

Scottish Affairs Committee

Oral evidence: [The Work of the Scotland Office](#), HC 376

Tuesday, 24 October 2017

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Christine Jardine; Gerard Killen; John Lamont; Paul Masterton; Danielle Rowley; Tommy Sheppard; Ross Thomson.

Questions 1 - 74

Witnesses

I: Rt Hon David Mundell MP, Secretary of State for Scotland, Lord Duncan of Springbank, Under-Secretary of State for Scotland, and Lord Keen of Elie QC, Advocate General for Scotland.



Examination of witnesses

Witnesses: Rt Hon David Mundell MP, Lord Duncan of Springbank and Lord Keen of Elie QC.

Q1 **Chair:** Secretary of State, welcome to the Scottish Affairs Committee. I am sure from where you are sitting it looks remarkably different from the last time that you appeared, but you are most welcome and we are glad to see you in the first session of the new Scottish Affairs Committee.

I understand that you have to leave at 3.25 pm, is that correct?

David Mundell: I do, and I do want to thank you, Chairman, for accommodating my logistical requirements.

Chair: Well, anything we can do to assist you, Secretary of State, you know that.

David Mundell: Thank you. We will note that, but thank you for that. I also understand that my colleagues may have some House of Lords votes this afternoon, which might interrupt proceedings, but I am sure we will manage that.

Chair: Democracy is a strange beast in the House of Commons.

David Mundell: It is indeed.

Q2 **Chair:** We will look out for the bells. Perhaps you could introduce your ministerial team. I know that you have something by way an opening statement.

David Mundell: Yes.

Chair: In that opening statement, perhaps you could just detail to this Committee about where we are, particularly around the issues with the Repeal Bill. What progress do you see as being made in the course of the past few weeks and maybe identify to us what some of the sticking points might be and what resolution we might be able to secure in order to move forward.

David Mundell: Thank you, Chairman. As you indicate, it is quite a different Committee to the one that I last appeared before. However, I had the pleasure of serving on the equivalent Committee many years ago for five years.

Chair: You did, indeed. That was a sentence.

David Mundell: So I value very much the work of this Committee. I should also acknowledge the personnel changes that we have had in the Scotland Office, in that I have been joined by Lord Duncan of Springbank as the Parliamentary Under-Secretary of State for Scotland, replacing Lord Dunlop of Helensburgh. One thing that hasn't changed is that the Advocate General remains Lord Keen of Elie and, of course, the office of



HOUSE OF COMMONS

the Advocate General is a participant to the annual report, hence the presence of Lord Keen.

I should also acknowledge the change in director at the Scotland Office. Francesca Osowska, who was director, has left to go off and to be—

Q3 **Chair:** Just on that, the best wishes of this Committee to Francesca and her new career and we wish her all the best for the future.

David Mundell: Indeed. Well, that is what I was about to come on to because she will be chief executive of Scottish Natural Heritage and I am sure certainly members of the Committee may have some engagement with her in that regard.

Gillian McGregor is the new director of the Scotland Office and Gillian, I think, will make herself known to the Committee. We welcome Gillian from the Home Office where she was effectively the head of the Home Office in Scotland and has a very extensive knowledge and understanding both of Whitehall and of Scotland and extensive working with the Scottish Government. I very much welcome the opportunity to have her heading up the Scotland Office.

As you alluded to, Chairman, much of the focus of the work of the Scotland Office since our return after the general election, and indeed in the period immediately before that, has been on the issue of Brexit. I do not think anyone would acknowledge that there aren't significant challenges. When we entered the EU there was no devolution settlement. When we voted on the various Acts of Parliament that have constituted and enhanced the powers of the Scottish Parliament, it was not contemplated that we would be leaving the EU. So, clearly, that has raised significant issues.

I have sought in both the period before the election and subsequently to focus the Scotland Office primarily, although not exclusively, on ensuring that we worked across Whitehall, worked with the Scottish Government to achieve the best possible deal for Scotland and, indeed, the whole of the United Kingdom. I am sure that we will come on to specific elements of that.

The Government have clearly indicated that we are bringing forward the EU (Withdrawal) Bill in order to facilitate our exit and set out the parameters for that. That has been the subject of, I would say, extensive discussions between ourselves and the Scottish Government. I acknowledge there was not significant progress prior to the general election, but subsequent to the general election I believe that we have made significant progress in terms of our discussions on how, for example, powers and responsibilities currently exercised in Brussels would be returned to the United Kingdom and on to Scotland. We have discussed in both bilateral meetings and the reconvened Joint Ministerial Council on European Negotiations how the Scottish Government can play a part in—and indeed the Scottish Parliament—the discussion process as



we move ahead with negotiations. I think we are currently in a positive place in regard to that dialogue.

At the moment there is an exercise going ahead, which is being referred to as a deep dive. It is not a nautical term, it is a term that the officials have come up with in terms of examining particular areas in detail as to how those areas would be dealt with in a post-Brexit environment in Scotland and the United Kingdom. Once that exercise is complete, then the view is to press ahead as expeditiously as possible, and obviously I am very keen that this is as expeditious as possible in terms of determining which of the 111 responsibilities, which you will be aware of, would go directly to the Scottish Parliament and which will be the subject of discussion for a UK-wide framework.

At the moment that is my focus in terms of Brexit, getting those arrangements agreed, because I think that once they are agreed it will give a greater clarity and context to the discussions in Parliament for the EU (Withdrawal) Bill.

Of course, there are a whole range of other things going on. There has been a Trade White Paper, a Customs White Paper, a number of other specific initiatives, all of which impact on Scotland and all of which we have sought, first, to work with the Scottish Government and, secondly—obviously from my perspective—to ensure a good deal for Scotland.

Q4 Chair: I am grateful. Just to try to summarise where we are with this, we are making progress on the powers and responsibilities and we have something called “the deep dive”, which will try to propose and suggest all sorts of post-Brexit scenarios. What do you still see as the difficulties and sticking points in all of this? We had Michael Russell here, for example, in front of this Committee, who still had serious concerns about all of clause 11. What do you see are the sticking points to making the progress that is required in order to get legislative consent for this?

David Mundell: What we have indicated is that we will look at all amendments and proposals that are brought forward. I can tell you today, Chairman, that the exciting event called an amendments forum is going to take place over the next couple of days involving officials from the UK Government and the Scottish Government to work through the various amendments that have been brought forward, not just in relation to clause 11 but in relation to other parts of the Bill. We have been quite clear that would look at all amendments seriously, in good faith, that they were brought forward not to wreck the Bill but brought forward to make the Bill better, more in line of achieving its objectives, and that is what we are doing. There is, over the next few days, this very detailed discussion between officials of the UK Government and Scottish Government about the amendments.

Q5 Chair: This amendments forum—it is the first time I think I have heard of it; I do not know if any other members of the Committee are familiar with this new innovation, development—is this a bilateral between the Scottish



Government—

David Mundell: This is a bilateral. As you will be aware, the Scottish and Welsh Governments announced that they would like to see amendments brought forward to the Bill, and I think some of your colleagues have facilitated those amendments being brought forward. But I think both the First Minister of Wales and the First Minister of Scotland are clear that these amendments were the proposals of the Scottish and Welsh Governments. As a UK Government, we are discussing those amendments with the respective Governments to understand fully what is sought to be achieved as in the case of the discussion of all amendments. It may be that some amendments can be accepted with a little bit of modification; some amendments ultimately we may decide that we cannot agree on. Obviously, it is ultimately for this House to determine whether amendments are successful in relation to the Bill.

What I am indicating is that there is this detailed dialogue ongoing about the amendments. We did not just say, "Here are amendments submitted by Opposition MPs and we are not interested. Here are amendments from the Welsh Government and Scottish Government." We have sat down at official level, or are about to, and gone through these amendments in detail.

Q6 **Chair:** Thank you for that. We are looking forward, as I am sure colleagues around the table are, to participating in this amendments forum, which—

David Mundell: I think it is at official level. The amendments forum in this House will be the Committee stage of the Bill, I would suggest.

Q7 **Chair:** I see, which we are all looking forward to seeing on the Floor of the House as soon as possible. You said that there would be significant new powers coming back to the Scottish Parliament. I think you characterise it as a power bonanza.

David Mundell: Yes.

