had JMCs when I was Scottish Secretary, but we were all one party and one Government. It is much more difficult if you are dealing with different parties, which is what I guess you would have to do unless something very dramatic happened and Scotland suddenly voted Conservative en masse—something that I am not immediately anticipating, although we are getting there—whereas Jim probably has more experience of working with different political parties, which is much more difficult.

The Chairman: On that note, we might bring Jim in. Perhaps I could just comment to the Committee and to Jim, if he wants to respond, that I have just come from our consultative machinery with the devolved parliaments, and it would be fair to summarise the feelings of representatives of the National Assembly for Wales and the Scottish Parliament who discussed this with us that they both felt, at least in the context of the EU negotiations, that the JMC machinery was not working

entirely with the degree of efficiency that I think the Prime Minister and other Ministers might claim that it was. I am just recording that to see how you respond. For the avoidance of doubt, this is not a wholly Scottish issue.

Lord Wallace of Tankerness: I have experience of JMCs as both a Scottish Minister and a member of the coalition Government, and I have sat on both sides of the table. In the early days of devolution we had a JMC that consisted of First Ministers, Deputy First Ministers, the Prime Minister and the Deputy Prime Minister. One was in Edinburgh, the second was in Cardiff and the third was at No. 10, but then there were no more. I think I gave evidence to the Constitution Committee on this. Apart from Mr Rhodri Morgan, then the First Minister of Wales, who constantly had issues with the Department for Trade and Industry, they were not really getting anywhere and fell into desuetude. I think that was a mistake and that we should have put more effort into them.

There were other JMCs on different subjects. I remember one on health that brought together different Health Ministers; it was during the period of Donald Dewar's illness, and I was there with the Scottish Health Minister. At that time it was very good for sharing information about what was happening in each of the devolved Administrations and, in the case of the UK Government, in England. I found that valuable. I then sat on the Calman commission, which recommended that some new life should be breathed into JMCs. I think that has happened; the committees that have been held at Prime Minister level have in effect been JMCs.

There was another, which continued throughout and of which I was a member as both a Scottish Minister and a UK Minister: the Joint Ministerial Committee on Europe. When I was in the Scottish Government, it sometimes felt like a good clearing house for colleagues in the UK Government to sort out their interdepartmental issues on European matters, but when I was in the coalition it was far more focused on the agenda that the devolved Administrations had put forward, together with some obvious things; ahead of an EU Council summit, for example, it would play an important part. I felt that that was worth while and was getting somewhere.

Obviously I have no knowledge of the JMC on European negotiations. I note—my source for this is a Scottish Parliament report published overnight—that part of the terms of reference for the committee is to discuss each Government's requirements for the future relationship with the EU and to seek to agree a UK approach to and objectives for Article 50 negotiations. That is quite a challenge, and I do not know what progress has been made. It says "each Government's requirements", so it is as incumbent on the Scottish Government and the Welsh Administration to look at the UK Government's position as it is on the UK Government to look at their position, and I hope that is happening.

I noticed that the report called on the UK Government to respond to the Scottish Government's paper, which we have already discussed, before Article 50 was triggered. Whether that will happen or not I do not know,

but it should. It is vital that that is meaningful, not just rubberstamping and going through the motions. Post Brexit there will be a need to look again at this. To take fisheries as an example, at the moment, before the UK Government went to an EU Council there would be a meeting of the Fisheries Ministers of Scotland, Wales and Northern Ireland and Defra. The issues will be different—we will not be dealing with the common fisheries policy—but there must still be some areas where there is a common interest. To lose that bringing together of Ministers would be a step backwards.

The Chairman: That is helpful. May I ask very briefly, given that you both have ministerial experience in Scotland, whether it is at all important in conducting negotiations for Brexit that the Westminster Government have alongside representatives of or officials from the national Administrations, either to advise or to relay perspectives into the negotiating room, or should that be pretty clear to all? Do you have a view on it yet?

