House of Commons
Scottish Affairs Committee

The Referendum on Separation for Scotland, Session 2012–13

Oral and written evidence

Oral evidence ordered by the House of Commons to be printed 16 and 23 May, 13, 20 and 27 June and 4 July 2012

Written evidence ordered by the House of Commons to be printed on 17 July 2012
The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Mr Eliot Wilson (Clerk), Duma Langton (Inquiry Manager), Hannah Lamb (Senior Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant).

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Taken before the Scottish Affairs Committee
on Wednesday 16 May 2012

Members present:
Mr Ian Davidson (Chair)
Fiona Bruce
Mike Freer
Iain McKenzie
Simon Reevell
Lindsay Roy

Examination of Witnesses

Witnesses: Patrick Layden TD QC, Scottish Law Commission, and Professor Andrew Scott, University of Edinburgh, gave evidence.

Q1 Chair: Gentlemen, I welcome you to this meeting of the Scottish Affairs Committee. This is part of our inquiry into the impact of separation on Scotland. We want to discuss with you today the elements relevant to the European Union. It would be helpful if you started off by introducing yourselves, and then we will start with questions.

Patrick Layden: I am Patrick Layden. I am a Scottish law commissioner, but I am not speaking in that capacity today. These are my personal views and do not reflect any position of the Scottish Law Commission. Before I became a Scottish law commissioner, for about 30 years I worked in government advising first Westminster and then the Scottish Government about constitutional and EU matters. The Committee has had my note, which sets out my position.

Q2 Chair: Perhaps we may first take the other introduction and then come back to you. I thought you were about to give us your exposition.

Patrick Layden: I was, but I will stop.

Professor Scott: My name is Drew Scott. I am professor of European Union studies and co-director of the Europa Institute in the school of law at the university of Edinburgh. I should stress that I am not a lawyer but an economist by training, although I live with lawyers daily and have an interest in that side as well. I am principally an economist.

Q3 Chair: Mr Layden, we invited you here because I was with others at the event in Edinburgh hosted by the university of Edinburgh. We found your address on matters to do with separation and Europe most interesting. That is why you are here today. I would be grateful if you could perhaps lead off on how you see a separate Scotland relating to the EU and the implications thereof.

Patrick Layden: You have my note. I would like to add to it that when you are considering the legal implications of any course of action you have to look at two risks. The first is the risk of challenge to what you want to do; the second is the risk of successful challenge. Quite a lot of Government activity happens on the basis that no one will want to challenge it, even if they might succeed if they did. Here, the risk of challenge at least to the SNP position, as I understand it, that Scotland would automatically become or remain a member of the EU arises because splitting the UK is a major event geographically, legally and politically. Seen from outside the UK, it is not even a given that both new states will want to stay in the EU. If both parts do want to stay in, then you will require to be treaty alteration, and I set out in my note some of the areas in which that would have to happen.

First, we in this country tend to have a UK-centric view of affairs. We see things through the prism of our own attitudes, perceptions and wishes. We are not unique in that, but our perception of matters is not always shared by everyone else. In this case other member states, in particular those with provinces that might be seeking more autonomy, will be cautious about creating a precedent for an easy transition from being part of a country to being a full-blown member of the EU. Secondly, anyone who believes in the European Parliament will be concerned at the dilution of votes that will happen if we become independent and you have to cater for two member states where previously there was only one. The grounds of challenge are as set out in the note. It would be said that RUK is not the same state as the present United Kingdom. The effect of the split is that the UK is leaving the European Union, even though both RUK and Scotland want to rejoin. So the argument would run that we should use the procedures in the treaty, which would give the institutions and other member states the opportunity to consider any necessary treaty amendments in an orderly way.

As far as the prospects of a challenge are concerned, if it got to that, I would myself have said that the prospects of the Court of Justice agreeing with the challenge are quite good because it would fit with their perception of the all-embracing scope of European law. They like to feel that European law provides a solution to any question. As far as they are concerned, all human life is there. If asked a question to which one could formulate an answer in terms of European law, their tendency would be to go for that. I suspect that we would not actually get to court because both Scotland and RUK would fudge the issue and agree to negotiate as if articles 49 and 50 of the treaty applied rather than have a fight about it in the Court of Justice. The point I am trying to make is that we in this country, whether here in London or up
in Edinburgh, cannot determine that we will continue as member states of the European Union on the same or comparable terms to those that we enjoy now. That is not something that we control. That is really it as far as the basic argument is concerned. I have some other thoughts about what would happen to our various opt-outs and so on.

Q4 Chair: Let us come to those separately, if we can. Drew, do you want to respond to that and also give your exposition to summarise the position for us?

Professor Scott: I defer to the law. I am not going to get into a point. I would make a few observations. First, this is uncharted territory. All lawyers agree there is no provision in the treaty and no legal precedent for this particular situation. Lawyers in my experience are divided as to what the likely outcome would be. Some take the view, as Patrick has explained, that both parts of the former UK would find themselves in the same position outside the European treaties, and both would have to go through some kind of formal readmission process.

I take a different view, which is partly informed by the work of colleagues, such as Aidan O’Neill QC, who have argued quite strenuously that, on the basis of EU citizenship law, there is no provision within the treaty for citizens of the European Union to have that citizenship taken away from them. In a sense the treaty protects the citizens of the EU. His argument—would be. Some take the view, as Patrick has explained, that both parts of the former UK would find themselves in the same position outside the European treaties, and both would have to go through some kind of formal readmission process.

I take a different view, which is partly informed by the work of colleagues, such as Aidan O’Neill QC, who have argued quite strenuously that, on the basis of EU citizenship law, there is no provision within the treaty for citizens of the European Union to have that citizenship taken away from them. In a sense the treaty protects the citizens of the EU. His argument—I would not like to distort it or put words into his—what is the citizenship provisions of the EU treaties provide a large degree of safety for Scottish citizens of the Union, and that would prevent Scotland, or the rest of the UK, being expelled or somehow excluded from the EU.

Added to that, the EU is going through a number of constitutional situations for which there is no provision in the treaty. It goes as far back as Algeria, through the Greenland situation, the Netherlands Antilles, which is an ongoing debate, and of course into the unification of Germany. On each occasion a solution has been found that met the wishes of the constituent parts. I think the European Union is very able to tackle this type of issue without going through or getting to a formal position where the court would be asked to adjudicate.

It is worth adding to that the situation under UK law. What would be the situation of Scottish independence in terms of the UK? Would the UK exist? I think Patrick is absolutely right that the United Kingdom of Great Britain and Northern Ireland would no longer exist. Both parts of the UK would be in the same situation, but my view is that both would be continuing members of the European Union. Of course they would have to negotiate; there would have to be treaty amendments, which would have to be unanimously agreed upon, but they would be negotiated from within rather than outside. That has implications, and doubtless we will come to them, for the opt-outs and the various privileges that perhaps the UK uniquely gets, particularly, for example, on the budget. My view is that Scotland would remain part of the EU, as would RUK, and negotiations would go forward on that basis. I would hope and expect them to be satisfactorily concluded very quickly.

Q5 Chair: If, as you suggest, there is a degree of automaticity about remaining, why would there be a requirement for any negotiations at all?

Professor Scott: Because you would end up being two different countries that previously were one. The Council of Ministers is taken care of under the new treaty because it is a straightforward double majority, so there is no allocation of that, but there would have to be discussions about the seats in the European Parliament and particular policy lines, for example, on the structural funds where at the moment the UK is the state that signs those funds. Provision would have to be made for that.

Q6 Chair: But in a sense these are just housekeeping matters, are they not?

Professor Scott: Yes.

Q7 Chair: It would be automaticity except for housekeeping matters.

Professor Scott: Yes; that is my view.

Q8 Chair: Patrick, your view is somewhat different. I am struggling to express this properly. You are coming to the view that it would not be automatic because the EU would have an opportunity for the EU to involve itself in the future relationship and it would seize that opportunity to exert a price, as it were, if I remember correctly your contribution in Edinburgh.

Patrick Layden: Yes; absolutely; that is exactly the point. If you characterise the splitting up of the UK as an internal arrangement that has no effect on anybody else, of course you could say that both countries carry on in the same position as the previous country did, but that is our view of the matter, at least in terms of international law. International law might very well say that both Scotland and RUK would carry on with the same obligations as the old UK had. Even in international law it does not follow uniformly. We might both continue to be members of the Council of Europe and the United Nations, but we will not have two seats on the Security Council—at least I doubt it. As a matter of European law, the rules of that particular club are for the rest of the club. What we are saying to them is, “We have decided to split the UK into two bits. Will you now, please, renegotiate this settlement of 750 members of the European Parliament so that Scotland gets a few more, and, indeed, England or RUK gets a few more, if you take away the Scots ones? Instead of having 67 for RUK and six for Scotland, we want 12 for Scotland, because that is what other countries with 5 million citizens have. Instead of RUK having 67, it needs a few more because other countries with a similar population have more seats.” Then all the other member states have to work out which of them will lose a few seats to give us what we are entitled to.

Q9 Chair: Are these what Professor Scott was referring to as internal housekeeping issues only, or do they go beyond that? I think there is an agreement between both of you that housekeeping matters of
various sorts would require to be renegotiated. The simplest issue is membership of the European Parliament and so on and so forth. If I recall correctly, you seem to be going beyond that and thinking there would be a whole number of other issues that have to be reopened as well.

**Patrick Layden:** When Bulgaria and Romania joined they had a protocol to the treaties to do those housekeeping issues. It is housekeeping; it is procedure on one view, but, if it is to be done in an orderly way, you need a treaty change to add a few more members to the European Parliament, if that is the decision you take. You need a unanimous decision of the Council and a vote in the European Parliament before you can reallocate seats in the European Parliament. Other countries would lose seats. If they did not do that process, citizens in Scotland would have votes that were less valuable than citizens of Finland. Finland has 5.2 million people, much the same as Scotland would have post-independence. Finland has 13 seats in the European Parliament. If you worry about the European Parliament, it would be intolerable that Scottish votes should be so much less valuable than Finnish votes, but in order to achieve a more equitable solution you would have to have an agreement from the Finns and other member states that they were prepared to lose a seat so that Scotland could have more.

These are not insuperable problems, but if I were advising the Government of another member state I might very well be saying to them, “Look, the Brits are chopping themselves in half; they will wind up with more votes in the European Parliament than they have at the moment. We need to have an input into this; we need to make sure that our views on the matter are heard and expressed.” Our way of doing that, as I said in my note, is to characterise the process as the UK leaving the Union and two other states applying to join. If I were advising, say, Spain, which has provinces looking for more autonomy, I would say, “No. Let’s go through the article 50 hoop and have an orderly negotiation towards the UK leaving, and then let’s have a process with the two new states joining. That will give us the opportunity, I would say to my Government, of having a go at this ridiculous British rebate, its exclusion from Schengen and British attitude to the JHA measures.”

All sorts of things could get tidied up from the perspective of other member states on the back of this incident. My position is not that there are much wider ramifications. (001)

**Q10 Lindsay Roy:** Essentially, what you are saying is that this is much more than internal housekeeping; there are much wider ramifications.

**Patrick Layden:** Yes.

**Lindsay Roy:** That is very helpful.

**Q11 Mike Freer:** Mr Layden, you talked about the challenges coming from other states of the EU. Is there a possibility that the challenges to an internal housekeeping exercise could come from a third party? For instance, if Amnesty International believed that the UK attitude to human rights or the social chapter was inequitable, could it seek a legal challenge in the European courts to say that the internal tidying-up is not appropriate and they have to completely reappraise as a way of trying to force the remnant countries to comply with European law as a whole?

**Patrick Layden:** They might have trouble qualifying an interest to raise an action in the European Court of Justice. They might even have trouble qualifying an interest to put representations into somebody else’s litigation in the European Court of Justice, but I am sure they would contrive that their view of the matter got before the European Court of Justice if somebody else was raising the litigation.

**Q12 Mike Freer:** They could put a stick in the wheel. They may not be successful, but they could at least cause a bit of trouble along the way.

**Patrick Layden:** I have trouble seeing how they could do it formally, but I am sure you are right about the basic point.

**Professor Scott:** I agree they would have to prove standing in the issue. I think that would be extremely difficult; that type of thing is very tenuous. In a sense, they could do it now if they felt that somehow the UK was violating human rights in that way. I doubt very much that that is a goer. To go back to the European Parliament, we should remember that it does not sit as member states but as political groupings. I do not agree with Patrick that the European Parliament is a deal breaker because it is not a member state representative organisation; it is a political organisation where socialists, Christian democrats and so on sit. I do not think it would defend a particular national line, and UK MEPs do not vote according to member state.

**Q13 Chair:** But, surely, the basis on which people are elected to the European Parliament depends upon the numbers in each individual state.

**Professor Scott:** Yes, of course; it is a relationship with the population of the member states. All I am saying is that one cannot predicate a problem on the basis of nationality in the European Parliament. One can predicate problems, but not because Britain somehow would get more representation, because that is to see the European Parliament as a representation of member states. The Council is a representation of member states; the European Parliament is a representation of the citizens of the European Union—not of member states. There may be an issue about it, but I do not feel it would come because member states are complaining about too many—that is my position; that is my opinion.

**Q14 Chair:** I understand that.

**Professor Scott:** There is another point I would like to make about the incentive. The presumption of spanners in the works has to be pushed a little. Where is the driver of this? Why would other member states
see it in their interests to make difficulties, given that the UK is one of the largest markets for the European 27, given that the UK as it exists just now and, one expects, post-independence, should that arise, would remain a very close partner of the main countries of the European Union? We have to think about this more carefully. Spain has sometimes been used as an example. As a member state, why would Spain see it in its interest to block either the whole of the former UK or part of the former UK in the event of independence? We presume it would because we presume this would play to movements in Spain that seek independence. Spanish national interests may be quite different. It may be that the economic interest that Spain has in Scotland would trump domestic politics, with no guarantee that domestic politics would go in that direction anyway or that Scotland would be used as an example. It is very easy to make statements that create an incentive for other countries to be obstructive, but I am not sure how much weight I would give them.

Q15 Chair: To take Spain as an example, surely the argument is that it would not be entirely enthused by the prospect of a precedent being set whereby countries could rend themselves asunder and just carry on as if nothing had happened. That would give an impetus to those who wished to see Spain fall apart, and, the more difficult it is made for the UK to break up, the less likely it is for people in Spain to seek the same route. That seems logical to me.

Professor Scott: That may be logical to you, but I have not heard anyone pronounce on that from the Spanish side publicly yet. If it is so obvious, it surprises me that a member of the Spanish Government has not made that point clear in public. As far as I am aware, although I stand to be corrected, that has not been said. Spanish constitutional rules are quite different from what we think is the UK constitutional position. It may well be that Spain would have a quite different internal process from perhaps the UK where the principle of independence for Scotland has been conceded by successive Governments—at least since Mrs Thatcher and perhaps before. The situations are not directly analogous.

Q16 Simon Reevell: Mr Layden, you referred to the manner in which the European Court of Justice might become involved, but your working assumption is that, if Scotland became independent, both it and the remainder of the United Kingdom would fall to leave the European Union. If that is right, on what basis do you say the ECI would retain jurisdiction in respect of the remainder of the UK or an independent Scotland?

Patrick Layden: I would see the Court of Justice becoming involved if, say, the European Commission took the view that both parts of the UK remained members of the European Union, that no treaty alteration was required and all that was left was some minor housekeeping. If that was the position taken by the European Commission, then another member state could challenge that in the European Court of Justice. That is how the matter would come before the court.

Q17 Simon Reevell: If the Commission took the view that both had gone, it could not then turn to the ECI because the jurisdiction would no longer exist.

Patrick Layden: If we were persuaded that we were still both members of the European Union, we might go to the European Court of Justice with an action against the Commission to say, "These people have got it all wrong."

Q18 Simon Reevell: That would be dependent upon a determination of whether or not we remained within the jurisdiction.

Patrick Layden: Yes.

Q19 Simon Reevell: We have only just seen—and you may not have done—a parliamentary question to the European Parliament that goes back to 2004. Its reply on behalf of the Commission is very clear. Scotland would cease to be a member of the EU and the remainder of the UK would carry on. If that is right, jurisdiction would remain as far as the remainder of the UK, if you can call it that, is concerned, and Scotland then may be able to approach the ECI to argue that its membership has been terminated incorrectly and the jurisdiction is still there.

Patrick Layden: Yes.

Q20 Simon Reevell: But it would have to get over the initial hurdle of demonstrating that it was still within the EU for the jurisdiction to apply.

Patrick Layden: It would maintain that it was in the EU. Since that was the question it would be asking the court, the court would assume jurisdiction.

Q21 Simon Reevell: Effectively, one would determine the other.

Patrick Layden: Yes.

Q22 Simon Reevell: That would be the sequence. Is the answer given by the Commission—whether it is right or not, there is no ambiguity there—one with which you would disagree?

Patrick Layden: I do not need to agree or disagree. All I need to say is that nobody knows at this stage.

Q23 Simon Reevell: I understand that.

Patrick Layden: I personally disagree. I think that both parts of the UK would be outside the European Union seeking to get in.

Q24 Simon Reevell: That is an example of the potential problem, because already we have learned opinion saying one thing and the Commission saying another, and the only method of resolution would be ultimately the ECI.

Patrick Layden: The resolution is a negotiation. The negotiation will take in a range of matters. I doubt whether any of the parties would want to go off to the Court of Justice, because all that does is hold up the whole thing for months while the lawyers do their work.

Q25 Simon Reevell: But, as with any litigation, in the absence of a negotiated settlement—
Patrick Layden: Then there would be litigation.

Q26 Simon Reevell: Then it is the ECJ.
Patrick Layden: It may be that there could be litigation. There is a certain artificiality about this, because if Scotland votes for independence a whole range of processes will happen in parallel. One will be a detailed negotiation between Scotland and the rest of the UK about all sorts of internal matters. Who is going to run welfare benefits? What sort of provision is going to be made in UK law for Scotland to break away? The Scots will want this, that and the other, and the rest of the UK will be saying, “You can’t have it.” There will be a long negotiation going on there. Both parties will have to negotiate with the other member states in the European Union and Commission to achieve whatever “housekeeping” is going to be necessary.

There may also be negotiations going on, on a grey basis, with other international organisations. It will be a very busy period for two years to break up the United Kingdom. There will be a great big Act of Parliament here and people will be poring over it, fighting about it and producing schedules and things to the heart’s content of the lawyers, and that will take some time. Whatever view you take of which bits of the UK are going to be in or out of the European Union, those processes could carry on simultaneously. If you accepted my analysis and said that the UK leaves and then both bits have to apply, the processes by which the UK leaves and the two new states join can all be negotiated at the same time as the Scots are having their discussions with Whitehall. The end result would be an Act of the UK Parliament and 27 or 28 Heads of Government sitting round a table in Brussels. You could sign two bits of paper. One would be the UK leaving under article 50 and the other would be Scotland and RUK joining under article 49. Maybe there would be three bits of paper. All those things could happen simultaneously. There would not be a period during which either or both countries were outside the EU trying to get in.

Q27 Simon Reevell: Don’t tease me with the prospect of the UK leaving the EU.
Patrick Layden: I am actually impressed by the idea that we are looking at this thing from the point of view of scurrying into the EU so that we do not have to think about anything outside it. If for some reason or other Scotland was outside the EU and thinking about joining it, I would have hoped that those in charge, whoever they are at the time, would at least want to think about whether it wanted to join on the same terms as the UK has at the moment. In 1971–72 the European Union cobbled together a common fisheries policy because it knew we were about to join and did not want us negotiating it. The result is a common fisheries policy that a whole range of British and Scottish politicians have said is not to our advantage, and all the Factortame litigation and so on was a result of that. There are serious advantages to us in being in the EU, but, if we were approaching the matter now, I would like to hope that we would try to do a better deal on the fisheries policy than we currently have.

Q28 Simon Reevell: On any analysis of either your position or the Commission’s position as set out in the parliamentary question response, certainly Scotland would be out and have to apply to go back in.
Patrick Layden: Yes.

Q29 Simon Reevell: There is a question as to whether the rest of the UK would or would not, but the common ground is that Scotland would be out and would be seeking to reapply.
Patrick Layden: Yes.
Chair: That is not a view with which you agree. We have already covered that.

Q30 Simon Reevell: I accept that. I asked Mr Layden, with no disrespect, simply because he is a constitutional lawyer, and we also have a response from the Commission. I accept others may take a different view.
Professor Scott: I would make one brief point about the response by the Commission. The difficulty is that this was the response from the President of the Commission at the time. We could dig out many quotes by very senior lawyers, including Lord Mackenzie-Stuart, Emile Noel and so on, who would take issue with this interpretation. I would caution against reading this as a definitive legal statement. I think that would be a very unwise thing to do.

Q31 Simon Reevell: This can be no more than the attitude of the Commission at the time the answer was prepared, but there has been nothing from the Commission since then to indicate that their view has changed.
Professor Scott: The failure of the Commission to pronounce suggests to me that the attitude of the Commission is no longer this; otherwise, why is the Commission unwilling publicly to engage in the debate? As far as I am aware—again, I stand to be corrected—the president has declined to comment on the basis that it is hypothetical.

Q32 Simon Reevell: Do you think that if someone is not prepared to say something they must be taken to disagree with a previously stated position? There is quite a leap there. They may simply not want to engage in the debate because they regard their position as clear. I don’t know.
Professor Scott: I did not take that from Mr Barroso.

Q33 Lindsay Roy: Has anyone formally asked the Commission?
Professor Scott: I do not know.

Q34 Lindsay Roy: I would have thought the status quo is the position that they retain. Is that not a reasonable assumption?
Professor Scott: I do not think so, but you are welcome to hold it. I do not hold it.
Chair: You are not the only witnesses we will be seeing on this subject, so you are our starter for 10, as it were.

Q35 Iain McKenzie: Taking a small step back in that line of argument, would a post-separation Scotland
applying to be an EU member require the unanimous consent of all other EU member states?

Professor Scott: Yes. If you accept the basic assumption that Scotland would be outside the EU, any new member state requires unanimous agreement, including the Parliament’s support.

Q36 Iain McKenzie: If that unanimous consent was granted, what sort of obligations would fall upon Scotland?

Professor Scott: Going along that line—I do not share the predicate—in that event Scotland would join as a normal acceding country in your world and would settle the terms of membership at the time. We have various forms of membership of the European Union. We have countries joining—for example, Denmark—where particular rules over property were introduced into the protocol governing Danish accession because there was a particular interest. Iceland is seeking a particular protocol governing its fishing when it joins.

Q37 Iain McKenzie: But are there standard obligations on member states that Scotland would need to adopt?

Professor Scott: The standard obligations are the internal market. The core is the acquis communautaire on the internal market, and that is non-negotiable. Issues surrounding various other elements of the EU by expediency are negotiable. We have seen a number of exceptions and derogations, including those relating to the single currency, being given regularly and repeatedly on the accession of countries.

Q38 Chair: If there are to be derogations, changes or anything like that, those will have to be negotiated. Therefore, that would not be automatic. Your position, as I understand it, is that Scotland would automatically be in, but, if there is to be change on something like, say, the common fisheries policy, presumably that would have to be negotiated with somebody and agreed by somebody else.

Professor Scott: My position is that Scotland would go in along with the rest of the UK under the current provisions. My presumption is that it would not seek to negotiate new conditions, nor would the Commission or EU member states seek to impose any. That goes back to my principle of citizenship. We in Scotland, like colleagues across the rest of the UK, have certain obligations and privileges under citizenship as it stands. My view is that the privilege cannot be removed by dint of the break-up of the UK, if that is what happens, nor can obligations be increased.

Q39 Chair: If Scotland separated and chose to leave the EU, it would be free to take its citizens with it.

Professor Scott: Yes. That was not clear until now.

Q40 Chair: Your position is that, if Scotland split and wanted to remain in, its citizens would go in with it, as I understand it.

Professor Scott: Under the current provisions of what is now the UK.

Q41 Chair: All of that would be under the existing rules as they apply to the UK about the budget, although there would be a housekeeping issue about how it was split, Schengen and all these things, including the common fisheries policy. You would argue that, if they wanted to change things like the common fisheries policy, that would have to be the process of different and separate negotiations, which would have to be agreed by other people, but that would be distinct from the question of membership.

Professor Scott: That is my position.

Q42 Chair: I just wanted to be clear about that. Mr Layden, perhaps I may clarify your position about Scotland having to get the agreement of everyone else. Am I right in thinking that certainly the Irish, probably the French and possibly others would have to have a referendum for a treaty change that brought about Scottish entry? Presumably, Scottish entry, even if they were just housekeeping questions, would change some elements of Irish involvement in the EU.

Patrick Layden: I cannot speak for their constitutional arrangements. It might be the case, yes. I do not know. Suppose Norway comes along and applies to join the EU. I do not know whether the Irish would have to have a referendum before they could ratify the required treaty.

Chair: We will have to look at the Croatian parallel, which I know is being discussed here at the moment. I confess it is not a subject I have previously explored in this context or indeed in any context, I must confess.

Q43 Mike Freer: You talked about the application on the unwinding being run as two parallel processes. What if the process of independence arises at independence before those two processes have been completed? If you are having the UK as it is and the UK as it will be having these parallel negotiations but Scotland becomes an independent country a year beforehand, surely that throws a spanner in the works as well. It does not have legal entity to be having those negotiations because the UK ceases to exist.

Patrick Layden: I am sure we could organise things so that that unfortunate displacement did not happen. I am sure that those doing it would say the target date is 1 July 2017, 2016, or what have you, and everybody would work towards that.

Q44 Mike Freer: If the Scottish Government said, “We’ve run the referendum; we’re going to be independent by 1 January 2015”, but the EU says, “The parallel negotiations will not be until 1 January 2017”, we will have a bit of a problem.

Patrick Layden: It really depends on whether you want an orderly constitutional process or a simple declaration of independence. If the people of Scotland got together tomorrow and said, “We want to be independent”, and that was sufficiently clear from the way they voted in a referendum organised by somebody entirely different from the Scottish Government, and that was the clear will of the Scottish people, they would be off. They might have all sorts of trouble persuading the rest of the world that they were a sensible country, but they could do...
Patrick Layden: It is in the hands of the Scottish Government and the UK Government and, if we want to carry on being part of it, the European Union. It is a three-way negotiation. It would be quite difficult and complex. We can do it if we want to, but that is what will have to happen.

Professor Scott: There is no precedent for this, but what we do know—this is not related to the domestic situation—is that when the Commission perceives a lack of capacity in a member state on a particular theme—for example, holding the presidency—it makes itself available to the Governments of the countries concerned to support their work. It does not answer your question, but I think there is a long-standing tradition in the Commission that, once the principles have been settled, it will work incredibly hard with the member states, as we saw during the 2004 enlargement process and again in 2007, to make these processes utterly smooth. This is not a parallel; it is quite different, but I think it reveals a sense of commitment by the Commission to get on with the business once it has been agreed.

Q47 Chair: Unless somebody had an interest in being obstructive.

Professor Scott: I restate that this is after the principles have been agreed, which one hopes would happen ahead of the type of scenario that is being postulated.

Q48 Lindsay Roy: I think there is recognition that we are in uncharted territory. There is a polarisation and a variety of views as to what would happen. Are there other useful examples to illustrate how membership of international bodies has adjusted when nation states break up? Are there any lessons we can learn from this?

Patrick Layden: There might be, but international law does not apply inside the European Union. As a matter of international law, the Vienna Convention of 1978 provides for what happens when you have a successor state. One of its provisions says that a successor state will assume membership of an international convention in the same way as the predecessor state did “without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization.” The European Court of Justice is not going to apply pure international law to an internal European matter. It might look at international law, but if it does not coincide with its view of what European law requires it will apply European law. It has applied European law effectively to member states’ obligations under the UN charter, which predates the European Union. When the United Nations Security Council makes provision for determining that a particular person is a terrorist and his assets have to be frozen, the European Court of Justice will look at the merits and see whether he is being treated fairly. A purist would say that since a member state freezing somebody’s assets is acting under a treaty that pre-existed—it was in place before the European Union came into being—the EU should not be doing that, but the Court of Justice is quite happy to do that. It will always take a view consistent with European rather than international law, but the answer to your question is that there are lots and lots of cases where countries have become independent and assumed a range of the obligations of their predecessors.

If Scotland became independent, as a matter of international law it would probably be a member of the Council of Europe. That would not be a difficulty. If it applied, it would get in straight away. It would not necessarily be a member of NATO. Indeed, some people in Scotland hold the view that it should not be a member of NATO. You cannot be made to stay in an international organisation if you do not want to. The Swiss still are not members of the United Nations.

Q49 Lindsay Roy: The whole process could be quite time-consuming and messy, but we are not certain about that.

Patrick Layden: It would be time-consuming, detailed but not necessarily messy.

Q50 Chair: To follow up the NATO parallel, you would almost be in a position where Scotland and the rest of the UK would inherit the UK’s membership of NATO but then would leave. Sorry, that is your position, is it not?

Professor Scott: I am not speaking about that.

Q51 Chair: But, surely, on the general principle that the two parts would inherit all the pre-existing memberships, they would just leave.

Professor Scott: You are misunderstanding. As Patrick said, the European Union is a separate legal order. It is quite distinct from the international legal order. My position is based entirely on the European legal order. NATO is not part of the European legal order, and I have no comment on that. My comment is entirely about the European legal order.

Q52 Simon Reevell: Professor, with no disrespect to you, assuming the situation is either that which Mr...
Layden envisages, which is that both countries fall outside the EU or that which the Commission certainly have previously indicated, which is that Scotland would and the UK remainder would not, if either or both of the two countries took the view that they did not want EU membership but EFTA membership—European Free Trade Association membership—would there be any legal bar to them seeking the ability to trade rather than integrate politically?

**Patrick Layden**: None that I can see. If Scotland were an independent country, it could decide not to be a member of the EU but a member of EFTA or the European Economic Area. It could get into treaty relationships with Iceland, Norway and perhaps Denmark in light of the Faroes with all the fish and oil that is lurking about between the four countries and form some kind of northern alliance, and then it could enter into trading arrangements with the EU.

**Q53 Simon Reevell**: Presumably, on your analysis, you could have a situation where Scotland sought EU membership and the remainder of the UK did not and sought European free trade rights; it would apply either way.

**Patrick Layden**: That is another possibility. It would be a matter of the politics at the time whether the rest of the UK felt comfortable just continuing to be a member if the European Commission is right or wanted to apply for membership if I am right. They would have to make that decision.

**Professor Scott**: It is important to distinguish what we are talking about. Is it EFTA or the European Economic Area? EFTA comprises four countries: Iceland, Norway, Liechtenstein and Switzerland. In this scenario Scotland would have to apply to the Council of EFTA and be admitted unanimously by it. That would be apparently quite straightforward because the obligations of EFTA membership are much less onerous, but there are obligations concerning competition law, state aid and so on. There would also probably be a budget requirement, as Norway pays the European Union’s budget a considerable amount of money, as indeed does Switzerland. EFTA is one option, should Scotland decide to go that way. The European Economic Area is another option, which would include full access to the internal market, including financial services. That would be a more onerous obligation, because then Scotland, like Norway but not like Switzerland, which is not within the European Economic Area for reasons relating to financial services, would have to adopt and accept all of the acquis communautaire laws, including those on financial services, having made no contribution to making those laws, and pay a significant subvention to the EU budget. These are two quite different things. EFTA and European Economic Area membership is not within Scotland’s gift in that scenario. Again, it would have to apply, and there would have to be a treaty signed between the European Union and Scotland. A bilateral with Denmark would not be possible because Denmark is within the European Economic Area.

**Q54 Simon Reevell**: But, in terms of the degree of involvement, if you like, the smaller, easier option or whatever is EFTA; the option beyond that is European Economic Area; and the option beyond that is EU membership. I put that a little crudely, but they stack up in that direction.

**Professor Scott**: That is entirely right. You can be within EFTA and the EEA; they are not mutually exclusive, because Norway is a member of two.

**Q55 Simon Reevell**: Mr Layden, on your analysis, the same would apply to the United Kingdom, which by then would not include Scotland.

**Patrick Layden**: Yes, if it chose to do that. It could do it today. If the UK decided to leave the European Union tomorrow and seek to enter into some arrangement with one or other of these organisations, that is obviously competent.

**Q56 Simon Reevell**: If you know how to achieve that, Mr Layden, you must drop me a note. I have a number of colleagues who would like to read it.

**Patrick Layden**: All I can tell you is that the European law is in article 50.

**Q57 Iain McKenzie**: Do you agree or disagree that Scotland after separation would be very unlikely to meet the convergence criteria for immediate membership of the single currency?

**Professor Scott**: There are two points. One is that under the current position of the Scottish Government it is unlikely to meet the criteria because you would have to have a separate currency. As far as I am aware, this Government’s position in Scotland is to retain sterling as its currency. It would not have its own currency and it could not go in. It does not have its own independent central bank. At the moment it would have to establish that; it could do that without having its own currency, but that would be a requirement. It would almost certainly meet price stability; it would meet interest rate stability almost certainly, because everything is at zero. Whether it would meet the fiscal stability conditions, the 60% debt and 3% deficit, depends on where we are in 2014 and 2015. Frankly, we do not know because things are moving rather rapidly. I doubt that many countries by 2014 will meet those criteria, even those who are inside the euro as is, but, given that I understand there is no intention to seek euro membership, it will not arise. The direct answer to your question is that at the present time it would not meet the criteria.

**Q58 Iain McKenzie**: Because of the currency.

**Professor Scott**: Because of the currency and perhaps because of the fiscal position, but we cannot forecast that with any certainty at all just now. It would also have to be in the exchange rate mechanism for two years and show stability within the exchange rate mechanism. Self-evidently, in 2014, 2015 and 2016, without a separate currency, it could not meet that condition. Technically, it would violate the Copenhagen conditions to get into the single currency and could not join. It would have to have a currency for two years under the present rules that was stable within the ERM. It would have to join the ERM and
then be stable within it for two years before it met the treaty requirements.

Q59 Chair: On your analysis, if Scotland wished to join the euro post-separation, there is a stage when Scotland would have to have its own currency.

Professor Scott: That is certainly the case just now, unless they timed it with the UK and the UK decided that it would.

Q60 Chair: No; leave that aside.

Professor Scott: Leaving that aside, if Scotland wished to join the euro, then under the treaty just now strictly interpreted—this may change because treaties can change—it would have to have its own currency, which would have to be within the ERM, which is voluntary. The Commission is quite clear about that, as is the central bank. It could have its own currency without going into the ERM and therefore would never have to join the euro, because it would never meet the conditions set out in the treaty. In answer to your question, yes, it would have to have its own currency.

Q61 Chair: If Scotland wished to move from having sterling, it would have to have its own currency and central bank, and then jump through a series of hoops, which involve shadowing the ERM or being involved in the ERM, and then would move on.

Professor Scott: Right.

Q62 Chair: There is no way in which it could move directly from one to the other, as it were.

Professor Scott: Not without the agreement of all member states.

Q63 Chair: Unless the treaty is changed of course.

Professor Scott: It is conceivable that Scotland could go along and plead a special case and the other 27 or 28, or however many member states there are, unanimously could agree on a protocol to amend the treaty for that one case. That is perfectly feasible legally, but, as the treaty stands just now, in the absence of a specific protocol for that particular issue, that would be the case.

Q64 Iain McKenzie: Mr Layden, on the legality of it, how important legally do you regard the obligation of any new accession state to the EU to join the single currency?

Patrick Layden: It is a formal obligation. Every new member state is expected to take on the euro. There are practical difficulties, as Drew has said, but the default position is that acceding member states will adopt the euro.

Q65 Iain McKenzie: Would Scotland be able to adopt the UK opt-out?

Patrick Layden: That is the question. It is another of these assumptions that we make because we have a UK-Scoto-centric view of the world. Of course we can take on the UK’s opt-out because it would be in our interests to do that, yes, but will the other member states agree to that? I do not know. Maybe they will; maybe they will be put off by the difficulties that Drew has mentioned in getting us through the ERM and into the euro. Maybe they will say, “No. We want a clear statement in principle from the Scots that they will join the euro.” Personally, I do not know whether the euro as we know it will be in existence in the next three weeks, never mind the next three years.

Q66 Iain McKenzie: Could we adopt the Swedish position of saying yes but never really getting anywhere with adoption?

Patrick Layden: You could. Whether or not that was acceptable would depend on how you negotiated with the European Commission. It might say, “Yes, of course”; it might say, “Maybe”; it might say, “No, certainly not.” We cannot control that position. There are precedents. Sweden is a precedent for not joining; the UK is a precedent for staying out. We cannot control the process. We would be applying to join, and the European Commission, with the other member states, would say, “These are the terms upon which we will accept you”, and we either accept them or not.

Q67 Chair: This is unknown and unknowable, essentially.

Patrick Layden: Yes.

Q68 Chair: That short-circuits things quite a bit then.

Professor Scott: I do not agree that it is unknowable. This is an anomaly. There is no other way to put it. In the absence of an ability legally, which is not in the treaty, to require a country to join the exchange rate mechanism, the European Commission cannot enforce membership of the euro. It simply can’t. That is an anomalous situation, but the Commission has made clear time and again, as has the central bank—if you consult the website, you will see this—that it is entirely up to a member state if it wishes to join the ERM. The alternative would be chaotic. You would be requiring an independent Scotland in this scenario to introduce a new currency. There is no legal basis in the treaty to require Scotland to do that. So it is not unknowable; it is utterly clear. The Swedish position has never been challenged by the Commission, and that is since 1995. It is not that the Swedes are deliberately avoiding some of the rules; they simply will not join the exchange rate mechanism. As long as they do not join the exchange rate mechanism, which cannot be foisted upon them, they are not able to satisfy the legal conditions to join the single currency. So you have a stalemate.

Q69 Chair: I think the point being made was slightly different. The question is not one of enforcement but getting a commitment to join. For example, as I understand it, Croatia is making a commitment or promise to join at an indeterminate time in the future, and all these other steps will have to be gone through. I think Iain is seeking clarification on whether or not such a rule is likely to apply to Scotland, leaving aside the issues of implementation. Scotland could agree in bad faith, presumably, that if it has to tick the box saying it will join the euro eventually, it can say, “Yes, we will tick that box but we have no intention of doing it because you can’t force us to set up our own
central bank and participate in the ERM.” Is that not correct?

Professor Scott: In my scenario you have the opt-out, as I said before. Technically, you could argue that the UK has committed to the single currency; it just cannot be forced upon it. The derogation can’t be withdrawn by the European Union. The opt-out does not say that Britain will never join the euro; it simply says that this provision does not apply to Britain. Successive UK Governments—I think it is still the position—have said they will join the euro when the time is right.

Q70 Iain McKenzie: Presumably, Scotland would need to state a clear intention to join. At the moment the UK is not stating that.

Professor Scott: In my scenario Scotland would not have to state that intention because it would inherit the opt-out from the current situation.

Q71 Chair: Am I right in thinking that so much of this is unknowable in the sense that, while we can discuss legalities, existing treaties and so on, so much of this is just politics. What we have today can quite easily be changed by a consensus tomorrow, and it will depend ultimately upon a process of haggling, discussion, trade-offs and so on and so forth within the European Union. We see what is happening just now with Hollande and Merkel discussing the future of the euro. Treaties will be torn up, rewritten and reinterpreted depending on the political situation. It will be exactly the same situation for Scotland and the rest of the UK. Therefore, all of this is, as it were, unknowable. It would be a political decision if the rest of the EU stood aside and let the European Court of Justice implement it. Doing nothing is a decision in those circumstances. Is that a fair analysis?

Patrick Layden: I think it is. As Drew said earlier—I think he said it earlier, but, if he did not, it is true anyway—there is no provision in the treaty for somebody to withdraw from the euro, but all it takes is 27 member states and 27 Chancellors of the Exchequer sitting round a table slightly larger than this saying, “Let’s have a protocol that provides for Greece to withdraw gracefully from the euro”, and it will become European law, and therefore it can happen. You are absolutely right. I can think of legal barriers to simply assuming that life will go on as we would like it to, but, at the end of the day, there will be a negotiation that will take into account any matters which those negotiating wish it to, and it will produce a result. Once the result has arrived and it has been ratified by 26, 27, 28 member states, depending on your point of view, then it will become European law.

Professor Scott: This question is not that contingent. I think the question about an independent Scotland’s continuation of membership of the EU is not in that sense unknowable. I am utterly sure that it is a foregone conclusion that Scotland would remain inside the European Union, as would the rest of the UK, unless one or other party seeks to leave. I see no unknowability about that personally. That is my view.