Chair: Do you still stand by that view that Parliament is—

David Mundell: I stand by that view. If you have seen the list of 111 areas of responsibility—which is both the UK Government and Scottish Government—I think all objective parties regard as the areas of responsibility that will return after we leave the EU, there are very substantial areas that are covered in that. What I am not going to do is to pre-empt the good discussion that is now ongoing about where each of those responsibilities best lie. In our dialogue with the Scottish Government, obviously there is a separate dialogue with the Welsh Assembly because the powers do not exactly match. I think there are 64 powers in relation to the Welsh Assembly that we can have a productive dialogue.



HOUSE OF COMMONS

I think what will happen in that dialogue is that—and I am hoping for this and I am confident of it—there will be areas where we all agree that these powers should come directly to the Scottish Parliament. There are areas where we will all agree that there should be a framework and the Scottish Government have indicated publicly that they identify that there are areas where there should be UK frameworks and then there will be a number of areas where we will have a discussion.

Q8 Chair: Can you just give us a flavour of the powers that you are thinking about that might be devolved back to the Scottish Parliament? Maybe at the same time you could give us some kind of indication of the timescale when the Scottish Parliament expect to see these powers being given over and repatriated.

David Mundell: If I could take the latter question first, we want in that regard to work with the Scottish Government in relation to the return of powers. That is the approach that we have taken in relation to both Scotland Acts. One thing you may or may not be aware of is that I convened last week a cross-party meeting involving representatives from all the political parties represented here in the House of Commons from Scotland. That was one of the issues about which we had extensive discussion with Shadow Scottish Secretary Lesley Laird, being keen to ensure that powers returned in a way that is agreed and is thought through. That is the way we want to work, as we have worked on other powers.

I am not sure whether the Committee has the 111 list, because I am very happy to circulate that. That sets out what the various powers and responsibilities are. I am not today going to pre-empt the discussions now that we are in those discussions, in what I regard as a constructive way, as to what is and is not coming back, but I am confident that my previous statements will be vindicated.

Chair: I am grateful, thank you for that.

Q9 John Lamont: I am going to come back to the framework position shortly, but clearly there is a big opportunity on the horizon for the Scotland Office with the prospect of being involved in transferring more powers to the Scottish Parliament. I think this is a welcome statement and is one that I hope the Scotland Office is embracing. What assessment has been made of the impact of Brexit on the operation of the Scotland Office?

David Mundell: Obviously, we have had to modify the operations of the Scotland Office in terms of the allocation of resource and personnel to ensure that we can focus effectively on the issues that are arising. Of course, we are very much assisted by Lord Keen and the office of the Advocate General in regard to many of the technical aspects. Not just in the Scotland Office but, indeed, Richard advises across Government on Scottish legal aspects.



HOUSE OF COMMONS

I am determined that we ensure, through the Scotland Office, that there is a focus on issues that are relevant to Scotland. I am very pleased that within the Scottish Government working arrangements Michael Russell will effectively be a conduit for all issues, and I think that makes it very straightforward in some aspects in terms of making sure that the Scottish Government, too, has visibility of all the issues and matters that we need to.

Q10 John Lamont: In terms of the 111 areas of the law that the Scottish Government are alleging are going to be grabbed by the Westminster Parliament, clearly there is a difference of opinion. Can you perhaps expand why you think there is this difference of opinion and why the Scottish Government are taking the approach that they are, given that the UK Government, and you particularly, have been very clear that it is an opportunity to enhance the powers of the Scottish Parliament?

David Mundell: Obviously, I am disappointed by the repeated power grab suggestion, but I am realistic now in that we have to deliver and when we have delivered people will see that there is no power grab. These are transitional arrangements for a start, they are not arrangements that can be a series of powers back from Brussels to Westminster on any permanent or even semi-permanent basis. It is a means of having an orderly transfer back to the UK and Scotland, as the case may be, of these powers. I am disappointed to always be hearing about the power grab because there is no power grab. Indeed, when those who use that expression are questioned they cannot identify any powers that are being grabbed. Powers will either rest in the Scottish Parliament or they will be the subject of a UK framework of which the Scottish Government are a party. That is what will happen.

Chair: We have two supplementaries from Tommy Sheppard and Ross Thomson now.

Q11 Tommy Sheppard: I wonder if I could just pursue this a little further. If I understand the Government's position, it is that clause 11 is a mechanism for parking the powers for a transitional period while it is decided which can be devolved fully to Holyrood and which need to be devolved within some sort of common arrangement framework. Would that be a fair summation? You have used the phrase "transitional period".

David Mundell: I would not use the word "parking" because what I would like to see, Mr Sheppard, is that it be agreed in very short order which powers fall into which categories so that at the point that we left the EU, for example, if that had been what had been agreed, a range of powers could be transferred at that point. But there would be no extensive parking of powers.

Q12 Tommy Sheppard: Drop off, shall we say?

David Mundell: Drop off.

Q13 Tommy Sheppard: The difficulty, though, that I and others have is that



HOUSE OF COMMONS

that is not actually what clause 11 says. Okay, clause 11 and the other provisions of the Bill do not provide for what happens after the powers come to Westminster. It does not suggest how these powers would be transferred to Holyrood or, indeed, to Cardiff. I think I agree with you when you say that within the 111 powers obviously some of them are more in need of common frameworks than others. There must be some of those 111 areas that are an awful lot less cumbersome than running the NHS, for example, and you could just go with straight away.

Do you not think that 17 months on from the referendum we should now be in a position of deciding and categorising these powers to say, "These are the ones that should be devolved straight away, these are the ones that definitely require some sort of UK statutory framework, and here are some areas that we may need to explore more"? If a Government Minister was able to spell that out, then many of us might get some relief for our scepticism as to the intentions of clause 11. I take in good faith your statements but there are elements within your party, indeed probably elements within Her Majesty's Opposition as well, who are not as content with the devolution settlement as you are and would like to take this as an opportunity to roll it back.

David Mundell: Our objectives are the same. That is my objective and as I conceded in my opening remarks—I do not think it is productive to get into a tit for tat as to who did what, said what, you know, why aren't we in the position that we are now sooner. I would have much preferred that we were. I want us now to proceed as quickly as we possibly can through this process. I think there are a lot of indications that that will be possible. But that is what I want to be in a position to be able to deliver for you, to be able to say, "These are the areas that we are all agreed should be the responsibility of the Scottish Parliament. These are the areas we are all agreed there should be UK frameworks. Yes, we are in the dialogue about these other areas".

Q14 Tommy Sheppard: What is the role of your Department in making that determination as to which should be devolved straight away and which would require to be within a common framework?

David Mundell: Our role is to work with other Whitehall Departments that have a degree of interest within the areas of responsibility. But as I have indicated before, I am coming from a presumption of devolution position, so my position is to persuade others that matters should be devolved unless there is a good reason, the reasons we have set out previously in terms of making sure that the UK's internal market functions, that the practical arrangements as we have talked about before, such as transport of livestock and all these things, can happen. But I am just working on a presumption of devolution and that is my message into Whitehall.

Q15 Tommy Sheppard: The second Committee is coming up next month, we hope. Do you think perhaps by the time we get towards Final Reading that we might be able to see a schedule attached to the Bill that says



which powers are going to be devolved on exit day and which are not?

David Mundell: There are debates that in some way propose that schedules are appended. I do not think that it would be the Government's position to have a schedule, but I think it would be the Government's position to want to set out as clearly as was possible—I would imagine the Scottish Government's position—where the position was on each of these 111 areas.

Q16 **Tommy Sheppard:** When will the Government arrive at a view on that?

David Mundell: We are working through what I described to the Chairman as this deep dive, and by that it is a very, very detailed look at all the regulations within a particular area and how when we got to the next stage frameworks might operate. I think you, Chairman, alluded to the fact some frameworks will be very detailed, some frameworks might be light touch; everybody might agree that there was a need for a UK framework, but they might feel that it was more light touch than very detailed.

This is one thing that we absolutely accept as the UK Government. What both the Scottish Government and the Welsh Government are very keen to ensure is also managed as part of this process is what they call the rule book, the rule book in terms of how these frameworks will be developed and how they would go forward in the future. Because we all know that a framework that we might agree on something is not going to be indefinite in general terms because other events are likely to happen. As well as identifying the subjects of the frameworks, we want to identify and agree a rule book, if we can put it that way, for how frameworks will be agreed and taken forward.

Q17 **Ross Thomson:** I would like to come back to this issue of the dialogue and discussions between the UK Government and the Scottish Government. When we took evidence from Michael Russell, Scotland's Brexit Minister, I asked him about the situation where Defra had held around about 20 or so meetings at an official level, but due to the constitutional and physical position of Scottish Ministers they were unable to commit to, for example, UK-wide frameworks and where powers should lie. I have a transcript here of the Committee meeting, and Mr Russell in response cited Lord Duncan, saying that he made a similar comment and that the case of real progress being made on those issues was simply not true. So I would like to ask Lord Duncan, as he is here, what is your response to that and where do you think the issues have been in relation to the discussions between the UK and Scottish officials?