Lord Wallace of Tankerness: It has happened in past Council meetings. There should be no barrier to it. The rule should not be, “In no circumstances will a Scottish, Welsh or Northern Irish Minister be there”. There might well be times, and maybe it should be the rule rather than the exception that there will be times, when these Ministers and officials are present. Obviously at the end of the day there has to be a UK line, but my experience is that at some EU Council meetings when we had to thrash out some issues, particularly when I was a Justice Minister—although they were not terribly major issues—it was very useful to have a discussion before we went in.

I do not know whether any thought has been given to another point that I raised in one of our very early responses to Statements in the House after the referendum: that of involving officials from the Scottish Administration, the Welsh Administration and the Northern Ireland Administration in the Department for Exiting the European Union so that they are actually embedded within it and know what is going on. That would be a two-way thing, so that, for example, the Scottish Government would know what was going on, but equally that it would not just be a formal summit or meeting but there would be knowledge such as, “Well, hang on, that won’t work because of A, B or C”.

The Chairman: Michael, do you have a perspective on that?

Lord Forsyth of Drumlean: I can see that there may be an occasion, if you were discussing fishing or whatever, when you might want to have Scottish involvement. However, the thing about negotiations is that the negotiators need to be able to act in a way that represents the interests of the UK as a whole. I agree with Jim that it would be a good idea—I do not know the extent to which this is or is not happening—to have officials from the Scottish, Welsh and Northern Ireland offices involved at official level.

On the whole, officials do not pursue political agendas. In my time at the Scottish Office, I was amazed that in these Joint Ministerial Committees and Cabinet Committees you would have, for example, the Department of Health with vast numbers of officials and the Scotland Office with only a small number of officials, and often the Scotland Office was able to produce, in my view, far more coherent and well-argued documents than these large departments. There is talent there, but it has to be used. This goes back to Baroness Browning's point that you have to have good will and the determination to make a success of this. We do not have that at the moment, and I just hope that once this process is under way people will see that they have a duty and a responsibility to engage. If they do not, the voters will punish them.

The Chairman: Thank you. As Jim Wallace has re-joined us, I am going to ask Alison Suttie to come back on the question she asked earlier. Jim is an advocate and I think he might have a perspective that would be helpful to the Committee.

Q111 **Baroness Suttie:** I would like to start by saying for the record that I asked Mike Russell that very question about embedded staff, and if my memory is correct his reply was, "Not to the best of my knowledge". I also asked David Davis that question and he said, "Good idea, but as far as I'm aware it hasn't actually been implemented". My question involved reading Lord Forsyth's answer, which was, "I do not expect there to be a need for a legislative consent motion as I expect the Great Repeal Bill to attend to legislation a UK-wide basis". I pointed out that in an earlier evidence session Sir David Edward gave us a somewhat different reply. I asked what he believed the ramifications to be if such a consent Motion was not forthcoming.

Lord Wallace of Tankerness: My view is that it is likely that a legislative consent Motion would be required, given the terms of the Sewel convention. I do not have the actual wording before me, but the great repeal Bill—or the great re-enactment Bill, as it is probably more accurate to call it—will deal with issues that are unequivocally devolved. It will legislate with respect to issues that have been devolved, and that triggers the legislative consent Motion.

The shape of that Bill remains to be seen, but it is difficult to conceive of a Bill that did not deal with broader issues relating to the environment, fisheries and agriculture. Michael was right to suggest—we had debates about this when the relevant Section, Section 2 of the Scotland Act 2016, was going through—that the Supreme Court made clear that it is a convention; it has no legal status. As the court pointed out, and I think this is blindingly obvious, if it is not forthcoming or is refused, the consequences will be political rather than legal. In fact, they could be quite profoundly political.

Obviously this kind of legislation is *sui generis*, but the general position with regard to legislative consent Motions—when I was Advocate-General my office did quite a lot of work on this in engagement with the Scottish Government's legal people—is, to pick up the point that was being made

as I came in about good will, that good will is vital. There was a lot of coming and going to see if we could find a way for a Bill to be drafted for the UK Parliament that either did not need a legislative consent Motion or made it easier to get one. Some were easier than others, but there was quite a bit of give and take over how we could get there. I would hope that that good will would prevail.