Chair: We wanted to get you here to get that view. We were aware that that was your line on these matters.

Q72 Lindsay Roy: To pick up another possible area of contention—the UK budget rebate—is it your view that Scotland would be entitled to a proportion of that if it became a separate member state of the EU?

Professor Scott: That is my view. Perhaps I may say something on this point. I have been looking at the Parliament paper “Scotland, Independence and the EU”. Page 10 gives figures, which, if they were right, would make a number of Conservative Members of Parliament quite happy. If I am right in my interpretation, it shows the UK contribution to the European Union as £13.2 million, given per capita head of £50 per year. I think that should be “billion”.

Q73 Chair: Is this the Library’s paper?

Professor Scott: Yes; it is the table to the bottom right of page 10. Unless I have an earlier copy, I read that as the gross contribution being £13.2 million. I think you will find the gross contribution of the UK is £13.2 billion.

Q74 Chair: You just can’t get the staff these days. I blame the Government.

Professor Scott: If it was £13.2 million, there would be no debate about the European Union in this Parliament. I would urge you to correct that. The net per capita figures for the UK, England and Scotland are wildly out as a result.

Q75 Chair: I confess I had not spotted that myself.

Professor Scott: The reason I am saying that is that, as an academic and teacher of students, my students will read this, as will most students, and think this is definitive work; it will become true by repetition. I looked at it only just before I came down. I do not mean to impugn the Library staff, but I do think there is something quite wildly wrong here.

Chair: The staff here will no doubt transmit this view to the Library and it will be corrected as soon as possible, if it is indeed an error.

Q76 Lindsay Roy: Perhaps you would go back to my point.

Professor Scott: My view is that the budget rebate would continue.

Q77 Lindsay Roy: On the basis of proportionality.

Professor Scott: On a GDP/GNP proportionality basis. You cannot change the obligations or privileges of EU citizens because of something that happens to the states, so I do not see any ground for changing that, unless a Scottish or UK Government ahead of any independence were moved to change the rebate themselves, which in my view would be advisable.

Q78 Lindsay Roy: Do you share that view, Mr Layden?

Patrick Layden: No. I take the view that both Scotland and the rest of the UK would be applying to join again; that is my view. If you take the Commission’s last stated view, certainly Scotland would be applying to join again. If I were the European Commission or any other member state, I would say, “Now is the time to get rid of this
ridiculous rebate. If these blighters want to join again, the rebate has to go.”

Q79 Lindsay Roy: What are the chances of Scotland negotiating a rebate on its own in these circumstances?

Patrick Layden: Small, I would have thought.

Q80 Lindsay Roy: How small?

Patrick Layden: Very small.

Q81 Lindsay Roy: Minuscule.

Patrick Layden: Oh yes; non-existent.

Professor Scott: Zero is the answer.

Q82 Lindsay Roy: That is helpful clarification.

Professor Scott: I agree. If Scotland were applying for membership as a new country, the chances of getting this would be zero because it is indefensible.

This was negotiated in 1984 when the UK economy was very weak compared with the average. The UK economy is now being subsidised by some of the weakest countries in Europe, which, frankly, is outrageous, but that is a political decision.

Q83 Chair: Indeed it is. Perhaps I may clarify a point related to Schengen. Presumably, the same arguments apply. Drew, your view would be that, if they are both in, they both inherit Schengen, and, if they want to depart from it, that is another matter, is it not? Patrick, the question of Schengen is something the EU would want to negotiate. That is part of the process of whether or not the UK continues to have its exemption from Schengen, is it not? There are so many of these things. You have two consistent positions, and then everything can be applied through the relevant template.

Patrick Layden: Yes. If either Scotland or RUK had to apply, the default position for new applicants is that the Schengen rules apply. There is a protocol relating to Schengen. Protocol 19 to the Treaty of Lisbon provides: “For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission.” The starting position would be that Schengen would apply to Scotland if Scotland applied to become a member. You could speculate that, if that were to happen, the Irish might want to consider whether they really thought it was a good idea to keep the common travel area the way it is now; and the rest of the UK would have to think about how important it was to it to have long queues at the immigration desks at Heathrow, or whether now was the time to do what the rest of Europe is doing and allow free movement across the borders, but, yes, it would be an issue.

Q84 Chair: If we accept that your position is correct, Scotland is in a much weaker negotiating position than the rest of the UK in relation to exercising its will on things like Schengen, on the basis that Scotland is less needed by the EU than the rest of the UK given the size of the market and everything else.

Patrick Layden: We have a lot of fish.

Q85 Chair: A lot of fish and oil but not much else.

Patrick Layden: We have the sturdy independence, resource and efforts of the Scottish people. I do not think I would downplay that, but it would not cut very much ice with the European Union.

Q86 Chair: In a less elegant way, that was the point I was making.

Professor Scott: We need to be clear where we are coming from on Schengen. The EU has denied, for example, Bulgaria admission to Schengen because it is unclear about the border controls. Schengen is a privilege in a sense more than an obligation. Ireland’s position on Schengen was brokered because of the single travel area within the UK, and that was respected. It would seem bizarre for the European Commission to demand that long-standing free movement across borders were somehow interfered with to enlighten borders that were not being used that often relative to the one they are closing down. That would not make sense from an EU perspective. The same would apply, in my view, to Scotland. Were they to insist on Scotland joining Schengen, they would have to insist on Scotland policing borders in a way that was satisfactory in the conditions of Schengen. As we have seen with other countries, the Dutch vetoed Bulgarian accession to Schengen on the grounds that they did not believe the borders were sufficiently secure.

We have to get away from the idea that every element of the treaty is an obligation that the Commission is determined to enforce. Every obligation of the treaty is an opportunity. In a sense the Commission is trying to facilitate. Certainly, Schengen is an opportunity because it cuts business and tourist costs; it gets rid of messy borders, but I see no interest at all in the Commission demanding that an independent Scotland, or indeed Ireland at present, must join Schengen and erect border controls given that it has no power to do so.

Q87 Chair: There is no doubt that the Commission would wish to see Britain’s opt-out from Schengen removed.

Professor Scott: I have not heard that officially stated; so I think there is a doubt. I have never heard the Commission pronounce on that. I stand to be corrected again, but I have never heard the Commission state it would like to see Britain’s opt-out removed.

Q88 Chair: The UK wishes to retain its Schengen opt-out on the basis that it does not wish to encourage enormous amounts of illegal immigration.

Professor Scott: That is the UK’s position.

Q89 Chair: That is a perfectly reasonable position.

Professor Scott: I do not think the Commission takes issue with that position. In fact the Commission welcomes the UK’s participation in other elements of the JHA agenda when the UK deems it appropriate to be engaged. I think the Commission is entirely flexible here. I have never heard the Commission express
frustration, irritation or anything else about the UK’s position on Schengen.

Q90 Chair: Let’s clarify what the implications would be in the unlikely event, on your view, that Scotland joined Schengen and the rest of the UK remained outside. Would all the obligations to police the border fall on the rest of the UK in a sense, because they are the people who do not want to have the travel area, rather than on Scotland, because people coming from the rest of the UK are not a problem for Scotland in a Schengen environment, but it is a problem for the rest of the UK with people coming from Scotland? Is that correct?
Professor Scott: Yes. Scotland would have to guarantee to police its borders.

Q91 Chair: It would have to police its external borders with the rest of the world, as it were, but not so much its border with England, would it?
Professor Scott: Why not, because then individuals in England could simply drive up the M74, get on a flight and enter through a Schengen corridor in Brussels? Scotland would have to be able to guarantee to the European Commission, the way the Bulgarians have to, that its non-Schengen borders are secure. If I travel to Brussels from Edinburgh, I have to go through passport control. The Belgian immigration authorities are obliged to provide that channel for me.

Q92 Chair: If Scotland was within Schengen and the rest of the UK was outside, there would then be an EU obligation upon Scotland to have border controls with the rest of these islands, and then it would be a choice for England and Wales as to whether or not they wished to do that or the rest of the UK.
Professor Scott: That is my understanding. The burden would fall on the country who wished to join Schengen.

Q93 Chair: Fine. We are simply seeking the truth. On this particular occasion I am not making a point.
Patrick Layden: This is one of those things where there is a clear treaty provision, which was the one I read out a minute ago: “… the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission.” So the default position is that Scotland would be in the free movement provisions of Schengen. As Drew says, that means we would have to have satisfactory external border controls, as you were saying, Chair, to make sure that third-country nationals did not sneak into the EU through our porous airports, or ordinary ports for that matter. Whether or not the rest of the UK wanted to impose border controls to prevent people from Scotland sneaking into England and Wales down the M74 would be a matter for them. For them, at the moment they do, and that is why we have border controls at Heathrow. Those are there only because of the opt-out that the UK has secured to the free travel provisions. If you did not have that opt-out and we were part of Schengen for all purposes, then you would not need those. You would simply say, “If this person is coming from an EU port, he can just come and go.”

Q94 Chair: Or, more importantly, you would not have all the barriers at the rail tunnel.
Patrick Layden: Yes.
Chair: I think we understand that completely.

Q95 Lindsay Roy: To turn to the charter of fundamental rights under domestic Scottish law if there was a separate Scotland, are there aspects of Scottish law which would require a derogation from aspects of the charter, if such a derogation could be negotiated?
Patrick Layden: I do not think so and, no, I do not think there are aspects of Scots law that would need to be changed. There is a possibility in relation to article 50, which is the double jeopardy provision and which is in different terms from the obligation under the European convention on human rights about double jeopardy. The UK has not signed up to the European convention position on double jeopardy, but it has signed up to the position under the charter of fundamental rights. There may be a question there, but it has not arisen yet. I see no prospect whatsoever of negotiating a derogation from any aspect of the charter of fundamental rights, whatever it means.
Professor Scott: I have no comment. It is not within my expertise.
Lindsay Roy: That is very helpful, Mr Layden.

Q96 Chair: The latest news from the Library, can I tell you, is that they say that all the figures are correct, but instead of the gross showing a pound sign followed by “m” it should be “b”? It is billions, but the net per capita and everything else is all correct, or the figures are correct, they say.
Professor Scott: I would question that. It is a long time since I have done long division. If I divide 13.2 billion by 55 million, I get 240. I am an old person, so the population is 55 million.

Q97 Chair: We will follow that up as well. As I said, you just can’t get the staff these days. It was never like this under the Labour Government. The things that we got from the Library were always perfect in those days.
Professor Scott: I think you will find the figures are wrong.

Q98 Lindsay Roy: You will get a prize for spotting it.
Professor Scott: It is self-interest, because my students will be saying, “I don’t think this is right.”

Q99 Chair: So, your students use papers from the House of Commons Library as notes.
Professor Scott: My students use as notes anything I do not give them.

Q100 Chair: I want to turn to one other particular point which Iain touched on earlier. Irrespective of your positions about how Scotland gets into the EU, if indeed it does so, I want to be clear about the treaty obligations with which Scotland would have to
comply. We have touched on some of them already. I want to clarify whether or not in your view there is an obligation to have a financial services regulator and energy regulator, and whether or not there is anything else like that which Scotland would have to establish. To be fair, if you cannot provide them off the top of your head, perhaps you will be able to give us a note later. I am sure it is the sort of thing you have in a cupboard at home, but it would be helpful for us.

**Professor Scott:** I think that is a very good question, as most of them have been, and it is a very important one. You are right. When it comes to energy, telecommunications and financial services, my reading of the treaty and the subsidiary legislation is that Scotland would have to establish independent regulatory authorities. That raises a raft of other questions that I think are very important, but the short answer to your question is that, as the EU develops as a regulatory union, the regulatory shadow, particularly in the area of financial services, is getting larger, rightly so in my view. One of the provisions in the new regulatory architecture of the EU is that member states establish independent regulatory authorities that are able to ensure compliance on the part of financial services industries within their country.

**Q101 Chair:** The Scottish Government have said that on separation they would want to inherit, as it were, the Bank of England and have it as the bank of last resort. My understanding is that they also want the Bank of England as a financial regulator. In these circumstances is it possible to have the Bank of England as a financial regulator but also a separate Scottish financial regulator, or is there a precedent for the EU saying that in these circumstances the Bank of England will cover as both?

**Professor Scott:** There is no precedent that I know of. My particular view is that the priority here is to ensure the coherence of a single UK financial services sector so that there are no impediments to financial service trade across a new border. I do not think this is technically problematic, but it would require that in essence the rest of the UK and Scotland agreed on the financial services regulations that prevailed in the UK, most of which would be coming down from the EU in any event, and ensured absolute compliance and equality of effect in both jurisdictions so that there were no arbitrage opportunities within the island of the UK. I think that is very important. As I say, I think it can be done and I could give you chapter and verse on how it could be done, but it would require the agreement of the Bank of England as the principal, though not the sole, financial services regulator, because it will have its own financial services authorities beneath it.

**Q102 Chair:** But would the EU regulations stipulate that it was not acceptable to have the regulator in one country acting as the regulator in another—that is, essentially the rest of the UK regulator acting as the regulator for Scotland as well? That was the point I was raising about the extent to which EU regulations or rules would insist upon things like separate telecommunications, power—

**Professor Scott:** The objective of the Commission is to establish within each member state a financial services authority that is responsible for overseeing the implementation of its financial services regulations. As long as the regulations are compliant—it does not matter where they originate, because many will come from Brussels anyway—there is no difficulty legally that I could see in Scotland accepting the UK version of the EU regulations, assuming they comply, which they would have to do anyway. I know of no precedent, but I cannot see any reason why that would be an insuperable problem. It would have to be something that was addressed.

**Mike Freer:** I think the word you are looking for is “outsourcing”.

**Q103 Chair:** That was exactly the point. I was not sure whether or not the EU would allow outsourcing, as it were, of various responsibilities, like nuclear regulation. There is a whole host of things.

**Professor Scott:** The minimum requirement on the UK will be given by Brussels; that will be the framework. If the UK then opts to have its own tweak on regulations in areas that perhaps are not regulated, Scotland would need to follow that. That would not incur an EU dimension because it would be extra-EU. The EU dimension will prevail for all countries, so in that sense Scotland will be doing nothing different from the rest of the UK; it would just be ensuring that in the transposition of those laws it was identical, essentially.

**Q104 Mike Freer:** Could they choose the Bank of France instead of the Bank of England?

**Professor Scott:** Again, this is not a matter that Scotland can decide in that sense. It would have to have an agreement with the regulatory authorities. Again, the interests of both players are to retain the integrity of the UK single financial area, because there are massive cross-border movements. I am one of the financial services.

**Q105 Chair:** That is right, but part of the discussion we have been having with others is about clarifying what advantages there is to the rest of the UK, and the Bank of England in being the lender of last resort to Scotland, what controls would be necessary, and to what extent that would effectively curtail any semblance of independence in that particular area. There would be no question of separation there; it would all be run from London.

**Professor Scott:** From Brussels. I have always distinguished between constitutional independence and effective independence and I have been doing so all my professional life. While we may be independent constitutionally over interest rates or the exchange rate, constitutionally as the UK we are certainly not independent over these things in any effective sense, because what happens in the rest of the world affects us. I do not draw the distinction that constitutional independence must mean unilateral autonomy over every instrument. It does not, it never will do and it never can do. This is an area where the EU, which is pooled sovereignty, is the top canine. I think the
European Commission is driving forward the regulatory framework for the financial services sector in the future. No matter what constellation these islands resolve into, provided they stay within the EU, they will all have to adopt, implement and enforce EU obligations on financial services. My only point is that, if the UK decides to regulate extra-EU, outside the EU’s orbit, then in my view it would be very important for an independent Scotland to follow, negotiate or discuss these regulations with the rest of the UK so as not to fragment what is a very successful and important single financial area. The objective is clear to me.

Q106 Chair: I understand that.

Patrick Layden: I have a feeling that, whether or not it is sensible—I accept it is—for an independent Scotland to carry on with sterling and the Bank of England as the lender of last resort, when it comes to the question of ensuring the implementation of EU financial regulations, the Commission will want a financial regulator in Scotland. The financial regulator in Scotland may simply be finding out what is being done in London today and then doing it in Scotland, but it will have to be an independent, separate body accountable to the EU. We may well be able to negotiate a deal with the rest of the UK that we can carry on with sterling, but it will set the rules under which we are going to operate. That would be an internal arrangement. It may well be we could sell that to or persuade the rest of the European Union that was okay because of our particular historical situation, but the Commission is liable to want a definable separate body in each member state to whom it can look for implementation of the obligations. Whether the version we use is the same as the English one will not matter; it will be for us to make sure that we implement it, and it will expect somebody in Scotland to be responsible for that. The same applies to things like telecommunications, the nuclear industry and anything else. There is a very limited extent to which we could say, “We do this through London.” It is not a coherent position if you are saying that you are an independent state.

Q107 Chair: That is very helpful. I had not thought of the EU as the top canine, but it is a parallel that has its merits. Do my colleagues have any other questions? I think we have covered most of it. Are there any other answers you have prepared for questions we have not asked? Is there anything that you are bursting to tell us that we have not covered?

Patrick Layden: I think it would be very unwise. There is one about the JHA opt-out. Under Title VI of the previous treaty a number of criminal law and other evidential matters were agreed unanimously by the Council and were not subject to the ordinary legislative procedure. Following the Treaty of Lisbon, all those measures will be brought into the ordinary legislative process of the treaty. There is a five-year transitional period, which ends in 2014. On 1 December 2014 they all become part of the acquis. The UK negotiated an opt-out. At some stage, but not later than six months before 1 December 2014, the UK can indicate to the rest of the member states, to the Commission, that it will not be bound by those measures. There are 133 of them. If the UK does that, a whole lot of carefully agreed measures will not apply to the UK as at 1 December 2014. If either the rest of the UK or Scotland applied to join the Union thereafter, the position of those 133 measures would be a matter which they would want to negotiate about. I certainly would not like to predict that they would agree that we could remain outside those measures. I do not know.

Q108 Chair: But that is not an issue that would arise under your scenario.

Patrick Layden: No. It would not arise under that scenario because life would just carry on.

Chair: That is a helpful point. We had not thought of that. Is there anything else? Thank you very much. Once you have left us, if there is anything that occurs to you that you wish you had told us, or you think perhaps you were not as full as you should have been in your answers, by all means feel free to send us more. We intend to hear further witnesses on this general area, and I suspect this whole debate will run and run. Thank you very much for your early contributions to our discussions on the EU.

Examination of Witnesses

Witnesses: Kenny Jordan, CSEU Regional Secretary, Systems, Scotstoun, Raymond Duguid, Unite Senior Shop Steward, Babcock Marine, and Eric McLeod, GMB Senior Shop Steward, Babcock Marine, Rosyth, gave evidence.

Q109 Chair: Gentlemen, welcome to this meeting of the Scottish Affairs Select Committee. As you know, we have arranged this especially to meet you following your meeting with Peter Luff, Defence Procurement Minister, and David Mundell, junior Scottish Office Minister.

We are conducting a series of inquiries into the impact of separation upon Scotland, and we are particularly interested in defence and related matters. We understand that you have been meeting the Ministers today about this subject. We are due to meet the Ministers after the Whit holiday, but we would welcome the opportunity to hear from you how your meeting went with the Minister today, and what you believe is the future for defence-related industries, particularly shipbuilding, under separation. I think it would be helpful if, first, you introduced yourselves and told us who you are and where you are from, and then we will go on to discuss the details.

Duncan McPhee: I am Duncan McPhee, the Unite trade union convenor at BAE Systems Scotstoun shipyard in Glasgow.

Kenny Jordan: I am Kenny Jordan, regional secretary of the CSEU in Scotland.
Raymond Duguid: I am Raymond Duguid, chair of the DJC, which is the Dockyard Industrial Joint Council, for Babcock at Rosyth.

Eric McLeod: I am Eric McLeod, GMB convenor at Babcock at Rosyth.

Q110 Chair: Have you sorted out who is speaking on behalf of yourselves?
Kenny Jordan: I think we will have the usual back four, if you like, to deal with the subject of defence, which is normal.

Q111 Lindsay Roy: Who is the sweeper?
Kenny Jordan: It is twin sets of centre-halves. We did request to meet with the Minister earlier today. The subject was, in essence, shipbuilding with the possible effect of a referendum or what a separate Scotland could mean to shipbuilding—but not only shipbuilding. We posed the question of what effect it would have on the broader defence-related industry in Scotland. I have to congratulate the Minister for being candid in his answers and quite clearly because of the situation. To quote, if we have a separate Scotland, it is clear there will be less defence jobs in Scotland.

As the CSEU in Scotland, we are obviously concerned that we want to see a future for our members and our members in industry. Today’s meeting quite clearly pointed out to us that, if Scotland becomes separate, because of the ramifications of being able to bid for future orders, that would be thwarted and would reduce the opportunity for work to be placed not only in Scottish shipyards but in other establishments throughout Scotland. Therefore, it is with great anxiety that we go back to Scotland. If this is the evidence of a possible separate Scotland, then our intention would be to question the Scottish Government about their alternative to possible job losses for our members.

Q112 Lindsay Roy: You said there would be less jobs. I take it that the whole thing would be decimated. Would that be an accurate interpretation?
Raymond Duguid: I think the Minister said that, if Scotland was independent, it could not bid for the Type 26, for instance. No one in Scotland could bid for the Type 26. We believe that would also fall into that realm. Clearly, there would be no infill work and no Type 26 work, and that, certainly on the Clyde, is our workload because we have no export work. That, to me, would mean that, unless an independent Scottish Government could provide equivalent-type orders, we would be greatly reduced or completely finished as a shipbuilding industry.

Q114 Chair: May I clarify whether or not the Minister indicated where the ships would be built?
Raymond Duguid: His words were that BAE Systems had a TOBA and they would be built in BAE Systems’ yards, but not in Scotland as it would be a foreign country.

Q115 Chair: If the Clyde yards lose the infill for MARS and the Type 26 work, is there sufficient other work available to them at the moment to keep the yards going?
Duncan McPhee: There is absolutely no other work on the horizon at the moment. As trade unions we constantly discuss with the company trying to get into the export market, which is a difficult one. You need Government support as well for that, but export work in the defence industry only supplements the core work. The core work in the UK always has been and will be MOD contracts. That can be a springboard to get exports, but without the basic Type 26 or MARS contracts it is extremely unlikely you could secure only export work.

Q116 Chair: For the record, to be clear about the export work, as a Member covering part of the area, I was aware of the idea that there would be some export models of the Type 26. Is it inevitable that they have to be built in the same yards as the Royal Navy’s Type 26, or could we have a situation where the export work is done in Scotland and the domestic Royal Navy work is done in England?
Raymond Duguid: In theory you could but in practice you could not, because you would need the skill base on the Type 26 Royal Navy work to carry it over into export work. It would be nigh-on impossible to separate the UK contract from the export contract because you would lose the skill base and be uncompetitive.

Q117 Lindsay Roy: Did you get any indication from the Minister about the implications for Rosyth?
Raymond Duguid: Yes. He said that for surface ship repair and refit work Rosyth was best placed for the maintenance of carriers. That is the yard that is building and assembling them. Obviously, in an independent Scotland that would not happen either.

Q118 Lindsay Roy: That would go.
Raymond Duguid: The work would stay within the UK—what is left of the UK.
Q119 Lindsay Roy: The rest of the UK.
Raymond Duguid: Because we would be a foreign country. It was pointed out that there was the Kingdom of Fife and we could be a principality, but I think that was stretching it.

Q120 Lindsay Roy: Therefore, what would be the impact on Rosyth in terms of manpower and womanpower?
Raymond Duguid: Babcock is looking for commercial work as we speak post-2020, after carrier, but none of that work is secured. We need the opportunity. Refit and ship repair is our core work; that is the bedrock on which we can build a business, so we need that.

Q121 Chair: Refitting and repair for whom?
Raymond Duguid: For the Royal Navy.

Q122 Chair: Only for the Royal Navy.
Raymond Duguid: The only person we do refitting and repair for at the moment is the Royal Navy.

Q123 Lindsay Roy: That is the bread and butter.
Raymond Duguid: Yes; that is the foundation on which to build a commercial business.

Q124 Chair: It is not just the foundation. Am I right in thinking that at the moment it is the only work you are doing?
Raymond Duguid: It is the only work in the yard at this present time, yes. We have got blast doors for a nuclear company, and towards the end of the year we have modules for Sellafield, but they are small contracts at the moment.

Q125 Chair: Is there a world market for repair that you would be able to access? Would you be able to fill the order books by doing ship repair for other people?
Raymond Duguid: At the moment Rosyth cannot compete with other yards in the UK for non-military ships. We deal with high-end, high-technology combative ships. We cannot compete with A&P on the Tyne or A&P down in the south of England for RFAs, far less commercial tankers and stuff.

Q126 Iain McKenzie: Do you see yourselves as specialised?
Raymond Duguid: We specialise in the high end.

Q127 Iain McKenzie: Diversification would be extremely difficult for you.
Raymond Duguid: Yes.

Q128 Chair: We heard earlier from Duncan about the possibility of export orders being around and the Clyde’s difficulty in doing that. Is there any market out there for export repairs, as it were, and people sending ships to you?
Raymond Duguid: All I can say is that we have not had any yet.

Q129 Chair: Is there a world market whereby different navies send ships to other countries, or do they all repair them in their own countries?
Raymond Duguid: They tend to keep them as a sovereign activity, which is what happens in the UK. One interesting statement made by the Minister was that the UK had not built a Royal Naval ship outside the UK in 50 years, and most countries are very similar. He pointed out that Turkey and Brazil were starting to get into these markets as well and build their own. America builds its own.

Q130 Chair: Has the rest of the UK got the capacity without Rosyth to undertake the maintenance of the ships that you would normally deal with and the renovation of the carrier?
Raymond Duguid: Yes, definitely.

Q131 Chair: So they can cope without you.
Raymond Duguid: Yes.

Q132 Chair: Is there anything you want to add about shipbuilding just in case there was anything we had not touched on? That seems pretty clear.
Iain McKenzie: Duncan, to be absolutely clear about the Clyde shipyards, what you are saying is that you will not be able to tender for the Type 26 contracts.
Duncan McPhee: Yes.

Q133 Iain McKenzie: In effect, if you can’t do that tender, if you do not have that workload to bridge the gap, which you are now coming up to, in your opinion is that a closure scenario for these yards?
Duncan McPhee: It will definitely be a closure scenario, because, as I have already said, no yard relies solely on export work; it just does not happen. That is always a supplementary to anything. Just to touch on exports, it is getting harder and harder to win exports because most countries now want to do their stuff in-house. BAE Systems, which is a global company, is involved in discussions with Brazil and places like that, but the deals are basically design-to-buy and they will be constructed within their own sovereign countries. That is now happening worldwide. Without your core Government market you do not have anything. On the Clyde, at the moment we have a six-ship Type 45 contract. Ship 5 will be delivered to the Royal Navy in July. We are on the last one, and that will not last much longer. After that, we are doing some carrier work, but, after carrier, there will be nothing at all. Yes, I would say it would mean the closure of shipbuilding on the Clyde.
Kenny Jordan: It should also be borne in mind that, if the yards were to close, we would lose the supply network that surrounds it. It would not just be the loss of the yards but the loss of an industry in the west of Scotland.

Q134 Chair: Why should the supply network that presently supplies the Clyde yards not carry on supplying wherever the Type 26s are built in future?
Kenny Jordan: There would be logistical problems. Contracted labour is supplied to the yards, so it is not just the core work force.

Q135 Lindsay Roy: Presumably, if it is high tech and high skill, you have good contacts with local colleges of education, like Carnegie College in Dunfermline.
What is the throughput of new apprentices and reskilling and upskilling of the work force at the present time?

Raymond Duguid: Currently, in Rosyth about 170 are going through apprenticeships. We have in the region of 15 to 20 graduates as well. We have just struck a deal with a company whereby we are planning to upskill and cross-skill the entire industrial workforce to bring in composite team working and make it more efficient and affordable, and to push on and try and get more commercial work into the yard. For these colleges we are there again as a foundation for them also.

Q136 Lindsay Roy: Is that mirrored in Govan in Glasgow?
Duncan McPhee: Yes. We have had a massive programme. We have recruited about 700 apprentices over the last decade; it is massive. We have a graduate programme every year as well, and that is continuing. We would lose that as well. To make a point on the supply chain, when we asked him about that, he also said that the supply chain into these ships would be ordered within the UK as well. Orders for radars and stuff like that also would have to be placed within the sovereign state as well. That would hit some of the big suppliers we have for MOD contracts within Scotland. There are a lot of companies within the defence industry in the supply chain.

Q137 Chair: To be clear again, the firms in Scotland who would be supplying the Type 26 build will not be able to supply the Type 26 if it is built in England from Scotland.
Duncan McPhee: Yes.

Q138 Chair: They would either lose the contracts altogether or have to relocate into the sovereign state of the rest of the United Kingdom.
Duncan McPhee: Yes. An example of that would be SELEX. That is one company based in Scotland that would be in that position.

Kenny Jordan: Companies like that who at the moment are in the supply chain for these contracts have establishments in England and other parts of the UK anyway. It is more than likely that they would relocate to those sites so they could tender for the contracts. I think it is obvious what would happen.

Q139 Chair: To be clear for the record on one particular point which I think you have enunciated, it has been suggested that you are so good that the British Government would have to buy things from you. There is nobody else as good as you are. Presumably, you raised this point with the Minister. What was his response to these sorts of points?

Kenny Jordan: His response was that there were no guarantees in a separate Scotland that they would continue to build ships; there was no guarantee.

Raymond Duguid: I think he did actually say that we were very good at what we do, but he made the point that the UK has not bought a Royal Navy ship from Scotland there will be less defence jobs, meaning right through the spectrum.

Raymond Duguid: The words he used were that 10,000 jobs were at risk in Scotland.
Duncan McPhee: I took that to mean that any MoD contracts would not be going to companies in Scotland because they would have to go within the UK. All of us in this room know the variety of companies that we have spread across Scotland in different parts of the defence industry who do MOD contracts. Unless they can get replacement work I do not see a great future there either.

Chair: I think we have just about covered everything.

Q141 Lindsay Roy: I would be keen to find out if there has been any approach from the Scottish Government to you about the possibility of defence jobs, if there were indeed a separate Scotland.

Kenny Jordan: There has been no approach as yet, no.

Q142 Lindsay Roy: None at all.
Kenny Jordan: No.
Duncan McPhee: I don’t think they have thought about it.

Q143 Lindsay Roy: So there is no indication about what kind of defence provision there would be for a separate Scotland at all.

Kenny Jordan: The only indication we have is the recently published thinking on perhaps what a Scottish navy might look like, which is obviously nothing like what we see being produced at the Clyde at the moment.

Duncan McPhee: The last SNP comment I saw was that they believed the skill base was that good that the MOD would continue to order in Scotland. It has been made quite clear to me that that will not be happening. I am actually glad that we are now getting some clarity, because this is a very important issue given the jobs that are involved. As far as I am concerned, we are moving on to the academic debate about independence, but the real stuff is about jobs and people’s lives. I have certainly got the UK view. I would like to ask the SNP, “That’s the UK policy. How are you going to protect the defence industry in Scotland? Where are your contracts going to come from? How much will they be?” I am certainly looking forward to asking that question.

Kenny Jordan: As I said earlier, we are mandated from our members to expose this debate on the effects of a possible separate Scotland. Part of that mandate

Note from witness: This refers to the Type 45 and Aircraft Carrier programmes
is to press the Scottish Government for answers about their industrial policy.

Q144 Lindsay Roy: Are you surprised that you have to take the initiative in approaching the Scottish Government, as opposed to the Scottish Government talking to you?
Kenny Jordan: Maybe it is not “surprised”; it is what gets on the front page of the newspapers that takes priority.

Q145 Lindsay Roy: Hopefully this will be a headline tomorrow.
Raymond Duguid: Each one of the companies we work for has bases in England. Potentially, these companies will not lose the work; we will just lose the jobs. Being Scottish, the worrying thing for me is that this is going to cost Scottish jobs. Babcock and BAE Systems have got sites in England that will carry on doing the work, and it is our work because we are best at it and are best placed to do it. The Minister said that, but we need to be part of the UK.
Lindsay Roy: You have done exceptionally well continuously in gaining these contracts.

Q146 Iain McKenzie: The position that has now been made clear to you by the Government is not shared by the SNP’s spokesperson on defence, who still seems to be of the opinion that you would be able to procure work from the UK and other countries around the world. You have clearly been told that you will not be allowed to tender for UK contracts, and you have said it would be nigh-on impossible to get any other contracts from round the world, certainly in the defence field, to the standard you are building to.
Kenny Jordan: Yes, absolutely.
Duncan McPhee: Yes.
Raymond Duguid: Yes.
Eric McLeod: Yes.

Q147 Lindsay Roy: How many jobs are we talking about?
Kenny Jordan: There are 1,700 to 2,000 at Rosyth.

Duncan McPhee: Yes. There are 3,000 direct employees on the Clyde.
Kenny Jordan: Plus supply chain jobs. I think there was a figure once stated of up to 16,000 jobs.

Q148 Iain McKenzie: You would think there would be an announcement from the SNP/Scottish Government on their—
Kenny Jordan: No; it is just what has been mentioned in the press.

Q149 Iain McKenzie: Almost in passing.
Kenny Jordan: There was a launch of a paper yesterday from an academic who forecast the needs of a Scottish defence policy.

Q150 Iain McKenzie: Did it go into any detail on the size of navy or type of ships that may be required?
Kenny Jordan: They are small ships, no submarines and definitely no carriers.

Q151 Iain McKenzie: There were no aircraft carriers, I would imagine.
Kenny Jordan: No aircraft carriers.

Chair: I think that has just about covered everything we can at the moment. We have already discussed what we might do, and we will be putting out a press release after this, indicating that we are concerned about what we have heard from you. We are seeing the Minister in three weeks’ time. However, as a Committee, it would be our intention to announce that we shall be particularly pursuing this issue. We will be seeking clarification from the companies involved and would want to visit some of the defence establishments just to gain further information about the numbers of jobs involved in all of this. In due course we will be seeking clarification from academic experts but also from the Scottish Government about their plans in relation to employment in defence. In terms of the formal side of the meeting, unless there are any further points, I draw things to a close and thank you very much for coming.
Wednesday 23 May 2012

Members present:

Mr Ian Davidson (Chair)
Jim McGovern
Iain McKenzie
David Mowat
Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: Professor Hew Strachan, Chichele Professor of the History of War, All Souls College, University of Oxford, Professor Malcolm Chalmers, Research Director, UK Defence Policy, Royal United Services Institute, and Francis Tusa, Editor, Defence Analysis, gave evidence.

Q152 Chair: Gentlemen, I very much welcome you to this meeting of the Scottish Affairs Select Committee. We are undertaking a series of investigations into different issues connected with separation for Scotland. We produced some reports on issues relating to the process, but we also want to have discussions and produce reports about issues relating to substantial matters. The first question is on the question of defence. Perhaps I may start off by asking you to introduce yourselves for the record and tell us your backgrounds.

Professor Strachan: I am Hew Strachan, professor of the History of War at Oxford. I suppose it is relevant to this Committee that when I was at Glasgow I set up the Scottish Centre for War Studies in 1997, and in 1999 we had a conference on the implications of devolution and independence for defence in Scotland.

Professor Chalmers: I am Malcolm Chalmers. I am the research director at the Royal United Services Institute in London. I am a Scot by origin and birth, but I was educated and have worked for most of my career in England.

Francis Tusa: I am Francis Tusa, editor of Defence Analysis, a London-based defence newsletter. I suppose the only reason I am here is that I have now done two fully-costed studies of issues to do with devolution, independence and the armed forces. All I will say is that I started the first one simply because I thought I would not be able to fill the pages of my newsletter over Christmas and new year and, rather than writing three pages, I ended up writing close to 15 and revisited the subject this year to update it.

Q153 Chair: I wonder whether I might start off by asking what threats to security do you believe a separate Scotland would face, and how should it configure its defence forces?

Professor Strachan: Inevitably, the question in part relates to what political framework defence is operating in. I suppose the big question all of us confront on this is whether an independent Scotland would be within NATO or not, because that would affect its defence posture and also the security and military roles it might want to undertake. If we are thinking simply in defensive terms, the truism that we live in an extraordinarily secure age and we happen to live in a secure part of the world at the moment holds true. If you viewed it purely in defence terms, the obvious threat would be terrorism and so on. I would add to that the implications of what might happen in the Arctic. That seems to me relevant to Scotland and its Scandinavian neighbours. The possible militarisation of the thawing of the ice cap and opening up of trade routes across the Arctic have implications certainly for maritime security. Maritime security would be one big area. The other big area would be air defence of some sort and, presumably, the need for Scotland to look after its own airspace properly.

To go back to my first point, the big question is how far Scotland would feel the need to get into a wider insurance scheme, if you like. My understanding of where the United Kingdom is today is that a lot of what it does, particularly in relation to Afghanistan and Iraq, has been in order to buy into the favour bank in the United States. That is exactly what a great many other US allies are doing. What they are doing is hoping that, if at some point in the future they get themselves into an insecure situation or a position of greater insecurity, they will be able to call in those favours. For me, that is the core question.

Professor Chalmers: Following on from Professor Strachan’s remarks, I think that in the short to medium term the expectation that we will get into a war between the UK and another country about the UK’s territorial integrity is very far-fetched. As Professor Strachan says, in many respects we live in a particularly secure part of the world, but we also live in a world—the Government’s strategic defence and security review pointed this out—where there is a lot of uncertainty about where the world might be in 10 or 20 years. Of course, independence, if not for ever, is for a very long time, and in considering the implications for an independent Scotland one has to think about where the world might be in 30, 40 or 50 years. I think there is every reason to prepare and think about the possible and the plausible outcomes. I think the main issues in

European institutional frameworks will be in 10 or 15 years. We just do not know the answer to that question. On one level one can say that an independent Scotland will simply be another small European state, which is pretty secure but which needs some modest provision and can do that in co-operation with others, as Norway, Sweden, Denmark and Ireland all do with different positions and alliances. The main issues in
relation to Scotland would be transition ones—considerable transition ones but transition ones nevertheless. I think that in the long term there is also a clear difference between being part of a United Kingdom where there is an entirely equal commitment across that country, so that if any part of the United Kingdom is threatened in any way the whole United Kingdom state comes to meet that threat without question and differentiation, and a situation in which Scotland is independent, as is the Republic of Ireland, and, although there might be a reasonable expectation of friendly, allied relations with common membership of the European Union and help when one can, the level of expectation and guarantee would be significantly less if there was independence. In that scenario how much less it would be depends on all sorts of things that we are going to talk about.

In the immediate future—the next five to 10 years—the risks one has to take more seriously as a small power would be ones in which the military would have a role but would not necessarily be the primary responder: things like terrorism, cybercrime and fisheries protection. If there is a deepening economic crisis in these islands as a result of the eurozone crisis, there may also be issues of civil disorder, and there is certainly a role for security agencies in relation to that. Whether there is a role for the military is perhaps more questionable. There might also be questions in relation to Northern Ireland. In the hypothetical scenario you paint, it is not clear whether Northern Ireland simply stays part of the United Kingdom and it is entirely a problem for London, or whether Scotland might be asked to take some responsibility there.

Francis Tusa: I take a slightly different view. It is very easy for one to sit in the United Kingdom and say that everything is safe and happy for the foreseeable future. Instead, I would look much more, as I know the SNP have in policy documents, at the likes of Denmark, Norway and Sweden. They are far less sanguine about the next five to 10 years. If you look at their defence plans generally, they do not view stuff in the Arctic as a possibility—something that might happen. If I say they view this as tomorrow’s war then tomorrow and not that it “might” end up as a shooting war but that it “probably will” end up as a shooting war. They are investing today in both research and development and procurement for that conflict, cold war, call it what you will. If you had an independent Scotland, I am not necessarily as convinced that there would be a wonderful period of 10 to 20 years for a series of threats to work themselves out. Just comparing it with other people with interests, Denmark is not a particularly big country but it is investing a huge amount in a completely new navy, all aimed at issues to do with the north Atlantic and the Arctic ocean. Does that mean that an independent Scotland would have to do precisely the same? No, but if you are looking at how comparator nations are dealing with things, that is what they are doing. Interestingly, although Danish defence expenditure has not been cut as much as that of other European countries, not even the UK, Norwegian expenditure is rising significantly, especially in procurement. The Swedes have managed to keep their defence procurement on an upward trend. They are taking hits elsewhere. You have to ask yourselves why they are doing that if there is no realistic, sensible trend. If you talk to Nordic people, especially the air forces but also naval forces, they will tell you about the level of Russian activity, submarine and otherwise. We may not yet see as many Backfires and Bears coming down the North sea. If you are based in Kiruna or Luleå, you are seeing a lot more activity. They have a very different perspective from the one you might get from London or possibly even Edinburgh.