Lord Duncan of Springbank: There have been a number of meetings with Defra. The Scottish Government officials are under instruction not to engage at a detailed level on that. It makes it a bit more difficult to see progress. The Northern Irish officials have taken part. The Welsh have as well. It makes it more difficult then to establish the positions at an official level before we get into the politics of it. I am hoping progress will be



HOUSE OF COMMONS

made at the official level, but it will require there to be a change of approach.

Q18 **Ross Thomson:** Again, looking at the transcript and asking that same question of Mr Russell, he was quite clear that that was not the case. In your view, has Mr Russell misled this Committee then in the evidence he has given?

Lord Duncan of Springbank: I would have to look at what he said. From my discussions at the Defra meeting where this was discussed, in the room were Ministers from Scotland, Ministers for Wales and officials from Northern Ireland and it was an issue highlighted by the Secretary of State for Defra.

Q19 **Christine Jardine:** I will stick with the frameworks for a moment. One of the issues that perhaps raised the concerns Mr Sheppard was talking about was that the Government had stated that the approach taken by the Bill would ensure that powers repatriated to the UK would not be used in any way that undermines the UK single market. In a previous meeting we were told by various academics who have different views on a single market, whether that existed or not, but one was that product standards would be important at the moment because there was a European framework for product standards and that maintaining product standards across the UK single market would be important. Do you think this will have any impact on what powers you are able to devolve or are to be devolved to Scotland once they are repatriated or do you think that the single market will not in any way impede that?

David Mundell: I think there are two issues here. When a power is devolved it is entirely a matter for the Scottish Parliament and the Scottish Government to determine how that power is used. You and I may have views on how certain powers have been used but it is not our decision, it is not our call. If, in relation to these 111 areas, power is devolved, fully devolved, then it will be for the Scottish Parliament, Scottish Government, to determine what happens in relation to that area.

What we are seeing is that in determining the powers and responsibilities that are fully devolved and those that are subject to UK frameworks, then the operation of the UK internal market is a significant factor. I think the area you identify as product standards is clearly one where we would want to have a common UK framework on product standards. Both from a consumer's point of view but also from businesses in Scotland, we would not want them to have to have a different set of product standards to operate in Scotland as in the rest of the UK. I would see that as an area where we would want to seek a UK framework.

Q20 **Chair:** I am interested in this UK single market because it is a feature and conversation point that seems to have emerged when the UK seems to be leaving the European single one. Are we getting this confused with the state? Surely every nation is a single market because it is a state and, therefore, a feature of a state is to have a market that is singular.



HOUSE OF COMMONS

How have we managed to get to the situation where we are starting to have conversations about a single market? I know it might be a philosophical question, but it seems to me quite intriguing. I know that there have been a number of comments made about this in the course of the past week, but what is your view of this, Secretary of State?

David Mundell: My view is that Scotland is best placed within the United Kingdom because that is the arrangement that best suits businesses in Scotland because such a significant proportion of Scotland's output goes to the rest of the United Kingdom. We want to ensure that within the United Kingdom we do not have a marketplace where there are different rules applying to different parts of the United Kingdom and interfering with that ability to trade across the United Kingdom.

Q21 **Chair:** Is devolution not just a feature of divergences in what you might call the state and the single market?

David Mundell: You have just heard me say that where powers are devolved it is entirely a matter for the devolved institutions as to how they use those powers. But I do not think that it is desirable where powers are currently held at the European level to ensure that there is a common approach that as soon as we return those powers to the United Kingdom we say, "Oh no, we don't need a common approach any more".

Q22 **Chair:** So let's take it from that, then, it is possible, therefore, for a devolved Administration to disrupt a single market within a unitary state. That is your concern, is it, that this might happen?

David Mundell: My concern is to ensure that businesses in Scotland and in the rest of the United Kingdom have the opportunity to trade across the United Kingdom on—

Q23 **Chair:** Why wouldn't they have that?

David Mundell: —a level playing field basis that they currently do in relation to these particular responsibilities currently governed by the EU on that very basis.

Q24 **Chair:** Can I just ask about a feature of the EU (Withdrawal) Bill, which I know the Procedure Committee is looking at, and this is around the area of delegated powers? The Scottish Government have the ability to legislate on correcting some of the EU powers, but it does not have the same powers and responsibilities that the UK Government have. Why is that the case and is it always the case that the UK Government will always consult the Administrations on corrections made to direct EU law relating to otherwise devolved areas of competence? Should the requirement to consult be included in the face of the Bill?

David Mundell: I am sure the latter point is one that will be debated and discussed as the Bill progresses through Parliament. I think the point that you make, though, in relation to consultation is a fair one and I would answer that yes.



Chair: I am grateful.

- Q25 **Ross Thomson:** Just on that point of divergence, in Committee evidence Mr Russell on this very issue said there should be nothing to be afraid of in relation to divergence and that was part of devolution. Could you articulate to the Committee where you think divergence could be damaging to Scottish business and which areas you think that would be in if there was to be a difference between what is happening in Scotland and the rest of the United Kingdom when it comes to, for example, trading or seeking new trade relationships?

David Mundell: I go back to the first point I made. Obviously, if a matter is devolved then it is up to the Scottish Parliament, indeed the Welsh Assembly and Northern Ireland Executive if it is reconvened, to determine what should happen in that area. Hopefully, in so doing, it will take into account the economic consequences of its actions for businesses in its jurisdiction.

In relation to the 111 policy areas, these are areas that have been identified in terms of the EU and the operation of the single market within the EU where in order to maximise the capacity for business to take place there should be a common approach. That is why, in relation to some of these areas, it is clear we need to have a similar common approach to continue within the UK. I often cite, just in an agricultural practical issue, that of transportation of livestock. In my own constituency, the principal livestock market is a mile south of the border in England. It would obviously be extremely disruptive to the agricultural industry if you had different rules for animal transportation that applied there. Christine Jardine mentioned product specifications and that would obviously be extremely disruptive if there were separate product specifications in Scotland as compared to the rest of the United Kingdom.

- Q26 **Ross Thomson:** If we had divergence on issues such as animal or plant health, for example, how do you think that would impact us trying to secure new trade deals, for example, as a UK with other parts of the world? I know Liam Fox is doing that work right now. Is there a risk that that could be threatened if we have a difference between Scotland and England on these standards?

David Mundell: We have a Trade White Paper, a Trade Bill coming forward. I am hoping that we will be able to work very constructively with the Scottish Government in relation to our combined efforts to pursue trade arrangements. I think Dr Fox was meeting with Keith Brown later this week, or certainly was scheduled to, in order to discuss how we would take those issues forward. If we can have a common approach in relation to trade, that is to our mutual advantage and that is what we should be seeking to do. We certainly should not be seeking to put in place any unnecessary impediments to trade on behalf of the United Kingdom or, indeed, Scotland.

- Q27 **Deidre Brock:** Just with regard to Mr Thomson's first point, I am looking



at the transcript myself here and just to quote the Minister, he said, "The reality, however, is what we will not do. We will not enter into discussions about frameworks until we have an agreement on what those frameworks should be and how those frameworks should operate. If there was a serious attempt by the UK Government to try to ensure that these agreements are reached at official level and not at ministerial level, then we will say that is not feasible or possible." Aren't the UK Government just trying to bypass ministerial agreement through doing this?

David Mundell: Absolutely not. Absolutely not.

Deidre Brock: I am referring to Mr Thomson's suggestion.

David Mundell: There is not a shred of evidence to suggest that we are seeking to bypass—

Deidre Brock: I would suggest that that was what Mr Thomson—

David Mundell: —ministerial agreement or indeed, importantly, the agreement of the Scottish Parliament, because sometimes I do find the Scottish Government Ministers forget that the Scottish Parliament is separate from the Scottish Government. We want to engage fully with the Scottish Government and fully with the Scottish Parliament. Obviously, I will be making a number of appearances with colleagues over the next few weeks—

Q28 **Deidre Brock:** Okay, so the suggestion that officials should be making those decisions is incorrect?

David Mundell: Absolutely. There is no suggestion, but what we do need, and both sides accept, is that officials need to work together in order to progress matters.

Deidre Brock: I do not think anyone is suggesting otherwise.

David Mundell: There was no—

Chair: Order. I think we will leave that. What is in the account is in the account and people can refer to it in their own time. We will move on from here.