On the other point, I do not know the answer as I do not know what is happening, but it occurs to me—I read somewhere that the Constitution Committee is reporting tomorrow on delegated legislation and the great repeal Bill—that if a whole raft of legislation has been passed by this Parliament since 1999 involving delegated legislation under Section 2(2) of the European Communities Act, I am pretty certain that legislation has also been passed by the Scottish Government under that. If there is not to be a legal vacuum, the Scottish Government must be doing this work to see what needs to be done. Whether they do it in collaboration or co-operation with the UK Government to get a pantechinon Bill that would deal with Wales and Northern Ireland as well or whether they would seek to do it themselves I really do not know. There is the question of whether they have sufficient capacity. It is pretty challenging for Whitehall, I suspect. It is certainly proving challenging for Cardiff and Belfast.

The Chairman: We have noted that.

Q112 **Baroness Armstrong of Hill Top:** We have been talking about intergovernmental relationships, but, in getting agreement across the EU, interparliamentary relationships are quite important too. What is your view of the interparliamentary relationships between Scotland and the UK Parliament, and do you think that we have the right structures or that there should be a change? That is partly in the context that we are supposed to be taking back control. What does that mean, and what does it mean in relation to the Assemblies and the Parliaments of the nations of the UK and their links to the UK Parliament?

Lord Forsyth of Drumlean: I have no strong views on that. I confess that I see our foreign affairs policy as being carried out by the UK Government. I can see that there is value in regional Assemblies and the Scottish Parliament engaging with people in Europe and elsewhere where relevant, but I think the Scottish Government's focus should be very much on making the huge change that our leaving the EU will entail. Jim did not really answer the question about what would happen—if you take the view that a legislative consent Motion is required—if the Scottish Government refused to provide that. In the great repeal Bill, all we are doing, as I understand it, is taking the existing legislation that presumably has been subject to agreement by the Scottish Parliament and putting it on to the statute book. So I do not agree with Jim on that. If we take the view that there has to be a legislative consent Motion, there is the ability to block the progress of the whole show.

Lord Wallace of Tankerness: Picking up on that point, the Supreme Court has said, and I think it is an obvious statement, that it is a political

requirement. It is a convention. The refusal of it would not block the Bill, but there would be a significant political consequence.

Baroness Armstrong of Hill Top: A backlash.

Lord Wallace of Tankerness: A backlash, yes, and only a very brave person today would say how that would pan out.

With regard to interparliamentary relations, yes, I think they need to be more. Regardless of Brexit, which has highlighted this, James Selkirk will remember, because we both served on the Calman commission, that I chaired a working group on intergovernmental and interparliamentary relations, and we thought that both were pretty poor. It was virtually zero with regard to interparliamentary relations, down to simple things like passes for MPs to go into the Scottish Parliament and for MSPs to come to Westminster. What we are dealing with here is far more important than that, but it was symptomatic. You said, Lord Chairman, that you came away from a meeting that seems to be having some engagement. That is better than anything I have heard of for a long time, and that is encouraging.

The Chairman: It is a long-standing arrangement. We have had five hours today, and I must say, although it is not my job to give evidence to the Committee, that it was a constructive exchange of views with both Scotland and Wales.

Lord Wallace of Tankerness: We have the British-Irish Parliamentary Assembly, and it seems to me that we do better there than we do among the parliaments within the UK. So, irrespective of Brexit, there is much more that we could do to engage with each other. Very often we have debates here in which the knowledge of what is happening in Scotland is absent, and likewise north of the border. I have always believed that one of the benefits of having devolution was that if one part of the UK tried something and it did not work, the other parts of the UK could learn from that and vice versa. Scotland led the way on the smoking ban and other parts of the UK followed. The more we know about what is going on in each other's parts of the country, the better, and that is particularly so with the challenge that we have with Brexit, because it is important that parliamentarians at least understand where people are coming from.