Q154 Lindsay Roy: Has there been any indication that the Scottish Government have taken into account any scenario planning or risk analysis in their future defence programme?

Francis Tusa: I have not seen or heard any despite doing four or five years on this. No one has come back and said, yes, they are doing intensive work at all. If anything, over the last six to eight months, if you raise “what if” topics, certainly on the military side you are met with a very polite smile and, “Oh, is that the time?”, have they thought about it. If I were to deduce from it that people had been told, “Don’t even get involved”, I think that would be a fair comment.

Professor Strachan: Going back to the conference in 1999, I see almost no development from that day to this in thinking on these sorts of issues and what the implications might be. Of course, the quick and easy response when you ask that sort of question is, “It’s not our constitutional responsibility”, which in immediate terms it is not, but, as we have just heard, the issue is not about the immediate but the medium to long term. The drift of your question is entirely right. There does not seem to have been any appetite to engage in this sort of serious thinking. It seems to me that what tends to happen instead is an engagement in, “What sort of forces might we need?”, without any sort of context in which those forces might be set. Because it is partly related to the defence industry, it tends to begin with the building blocks rather than thinking of the context within which those building blocks will be stacked.

Q155 Lindsay Roy: Would you accept that there has been almost a vacuum in strategic thinking in terms of the Scottish Government and the defence programme?

Professor Strachan: Yes, partly because there is not a defence programme, so there is unlikely to be strategic thinking. I think there is a wider issue. I was in Glasgow and I am still based in Scotland. I have tried to suggest in Edinburgh once or twice that it might be a good idea if we just had a wider international discussion of the sort you might find going on here at RUSI where Malcolm works or at Chatham House. There really is not much appetite for engagement in it in terms of a security dimension. There is a great sense of outreach—“We want to engage with other countries”—but not a sense that these might be issues that involve threats as well as opportunities.

Professor Chalmers: Clearly, until the issue of the referendum was on the table, the Scottish Government could say, “It’s not our responsibility to look at
defence”, but we are now in a situation where it is probable there will be a referendum on Scottish independence by 2014. In order for the Scottish people to make an informed judgment as to how to vote, they need to know answers to many questions, one of which is what the implications for defence would be. Like Francis, I have written a paper, which is on the RUSI website, which goes into detail about what independence might mean and what the options are for Scotland’s independence. It is very healthy to have a free-flowing debate among people not in the Scottish Government and also people within it as well about what the different options would be.

The final point I would make, however, is that there is no single Scottish force structure you could have. As for the UK, there are different options, and the more you think that the primary threat faced by an independent Scotland would be from the north—from the Arctic—the more you might put emphasis on naval or air forces rather than ground forces.

Q156 Lindsay Roy: It would be fair to say that the referendum has been on the agenda in a serious way since 2007 and even more serious since 2011. What are your feelings on this? Francis Tusa: If I could come in on that with a slight change to what I said earlier, have people looked at, for example, force structures, basing and so forth of units all over the UK? Yes. People have looked at future army and air force structures. If you are going for the joint strike fighter as opposed to Tornado, where might you put bases? These things have been considered. When I wrote the first study in 2007, a lot of subscribers from Scotland contacted me to say it was great to see what I had done. It was the first time they had ever seen people looking at a totally blank sheet of paper. The starting point for the calculations is that you want from a blank sheet of paper?” They said it was totally ridiculous. I do not think people are saying that nowadays. Are there people inside main building who are quietly putting in time to consider some of the issues? Oh, yes. Will they talk about it openly? Believe you me, no.

Q157 Chair: To take us slightly back, unless I am mistaken, you did give us three somewhat different perspectives on the threats facing a separate Scotland. Can you give us a brief outline of what you think the appropriate force structure and equipment level might be to cope with those levels of threat just so that we have the parameters around which the debate can be conducted? As was indicated earlier, I have to be somewhere by eight.

Professor Strachan: Do you want a one-minute answer or a longer one? In a way, it is still a chicken-and-egg problem. What are you trying to do? Stuart Crawford, who has done work on this, would say that you need armed forces of roughly 25,000. It will be a couple of brigades, one regular and one TA, and those sorts of things. That is all fine, except for what? The “for what” question determines what you are going to do. If you are talking about the sorts of things that Francis just talked about, of course you will be looking predominantly at maritime and air capabilities rather than ground forces. Picking up what could be a real question for Scotland, if you look at civil disorder possibly involving military engagement, which, certainly at the moment, the Westminster Government do not envisage, such as serious economic problems that cause violence on streets, or whatever else—the sorts of things Malcolm referred to—you might want ground forces to supplement the police in a domestic context. That would put you in a different place again. Do you feel that Scotland should be able to provide a peace-keeping force? Will the consequence of the effects of Iraq and Afghanistan and the elevation at the same time of the responsibility to protect—which potentially create contradictory impulses in foreign policy but, assuming Scotland is in the UN, will be a UN obligation—lead to a revival of old-fashioned peace-keeping, in which case Scotland might well want to see itself as positioned to be part of that? I am already not giving you the one-minute answer, but I see no reason to dissent from Stuart Crawford’s figures as a departure point. It needs to be said there are things that are not there that a force might want. The big ticket items would be the ones that Scotland would need to discuss. Would it need a tank? Would it need a carrier simply because it would be able to launch air assets from ground bases. What would it need in the way of armour, if anything? Probably nothing would be one argument. You might need a light reconnaissance vehicle but you might not need a tank. Those are the sorts of answers that seem to underpin much of the thinking at the moment and bring the defence budget pro rata to manageable levels, because you are not investing in a great deal of this heavy equipment and you are keeping your forces relatively small on the presumption that they are designed predominantly for Scottish defence and possibly for some notional contribution to something like a peace-keeping force.

Q158 Chair: Before we move along, is it fair for us to take Stuart Crawford’s perspective as a sort of de minimis and add other items off the menu, and then there is a bill attached to them? You have a home guard and some planes and boats, and the more planes you want you just add more stuff. Is that an easy way of looking at it, or does it have to be completely restructured?

Professor Strachan: What he has done is to take what you might call the legacy items and thought, “What will we get? What will we inherit?” He comes from an army background himself. He has taken what he is familiar with. What he has not done is to say, “If you have a new state in this part of the world, what would you want from a blank sheet of paper?”

Francis Tusa: It is not going to be a blank sheet of paper. The starting point for the calculations is that you have a divorce. How are you going to calculate it? It will not be like going along the aisles of a supermarket and picking items. You will end up with a certain amount of kit given to you as part of the break-up of the British armed forces.

Professor Strachan: Well, are you?
Francis Tusa: In what other way will it happen? For example—this is perhaps one of the thorniest ones—despite the anti-nuclear side and no nuclear propulsion, weapons and so forth, the Scottish taxpayers have paid directly for nuclear attack submarines, ballistic missile boats and so forth. They have a stake in those. Therefore, that comes into the mix. You can get into horse trading afterwards and say, “If I don’t want my half of an Astute Class boat, what will you give me for that half?” But the starting point is not going to be a blank sheet of paper. The starting point is that you look at the discussion of the infantry battalions and other units. It is not a blank sheet of paper; it is a sheet of paper with a lot on it. I think the whole issue of force structures is not as difficult as you might think. Bearing in mind the number of examples around—Denmark, the Netherlands and so forth—it is pretty easy to look at what these countries can do for a certain amount of money with what kit. It honestly does not take that much time. You then work out which of those models suits you best as an independent Scotland. If you were to ask what the balance is, Ireland is not even going to have a pretty ineffective force that has to rely on everyone else for anything. You then have very capable Danish naval forces, pretty capable Dutch naval forces, and the Norwegians are now mastering very large air forces. You have a range of examples sitting there on the shelves with budgets available. I am not convinced it is that difficult to work out what an independent Scotland would want its armed forces to look like. You have examples with operational experience all over the world. You can look at those and say, “That looks like the one for us.”

Professor Strachan: One of the questions would be the balance—these Scandinavian examples highlight the question—between reserves and regulars. When I was thinking of what you might want, you might go, according to the roles you anticipate, in a very different direction in terms of the balance between regular and reserve capabilities. The Norwegians are a case in point. They have roughly 25,000 regulars and twice that number of reservists. It is a very different mix from the one we currently have.

Professor Chalmers: Perhaps I may return to Professor Strachan’s point about dividing the assets. It is a Union-wide issue, but it is particularly important in defence. The MOD accounts show the total value, after depreciation, of its assets as about £88 billion. You could divide these in the event of separation in two ways. You could divide them, as has happened in the Soviet Union for example, according to where assets happen to be at independence. Some of the assets are rather mobile, so it will be interesting to see what happened in the days before that, but that would be one principle. On that principle, all the Royal Navy submarines would be part of the Scottish equation and then you do some swaps after that. Or you could do it on the principle of population share. Everybody has paid for these assets over decades, so Scotland should take 8.5% of that £88 billion and then work out what that is equivalent to and do some bartering based on that principle. On either of those models, in my view, Scotland would have some assets, but they would not be the right sort of assets for what we ourselves, starting from a blank sheet of paper, might say was a model. One of the differences between an independent Scotland on the one hand and Norway and Denmark on the other is that the latter have had decades to design and build up forces and skills for their role. Norway has been an independent state for more than 100 years. They have had a long period to build up those capabilities. It would not be an overnight job. Thinking about what Scotland would ideally want, it will not get what it ideally decides for another 20 or 30 years in a rapidly changing world.

The last point in relation to the Norway/Denmark comparison is that spending comes into this. Unless there is a very big change in the strategic environment, like a war in the Arctic, which I do not think is very likely but is a possibility, I would not imagine Scotland spending more of its GDP on defence than the NATO average, which is around where Norway and Denmark are. For all that those in the military in Norway and Denmark worry about a range of things, that is what the military is paid to do. Norway and Denmark both spend about 1.4% of their GDP on defence, on average. That is a pretty effective force that are seriously threatened by having a war with Russia next year. They are involved in prudent preparation, and so would Scotland have to be. If Scotland spent about 1.4% of its GDP on defence, it would have a budget, depending on how you count oil revenues in GDP, of somewhere between £1.7 billion to £2.1 billion per annum, which compares with the Norwegian annual defence budget of over £4 billion and a Danish defence budget of almost £3 billion. On that scenario, Scotland would be spending significantly less on defence than Norway and Denmark but significantly more than Ireland. In the end, after transition costs were paid, I think that it would get a capability more or less of that order of magnitude.

I think Stuart Crawford’s model army is a very interesting and helpful starting point, as you said, Chair. Given that spending constraint, if you wanted to add anything to his model forces, you would have to take something else away; otherwise, it just would not add up.

Q159 Jim McGovern: On the point about regimental structures and British armed forces personnel, about an hour ago I was lucky enough to be able to ask the Prime Minister a question about this. In my local area, Dundee and Tayside, the Black Watch battalion is very significant. I know it is a matter of opinion rather than fact, but could you see the Black Watch continuing to exist if Scotland separated from the UK?

Francis Tusa: In terms of costing and the force structure issue, one of the most challenging pledges to keep all the names of the battalions and so forth is that you would end up with a Scottish armed forces and keep all the bases and everything. Scottish armed forces are predicated not on what you want to do as a military but simply on numbers of personnel. They would also be very expensive armed forces in terms of just paying people. If an independent Scotland wanted seven named infantry battalions, plus named artillery regiments and armoured regiments, fine. They will
just be very manpower-intensive and expensive armed forces, which will not necessarily be able to do much. That is a decision that an independent Scottish Government will have to take.

At the moment, the Scottish battalions are keeping going. I would throw in one thing from the point of view of someone who did in my own way serve for 10 years. At the time of the last review of the future army structure the Scottish regiments did themselves absolutely no favours by trying to claim that they were special, elite and things like that. They actually turned the rest of the Army off. Rather than the armed forces fighting the politicians as a unit, trying to fight their corner as the military, the view was, "If you think so little of us, we won’t necessarily stand alongside you."

At this time I would seriously counsel the Scottish regiments to try to play in the strength of the whole. I will get it wrong, but who was it who said, “We must all hang together, or assuredly we shall all hang separately”? That will apply in spades this time round.

Q160 Jim McGovern: I should perhaps put on record that I disagree with you entirely.

Chair: That is what the witnesses are here for so that you can disagree with them.

Professor Strachan: I think you are going to disagree with me, too. To put a slightly different gloss on this, the last time round the Black Watch was absolutely in the front line in resisting the reorganisation and creation of the Royal Regiment of Scotland, whereas the Argylls, which had been the highlighted regiment in the debate and were reduced to company strength and then brought up to battalion strength again, took the reorganisation on the chin. As Francis said, the effect collectively, of course, is that, once one Scottish regiment was resisting, then the collective benefits that came from creating a large regiment were essentially jeopardised because there was not buying-in to the working of a large regiment in the way that has happened, for example, with the Rifles. That has been a very successful example of a regiment that has lost individual battalion identity but gained greater identity as a consequence.

For my own money, the Royal Regiment of Scotland has a very clear identity, which is that it is Scots, and for most of the Scottish public that is absolutely what they recognise, particularly in the large conurbations. In Glasgow and Edinburgh much of this is really not fully understood. I quite understand that on Tayside it is a different story. I live in the Borders, and the King’s Own Scottish Borderers and the Royal Scots amalgamation caused feeling. I understood exactly where people were coming from. But the bigger problem here, to which Francis referred, is that the manpower base simply will not sustain this number of Scottish infantry battalions. That has been true since 1881. One of the reasons why every time that there is a reorganisation of the Army, particularly since 1957 but beginning in 1881, the Scottish regiments have been up front in terms of the issue of their identity and future is precisely because the population base has not been there. In 1881 the problem was that there were too few highlanders to fill the highland regiments and they recruited in the lowlands, and the lowland regiments then recruited south of the border to make up their numbers. Broadly speaking, that has been the story from that day to this.

You will all know that, at the moment, in regard to the Scottish battalions, Scottish recruiting is pretty healthy. It is not that it is bad in relation to the rest of the United Kingdom; it is just that the Scottish population base is small. Scottish battalions are kept up to strength by Fijians. Essentially, the Royal Regiment of Scotland is sustaining one regular battalion more than it can fill with Scots. At some point this issue has to be grasped. I believe most people thought that in 2004, 2005 and 2006 it had been grasped, because the Royal Regiment of Scotland was created precisely to enable the sort of flexibility that a large regiment allows, particularly—this leads into the point about whether the Black Watch would go into the new structures—if you are serving. If you are serving and you are an ambitious soldier, you want the career opportunities that a large regiment creates. If you are in a single battalion, the opportunities narrow right down.

What has happened to the British armed forces, particularly in the wake of Iraq and Afghanistan, is a degree of professionalism, which means that even people comparatively junior in rank are thinking much more seriously in career terms. The old days of the cold war when people spent their time thinking, “When can I go ski-ing? How much football can I get in?” and so on have gone, because there just is not time for that in today’s Army. The upshot is that what people want if they join the Army is a career where there are real promotion prospects, if they are committing themselves to it as a career. A single battalion will not deliver that.

What concerns me in terms of the move to an independent Scotland is that not only would Scotland struggle to sustain a reasonable number of infantry battalions but many Scots, if they possibly could, would vote with their feet and go to the Army that will give them the career options and openings. You see it already with the Irish who serve in the British Army rather than the Irish Army, and it happened before 1707. That was exactly what the Scots did. They did not serve in the Scots Army; they served in the English establishment because that was where the opportunities were.

Q161 Jim McGovern: In my view, both of the speakers have dismissed what is called the “golden thread” of the Black Watch. There are a lot of people in Dundee and probably Tayside and Fife who join the Black Watch because their fathers and grandfathers were in the Black Watch, not because they see it as a career opportunity or somewhere to make a good living, get a big salary or whatever. To dismiss the name of the Black Watch is quite offensive and insulting.

Francis Tusa: I would not take the insult. All I would say is that there is potential insult back that says that the large battalions and regiments do not have morale, history and do not have people joining because their fathers and grandfathers joined before them. I know the Royal Anglian Regiment quite well; my cap badge was Queen’s Regiment. You have those regimental loyalties, as do Fusiliers as well. That is why I am
suggestions that trying to say the Scottish regiments are different from the rest of the British infantry is a very divisive and dangerous path and does no one any good. I agree totally with the regimental principle. When one hears, “Let’s just make it all into one cap badge and one beret”, I am totally against that. In my TA career I have been trained by Scottish NCOs. I am well aware of what they have done to me and all for the good. I am not fighting that side. There was some choice language, I can tell you.

Jim McGovern: In 2006 I visited America as part of the British-American Parliamentary Group. At that time I met General David Petraeus, who at that time was the Supreme Command of Allied Forces in Iraq. He seemed to be something of an authority on the Black Watch; he had studied the history. He told me that the one thing the US Army was envious of when it came to British armed forces personnel was the fact that they had regimental names, battalion names, cap badges and so on. I repeat what I said earlier. I find it offensive and quite insulting if the witnesses here dismiss that.

Q162 Chair: Let’s not spend too much time on this. I understand the strength of feeling on both sides, but I do not want to focus just on this. What I want to pick up, however, is what I understood the witnesses to be saying, which was that they believed separate Scottish armed forces would not be able to sustain the number of single battalion regiments that they have at the present time. Is that correct?

Francis Tusa: And also you would be faced with the probable range of budgets. You have the choice between equipment or manpower. By the way, that has been faced by almost every European country, and also the United States at the moment. Manpower is just expensive. If you want large manpower armed forces, something will give, and the equipment will give, which means those armed forces will do less. From personal experience, I am very much in agreement with what I agree is a totally unscientific opinion poll. Every time I have lectured at armed forces bases around Britain when the subject of independence has come up and I have said, “Would you stay with the Scottish defence force or the British armed forces?” the answer—

Q163 Chair: Let me come to that in a minute. We have got that. I just want to be absolutely clear that you are all of the view that separate Scottish defence forces would not be able to sustain the existing pattern of regimental battalions.

Professor Strachan: Unless there were a dramatic change in recruiting patterns and the offer was that much greater. Coming back to the Norwegian comparison, Norway has conscription but there is competition to be conscripted because it is seen as a good career option, as it is in Switzerland. Of course that situation could change, but then there is a budgetary question if you sustain that number of battalions. You referred to single infantry battalions. The key question is whether you want a single infantry regimental battalion or regimental structure, or whether you want a large regiment. I believe that large regiment should have been called the Black Watch; that is the senior Highland regiment, but that would have eclipsed the other ones, but let’s get off that.

Q164 Chair: That is somewhat of a guess as well. My own experience of the Royal Regiment of Scotland last time I was at the Selkirk Sevens, which was some time ago, is that the regiment’s team was composed entirely of Fijians. There was not a Scottish accent among them. They won the tournament, if I remember correctly, which was presumably the point of the exercise. Can I come back to the division of assets? We have a list of things that we want to cover, and I do not think we have covered this one adequately. How would you envisage the division of assets being handled? You asked earlier whether it was a tenth of the equipment cost or the equivalent of Monopoly money and you can spend this amount. Presumably, the assets also have to be balanced by the debts in a sense. Presumably, the relocation costs of Trident and so on, which will potentially be enormous, have to be counted against the costs of the assets. Therefore, shares of each have to be paid. I do not know how any of that will be handled. Perhaps you could enlighten us.

Professor Chalmers: I certainly do not have a magic prediction machine.

Q165 Chair: You are here as expert witnesses, so we expect help.

Professor Chalmers: In that case I will tell you exactly what will happen. The first thing is that it will be put in a wider context, so there are lots of other assets and liabilities. There is North Sea oil, most obviously, about which there will have to be a settlement. In relation to defence specifically, in addition to the actual assets we have now—buildings, infrastructure and equipment—there are contractual obligations for future equipment contracts that have been signed, and somebody will have to take on those contracts. It will not always be London. There may be some contracts that a Scottish Government will want to take on. If there are cancellation costs, those will have to be borne. All of that will have to go in the mix. It just shows you what a complicated process those negotiations for separation will be.

After a referendum, if both sides accept the result, the key thing is what judgments both sides make as to the sort of foreign and security policy relationships they have with each other. If you went into those negotiations in a hostile spirit and saw it as a zero sum game, it would be very difficult to reach an agreement, but the bargaining position would undoubtedly be with the UK rather than Scotland. It is also possible and maybe likely—who knows, because it depends on the political atmosphere—that both sides will see they have an interest in compromise because they will continue to inhabit the same island. You can go back to a pre-1707 situation when there was a Union of the crowns and a lot of military co-operation, even though they were independent states under the crown, where the UK does not want Scotland to be a base for sub-state threats, terrorism or security problems. The UK will need to have strong security forces and agencies.
working in Scotland in close co-operation with the security agencies in the UK. They will need access to Scotland and arrangements for mutual procurement. Most symbolically but not the only example, there will be the Trident base. I wrote about this quite a number of years ago the last time there was a surge in support for independence a decade ago. If an independent Scottish Government were to insist on the Trident submarines being removed rapidly without the UK Government having anywhere to put them, that would create a very bad atmosphere between Scotland and the UK, and indeed between Scotland and the wider international community. It is one thing accepting a re-division of territories, which very few other countries in NATO would sympathise with at all, but quite another if it was seen to be taking a radically different foreign policy course, and that is what rapid expulsion would be.

If a Scottish Government were to accept that for a significant period of time, perhaps indefinitely but certainly a long period of time, Trident would have to remain because there simply is not anywhere else to put it, that in itself would be a significant bargaining card for Scotland. Scotland could say, “We’ve given you this, but in return we want a reasonable negotiation that leaves Scotland with a defence force that is small but does the job, and a Scotland in NATO that therefore does not have to rely entirely on itself for its own security.”

Chair: That is a very helpful point. Essentially, what you are saying is that issues relating to defence should not be seen in isolation but they can be balanced by trade-offs elsewhere, such as access to the Bank of England, the use of the currency and all the rest of it.

Q166 Iain McKenzie: On the assets, would Scotland be able to put criteria in there that said, for instance, “We don’t want handed over a frigate that is over five or 10 years old”? Would what was handed over be a mixture and in effect a separate Scotland would need to replenish that sooner rather than later?

Professor Chalmers: If you look at the defence assets of the UK—£88 billion or thereabouts—almost all the high-end ones are ones that Scotland would not want. It will not want any of the submarines, Type 45s, or the carriers, just in the Navy.

Q167 Iain McKenzie: You have already identified that the Scottish people have invested taxes in that.

Professor Chalmers: Yes.

Q168 Iain McKenzie: Would there be a trade-off to say, “We don’t want a submarine but we’ll take two helicopters”, or something?

Francis Tusa: Forget the asset value; let’s look at the size of the Air Force. When I first wrote this there were Harriers and Nimrods around, so forgive the fact that they have both disappeared from the piece. If you say, for the sake of argument, that Scotland is 10% of the economy, to what does that equate? For the sake of argument, you end up saying that Scotland’s share would be 0.3 of an aircraft carrier. Straight away you say, “What’s the use of having 0.3 of an aircraft carrier?” The answer is none. However, that does allow you to say, “I will swap you my 0.3 in favour of something else that I need.” If you look through the list as existed at the time, Scotland would be allocated 15 Tornados. Is that a useful fleet? Yes, you can run a fleet of 15 Tornados—absolutely. If you were to assume all 232 Typhoons were acquired—it will not happen now—Scotland would have got 23. Is that a usable fleet? Absolutely. You could have gone down the list and looked at which fleets were viable, be it armoured vehicles, planes and ships, and which ones were not. Under this sort of calculation Scotland would have been allocated 1.75 Type 23 frigates. Again, the value of 0.75 of a ship, especially if you are missing the front bit, may not be perfect, but that is when you sit down.

To come back to negotiating in good faith, you say, “If you’re going to give me both ships, what do you want in return?” It is doable, but I entirely agree that, if both sides come at it like that, it would not be nice. However, we should bear in mind there are international bodies for negotiations in Geneva. To give one example, for how many years were the three corvettes originally ordered by Brunei tied up on the Clyde? That went to the International Court of Settlements in Geneva, which found in favour of the UK and BAE Systems rather than Brunei. We should bear in mind that in this type of process there is a higher body you can go to and say, “We feel this; they feel that. What do you think?” So there will be a referee, if you want it.

Q169 Lindsay Roy: Are you saying that, even with the best of good will, it would hardly be a strategic approach in terms of the defence of Scotland?

Professor Chalmers: I think Francis’s way of describing it is very useful as a template of one possible way to do it. How it would happen in practice I really do not know. If a Scottish Government in such a scenario were to be strategic, it would look at all the sorts of calculations Francis has done in relation to how many Tornadoses Scotland would be entitled to and so on, and then say, “Could we afford to maintain those Tornadoses? Could we afford to train their personnel?” The running costs of a lot of these high-value assets are much bigger than the capital costs.

Q170 Lindsay Roy: But that is a best-case scenario.

Professor Chalmers: Therefore, they might then decide, “We don’t want to get into that; we prefer to have maybe some Hawk jets rather than Tornados”, for example, which are more affordable to run, even if they are not top of the range. My guessestimate would be that at the end of that process, given the levels of recurrent expenditure Scotland could expect to have in defence, it would end up wanting less than its proportion of the total defence assets. It would want 5% rather than 10% of the total, but it might want to trade that for something else.

Professor Strachan: My understanding of your question was different, and that is that horse trading over equipment would take the place of a serious long-term outlook as to what Scotland’s defence and international position might be.
Q171 Lindsay Roy: That would be a best-case scenario if there was good will.

Professor Strachan: I think the crucial question is the length of time over which this would be done. As things currently stand, it seems to me that on day one, if Scotland were independent, it would probably not have a fully-fledged defence and foreign policy just because it would still be learning those skills. It would still be uncertain of its position in the world and would not know fully what its relationships were likely to be with the EU, NATO or even the UN. Possibly it would be a member of the UN. As a consequence, if it went on over 10 years, assuming it took that length of time to complete the process of divvying up who got what—I do not think it would take that long—concurrently it would be possible for some sort of strategic assessment and understanding to develop. But it seems to me that in the Edinburgh context you would be beginning from a low base point, because essentially such strategic thinking as goes on in the United Kingdom, naturally enough, happens here in London rather than there.

Q172 Chair: Surely, that is not acceptable. When people are going to be asked to vote on whether or not they want to have a separate Scotland, the idea that they would get separation and then work out what they wanted to do in terms of foreign and defence policy is just silly. That is treating the people of Scotland with contempt and asking them to buy a pig in a poke.

Professor Strachan: I agree with you entirely, but that is exactly why the debate needs to happen now and why these issues need to be addressed. It is interesting that the focus has been more on defence than foreign policy, because the defence industry is so central to this and assets are at stake. But, if you are to answer your strategic question, you must have some idea of foreign policy. The NATO question, if I dare come back to it, is a key issue for the SNP, as we know, because it potentially divides the party. That issue is central to answering the question about strategy.

Q173 Chair: It very much seems to us that some of these things ought to be known or certainly knowable and ought to be made available to us now, and then the grey areas, as it were, get filled in as we proceed. I can see no reason why both sides should not be able to lay out their negotiating position on what assets they want, because it is clear what posture they want to achieve well before people are asked to vote. Does that seem unreasonable?

Francis Tusa: That is absolutely fine. I would come back to the point of saying what should defence look like in an independent Scotland. There are more than enough examples in comparator European states. It would not necessarily be that suddenly Scotland reverts to speaking Danish or anything, but, if you look at the various models they have ended up with, I do not see the need for anyone to go through hundreds of years of history to end up with a shape, when they can look at countries like Denmark, the Netherlands or Norway, and see what they are trying to do. You can get a very nice blueprint for where you move.

Q174 David Mowat: This debate is a little artificial because the point is that there would be a transition for two decades or something. If there was not a transition for two decades, one of the things you would see is that Scotland is over-provisioned with infantry battalions for any strategic analysis that they might do. You are saying that the problems are in the Arctic. You do not need infantry battalions for that. Independence would just trigger the fact that that had to be cut hugely, potentially. Therefore, that probably would not be sensible for either side in the dialogue. It just seems to me that there would be a two-decade transition for this sort of thing. I agree with the Chairman that it is a pig in a poke, but it is a little bit harsh in this case. Could you not do a lot of it with governance arrangements at the top as to how the Army, Air Force and Royal Navy are structured on your way to that significant transition, albeit with an independent Scotland?

Q175 David Mowat: For example, you have raised the point, which seems to me to be very coherent, that for 100 years Scotland has provided an overly-significant part of the British Army’s infantry. That is an historical thing. That has been half-addressed over the years, but independence could potentially force it to a head, because they would say, “Either they’re going to use all of that infantry and pay for it or bring it to a head.” All I am saying is that in reality there would be quite a long transition. It seems to me that would be sensible for everybody, even in the case of independence.

Professor Strachan: Is it not going to be a long transition, if it were to happen, because legally it is going to take a long time to sort all this out? I hear different estimates, but Malcolm and I were at the defence conference last week organised by The Scotsman. People were talking about the possibility of this transition being a couple of years. I have heard others say it could be 10 years—I have not met anyone who has heard 20 years—just because it would take that long to unscramble legislation that has effectively been drafted on the presumption of the existence of the Union. Therefore, to create disunion itself would be enormously complicated. This seems to me to have pretty important implications for the armed forces, because, if anything embodies what a state is and lies at the heart of a state’s identification, it is its armed forces and its capacity to defend.

There are issues of citizenship. If you are already an existing member of the British armed forces but have a home in Scotland, which way are you going in terms of your choices? Which way might you be obliged to go because of where you hold your citizenship? These seem to me to be issues that would be resolved only after the decision had been taken, although I agree entirely that, logically, I would want to know before I go and cast my vote in any referendum what the implications were. But my understanding of where we
are is that it is much more likely to be the other way round. The issue would be addressed in principle and then the ramifications would follow.

Q176 Chair: To pick up this point, you were discussing having a transition. I think that spending too much time on the transition to some extent misses the point. I can see no reason why, before a referendum vote, a Scottish party or organisation seeking separation should not be able to spell out where it wants to be. That is a menu that is then laid before the Scottish public. The question of how that is achieved, how long it takes, the process of haggling and stuff like that are to some extent issues of implementation, but you do not get the decision, start haggling, work out where you are at the end and pretend that is where you wanted to be. I can see no reason why the strategic part of it, such as whether or not you want to be like Ireland or Norway, or your point about the Arctic, could not be dealt with almost within the next couple of weeks in a broad sweep. You fill in more of the detail, then there is the decision in principle and then the question of transition. Surely, that is the way that this should be handled.

Professor Strachan: The historian in me says that is how it should be, but in practice it rarely has been.

The historian in me says that you would love to have a strategy that is clear and addresses exactly the question of what a strategy should be, with means, ways and ends all clearly spelt out. But the reality, particularly in a democratic process, is that it is much more confused than that. What emerges, you hope, is guided by that sort of overall objective. I think it is absolutely right to try to impose that, but what emerges tends to be an interaction between that overall objective and the haggling that we have been talking about.

Q177 Chair: You are not saying that the SNP are confused, surely.

Professor Strachan: Surely not.

Q178 Chair: Surely they must have a clear idea. Either they are completely confused and have no idea or they do know, fine, and they are just not telling us.

Professor Strachan: My impression is that they have not really seriously addressed this.

Francis Tusa: There is nothing published that gives any significant lead on issues about what the size of the budget would be and so forth. It is an absolute vacuum, which is why you have to come up with a table that says if it is 1.1% then it is this, and there is a range of options. You can get some ideas and can argue about them for ever. I have to say that someone who talks about a Scottish self-defence force that is not even going to be spending 1.4% of GDP on defence, will not want to be sending much more than a couple of observers on UN missions, and most of the forces will stay within the 12-mile limit.

Q179 Chair: This gets worse, because you are now describing the separatist defence and foreign policy as a complete vacuum. This is not reassuring to me as a Scot.

Francis Tusa: Unless I have been getting very strange copies of the SNP manifestos of the last few elections or have missed something, there are few concrete statements on defence that allow you to say, “Ah, that means x.” One of the few statements in recent years has been, “We would not join NATO,” which gives you a pretty firm idea of the direction in which such a policy would take you.

Q180 Chair: To be fair, I think that is this week.

Francis Tusa: I do not know. I always try to stay out of the politics when doing this analysis by saying, if Scotland wants independence, I live in London and I am British; it is nothing to do with me, and I will wish them well. I have tried to keep out of the politics and looked at it just from the point of view of the horse trading that would result. I started thinking that it would cost an absolute fortune to sort out and discovered that it probably would not. It could be far easier to sort out. I would be wholly in agreement with you. I think a lot of these things should be put forward as options so that people know what they are. I know that later we are going on to the industrial side. That will be a very interesting one because it is not very rosy.

Professor Chalmers: If you look at experience within the UK and the extent to which what political parties say before elections about defence is reflected in what they do in defence reviews after the election, there is not always a lot of clarity there. It is understandable as an analyst why politicians do not want to put hard choices before the public when they come to elections, even within a country with a relatively stable situation. I think it is even more understandable facing all the uncertainty one has approaching a referendum. I do not anticipate any political party before the referendum coming out with details of exactly what defence forces Scotland would have.

What I think is reasonable—it underlines what Francis is saying—when sketching out what Scottish independence would mean, is to talk about the broader issues, such as whether Scotland would be a member of the European Union or NATO and the conditions it would have to fulfil to do that at a broad level. But to try to predict how many frigates, armoured combat vehicles or attack aircraft an independent Scotland would have is not the sort of thing you should decide until you have accessed an awful lot more information.

David Mowat: Is there a constitutional point here? The SNP have no mandate for defence or foreign affairs, so they do not speak for Scotland on it. Therefore, there has to be a general election in Scotland on separation, in which case you have political parties coming forward, and coming out of that would be somebody who has a mandate to create a foreign policy. I do not want to defend the SNP.

Chair: The view from Warrington is very interesting in that context, but, for those of us who would be faced with having to vote in a referendum, the idea that these decisions would be taken afterwards is simply not adequate. Going into a referendum with, on the one hand, confusion and, on the other, a complete vacuum—I am not quite sure which is worse—is simply not acceptable, and we will reflect
on that. I think we have a fairly good grasp of your understanding of the SNP’s defence policy at the moment, so perhaps we may move on slightly. Iain is going to pick up three points about the membership of the forces.

Q181 Iain McKenzie: We touched on it briefly when we discussed some of the Scottish regiments and the personnel there. What would be the effects of separation on Scots serving in the UK armed forces and also those wishing to serve in the UK armed forces in the future?

Professor Strachan: At the moment you swear an oath of loyalty to Her Majesty, her heirs and successors. I imagine that, if you were a Scot, the successor state is Scotland and that is not necessarily an insuperable problem, not least because under the SNP’s current position the Queen will remain head of state in Scotland. I do not see a massive problem there. I think the much bigger question arises if you are somebody in mid-career—let’s say, a colonel, senior warrant officer, sergeant or NCO in the Army. You have a fair degree of pension entitlement, reasonable career prospects, and you have done the hard graft of your military service. Which way would you go?

If I dare mention the Black Watch again, if they were going to Scotland, would you feel, “I will go with the Black Watch because I love the regiment?” I am not saying for a moment that those who serve in the Black Watch or other Scottish regiments do not love them. They would feel torn; particularly if they had served in it for a long time they might feel that. Or do they stay in a career stream they understand, which has further career opportunities and is a known beast? It will change of course, but there will be an issue. You might say that this is a transitional problem, but, once a Scottish Army or Scottish defence force is up and running and is clearly separate and independent from the rest of the UK, there is a different career option. I think that is absolutely true. If you are a young man or woman in Scotland 20 years after independence and you decide to join the armed forces, it may well be that at that point you take a totally open decision.

You say, “I’m a Scot and therefore I serve in the Scottish forces”, except that if there is a hangover and Scots continue to pursue careers in the armed forces of the rest of the UK immediately after independence, I suspect that trend may continue, if it is legally possible to do so. It is legally possible at the moment from the point of view of the United Kingdom and London, so unless Scotland made it impossible I would have thought that would continue. I think there are real issues.

When we see Stuart Crawford’s analysis we tend to think of this in terms of assets and small units, but I am thinking of the collective capabilities that the UK armed forces have: the Defence Academy, the individual service establishments in terms of training and education, and, above all, intelligence. Where would Scotland have those? Would they be buying into the rest of the UK’s capabilities, and, if they did, that would be another reason for people being pulled away from Scotland and towards London in terms of where they might want to be. It might well be that an independent Scotland would negotiate an intelligence arrangement, if it could—it is more difficult—but certainly negotiate places at the Defence Academy, Sandhurst, Cranwell, Dartmouth and so on. My guess is that is what that would happen.

Francis Tusa: In terms of the legal side of what happens afterwards, we should remember that Irish citizens are still recruited into the Irish Guards and other parts of the British Army. Whatever the legal arrangement was in 1921, they are still allowed to join. I do not know, but I assume they do swear an oath of allegiance to Her Majesty, heirs and successors. Those who wish to do it do it, so, in the nicest sense, that is probably one of the easiest things. If you dust off the legislation from 1921, delete the word “Irish” and insert “Scottish”, it should be doable.

Q182 Jim McGovern: Is it also fair to say that the Irish regiments you refer to were only founded in 1921 or since 1921?

Francis Tusa: No. The Irish Guards and Rangers were founded, were they not, in 1915 or 1916?

Professor Strachan: The Irish regiments recruited in what is now the Irish Republic were disbanded in 1922 as a direct consequence. The Connaught Rangers and all those regiments went. Those who were recruited sufficiently in the north, for example the Royal Inniskilling Fusiliers, remained on the British establishment. You are absolutely right that the Irish Guards were created during the course of the first world war, which was a particularly pregnant moment from the point of view of Ireland. They could justify being retained on the British establishment precisely because of Northern Ireland, but it did not mean they did not recruit from south of the border.

Francis Tusa: The Irish Guards have a very heavy southern component.

Q183 Jim McGovern: The Scottish regiments or battalions—Black Watch and so on—could be disbanded and possibly reformed under a different name.

Francis Tusa: I would not see disbandment. I think you would see regiments marching proudly from one place to another. I do not think you would have disbandment parades.

Q184 Chair: There is a difference between units. Presumably, Scottish units would be retained in Scotland in some way, but the question of individuals is perhaps more significant from that point of view. As I understand it, you are saying that, if Fijians can join the British forces and Scottish regiments, then the Scots would be able to join English ones and probably vice versa. That should not pose a difficulty in future, but what I am not clear about from what you are saying is what would happen to those who are there at the moment. Would they be given an option? If you are an Englishman in the Royal Regiment of Scotland somewhere, or indeed in a Scottish regiment based in England, or a Scot in the Royal Anglians, or whatever it is—no disrespect—would these people be chosen? What happens if you do not have a mix and they say, “We are full up with Riflemen”, or, “We don’t need any tank crews any more”? Have you any idea how
this has ever been handled before or how it might be handled?

Professor Chalmers: This may be something about which your Committee is doing a separate inquiry. To answer your question, first you have to say what the hypothesis is on how citizenship is determined, because right now, as I understand it, those entitled to vote in the referendum are those on the electoral roll at the time of the referendum. If that is the principle on which future citizenship is decided, there are many English-born people serving with the armed forces in Scotland and vice versa. Indeed, there are many on the crews of submarines based at Faslane who are entitled to vote in the Scottish referendum. Will they be Scottish citizens after independence? Will it depend on where their mothers, fathers or grandfathers were born? Will people be entitled to be English, Scottish citizens and UK citizens at the same time? If dual citizenship is allowed and people can move to a job in the armed forces in England and, by joining the electoral roll in East Anglia, they automatically become a UK citizen, this issue is moot. If, however, it is decided to separate out citizenship in some way so that people like myself, who live in England but were born in Scotland, have to choose which country to be a citizen of—or maybe we will not have a choice—you are in a different and much more confrontational position. In a sense, this is not so much a defence issue but how you sort out citizenship, if there were to be separation.

Professor Strachan: I have some dealings with the New Zealand defence force. For some of those serving in that defence force there is an interesting interplay here between that and the British armed forces that really overrides the issue of citizenship. You will find New Zealanders who cannot fly fast jets in New Zealand any more who will want to join the Royal Air Force precisely so they can. More frequently, they join the Royal Australian Air Force because it is a bit closer, but they have certainly served in the Royal Air Force in the past. You will also find those who later in their career decide they want to emigrate to New Zealand for a slightly quieter life, who will then join the New Zealand defence force and go the other way. There are people who have done maybe 10 or 15 years of pretty active soldiering and service and then decide to move to New Zealand but remain in the armed forces. That move either way seems to be accomplished remarkably easily. I do not know whether it is membership of the Commonwealth and the fact that the Queen is head of state and provides that common identity that enables that to happen, but, interestingly, it does not seem to hinge too much on the issue of citizenship. But it is precisely that sort of relationship, which I think all of us can see happening in some form or another, with a great deal of fluidity rather than a hard division in terms of individuals, that suggests that individual choice will be the key thing, much more than what is decided in terms of citizenship.