Q29 **Paul Masterton:** Afternoon, gentlemen. I am interested to know a little bit more about this council of amendment discussions that is going on. That takes care of a couple of my questions, but are you hoping then that those discussions will have taken place and been completed by the devolution day, as it were, in Committee so that we have an idea of what—

David Mundell: I would hope that when we reach the Committee stage of the Bill, which looks at clauses where amendments have been proposed by the Scottish and Welsh Governments, the UK Government are able to set out their clear position in relation to those amendments. It might be that that position is that amendments would be accepted; it might be it would be suggested that amendments with modification could



be accepted. It might be to say no, we have looked at the amendment and we do not agree with it, but if it is the latter it will be on the basis of having evaluated the situation.

- Q30 **Paul Masterton:** Obviously, linked to the question of amendments is the legislative consent motion because the Scottish Government have effectively said that they won't grant it on the Bill as drafted but these amendments would be the sort of things they are looking for. Aside, I guess, from just looking at these amendments, what work is going on in the Scotland Office to try to break through that discussion to get to a position where the Scottish Government, Scottish Parliament, can vote in favour of the legislative consent motion?

David Mundell: Of course, as I said before, or alluded to before, the legislative consent motion is a matter for the Scottish Parliament. It will be the Scottish Parliament that determines whether a legislative consent motion is granted. I am optimistic that a legislative consent motion will be granted because I have been around the course before in relation to the 2012 Scotland Act where legislative consent was not going to be given, and indeed the 2016 Act where the same suggestions were made. But it is about working in detail with the Scottish Government and, indeed, the Scottish Parliament. Our old friend Mr Bruce Crawford is convening the Finance and Constitution Committee and they are doing a detailed report. This Government, and indeed this Parliament, pays heed to the reports of the Committee, so we want to work with the Committee, we want to work with the Scottish Government. But I come back to a point Mr Sheppard made, and it is a very fair point, that if we can resolve the issues in relation to the frameworks that will give people a much more informed basis on which to make a decision about whether in the Scottish Parliament they grant legislative consent and whether in this Parliament they support clause 11.

- Q31 **Paul Masterton:** Just one final question linking back into the frameworks. To some extent, what those frameworks might look like and how they might operate will be dependent on how any transitional—or whatever you want to call it—and future post-Brexit agreement looks like with the EU in terms of areas where they may want a guarantee or certainty of conformity across the UK.

David Mundell: Yes is the answer to that question.

- Q32 **Chair:** Could I just take advantage of having the good lord, Lord Keen, with us this afternoon? I was fascinated with some of the remarks Lord Keen gave in *Miller v UK Government* in the Supreme Court. I think you described the Sewel Convention as something that was merely a self-denying ordinance and it was political in nature as opposed to statutory. Obviously, you stand by these views.

The Secretary of State and myself went through all the Scotland Acts and we believed—or I certainly believed—when we were creating this legislation that it was a statute, it was real, it was meaningful and it was



HOUSE OF COMMONS

permanent. Were we just deluding ourselves when we were voting on these Scotland Acts? Three I have been in and I think the Secretary of State equally has been in three.

Lord Keen of Elie: I do not believe anyone was deluding themselves. I don't recall using the word "merely". I think the point I made was that it is a political convention and clearly it is a political convention to which we would seek to adhere. It is expressed in statutory form. It is not unique in that regard. There are other instances in which such political conventions have been expressed in statutory form in order to underline, first of all, their permanence and, secondly, their importance.

- Q33 **Chair:** But it is not permanent because we do not know whether Westminster is unhappy with this. Again, there was an amendment in the last Scotland Bill—it is a clause in the Scotland Bill—which says, "The Scottish Parliament should be permanent". Again, I believed that I was making the Scottish Parliament permanent, but there seemed to be an assertion of sovereignty in the remarks that you made in the Supreme Court, which I found quite baffling and quite disturbing, believing that we had passed all this legislation just to have it thrown away if Westminster decides to assert its sovereignty.

Lord Keen of Elie: I do not think it is a question of throwing anything away. Clearly, the Westminster Parliament is sovereign in the respect that if it decides to change the law it has the power to change the law. The example sometimes given is the Act of Westminster from 1935—it might be 1938, I apologise if I have the date wrong—in which the Westminster Parliament said it would not legislate for the dominions, including the dominion of Canada. Now, of course, the Westminster Parliament could repeal the Act of Westminster but let's be realistic, that is never going to happen and this Parliament would never attempt to enact legislation for Canada.

In the same way, when the Scotland Act said that the Scottish Parliament was permanent, it was clear in its terms. When we come on to the Sewel Convention, it is a part of the statutory form, it is expressed in statutory form, but it is, nevertheless, a political convention. I see no conflict there. I do not see any inconsistency there at all.

- Q34 **Chair:** I took your contribution to the Supreme Court ruling as a sort of softening-up exercise. If we got to the stage where a legislative consent motion was withheld at the Scottish Parliament, Westminster would then assert its sovereignty and would just legislate anyway. That is what I took from your remarks. Would I be wrong in drawing that conclusion?

Lord Keen of Elie: You would not necessarily be wrong in drawing that conclusion, but before I made any submission in the case of Miller, I would remind you of what I said during the passage of the Scotland Bill that became the Scotland Act 2016, then incorporated by way of amendment to the Scotland Act 1998. I made exactly the same point



HOUSE OF COMMONS

during the passage of that Bill in the House of Lords as I made in the case of Miller.

- Q35 **Chair:** If the Scottish Parliament did, for whatever reason, decide to withhold a legislative consent motion, the Westminster Parliament could simply legislate anyway?

Lord Keen of Elie: It is not a case of simply. The legislation is quite clear. We would not normally see Westminster legislate in a devolved area without the consent of the Scottish Parliament. As to the way in which that consent is given, the legislative consent motion is a procedural instrument of the Scottish Government, the Scottish Parliament. It is not a Westminster instrument. It is a question of whether or not we would proceed without the consent of the Scottish Parliament, and we are quite clear in the terms of the Scotland Act we would not normally do so. But I think some content has to be given to the word “normally” in that context and that is why it is seen—and was seen, if I may say so, by the Supreme Court; I believe all 11 judges concurred on the view—as essentially a political convention. Of course, it is nonetheless important and no one would take away from that.

David Mundell: It does surprise me that you would express the view you do, Mr Wishart, because those provisions of the Scotland Bill were debated extensively in the House of Lords around the very issues that were set out in the court case. However, let’s just be absolutely clear on the record. The Government’s position is to seek a legislative consent motion from the Scottish Parliament.

Chair: With that we can all be relieved. Thank you.

- Q36 **Christine Jardine:** Secretary of State, the UK Government are responsible for negotiating the UK’s departure from and future relationship with the EU. As Scotland’s representative within the UK Government, could you explain to us how you have made sure Scotland’s interests have informed the UK negotiating position?

David Mundell: As a starting point, I am a member of the UK Cabinet, I am a member of many of the Cabinet Committees that work around the Brexit process, and we are in a constant, I would say, process within Whitehall to ensure that in all the ongoing processes, ongoing documentations, White Papers, that we are ensuring not just that Scotland’s interests, as I would see them, but the Scottish Government’s interests are reflected and that we can have that engagement.

As I have been very, very clear, decisions are for Ministers. It is important that officials at all levels are engaged together and I want to work continually to achieve that. That is the basis on which I take those responsibilities forward.

- Q37 **Christine Jardine:** Could you perhaps point us to an area where there has been a difference in stance or a move in negotiating position once Scotland’s interests were taken into account?



HOUSE OF COMMONS

David Mundell: We are at the stage, obviously, at the moment where we are negotiating, as the Prime Minister and Mr Davis have made numerous statements about, our actual departure and that is the basis. The nature of those discussions have been set out in the various statements that we have seen to date.

The interests of the whole of the United Kingdom are taken into account in those arrangements and we feed into that process. I think clearly as we go into the next stage, which I hope can be achieved certainly after the December council, that is the point that will be much more illustrative of specific Scottish requirements that have to go into that process.

Q38 **Christine Jardine:** There was, Secretary of State, a report from the London School of Economics this week, which said that Edinburgh, Glasgow and Aberdeen could each lose billions of pounds in economic output in the event that the UK Government walked away from the EU without a deal. Have the Government made their own assessment of the impact of Brexit on Scotland and, if so, would you be prepared to share it with us?