Q113 **Lord Selkirk of Douglas:** Can I ask a question in the context of the repatriation of powers? Could there be a role for the Supreme Court being involved in the interpretation of the law in relation to disputes? The background to my question is that I witnessed the supreme court in the US dealing with a large number of cases involving federal rights against states' rights. The judges dealt with those cases quickly, efficiently and decisively. Do you see any prospect of our Supreme Court being involved in these matters?

Lord Wallace of Tankerness: If it was about whether the Sewel convention should apply to a particular piece of legislation, no. As I have said, it is a convention, so I do not think that the Supreme Court would

adjudicate on whether it was something to which a legislative consent Motion should apply. It can arise, and I am surprised it has not arisen more often since 1999, with a specific piece of legislation. At the moment, if the Scottish Parliament passes legislation that the Advocate-General, the Attorney-General or the Lord Advocate thinks goes further than the bounds of the Scotland Act, a reference can be made to the Supreme Court to determine. That is with respect to specific legislation on the Scottish Parliament, but it has never happened.

The outcome has been reference to the Supreme Court where a private individual or a company has taken exception. Imperial Tobacco, for example, challenged the provisions on tobacco advertising that were passed by the Scottish Parliament, and ultimately the Supreme Court determined whether it was a devolved matter or a reserved matter. So the Supreme Court can have a role on specific uses of legislation or specific points, but I cannot see it having a general role in determining whether something required an LCM.

Lord Forsyth of Drumlean: I do not know the answer to the question, but I have just one thought, going back to the idea of Scotland somehow remaining a member of the single market. That would lead to the odd position that you would have a foreign court, the European Court, having jurisdiction in one part of the UK but not another, which would be very difficult.

The Chairman: I am anxious to get through this if we can, because of the possibility of a vote.

Q114 **Lord Green of Hurstpierpoint:** Looking at all this through the other end of the telescope, what is your sense of how the EU institutions and the member states look at the concerns and interests of the devolved nations—or, rather, the nations and the devolved Governments? Do you think they understand in reasonable depth the dynamics of the debate in Scotland, Wales and Northern Ireland? Focusing in particular on Scotland, do you think they understand enough about the real considerations?

Lord Forsyth of Drumlean: I think they are very conscious of them. I have a quote from Esteban González Pons, who leads the Spanish delegation of MPs in the European Parliament: "If Spain agrees a special deal for Scotland after Brexit, Spain has to negotiate a special position for Gibraltar. We accept that Gibraltar could be part of the single market. We are not going to accept Scotland in the single market without the rest of the UK". There are all kinds of implications and some alarm, which would affect the French, the Spanish and others. The irony is that the great model at the time of the devolution debate in which Jim and I were on different sides was the Catalonians, and I think the Catalonians are very much in the minds of the Spanish. The idea that you could have regional changes is of concern to them.

Lord Wallace of Tankerness: I am tempted to give the answer that we should just ask the Spanish, but Michael already has a quote from them. It might solve a lot of problems in one go. If the Spanish said, "Actually,

Scotland's not going to become part of the single market on its own", that would probably put an end to it. There is probably a high level of awareness, no doubt varying from country to country. In peace time rather than in Brexit-negotiation time, as a Scottish Minister I went to meet the Commissioners and they accepted that there was a Scottish dimension. I was always very careful that I did not say anything contrary to the UK Government's position. I am not sure that is still the case, but we were conscious then that that was the proper thing to do. Equally, as a Justice Minister for Scotland, when I met the Commissioners they were aware that there was a distinctive Scottish jurisdiction and legal system. There is a level of awareness, which is healthy. I wonder sometimes how aware we are of the subnational arrangements in some of our fellow member states.

The Chairman: If we have all concluded, I thank you both on behalf of the Committee. You have given us an invaluable and very salty insight into your views and perspectives. Obviously there is an element of politics in this, but it is important that all parties, those close to it and those with ministerial experience, have been able to take the time to share it with us. We are very grateful. Please keep in touch with us if you have any further thoughts or material to provide.

Lord Wallace of Tankerness: If anything specific arose while I was away, I will happily provide a note.

The Chairman: We will fill you in if necessary, but your colleague batted on his own very successfully. Thank you both.