Q185 Chair: But the issue presumably in relation to New Zealand both ways is to some extent a trickle.

Professor Strachan: Yes.

Q186 Chair: You have two situations in stasis, as it were. What you are going to have here is potentially the equivalent of the big bang where people will have the opportunity to make their choice. This has been raised with us in the context of whether people who will be eligible to join the Scottish forces, because they are in the UK forces and potentially die for Scotland, should be able to vote in these circumstances in the Scottish election. I think at some point we are going to have witnesses saying that basically they should. I wonder whether or not that is an issue that has occurred to you or has come across your desk at any point.

Professor Strachan: I have looked at this as an historian. For example, possibly the majority of those who served in the British Army in the first world war did not have the vote. We did not have a sense of citizenship being related to military service, because there was no universal manhood suffrage until 1918. Even if you were likely to be eligible for the vote, if you were under 21, of course you did not have the vote either. In many cases you went to the front without citizenship, and you might have died without citizenship. In the United Kingdom as a whole we do not have a strong sense, as you would have, say, in France, that military service and citizenship hang together. We have not inherited that, partly I think because we have not had conscription. It does not automatically enter the political debate in the way it does in other countries. I think it should enter the debate in this case, but it will be a novel element in terms of how Britain conducts those discussions, because it has tended to divorce these two things. The point we have already been making about Fijians winning the Sevens at Selkirk makes the point exactly. They are not citizens and yet they are serving in the British armed forces. They can become eligible for citizenship by virtue of residence. There is an ongoing issue with their families and their eligibility for citizenship because they have to qualify through residence like any other immigrant, which itself can be difficult because battalions are then moved to Germany and so on. We really have not digested a relationship between military service and citizenship here. I suppose the question for an independent Scotland would be whether you would begin with military service as a concept that entitles you to citizenship or whether you would begin with the issue of citizenship and say that, from that, our armed forces will be recruited or might be outside that, and therefore we are really not aligning citizenship and military service.

Chair: We have some questions about Scotland spending the same proportion of its GDP, but I think we have pretty well covered most of that in questions 4 and 5. Pamela, do you want to deal with question 5 about deployment of forces overseas?

Q187 Pamela Nash: We have had written evidence, and Professor Chalmers spoke about the most likely percentage of GDP. With that in mind, what is your vision of what a future military would look like in Scotland after all the to-ing and fro-ing and deals have
been done? What do you predict would be the percentage of GDP that would be spent?

**Professor Chalmers:** I tried to lay that out in more detail in a paper I wrote for RUSI. It is hard to predict, and I think quite a lot would depend on the threat perception of an independent Scotland. In a sense, all one is going on is what one senses is the political culture in Scotland, not only in the SNP but across the political elite in terms of what role Scotland might have. The key point is that the UK is unusual in the high proportion of its GDP that it spends on defence compared with other NATO European countries. The reason is that the UK is more ambitious. It is on the Security Council, and it wants to be the US’s number two, if you like, in places like Afghanistan, Iraq, the Balkans and so on, and that costs money.

Anything is possible, but it is difficult for me to imagine, given the very difficult economic circumstances an independent Scotland would face, especially in the transition but perhaps also longer term, that it would be prepared to give defence as high a relative priority as the rest of the UK. There is a lot of discussion about how Ireland, Norway, Denmark and sometimes Sweden are modern and you can look at how much they spend on defence. It is possible that an independent Scotland, looking at how difficult transition would be, would adopt the Irish option. Basically, almost all the assets would go to the UK, because the UK’s need for defence assets would not be substantially changed by Scottish independence. They would not suddenly wake up after independence and say, “We no longer need that. We only needed because Scotland was part of the Union.” There is not very much the UK deploys that is only for the purposes of Scotland. All of the assets the UK deploys in Scotland, Faslane most obviously, will still be required by the UK, but that is also true of air defence assets and so on to a very significant, if not total, extent. They would want almost everything, and how hard would the Scottish negotiating team ask for that?

**Q188 Pamela Nash:** That is an interesting point. Can I just ask you to look at that in a different way? You are saying that the UK without Scotland would still have very similar requirements. What we are hearing from the Scottish Government is that they do not think they will, but what would be the difference in defence requirements for a Scotland separate from the UK and what Scotland has at the moment within the UK?

**Professor Chalmers:** On the assumption—perhaps it is a big one, but I think not an unrealistic one—that an independent Scotland would, after all the argy-bargy, end up as a member of the EU and NATO, like Norway and Denmark, and it had to think about what—

**Q189 Chair:** You think that Scotland will end up as a member of NATO.

**Professor Chalmers:** I think it will, because, after a divisive referendum, it would be such a radical step on top of that to say, “We’re going to pull out of NATO, having been in it for so long a period.”

**Chair:** But we have to know that now. Surely that is not a decision that can be left until after the referendum.

**Pamela Nash:** To be fair, I think the SNP have said they would stay in, have they not?

**Q190 Chair:** No, they have not. You seem to be suggesting that they would have the referendum and then they would decide. That seems to me to be absurd.

**Professor Chalmers:** It was not me that designed the system.

**Q191 Chair:** No, but you are the witness in front of us.

**Professor Chalmers:** I am saying as a matter of observation and analysis that for Scotland to become independent, for the UK to be the first advanced industrialised democracy to break apart since world war two—Quebec almost got there but it did not in the end—would be a radical enough step in a Europe that itself is in a pretty unstable place. It may well be that all the parties before the referendum are agreed that Scotland should stay in NATO, in which case it will not be an issue, but, if they disagree in advance of a referendum, then, even in that scenario, as one of the other witnesses said, at some stage there would have to be an election after a referendum. I think the pressure on an independent Scotland to maintain a role in NATO would be pretty substantial. Indeed, some of the countries in Europe that are not in NATO, like Sweden, have very close relationships with NATO. Their foreign policy is constrained by the need to keep good relations with the United States, their European neighbours and NATO bureaucracy, so we would have to sketch out exactly what this scenario is.

**Francis Tusa:** I would like to come back to your original question about what we think it would be reasonable to suspect that independent Scottish forces would look like. Based on the quite sparse policy statements in manifestos, talking about defence of airspace, economic zones and so forth, if that is what the policy on defence structure is, it leads you pretty inevitably towards a maritime and air-based armed forces, with much smaller land forces. At the same time, there is the issue of whether the land forces can actually be provided with the troops, let alone equipped. As soon as you talk about a Scotland not in NATO, that means you are ruling out any significant deployment of troops overseas, in which case I think taxpayers in an independent Scotland after five years would be saying, “Why have we got all these barracks and units when they don’t seem to go anywhere?” If you were to ask me straight away what a Scottish defence force would look like within five or 10 years of independence, it would be a naval arm, an air arm with not much in the way of fast jets, and a smaller two-brigade army.

**Professor Chalmers:** The reason I was making those remarks about the broader context is that it is hard to answer the question about structure without them. On the assumption that Scotland was in a military alliance, Scotland’s security would be determined mostly by the need to keep the rest of the alliance happy to ensure they came to its aid when necessary. That would require a rather different force structure from one that was self-reliant. It may well be that, if there is a future Afghanistan-type operation, like
every other member of NATO right now, Scotland would be expected to send a small contingent to such an operation.

Q192 Lindsay Roy: The First Minister is on record as saying that, if Scotland becomes independent, it would not be a home for nuclear weapons. Is that stance compatible with staying within NATO?

Professor Strachan: Can I just pick up two other capabilities and then answer that question? The other things an independent Scotland would need to think about are what it is doing about its intelligence, particularly if it is thinking about maritime air capabilities. How much horizon scanning is it doing? Where is the intelligence going to come from that will enable it to do its own defence? In part related to it is the question whether if it has only limited ground forces—even two brigades might be big in that sort of structure, unless they were very heavily weighted towards reservists—it would still need special forces, particularly for counter-terrorism operations and those sorts of things.

On the nuclear issue, historically, it has been part of the SNP’s position that Scotland cannot be part of NATO because NATO is an alliance that rests on the principle of nuclear deterrence. There are other countries in NATO that similarly have rejected nuclear weapons but still see that as compatible with being a member of NATO. Norway, whom we have referred to regularly in this discussion, is a classic illustration of that. Norway will not allow nuclear weapons on Norwegian territory but is within NATO so that is its solution to the problem. There are other countries that have nuclear weapons based within them but do not themselves own nuclear weapons, which is another position you can take. There does not have to be this close relationship that the SNP have drawn.

I would go one stage further and say—it is an arguable point—that extended deterrence is something that a lot of states, including those outside the NATO structure, can be argued to have benefited from. This is not an argument we are having currently within the United Kingdom, but during the years of the cold war that presumption had emerged. Essentially, there was stability in the international system and a degree of international security that was provided by American extended deterrence, which meant that, even if you were not necessarily within NATO, or a fully paid-up member of the alliance and therefore paying your dues, if you like, to the United States, you were still deriving benefit from the US. You can see evidence for that, for example, in Australia’s position. Quite openly in its last defence White Paper, Australia acknowledged the benefit it had derived from the United States’ extended deterrence in terms of the stability it provided in the wider region within which Australia found itself.

All I am really saying in relation to the SNP and Scotland’s position is that the SNP have put themselves in a more dogmatic position in relation to nuclear weapons than logically they need to be, given that this issue can be fudged in a number of different ways. Of course the reason they have done that is precisely because of Faslane since nuclear weapons are actually based within Scotland.

Q193 Lindsay Roy: There would be a dependence on the nuclear umbrella.

Professor Strachan: An independent Scotland that rejected nuclear weapons might still get a benefit from a nuclear umbrella without having to have a hand on the umbrella.

Q194 Chair: We usually think of fingers on triggers rather than hands on umbrellas, but we get the metaphor.

Lindsay Roy: Is it called a freebie?

Chair: It is free-riding basically, is it not?

Professor Strachan: Exactly.

Chair: My colleagues Jim McGovern and Lindsay Roy have to leave because there is a debate in Westminster Hall about the regiments at four o’clock. Jim was warming up his arguments earlier on, which he will now deploy.

Lindsay Roy: I am keeping my powder dry.

Q195 Chair: Do you want to come in, Malcolm?

Professor Chalmers: Hew is absolutely right that there is no necessary correlation between nuclear basing and NATO membership. I think the German example today is a rather interesting one. The German Government after the last election in their coalition agreement agreed that they wanted US nuclear weapons to be removed from Germany, but the key thing in German Government policy since that statement is that they have made it clear they want this to be achieved only through negotiation with other NATO members. They are not saying, “These will go no matter what anybody else thinks.” These are weapons of pretty marginal operational value; the role of American tactical nuclear weapons in Germany nowadays is almost entirely symbolic. But even the Germans are saying, “We will not do anything unilaterally.”

The parallel with Scotland is that one can envisage a situation where a Scottish Government say, “We don’t want these things on our territory; we want a different NATO policy that is much less reliant on nuclear weapons.” In the particular circumstances of Trident bases in Scotland there is no way in which the UK Government could rapidly rebase these forces in England. I have written at length on this point. Hew is talking about a degree of unilateralism that would be politically impossible for them to do so, so for Scotland in those circumstances to insist on them leaving would be to force the UK to make a decision effectively to de-nuclearise. Other NATO member states would look at this process and say, “What is all this about? What is Scotland trying to do?” Many expatriate Scots in Canada, Australia and the United States who have some degree of nationalism, at least with a small “n”, might say, “What is our old country up to here disrupting long-standing alliances?” I am cautious about predictions, but I think that, if Scotland wanted a reasonably fair wind after independence, it would have to find some way of ensuring that this base was not removed until the rest of the UK had a reasonable amount of time to consider alternative basing arrangements. It might be there were not ones. On the nuclear umbrella, that is one of those metaphysical concepts that can mean something to anybody. My suspicion is that, like the Norwegians,
once a Scottish Government were established, they would have sufficiently skilled diplomats able to construct communiqués, and footnotes to communiqués, to fudge that issue. I think the really difficult issue to resolve is the Trident-basing issue.

Francis Tusa: Increasingly, one of the biggest red herrings is that Trident could not be moved from Scotland. It has become an article of faith. If you even bother looking, suddenly you hear, “Where would we store the nuclear warheads?” It is very easy, Aldermaston and Burghfield have spare storage capability and have full nuclear licences. Coulport is sized for a deterrent with five—

Q196 Pamela Nash: Why are they not there at the moment?

Francis Tusa: The ones at Burghfield require about £50 million of modernisation, but the argument that there is nowhere to store the warheads is simply not true. Is it ideal having them in the middle of Berkshire when your submarines might be based down in Devonport or wherever? No, it is not ideal, but it does not mean you cannot do it. You have to remember that all the nuclear warheads go through those facilities for upgrade and maintenance; they are driven along the roads. It happens daily. Are there submarine facilities in Devonport and Barrow? It has shiplift; you can do refuelling there; and you can do missile reloading, if you want to do it at Barrow. So the facility at Faslane is duplicated by Barrow. You do not require Faslane for any of the major operations of the submarine fleet.

Professor Chalmers: It is very easy. All you have to do is keep our ballistic missiles in a stockpile in Kings Bay, Georgia, in the States, so I am afraid that the idea that there are no options is an utter red herring.

Would people be able to move in one day everything elsewhere? No, not in one day, but there are more than enough nuclear facilities all round the remaining parts of the UK. There are harbour facilities as well. The Royal Navy has been relatively active in surveying Milford Haven, which has a wonderfully deep channel; it still has a Royal Navy quay there. You are just off the Celtic Deep, one of the deepest water channels off the British isles. It is excellent for submarine operations. With regard to Plymouth, I can slightly understand that they do not like the idea of the submarine missile boats going in and out. It is very shallow for about 25 to 30 miles. Strangely, they have still been operating nuclear submarines out of there for many decades.

I would like to believe that someone is not advertising most of this because they want to keep their cards close to their chest, but the number of options for moving the deterrent out of Scotland is huge, and a lot of them are not that expensive either. I have seen reports that it would cost £50 billion to move. No, it would not; it really wouldn’t. By the way, the figures for renovating Burghfield and Aldermaston were done by people who have recently worked there. With the downsizing in the nuclear deterrent from 500 to 600 warheads to under 200, you do not need a Coulport-size facility. Anyway, over one third of your warheads will be at sea the whole time.

Quite frankly, if the SNP are working on the basis, “We have this great card; it will just be too expensive to move the deterrent”, they are in for a real shock. As to the other ones that have been discussed recently, is there any reason why we should not be able to store warheads in French facilities off Brest? We shared American storage facilities for nuclear warheads at Iserlohn for 40 years and no one seemed to care. I spent some time there. There were American, German and British guards. The UK had British bunkers on German soil, but it was a US sovereign base. I did not notice anyone caring one way or the other.

Q197 Pamela Nash: To go back to my original question, which I put about half an hour ago, apart from nuclear, which I accept is a big part of what we have in Scotland in the current military, how different would you think the Scottish military would look in an independent Scotland in comparison to what is planned under the current armed forces spending review by the UK Government?

Professor Chalmers: The current spending review does not plan for a Scottish armed force.

Q198 Pamela Nash: But what I am saying is that Scotland is part of the UK in the review. How would what we have in Scotland at the moment and what would be planned under the review compare with an independent Scotland?

Professor Chalmers: It would be utterly different.

Q199 Pamela Nash: In that case, do you think there would be fewer armed forces in Scotland? We would have a down-sizing.

Professor Chalmers: The armed forces in Scotland controlled by Scotland would be very different, because, certainly on the naval side but to some extent on the air force side, there are assets in Scotland that I think it is unlikely Scotland would want to inherit.

Q200 Pamela Nash: What I am getting at is whether Scotland would be more vulnerable to attack with the military that we are currently trying to guess at and envisage in a Scotland separate from the United Kingdom than it is at the moment?

Professor Chalmers: That would depend partly on whether we were in alliance with other countries.

Q201 David Mowat: Surely it would also depend on the position of a future Scottish Government. There is nothing to stop a future Scottish Government spending 20% of its GDP on defence. It depends on who Scotland elects, presumably, after a general election.

Professor Strachan: It also comes back to the independence question. I am sorry to say it again, but vulnerability to attack includes both the capability of defending but also the capability to anticipate to some degree. At the moment the United Kingdom benefits, at least most of the time, from an incredibly close relationship with the United States, and there is no presumption that Scotland would. On the other hand, I would imagine the rest of the United Kingdom would want a close intelligence relationship with Scotland precisely because the security of the rest of the United Kingdom would also be integrally bound up with the security of Scotland. They are both on the same land mass and that will not change. Again, this
would be a subject for negotiation, but I think the Scottish intelligence capability, whatever it might be, would not come through inheritance. That would have to be negotiated, and it is not at all clear to me that it would be as privileged. I do not think it could be as privileged as the United Kingdom currently is, which would imply a greater degree of vulnerability.

Q202 Chair: Perhaps we may return to the nuclear question later. I know you are keen to go into it, but we have some questions on it later on. That was an enormous diversion dealing with a red herring. So we will maybe stick to the plan if we can, if you don’t mind.

The next point we want to raise—Jim wanted to raise it but, unfortunately, for the reasons I mentioned, he has had to go—is that the UK has signed military agreements with France about sharing, co-operating and so on. Surely, it is entirely possible that a separate Scotland would be able to sign arrangements with all sorts of other countries, and therefore it would not necessarily be the case that it had to own everything or staff everything itself. I understand the point about maritime capability and the Arctic, but Scotland would not need to duplicate what everybody else was doing. It might very well be that, in return for doing something close at hand, the Norwegians did all of that all together. Surely, that is another scenario that potentially would be a great deal cheaper for Scotland and would give it a much greater capability for the pounds the Scots spent.

Professor Strachan: That is exactly the difficulty with Stuart Crawford’s analysis. It does not allow Scotland to develop niche capabilities and forfeit other capabilities on the grounds that partners would provide those, which comes back to political relationships, does it not? The reason Stuart Crawford’s paper and most of the analyses you see go down the line of what would be a reasonable balance of capabilities, rather than what would be a proper niche capability for Scotland to pursue, is that, even within NATO, most countries think in national terms. They still do not do the “niche capability” thing despite the fact that enormous amounts of savings and greater efficiencies could be achieved by doing that, which is precisely why Rasmussen as Secretary-General has been on the front foot on smart defence, saying, “We can obviously do our procurement more efficiently.” Scotland could absolutely do that, but, if it does that, then it has to recognise that it needs some sort of relationship, probably geopolitically, with somebody who is reasonably close.

Q203 Chair: Maybe it could share the border.

Professor Strachan: Sharing a border is one possibility, or sharing access to the North sea—which is where we have been going—is the other obvious way. That is why Britain has a defence relationship with France. One of the reasons that defence relationship can operate despite the views of many cynics, to reasonable effect in the case of Libya, is that there is already an existing framework within which that has developed. Of course France is very anxious to get back up to speed in NATO terms.

What Scottish forces would have to be able to do is remain at the same level of operational confidence and interoperability that NATO forces have at the moment. The extraordinary thing about ISAF in Afghanistan is that there are 50 states—many more than there are members of NATO—and those states are able to operate alongside NATO forces. Of course there are problems, but what is more remarkable is the achievement. There are sufficient common operating procedures for these forces to operate alongside one another. Scotland would have to be able to do that if it wanted to go down the “niche capability” line.

Q204 Chair: Two things arise from that. First, is it a fair parallel with, say, Norway and the EU? Norway is effectively not in the EU but accepts lock, stock and barrel a whole host of things from the EU. Even if Scotland did not join NATO but accepted lock, stock and barrel all the rules and so on, it would be effectively the same thing but it would allow the maiden to preserve her virginity, as it were; it would allow Scotland to say, “We are not in NATO.”

Professor Strachan: NATO is already in that position with a great many countries. Malcolm is right in referring to Sweden. Sweden is a classic illustration of that. It has troops in Afghanistan; despite its neutrality during the cold war, it is effectively aligning itself more and more with NATO in terms of what it does. This is where NATO is different from the EU. NATO is very ready to take people in on that basis; essentially, it is trying to include rather than exclude.

Q205 Chair: The second point is the question of which niche capabilities you would see Scotland developing. Apart from kilts and the Highland Regiment, it is difficult to identify anything military that is uniquely Scottish, or am I mistaken?

Professor Strachan: The irony here is that the front-page image is that we produce men and export them. That is what we have been doing for 300 or 400 years, and that is where the image of the Scottish soldier comes from. What makes most sense in a less manpower-intensive era in terms of defence capability would be, one would have thought, maritime air power. It would not need to duplicate what everybody else was doing. It might very well be that, in return for doing something close at hand, the Norwegians did all of that all together. Surely, that is another scenario that potentially would be a great deal cheaper for Scotland and would give it a much greater capability for the pounds the Scots spent.

Q206 Chair: That was 45 Commando in a sense, which is now getting moved away.

Professor Strachan: Yes.

Francis Tusa: The point about niches comes back to the whole issue of the orientation of independent Scottish defence forces. If they are solely for territorial defence and so forth, one of the problems of having a niche capability is that you must be...
willing to use it, because someone will want to rely on you only if you will turn up on the day when they say, “My God, I need whatever it is you are providing.” Based on the very scant things from SNP documents, you do not get the impression of an armed force that are looking to deploy anywhere, in which case you will not be able to have niche armed forces, because no one will want to rely on your niches if you will never use them.

Q207 Chair: Picking up the point about maritime surveillance and so on, that is different. As I understood your point about deployment, it was to do with people maybe getting killed, but you are unlikely to have people killed if you are doing maritime deployment for air cover.

Professor Chalmers: It depends on where you are doing it. If you are talking of maritime surveillance off the coast of Scotland looking for Russian submarines that is one thing, but, if you are talking about a maritime air capability deploying to the Gulf, for example, with potentially hostile air forces, you are in quite another scenario.

Q208 Chair: I was thinking of it much more in the context of a piece in the jigsaw around the Scottish coast, as it were. Maybe I picked you up wrongly. I did not think you were suggesting that it would be a maritime surveillance capability that would then be transferable worldwide.

Professor Strachan: I was, if it was to be a niche capability. If you are thinking beyond the notion of what is an all-round Scottish defence for an independent Scotland simply defining itself in territorial terms, as opposed to what Scotland would specialise in on the grounds that it would draw in other specialisations from its allies, whoever they might be, it seems to me that maritime air is what Scotland would naturally do because of where it is in the world and the sort of problems it has. But, as has been said by Francis and Malcolm, you have to be ready to use that if you want to bring in other assets that you might need.

Francis Tusa: If you stay only 12 miles from the Scottish coast it is not niche; it is non-existent.

Professor Chalmers: Given that, I do not think that is a route that an independent Scotland would be likely to go down, because it is a very expensive route. You would be spending a lot of money on a very specialised capability with very little flexibility. Essentially, it would be accepting that Scottish defence policy was subordinate to UK defence policy and it would have to be guaranteeing those capabilities to be there on the ground. I cannot see any other small European state that has gone very substantially down this road. From the point of view of the big powers, they would love the small powers to have niche capabilities, but from the point of view of the small powers they want ones that they can sell to their electorate as being relevant to their own needs.

Francis Tusa: Perhaps perversely, if you look at Afghanistan and ISAF, what have all the Nordics done? They have deployed infantry battle groups and, boy, has NATO been saying, “Please give us these.” They have not necessarily said, “Please send us this niche or that niche.” Because they have been so short of bodies, they have been crying out loud for boots on the ground and so forth, so these entirely non-niche capabilities from Denmark, Norway and whatever have been welcomed with open arms.

Q209 Chair: To be clear, is this a disagreement?

Professor Strachan: It is not a disagreement.

Q210 Chair: It seems to me that your positions are different. You are saying you cannot identify any particular niche capabilities that it is likely a separate Scottish state would wish to pursue.

Professor Chalmers: I think Francis makes a good point that there may be or there are some low-tech areas that Scotland would want to pursue.

Q211 Chair: That is hardly a niche, though, is it?

Professor Chalmers: In terms of niche and particularly challenging areas where you specialise, no, I do not think it would be wise for Scotland to pursue that in those circumstances, and I do not think it would be likely to.

Q212 Chair: It is helpful just to clarify that.

Professor Strachan: The difference is simply that Malcolm was addressing, if you like, the political acceptability. I was saying you could do it that way, but whether it is politically acceptable is another issue entirely.

Chair: That is right. To come back to Francis’s point, the question of whether or not a separate Scottish state would wish to have boots on the ground in Afghanistan, Iraq or somewhere similar is a moot point. That would be decided at the time. But Scottish presence would not be vital to the progress or success of any such mission. It would be buying into something that somebody else was doing or not, as the case might be; it really would not be relied on by anybody.

Q213 Iain McKenzie: What I am envisaging here is almost a Scottish defence force that is either incapable or reluctant to go beyond its borders. In essence, are we talking about a home guard situation here, because that is probably what we are setting up?

Professor Strachan: It seems to me that much of Stuart Crawford’s paper—we come back to this again—seems to be working on that presumption. It does not state what the capability is designed to do, precisely because there is no political framework within which it goes. We have used the phrase “territorial defence”. During the 1970s and 1980s that was very much a model for states that were aspiring to neutrality within a European context. It was what Yugoslavia was moving towards; it was what Sweden and Switzerland were doing. That is something that you could see as a possibility for Scotland and where Scotland might want to go. Equally, if it went there, it implies a big switch away from regulars to reservists, with a weight—this was why I raised the issue of what the brigade structure and the balance between regulars and reservists would look like—that implies a commitment to defend Scotland and not much more.
One of the reasons Norway can look as it does is that it has been in the front line during the cold war and could be in the front line again, so there is not necessarily an incompatibility between the notion of Norwegian territorial defence and a wider contribution to defence. There is a tension there. If there is a debate in Norway, it is about whether it should put troops into Afghanistan and whether it should also have an expeditionary capability, but the core question does not arise for Norwegians. It is presumed, and has been presumed ever since the Germans took them by surprise in April 1940.

Scotland has no such experience that provides a benchmark; it has no such experience of invasion, at least since the 18th century. As a result, it is hard for territorial defence, if that is to be the basis, to capture the political resonance of security of supply and very simple things like, again, size of budget. What would be the size of the independent Scottish research and development budget? God knows, the budget in the UK at the moment is going down, but, if you look at the possible ranges and an independent Scotland having potentially £20 million to £25 million, how many defence companies would keep the same size estate in a country with that level of R and D? Will it just move it to where the money is? It is very easy to move these factories, and the engineers follow as well.

To give one very relevant example of shipyards, when VT Group closed their facility in Southampton and moved to Portsmouth it cost £14 million. That did not even make them think twice. By the way, that yard is now part of BAE Systems and is building major portions of ships for the carrier programme. You could build the next generation of ships there very easily.

Look at rationalisation within BAE Systems and the different factories they have. Brough is closing down and moving most of the work out to India and so forth. There is the growth of Samlesbury and Warton. It is a lot easier to flex factory demand within the defence industry than you would think. The idea that that could take decades before a move is wrong. If you ended up with an independent Scottish defence force with limited capabilities, and low-tech capabilities at that, those facilities will be within Britain within months—end of. It goes where the money is, pure and simple. There would still be cross-border procurement and so forth. You need to look at the examples of companies like Thales, which is international. They move their facilities to where the money is. In the case of air defence, they closed down all of their French facilities and moved them to the UK because that was where the budget was for their particular niche. That is happening across borders as well. MBDA Missiles do the same; they move their facilities to where the money is.

Q214 Chair: It seems to me that a great deal of what we have been discussing is essentially a home guard with some planes and bullets. Can I maybe take us on to the questions of industrial policy in the remaining four hours? We are aware of general discussions and debates about procurement and so on. You will probably be aware of some announcements and statements that have been made. What is your perspective or understanding of the likely position of defence manufacturers within Scotland after separation? How will things pan out? Will everything just carry on as it is at the moment? If not, why not and what will happen? Francis, you seem to be keenest to speak.

Francis Tusa: You can look at the force effect or whatever. Why does the United States have the biggest defence industry? It is where the money is spent. Looking at Europe, is the Belgian defence industry the size of the French defence industry? No, it is not. Why? Belgians spend very little on defence. The industry follows the money, pure and simple. We may not quite have the political allegiance that they have in the States in the sense of, “Have you got a manufacturing facility in Wisconsin?” and “How far away from one there”—that whole element of “pork barrel”—and forget, “Oh, the EU has said it will be trans-border procurement.” I am sure it will be for bootlaces and bottled water, but for the key systems there is the political resonance of security of supply and very simple things like, again, size of budget. What would be the size of the independent Scottish research and development budget? God knows, the budget in the UK at the moment is going down, but, if you look at the possible ranges and an independent Scotland having potentially £20 million to £25 million, how many defence companies would keep the same size estate in a country with that level of R and D? Will it not just move it to where the money is? It is very easy to move these factories, and the engineers follow as well.

As to the sort of work that is done in Scotland at the moment, clearly there is a lot of work on the naval shipbuilding side with the carrier and possibly the Type 26, which maybe we will come to later. In addition, there is work on the F-35, Paveway bombs and things of this nature, but, for most of the other projects, they are equipping things one cannot imagine Scotland buying. I cannot imagine Scotland buying F-35 aircraft, for example.

The companies will make commercial judgments about whether or not to relocate. They will look at existing contracts and what signals they are being given by their paymasters in Washington, London or elsewhere. They will also look at their employees and whether they are prepared to relocate across the border. I do not think everything will leave on day one, but the trend will be pretty clear. Why should the UK Government in this scenario support jobs in Scotland in the defence area unless it is clearly more cost-effective to buy from those suppliers? Scotland may have some industrial niches, but they will have to fight much harder.

The last point I would make is one made in the seminar in Edinburgh that Hew and I attended last week. This scenario will put a considerable burden on a Scottish Government having an active industrial
Q216 Chair: Have you detected any signs of an industrial policy being developed as part of the separation debate?

Professor Chalmers: I have not, but maybe I am simply ignorant of it.

Q217 Chair: Has it been detected? I must confess that I have not detected it, but I was presuming you were closer to it, certainly in relation to defence industrial strategy.

Professor Strachan: It is interesting how politically silent the defence industries have been, but they have been very silent. Whether or not that has eased the pressure on the need to develop a defence industry policy I would not know. I suspect it has. If they had been as explicit as you have heard both of these two gentlemen being—I have no reason to dissent from what they have said—that this is potentially pretty bad news for Scottish defence industries, you would have expected them to say rather more than they have, but they have not.

Q218 Chair: I think we can discuss why they might not be saying it, but my impression from discussions I have had with companies is that they do not want to get drawn into what they see as party politics.

Professor Strachan: Absolutely.

Q219 Chair: They will say privately that their view is x or y. The company is not taking a view because it will have to survive after the referendum, but commercially this is what makes sense. They outline a case that is pretty much along the same lines as Francis, but they do not want to be drawn on it lest they are seen to be bullying the electorate and all the rest of it.

I have a particular interest in shipbuilding since I have Govan shipyard within my constituency. It has been said that any suggestion that that yard will not continue to get both Royal Navy orders and a mass of export orders is simply talking Scotland down and does not fully recognise the merits of the work force. We have the best engineers in the world; people will want to come here and build ships there; we will be able to win competitions against anybody, and so on and so forth. How would you respond to that?

Professor Chalmers: The key issue there is to ask who will make the decisions as to whether or not to place orders with those yards in Scotland. To date, a very substantial part of the work that has been done in those yards has been for our UK customers. Clearly, the UK customers are not more likely to place orders in Scotland after independence than at present. I would suggest they are much less likely to do so. Again, it is a political analysis, so politicians can disagree with my analysis. If Scotland were to become independent before decisions had been made about where to build new Type 26 frigates, for example, I do not understand what political make-up could be in those circumstances make the UK Government place those orders in Scottish yards if there were, as there are, alternative places to build them in England.

Francis Tusa: There is also the terms of business agreement, which would be a remaining UK Government agreement on building and maintenance of ships. An independent Scotland is saying, “We are no longer part of that.”

Q220 Chair: Surely, the TOBA is with BAE Systems.

Francis Tusa: But it is also talking about a UK national capability. They have been charged to provide a capability at national level.

Professor Chalmers: It is not clear who would inherit that agreement.

Francis Tusa: But this is signed with the UK Government, and I suspect you will find someone says, “Great. We’ve just got rid of one overhaul yard and two new-build shipyards. We have just sorted out a significant element of our industrial problems.”

Professor Chalmers: It comes back to Francis’s point about he who buys determines where it is built. I think only a very limited number of Type 26s will be bought because they are getting so expensive, but those that are bought will be UK ships and not Scottish ships.

Q221 David Mowat: The analysis that all of you have given, which is very clear, is that there will be a drift of this expenditure from Scotland to England. I understand the logic of that. I suppose the only question I have is this. Scotland will have 10% of the procurement spend, roughly speaking, going forward, if it is decided to be at roughly that level. How much of the UK’s procurement defence spend capability is currently in Scotland? Your argument is valid only if it is significantly more than 10%.

Francis Tusa: To turn to something Hew said earlier about joint facilities, there will still be a requirement in the rump UK for a Dartmouth Naval College, or for a Sandhurst. Depending on decisions taken by an independent Scottish Government, they may have to bear the costs of overheads of new facilities; so the 10% will not necessarily buy as much as it would seem.

Q222 David Mowat: So there is a diseconomy of scale.

Francis Tusa: A diseconomy of scale.

Q223 David Mowat: But the fundamental argument is still right that there is some procurement spend in Scotland post-independence; they can put that where they want, and presumably they would put that in Scotland.

Professor Strachan: But the crucial issue is: what will they want to procure?

Q224 David Mowat: Yes, it is.

Professor Strachan: What they will want to procure, on all the indications we have had so far, will be at the low end of capability and low-tech end of capability,
Q225 David Mowat: The sort of stuff for which you do not need the Govan yard.

Professor Strachan: Absolutely. The converse of that, which goes back to what the Chairman was raising, is the argument that says, because the Clyde has a reputation and shipbuilding in Scotland is particularly good, therefore country A somewhere else—not the rump UK—will want to order ships from the Clyde. This comes back to an assumption that you will want to order ships—and warships specifically—from a yard that is not producing ships that are being used in action elsewhere. In the end, the way you sell arms in part is by proven military effectiveness and by employment. Krupp learnt this before the first world war. If you want to sell Krupp artillery, you do it on the back of the German army’s reputation, because that army is using Krupp artillery to great effect. I think it will be very hard over the long term for a Scotland that has warships of limited capability to continue to argue that it is capable of building ships of high capability for other countries.

Francis Tusa: If you look at the world’s naval market, more and more countries are saying, “Do you know what? We have actually got some industry, but we’d like to develop it and we’re willing to pay. So have you got a design and we will build them in our country?” If you are looking for lower-end corvettes—the light frigates—it does not matter whether you are talking about the United Kingdom today or a rump Scotland and rump UK tomorrow. The chances of huge programmes building lower-end ships in the British isles are incredibly limited. There will be some design work, no doubt, but all the work will be done overseas. We should bear in mind the Type 26. We are talking to a number of countries potentially interested in joining the development programme and so forth. If, for the sake of argument, Canada or Japan sign up for the Type 26, how many would be built in Britain? Zero. They will all be built overseas. This is recognised straight off.

If you were able to get an order from, say, Saudi Arabia, they have not got the manufacturing capability. So you would build those in a British Isles yard. You mentioned the capability and cost of the Type 26. This is a ship that at the moment, potentially, is probably of interest to only eight countries, all of whom would build them in their own shipyards. As to your comment about doing the yards down, it is places like Korea, not even Italian or Spanish yards, that are starting to build the next generation of corvettes. Why? They just have the capability, skills and cost base. That was why from the word go on the Type 26, with the belief that we would be building dozens of ships in Britain to export, it was realised that that was not what the market was doing.

Professor Chalmers: To come back to the headline number very briefly, if you had a Scottish defence budget of about £2 billion a year and it spent 40% of that on new equipment and equipment maintenance, which is quite high, you would be talking about £800 million a year. A lot of that would be small-scale suppliers and so on. I think quite a bit would be buying things from overseas. If you wanted a maritime patrol aircraft for Scotland, for example, you would not design and develop it in Scotland; you would buy something off the shelf, like the P-3. According to the figures from the Government here, defence sales from Scottish companies right now are about £1.8 billion a year. That is quite a significant difference. There would still be a market in Scotland.

Q226 David Mowat: For the avoidance of doubt, we have heard that Scotland provides infantry battalions that are greater than its share, if you like. In terms of procurement, at the moment does Scotland provide a higher proportion than you would expect given its relative size within the UK?

Professor Chalmers: Of defence production?

David Mowat: Yes.

Professor Strachan: Yes.

Professor Chalmers: I am not sure it does.

Q227 David Mowat: If it does not, the issue is not so much that; it is that you have taken the view that Scotland will have a much smaller home guard-type outfit and therefore the stuff it will be buying is more commodity-based, which is what takes you to the £800 million number versus the £1.8 billion, which is where you get the analysis that places like Govan would not be used in the same way as they are now. That is right, is it not? That is the answer.

Professor Chalmers: That is right.

Francis Tusa: On another naval point, in terms of business frequency—how much business there is long term—you should bear in mind that, for their new generation frigates, the Norwegians had them built in Spanish shipyards, simply because they had not ordered ships for so long that they did not have the capabilities any longer. They could probably have resurrected them. They just took the decision that it would cost far too much time and there was a serious business risk. Those are also quite sophisticated ships. A country like Norway, which spends nearly £1 billion a year on procurement and which still has a maritime industry, says, “We’ll let the Spanish do it.” By the way, it has not been without troubles. That is one of the higher spending smaller countries in Europe. The question is, if that is the decision they took, why would it not be the same situation here?

Q228 David Mowat: That slightly undermines your argument that people’s spending will go where it is commissioned, because you could say in that instance, “Why wouldn’t the Norwegians go to Govan?” in that instance.

Francis Tusa: This comes back to the point that at that time there was no evidence of any decent products.

Q229 David Mowat: But, in future, if people are prepared to do that, that is interesting.

Francis Tusa: The Spanish were producing ships of a type already for their own navy, the F100 class, and the Norwegians looked at them and said, “Do you know what? That’s pretty much what we are looking for. They are going to be using the same radar, battle management system and missiles.” In effect, they were looking to try to get economies of scale working off the back of it. It did not quite work that way.
Q230 Chair: I was speaking to a defence supplier last night who said that the Norwegians and Swedes have some defence industries; they have managed to survive. There are some niche capabilities that they have managed to target and achieve. Surely that is a scenario that is entirely possible for Scotland. **Francis Tusa:** Yes. It is still fascinating how often, when the Norwegians are faced with buying something from Sweden or something from anyone else in the world, they will go for anyone else in the world. There are little historical bits, such as, “You were our rulers for however many centuries and we haven’t bloody forgotten this.” I think that is why they should have bought the Gripen aircraft a long time ago. Every time it is offered in new configurations they lead Saab up the garden path for a year and, at the last minute, go off and buy something else. They almost take delight in doing it. Yes, there are areas where they have been very successful in collaborating on procurement, and, looking ahead, you will probably see deeper procurement between the Norwegians and the Swedes—and the Danes for that matter. I am still fascinated that there is not even a residual but quite large historical knowledge and the Norwegians kick back against the Swedes.

Chair: Whether or not that develops between Scotland and England is a point that no doubt we can investigate in 20 years, but Norway and Sweden have managed to have some niche manufacturing capabilities in relation to defence. Why should Scotland not have that? Instead of being an all-purpose singing and dancing producer of ships, tanks and planes, why not focus on particular things? I suppose this comes back to the question of industrial policy, of which presently there is none, but were there one it might be possible. Is that right?

Professor Chalmers: I think that is right.

Q231 Chair: I am looking for some sort of light and hope from you, because you have been pretty pessimistic.

**Francis Tusa:** Maritime is probably the area. There is still an offshore industry. Weir Pumps is one of those capabilities. Is it possible to move it elsewhere? Yes. Because you are not talking about a complete ship or aircraft or something big, is anyone necessarily in London going to care if the main pumps for the nuclear submarines come out of Scotland? No. In the same way, rather hilariously, the fasteners on the Charles de Gaulle aircraft carrier all come from a British company called Nelson. They only found out when they saw the names on the fasteners. Certain things are almost internationally traded items now, such as probably Thales periscopes in the old Barr & Stroud. For that type of thing, would anyone in the remaining UK in 10 years say, “I am going to pay for someone to move that facility away from there”? Probably not.