David Mundell: I notice, if I may say, that the Liberal Democrats have a little bit of a hand in the dissemination of the figures that were in the LSE report, which I don't recognise. Again, just to be clear for the record, the Government are not seeking to achieve a position of no deal. What the Government are doing is taking the responsible step to prepare for the fact that there might not be a deal. I think that is entirely the responsible thing to do. At the JMCEN that we held recently, it was agreed that both Governments have done a degree of analysis in relation to Brexit impact and that would be shared between Governments, and that is the position.

Q39 **Christine Jardine:** It will be shared between Governments?

David Mundell: It will.

Q40 **Christine Jardine:** One of the other reasons I ask is that this week—and the Liberal Democrats had no hand in this, I promise—a new campaign has been launched by the Musicians Union warning that Brexit could be disastrous—I am particularly concerned about the Edinburgh Festival and the impact on the city but also Celtic Connections and other festivals around the UK—through the need for visas for musicians to travel, licensing. To what extent has this been taken into account, the possible cultural impact on Scotland of a departure from Brexit?

David Mundell: It is taken very seriously and the positive impact of the Edinburgh Festival is something that is taken very seriously, which is why the Prime Minister held a reception at 10 Downing Street to mark the 70th anniversary of the Edinburgh Festival a couple of weeks ago.

At the moment there is a view that festivals, not just international festivals, have benefited from a weaker pound and there has been very high attendances at certainly the Edinburgh Festival this year. I have engaged myself extensively, Lord Duncan is engaged, with the cultural



HOUSE OF COMMONS

community and in relation to many cultural issues my point is we are leaving the EU, we are not leaving Europe. We want to remain engaged in many cross-Europe cultural activities. We want to ensure that the very best in the world can come to our events, not just in Edinburgh but across the UK, and that is what we will be working to achieve.

- Q41 **Chair:** Can I just turn to some of the financial issues? I do not know if the LSE report this morning we saw in *The Herald* was anything or not to do with the Liberal Democrats, but it is devastating figures, isn't it? The LSE are talking about a £30 billion hit for Scotland, with cities that obviously affect everybody around the table, Aberdeen, for example, taking the biggest hit, with Edinburgh not far behind and Glasgow, and even the impact across all the rural areas. We have the Fraser of Allander modelling that was done a year ago. We have the Scottish Government modelling, which all suggests that there will be a massive financial hit for Scotland. We also have the Freedom of Information request that was rejected, the comments from James Chapman, who was the former chief of staff at DExEU, who suggested that Scotland and the north-east would take a disproportionate hit for the leaving of the European Union.

Have you accessed any information about how bad and how serious and significant the financial loss to Scotland will be? If you haven't, why haven't you got that, and if you haven't what are you going to do to try to secure it?

David Mundell: What I have indicated in my answer to Christine Jardine is that the UK Government have done analysis, the Scottish Government have done analysis, and we have agreed to share and work together on that analysis. I see all sorts of figures bandied about. What my objective is is to ensure that Scotland achieves a good deal as we leave the EU and not that we are in a position of no deal. That is what I am looking to try to achieve. I remain optimistic that it will be possible to do that.

- Q42 **Chair:** Could we get your view just about what the economic impact of leaving the European Union is going to be for Scotland? I do not know if you have any figures you could tell us. What is the best outcome and what is the worst outcome? Can you give us a suggestion about what your understanding is of what will happen to Scotland financially with leaving the European Union?

David Mundell: We are still at a stage of negotiating the basis on which we leave the European Union, but I still believe that we can do that on a positive basis for Scotland and the rest of the United Kingdom and that is what we want to work towards. I understand, particularly at this point in the cycle of the negotiations, that there is going to be uncertainty and people are going to be concerned that they are not absolutely clear what the outcome of the negotiations are going to be. That is one of the reasons obviously in her Florence speech that the Prime Minister set out the proposal for a transition period so that there would not be a cliff edge for businesses in Scotland or elsewhere. That was a very, very important move, in my view, in order to minimise that disruption.



HOUSE OF COMMONS

What I think we should all be doing is all pulling together to work together to get the best possible outcome and not seeking, every time there is some damning report or damning figure from an academic, to amplify that. What we should be doing is working together to get the best possible outcome.

Chair: You seem to have piqued the interest of Mr Thomson and Ms Jardine.

- Q43 **Ross Thomson:** You have kindly drawn me in with your reference to Aberdeen, so thank you very much. I know we can all be selective in what we take from reports. Looking at that Fraser of Allander Institute report, yes, it highlighted challenges but also, if you read the full body of it, it stated that Aberdeen is best placed to take on the opportunities from leaving the European Union when you look at skills and so on. From your point of view, what are the economic opportunities for Scotland in leaving the European Union? Scotland has a global oil and gas industry. We have fantastic food and drink. We need to encourage exports and, in relation to culture, through the Great campaign we can promote Scottish culture across the globe. I would be really intrigued to hear your thoughts and where you think the opportunities lie for Scotland in leaving the EU.

David Mundell: I believe there are significant opportunities. As I think you are aware, I was recently in South America where I saw huge opportunities, particularly for the oil and gas industry, for example, in Argentina, and for our universities sector there, too. That is why the trading environment that we are able to secure post-Brexit is so important, because we have these businesses within Scotland who want to look outward and take advantage of those opportunities. We are absolutely committed, as a Government, to retain Aberdeen as a global energy centre, regardless of production levels within the North Sea, that Aberdeen is taking that expertise and disseminating it around the world and is keeping, though, that vital economic core within Aberdeen and the north-east.

- Q44 **Christine Jardine:** I will just go back a moment to the LSE figures. While I appreciate what the Secretary of State is saying about not revealing our negotiating position, there has been a great deal of concern expressed about the economic impact—we are talking about Scotland—and the LSE figures. There was also the FOI request, as Mr Wishart mentioned, which was rejected. With, we are told in the opinion polls, an increasing number of people unhappy with the situation, with the possibility that we may be facing an extremely difficult economic situation, which people were not informed of when they voted, would it not be responsible to reassure people, if there is reassurance, or to tell them what the reality of an exit from the EU would mean in order that they might, if the possibility comes up, have all the facts and be able to make an informed decision on the deal itself?

David Mundell: And have a second referendum I think is the next part of that.



Christine Jardine: I did not say that.

David Mundell: I understand that is the policy of the Liberal Democrats. We had a general election four months ago. That proposal did not seem to seize the imagination of the people of Scotland or across the United Kingdom.

Christine Jardine: With respect, we had not seen the figures then.

David Mundell: I want, to the extent that I can, to give people the reassurance that what we are focused on is getting the best possible deal for Scotland and the United Kingdom. We understand the need to prepare for a no-deal scenario—that is the responsible thing to do—but we are not seeking no deal.

Q45 **Tommy Sheppard:** Chair, I would like to go back to the discussion on UK frameworks for the operation of potentially devolved powers. I appreciate that these are early days in the discussion and that the JMC has just agreed a set of principles that would look at which powers might be subject to framework rather than how the framework might operate. You yourself referred to a rule book. Clearly, some rule books will be more acceptable to some people than others and, while I do not expect you to give a definitive answer, I am keen to know your thinking and your intention. Do you accept that there has to be a difference between a UK framework and the UK Government? In other words, a common UK framework is not just a matter of Westminster requiring compliance by the national devolved Governments but, rather, it is hopefully a consensual body where different Governments can come together to establish a common framework.

David Mundell: I am concerned about the extent I am agreeing with you, Mr Sheppard.

Tommy Sheppard: Say that again.

David Mundell: I am concerned about the extent that I am agreeing with you. Yes is the answer to your question.

Q46 **Tommy Sheppard:** You think it should be the latter?

David Mundell: A UK framework is not a framework that the UK Government impose; it is a framework that is agreed across the United Kingdom.

Q47 **Tommy Sheppard:** It would provide for co-decision and a means of arbitration where there is disagreement?

David Mundell: That is the nature of the discussion that needs to be had about how these frameworks will be agreed. You are right, we are at an early stage in how that would be taken forward, but I am very clear. A UK framework is not a framework that is imposed by the UK Government on other devolved parts of the United Kingdom.

Q48 **Gerard Killen:** The Scottish Government have said their priorities in



HOUSE OF COMMONS

relation to the UK's future relationship with the EU, things like membership of the single market, protection of workers' rights, repatriation of powers. How have those priorities influenced the UK's approach to the negotiations and are there any of the priorities that you disagree with?

David Mundell: I think it will, Chairman, be well documented in previous iterations of this Committee that we did have extensive discussions about the Scottish Government's document "Scotland's Place in Europe". We set out in a response to that document a whole range of areas in which we are in agreement with the Scottish Government.