Q232 Chair: That is also, by coincidence, in my constituency.

**Francis Tusa:** I hadn’t guessed.

Q233 Chair: No, no; you have not researched adequately then. I thought that was one of those questions of following the market or customer. Some of those items would actually be moved.

**Francis Tusa:** Probably the advantage there is that the market is so specialised and niche and business flows are such that, if you look at the amount of turnover from that facility, which is going on exports anyway, it is doing quite nicely. Again, great, we have the Astute Class and they are going to do six boats; so, potentially with a few spares, there are about 14 or 15 units over 30 years. That is the sort of area where a company would say, “If you want us to move south, what happens after that is finished? What are we going to be doing?” However, the other side of the coin is the old Ferranti works at Edinburgh with all the radar and electronic warfare. All of their future business is going to be in supporting Typhoons down south and then Saudi contracts and so forth. That is the type of business that will move.

Q234 Chair: That is interesting because that was a particular example that was quoted to me as one that would not, because the expert said that the engineers in Edinburgh were so good that they could not be replicated anywhere else. If the plant were moved, they would not go with it because they loved Edinburgh so much, and they would go off and rather be taxi drivers or work on the trams or anything else rather than move.

**Francis Tusa:** All I will say is that I think you will be surprised in the broader sense how international that work force is. It is working for an international company. Its support facilities will all be down south; they are anyway. If there is no R and D budget in an independent Scotland to support radar developments and so forth and no support, why—

Q235 Chair: I am sorry, but I am just trying to identify the key issue. Rather than the location of the skills, in future terms it is the R and D budget, and who has got it and who is going to spend it that will determine it.

**Francis Tusa:** To give an example of what happens to skilled engineers who love the place where they work and so forth, before the TOBA was signed, on the submarine side Barrow was wasting away at a rate of knots because there was physically no work in Barrow for the engineers. Funnily enough, they loved living on the edge of the Lake District; they had a gorgeous, helocyn life, but they were getting bored rigid and leaving to take jobs all over the rest of the UK and Europe. If you love the engineering that you do and you are in a job where you are literally sitting at a desk with no work, you tend to move pretty quickly. That was the experience of highly skilled maritime submarine engineers at Barrow. They were just leaving and going off to work, funnily enough, at Rolls-Royce and other businesses because there was no work there. It was only once the TOBA said, “No. You won’t just be paid to sit at your desk; you will be paid to carry on working on submarines doing real work”, that got people going. Why become an apprentice in a factory where basically you do not do the work? That is a very physical real example. If people say, “How do you know this has happened?”, that is what happened at Barrow. I am always
surprised at quite how many people you met 15 years ago in one defence company in Britain and then you meet them five years later in a totally different one in a different area. I suppose it is because engineers of a certain type are still in short supply, but the demand is high. They are commodities and they move, and they get poached. Believe you me, at the moment there is a very lively transfer market between some of the companies, and I would not see that changing.

Q236 Chair: Is that a view the other two would accept?

Professor Chalmers: To a large extent it is. I think industrial policy is important. Some of these technologies are dual use; they have a civilian as well as a military dimension. I do not think that all manufacturing industry is going to flee from Scotland in the months after independence. So much will depend on international competitiveness and whether a new independent Scottish Government has the structures and regulations in place to support them properly.

In the specific area of defence, having export control regulations that are easy for companies to relate to will be very important, because an independent Scotland would have to have a separate set of export control regulations. Would that regulate exports between different parts of the old United Kingdom? Would you have to have an export licence to send a pump from Scotland to another subsidiary in England?

Q237 Chair: But if you assume that a separate Scotland behaves rationally, it will want to minimise that.

Professor Chalmers: Yes, it would.

Q238 Chair: It would have an interest in minimising that. There are EU rules. There are a number of problems here, but I do not necessarily see that as being one of them.

Professor Chalmers: I do not think that is an insuperable obstacle. I am just adding something else to the very long list of things that a new Scottish Government would have to put in place. In most areas of Scottish life governance has already devolved to Scotland. In defence there is a whole number of things. It is not simply a case of transferring units from one authority to another; it is putting into place a whole system of government, and export control is something that would have to be done right. If you got it wrong, you might tip the balance in terms of location. Companies do not want disruption. There will be some costs in removing facilities from one place to another. So if they can keep it there, fine, but all the signals would have to be right on both sides of the border.

Francis Tusa: It comes back to the question of reasonable behaviour when it comes to the break-up. If everything is done in a slightly harsh, ill-tempered manner, then you will see harsh and potentially ill-tempered decisions being taken on both sides. The chances of, say, the old Ferranti factory staying in Scotland will be multiplied manyfold if there is a very benign, well thought-out and non-rancorous split.

Chair: You may believe that, but at the moment the Scottish Parliament will not even allow us to meet in their building. The signs are not good at the moment. David, I wonder whether we could turn to question 10.

Q239 David Mowat: In a way, we have covered it. The question is about the extent to which procurement would continue outside borders. What you have said is that it will be minimal, and there is no EU procurement issue that would change that.

Francis Tusa: In theory, even defence is meant to become more open market. However, there are rules and regulations that are so easy to work your way round if you do want to continue to buy from your own domestic suppliers. It will take many, many decades before those are—

Q240 David Mowat: Has the EU ever enforced a defence procurement?

Francis Tusa: Occasionally, they send a slightly peevd note to someone claiming they should not be doing this.

Q241 Chair: That will really frighten them, I would have thought.

Francis Tusa: In those cases the note was never answered.

Q242 David Mowat: Presumably, the distinction would occur between bootlaces, as you described, and frigates.

Francis Tusa: Yes. Surely one of the biggest criticisms of the UK's defence industrial policy, which of course does not exist, is that over clothing, bootlaces and so forth, even when there are perfectly decent suppliers in the country, the resolute driving down of costs or level means it all goes to China. There is an open market but not necessarily for high-tech defence equipment or items that are deemed to be very vital to specific sub-systems.

Professor Strachan: That is really the point, is it not? The dual use argument is about things for which there is an open market in which Scotland might thrive rather than things for which the market is a much more restrictive and closed one.

Q243 Chair: There is one further point about the EU. In the event that it is decided that a particular procurement contract will be placed outside the UK or the rest of the UK, my understanding is that under EU legislation Scotland would not be able to get favourable treatment on that. It could not say, “We are not going to buy it from within our own borders but we are going to buy it from Scotland”, because presumably that would be contrary to EU competition legislation. I was under the impression that the exemption to competition legislation under article 236, or something similar, applied only to your own boundaries, not just to your pals, who might not be your pals by the time you get to that position. Is that a fair assessment?

Francis Tusa: If anyone was ever able fully to enforce EU competition rules as far as defence equipment is concerned, then you would not be able to show favour to any particular source; but, as I say,
you can get round these regulations so easily if you want to.

Q244 Chair: To be clear, you are saying that, if the UK wanted to favour Scotland in placing defence orders over anybody else in the EU, it would be able to do so. 

Francis Tusa: If someone is an incumbent manufacturer, they will have the inside knowledge on the product, how the user uses the product and so forth, which will be worth tens of millions of pounds in research costs and so forth. If they cannot come in with a cheaper bid on that basis, then there is something wrong about the business. It is very easy, and it happens all over Europe, with the incumbent or preferred supplier. Someone writes the specification around a specific product that no one else possesses. Believe me, that is happening every day.

Q245 Chair: That would happen only in circumstances where there was an incumbency advantage.

Francis Tusa: Unless you have cases where someone has a product that you believe is the one you want and therefore your operational capability guys write the operational capability round that product. When you come to the contracting, someone says, “I’m amazed. Out of the six people who were offering, only one person can meet it.” That is one of the oldest tricks in the book for any procurement agency. As I say, it goes on with shocking frequency.

Q246 David Mowat: What you have said is that the UK is buying the stuff in China anyway, if it can. Therefore the likelihood of it favouring Scotland is pretty remote in that instance.

Francis Tusa: If you were looking at those low-value commodity items and so forth, yes, it would be incredibly limited.

David Mowat: It depends what they are.

Francis Tusa: There has been no evidence of anyone wishing to show favour towards UK suppliers in this area.

Q247 David Mowat: If we look at the position of Ireland, Norway and Denmark over the last decade or so, have we seen much in the way of joint procurement? Have they said, “We’re all quite small. Let’s get together and do stuff”? 

Francis Tusa: There has been some. For the NH90 helicopter the Nordic nations teamed together, realising they would get better bargaining power. 

Q248 David Mowat: Is that a model for Scotland? It is of a similar size and therefore that is what it will have to do.

Francis Tusa: It would make the defence pounds, or whatever, go a hell of a lot further than if they tried just to spend on their own. Ireland does piggyback off the UK a little in some areas and other countries on the lines, “If you’re buying six of them, can we buy one?” If you look at Luxembourg—I am not saying this for comparison at all—for the A400 transport airport the Luxembourgers are piggybacking on Belgium, saying, “When you buy yours, can we chuck one on the production line?” That is a model that works for the smaller states. It has worked in helicopters before and it works in consumables like guided weapons.

Q249 David Mowat: I suppose it is not a model that lends itself particularly well to a large indigenous defence industry, because what you are doing is taking marginal capacity from other people’s industries.

Francis Tusa: Yes.

Professor Strachan: But it is the model you would expect Scotland to end up having.

David Mowat: It is pretty rational, but it is not one that gives you an indigenous defence industry.

Chair: The final major area which we want to touch on—we touched on it earlier—is nuclear.

Q250 Mr Reid: I had better declare an interest that Faslane and Coulport are in my constituency. Let me start with Francis. Earlier you seemed to suggest that it would be fairly straightforward to replicate the facilities elsewhere. Was that for both the Trident and Astute submarines?

Francis Tusa: In terms of the boats themselves, there is no shortage of places they can be based all over the rest of the UK. There are facilities nuclear-cleared for handling of those boats. You have Devonport; you still have a facility at Portsmouth that can take them. This ignores for the moment issues like sea access and sea lanes. There is Barrow. There are more nuclear facilities around than people think. I have heard people in NATO say, “We can’t possibly move from Faslane.” You ask, “What if an independent Scotland tells you that you have to move?” One admiral said, “We won’t.” Hang on, if that is the standard of debate, there is a degree of denial here. That was why I started to start to look at where things might go and I found out that there are almost replicated support facilities, sufficiently enough, at Barrow and Faslane. Is there a shiplift at Barrow? Yes, sure.

Q251 Mr Reid: Would there be enough space for all the Trident and Astute submarines?

Francis Tusa: At Barrow you could probably have only two, but they have looked at Milford Haven and you could get all four in there.

Q252 Mr Reid: But there are all the Astute ones as well.

Francis Tusa: The Astutes go down to Devonport; there is more than enough room there. There is an article of faith that it cannot be moved. Could the nuclear coast of Cumbria take a facility? Yes. They have Barrow, which is nuclear-cleared; they have handled nuclear warheads. There are places like Aldermaston and Burghfield. People have not thought about these. They say, “We can’t use them.” Especially in the aftermath of announcements spending £5 billion extra to keep the facilities going and the infrastructure built up, these are places where nuclear warheads are stored anyway.

Q253 Mr Reid: But at Coulport and Glen Douglas there are massive underground stores for weapons,
nuclear and non-nuclear. Could you replicate those at Barrow?

Francis Tusa: If you want to, sure.

Q254 Mr Reid: How long would it take you?

Francis Tusa: The nuclear ones would take longer, but that is why you use Aldermaston and Burghfield in the short term. You need to bear in mind how many other facilities all over Britain were sold off. As to digging extra bunkers, especially in the south-west with high unemployment, if you were to be a really Machiavellian politician trying to take votes away from the LibDems and get more Tory votes in the south-west, you would be chucking quite a lot of work down to the south-west; likewise, Wales. Are you telling me there are not plenty of facilities and areas where you could not put these facilities in Wales?

Q255 Mr Reid: How long do you estimate it would take to replicate the facilities?

Francis Tusa: Everyone always says it would take decades. How long did it take to build Coulport in the first place?

Q256 Mr Reid: I have no idea.

Francis Tusa: In terms of the physical engineering, it took about three and a half to four years, but in the meantime is there any reason why you cannot use Aldermaston and Burghfield to store the warheads? Can we not speak to our best friends across the channel now who have spare facilities? Could we ask if we could borrow some bunkers? Something tells me that President Hollande would probably say yes. It is just an article of faith that you can never move any of the boats anywhere; none of the facilities could be replicated anywhere else, and it would all take far too long. I have to say that it comes from people like the Navy guy, who says, “It just can’t happen.”

Q257 Mr Reid: I want to pursue Francis’s view first.

No doubt there will be an alternative view in a minute. What about the skilled work force at Faslane?

Between workers and sailors there are several thousand people that obviously have to be housed somewhere.

Francis Tusa: There is a skilled work force at Devonport who have been handling nuclear submarines for the last 30 to 40 years. There is no shortage of people down there to do it. There is Barrow for maintenance and overhaul; they are building these things.

Q258 Mr Reid: Where would you house the sailors?

Francis Tusa: If you have seen how many spare houses and barracks there are in Plymouth, they are considering selling three or four of the barracks spaces there. To come back to a point made far earlier about why some of these issues are not raised before we even get to a referendum, I think it is very worrying, on the issue of property and land sales across the UK, regardless, that people come up with decisions to sell facilities without really thinking of some of the longer term conclusions. I have only heard of one person at a fairly low level in the Navy who is looking at the estates plan and saying, “What if?” We are going to be downsizing in Plymouth quite substantially. There is a lot of area of housing. I know that the sea close to it is not regarded as ideal, but they have been basing S-Boats and T-Boats out there for decades, so it cannot be that “unideal”, otherwise, they would have moved years ago.

Q259 Mr Reid: Presumably, the Navy has these stores at Coulport and Glen Douglas for a good reason. You seem to be suggesting that we could base the warheads at Aldermaston, but they have to be loaded on to the submarines in pens. I do not know the technical details of how you go about doing that, but I would have thought that, if you are storing them at Aldermaston and then loading them on to a submarine at Barrow, you may need the intermediate storage space that you currently have at Coulport.

Francis Tusa: But you have nuclear-rated facilities at Barrow anyway. Again, it is the art of the possible, and the art is possible. Would it be in the short term as easy as Coulport? No, because it is just across the loch; it is a short drive and so forth. But the idea that it is impossible to countenance any changes is wrong. Even the wardroom stock is going in and out of Burghfield for overhaul and maintenance; there are nuclear convoys driving up and down the motorways, maybe not quite on a daily basis, but it is not a once-in-10-years event. This is happening.

Q260 Mr Reid: How much of an increase in nuclear convoys would you have if you were basing your warheads at Aldermaston and then loading them at Barrow?

Francis Tusa: Naturally more than if you were across the loch between Gare Loch and Coulport; of course it will be more, but we come back to the very simple point about what happens if there was an independent Scotland with the attitude, “Right; that’s it. The nukes leave.”

Q261 Mr Reid: If they were given, say, a year to get out, would that be long enough?

Francis Tusa: The boats, shiplifts and so forth could sail south, as long as they had the crew to man them. Could they find them barrack space in and around Plymouth to stay in Wallace? Yes, of course they can. Warheads are more problematic because, unfortunately, you cannot just chuck them on Eddie Stobart’s vehicles and leave them at service stations. You have to take care of them, but there are more options open than people have thought about. I put it to a French admiral not that long ago whether he would object to having British nuclear warheads stored, and his reaction was, “No, of course not; we’ve got spare facilities.” Bearing in mind the rapprochement between the two nations, he thought it would be an excellent idea.

Q262 Mr Reid: Perhaps Malcolm and Hew have a different viewpoint.

Professor Chalmers: I do. Nothing is impossible, and Francis is quite right to say that. I think it would be much more difficult than he suggests. One of the things that I have done in the past is look at the public records of the surveys, which are now available, that
the Government did right back in the early 1960s as to all the alternative bases. All the ones Francis has just mentioned were looked at in that process. There were good reasons why they ended up with Scottish locations right at the top of the list of preferences. A lot of the issues at that time, which would be greatly intensified today, were in relation to the safety margins that the Nuclear Installations Inspectorate would insist on. Unless you are prepared to rehouse a very large number of civilians and close down areas of housing and so on, it limits where you can put the particular facilities. Aldermaston is not really relevant. Aldermaston is not on the coast. Aldermaston is where we go to refurbish warheads, so that is already part of the operating cycle. The issue is whether there is another coastal location in England, Wales or Northern Ireland that could replicate what we have at Faslane and Coulport. Devonport is a possibility.

Q263 Mr Reid: Are you ruling out Milford Haven and Barrow?

Professor Chalmers: Milford Haven was quite high on the list in the past. There are a couple of large LNG facilities there now that were not there in the past. Perhaps somebody should look at that again, but the idea that you could base these facilities there, with this very important economic and industrial facility there today that was not there back in the 1960s, gives rise to real problems. Some of the people I have talked to suggest that that is not on the cards.

This is going beyond my level of expertise, but certainly in the past issues have been raised about how deep the channel is at Barrow and whether you would have to do a lot of dredging, or whatever it might be, to ensure that submarines could go in and out on a very frequent basis. You would have to tackle that issue. Of course you would have to have facilities that were sufficiently distant from population centres in relation to safety margins. Again, you would have to look at that. Barrow was certainly rejected in the past for those reasons.

In terms of going to the south-west of the country, William Walker and I wrote something about this in the past. Given enough time and expense, you could carve out an area for the Faslane-type facility in Devonport. It would take some time, but you could do it. Francis is absolutely right in that respect. The issue would be the Coulport facility. You could not put the Coulport facility in Devonport because there simply is not the room given the safety margins, which would be higher now than they were in the 1960s. There was at that time, and there continues to be, discussion about whether there could be a location near Falmouth for the Coulport facility, which is a possibility and would involve moving a significant number of people, planning permission and so on.

Q264 Mr Reid: Would the distance between Falmouth and Devonport cause problems?

Professor Chalmers: Given the rather more relaxed operating environment we have today compared with the past, it might be possible. It certainly would be more possible than having a much larger Devonport/Barrow-type arrangement of the kind Francis talked about. If you get to a situation in which the UK has no choice, the first thing it would do is take the warheads to Aldermaston and basically continuous at-sea deterrence would end. Then the Navy would be asked, "How long is it going to take you to regain this?" The politicians would then be asked, "What political price and financial price are you prepared to pay to restore continuous at-sea deterrence?" I think there would be an awful lot of nimbysim where you wanted to put the Coulport facility.

Q265 Chair: Noises off there. Just carry on.

Professor Chalmers: There might be employment considerations as well. You would have to look at the location and talk to the people. For people at Falmouth at the moment, having a nuclear weapons facility in their back yard is not right at the top of their agenda, and it would be in this scenario. I think it would take a very long time to work through. It is very uncertain where it would all end. There would be some period in that process of rapid expulsion where the UK no longer had a continuous at-sea deterrence. In a way, there would be a bluff according to the Scottish thinking, the UK in which the UK Government has no interest in a referendum discussion, or even after it, saying, "Yes, we can relocate; no problem." The Scottish Government have a very difficult choice, because if they push the issue and say, "We don’t care. That’s your problem, not ours”, the diplomatic and other costs will be very substantial. I think the UK Government’s reluctance to go down that road is in my view based on considerable worries about the safety, politics and the cost. Of course, if the UK was faced with an imminent threat, and we were in May 1940, a way would be found. I do not doubt that, but we are not in that sort of situation.

Q266 Chair: The point that strikes me is that we are building aircraft carriers that will not have aircraft on them for a while, so it is entirely possible in defence terms to have a gap in capability, is it not? Who knows what might happen in the next two or three years, but at the moment it does not look as if we are likely to require a deterrent since, if nothing else, we are in an alliance with the French and Americans, both of whom do have nuclear weapons?

Professor Strachan: That proposed gap has been canvassed as a possibility in the British case anyway in relation to its nuclear deterrence. If I may pick up the point about nimbysim, I talked about this with Michael Quinlan, who was the Permanent Under-Secretary at the Ministry of Defence. He was the person who is most often credited with having underpinned at least some of the British thinking on this. He always used to scoff when I asked what he was going to do when a Scottish nationalist party was in power and there was pressure to do exactly what we are talking about. He lived long enough to see the SNP form a Government, if not have an absolute majority. He said, “I have got to take it seriously now.” His response was entirely along the lines of the political difficulty of doing what is being described. People would resist having the Coulport equivalent, especially, in their part of the world, because he assumed, especially, like Malcolm,
that the most likely place would have to be adjacent to Devonport and it would be Devonport they would have to go to. He could not see a possibility of doing that from scratch now, as opposed to being able to do it in the 1960s when the cold war provided the impetus and political acceptability for what you were doing. He thought we were now in a very different place. There was so much more public scepticism about the value of nuclear weapons without the imperative of the cold war that it would be very hard to get people to accept this happening adjacent to their homes.

I entirely accept that in a recession employment opportunities might work against that, but you are constituency MPs and you can reflect on the dynamics of this relationship better than any of us. He thought that was the most likely case. Of course he was not a constituency MP. He stressed the Coulport aspect of it particularly, how effectively you could move that and whether you could move it to the south-west, which is presumably where he would have wanted it to be.

Francis Tusa: I come back to one very significant difference between now and the 1960s, 1970s or whatever. The size of the facility that you would be looking at is less than half because of the number of nuclear warheads the UK states it wants. Instead of 500 or 800, of which about 190 would be on one boat, the remainder being largely in Coulport, you are looking potentially at under 100 warheads. Physically, the size of the facility will be a fraction of that at Coulport. I have these debates with navy guys, all of whom say, “It’s too difficult.” I honestly do not believe they have thought of it. I have spoken to former BAE Systems guys and they say, “At Barrow the channel is great; you dredge it out.” This is what a lot of other countries do, including the US Navy, when annoying sandbars start growing. They get a dredger and just dredge it. This will be the problem with Portsmouth. For the carriers in Portsmouth they have accepted they will have to have a long-term contract with somebody to dredge the channel. I do not notice anyone getting particularly uptight about that. They make and launch boats at Barrow anyway. Could you use that as a loading facility? I am now trying to think of other operational bases. Is the ballistic missile storage site in Georgia an operational boomer base?

Professor Strachan: Yes.

Francis Tusa: Are you sure? I thought they were up in Bangor, Maine.

Professor Chalmers: As to the issue of Barrow and dredging, in principle that is right. It would cost something because you would have to maintain it continuously. Warhead basing is the number one safety issue. That would severely constrain it. As to Coulport, Francis is right; it could be smaller because of the smaller size of the force, but you would still have to have the safety assurance in relation to loading and offloading missiles and warheads.

Q267 Chair: Maybe this is a daft question. If we can have storage capacity in France, is it possible to have just loading capacity? You store them yourselves, load them on the boats and then the boats sail away. Presumably, it does not matter if you load them in France or indeed the United States, as long as the British control it.

Francis Tusa: We load the missiles in the United States. We do not own any Tridents. They are all owned out in the general pool. When another boat goes on patrol, it is not that that is British missiles 1, 2 and 3; it is missile 7; then the other tube has missile 64. It is a joint stock of missiles. We have the right to access a certain number of missiles; we do not own any.

Professor Chalmers: The option of having the Coulport facility in the United States was looked at when Trident was first purchased. I think part of the reason it was rejected was that it was seen as just a step too far to being perceived as not having an independent deterrent if both your missile servicing and warheads were based in the United States. It would have saved money. There was also an issue at that time, which was not fully explored, as to whether the United States would be prepared to have a foreign nuclear weapons base on its territory or whether it would ask, “If you are not even prepared to have your nuclear servicing done in your own country, how serious are you about having an independent deterrent?” I think that in the case of France it would be a different dynamic. There may be a stronger French stake in Britain remaining a nuclear weapons state than there is an American stake in that, but, even then, it would not be automatic that the French would be prepared to have a sovereign foreign nuclear weapons base on their territory. They would think twice about it. It is possible; I think it is an option, but I think it would be a difficult one.

Francis Tusa: Do remember we have just started—it is a very early process—of mutual dependency in nuclear design and testing. We are now totally reliant on the French for some areas and they are now totally reliant on Burghfield and the explosives facilities. On that basis, you could say we have both given up our independence in nuclear weapons to the other, without massive investment. It has only just ended, but we would not be able to get back all those areas. If you had spoken to French people a couple of years ago about a load of Gaullists would have just said, “Non.” This is not the case now. I have been following France’s drive back into NATO and so forth, seen French units come over here working with their British opposite numbers at all levels, and the desire to be like that.

Chair: The answer is that these things are not inconceivable. The point you made at the beginning, Francis, was a very good one. It was assumed—we just assumed—that there was no solution, save the status quo. The thing that strikes me is that this is more properly a matter for the Defence Select Committee. As the Scottish Affairs Select Committee we are interested in the Scottish dimension. If there is to be exploration of where else it might go, since presumably if it is moved out of that part of Scotland it won’t be moved to another part of Scotland, it is not really our remit, as it were.

Q268 Iain McKenzie: Regardless of the difficulty or ease of handing over the hardware and so on—I am
pretty sure they are all cardboard anyway—there is also the transfer of jobs. A lot of our constituents will work in these facilities. You have already touched on probably a bonanza for jobs in certain parts of the UK. Can you comment on the ease of transfer of those jobs and also the degree of skills that could or would be transferred?

_Francis Tusa:_ In part, it comes back to when we talk about the different regimes and whether people would sign up one way or the other. Some people who heard that Faslane was closing down and it was all going to Devonport might well decide they would move with the work. If you are looking at jobs in Scotland, for example, submarine support and maintenance is done by Babcock, who have facilities both sides of the border. They have flex capability to move either way. If there were different stove-piped firms, it would be more difficult, but the fact is that BAE Systems and Babcock, let alone Rolls-Royce, are the two and a half most important firms with facilities south of the border in different places with the requisite licences. From an industrial point of view, it is not just not inconceivable; for them it becomes a business operations matter to move stuff to a different facility. Will there be some jobs that will not move because people do not want to move? Yes, there will be.

Q269 _Iain McKenzie:_ What seems inconceivable, and probably will not affect that, is what will replace those jobs that transfer, especially in that area of the country.

_Francis Tusa:_ To come back to the point I made earlier about engineers generally, if you are a specialist nuclear submarine engineer, you love that job and the future of that job, as much as a major wanting promotion to colonel and brigadier afterwards, and that is moved to somewhere else—

Q270 _Iain McKenzie:_ You may not be persuaded to stay and work on our ferries.

_Francis Tusa:_ I am not saying there is an easy answer. I am just saying it is not as clear-cut as somebody saying, “No, thank you; I’m going to stay here”, if the job you have trained for, and you are potentially a national leader in it, has just shifted 450 miles to the south-west.

_Chair:_ I am conscious that Professor Strachan has to go off in a moment. Alan wants to ask another point, and then we will draw things to a close.

Q271 _Mr Reid:_ Moving on to the next stage, if we assume that the submarines have gone and a separate Scotland is left with all the facilities at Faslane that have not been moved, do you think a separate Scotland would have any use for submarines?

_Professor Strachan:_ It depends. It comes back to every question that you have asked about Scottish capability and the political framework. Yes, of course there is a function for submarines, particularly if you are thinking about maritime defence. There is a presumption at the moment that Scotland will not have them, but it seems a very logical thing for Scotland to want to have them.

Q272 _Mr Reid:_ Would it be a practical proposition?

_Professor Chalmers:_ The key thing is that, as Hew says, there might be a requirement for submarines but it would not be these submarines. The Astute Class submarines are designed for global deployment. They have a very high capital cost and running costs. It is the sort of thing that only a small number of major powers with defence budgets of $70 billion, $80 billion or $90 billion a year can afford. You would have to think about what the shape of a Scottish Navy would be. Like Norway, it might like to have a couple of submarines.

Francis Tusa: That is the whole point. If you look at the comparator nations, the best ones—Denmark, Norway and Netherlands—all have submarine forces and they are modernising.

Q273 _Mr Reid:_ Are these diesel submarines?

_Francis Tusa:_ These are diesel electric submarines, but in certain areas with the modern technologies they are as capable and silent as nuclear submarines, so they are no longer the poor man’s submarine. Some of them are incredibly expensive. As a weird aside in terms of nations and their submarine use, one of the key requirements of the South Africans when they bought their German submarines a decade ago now was not force projection or defence of the coastline but fisheries protection. That may sound really weird, but a submarine can be on station for a long time, whereas an aircraft goes out, does two hours and then disappears, and rogue fishermen are very good at working out, hang on, the fisheries protection aircraft is about to come over and they disappear. One of the requirements for the periscopes from a certain company was to be able to identify and take photos of fishing boats that they could then raid and arrest. I am not suggesting that is the best reason to buy submarines, but it is interesting how different nations look at this.

Q274 _Chair:_ Professor Strachan has his jacket on, so this is really getting serious.

_Professor Strachan:_ I have two generals waiting for me, and I know I have got to get there.

Q275 _Chair:_ You name-dropper. What we want to ask all of you is, first, whether or not there are any other points that you particularly want to raise with us; and, secondly, if upon reflection there are points you wished you had made to us or we had asked you about, we would very much welcome any further correspondence. Professor Strachan, is there any point you want to raise?

_Professor Strachan:_ I do not think there is anything immediately. I think it has been a constant theme throughout this that the foreign policy question ought to come first. You can get much more sensible answers to many of the questions you are trying to address if you have some sense of what the foreign policy would look like, but every answer we have given has been contingent on that.

Q276 _Chair:_ There are just a couple of other points we would like to clarify with the other two victims.
To clarify the position on submarines, did any of these states build their own submarines?

Francis Tusa: The Dutch did, but, because of the complexity of some of these platforms, more and more often you go to one of the two key developers and builders, either DCNS in France or ThyssenKrupp Marine Systems in Germany. If you buy enough of them or are willing to put up the money, you can probably do licensed assembly in your own country. One not very good example of how to do this was when the Greeks decided to buy some submarines from ThyssenKrupp and then forgot to pay for them. They started welding bits of hulls the wrong way up and so forth. That one was not a particularly pleasant programme. In terms of conventional submarines, there is no UK design; there are no British yards.

Q277 Chair: I was just thinking for Scotland. Would it be feasible for a separate Scotland to build its own submarines?

Francis Tusa: Yes, it is absolutely feasible. Is there a learning curve? Yes. It is different from building a surface warship. The minimum number you have to do is four. Below that the economies of scale are insane, because there are not any. If you were building four, the first one would almost certainly come out of either the TKMS yard in Germany or the DCNS yard in France. They would take engineers and workers from Govan to those yards to show them how they are built. This is now relatively common. If you look at DCNS, they are building submarines with and for the Brazilian Navy where precisely this practice happens. The first one/two get built in France and the rest are built in country, and they do technology transfer.

I would not like—it is strange for me—to minimise some of the hiccups you can have. There is a learning curve, but it is doable, and, quite frankly, almost the first question asked by either of the two submarine manufacturers when selling submarines overseas is, “Do you want to build them yourself?”. Because that changes how you market the submarines.

Q278 Mr Reid: You mentioned that four would be the minimum. Would Scotland need four submarines?

Francis Tusa: The reason I say four is not just industrially; you look at support, training and investment in facilities. Much less than that and you are spending a vast amount on sunk costs. We do not actually need four SSBNs for constant at-sea deterrence. Again, that is one of those inconvenient truths. Four submarines allow for one in maintenance, one doing stuff, one going out, and one probably just in training. Four is about the minimum flotilla where one doing stuff, one going out, and one probably just truth. Four submarines allow for one in maintenance, actually need four SSBNs for constant at-sea industrial; you look at support, training and

Q279 Mr Reid: Would the facilities that exist at Faslane for the nuclear submarines be of use to Scotland with smaller diesel submarines?

Francis Tusa: Yes.

Q280 Mr Reid: It would not be starting completely from scratch.

Francis Tusa: I would come back to the point that Malcolm or Hew made. All of the training would have to happen down in Plymouth and Portsmouth because that is where the facilities are. Would you ever want to try to replicate them? No. For that reason the Dutch and Norwegians still send people over to Portsmouth because it is just not economic for them to replicate those facilities. As a facility you have all the means of handling submarines.

Q281 Mr Reid: You mentioned the fishery observation. What other uses do you envisage Scotland having for submarines?

Francis Tusa: The broadest one is an insurance policy. Especially with oil and gas rigs out at sea and so forth, you have the ability to say, “By the way, if you do fancy trying to sniff around some of our assets, we are in a position to stop you.”

Q282 Mr Reid: You have mentioned fishing and oil and these assets tend to be in the North sea. Faslane is obviously up a sea loch on the west coast. Would you be advising a Scottish Government to base their submarines at Faslane, or would you be looking at a fresh start on the east coast?

Francis Tusa: It would take advantage of what you said. If all the nuclear boats are heading south, you still have a work force with expertise and knowledge of dealing with submarines. They will not say, “My God, what’s this turning up?” They will be used to it. The transition will be far, far simpler than if you were to try to transport a base somewhere totally different. You would then have to build all the infrastructure again. If Scotland had submarines of any type, you would have to come up with an amazing defence and business case not to put them at Faslane.

Q283 Mr Reid: If Scotland had any surface ships—Scotland had fishery protection vessels—would it make sense to base them also at Faslane or somewhere else?

Francis Tusa: You could put some at Rosyth. Again, how many are we talking about? If you are talking about three frigates and four fishery patrol vessels, I suppose the best/worst case, for the sake of argument, is to put the frigates at Rosyth and the smaller vessels at Faslane. But, quite frankly, looking at comparator navies—even New Zealand and so forth—how many of them have two, three or four naval bases? No; they are pretty much down to one naval base. Why? It just makes sense.

Q284 Mr Reid: Could you make an estimate of the number of jobs that a Scottish Navy would support compared with the number of jobs that are supported by the Royal Navy?

Francis Tusa: I could find out the figures for the size of submarine bases in some of the comparator nations, if that would help.

Q285 Mr Reid: It would certainly be helpful, if you could send that to us.

Francis Tusa: Of course you do not have the nuclear site; so you do not have all the safety people.

Mr Reid: That would certainly be useful to have.
Q286 Chair: Do you want to respond to any of that exchange?
Professor Chalmers: Only to say you could make these calculations for the Navy in isolation, but you have to look at the whole force structure. If you put emphasis on surface ships and submarines, the key thing is that in all these areas of the Navy there would be a lot of new buy by Scotland. You are not talking about inheriting; there is not much to inherit that would be appropriate for Scotland, given its income and strategic situation. It would have to be new buy. Would you be able to get them on a sort of long-term hire purchase agreement?

Q287 Mr Reid: Are there second-hand ones about the world?
Professor Chalmers: Second hand is not cheap. Would you have a procurement-dominated 10-year initial defence budget? I suspect you would not, and what would happen is that it would take a long time to build these capabilities. You would have to make some really hard choices. If you made the choice, which you could do, to get four Scottish submarines by 2025, you would have to spend much less on aircraft, the Army or whatever it might be.
Francis Tusa: If you are going to go for frigates, submarines and so forth, with all the reasonable assumptions on the size of the budget, you are saying that the Scottish Army will be smaller, because there is not the budget to pay for the manpower of a largish army and then the equipment and high-tech stuff.

Q288 Mr Reid: You are convinced it would have to be new build; there are not reasonably priced second-hand assets.
Professor Chalmers: There are some; there will be a second-hand market.

Francis Tusa: The Greeks are selling.

Q289 Chair: But, if you do not buy new submarines and build them in Govan, the Clyde shipyards shut, which is the reality.
Professor Chalmers: Yes.

Q290 Chair: If they are not building the Type 26, then there is no work. It is clear that you have said they will not be building the Type 26; indeed, that is what the Minister said. Unless it is something like the Scottish Navy building new submarines, there is simply no work.
Francis Tusa: Unless we do “the card” deal and all of the current offshore patrol vessels go to Scotland so that the UK keeps all the Type 23s, or something like that. The other question is the work force required for very sophisticated ships like the Type 45. Compare that with the work force you need to build an offshore patrol vessel like a corvette. It is a small percentage.
Chair: Thank you very much. I hope this has not been too much of an ordeal for you. We have found it immensely interesting. My head is now completely full. If there are any other points that upon reflection you would want to draw to our attention, please drop us a note. We are seeing Ministers immediately after the Whit break. Given the scale of uncertainty, we will be producing a pretty quick report focusing on the need for clarity and identifying a number of the possibilities rather than trying to answer lots of these questions. In a sense we are not in favour of breaking up the Union, and therefore we do not need to produce the answers; somebody else needs to do that. What you have identified for us is that some of these things have to be clarified as soon as possible.
Again, thank you very much for coming along. I am sorry for holding you for a little longer than you might have expected.
Wednesday 13 June 2012

Members present:
Mr Ian Davidson (Chair)
Fiona Bruce
Mike Freer
Iain McKenzie
Jim McGovern
David Mowat
Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: Nick Harvey MP, Minister of State for the Armed Forces, and Peter Luff MP, Parliamentary Under-Secretary of State for Defence (Equipment, Support and Technology), gave evidence.

Q291 Chair: Gentlemen, I welcome you to the Scottish Affairs Committee. We are very grateful that you could come. I will start off by asking you to introduce yourselves and tell us what it is you are responsible for within the MOD so that we are aware of to whom we should be directing our questions.

Nick Harvey: I am Nick Harvey, Minister for the Armed Forces. This covers anything for which the Armed Forces undertake operations. It also involves strategic basing issues and broadly deputing for the Secretary of State across the Department.

Peter Luff: I am Peter Luff, Minister for Defence Equipment, Support and Technology, which means I buy things. I also have responsibility for the ranges in Scotland and this gives me an opportunity to say how much I value the contribution that Scotland makes to the UK’s defence industries, which is very significant indeed and greatly valued by the Department.

Chair: Did you say “Ranges” or “ranges”?

Peter Luff: I am a Chelsea man, I have to say. No, “ranges”.

Chair: I am glad we have clarified that.

Jim McGovern: I misheard the same as you, Chair.

Peter Luff: Wishful thinking.

Q292 Chair: First of all, have the Scottish Government been in touch with the UK Government or the MOD to discuss co-operation in defence in the event of a separate Scotland?

Nick Harvey: The short answer to that, Chairman, is no. We have a regular and constructive dialogue with the Scottish Government about a variety of defence matters, not least the Armed Forces Covenant for which the devolved Administrations have a lot of delivery responsibility, but we have not had any discussions of any substance with the Scottish Government about independence.

Q293 Chair: When you say “of any substance”, that is capable of interpretation. Have there been any discussions at all?

Nick Harvey: I cannot look you in the eye and say that the word “independence” has never been mentioned in any discussion, but we have never had any meaningful substantive discussion with them about it. Peter might wish to add something.

Peter Luff: We do have a very constructive relationship with the Scottish Government, as you would expect. I write to them regularly on specific issues affecting Scotland. Most recently I had correspondence about the submarine dismantling programme, for example, which has recently been consulted on. There is regular practical discussion over the issues affecting defence, but no discussions on independence that I am aware of.

Q294 Chair: I want to clarify whether or not you have had any discussions at all, or there has been any input, from the Scottish Government on anything relating to future foreign policy that has defence implications and about which you might want to have dialogue with them.

Nick Harvey: To the best of my knowledge there has been no such discussion.

Q295 Chair: You say to the best of your knowledge. Are there other people that would deal with these matters, or would it all come to you if there was a dialogue?

Nick Harvey: If there was a formal dialogue of any description, I am pretty certain I would know about it.

Q296 Chair: Would you welcome some sort of indication from the Scottish Government about what their foreign and defence policy might be, in order that you could undertake some degree of planning?

Nick Harvey: The Ministry of Defence is not planning or preparing contingency arrangements for the event of Scottish independence, because we do not expect it to happen. We have confidence in the Scottish people to arrive at a view in any referendum that they would wish to sustain the Union. You will understand that manpower is quite stretched already with the tempo of current operations and the scale of defence reform we are undertaking at the moment. Clearly it is something about which we have occasional internal discussion, but it is not something that we are devoting a great deal of time to beyond normal contingency planning for the unexpected that is part of any usual military thinking.

Q297 Chair: If the Treasury is drawing up contingency plans for the departure of a small European country like Greece from the Euro, surely the MOD would be having some sort of contingency discussions in the event of separation. Surely there must have been some thinking somewhere about what is obviously a black cloud on the horizon.

Nick Harvey: The possibility of Scottish independence is always in our minds, Chairman. I
suspect, as you go on to ask us questions about various aspects of our work, that the relevance of the independence dynamic to decisions we might take over the next couple of years, for example, will be explored a bit. No, we are not spending our time setting up teams to prepare for the contingency of Scottish independence. Basically we do not have the resources with which to do that.

You touched—and I fully see why you did—on questions of what the future foreign policy, and therefore the defence and security policy, of an independent Scotland might be. I entirely agree with your observation that, before anybody can make any sort of an assessment of what the future of defence in Scotland might be, or how that would interrelate with the residual United Kingdom, we would need to understand that. I feel it is incumbent upon those who advocate Scottish independence to explain their view at least of what that might look like, but of course if an independent Scotland came about, it does not follow that the political composition of the current Scottish Government would necessarily be the composition of a future Scottish Government. Therefore, there necessarily an element of speculation as to what decisions a future Scottish Government would take.

Q298 Chair: I do understand this, but I want to pursue the point slightly because it is quite crucial for this and a whole number of other areas. Many of us who are Scots in Scotland with a vote in the forthcoming referendum do not want to end up in a position where we have to vote for a pig in a poke. We think the idea that we will simply wait and see what turns up is inadequate. We are therefore trying to clarify the extent to which we can tell the Scottish people what the options and possibilities are. I must say I am very disappointed to hear that there seems to have been no work in the MOD on planning or preparing for the possibility of separation, and how this might be implemented or what might result under various scenarios.

Nick Harvey: I did not say there had been no thinking given to the matter, but I state again that we have not set up teams to prepare for a contingency that we do not expect to arise.

Peter Luff: Additionally, Chairman, I would just say that there is so much uncertainty about what an independent separate Scotland would mean and we would have so many scenarios to plan that the workload would be immense. Until there is greater clarity in what the Scottish National Party intends for independence, it is very difficult to do that preparatory work in any meaningful way.

Chair: Without wanting to suggest that you use Special Forces or spies or anything, we find it difficult to clarify this as well. We wanted to be clear, first of all, whether or not you had had any communications. You would welcome that.

Q299 Mr Reid: I want to pick up on a point from Nick. Quite rightly, nobody knows what future Scottish parties would be elected to a future Scottish Government; but if this referendum were to be carried, then what we do know is that it will be the present Scottish Government that would be negotiating with the UK Government, so you do know who you would be negotiating with. Have you made any effort to find out their negotiating position or decide what your own negotiating position would be?

Nick Harvey: In response to that I would say that, in the event of a referendum returning a vote for separation, I surmise that a big pan-governmental negotiation would have to take place, of which defence would be but one part. It would be quite a large and significant part but nevertheless only one part. The lead for that would be the Cabinet Office and the Treasury. I do not think it would be wholly without precedent. The public sector reorganises itself from time to time, but clearly that negotiation would be looking at assets, liability, costs of change, and, frankly, these are questions considerably above my pay grade and ones on which the Treasury, the Cabinet Office and the Scottish Government would have to agree some ground.

Q300 Chair: We will continue to pursue this with you as we go through this because it is clear to us that the Scottish people deserve more than simply a pig in a poke.

Nick Harvey: Yes.

Chair: We have to have clarity both on the Scottish Government’s negotiating position but also on what the likely response from the MOD and other Government Departments would be.

Q301 Lindsay Roy: Given the faith that the SNP apparently have that separation will come to pass, are you not surprised that there has been no approach to you about defence of the British Isles? There appears to be a vacuum at the moment.

Nick Harvey: There appears to be a vacuum in terms of their intentions across a wide front, of which defence is an important part, but one part among several. I understand the frustration of the public, the media and political colleagues in Scotland that there is not a more tangible proposition to debate. I find it surprising that there is not, but I confirm what you are saying. At the moment, as Peter quite rightly says, there are so many different ways this could go that it is very hard to know which aspect of which issue it is constructive to debate.

Q302 Lindsay Roy: Just to clarify, if they feel so confident, you would expect an approach?

Nick Harvey: I would have expected them to start spelling out to the Scottish people what the practical impacts would be, so that the Scottish people can start to formulate their opinion in an informed way.

Q303 Fiona Bruce: Running on from that last statement, you said that we may ask you about specific areas. I want to ask you about a handful of specific areas. We took oral evidence from some military analysts before the recess and they pointed out some of the future threats to the UK and a future separate Scotland. We are very interested therefore to know whether you have any knowledge—I am assuming that you have had no discussions with the Scottish Government from what you say—of their
position regarding the following and indeed, as you say, the practical impacts of separation on them: first, the defence of the North sea and fishing waters. Have any statements been made to you or have you had any communications?

Nick Harvey: No; I do not believe so.

Q304 Fiona Bruce: What about tensions around the Arctic?
Nick Harvey: None that I am aware of.

Q305 Fiona Bruce: With regard to cyber crime, have the Scottish Government talked to you about what military capability might be required for this, bearing in mind, it is fair to say, that such a modern threat would require a modern defence involving perhaps the latest technology and effective intelligence? Such things do not come cheaply.

Nick Harvey: I believe that the Cabinet Office, in executing its cross-governmental responsibility for cyber security, does have practical discussion with the devolved Administrations. I do not believe there has been any discussion with the Ministry of Defence about specific defence aspects of that in the longer term that you are describing. I do believe there is a constructive dialogue between the Scottish Government and Whitehall about current cyber security threats.

Q306 Fiona Bruce: It may well be worth us pursuing that with the Cabinet Office.
Nick Harvey: It might be.

Q307 Chair: I want to follow up on this. Should the SNP and Scottish Government’s negotiating position on these matters ever become clear, would it then be the MOD’s position that they would prepare negotiating positions for the remainder of the UK in order that they can respond, or would you just wait and see what turned up?

Nick Harvey: I find it an unlikely situation that Whitehall Departments would prepare negotiating positions in the sense that you have described. I think that negotiations would only take place after there had been an outcome that determined that negotiations needed to take place. However, I believe that, if some clarity began to emerge about what the more detailed proposition was, then the Ministry of Defence, like other Whitehall Departments, would begin to offer a commentary on that and make observations about that. I would draw a distinction, as it were, between engaging in the debate and preparing a negotiating position.

Q308 Chair: That is helpful. It would also be helpful if you were able to authorise people such as the Defence Academy, which I visited in the context of the Armed Forces Scheme, to have some dialogue with us in order that we can pick their brains. Unless I am mistaken, there are no defence experts here of the calibre that you are likely to find in the Defence Academy. We would quite welcome having ideas put in front of us for consideration—a sort of idiot’s guide to some of the issues.

Nick Harvey: Chairman, if what you wanted was, as you put it, to pick the brains of the Defence Academy, I do not think there would be any problem with that. If you want them to come formally and give evidence to you, I would be more concerned about that. In a sense the session you have already had with some quite notable defence experts has already given you—

Q309 Chair: We are looking for authorisation from you for informal discussions that we would find helpful.
Nick Harvey: I do not see any problem with that at all.
Chair: That is excellent.

Q310 Mike Freer: Minister, I am going to turn to the UK’s relationship with NATO. The SNP have a long history of saying they would withdraw from NATO. Given that Scotland has been described as NATO’s aircraft carrier—I am not sure whether that is complimentary or not—do you perceive complications in a future relationship with an independent Scotland because of our relationship with NATO and their lack of relationship with NATO?

Nick Harvey: It is certainly the case that our relationship with NATO is the central bedrock of our defence and security policy. That position was reaffirmed in the National Security Strategy and the SDSR two years ago. The defence arrangements that we have with other countries that are members of NATO are necessarily and understandably closer and more mutually interdependent than our relationships with many countries outside NATO.

If a future independent Scotland were to be members of NATO, I think that would enable a quite different relationship with them from that which would obtain if they were not members of NATO, therefore that is an important consideration in trying to analyse what a future defence relationship would look like. I understand why you raise it, but this is clearly something that a future Scottish Government, were such a thing to come to fruition, would have to work out for itself, starting from its foreign policy analysis and then working through to what it considered its security threats were and the arrangements it wished to put in place in order to meet those. It would not be for UK Ministers to say what those should be. It would be up to the people of Scotland to decide.

Q311 Mike Freer: What you are saying is that you think they would simply follow the Irish route—the relationship between the UK and Ireland as a non-member of NATO. The relationship between the UK and Scotland would simply replicate that Irish relationship.

Nick Harvey: It is impossible to say quite how the relationship would work out without knowing the answer to a vast number of variables. I would observe that the SNP’s declared position on the nuclear deterrent would raise some interesting issues if it sought to join NATO, when you consider what NATO’s underlying shared concept is.

Q312 Mike Freer: Given the importance of our relationship with our NATO partners, have there been any discussions or comments from our NATO partners...
on the impact of an independent Scotland on the relationship with the UK.

**Nick Harvey**: None, with me personally, but we interact with NATO partners at a huge number of different levels, so I do not think it would be possible for any one person to give you a comprehensive digest of any such discussions that have taken place. You may wish to address some of these questions to the Foreign Office, which has the policy lead on our international alliances.

**Q313 Chair**: I want to clarify whether or not you are aware of the Scottish Government having raised with any of our NATO partners the possibility of Scotland leaving NATO.

**Nick Harvey**: My perception is that, if an independent Scotland came about, they would have to apply to join NATO rather than take a decision to leave it.

**Q314 Chair**: That is an interesting point that had not occurred to me. The point I was making was slightly different. I want to clarify whether or not you were aware of Scotland and the Scottish Government having had any discussions with any other countries in NATO about the possibility of their departure. Have they been preparing the way by discussing with any of our NATO partners what might happen if they left?

**Nick Harvey**: I am not aware of any such discussions, but I do not feel competent to say with any confidence that they have not had any such discussions. I am not aware of any.

**Chair**: I am now in a difficulty. I have this trust in the MOD’s intelligence services that you would certainly know if such discussions were taking place, but I am not confident you would necessarily tell me. We will just have to leave that as it is at the moment. We will now turn to Trident and Alan Reid has a question.

**Q315 Mr Reid**: Have the Scottish Government contacted you about their view of what would happen to Trident should they win the referendum?

**Nick Harvey**: Not that I am aware of. I will give way to Peter, because he deals with some of this.

**Peter Luff**: I have had no formal contact. I read comments in the press attributed to SNP spokesmen, but I have had no formal representations at all about their intentions.

**Q316 Mr Reid**: What is your view of their intentions, given their stated comments?

**Nick Harvey**: I find it quite impossible to make an assessment of their intentions. One can piece together different statements that have been made at different times. One understands that the policy position of the SNP has historically been that they are completely opposed to the nuclear deterrent, but I do not know what their precise proposition will be when making the case for independence.

**Q317 Mr Reid**: My understanding of their position is that Trident would leave very quickly. Given that position, has the Ministry of Defence done any planning as to where it would base the submarines, warheads and missiles should that happen?

**Nick Harvey**: The UK Government are not making plans for independence, as I explained, and hence we are not making plans to move the nuclear deterrent or indeed the submarines from HM Naval Base Clyde. In the course of our normal work we have all sorts of contingency arrangements in place, but we have not had any discussion of the sort that you are alluding to, certainly with either the SNP or the Scottish Government.

**Q318 Mr Reid**: Does that contingency planning take into account the scenario where, for whatever reason, Faslane was not available for, say, a submarine that was at sea and had to return?

**Nick Harvey**: Yes.

**Q319 Mr Reid**: You have run scenarios like that.

**Nick Harvey**: As part of our normal work, all sorts of contingency plans are in place for all sorts of situations that might arise.

**Q320 Mr Reid**: What is the contingency planning?

**Nick Harvey**: It would depend entirely on what the problem was.

**Q321 Mr Reid**: A Vanguard submarine is at sea; it cannot return to Faslane because, say, Faslane has been damaged by a terrorist attack. Where does it go?

**Nick Harvey**: Chairman, we are getting into areas that I do not think Ministers would discuss in the public realm.

**Peter Luff**: It is important to recognise that HM Naval Base Clyde at Faslane would not be a base just for the Trident deterrent but also for the conventional tactical submarines. They are nuclear-powered but not nuclear-armed. Again that is an issue. Does this apply just to Trident or does it apply to the entire fleet of nuclear submarines?

**Q322 Mr Reid**: Turning to the other submarines, as you know, the plan is that Faslane will become the base for all the UK’s submarines. Has the fact that the referendum is going to happen in 2014 affected the timetable for that redeployment?

**Nick Harvey**: That is quite a slow timetable anyway. The task of moving the entire fleet is going to take a decade or so in any case. It has not affected the time scale thus far.

**Q323 Mr Reid**: You say “thus far”. Are there intentions that perhaps it will slow down?

**Nick Harvey**: It has not, but we will follow events with interest.

**Q324 Mr Reid**: Is that something that could be considered in the near future—i.e. slowing down the timetable because of the referendum?

**Nick Harvey**: No, I don’t think so because, whoever’s view you take on the likely time scale of the referendum, we will have an outcome of the referendum in time for it not to have a profound impact on that piece of work.

**Q325 Mr Reid**: But, as part of the transfer of the submarines, extra accommodation has to be built for
the crews. Has the prospect of the referendum in any way slowed down the planning for building that accommodation?

**Nick Harvey:** No, it has not. Work continues as announced.

**Peter Luff:** I am visiting Faslane shortly to see some of the investment in the infrastructure there.

**Q326 Mr Reid:** Have you done any planning as to how long it would take to replicate the facilities at Faslane and Coulport elsewhere in the UK?

**Nick Harvey:** While it would be possible to do so, it would be fraught with difficulty. It would be a very challenging project, which would take a very long time to complete and would cost a gargantuan sum of money. When the facilities were upgraded for Astute and the previous upgrade of the nuclear deterrent, the cost of that upgrade in today’s prices was about £3.5 billion. That was upgrading an extant facility. If we were to replicate it somewhere else, that figure would be dwarfed by whatever that would cost.

**Peter Luff:** It was the Vanguard and the Trident warhead.

**Nick Harvey:** I beg your pardon; that was for Vanguard.

**Q327 Mr Reid:** As you point out, replicating these facilities would cost a lot. We also have to take into account that, if Scotland was not part of the UK, then obviously the GDP and the tax base of the rest of the UK would have been significantly reduced. Do you think that in such a situation the rest of the UK would be able to afford to replicate these facilities and maintain the Trident deterrent?

**Nick Harvey:** The costs would be absolutely immense. I would have thought that relocation would be just about the least favoured option that it would be possible to conjecture. In the context of that pan-governmental negotiation to which I alluded earlier, which I would expect the Treasury to take an active interest in, if a future independent Scottish Government were to insist upon the nuclear deterrent being relocated out of Faslane, the impact of that on that pan-governmental discussion would be very substantial indeed. It is hard to think of any single item that would be larger in that negotiation.

**Q328 Mr Reid:** What are the implications of that for the UK’s negotiating position?

**Nick Harvey:** I would simply say that on the table, of all the issues that needed to be discussed on a pan-governmental level, that would stand out as one of the most immense.

**Q329 Mr Reid:** It sounds as if the UK Government’s position is that they would make substantial concessions in other fields in order to get the Scottish Government to agree to maintain Trident at Faslane.

**Nick Harvey:** My meaning was slightly the opposite, but you can look at it which way you like.

**Q330 Mr Reid:** Can you expand? I genuinely misunderstood what you were saying.

**Nick Harvey:** This is not a matter for the Ministry of Defence to take in isolation. This would genuinely be a huge pan-governmental issue.

**Q331 Mr Reid:** If Scotland were a separate state and they were agreeable to Trident staying at Faslane, despite what the SNP have said publicly, what conditions would the UK Government be laying down?

**Nick Harvey:** Thinking off the top of my head here, Chairman, I think the critical one would be complete freedom of action—complete control and complete sovereignty over the facility.

**Q332 Mr Reid:** You would want the Faslane and Coulport area to be UK sovereign territory rather than Scottish sovereign territory.

**Nick Harvey:** That is going into detail. As I have described, we are not making contingency plans for this. We do not think it is going to happen. You are inviting me to speculate now, but the critical point of this negotiation would have to be complete control over what we did there.

**Q333 Jim McGovern:** I have two questions. First, when you talk about the costs of possibly relocating Trident to somewhere outwith Scotland, who would pick up the tab for that? Would it be the Scottish or the UK taxpayer?

**Nick Harvey:** This is exactly the same question that Alan was asking but reformulated.

**Q334 Jim McGovern:** Mine is probably more simplistic.

**Nick Harvey:** What I am saying to you is that, if that cost had to be met in a way which, in a practical sense, would seem to me and I would have thought seemed to people of good sense to be completely unnecessary, then there would be an implication of that across the rest of the negotiation. It would be the largest item looming across the whole piece.

**Q335 Jim McGovern:** I am not sure I got an answer there. Who would pick up the tab?

**Nick Harvey:** As I said a little earlier, a huge negotiation would have to take place. It is not for any of us to predict what the outcome of that negotiation would be.

**Q336 Chair:** I want to be absolutely clear about this. Are you saying that, if a separate Scottish Government threw out Trident, that would not be helpful to discussions on, say, things like retaining the pound in a separate Scotland and having the Bank of England guaranteeing deposits in Scottish banks and the like?

**Nick Harvey:** You are inviting me to speculate, Chairman. If the residual UK taxpayer had to pick up that bill, their ability to pick up any other bills would be proportionately diminished.

**Q337 Chair:** That is helpful. When you say “UK”, you mean—

**Nick Harvey:** I mean the residual parts: England, Wales and Northern Ireland. If you have a more elegant term for that I am happy to use it.
Q338 Chair: No, we don’t actually, because we do not think it is likely to happen either, you see. We have not really spent a lot of time working on the language.

Nick Harvey: So you are in the same position as we are.

Peter Luff: At the risk of stating the blindingly obvious, the Scottish Government would lose as well. There are 6,000 jobs currently at Faslane and rising.

Q339 Jim McGovern: That was my supplementary question. What would be the implications for employment?

Peter Luff: There are over 6,000 jobs and rising. There are naval personnel, MOD personnel, contractor personnel and subcontractors providing work for the programme. We do not know the scale of that. It is a huge net gain to the Scottish economy. If they lost it, it is a huge loss for the Scottish economy.

Nick Harvey: And then what they will spend in the local economy.

Q340 Iain McKenzie: I think it is surprising that the Government are not aware of the Scottish Government’s position on nuclear weapons and probably the SNP’s position on nuclear weapons. It would seem pretty clear to me. I have heard it many times and seen them debate and agree at their conferences that they would not have nuclear weapons on Scottish soil should they achieve separation. I would agree with you that you are planning for the continuation of the Union, but surely you would expect them to be planning for separation because that is their goal. You might think they would have approached you and made you very aware of their position with these weapons and also the other positions they wished to discuss on defence.

Nick Harvey: Yes.

Q341 Iain McKenzie: But to date you have had no contact on those particular points.

Peter Luff: I would say it is what we read in open source reporting, what I read in newspapers and magazines and what I hear people say in the House of Commons.

Nick Harvey: Of course we are as aware of their policy resolutions and their public statements as you are, but in terms of any formal proposition to us or to the Scottish people we await them with interest.

Q342 Iain McKenzie: We recognise your position of wishing to continue with the Union and not going to the Scottish Government and asking, “What is your position?” If they wish for separation, they should have knocked upon your door by now to say, “Here is our position on this. Here is what we would like to discuss on defence.” At least then the options that they are putting to the Scottish people would stand up to scrutiny.

Nick Harvey: We would certainly expect them to do so at some point and await with interest their doing so.

Q343 David Mowat: I was just reflecting on this approximately £5 billion figure for moving Trident. Effectively that is one of the costs of separation. Presumably it would just go into the negotiation with everything else, so the UK residual Government—

Nick Harvey: The only figure that I have used was that a previous upgrade in today’s money cost £3.5 billion and I felt that that would be dwarfed by the cost of re-establishing—

Q344 David Mowat: The point I am making is the same. Whatever the figure is—£x billion—it would go into the negotiation. The UK would have a position and the Scottish Government would have a position. There would, as you have said, potentially be dozens of these things, including a number of items about the National Debt, RBS bailouts and all the rest of it. We would put in a big list, go down and decide where the line fell. To answer Mr McGovern’s question, in the end, a compromise would be made as to what it would be—what. So both sets of taxpayers would end up paying because that is how negotiations work. That is likely to be the way it is, isn’t it?

Nick Harvey: That sounds to me a sensible characterisation of what I think would probably happen, yes.

Q345 Chair: I want to seek a bit of clarification on this because these matters are obviously important. Taking account of the fact that you have not been formally approached about any of this, if we had a situation where on day zero—the day after a separation referendum and it was carried—you were told, “This has to be moved,” and if the rest of the UK decided that it wanted to retain Trident, could you give us some sort of indication of how long that might take to rebuild? We have had some discussions with witnesses here and they were vague about the time. Since then it has been suggested to me that it would be 15 to 20 years. I want to be clear about what the nature of the negotiations might be. If the Scottish Government were to be reasonable and said, “We will give you a period to remove it,” and the period is 15 to 20 years, would that be the ballpark figure that would allow you to relocate?

Peter Luff: In the context of the fact, what Nick said is right: we have done no detailed thinking about this. Nevertheless, one has to recognise that one is moving nuclear-qualified facilities and the standard of safety required is absolutely enormous. Even quite simple engineering tasks for a conventional boat/ship become immensely more complicated when dealing with nuclear facilities.

I am going to Faslane to see the new jetties being constructed. It is a saga in itself. One jetty has been a huge struggle. There are massive problems with the contractor meeting the very testing requirements of a nuclear-qualified facility. It is not just a question of shoving up a few buildings. It is a question of creating an immensely strong infrastructure against any seismic shock, for example, that you can possibly foresee. The orders of magnitude for the construction complexity are significantly greater than any other more routine defence investment. Therefore, I have no reason to challenge the figure you are giving but I cannot justify it either. They are much longer periods of time than are normal for construction projects.

Nick Harvey: Absolutely spot on.
Q346 Chair: I ask because we will obviously want to pursue with the Scottish Government at some point the question of the 20-year figure. If that is deemed by people, including the Defence Academy, to be a reasonable figure for moving, we will then want to clarify with them whether or not they are prepared to allow Trident 20 years until such time as replacements are built.

Nick Harvey: Chairman, I would have thought you would also need a period of consultation with the local population where you are moving it to. It would be a very long project indeed. It could not happen in a couple of years.

Q347 Chair: That is why the advice we had of 20 years seemed to me to be not wildly unreasonable. Have you discussed or considered in the short term seeking agreement from our French allies that perhaps some of our nuclear materials or submarines would be based in conjunction with the French nuclear weapons and submarines? We heard from some of the previous witnesses that there is surplus capacity for nuclear storage in some of the French facilities. They have nuclear submarine bases and this might be possible as a short-term measure before a long-term solution was found. Therefore, the 20-year figure might be considerably reduced.

Nick Harvey: We have had no such discussion.

Q348 Chair: Would you consider having a word with the French about this? I can speak to them the next time I see them, but I suspect that your relationship is slightly better than mine. Well, no, perhaps since I support the President, then possibly mine would be better than yours. Either way, I would suggest that this is something that is examined. It might very well be that, if there is an urgency applied to the removal of Trident and you want to keep it, then you would want to look at other solutions like that.

Peter Luff: Chairman, you will understand that we are engaged in a programme of collaboration on nuclear issues with the French, but these are very difficult areas with very challenging security issues around them. They cannot be rushed into. The idea of dumping off the boats there for a few years while we sort out a long-term solution would be a little tricky to manage. That is my immediate instinct but we have been given this no thought. That is my immediate reaction.

Nick Harvey: I agree. Even what you are describing, as reasonable as you make it sound, would in practice be immensely difficult.

Q349 Chair: Before we accepted that, we would have to prove it. We would have to have some evidence that that was not doable, as it were. To be realistic, if the Scottish Government did win, we had separation, they wanted Trident out and they were willing to be reasonable, they would have to be satisfied that you had no alternative but to keep them there for 20 years. It is not an unreasonable point to pursue with you.

Nick Harvey: I am not saying that anything cannot be done.

Q350 Chair: Good. That is the first time the MOD has ever said that.

Nick Harvey: I am saying it would be difficult and not straightforward.

Q351 Chair: Ah yes—that is the traditional MOD caveat. You forgot to mention expensive.

Peter Luff: And lengthy.

Nick Harvey: I took all of that as read.

Q352 Chair: Very wise. I turn now to the question of the division of assets in the event of separation. It would be helpful if you could let us have a list of all the MOD facilities in Scotland together with, where you have them, lists of the civilian and military personnel involved. It would also be helpful if you were willing to agree that, in principle, Members of the Committee, possibly over this summer and subsequent periods, were able to visit and look at these. Obviously we would want to identify what facilities might be under threat, the numbers of jobs that might be lost and the like. Unless there is anything particularly secret—the local papers probably know about it anyway—if you were willing to open the way for us that would be helpful.

Nick Harvey: I cannot see any objection to what you are describing. I am sure that your officials and ours could follow up with some of the detail.

Q353 Chair: I think I know the answer to this, but I want to clarify whether or not the Scottish Government have given you any indication as to which of the existing UK MOD bases in Scotland they would want to retain post-separation.

Nick Harvey: As we have already established, we have had no such discussions with them. We have seen statements from SNP figures saying that the defence footprint that we have defined for Future Force 2020 of one principal RAF base, one naval base and a deployable army brigade is the footprint that they would want for an independent Scottish defence force. That may be so. What they would base at their naval base and their air base, and how they would construct their army and what they would do with it, are not matters for us.

My broad observation would be that the defence footprint in Scotland at the moment is comprehensively integrated with the whole of the United Kingdom’s defence capability. What is based in Scotland is not there by accident. It is based there because it makes sense in military terms for the defence of the UK as a whole. What the foreign policy would be of an independent Scotland, what the defence or security ambition and policy would be, what sort of forces they would want and what they would intend to do with them would be matters for a future Scottish Government. Why that would, by complete coincidence, be reflective of what the UK Government currently locate in Scotland I cannot begin to imagine, but I suppose their starting point would be that they would aspire to use existing defence assets or at least some of them.

Q354 Jim McGovern: Chair, you said when you asked the question that you thought you knew the
answer to that question. Was that the answer you thought you were going to get?

Chair: Basically the short answer I expected was, "We don’t know what they want," but that was the long answer. That was the answer that had been prepared by his civil servants beforehand, and delivered very well, if I may say so.

Peter Luff: I would like to emphasise what Nick said about this interrelatedness point. It is very important. The Secretary of State used a phrase that it is not just like breaking a couple of lumps of chocolate off a bar. There is a total integration. You cannot just break what you have.

Chair: We have some questions on that later on and we will come on to that.

Q355 Iain McKenzie: With respect to assets in Scotland, has the MOD given any thought to the ones on which you would like to come to an arrangement to continue to use, if separation should take place, and other assets that you may look to dismantle, take and place in other parts of the UK?

Nick Harvey: We haven’t for the reason that I set out earlier—that we are not preparing for this contingency because we do not believe it is going to happen. We are working pretty flat out on running defence as it is. I would observe in response to your question that it would depend entirely on what sort of relationship we had with the defence force of an independent Scotland. Our starting point is that we would expect to have some sort of co-operative relationship with them. We have already touched on Mike Freer’s question about whether or not they were in NATO, which would be very significant. We have no idea what sort of forces they would have. At the moment the UK forces have global interests and ambitions. We are geared up for expeditionary warfare. I have no idea whether a future Scottish force would have that sort of ambition or a far more limited ambition. Therefore, the scope for working with them is hard to determine. Whether or not they would propose any sort of shared security with us, who knows?

Q356 Iain McKenzie: Are there any properties in Scotland you would like to negotiate continued use of? For instance, there is Cape Wrath.

Nick Harvey: It is certainly the case that there are facilities in Scotland that, in an ideal world, we would wish to continue using. Therefore, as part of that big negotiation I described, and as part of an ongoing defence relationship, I can think of facilities particularly with reference to training, and we have already discussed Faslane, which in an ideal world the residual UK Armed Forces would be very keen to use.

Peter Luff: I want to add not Rangers but the ranges into this as well. Last year I visited Benbecula in the Hebrides range and saw that incredibly large air-to-surface range with a phenomenal ability to take a large amount of airspace and conduct really important tests. How do we know on what basis we will be able to continue using it? Would the kind of weapons we would want to test there be acceptable to the Scottish Government? What nationalities would be able to operate these ranges? There are so many imponderables around this. I would very much like to be able to use that Hebrides range, but until I know more about the defence posture in Scotland I cannot begin to assess whether I could use it or not.

Q357 Chair: Being willing to stay on and use Cape Wrath and the Hebrides range, and willing to pay money for it, presumably, would to some extent depend upon how agreeable the negotiations were about Trident. Is that fair to say?

Nick Harvey: I cannot speculate about the linkages of different issues within a negotiation, but I say again, clearly at the point the separation was being negotiated, there would be a pretty vast and comprehensive negotiation and then, on an ongoing basis, we would expect to have some sort of relationship and would regularly negotiate things as part of that. It is quite impossible to predict outcomes or interconnectivities, but there will be a variety of issues that we would want to discuss.

Q358 Lindsay Roy: It is very clear from what you are saying that dividing up assets would be a real challenge. One quarter of an aircraft carrier would not be much help to an independent Scotland. Can you envisage a set of criteria being established for dividing up assets?

Nick Harvey: You make a good point. The Defence Secretary has said that it is not just like snapping a piece off a chocolate bar. When you had some of your defence experts in a couple of weeks ago, there was a general view among them that an independent Scottish defence force would be unlikely, for example, to want or need fast jets. It is probably just as well because the costs of trying to run some sort of miniature fleet of highly sophisticated aircraft or complex warships would, I would surmise, be completely uneconomic. I do not think that the concept of dividing military assets is a simple or straightforward one at all. That is before we even get into the realms of what a Scottish defence force would plan to do or what it wanted kit for.

Q359 Lindsay Roy: That is because it would be very difficult at this stage to know what the strategic priorities were for a separate Scotland, if that ever came into being.

Nick Harvey: Quite so.

Q360 Lindsay Roy: I want to pursue another area in relation to the strategic reasons for keeping Lossiemouth open, in particular as a base for fast jets. Would you like to comment on that?

Nick Harvey: Historically, there has been a fast jet base at Lossiemouth because the potential aerial threat was perceived to be coming from that direction. That was certainly a part of the underthinking that underpinned the decisions taken during and pursuant to the SDSR. That is not to say that Lossiemouth is the only place from which we could defend ourselves in aerial terms, but it was the view of this Government, as it has been of previous Governments, that it was a very good place from which to do so.
Q361 Lindsay Roy: Has there been any thought to stay at Leuchars, because I understand that recently a review indicated that it would cost around £40 million to transfer and a £10 million on-cost every year thereafter?

Nick Harvey: I do not recognise any of those figures.

Q362 Lindsay Roy: They are from Philip Hammond.

Nick Harvey: Without understanding the context, I cannot offer intelligent comment on them. There is no plan to review the choice between Lossiemouth and Leuchars. Either which way round, there are costs. At the moment Lossiemouth is still working very hard as a Tornado base. The question of where you build up the Typhoon capabilities will bring costs with it either which way.

Q363 Lindsay Roy: I am sure you are aware that the second group of Typhoons is now being based at Leuchars. The issue, therefore, is that at a time of diminishing resources, if you have to fork out another £10 million a year and £40 million, I just wondered if there had been a further review.

Nick Harvey: There has not been a further review thus far, certainly.

Q364 Lindsay Roy: Can you indicate how many jets will be based at Lossiemouth and how many personnel?

Nick Harvey: The plan is eventually to base three squadrons there. You will end up with a military footprint of between 1,500 and 2,000.

Q365 Lindsay Roy: To be clear, that would be in jeopardy if Scotland became a separate state.

Nick Harvey: It is quite impossible to predict what would happen. I know that some of the SNP figures have talked up a concept of joint defence. This is not a concept or a doctrine that we recognise. We cannot see anywhere in the world an example of joint defences among sovereign UN member states. Even with relatively small countries—for example, the division of Czechoslovakia into the Czech Republic and Slovakia—they divided out their military capabilities. Certainly I am unpersuaded by the idea that they have floated of joint defence. I do not think it is out of the question that we could have co-operative defence arrangements. Where those might lead us in terms of where we might base anything, time alone will tell. I think you asked me whether it at least put a question mark over that. It must do.

Q366 Lindsay Roy: Apart from floating the idea, there has been no real discussion of any possible joint venture. It would seem nonsensical to make a huge investment, if indeed that was likely to be the outcome of separation.

Nick Harvey: Are you talking about investment before the referendum or after?

Q367 Lindsay Roy: I am talking about investment in gearing up Lossiemouth and indeed the costs of transfer from Leuchars.

Nick Harvey: Lossiemouth is still very busy as a Tornado base.

Q368 Lindsay Roy: Yes, but it is Typhoons for the future.

Nick Harvey: We may know the answer to this question in time.

Q369 Lindsay Roy: Lastly, can you tell us about the size of the RAF Search and Rescue presence in Scotland?

Nick Harvey: As you are aware, from 2016 Search and Rescue will be provided by a civilian contractor with the Department for Transport as the lead Department for that. Therefore, irrespective of the independence question, that will cease to be a uniformed defence service any which way.

Q370 Lindsay Roy: Can you clarify how many people will be based in Scotland in that scenario?

Nick Harvey: None.

Q371 Chair: That has the merit of clarity.

Peter Luff: No military personnel. It will be a civilianised service run by the Department for Transport. It is being bid for at present. The contract is at an advanced stage of competition. It will be up to the contractor to determine how many people he or she will be using in the contract. Scotland will be adequately well covered by the service.

Q372 Chair: I want to clarify one point arising from what has been said. You did mention when we were discussing Lossiemouth that it is the best point “from which to defend ourselves”. Of course, after separation, the MOD based in London would have a different “ourselves” to defend, as it were. I want to clarify whether or not it would be your view that sharing of bases would be appropriate. You can tell me whether or not you actually share bases anywhere else in the world.

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Nick Harvey: I think sharing of bases is intrinsically a rather difficult proposition. It is certainly the case, for example, that we and the Americans have bases adjacent to each other at Bastion, where the American Leatherneck facility is next door. These of course are operating bases; they are not permanent home bases. The difficulty of having joint bases, if you have two different Governments pursuing different foreign policies and two different defence policies, is what would happen in the event that there was a divergence of view, for example, about deploying aircraft or naval assets in this joint base. Would the Government that did not wish to get involved start trying to frustrate the preparations of the one that did wish to? This is intrinsically a very difficult proposition.

By contrast, if a future Scottish Government were to make an assessment that they felt that Scotland faced a similar aerial threat from the north that the residual UK believed it did and were to negotiate with the residual UK that it provided air cover for Scotland, and as part of that arrangement some decision was made to base part of that capability somewhere in Scotland, with the UK operating it in a sovereign sense but providing some cover to Scotland, I could...
imagine an arrangement of that sort being negotiated, but joint bases, joint capability and joint assets are an intrinsically difficult proposition for which I think you will struggle to find analogies.

Q373 Chair: That is no then to joinery. Anything that you had would have to be sovereign. Perhaps there might be an agreement on objectives and so on, but it would have to be sovereign control. We will want to explore this with the Scottish Government. If you are saying, as I think you are, no to joinery, then it is either having a sovereign element within a base or a separate base with an agreed objective and so on, but you cannot have two masters for the one aircraft.

Nick Harvey: I am certainly saying that last point, yes.

Chair: Of course, if Scotland was in NATO, then they could just adopt the usual pattern. It is not in NATO just now but that is this week; it might very well be in NATO by next week. David now wants to ask some questions about procurement.

Q374 Mr Reid: We talked earlier about the likes of Faslane becoming a sovereign base. Obviously, with a base on the coast, the submarines sail out into international waters, but, if you have a sovereign air base, does that mean you would also be insisting on the right to overfly any Scottish territory at any time?

Nick Harvey: You are inviting me into areas that I have made clear from the outset we have not considered because we are not planning for this contingency. We make overflight arrangements with various countries around the world to cover a variety of activities. In the event of Scotland becoming independent, frankly, regardless of basing, we would expect to try to negotiate overflight, come what may.

Chair: Surely these things must be negotiated elsewhere in NATO?

Nick Harvey: Precisely, yes.

Chair: Of course, if Scotland was in NATO, then they could just adopt the usual pattern. It is not in NATO just now but that is this week; it might very well be in NATO by next week. David now wants to ask some questions about procurement.

Q375 David Mowat: Just before we go to procurement, it strikes me that the example you gave of the sovereign thing, Nick, was a bit like a country outsourcing defence. The example you gave was Scotland saying to England, “We would like you to defend our northern airspace.” That is the analogy in commercial terms, is it not?

Nick Harvey: Yes. You could look at it like that, but all countries around the world, even the Americans, are feeling the pinch. We all have understandings with each other about the circumstances in which allies will help each other. There are many agreements in place all over the world between allied nations. We have memorandums of understanding with a huge number of friendly countries covering a vast range of different things. Yes, style it as outsourcing if you like, but what I am saying is that that would not be without analogy. There would be many comparable arrangements to be found everywhere, but joint assets and joint bases serving two masters, as it were, as the Chairman put it, would be entirely novel. A co-operative arrangement of sharing burdens is becoming increasingly common.

Q377 David Mowat: It made me think that the Scottish Government could outsource their entire defence to the UK if they so chose under that scenario that you gave, but let me go on to procurement.

Lindsay Roy: That would not be independence.

Nick Harvey: That is called a Union.

Q378 David Mowat: We have been wrestling with the area of procurement policy and the way that contracts could be divvied up between the UK, Europe and indeed an independent Scotland. Before we do that, Scotland is about 10% of the UK. How much of the procurement of the MOD is in Scotland? Would you say it is more or less than that?

Peter Luff: We do not count those figures because we are a Union and I would regard defence expenditure for defence purposes. We do not look at those figures. The most recent figures I have seen were in this week’s Jane’s Defence Weekly, where there is a six-page article on the consequence of independence for defence. Yes, something like 10% of UK jobs in defence are in Scotland compared with a population share of just over 8%. It means Scotland has a disproportionately large share of the United Kingdom’s defence expenditure if those figures are the case.

Q379 David Mowat: But not massively so.

Peter Luff: No. The Secretary of State for Scotland has told this Committee, I believe, that some 40,000 people are involved in about 800 different companies.1 It is a very big engagement. Again, as with the Armed Forces themselves, the relationship is close and intimate. It is not easily separated.

Q380 David Mowat: In terms of procurement policy you have all the EU directives that you have to follow, presumably, like everybody else does, but am I right in saying that does not apply to equipment that can be used in war? Is it article 346?

Peter Luff: So much of what we have had to say today is hedged around with conditions and qualifications because we do not know the situation. Here I can offer the Committee some absolute clarity. It is true that the Commission is currently trying to create a more genuine single market in defence products. It is bearing down on countries that have unilaterally used protectionist measures to procure only from their own defence companies. That is true. Nevertheless, the Commission does recognise—it is enshrined in European law and we have put the directives into our law as well—that there are special exemptions for defence.

Article 346, as you rightly say, of the Treaty on the Functioning of the European Union, known as article 296 in previous treaties, makes it very clear, and I quote, that “any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the

1 The figures quoted refer to the combined aerospace, defence and marine sectors (sourced from Scottish Enterprise website).
internal market regarding products which are not intended for specifically military purposes”. In other words, where we think our security depends on this, the Commission does allow us to procure within the United Kingdom.

The test that we apply as a country is a test of operational advantage and freedom of action. We believe in our ability to maintain an operational advantage and a competitive edge over our enemy. We want to do it ourselves and we want to guarantee that we can actually maintain that action and not depend on foreign countries to maintain that action. Again, we wish to do it ourselves. It is true that we do prefer open procurement in international markets where we can, but very often this means you have to buy stuff from the countries—

Q381 David Mowat: For clarity, your 346 exemption would be applied when you have operational advantage—

Peter Luff: Where we wish to maintain our operational freedom of action we would apply the article 346 exemption, yes. That would mean we could not buy from an independent or separate Scotland. On the other hand, were we not to apply the article 346 exemption, we would be obliged to compete the contract internationally. We could not favour Scotland, England, Wales or Northern Ireland.

Q382 David Mowat: Approximately what percentage of your total spend would you say is under the 346 exemption versus the rest?

Peter Luff: That is a very good question, which I cannot answer directly. I can tell you that 40% of our expenditure is non-competitive at present. Of course shipbuilding comes under this exemption so it is a very important part of the Scottish future. We are trying to drive this down.