The area where we were not in agreement was that there should be a separate arrangement for Scotland. That was an issue that did have the opportunity to be debated when we had the general election in June, and I did not find or I was not aware of widespread public support that Scotland should have a separate arrangement in terms of leaving the EU.

A whole host of areas that were set out in that document were reflected in the White Paper. They were reflected in the Prime Minister's Lancaster House speech. Indeed, I was pleased that when the Prime Minister gave her speech in Florence there was a general welcome from the Scottish Government in relation the proposal for a transition period as being something that they have wished to see.

Q49 **David Duguid:** I would like to ask a couple of questions about intergovernmental relations. We have touched upon this as a factor in a couple of our earlier questions. In terms of intergovernmental relations, how do you see the future role of the Scotland Office? The Scottish and Welsh Governments have each raised concerns about the effectiveness of the UK Government's engagement with them regarding the UK's withdrawal from the EU. What is the Scotland Office going to do, or is currently doing, to make improvements in this level of engagement?

David Mundell: I acknowledge that we do have to continue to work to improve particularly the formal intergovernmental measures, and there have been some valid attempts to do that. In relation to, for example, intergovernmental relations, it is not necessarily just a bilateral discussion between ourselves and the Scottish Government, it is involving both the Welsh Assembly Government and the Northern Ireland Executive. Just getting everybody in the same place in relation to such processes has proved to be challenging.

One of the reasons that the Joint Ministerial Committee on EU Negotiations was not able to meet was because the Northern Ireland Executive was not in situ for most or, in fact, for a significant amount of time, and that made the nature of the dialogue difficult. We have revamped the nature of that grouping, certainly in satisfaction of the Welsh and Scottish Governments, in terms of the personnel. Any body or organisation like that is judged on outcomes, but I think we have to do better. What is very difficult, and I am happy to acknowledge this, is that



HOUSE OF COMMONS

during very political periods it is much more difficult to set in place these intergovernmental processes than it is during a period of relative political quiet. We have not had a period of political quiet in Scotland, and indeed the UK, for some time. I look back fondly to the 2003 Scottish Parliament—

David Duguid: Is that how far you have to go back?

David Mundell: —when that might have been an opportunity, perhaps, when things were just a little quieter.

Q50 **David Duguid:** Following on from that, it has been said that in some areas, such as the devolution of new powers over welfare, intergovernmental co-operation has been seen as much more effective. Is there anything we can learn from those cases that we can use to improve engagement now?

David Mundell: I could say that the Joint Ministerial Working Group on Welfare was my idea, which in fact it was, but—

David Duguid: There is no need to be modest, Secretary of State.

David Mundell: It is a very good example of good working together, because we brought together all the relevant parts of the Scottish Government and UK Government. There has been very good official interaction, and we have not been afraid to shy away from the issues that we did not agree on, but rather than allow those issues that we did not agree on to dominate the process, even when we were sometimes in challenging circumstances, we focused on those things that we could productively take forward.

The Joint Ministerial Working Group on Welfare has worked well. The Finance Quad has also worked well. That is where the Finance Ministers from the devolved Administrations come together with the Chief Secretary to the Treasury, and that has always been a very frank and open discussion. We have to get better. Lord Smith identified it in the Smith Commission. Some work was done immediately after that, but it was not followed through to completeness.

Q51 **David Duguid:** Finally on this topic, given that our departure from the EU is likely to require closer co-operation between the UK and Scottish Governments, in particular in areas such as agriculture or fisheries policies, what do you see as the role of the Scotland Office in ensuring that we get the optimal co-operation and the best deal for Scotland in those regards?

David Mundell: First, I think it is very important that Scotland's interests are fully represented, as I indicated in answer to Christine Jardine's earlier question. In relation to both fisheries and agriculture, we have been in extensive engagement, and perhaps I would invite Ian just to advise you of what we have done, because we want to make sure



HOUSE OF COMMONS

absolutely that these issues in relation to Scotland are fully understood and taken into account.

Lord Duncan of Springbank: Yes, thank you. Across each of the sectors, we have set up a series of roundtable discussions. We have tried to bring in all of the stakeholders who are affected and, operating at the moment under Chatham House rules, to have a very free and frank discussion about their concerns so that we are under no illusions about that. Certainly, the farming gathering and the group around fishing have been very active and very frank and have told us where they have concerns and where they also see opportunities.

These will be ongoing bodies, so this will, as the Brexit process evolves, allow us to have an open dialogue with the stakeholders and, using that information, to make sure the Home Departments in Whitehall are also fully briefed where there are particular and unique Scottish elements. It is important, certainly in this case, for Defra to be fully cognisant of the unique elements of Scottish fisheries, for example. It does not look like fishing in Cornwall. It is different, and they need to recognise that.

Again, it is useful to have the dialogues so that stakeholders themselves can find an open door to the UK Government and can get that information very quickly into the heart of the discussions. Also not in any way trying to keep this secret from the Scottish Government, but trying to make sure that there is an opportunity to have that open dialogue with the Scottish Government because they have insight, responsibilities and roles that will be enhanced through this process. They will need to hear the same information that we hear from the stakeholders so that we are on the same page and ready for the next step, which will be post-Brexit.

David Duguid: Thank you very much.

Q52 **Deidre Brock:** Mr Duguid has asked some of the questions I was going to ask. Secretary of State, immediately post-devolution the Scotland Office staff numbers, I believe, stood at five. I take that from an interview I read with Baroness Liddell when she was Secretary of State for Scotland. They now stand at 71, and you add in the 50 staff in the Advocate General's office and that makes 121 staff. Since 1999, of course, we have seen considerable devolution of powers, further devolution of powers, through the Calman and Smith Commissions. Staff costs are now approaching £9 million. How do you justify that increase when your responsibilities, specifically, have decreased over that period and are likely to decrease further?

David Mundell: I would not concede that responsibilities have decreased. Because of the constitutional debates that we have enjoyed in Scotland, those responsibilities have been greater in the sense of my constitutional responsibilities in terms of, for example, in the last Parliament taking through the Scotland Bill, which was a very significant piece of legislation that was taken through, I think, with great skill by a relatively small Department. We have just spent the last hour or so



HOUSE OF COMMONS

discussing all the elements of Brexit that impact on Scotland and, in particular, that impact in relation to the constitutional arrangements for Scotland in terms of the frameworks, the devolution of additional powers, the Joint Ministerial Committees, the White Papers, the internal Government mechanisms for taking these matters forward. They are significant.

Finally, I take seriously the recommendations in the Smith Commission report that it is important that people in Scotland understand the roles of both of their Governments and what both of their Governments are doing in Scotland. That is why—

Deidre Brock: Specifically with regard to that, thank you, Secretary of State—

David Mundell: —I think it is important to have enhanced our communications capacity. That is why I think it is important to take part in social media because that is where lots of people get their information.

Q53 **Deidre Brock:** Funnily enough, Secretary of State, I was going to ask you about that very issue. When you took over in 2010, your communications team costs stood at £108,439. They now stand, in 2016-17, at nearly £690,000. That is an enormous increase in communications staff, is it not? Is it really needed to increase by that significant amount to deal with constitutional and Brexit issues?

David Mundell: The Scotland Office back in, I think, 2015—or certainly before I became Secretary of State, although a Minister at the time—underwent a communications capability review. With absolutely no disrespect to Ms Jardine, who I have always found an excellent communicator, the general view was the Scotland Office did not, on behalf of the UK Government, communicate particularly effectively and that the effectiveness of the communication needed to be enhanced. I have put those recommendations in place. I think it is vitally important that people do understand Scotland has two Governments, what the roles and responsibilities of those Governments are, and what the Governments are doing on behalf of citizenry.

Q54 **Deidre Brock:** Okay. Sorry, Chair, I do have a couple of points to make. You mentioned that bodies should be judged on outcomes. In written answers to me you said the scoring and evaluation of your Department's social media campaigns in the last year must remain confidential, and you have refused to publish the adverts used in an open format or, indeed, the messages you targeted at social media users. Can you tell the Committee what benefit was derived from your social media use and how you measure that?

David Mundell: We have made clear that the items that we put out into social media were available. They were there on that social media format that was accessible.

Q55 **Deidre Brock:** In an open format that was easily accessible? If people



HOUSE OF COMMONS

were prepared to spend time hunting through months and months of different Facebook or Twitter accounts, I suppose.

Can I ask also about the Scotland Office monthly advertising spend? From January 2016 to February 2017 we see spend bumping along at around about a few hundred pounds a month, sometimes none at all. It goes up to £900 in February 2017. However, the spending hikes to nearly £12,000 in March 2017. Can you explain that increase just before the general election?

David Mundell: I hope it is not a shock, but I was not aware there was going to be a general election and, therefore, it did not shape the use of social media. The amount spent in March was higher due to the promotion of a number of Government campaigns, including childcare choices, the national minimum wage and International Women's Day. There were a number of specific matters that were highlighted in that period. As you will be aware, there are very serious and important civil service guidelines on propriety of Departments using social media.

Deidre Brock: Indeed.

David Mundell: I am not aware that any use of the social media by the Scotland Office was in any way in breach of that propriety.

Q56 **Deidre Brock:** It does seem a remarkable coincidence, though. I wonder how you respond to those who suggest that the Scotland Office is just a propaganda unit for the UK Government.

David Mundell: I am disappointed that anyone would think that. I would hope that they would, however, think that we are effective at communicating to people in Scotland what the UK Government were doing in respect of their roles and responsibilities on their behalf.

Chair: That seems to have aroused the interests of several members of the Committee, which will have to be brief because we only have 25 minutes or so with the Secretary of State and there are other issues that we want to deal with. We have Danielle, then we have John Lamont and Paul Masterton.

Q57 **Danielle Rowley:** Just picking up on some of those points, as well as promoting the work of the UK Government to Scotland, what specific measures does the Scotland Office have on being open, accountable and transparent? Are there any specific policies on responding to requests for information?

David Mundell: My understanding is that we have, within the requirements upon us, answered—and I think I do have the figure—90% of Freedom of Information requests within, for example, the 20-day target. We have answered 100% of written parliamentary questions in that time. Although Ms Brock might not like the answers that she has received, she has received them timeously: 80% of ministerial correspondence within the 15-day target and, in relation to dealing with



HOUSE OF COMMONS

suppliers, 86% of invoices were paid within five days, against a target of 80%.

Q58 John Lamont: Secretary of State, one thing that is notable from the output of the Scotland Office, particularly on social media, is the sheer geographical spread of your engagement and your colleagues across Scotland. I wonder if you could provide us with some more information about how these visits are organised and how you ensure that you are achieving a suitable breadth of engagement.

David Mundell: Thank you for that question; I am going to refer part of it to Lord Duncan. Because of the constraints of the parliamentary numbers, I am not as able to leave Parliament as regularly as I would wish to do. I am very grateful that Lord Duncan is able to get out and about in Scotland, although I do commend, Chairman, one of your colleagues who, on a monthly basis, does ask me the question when am I going to be in his constituency.

Chair: We are all desperate for a Secretary of State visit, you see.

David Mundell: I will be there. We take very seriously the need to get out and about within Scotland, from Unst in Shetland right down to the border. Perhaps, Ian, you could say a little bit more on your travels and engagement.

Lord Duncan of Springbank: Yes. The fantastic part of the job, in fact, is meeting various organisations and individuals. In terms of how we select, we do an analysis first of all on what are the big issues that are emerging and the big Government policies, and we try to complement the visit programme around that. We also, as best we can, respond to invitations where there are interests in participation. A lot of the work in the last period has been around Brexit, so wherever we go we try to speak to the wider stakeholder community, to local authorities and to other interested parties.

As well as that, we do try to include various cultural elements as best we can. I spent a very happy morning last week in Govan, looking at the Govan Stones and talking about how the Scottish Government and the UK Government will be able to help in that regard. We also respond to invitations to speak and to try to explain what is going on, whether it be wider Government policy, Brexit policy, or specific aspects of the thematic work that we cover.

As best we can, we try to do it across the whole of Scotland, so there should be no part left out at all and, if they have been left out so far, it is not for want of effort to get there. I am going up to Orkney shortly again and will spend some time there. I have been to Shetland, the Western Isles, Aberdeen many times. I am due to be in Perth—Pete, perhaps we can sit down and have a chat when I am up there—to talk about some of the issues around the Stone of Destiny, which will be an interesting thing to talk about.



HOUSE OF COMMONS

Q59 **Chair:** We all follow Lord Duncan's travels across Scotland with great interest, but can I just say to him that his appointment as Under-Secretary was not without controversy?

Lord Duncan of Springbank: You are telling me? I know.

Chair: Lord Duncan had just been defeated in a parliamentary contest and, within a couple of weeks, found himself ennobled in the undemocratic House of Lords and appointed to the Minister in the Scotland Office. Do you not feel slightly embarrassed about the context of your journey to ministerialship?

Lord Duncan of Springbank: In truth, the journey began long before that election. The election itself was a surprise. I am here not because I was defeated in an election by you, Mr Wishart; indeed, my journey began through my interest in Europe. It began quite some time ago when I started working for the Scottish Fishermen's Federation, where I spent five years, when I spent one year working for the Scottish Refugee Council, when I spent over seven years heading up the Scottish Parliament's office in Brussels, followed shortly thereafter with becoming a clerk to the Scottish Parliament, where I met a number of colleagues here, and also an adviser to the Scottish Parliament, before then becoming a member of the European Parliament. In truth, I suspect my appointment had much more to do with Europe and I suspect, again, that will be the principal focus, as it is right now, of that. As you will know, the Lower House is where law is made; the Upper House is an advisory body where it will be amended.

Chair: I look forward to that meeting in Perth anyway.

Lord Duncan of Springbank: I think we should talk about destiny, in stone form if nothing else.

Chair: Thank you for that.

Q60 **Paul Masterton:** Intrigued as I am by a suggestion that perhaps the Scotland Office should run with yourself, Secretary of State, and a typewriter, clearly that would not go down well if that was the case. It is important, obviously, that we count the voice of Scotland in the Cabinet, that you are ensuring that Scotland's voice is heard at the top table. Do you think that in the past the Scotland Office has not been given the sway or the respect it perhaps merited? What have you done, particularly over the past couple of years, to ensure that the Scotland Office is being heard and being able to shape discussions at Cabinet level?

David Mundell: It is not just about the Scotland Office; it is about the Union and the commitment to the United Kingdom and all parts of it. Both Prime Ministers that I have had the opportunity to serve have set out a very, very clear commitment to the United Kingdom and, therefore, that the constituent parts of the United Kingdom must be clearly represented within the Cabinet, within the system of government. I do think, certainly when I was initially a Member of this Parliament, the Scotland Office was a shared function with a random selection of other



HOUSE OF COMMONS

Departments, if I remember correctly, from Transport to the Department of Trade. I do not think that was a satisfactory way to be.

Likewise, during that period Wales and Northern Ireland were joined together as a joint office. Again, that did not allow for the respective interests of those parts of the United Kingdom to be represented, nor was it a clear enough demonstration to people across the United Kingdom that Government was committed to the whole of the United Kingdom. I am absolutely committed to deliver that.

Paul Masterton: I am grateful.

- Q61 **Chair:** May we just move on? There were a couple of other questions we have for you in the range of your responsibilities. One of them is the confidence and supply arrangement between the Government and the Democratic Unionist Party, which apparently costs in the region of £1 billion. According to all of the press reports, you seemed to welcome this arrangement and agreement. This obviously has been given to Northern Ireland to spend as designed on devolved areas of responsibility. If this is good for Northern Ireland, why is Scotland not getting the same type of arrangement? What did you do in order to try to ensure that Scotland got its share?

David Mundell: What I did, Mr Wishart, was to ensure that Scotland was treated fairly within the Barnett arrangements, within the statement of funding arrangements, and that this arrangement was entirely transparent, which it is. It is not the case that a package of money has just been given to Northern Ireland. There are a series of specific funding proposals that will be implemented over the next two to five years, just as a billion pounds has been spent in Scotland, independent of the Barnett formula, on City Deals in Scotland. It is perfectly clear that the proposal that was ultimately agreed was one that was compliant with those requirements.

- Q62 **Chair:** I have heard this argument before and it is interesting. It is something that, when we have questioned Ministers on this, they come back to this issue that Scotland has secured City Deals. So did the rest of England. I have looked at records. Apparently, it looks like there might be a bid for a Belfast City Deal. What this is, is a set of money that bypassed Barnett. I remember your very clear words just before this. You said you are not going to agree to anything that could be construed as back-door funding to Northern Ireland. You also said Barnett rules will ensure that appropriate funding comes to Scotland. Where is that money for Scotland?

David Mundell: It is because of the basis on which the funding has been given. It is the basis of—

- Q63 **Chair:** Did you make any representations to the Prime Minister?