Q383 David Mowat: Of that 10% in Scotland that you mentioned at the start, a good chunk of that will be 346 exemptions—i.e. shipbuilding.

Peter Luff: Complex warshipbuilding comes under the article 346 exemption, yes.

Q384 David Mowat: Therefore, future contracts of that type would possibly not be in Clyde.

Peter Luff: When we come to build the new Type 26 frigate—the Global Combat Ship—we will have to apply for an exemption under article 346 to enable us to build it within the United Kingdom without contracting it. That means that, if Scotland is separate, we cannot build it in Scotland.

Q385 David Mowat: Would it be possible for you to give to us—or write to us about it later—the percentage of your total procurement spend under 346?

Peter Luff: I will see what analysis I can have done on that. I am not sure what analysis I can helpfully give you.

Q386 David Mowat: The carrier project is a contract with British Aerospace and not Scotland per se.

Peter Luff: The Aircraft Carrier Alliance runs that together with other companies.

Q387 David Mowat: There are presumably lots of subcontracts within it, stages and everything else. Could there be a requirement, if Scotland separated, for that work to move?

Peter Luff: In practical terms it would be very difficult at this stage. The first carrier is at a very advanced stage of assembly at the site, of course, in the Babcock facility. The work on the second carrier is also at an advanced stage.

Q388 David Mowat: So you would not use 346 in that case.

Peter Luff: I think it is unlikely that it would be practical or sensible to do that. My understanding is that the exemption applies to the prevailing conditions at the time it is applied. It would not be invalidated by a Scottish separate state. The carriers would not be affected, as I understand it. The Type 26 Global Combat Ship would.

Q389 David Mowat: That is useful. I have one final point on this area. For the non-346 spend, for the avoidance of doubt, I presume the status of Scotland would be the same as the status of any other country.

Peter Luff: Yes.

Q390 David Mowat: I was going to say in the single market or in the world.

Peter Luff: In the world.

Q391 David Mowat: So it would be the same status as South Korea.

Peter Luff: The Scottish defence industry is very competitive. They may well win many of these contracts because they are fine businesses, but they will be competing internationally in those circumstances. I want to say something else about the carriers, just to make one thing absolutely clear. We often focus on the construction of a particular platform or asset. Through-life maintenance and support are often of a greater value to the economy. We would not be able to maintain complex warships in a country where we could not guarantee our freedom of action. It is as though Scotland would disqualify itself from the maintenance of ships.

Q392 David Mowat: As you say, in the life cycle of the carriers, presumably all the maintenance would currently be done out of Clyde.

Peter Luff: We have not yet taken a decision as to where the aircraft carriers will be maintained. That decision will be taken around the middle of the decade. I do not see how we could maintain an aircraft carrier in a separate Scotland.

David Mowat: That is quite a separate point.

Q393 Chair: I want to be clear on one point relating to that. If the contract to maintain the aircraft carriers is awarded to a company and then the constitutional position changes, do the MOD have the right to redirect that contract to within the rest of the UK or
Q394 Chair: Not entirely. For example, the design work on the Type 26 has begun. Is that work that has begun and therefore can be completely allocated to Scotland even if Scotland is separate?
Peter Luff: That would be fine, yes. We will have the main gate decision around the middle of the decade. At that stage and thereafter we will sign a contract with a supplier to build the ships. The aspiration of the Scottish National Party is that they should be separate at that stage. That would mean we could not, if we applied the warlike stores exemption under article 346, invite a Scottish yard to bid for that contract.

Q395 Chair: To clarify this point, if we take day zero as being the date of the referendum, if the contract is signed on day zero minus one, then it could run, as the Type 26 order is expected to, for some 15 to 20 years. If it is signed on day zero plus one, then it could not.
Peter Luff: The point about applying for a warlike stores exemption is that it is open to challenge by the European Commission other member states. It is effectively a public process. In those circumstances you may well see a challenge from other countries saying, “Hey, hang about a bit. Scotland may become separate, the nature of the procurement that they did might not change, depending on the defence posture that Scotland had taken if it were to become separate. Many moving parts are present here. It is certainly the case that, if we decided, freely and willingly, to enter into a contract prior to independence, we could continue with that contract should we choose to do so.

Q399 David Mowat: If you choose to let a contract of that type to a Russian company that was going to build it in England, that would be your choice.
Peter Luff: This is a very hypothetical situation, but I am largely blind to the ownership of companies operating in the United Kingdom. I regard them as being British companies, whether it is Lockheed Martin, Boeing, Raytheon or whoever it may be. I regard them as British companies. We require a surety around the contractors providing the service, security clearances and so on. It is a complex process. How we would choose to define our national security interests is up to us.

Q400 David Mowat: I was reflecting on the fact that you say 10% of defence procurement is done in Scotland.
Peter Luff: That is the story I have today.

Q401 David Mowat: That is not hugely out of balance. It does seem, though, that, if Scotland were separate, the nature of the procurement that they did would be different because you would not get the big ticket items as are being done now. Although the total volume might not change that much, you would not get aircraft carriers because they do not need two of those, do they?
Peter Luff: I would go further than that. I would say it is almost inevitable that, if Scotland were to separate from the rest of the United Kingdom, the volume of defence contracting in that country would reduce. Where we apply the article 346 exemption, we cannot do it in Scotland. I know individual companies in Scotland are saying to me privately, “In the event...
of separation we would consider moving south of the border because we want to keep our access.”

Q402 David Mowat: In fairness, though, Scotland would presumably have some kind of defence industry and defence spending themselves, which they would have in the other direction.

Peter Luff: Yes.

Q403 David Mowat: What I was getting at is that the nature of the items would be different. A bigger country like UK residual can do aircraft carriers, whereas it is unlikely that a residual Scottish defence establishment would need that.

Peter Luff: I am rather obsessed with small and medium-sized businesses because they do provide enormous innovation in defence. I would say not only the bigger ticket items like aircraft carriers and ships, which you have identified, but the very clever cutting-edge technologies that often spin off into civilian technologies would also be at risk.

Q404 Jim McGovern: At the risk of digressing, the question I want to ask is certainly about procurement but possibly not about Scotland’s separation from the UK. I had a meeting with Peter possibly about 18 months ago about the subject of Remploy. The Remploy factory in Dundee produces fantastic uniforms and depends almost entirely on MOD contracts. At that time, at that meeting, you said I should make a nuisance of myself. That is exactly what I am doing now. When are you going to come to Dundee and visit the Remploy factory?

Peter Luff: I should have prepared myself for questions about Remploy. I have not done so, Chairman. I promise to talk to you again, Mr McGovern, about Remploy.

Q405 Iain McKenzie: I want to explore the non-346 contracts to get an idea of the variety of products that fall within that. Are we talking about sophisticated high-end, high-spec additional apparatus for ships and so on, or are we simply talking about putting out general contracts for toilet roll holders or whatever?

Peter Luff: The most controversial non-346 contract that we have let in the last two years was for the MARS tankers for the Royal Fleet Auxiliary. A decision was taken by the last Government—in my view quite rightly—that they could not apply for a warlike stores exemption for them. They are important ships, but they are basically tankers for the Royal Fleet Auxiliary and not for the Royal Navy itself. The last Government, in my view rightly, decided that they had to run an international competition for those ships. They are very largely British components going into those ships; they are British-designed. I am sure they will be customised in the United Kingdom as well. They bring huge economic benefit to the UK, but the basic ships are being built in Korea. I will be going in a couple of weeks to see the shipyard and discuss some issues around that construction with the guy who will be building them.

Q406 Iain McKenzie: We are talking about low-end, low-spec, low-tech, and that is the sort of market that Scotland after separation will be competing in if they want to get those contracts.

Peter Luff: There will be some reasonable stuff as well. You are right that, by definition, it tends to be the case that the most complex weapons and technologies, made by companies like Raytheon, tend to have the security exemptions applied to them. The very interesting technologies would be likely to be retained within the United Kingdom, yes, or what remains of the United Kingdom.

Q407 Chair: Following up that point and taking the example of Raytheon in my colleague’s constituency, at the moment you give them priority because they are within the United Kingdom. If you wish to retain the intellectual property that that firm has got, which has been paid for by the MOD, how do you ensure that that happens if they choose to remain in Scotland?

Peter Luff: I am not going to comment on any one particular company. I do not want to be specific. If a company chose to exclude itself from competition for warlike stores within what remains of the United Kingdom, and that product was particularly important, then that would be a cost to us. We would have to reinvent it with existing contractors. It would settle in what remains of the United Kingdom. That would be a challenge for us. I suspect on many occasions it would be a strange commercial decision for the company to take, but it would be a challenge for us. That is one of the many reasons I do not want Scotland to separate from the United Kingdom.

Q408 Chair: I understand that but I want to be clear. I obviously have other defence firms in my constituency, as do some of my colleagues. I just want to be clear that, if they have been awarded contracts by the MOD under your most favoured status, as it were, and the MOD covers only England, Wales and Northern Ireland, they will then have the choice of either losing that business and competing internationally or relocating to England. The only way they can be sure of it is by relocating to somewhere else within greater England or the rest of the UK.

Peter Luff: Your analysis is pretty strong and powerful, Chairman.

Q409 Lindsay Roy: Is the time delay before the referendum on separation causing any problems for strategic planning? Are you in a position where you say, “We might delay that a bit further”?

Peter Luff: I am not yet aware of any serious challenge to our strategic planning.

Q410 Lindsay Roy: Is that something on the horizon?

Peter Luff: I can see that it might become a problem in due course.

Q411 Lindsay Roy: And possibly a difficulty for companies who are applying for contracts.

Peter Luff: Certainly it will create considerable commercial uncertainty for the companies themselves. It may at some stage pose a challenge for us too; I can see that.
Q412 Lindsay Roy: Have you been approached by companies about their concerns?

Peter Luff: As I think I said earlier, privately a number of companies have indicated to me that potentially they are undertaking planning, reflecting what they might do, but they are unprepared to say this in public.

Q413 Lindsay Roy: I can understand why. Is the number in teens?

Peter Luff: I have spoken to a number of contractors but I would not like to go beyond that. It would not be fair. It would breach the confidence.

Lindsay Roy: I am not asking for names; it was just a quantitative analysis.

Q414 Chair: Could you possibly reflect on the fact that, as you have said, a number of companies are making contingency plans for the possibility of separation and yet the MOD is not? Does that not seem strange to you?

Nick Harvey: I made clear that it is not the case that we have not thought about these issues, but we don’t have a contingency plan because there are so many imponderables and so many unknowns. Until we get some clarity on them, it is hard to make an intelligent plan.

Q415 Chair: Clarity is being sought; right.

Peter Luff: This is where there is an air of clarity. The article 346 issue gives great clarity to what will happen and there can be no misunderstanding about it.

Q416 Mr Reid: When you advertise for bids for non-346 work, are you able to tell us what proportion of that work is won by companies within the UK?

Peter Luff: I can tell you that, historically, a very high proportion of competitive and non-competitive work stays in the UK. Round about 85% or 90% is the kind of figure overall that stays within the United Kingdom within competitions. We have a very highly competitive, successful, skilled and technically advanced defence sector. We are the second largest defence exporter in the world. We have a very strong defence sector, of which the Scottish industry and companies are a very strong and important part. We have a very strong defence business. We are the fourth largest defence budget in the world. It is hardly surprising that we are so well placed. A very high proportion is won by British companies.

Q417 Mr Reid: In relation to the amount that is not won by British companies, are there one or two countries that tend to win most of that?

Peter Luff: There is a lot of work for America of course—United States work. A lot of commodities come from the traditional commodity-supplying countries, where the UK is not competitive. America must be our biggest single trading partner outside the United Kingdom.

Q418 Chair: I want to be clear about the position of firms such as QinetiQ. We mentioned the range. That is presumably being operated by them under contract to the MOD. Presumably the MOD would then be able to end that contract and move it somewhere else at the break point, should they so desire. It is not there for ever necessarily should we have separation.

Peter Luff: I do not think I ought to get into a contractual discussion. Even if I knew the answer to that question, I do not think I would share it across a Committee room because it would be a contractual issue. It is certainly the case that, if we could not operate the ranges and deliver the kind of test and evaluation ranges in the way we needed to secure our national security, then we would have no need for the ranges. There are break points in contracts.

Q419 Chair: The Committee wants to clarify some of these issues with you. It will be necessary at some stage to have a discussion in private, where we indicate that we are interested in particular locations, in order to be absolutely clear about some of the dilemmas and difficulties that are being faced in Scotland. I can appreciate why you do not want to raise some of this in public, but you can understand why that is not acceptable to us. We do need to have some things a bit firmer.

Peter Luff: We do have many options for ranges, for example. The French would like us to use their ranges. We use American ranges, Australian ranges and German ranges. There are many options for ranges and there are many other places. We look at the best value and the best service for the security of the nation.

Q420 Pamela Nash: I want to go back to the article 346 contracts. We are trying to put it out there for the layperson reading this in the papers tomorrow. Can you tell us, Peter, when was the last time the Royal Navy ordered and built a warship in a foreign country?

Peter Luff: I am so grateful to you for asking me that question because I have to admit that I misled the trade unions. They came to see me on 16 May. I told them that it was at least 50 years. I am now prepared to take a political risk and go against the advice of my officials. I would say it is pushing 200 years. We built warships during the second world war outside these shores. They were not complex warships but simple things like the so-called Landing Ship, Tanks, which were the brainchild of Winston Churchill—a thousand of them were built in the United States of America to enable amphibious attacks on the D-Day beaches, for example—and we built some 200 or 300 wooden minesweepers around the world during the second world war in bizarre places like Tel Aviv, Bombay, Cochín, Singapore, Burma and Canada; so we have built ships. I am reminded by the naval historians—I hope this is not regarded as frivolous but it is an important point in many senses—that the Royal Navy has also operated many foreign-built complex warships acquired through seizure or capture and has also operated some simple built ships such as HMS Endurance and HMS Protector, but as to complex warships, I honestly think the answer is not for a couple of hundred years.
Q421 Pamela Nash: Apart from a period of national emergency, there has not been a warship commissioned outside the UK.
Peter Luff: That is correct.

Q422 Pamela Nash: Therefore Scotland would be seen as a foreign country and it would be unlikely.
Peter Luff: That is correct.

Q423 Mr Reid: Obviously I do not want you to refer to any one particular company, but I just wondered if, when you are giving out contracts for work that is very sensitive, the contracts tend to specify that the work must be carried out within the UK.
Peter Luff: They can contain precisely that criterion, yes.

Q424 Mr Reid: If Scotland then became not part of the UK, what has your legal advice said? Would the work then have to be moved to within the UK?
Peter Luff: We would have to look at it on a case-by-case basis. My instinct here—I am making this up as I go along now—is that we would have to look at it on a case-by-case basis for the individual contracts and projects and decide what was in the best interests of the taxpayer, the security of the nation and look into the project.

Q425 Mr Reid: Would the legal advice be such that, if you felt it was in the best interests of the residual UK taxpayer, then legally you would be able to tell that company they must transfer the work to within the rest of the UK?
Peter Luff: That is a very good question, I do not want to get this wrong, so I cannot answer that question.

Q426 Mr Reid: Can you write to us?
Peter Luff: I will see what I can say to you. I see the importance of it.

Q427 Chair: That is one of the points that we may wish to discuss with you in private at some point, naming particular companies, discussing particular contracts and establishing a view about what might happen in certain circumstances. I appreciate that due to commercial confidentiality you do not want to discuss this openly, but none the less we need to be clear.
Peter Luff: There are commercial and security issues as well.

Q428 Chair: Absolutely.
I now move on to issues relating to the Scottish regiments and related matters. First of all, could I again clarify that you have had no observations from the Scottish Government directly about the pattern of forces that they would wish, apart from saying that in manpower terms they want pretty much what they happen to have decided that they were going to get? There have been no other submissions made or anything like that?
Nick Harvey: Chairman, are you asking whether they have made representations in the course of the current work being undertaken now?
Chair: No.
Nick Harvey: You are asking about independence.
Chair: Yes.
Nick Harvey: No.
Chair: Fine; I just wanted to clarify that again.

Q429 Jim McGovern: As regards the regiments, possibly I should declare a rather parochial interest in this. I represent Dundee, and the Black Watch traditionally recruit from Dundee, Tayside and Fife. My own grandfather served in the Black Watch and is buried in the Black Watch section of the cemetery in Gibraltar. What would the future hold for a separate Scotland for Scottish regiments and Scottish battalions?
Nick Harvey: This tracks us back to two questions that we have already touched upon. The first is what sort of defence an independent Scotland would want, what threat it thought it was trying to deter, what appetite it had for international engagement and therefore what configuration of forces it might wish to generate to those ends.
The other point that we have already touched upon is that the UK Armed Forces as currently configured are very complex and very interdependent, and regiments that happen to bear Scottish names or recruit from Scotland are integrated into brigades with other regiments and battalions that recruit in England, Wales or Ireland. In terms of their functionality, they hang together and work together as deployed formations. Therefore, if you were to simply say that regiments with a Scottish name or a Scottish tradition would form the basis of a future Scottish defence force, and those with English, Welsh and Northern Ireland traditions and names would form the future of a residual UK defence force, neither of them would be coherent. It simply would not make any sense.

Q430 Chair: With respect, we are not here to discuss whether or not the nationalist position is coherent. We are here to discuss what it is and what it would mean. We cannot go down the road, I am afraid, of discussing which of their policies would be coherent because that is impossible.
Jim McGovern: I was welcoming it, actually.
Nick Harvey: The worry I have as Minister for the UK Armed Forces is that, if our brigades were suddenly no longer to have the Scottish regiments within them, our Armed Forces would cease to be coherent as well.
Chair: That is a much more helpful way of putting it.

Q431 Jim McGovern: Do you think that, if this happens—it is all hypothetical—and Scotland was separated from the rest of the United Kingdom, the remainder of the United Kingdom Armed Forces would still welcome Scots into the Armed Forces personnel?
**Nick Harvey:** The situation at the moment, as you know, is that the Armed Forces recruit from all over the Commonwealth. We recruit from Ireland.

**Lindsay Roy:** And Fiji.

**Nick Harvey:** We recruit from Fiji. In practice, what we do would reflect at any given point in time the prevailing legislation, the policy, the priorities, the needs and so on. As a point of principle, I can see no reason why we would not recruit from Scotland—none at all.

**Q432 Jim McGovern:** There is a current move to reduce the numbers of Regulars and increase the numbers of volunteers—the TA. Do you have a view on how the numbers would be affected if Scotland was separate?

**Nick Harvey:** I have no view whatever about what numbers a future Scottish defence force would comprise. That would be entirely a matter for them and would depend on what they wanted to do. The next Strategic Defence and Security Review for the UK is scheduled to take place in 2015, by which time the outcome of the Scottish referendum will be known. Without prejudicing an extremely complex piece of work, which will be conducted in three years, I would surmise that the UK would largely still retain its current view of global security and its current appetite for participating with allied nations in activities in all parts of the world and would very broadly, I think, wish to sustain Armed Forces of a comparable size to those which we are currently planning.

**Q433 Jim McGovern:** Finally, can I put you on the spot? Could you confirm that on your watch there will always be a Black Watch?

**Nick Harvey:** As you know, the Army is reviewing its regimental structures. At the moment it is reviewing its entire structure and force generation picture—

**Jim McGovern:** It is a one-word answer really.

**Nick Harvey:** As a consequence of that, there will sadly have to be slightly fewer regiments and battalions in the future. I would hope that an announcement will be made shortly and certainly before the summer recess.

**Q434 Pamela Nash:** At the moment Scots who are currently in the UK Armed Forces are becoming increasingly concerned about the possibility of separation, not just their formal status and what country they might be serving but also practical concerns about their own pensions and medical records. Has there been any approach at all so far from the Scottish Government to discuss what the future of the Scots currently in the UK Armed Forces might be?

**Nick Harvey:** No. As with similar questions you have asked on other fronts, there have been no such discussions. Let me say this if it is of any help to those whom you describe as being worried. Soldiers, sailors and airmen cannot simply be co-opted. They cannot suddenly be declared to be part of another country’s Armed Forces. They would have to be given a choice, and it is far from clear that they would automatically choose to join the Armed Forces of an independent Scotland, the ambitions and activities of which we can only speculate about at this stage. But that they would find themselves shifted off wholesale is just not going to happen.

**Q435 Pamela Nash:** What about the future of people from other countries? A couple of people have mentioned those from Fiji who are serving in Scottish regiments at the moment. What would you say is a possibility for them?

**Nick Harvey:** People, wherever they are from, are in the same situation. We are not going to suddenly march them off into somebody else’s army.

**Q436 Pamela Nash:** So they would be absorbed into the new UK regiments.

**Nick Harvey:** They have joined the UK Army and would still be part of it.

**Q437 Pamela Nash:** In that case they would be treated like the Scots in the Army at that stage.

**Nick Harvey:** Wherever people have come from.

**Q438 Pamela Nash:** We were also discussing the fact that we have nine Scottish regiments at the moment but only three are based in Scotland. Would you see the future of those other six as remaining in the UK?

**Nick Harvey:** You make an interesting point. Regiments that recruit from Scotland are based in England and in Germany. Equally, there are English people serving in Scottish regiments as well. It comes back to the point of the whole thing being integrated and structured into a comprehensive and coherent whole. Until we see and understand what an independent Scotland thought it wanted by way of defence forces, it is quite impossible to see what future there will be for people serving Scotland’s defence.

**Q439 Pamela Nash:** This is very much your opinion and not in your ministerial role, but the Scottish Government’s consultation has basically said that those who are serving in those regiments at the moment not based in Scotland will not have a vote in the referendum. What do you think about that? If these people are putting themselves forward to serve their country, do you think they should have a vote?

**Nick Harvey:** There are Scottish people in many walks of life that happen currently to be working elsewhere and who will be equally aggrieved that they are not given a vote on this issue.

**Q440 Pamela Nash:** The difference, though, is that those in the Armed Forces are sent there and are serving their country. This is not the private sector where they have chosen to move out of Scotland for their own benefit.

**Nick Harvey:** I will discuss that issue with the Scotland Office and make that point to them.

**Pamela Nash:** That would be helpful.
Q441 Chair: I want to clarify a couple of points. We indicated earlier on that we might want to visit some bases and some suppliers. The same thing would apply to the regiments as well; we may want to visit them. I presume that that is agreeable to you. We would also want to have some discussion with people in the regiments, on the same terms as those of us who have been on the Armed Forces Parliamentary Scheme have had discussions, just on an informal basis. It would be helpful if you were able to explain that.

It would be helpful as well if you were able to give us some factual material. We note here that there are nine Scottish regiments, three of which are based in Scotland at the moment. It would be helpful if you were able to give us the figures on what their capacity is, how high up they are in terms of staffing and how many of their number are overseas citizens. Obviously we will want to ask any putative Scottish Government whether or not they would intend to retain all the Scottish regiments, so we need to know what level of commitment that might mean for them in manpower and financial terms. There are a couple of artillery regiments and there is at least one tank regiment. We will need to clarify with them whether or not they would intend to retain those. It is only fair that we give them an indication of the scale of numbers and expenditure that that might involve. If you could let us have that, that would be very helpful.

Nick Harvey: We will give you what statistics we can. We do not always know what the country of origin of every member of the Armed Forces is. There will be people serving in English regiments who may have been born in Scotland or of Scottish parentage. We will not necessarily have a comprehensive picture on that. Similarly, there are English people serving in Scottish regiments. We will not necessarily know that either, but we will be as helpful as we can be.

Q442 Chair: The Fijians are generally easier to spot in these circumstances.

Nick Harvey: I follow your logic, Chairman.

Q443 Chair: We want those sorts of figures. It would also be helpful for the Committee if we could have some sort of briefing. I understand your point that these cannot be seen in isolation, and they need other elements of the forces to support them and so on. I do not have a feel for that, I must admit. I am not quite sure of the sort of figures we are discussing, what sort of units are necessary, and therefore what might be necessary in order to add to that. It would be helpful if we had co-operation, and that might be where the Defence Academy or somebody similar helped us with that sort of information, because it would be factually important for us to have that.

The other point I wanted to clarify is the nature of the relationship that Sandhurst and other colleges—Cranwell and Dartmouth—have with other countries and whether or not arrangements could be reached with a separate Scotland whereby officer training could take place for separate Scottish services in these locations, or whether it is only members of NATO, for example, or anything else that can use them. I am not quite sure whether that was touched on in the points that Pamela made; I was not able to hear all of it.

Nick Harvey: Chairman, students come from all over the world to those colleges, not only from NATO or the Commonwealth but literally from countries all over the world. The arrangements and who pays for them, for example, will differ depending on which country it is. The point I would make is that demand for places always dramatically exceeds supply. It would not be possible for us to make an offer to any other country that we could fulfil all of its officer training in our academies.

Q444 Chair: Again, it would be helpful if we had some guidance from you about what might be necessary to establish officer training structures for home defence forces—how many officers might be required by a Scottish home guard, how they might be trained and so on, and similarly the naval home guard and stuff like that. All of these are presumably separate. The officer training is not contained within the existing Scottish regiments, is it? If an independent Scotland retained all the Scottish regiments, there would still have to be a separate officer training structure; is that correct?

Nick Harvey: It is correct that the training is not done entirely within regiments. That is absolutely right. A future Scottish defence force would certainly need to be making some arrangements of its own. Your question was about if the future Scottish defence force was to take on the Scottish regiments or, if you like, the existing Scottish regiments, is it? If an independent Scotland retained all the Scottish regiments, there would still have to be a separate officer training structure; is that correct?

Q445 Chair: It is reasonable for us to take that as our starting point. We will be asking the Scottish Government whether there are any of the Scottish regiments that they intend to desert, or whether or not they want to retain them all. Then we will try and map out what the consequences of that might be in terms of other support staff that they might need and what training they might need. In the absence of official answers from the Scottish Government, it really falls to this Committee to try and establish what the facts are, so that they can be put in front of the Scottish people; otherwise you are left with the situation where people are being asked to vote for a pig in a poke. It is the pig-in-a-poke argument that causes most people in Scotland a great deal of difficulty, when they do not know what the choices are. That is why we will be looking for your assistance.

Unless I am mistaken, there are no other points that any of my colleagues want to raise. I just ask you whether or not there are any answers for which you have been briefed that you have not been given the question to offer to us. None of the staff behind you are shaking or giving any indications, but presumably in the MOD it is done by thought transference or staring at notes.

Nick Harvey: You have covered the ground that we anticipated, Chairman. The Defence Committee, as
you know, has announced that it will inquire into the impact on defence. We appreciate that you are inquiring into the impact on Scotland. Therefore, in a sense, you may care to read their report when they publish it because it might throw more things up.

**Chair:** We have taken the view that the Defence Committee and the Foreign Affairs Committee, for example, have the responsibility to look at what the impact of separation would be on the rest of the UK. It is our responsibility to look at the interface and also what the impact upon Scotland would be.

I thank you very much for finding the time to come along. This has been very interesting. No doubt our dialogue will continue.
Wednesday 20 June 2012

Members present:
Mr Ian Davidson (Chair)
Fiona Bruce
Mike Freer
Iain McKenzie
Jim McGovern
David Mowat
Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: Lieutenant Colonel Stuart Crawford, former Lieutenant Colonel in the Royal Tank Regiment, and Richard Marsh, Economist, 4-consulting, gave evidence.

Q446 Chair: Gentlemen, I welcome you to this meeting of the Scottish Affairs Committee. As you are aware, we are conducting an investigation into various aspects of the Referendum on Separation for Scotland. We are conducting inquiries into process but also into issues of substance. One of the main issues we are looking at is the question of how a separate Scotland would defend itself. Therefore, the issue that you have done is obviously of great interest to us.

I want to start off by asking you to introduce yourselves. Tell us your background and why you think you are competent to speak about this, and also whether or not you are speaking as individuals or on behalf of an organisation, gang or group. I would then intend to ask you to outline the bones of what you have put forward so that we get the context of it and then we will go through it in bits. Let us start with you, Stuart.

Lt Col Stuart Crawford: My name is Stuart Crawford. I am a former Army officer. I spent 20 years in the Army as a career officer in the Royal Tank Regiment. I left in 1999 and became temporarily involved in politics—I think that is probably the correct way of putting it. Since then I have worked in Edinburgh as a political, media and defence and security consultant. My interest in the subject matter of today arose while I was still serving in the Army. I have a residual interest in defence matters and I am increasingly interested in the politics of Scotland. It struck me during the late '90s that nobody had really seriously considered how an independent Scotland, if that thing should ever come to be, might go about organising its defence forces. It is very much of its era post-cold war. I was still serving in the Army, but with the referendum coming up in 2014, subject to consultation of course, now was the time to have a look at it again because a lot of my ideas will have changed. A lot of the circumstances in the background against which I wrote the original paper will have changed. Fundamentally, the major omission from my first paper—and there were a number of flaws in it—is that it was put forward as a possible defence scenario for a separate Scotland?

Richard Marsh: My first paper was published anonymously in 1998 by Professor Hew Strachan at Glasgow university—I know that Hew has been here recently—and was very much a first take at what I was setting out to do, which was looking at how an independent Scotland might go about defending itself. It is very much of its era post-cold war. I was still slightly mesmerised by my previous Staff College training and very much in the era of mechanised warfare, the focus being in north-west Europe. The paper is still valid for its time but, with changes in the political context worldwide and in Europe, I felt that, with the referendum coming up in 2014, subject to consultation of course, now was the time to have a look at it again because a lot of my ideas will have changed.

Q447 Chair: Can I clarify whether you are what could be described as a defence economist or a general economist? Do you have any speciality in this area, in the way that Stuart obviously has in military affairs?

Richard Marsh: No. I have no military background and I have no speciality in defence economics.

Q448 Chair: I will ask you first, Stuart, and then Richard, to outline how you have responded to this, but would you like to give us a broad sweep of what it is you have put forward as a possible defence scenario for a separate Scotland?

Lt Col Stuart Crawford: My first paper was published anonymously in 1998 by Professor Hew Strachan at Glasgow university—I know that Hew has been here recently—and was very much a first take at what I was setting out to do, which was looking at how an independent Scotland might go about defending itself. It is very much of its era post-cold war. I was still slightly mesmerised by my previous Staff College training and very much in the era of mechanised warfare, the focus being in north-west Europe. The paper is still valid for its time but, with changes in the political context worldwide and in Europe, I felt that, with the referendum coming up in 2014, subject to consultation of course, now was the time to have a look at it again because a lot of my ideas will have changed. A lot of the circumstances in the background against which I wrote the original paper will have changed. Fundamentally, the major omission from my first paper—and there were a number of flaws in it—is that it was put forward as a possible defence scenario for a separate Scotland?

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Richard Marsh: No. I have no military background and I have no speciality in defence economics.
second and third order implications. That was how I approached it. I wanted to try and answer three questions: what would an independent Scotland want its armed forces to do; what armed forces would be required to do those things; and could we afford the model that that threw up? The third one has been very much in Richard’s remit. That led me to come up with a fairly conventional and modest model for Scottish defence forces, if we want to call them that. It is not a perfect model. It is by no means the best model. It is a model, and I think at the moment it is the only model. Much of it has been created in a political vacuum. There is no extant foreign policy for an independent Scotland that I know of, although I have asked for it. I have had to make an educated guess at aspects of it. What I have come up with is a model that would be a suggestion of what an independent Scotland would need to do the basic tasks of defence forces, but not necessarily what an independent Scotland might want to do with its defence forces, because that is very much a political and not a military decision, as far as I can see.

Richard Marsh: You have probably guessed here that Stuart has done a lot of the heavy lifting on this project. To summarise what he has said, a lot of the estimates that have been worked up so far have talked about what Scotland might get when it becomes independent, based on what is on Scottish soil or what Scotland might negotiate for a certain share of the defence industry. Stuart does most of the valuable work here in saying, “Here is what Scotland would need to defend itself.” I have simply worked through that model and said, “According to Ministry of Defence statistics, how much might it cost to sustain that number of service personnel with this amount of equipment?”

Q449 Chair: If I heard you correctly, you mentioned that you had sought clarification about the foreign policy that a separate Scotland might have but that no guidance had been given. It seems to me that, unless you have some sort of information about the foreign policy, it is almost impossible to devise a defence policy and hence all the rest of the work that you have done.

Lt Col Stuart Crawford: The external aspects of it become more difficult. There are certain assumptions that we can reasonably make on foreign policy. I am assured that foreign policies are being worked on but I have not seen anything. I will come back to your main point, but when I wrote my original paper in 1998, there was an extant defence policy for an independent Scotland that was produced by the Scottish National party, so I could do a certain comparison. There is no such current document that I can get access to at the moment—I have asked—but I understand that such things are being worked on. Therefore, in many ways, rather than me comparing my work with theirs, it might be the other way round, and as and when that work comes, they will be able to compare it with mine.

Q450 Lindsay Roy: You would accept that the first priority of any nation state is to protect its citizens. Does it not appear strange that there is this vacuum at the present time? If I read you correctly, not only is there not a foreign policy but there is not a defence policy framework.

Lt Col Stuart Crawford: That is correct. There is a consensus that the purpose of armed forces is threefold, and I hope I can remember all three of them. The first is to maintain the integrity of the elected Government, which is the least popular one, because it brings visions of strikebreaking and all that sort of stuff. The second is to defend the territory of the state against external aggression. Most people would agree that that sort of conventional attack on the UK as a whole, let alone Scotland, is less than likely in the current political context. The third is to protect and defend a nation’s interests abroad. I think that most people would agree that those fairly broad guidelines apply generally, but there is no specific foreign policy for an independent Scotland that I am aware of.

Q451 Lindsay Roy: Have you considered criteria that would be used if the strategic military assets were to be divided up on separation? Do you have a notion of what the criteria would be?

Chair: Before we move on to that, I want to stay with the wider scenario. What is your assessment of both the internal and external threats that might be faced—that you are gearing up your possible defence forces to face?

Lt Col Stuart Crawford: I spoke recently at a conference in Edinburgh on this. I have said that, very much in accordance with the preamble to the Strategic Defence and Security Review, there is no real, credible, conventional military threat to the UK as a whole. In terms of external threats, we are looking more at things like terrorism, of which Scotland was free until comparatively recently, economic sanctions and threats, and also cyber warfare, on which I am not an expert. The spectrum of direct threat to the state has moved away from conventional attacks to these much more asymmetric types of attack, but we can defend against them to a certain extent.

There is also a requirement for military assistance to the civilian authorities, which has been well exercised over the past 100 years. One thinks of the military assistance that was called in when the Lockerbie bomb went off and the wreckage came down. Much of the recovery work was carried out by the military. In any other sort of crisis of health or transport, the armed forces provide a structured body of men and women with a command structure and the appropriate equipment to deal with a whole host of civilian crises and emergencies.

Q452 Chair: In terms of external threat, other people have talked to us about the question of the melting of the ice cap, the way in which there would be tensions in the Arctic, and what used to be the Soviet Union—Russian—intrusion into airspace and so on and so forth. Have you built all that into your assumptions?

Lt Col Stuart Crawford: Yes, in sweepingingly general terms. The armed forces model that I have come up with involves modest armed forces—very much at the modest end of the scale—but it does have sufficient resource and flexibility to allow some participation in
all those sorts of things, so the whole spectrum of military threats. The question is the extent to which that can be done.

Q453 Iain McKenzie: On that last point, when you said “modest” armed forces, can you put a size or figure on it so that we can picture what “modest” armed forces are?

Lt Col Stuart Crawford: In sweeping generally terms, I have come up with a model of a Scottish navy that has between 20 to 25 ships and vessels, an air force with about 60 aircraft of all types, and an army that would consist of two brigades plus supporting troops.

Q454 Chair: I want to come back to the general area about the extent to which separate Scottish forces might be involved in what are sometimes described as foreign adventures, and at other times are described as joint alliances—the wording depends on your perspective. Is there an element built in there that would allow a capacity for a separate Scotland?

Lt Col Stuart Crawford: There is, but it is not a huge thing. For example, in the navy, I think I have suggested—I can check my notes—that it would consist of two frigates or something like that. That would allow a Scottish Government to contribute to joint military exercises or operations. In the air force I have gone for two squadrons of Hawk aircraft, which are advance trainers and have an operational capability. The elements of the army would be deployable independently. In the model I have drawn up, the Scottish forces would probably have to be part of a coalition or larger force.

Q455 Chair: That would be a coalition of the willing. They would be entirely self-contained. It would be fair to say that the general thrust you have adopted is that Scottish forces would be capable of protecting home waters, home airspace and territorial defence, with some—it depends whether or not you call it slack—flexibility to be able to exercise a role internationally, if necessary.

Lt Col Stuart Crawford: Yes. It is also quite important to build in the element of operational availability. For example, if we use the model of 18 Hawk aircraft, they may have an operational availability of 80%. It does not mean that you have 18 aircraft up in the air all the time. You might have 18 or 16 or 15 aircraft up there for a period of three hours, depending on their fuel supply. If you want four aircraft up continuously, that is probably the best you could do.

Q456 Chair: This is clearly a restricted model in a sense, is it not?

Lt Col Stuart Crawford: Very much so, yes.

Q457 Chair: It could almost be described as a Home Guard option.

Lt Col Stuart Crawford: You could describe it as that.

Q458 Chair: I deliberately do not use the term “Dad’s Army” because that would be seen as pejorative. The focus here is on the Home Guard option, but keeping Scotland safe.

Lt Col Stuart Crawford: Yes. The important thing about the way I have gone about it is that it is open to others to decide whether this is sufficient. This is where, of course, Richard’s part of the exercise comes in.

Q459 Chair: Absolutely. I am not criticising. I just want to be clear about what you are saying.

Lt Col Stuart Crawford: It is a modest model.

Chair: Richard, if at any time you think there are issues you want to raise in this context that we have not spotted, please intervene.

Q460 Lindsay Roy: In relation to the criteria that might be used to distribute the strategic assets and what would come to Scotland, what kind of process do you envisage?

Lt Col Stuart Crawford: I think the answer is that what exists in Scotland at the moment, equipment-wise and personnel-wise, would not be sufficient for the needs of the independent state as I would see it. Therefore, I anticipate that there would be a prolonged period of negotiation to make sure that the assets of the UK were divided up in an appropriate manner, where that was relevant. In other words, I do not think an independent Scotland—we can go on to talk about this, no doubt—would necessarily want to have any part of the UK nuclear deterrent. It could be argued that its share of that is about 0.4 of a boat. Therefore, it might be open for the value of that share, however that is calculated, to be traded with the rest of the United Kingdom in return for something else that is absolutely required.

Q461 Lindsay Roy: In terms of strategy, there would be negotiations and a trade-off to get what was fit for purpose.

Lt Col Stuart Crawford: I think that is correct, yes.

Q462 Lindsay Roy: When you say “prolonged”, can you give us an idea of what you mean?

Lt Col Stuart Crawford: I really do not know, but I would think that it would be a period of years rather than months.

Q463 Lindsay Roy: Several years.

Lt Col Stuart Crawford: Several years. Two or three years probably—something like that. That would be the negotiation, but whether the assets would be transferred in the same time frame would be another matter altogether. In some cases there would have to be some work carried out to receive them.

Q464 Lindsay Roy: In my understanding, they would be quite complex negotiations, and thereafter there would be the distribution of assets in relation to those negotiations.

Lt Col Stuart Crawford: Yes, absolutely.

Q465 Chair: Am I right in thinking, though, that, if on day one, after a vote on separation, the negotiations started, nobody who had voted would know what they were going to end up with? In a sense they would almost be voting for a pig in a poke. They would know what the negotiating position of the SNP was,
and they might know the negotiating position of the UK, but they would not know what was going to come out at the end of that.

Lt Col Stuart Crawford: That is probably correct at the moment. I would very much hope that by the time of the independence referendum—whenever it takes place, although it looks as if it will be in the autumn of 2014—we will have a much better idea of what the vote was for.

Q466 Mike Freer: I represent a London seat. From my point of view I just do not see how these negotiations are going to take place. Looking at it from slightly outside, the Scottish Government have no foreign policy, no defence policy and no economic impact study on the negotiations. They don’t want the debt. They don’t want the cost of the bail-out. They still want the tax revenues, but they are then going to pick and choose the bits of the defence forces that they want and expect the RUK Government simply to roll over and hand this across. Do you not think that that scenario is a bit far-fetched, and that the Scottish Government need to start putting some flesh on the bones?

Lt Col Stuart Crawford: I understand where you are coming from, and I think the necessary information is not yet available.

Q467 Mike Freer: That is a polite way of putting it, is it not?