David Mundell: If the funding had been given through a mechanism to which the Barnett formula applied, then, of course, Scotland would have



HOUSE OF COMMONS

had a proportion, but it was not. It was given in a freestanding way, which had been the equivalent of funds that have been spent in Scotland, that have been spent in Wales, outwith the Barnett formula mechanism. That is why the Barnett formula did not apply.

Q64 **Chair:** Did you make any representations or raise any concerns about this huge swathe of funding that went to Northern Ireland?

David Mundell: I said that any funding had to be subject to the Barnett formula rules; it was. I said that it had to be transparent; it was. I said that it had to be consistent with the statement of funding; it was. I remember two years ago, Mr Wishart, you and your colleagues disparaging that self-same Barnett formula, trotting through the lobbies here to get rid of the Barnett formula and impose on people in Scotland full fiscal autonomy, with all the serious consequences that that would have brought to Scotland.

I regard my contribution to funding in Scotland of standing up against those who wanted to get rid of the Barnett formula and ensuring that Scotland continues to benefit from it.

Chair: I want to bring John Lamont in here. I will just say that this whole issue with the funding of Northern Ireland turns the whole funding allocation across the United Kingdom, based on Barnett, totally on its head.

Q65 **John Lamont:** There has been some commentary about Barnett consequential as a consequence of the DUP deal. The Barnett formula, as I understand it—and I wonder if the Secretary of State agrees—only applies to UK-wide spending on devolved areas, which then results in Barnett consequential flowing to devolved Governments. Is it not the case that the Barnett formula was never, and has never been, applied to spending to one devolved area then resulting in consequential funding flowing to other devolved areas?

David Mundell: Absolutely. Just before the summer recess, it was announced that there was to be £300 million coming to Edinburgh and south-east Scotland as part of the City Deal. There was no suggestion that there should be funding to Northern Ireland, Wales or, indeed, England.

Q66 **John Lamont:** Are there any examples that you are aware of of the Barnett formula being applied in the way that the Scottish Government are arguing, namely that where the UK Government are applying funding to one devolved Government it should then, as a consequence, be applied elsewhere?

David Mundell: No.

John Lamont: Thank you.

Chair: We have a couple more questions. We have Gerard Killen and then Ross Thomson.



HOUSE OF COMMONS

Q67 **Gerard Killen:** I am speaking as an enthusiastic supporter of the Barnett formula. The Scottish and Welsh Governments have initiated a formal dispute resolution process in relation to the DUP deal. What stage is that dispute at and how do you think it can be resolved?

David Mundell: I am sure that it will be a matter that will be discussed at the meeting of the Quad on Thursday, where Finance Ministers from Scotland and Wales and representatives from Northern Ireland will meet with the Chief Secretary of the Treasury.

Q68 **Ross Thomson:** Secretary of State, you may have referred to this in a previous answer, but can you tell us, and for the record, how much funding Scotland has received from the UK Government from the City Deals that have been signed so far?

David Mundell: To the City Deals that are currently in operation, £1 billion.

Q69 **Ross Thomson:** As part of City Deals for English cities, I am aware that the UK Government have devolved control over budgets and powers in areas such as transport, housing, skills and business support to local authorities. Having been a councillor in Aberdeen when we signed the City Deal, I am aware that in Scotland similar powers can only be devolved to cities by the Scottish Government. How willing have you found the Scottish Government to do this, and what impact has the Scottish Government's approach in this regard had on the way you have designed and implemented City Deals in Scotland?

David Mundell: Of course, as I have set out previously, it is not for me to tell the Scottish Government what to do. I may have done things differently in relation to the devolution of powers, along with the funding packages. That methodology has been successful, I believe, in parts of England, but that is a matter for the Scottish Government to determine in terms of how they approach the deals.

We continue to work well with the Scottish Government in terms of the arrangements that are currently under discussion, and a number of people here have interests in deals that may be under discussion: the Tay and Dundee deals, Stirling and Clackmannanshire. There are other proposals that have been brought forward from other parts of Scotland, and there is the very innovative Borderlands, a proposal that would take the economic area that crosses the border between Scotland and England.

I am hoping that the Scottish Government will engage in all of those in a positive way, but other than agreeing the financial structure, we are not in a position to place any requirements on how they devolve within Scotland. Obviously, it has been, to use the phrase of the Chairman, subject to a great deal of comment about the level of devolution within Scotland, but that is a matter for discussion within the Scottish Parliament.



HOUSE OF COMMONS

Q70 Ross Thomson: Following on from that, what work have you been doing or has the Scotland Office been doing in relation to further City Deals in Scotland? At this point, may I also put in a plug for a City Deal 2 for Aberdeen City?

David Mundell: City Deal 2? Well, we have noted that. I would like to see us having arrangements across all of Scotland before we have a "Deal 2" anywhere. I am very happy to put it on the record: I am very positive about the engagement the Scottish Government have had in relation to these matters, engagement that local authorities across Scotland have had. Clearly, a proposal has emerged from the Moray Council area, from Argyll and Bute. I met Mr O'Hara last week, I think, or the week before. He has a very innovative proposal for a tunnel from the mainland to Cowal. Sorry, Chairman—

Chair: I am just saving you from your colleagues, Secretary of State.

David Mundell: What I am saying is that we are open to looking at arrangements for the whole of Scotland, and I would rather we looked at the whole of Scotland before we got to second arrangements anyway.

Q71 Chair: I will raise a local issue, too, and that is the Tay Cities Deal. It seems to be just a little bit bogged down. My understanding is it still might happen in the new year. I know Lord Duncan has been particularly close to this deal, so this is a question for him. Are we all right with the Tay Cities Deal, or are there any outstanding issues that need to be resolved before it progresses?

Lord Duncan of Springbank: We are making progress and, believe me, we will make progress early in the new year. It is trying to make sure that we have identified where we can collaborate well with the Scottish Government. There are quite a number of projects identified that are really quite impressive. The spread of the projects is not quite as large as we would like, and we are looking at Perthshire itself to see what might be able to be drawn through the deals in Perthshire.

Q72 Chair: Is this the balance between reserved and devolved areas of responsibility that seems to be holding it back?

Lord Duncan of Springbank: No, it is not as much. Unfortunately, everybody wants a bit of Scottish Government money right now because it is mostly infrastructure that the local authorities have pitched for. Of course, infrastructure rests in the devolved space. We are very conscious that that is not where we can spend, so we are looking at the reserved space and how we can help identify into areas like Perthshire and into Angus where we can see ways of helping develop projects through that basis.

David Mundell: Within that, which I think you did touch on, where we take a city region, we do want to ensure that the whole of the city region benefits. Recently, when I visited Skye, for example, with Mr Blackford, and at his request, we found that people there felt that perhaps the



HOUSE OF COMMONS

Inverness City Region Deal had not spread as widely as people in the locality would have hoped for.

Chair: I want to take Mr Lamont because I know he is very keen to ask a question about the Borderlands, and then we will maybe wrap up after that.

Q73 **John Lamont:** Chairman, I wondered if the Secretary of State could update us on the progress towards delivering a Borderlands Growth Deal.

David Mundell: I am very positive about that. We have had a very helpful submission from the five local authorities involved. I had met with them previously. I am intending to meet very shortly with colleagues from the Department of Communities and Local Government. Clearly, because it is a cross-border arrangement, they have a key interest in taking it forward. I think significant progress is being made, and I look forward to meeting with you and the Leader of Scottish Borders Council shortly to discuss it further.

Q74 **Chair:** There you go, that seems a very encouraging response. Lastly, we still have the issue of English votes for English laws. We are Scottish Members of Parliament and we now have an all-Scottish Scottish Affairs Committee, which we obviously all welcome. There are issues about the nature of our relationship with this place, the fact that very often it is seen that Scottish Members of Parliament are still second class and cannot vote on all issues relating to this House, the Legislative Consent Committees in which nothing is said. Are you happy, Secretary of State, being a Scottish Member of Parliament subject to the EVEL procedure in this House?

David Mundell: I am satisfied that I have the equal right, as with all colleagues here, to determine whether legislation is passed or not, and I am satisfied with the procedures as they are currently in place. Of course, I would listen to any substantive and specific concerns, whether through this Committee, the Procedure Committee or any other Committee of the House.

Chair: I am grateful. It is right on 3.25 pm, which I think you were keen to get away by. Secretary of State, thank you ever so much, and your ministerial team, for your attendance today. If there is anything further that you could contribute to these particular issues, you know how to get in touch with us. Thank you.

David Mundell: Thank you.