Lt Col Stuart Crawford: There will be a great deal of negotiation. I suspect. The elephant in the room, of course, is the Trident boats on the Clyde and how, when and to where those boats are removed from an independent Scotland that has pledged it will be nuclear weapons-free. That is supported by all parties north of the border, with the possible exception of the Conservative party. It is not a case of independence on Friday night and the boats sail out for ever on Saturday morning. Professor Malcolm Chalmers, who has been here, and certainly Professor William Walker from St Andrew’s university, would say that there would be an overlap when the rest of the UK, if it came to that, would maintain its nuclear fleet on the Clyde, possibly until it was obsolete. That is a political negotiation and not really a military one.

Richard Marsh: I would back Stuart up on that point. In the previous conference that we spoke at, we came to the conclusion that there would not actually be a day one, which has been referred to already; it would be a slightly longer period where you would have to provide more detail as to how the negotiations will take place.

Chair: It is not day one of year zero, as it were. People in Scotland have to have some sort of idea of what they are voting for. At the moment they do not. This is part of the difficulty about this sort of discussion, which we have to try and flesh out. As we go on, we will try and clarify how long the process of haggling might be.

Q468 Jim McGovern: I want to clarify something that Stuart just said. Did I pick you up correctly when you said that every party is in favour of a nuclear-free Scotland?

Lt Col Stuart Crawford: I think that is correct, with the possible exception of the Conservative party.

Q469 Jim McGovern: I think you are wrong.

Lt Col Stuart Crawford: The SNP is. The Scottish Labour party definitely is. The Green party is.

Q470 Jim McGovern: But there is a UK Labour party.

Lt Col Stuart Crawford: Yes, I know. I think the Labour party’s position is at variance in Scotland and Westminster, but that is not really for me to comment on.

Chair: This is a fascinating dispute—

Q471 Jim McGovern: You said you were going to try and avoid political subjects, but you just drifted into one there, I think.

Lt Col Stuart Crawford: That is my perception of it. If I am wrong, then I stand corrected.

Jim McGovern: You are corrected.

Q472 Mr Reid: Does the model you have produced assume that Scotland is inside or outside NATO?

Lt Col Stuart Crawford: Neither really. I have frequently commented that the position of the party of independence—the SNP—on NATO is misguided. It is fair to say that there are many people within the Scottish National party who know it is misguided. My personal view is that the position is naive on two counts. It is naive militarily, because why would any small new independent country want to negotiate its way out of the most powerful military alliance in history, if you agree with that assessment? Although I do not want to drift into politics, I think it is also naive politically, because it hands the opposition political parties a big stick to hit the SNP over the head with.

Q473 Mr Reid: What do you think Scotland would lose by not being part of NATO?

Lt Col Stuart Crawford: It would lose the overarching purpose of NATO, which is basically that an attack on one member is taken as an attack on all members. It loses that facility. It would also lose the facility of transatlantic involvement in the defence of Europe, and various other smaller things like equipment negotiations and so on and so forth.

Q474 Mr Reid: Would Scotland lose anything by being in NATO, or are the benefits all one way?

Lt Col Stuart Crawford: The objection to an independent Scotland being in NATO is the perception that it is a nuclear-led alliance that has not ruled out the use of first nuclear strike. My personal view on that is that the use of nuclear weapons in future warfare is so highly unlikely, and the likely NATO use of first-strike nuclear weapons is so infinitesimally small, that to predicate a NATO policy on that very, very small possibility is perhaps misguided.

Q475 Mr Reid: Do you think the Scottish Government’s insistence on the removal of nuclear weapons from Scotland and not being a member of NATO would have an impact on negotiations with the rest of the UK over the division of assets?
**Lt Col Stuart Crawford:** Obviously it would be in terms of the Trident boats, because there would not be any fuel for that. I really do not know how it would affect it. It would damage the credibility of the negotiating team because the reasons for leaving NATO are not, in my opinion, necessarily intellectually coherent.

**Q476 Mr Reid:** Have you given any thought as to how long it would take for the Vanguard boats and the Trident missiles to be removed from Scottish soil?

**Lt Col Stuart Crawford:** I am not the expert, but Professor William Walker’s line at the Edinburgh conference was that if Scotland insists on nuclear weapons leaving the Clyde, the UK is basically being forced down the line of unilateral nuclear disarmament. You can agree with that or not, but his line was that the most feasible compromise was that the Trident fleet as currently constituted should remain on the Clyde until either the fleet or the missiles become obsolete.

**Q477 Mr Reid:** Does your model take into account the costs of the UK Government removing facilities from Faslane and that they would need if they wanted to relocate Trident somewhere else?

**Lt Col Stuart Crawford:** I am going to pass that one on to Richard.

**Richard Marsh:** The short answer to that is no. We came to a figure of something approaching £2 billion a year in terms of operating expenditure and capital investment required to keep the forces that Stuart described up and running. That does not include any one-off costs that would occur around the time of independence and negotiation that you have just described.

**Q478 Mr Reid:** If we are looking at the division of assets, assuming that the Scottish Government continue with their present policy and tell the UK that the Trident missiles and the Vanguard submarines have to go, there would be a lot of fixed assets at Faslane and Coulport that the UK Government would not be able to move. Presumably they then become the property of the Scottish Government. When the UK assets are being divided up, have you placed a value on those assets that the Scottish Government would automatically get, even if they did not have any use for them?

**Lt Col Stuart Crawford:** I certainly have not. I do not think my study is that detailed.

**Richard Marsh:** We did talk about this briefly. The problem is that when you talk about the value of the assets, you would really need to be informed by something approaching market prices. That is going to be very difficult to get.

**Q479 Mr Reid:** Presumably the value that the UK Government would put on them would be the same as any insurance company. It would be the rebuild costs and the costs of reconstructing them somewhere else. That was certainly what the Defence Ministers told us last week.

**Lt Col Stuart Crawford:** The Faslane base, for example, has a residual value as a naval base. My model for the Scottish navy has suggested that Faslane would continue as a conventional naval base and there would have to be another naval base at Rosyth. Although Faslane is the only current naval base in Scotland, it is part and parcel of the three major naval bases of the UK. For an independent country to have only one naval base is a bit like putting all your eggs in one basket. I have suggested that Rosyth should be reinstated as a naval base, and I understand from my naval contacts that that is feasible.

**Q480 Mr Reid:** Would an independent Scotland have any use for Coulport?

**Lt Col Stuart Crawford:** I have never been in Coulport, so I do not know the true extent of the facilities there, but I understand they are both extensive and impressive. One can only speculate what it might be used for, but not for nuclear weapons storage, I think.

**Q481 Mr Reid:** Do you think it would be reasonable for the UK Government to insist in negotiations, if the Scottish Government inherited all these facilities at Faslane and Coulport, that they were allocated as an asset that the Scottish Government have, and that the costs of the UK Government removing facilities there, but I understand they are both extensive and impressive. One can only speculate what it might be used for, but not for nuclear weapons storage, I think.

**Q482 Chair:** When the Czech and Slovak Republics split, my understanding is that those facilities that were in particular geographical areas were priced and allocated to that particular authority. Under what Alan is suggesting, presumably the replacement cost of Coulport and the entire base would be the equivalent allocation to Scotland. That would be part of the haggling that starts from day zero, unless some of that gets resolved beforehand.

**Lt Col Stuart Crawford:** I would imagine it will be a factor that would have to be taken into account.

**Q483 Chair:** You have not done any work on anything other than running costs, as it were, of the force structure that is being proposed—the transitional costs, the one-off costs or anything like that. This is not intended to be a trick question.

**Richard Marsh:** It is something we were discussing earlier, particularly because there are some types of ships that Stuart has outlined that might not be readily available. I think we were talking about a Type 45. A Type 45 is probably too expensive but a Type 26.

**Richard Marsh:** They are incredibly expensive. What we have included here is both current and capital. Over the very long run you would expect the cost to be reasonably close to what we have outlined. We have included an element of putting aside a certain proportion of the budget that we have allocated here as capital expenditure. Where you would run your ship for 20 or 30 years, you would be expected to put aside some money so that you could afford to replace...
Lt Col Stuart Crawford: I think I am correct. The geo-political context in which Scotland finds itself historically is exactly that. It has been part of the UK aircraft carrier over two succeeding world wars in the last century.

Lt Col Stuart Crawford: I am sorry—I missed that.

Lt Col Stuart Crawford: Yes. The reason why I thought the Hawk jet would be an appropriate aircraft for an independent Scottish force was its dual role. It is part of the RAF inventory. While it would never be as sophisticated an interceptor or fighter aircraft as the Typhoon, it is considerably cheaper. I do not have the figures for that. It can certainly intercept and it can certainly carry a weapon load. What it cannot do is what Typhoon can do: target and engage, although I don’t know how many individual targets all at the same time, a bit like the Type 45 destroyer can do. The Typhoon is at a level of sophistication that an independent Scotland might not need.

Lt Col Stuart Crawford: Yes.

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Richard Marsh: Yes, there is a small amount of money in there for that.

Richard Marsh: I am happy to go through the figures and send you that data.

Lindsay Roy: That would be most helpful; thank you.

Lt Col Stuart Crawford: That was its latest report yesterday, yes.

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Lindsay Roy: The Rapid Deployment Force from Leuchars has been called out on a number of occasions recently.

Lt Col Stuart Crawford: Yes, indeed, to intercept.

Q494 Chair: There were two steps. One was the decommissioning because it was not active in Scotland. The other was physically removing them, and then there was a longer period for dismantling them, but that could be done in the Firth of Scotland, as I understand it.

Lt Col Stuart Crawford: Profession William Walker at St Andrew’s university has spoken and written extensively about this. His line, as I said before, is that there would need to be some sort of negotiated settlement whereby Trident remained on the Clyde until it was obsolete. That seems to be a commonsense approach.

Q495 Chair: I want to pursue this a little bit with you. If you are saying that negotiations will have to take place about who gets what assets, they are likely to be somewhat poisoned by a Scottish Government saying, “We are going to enforce unilateral nuclear disarmament upon the rest of the UK, but we want to be pals with you. We want you to have a decent dialogue with us and we want to be pleasant and agreeable, not only in defence things, but as we want you to save our banks and all the rest of it.” There has to come a point, does there not, where somebody like yourself, making an assessment about a future foreign
and defence policy, takes into account the nature of the relationship that there will be with the rest of the UK dependent upon what decisions are taken on nuclear weapons? Have you factored that in? If the pool is poisoned by an inappropriate decision on nuclear weapons, presumably your costings and estimates of co-operation just disappear.

**Lt Col Stuart Crawford:** I would agree that nuclear weapons are probably an unhelpful negotiating position. One has to ask whether the global community would allow that position to be carried through to its natural conclusion, because we are talking about effective unilateral disarmament. A compromise has to be sought but, in the case of my model, I have assumed that nuclear weapons would not be part of the inventory of an independent Scotland.

**Q496 Chair:** I do understand that, to be fair. It is coming back to the building block of foreign and defence policy depending upon a decent relationship. When you say you want to have this settled amicably, that would swing towards the 20-year option or the four-year option. I do not see that splitting the difference is possible. It is a bit like the Tories not having any aircraft carriers for a period; it depends upon whether or not they are willing to have no nuclear weapons for a period. If you say, “You can keep them for eight, and but in fact we recognise it is going to take 20 years to build a replacement, so you have got them for eight, and you then don’t have them for 12, and then you either re-install them at the community pool is poisoned by an inappropriate decision on nuclear weapons, presumably your costings and estimates of co-operation just disappear.

**Lt Col Stuart Crawford:** If we accept that there is nowhere else for the UK’s nuclear deterrent to go—some people have speculated that it could be found in a home in the eastern seaboard of the USA, or on the French coast at the French submarine base, but if we accept that those are long shots that are unlikely to happen, so there is nowhere else for it to go—my personal opinion is that the long exit scenario is the most likely and the one upon which people are most likely to agree.

**Q497 Chair:** That is very helpful. Similarly, in your model, you refer to clean-up costs for any bases that are left. Traditionally the United States, when it pulls out, does not pay clean-up costs just on the basis that it would cost them so much. Have you factored in any of that at all to any of your model?

**Richard Marsh:** The short answer is no, because it is very difficult to try and find out how much it costs.

**Q498 Chair:** I understand that. Do you have any information at all about that? We can seek some of these things from the MOD, but getting information from the MOD is not always the easiest of processes.

**Lt Col Stuart Crawford:** Even when you are inside it.

**Chair:** We have been told to expect a 20-year timetable for getting material from them. That clarifies that element of it.

**Q499 Iain McKenzie:** In relation to where the nuclear deterrent is based, is there anywhere in the UK where the weapons would not have an impact in Scotland should there be an exchange?

**Lt Col Stuart Crawford:** Of nuclear weapons. You mean “nuclear exchange”, as in conflict.

**Iain McKenzie:** Yes.

**Lt Col Stuart Crawford:** I am just thinking. The First Minister of Wales has recently said he would welcome them to Milford Haven in Wales, if Scotland does not want them.

**Q500 Iain McKenzie:** In effect it is a gesture to say “off our soil”. There is still an effect on Scotland should there be an exchange. There is nowhere in the UK we can base these weapons that would not have an influence.

**Lt Col Stuart Crawford:** If the nuclear exchange was designed only to negate the nuclear arsenals of the competing sides, it is feasible that Scotland might not be affected by a nuclear exchange, but if it is a general military exchange—and there are military targets in Scotland—clearly Scotland would be involved in that exchange. For example, if it was a first strike against the UK’s independent deterrent—four Trident boats at Milford Haven, which is the speculation in the papers today—then depending on the size of the warheads involved, Scotland could escape that. Likewise, if there was a nuclear first strike against Trident on the Clyde, much of the rest of the UK would escape that exchange.

**Q501 Chair:** What way does the wind blow from Milford Haven? Does it not depend, since Welsh lamb was affected by Chernobyl?

**Lt Col Stuart Crawford:** It does. I think it comes from the west. If it was Milford Haven, London would definitely be affected; if it was in the Clyde, maybe not.

**Q502 Chair:** So the future of Scotland would depend on the direction of the wind.

**Lt Col Stuart Crawford:** The future of humankind would depend on that.

**Chair:** That is very consoling; I feel much better now.

**Q503 Iain McKenzie:** Continuing on the theme of NATO and taking it from the other angle, if Scotland was not a member of NATO, is there any other military alliance that it could join? What would it get from that, and which countries would it be involved with?

**Lt Col Stuart Crawford:** Apart from a general warm and fuzzy feeling that you are not alone militarily in the world, the Partnership for Peace is a sort of NATO halfway house. You would be half in and half out there—doing the military hokey cokey. That has always been a favourite. I do not know very much about the Partnership for Peace.

There are other alliances in the Scandinavian countries. I cannot remember what they are called—it is the Northern Alliance or something like that. That would allow an independent state, whether it is Scotland or any other, not necessarily to have to have the full gamut or spectrum of military capability, but
to be able to specialise to a certain extent. It would work on the basis that the gaps in the inventory would be provided by the allies, much as NATO operates under the American surveillance and advanced weapons technology umbrella.

Q504 Iain McKenzie: Do you think that Scottish forces would be able to participate in combined military manoeuvres?
Lt Col Stuart Crawford: Yes. I do not see why Scottish forces should be any less well trained than the current UK forces might be, although they might not be involved in the full spectrum of operations that the current UK forces are.

Q505 Iain McKenzie: Could they take part in engagements like, for instance, Afghanistan or Libya?
Lt Col Stuart Crawford: Very much so. The model I have drawn up, though, has no heavy artillery or tanks.

Q506 Iain McKenzie: Would that be offering specialist units, or would it simply be the soldiers on the ground?
Lt Col Stuart Crawford: It would be a combination of both. My model has no real specialism, except that there are some areas that I have suggested the Scottish defence forces would not necessarily wish to be involved in. Heavy armour is one of them.

Q507 Chair: I want to clarify that Scotland would not have any particular niche for combined forces; it would be a question of boots on the ground and a bit of whatever it is we had.
Lt Col Stuart Crawford: Yes, absolutely, unless a specific decision was taken that the Scottish defence forces would specialise, for example, in the medical field—"We will produce the world's best field hospitals."

Q508 Chair: Something like that would be an add-on, wouldn’t it, because it is not built into this sort of model?
Richard Marsh: No, not currently.

Q509 Chair: Presumably the difficulty with a niche speciality like this is that it depends on the Government agreeing to hand it over.
Lt Col Stuart Crawford: Yes.

Q510 Chair: In which war was it that the Belgians would not give us bullets? Was that Iraq? If you have any alliance like that, you have to be certain that your chums are going to come if you get into a fight.
Lt Col Stuart Crawford: You have to be sure that you have allies, absolutely.

Q511 Chair: I want to clarify the defence of Scottish waters. Are you suggesting that Scotland would be able to do that on its own, and would therefore have almost a niche capability driven by its own needs there?
Lt Col Stuart Crawford: I am suggesting that Scotland—Richard will talk about the cost—could afford to have a navy that would be capable of defending its maritime interests: the oil and gas fields; the fishing grounds; the trade routes and so on and so forth. It depends on the number of operations you want to be able to do at the same time. It would be impossible to send any sort of major naval presence to operate off Lebanon at the same time, but that is common to all armed forces around the world. Even the Americans, I think, can do only two regional operations at the same time.

Q512 Chair: It used to be three wars at a time.
Lt Col Stuart Crawford: It used to be six.
Chair: That is before my time. We turn now to the question of the Scottish army.

Q513 Lindsay Roy: We are most appreciative to you for this model, because otherwise we would have much less focus for our meeting. In terms of your model, can you remind us of the strength of the Scottish army, and how that compares with the current strength of the Scottish regiments?
Lt Col Stuart Crawford: That is quite a difficult question. The Scottish army I have come up with is based on a two-brigade structure and a headquarters. The problem is that any military unit size like a brigade, a battalion or a division is essentially a headquarters on which a number of units can be hung, depending on the operation.

The classic idea of an ordinary brigade is a brigade headquarters, three combat battalions—whether they are armoured or infantry—plus supporting troops, but it can be more than that. When I went through Staff College as a student, and indeed when I taught there, the maximum number of units that one could attach to a brigade headquarters was always thought to be five. When we talk about brigade strength and people say, “How big is a brigade?” the answer is not quite, “How long is a piece of string?”", but it could be anything from 3,500 people to as many as 7,500, depending on the purpose and the tasks.

The model I have come up with assumes an average size of brigade. I have been fairly consistent over the years in saying that that would amount to an army of approximately 12,500.

Q514 Lindsay Roy: How does that compare with the current arrangements?
Lt Col Stuart Crawford: The Royal Regiment of Scotland is currently five battalions. That is about 2,500. With the Scots Dragoon Guards that would be 3,000. With the 19 Field Regiment it would be 3,500. It would be larger than units that you would necessarily say would be the Scottish part of the UK forces, I think.

Q515 Jim McGovern: I am sorry; I did not quite get that. What was the answer to the question?
Lt Col Stuart Crawford: The answer is that I have not made that direct comparison. I could do but I have not done it.
Chair: It would be helpful if you did.
Lindsay Roy: It would be immensely helpful.

Q516 Chair: Again, this is coming back to the question of trying to clarify for people in Scotland
what the situation is just now, what the impact of separation might be and what the choices and differences are.

Lt Col Stuart Crawford: I shall certainly try and get that. Again, I may have to go to the MOD for some of that information.

Chair: Tell them you have a note from me.

Lt Col Stuart Crawford: Yes, I will.

Q517 Lindsay Roy: Can you tell us about the proportion of regulars and reservists?

Lt Col Stuart Crawford: That is really just in my own head. I had in mind one infantry brigade, which would consist of regular troops that would be deployable overseas if need be, and one brigade of reserve or Territorial Army troops, which would primarily be a domestic force. Other people have commented—Professor Hew Strachan being one of them—that it would be better to mix the brigades to have a combination of regular and TA, and I think he is probably correct about that.

Q518 Lindsay Roy: How does that compare with the current provision?

Lt Col Stuart Crawford: In Scotland?

Lindsay Roy: Yes.

Lt Col Stuart Crawford: I think there is only one actual brigade now in Scotland. It has never been an operationally deployable brigade. It has always been an administrative brigade: 51 Brigade and 52 Brigade.

Q519 Jim McGovern: When you talk about brigades and battalions, what are we trying to determine here is numbers and people.

Lindsay Roy: Would there be more reservists?

Lt Col Stuart Crawford: There would be a greater emphasis on reservists.

Q520 Lindsay Roy: By roughly how much?

Lt Col Stuart Crawford: I don’t know. I have not counted it. At the moment there is no Scottish army. All we have is the Scottish contribution to the UK Army. Historically, over the past 20 years, something in the order of 13% of personnel are Scottish. If we take the strength of the armed services as being 102,000, going down to 82,000, currently my model of 12,500 fits in quite neatly with that 10% to 13% of the UK armed forces being the Scottish contribution. There is no Scottish army because a large number of those individuals are spread across arms and services that do not have a distinctive Scottish identity.

Q521 Lindsay Roy: As you will be aware, there are very strong attachments, legacies and identities to the Scottish regiments. There are huge issues currently about them and the retention of the Golden Thread and so on.

Lt Col Stuart Crawford: I have campaigned on their behalf many times.

Q522 Lindsay Roy: How would you define a Scottish regiment? Is it by name, historical recruitment area or current base? Have you given any thought to that?

Lt Col Stuart Crawford: No. I am in favour of a return to the traditional Scottish regimental structure, which is geographically-based, rather than having five battalions of the Royal Regiment of Scotland, as it is now. I was very much in favour of the six, traditional, individual regiments that had territorial recruiting patterns. They are historical in nature and I think formed a large part of the identity and ethos of those individual regiments.

Q523 Lindsay Roy: Can you tell us how expensive it is to train a full-time soldier as opposed to a reservist—a regular as opposed to a reservist? What kind of differential is there?

Lt Col Stuart Crawford: I don’t know the answer to that.

Q524 Lindsay Roy: Again, it would be helpful if we could have that information.

Richard Marsh: We had a figure in our model that was based on some MOD data. It was £49,000 direct costs for each service personnel. We do not have the data to hand on reservists versus full-time service personnel.

Q525 Lindsay Roy: Can you envisage Scotland ever introducing conscription, because there are issues at the moment about the number of people signing up? Indeed, I understand they have Fijians in some of the Scottish regiments, for example.

Lt Col Stuart Crawford: The Royal Regiment of Scotland—and I am speaking in general terms—consists of five battalions or units, but it has sufficient manpower for only four. That may be driving certain aspects of the current review that the MOD is undertaking. Conscription is very unpopular within the armed services because it is a case of unwilling recruits in many cases. It is far better to have one volunteer than 10 pressed men.

Q526 Lindsay Roy: I understand that. The figures that I have here are that each of the regiments is undermanned.

Lt Col Stuart Crawford: That is correct.

Q527 Lindsay Roy: Would that change on separation?

Lt Col Stuart Crawford: I do not know. When it comes to an independent Scotland setting up its own armed forces, and particularly setting up its army, one would assume that to a certain extent those Scottish servicemen and women who are in the UK armed forces would have the option to transfer to the Scottish defence forces, but what proportion that would be I do not think anybody knows. It should be easy enough to find out; we need only ask them.

Q528 Lindsay Roy: That is something that should be done in terms of some research.

Lt Col Stuart Crawford: Absolutely. Defence Analytical Services Agency does that sort of stuff all the time, but maybe that question is one that it would shy away from.
Q529 Lindsay Roy: We have some anecdotal evidence that some of the soldiers in current brigades would wish to retain membership of the British Army in the UK.

Lt Col Stuart Crawford: Absolutely; I am sure they would. The figure we talk about among ourselves is that about 50% might transfer, but that is just speculation.

Q530 Lindsay Roy: Informed speculation.

Lt Col Stuart Crawford: The pattern tends to be that when you are young and single, and full of vim and vigour, you want an adventure. When you are married and settled down with children and a spouse who is not keen to see you disappear for six months at a time, you are more likely to want—

Q531 Chair: I did say earlier that this would be a Home Guard and not a Dad’s Army.

Lt Col Stuart Crawford: That is the danger.

Q532 Chair: In fact, you are pointing us towards the idea that it would be a Dad’s Army.

Lt Col Stuart Crawford: There is always a danger that, when you have a domestically-based armed force without any expeditionary function, it tends to become populated by people who, through personal circumstances, wish to be more geographically settled.

Chair: Captain Mainwaring, if I may say.

Lt Col Stuart Crawford: Indeed.

Q533 Jim McGovern: I was just going to say, Chair, that Stuart mentioned earlier that he was being speculative. I think probably almost every answer you have given has been speculative.

Lt Col Stuart Crawford: Indeed.

Q534 Jim McGovern: I realise it is not an exact science, but every question that you have been asked you have ducked or have said, “I can’t quite answer that”, “I don’t know”, or, “I must speculate.” To be honest, I am not quite sure why you are here.

Chair: Because he is all there is. To be fair, you are understandably unclear about a number of issues, and the Scottish Government are even more vague. You are the only person who has done much work on this.

Lt Col Stuart Crawford: There are issues that I cannot be clear on because there is a vacuum.

Lindsay Roy: I think we should be clear that your contribution has been immensely helpful.

Jim McGovern: Not for me.

Q535 Chair: You have only heard the answers that both of our guests are unable to provide. This depends, as with so many things, on the Scottish Government getting off the fence and telling us the premises on which some of these things would be based. I want to pick up one element of this. At the moment we have the British Army. It has been suggested that having a separate Scotland would not diminish our Britishness. It seems to me that a substantial element of Britishness is actually the British Army and the pride that people take in the British armed forces. I find it difficult to see how breaking them up would enhance Britishness. Is that a reasonable point to take?

Lt Col Stuart Crawford: It is a very reasonable point. Clearly, if there was that sort of political break-up, the UK armed forces would lose a sizeable proportion of their current inventory and assets as a result. It would not enhance the rest of the UK’s military capability. It might also not enhance the reputation of the British armed forces. I don’t really know whether that would be the case.

Q536 Chair: One of the points I think Jim is unhappy about, and understandably so, is this question: under your scenario, how many of the existing regiments would remain? At the moment we have the 1st to 5th Battalions and the Royal Regiment of Scotland. I am not clear whether, under the force structure you are proposing for a separate Scotland, we would retain the Borderers, the Highland Fusiliers, the Black Watch, the Highlanders, the Argyll and Sutherland Highlanders and the Scots Guards inside a separate Scottish army. I know that you and a number of other commentators have said that that is the wrong way to look at it, and that you should be looking at what you want to do and then structuring accordingly, but we are where we are and people will want to know. Does a separate Scotland mean the abolition of the Black Watch?

Lt Col Stuart Crawford: No, not necessarily. I have drawn up a model that has six units, one of which is armoured. That leaves space for five infantry-based units, which fits in neatly with the current constitution of the Royal Regiment of Scotland. The answer is no, there is no need for the Black Watch to disappear. Some of those units in my model, which are currently regular battalions, might be territorial battalions.

Q537 Chair: Let me be clear about this. The five battalions would all retain their names under your scenario.

Lt Col Stuart Crawford: That is the way I would do it.

Q538 Chair: But they would not necessarily be full time; some might be territorials.

Lt Col Stuart Crawford: That is the case, yes.

Q539 Chair: And they might not retain their present numbers.

Lt Col Stuart Crawford: My preference would be for them to revert to their historical regimental entities.

Q540 Chair: When I said “numbers”, I meant numbers of personnel.

Lt Col Stuart Crawford: The same numbers of personnel in general terms, yes.

Q541 Chair: I want to clarify in terms of the Scots Guards, would they also be coming to—

Lt Col Stuart Crawford: Not in my model, no.

Q542 Chair: The Royal Scots Dragoon Guards.

Lt Col Stuart Crawford: Yes.

Q543 Chair: They would.

Lt Col Stuart Crawford: Yes.

Q544 Chair: But not with heavy tanks.
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**Lt Col Stuart Crawford:** Not with heavy tanks.

**Q545 Chair:** Do they have heavy tanks just now?

**Lt Col Stuart Crawford:** They have in Germany, yes, in Fallingbostel.

**Q546 Chair:** So they would be moved to light reconnaissance vehicles.

**Lt Col Stuart Crawford:** Absolutely, if they still exist, because obviously the current speculation is that they will be disbanded in situ.

**Q547 Chair:** We will cross that bridge later on. The other two are the two artillery regiments—the Highland Gunners and the Lowland Gunners. If I remember correctly, you would only retain the Highland Gunners.

**Lt Col Stuart Crawford:** Yes. The Lowland Gunners have been disbanded.

**Q548 Chair:** Have they? That must have happened since our briefing was drawn up.

**Lt Col Stuart Crawford:** Very recently.

**Q549 Chair:** I find it difficult to believe that our staff would have briefed us incorrectly, unless it took 20 years to come from the MOD, in which case it was out of date by the time it arrived here.

**Lt Col Stuart Crawford:** I think they laid up their colours a fortnight ago.

**Q550 Chair:** Goodness me; well, there you are. It just shows how quickly things move. I want to be clear about the question of choice. There are Fijians in the Scottish regiments, providing them with one of the best seven-a-side rugby teams available, obviously. There is a substantial complement of Fijians and other Commonwealth nationalities in these regiments. Would they transfer or would they have a choice? Have you thought that through?

**Lt Col Stuart Crawford:** I cannot see why they would not transfer.

**Q551 Chair:** I want to go back to a question we have discussed with the others and your estimate that 50% of people in the Scottish regiments might want to remain. I got the impression from some of our previous speakers that almost anybody with any ambition would not want to stay in the Scottish armed forces because they were essentially going to be a Home Guard, as we discussed earlier. There is your point that people who want adventure—and indeed a career—would remain in the British Army. Just as more people, as I understand it, from the Republic of Ireland joined the British armed forces than are in the Irish armed forces, your 50% scenario—even if it is the end-of-the-war elderly—is still over-optimistic. How would you respond to that?

**Lt Col Stuart Crawford:** You might be right; I just don’t know. I think there is work to be done in asking Scottish servicemen and women in the UK armed services whether they would transfer on independence. I do not think that work has been done.

**Q552 Chair:** We will want to pick that up. I want to come back to the question of conscription. The nationalists have said on a number of occasions that they want to model themselves on, and to be much more like, the Scandinavians, who do have conscription. I want to press you a little on that. Would your model with more emphasis on reservists be more attractive with conscription? Presumably it would be less costly. If you have limited functions with the Home Guard aspect of it, is that much more cost-effectively done with a bit of conscription and a higher proportion of reservists, as you say?

**Lt Col Stuart Crawford:** Undoubtedly it would be less expensive, but whether conscription is a good thing per se is another matter altogether. From the armed forces’ point of view, conscription is not seen as a good thing. They would rather have volunteers.

**Q553 Chair:** Given that Scots throughout the armed forces would be given the opportunity to fight and potentially to die for Scotland, would it not appear reasonable that they should actually get a vote in the referendum?

**Lt Col Stuart Crawford:** That is an argument that I have heard.

**Q554 Chair:** It is an argument I have just made.

**Lt Col Stuart Crawford:** Personally, yes, but I am aware from my military career that voting in UK elections was virtually impossible until comparatively recently. It would need a sea change in attitude within the military as a whole.

**Q555 Chair:** If we will the ends, we would have then to will the means. It just struck me that it seemed bizarre that Fijians in Scottish regiments based in Germany who might be asked to die for Scotland would be able to vote in the referendum?

**Lt Col Stuart Crawford:** That is fair enough. I would be in favour of military personnel serving abroad in Scottish regiments having a vote.

**Q556 Chair:** Not just in Scottish regiments, surely. Presumably every Scot would be given the chance to relocate to Scottish forces. There will be Scots in engineering.

**Lt Col Stuart Crawford:** Very much so, yes, and in the other armed services.

**Q557 Chair:** So they also presumably would—

**Lt Col Stuart Crawford:** Yes.

**Chair:** Could we turn to the question of the navy?

**Q558 Mr Reid:** Could you outline for us what you think a Scottish navy would comprise of in terms of ships?

**Lt Col Stuart Crawford:** Yes. Again, in very general terms, I have drawn up a model. Obviously I am not a naval officer, but I have taken advice. It comes up with a navy of about 20 to 25 ships overall, comprising maybe two frigates, six to eight offshore patrol vessels, half a dozen mine countermeasure...
vessels and various other smaller minor vessels, which I have not gone into any detail on. Do you want me to compare that? That compares with the Danish navy, which has 70 vessels—I think they call it ships, boats and vessels—and the Irish naval service, which has eight ships plus one or two smaller craft, so it is somewhere in between.

Q559 Mr Reid: In terms of naval bases, you have suggested that Scotland needs two. Can you perhaps explain why?

Lt Col Stuart Crawford: From a purely military perspective, having all your eggs in one basket in terms of military assets is probably unwise. In addition to the established UK naval base in Faslane, another at Rosyth would be perhaps appropriate.

Q560 Mr Reid: Have you worked out the cost of reinstating Rosyth?

Lt Col Stuart Crawford: No, I have not.

Q561 Mr Reid: Why did you suggest that Scotland does not need any submarines?

Lt Col Stuart Crawford: Mainly because of the expense. Again, this comes from advice from naval colleagues. Had there been conventional diesel-powered submarines in the Royal Navy inventory, perhaps the cost of that would have been more acceptable, but the advice I got was that any thought of having an Astute class nuclear-powered submarine, for example, would be just too expensive for a small nation like Scotland.

Q562 Mr Reid: Even for a diesel-powered one.

Lt Col Stuart Crawford: A diesel-powered one might be feasible, yes, but anything that is nuclear powered is not.

Q563 Chair: The British Navy does not have any diesel-powered submarines, does it?

Lt Col Stuart Crawford: It has no diesel-powered submarines left, no.

Q564 Mr Reid: If an independent Scottish navy wanted to acquire diesel-powered submarines, would it be feasible for it to set up its own industry to build them at the shipyards, or would it have to buy them from elsewhere?

Lt Col Stuart Crawford: I would suspect that they would be sourced from elsewhere.

Q565 Mr Reid: What role would you see the Scottish navy fulfilling?

Lt Col Stuart Crawford: Policing sea and trade routes is one, as is the defence and protection of oil and gas installations in the North sea and off Shetland, if Shetland is indeed part of an independent Scotland. What else have we got? There are mine clearance purposes and so on and so forth.

Q566 Mr Reid: Would you see the role of the Scottish navy as purely defensive within Scottish territorial waters, or do you see any major role for it?

Lt Col Stuart Crawford: My model has an element built in that would allow for some sort of contribution to extra-territorial military operations, if the Government of the day chose to do that, but it would not be a substantial contribution.

Q567 Mr Reid: Have you done any calculations on the naval personnel and onshore personnel that would be required to support the Scottish navy in comparison with the number of jobs the Royal Navy has in Scotland?

Lt Col Stuart Crawford: No, I have not. I have a figure of about 1,500 to 2,000 personnel for the Scottish navy, but I have not compared that with the current numbers of naval personnel in Scotland.

Q568 Mr Reid: What about staff in the dockyards?

Lt Col Stuart Crawford: Nor have I done any work on that.

Q569 Iain McKenzie: I want to go back to submarines. We took evidence earlier that suggested to us that submarines would be ideal for Scotland to protect its shores, especially in the oil industry. Reference was made to the South African navy, which puts its submarine fleet to good use in that respect instead of surface vessels. You suggested that, obviously, they would not be nuclear but diesel-powered, off-the-shelf submarines. They tend to source theirs from Germany, which produces these off-the-shelf diesel submarines. Again, would that be an option for Scotland? Would that indicate a low-spec, low-tech arm of the navy?

Lt Col Stuart Crawford: Yes. I do not think there is anything fundamental that would stop a Scottish navy having conventionally powered submarines of that nature, if the Government of the day wished to make the expenditure on them. All I am saying is that I have not included them in my model.

Q570 Chair: You indicated that you did not think it was helpful to have just one naval base in Faslane on the basis of having all your eggs in one basket. I would have thought a bigger argument against Faslane is that it is on the wrong side. If you had to have one base, you would want to have it at Rosyth anyway. Presumably most of your ships in those circumstances would be sailing out of Rosyth, would they not, whereas Faslane was essentially a residual base.

Lt Col Stuart Crawford: Again, I am not a naval officer, and I am definitely not a naval expert. Scotland looks both ways. It looks to Ireland, the Atlantic and the Americas, with the trading routes across there, and it also looks to the east. I think there is an equal requirement for the ability to deploy naval forces from both sides of the country.

Q571 Chair: Surely the sort of scenario that we were discussing earlier on about possible threats emphasised the North sea, the Arctic and so on. We have never touched on Scotland as an Atlantic power in a sense.

Lt Col Stuart Crawford: No.

Q572 Chair: Therefore, we have not looked at that westward-facing aspect at all. Am I missing something here?
Lt Col Stuart Crawford: No, because I have not mentioned it, and therefore the omission is mine, if there is an omission there. It just seems to me sensible to make the best use of an existing naval base on the Clyde.

Q573 Chair: I understand that. You have got it, and after separation you are going to inherit it, so you might as well use it because you are going to be billed for it in terms of the allocation of resources. I just wanted to be clear that, in a sense, Rosyth would be the No. 1 base and Faslane would possibly be residual.
Lt Col Stuart Crawford: That could be the case in time, yes. A certain amount of work has to be carried out at both naval bases, as I understand it, but Rosyth needs to be reinstated as a naval base because it is not a naval base any more, and I do not think it has been a naval base since the 1990s.

Q574 Chair: Do we have any costings for what that might be potentially?
Lt Col Stuart Crawford: I am looking at the costings man.
Richard Marsh: I do not have them on me right now. We did not put them in the formal report, but we did have a little think about it.

Q575 Chair: Is it possible that you could let us have that?
Richard Marsh: Yes.

Q576 Chair: If a Scottish Government were strapped for cash and wanted to spend money on something else, would operating the Scottish navy out of a single base at Faslane be feasible?
Lt Col Stuart Crawford: Of course it would be feasible.

Q577 Chair: It is undesirable for reasons you have indicated, but it is doable. It just seems to me that reinstating Rosyth is, as it were, a policy option that people might decide not to proceed with in the absence of any immediate threat, because they might have other things that they want to spend the money on.
Lt Col Stuart Crawford: Yes; agreed.

Q578 Mr Reid: I want to pick up a point that the Chair alluded to earlier. Most of the assets that Scotland would want to defend would be on the east coast—the fishing grounds and the oil rigs. If your only naval base is at Faslane on the west, obviously it is a long journey round the Mull of Kintyre and all the way round Scotland.
Lt Col Stuart Crawford: Absolutely.

Q579 Mr Reid: Would you therefore need ships permanently on patrol in the North sea to counteract the fact that it would take an awfully long time to get there from their home port?
Lt Col Stuart Crawford: Ideally, yes. This applies to the UK naval presence at the moment. When the Russian aircraft carrier recently appeared in the Moray Firth, the naval asset had to come from Portsmouth. I think your answer is absolutely right; yes, it would be helpful to have something closer to hand.

Q580 Mr Reid: Take the scenario that there is a terrorist incident on an oil rig.
Lt Col Stuart Crawford: That would probably be a special forces job, I would think.

Q581 Mr Reid: Do you have any idea how long it would take to get a ship there from Faslane?
Lt Col Stuart Crawford: It would take longer than it would from Rosyth—definitely.

Q582 Chair: That is why we brought you here—to give us these sorts of insights.
Lt Col Stuart Crawford: I think that would be special forces. We have not talked about special forces and, again, I am not the expert.
Chair: We are proposing to come on to that in a moment.

Q583 Mr Reid: This is probably unfair because you are not a naval officer but an Army officer, but how would the navy operate? Would it mean that ships would be permanently anchored in the North sea and sailing up and down?
Lt Col Stuart Crawford: They might be permanently based in Rosyth, for example, and have patrol patterns that saw them going into the North, doing a patrol and coming back as much as in conventional naval operations, but if they do not have a global purpose, their time at sea would probably be less.

Q584 Chair: If you are guarding against Arctic difficulties, would it not make sense to reinstate something at Scapa Flow or somewhere like that?
Lt Col Stuart Crawford: The yet-to-be-published and still-being-worked-on paper does go into the number of naval bases like Loch Ewe, Scapa Flow and Moray Firth that have historically been used for a British naval presence. So the answer is yes, but I do not think there is anything left at Scapa Flow.

Q585 Chair: Is there not?
Lt Col Stuart Crawford: I do not think so.

Q586 Chair: I want to come back to the question of the number of ships. The number of ships and the way in which they are divided up has all got to be dependent upon the break-up discussions and haggling. There is no new build envisaged.
Lt Col Stuart Crawford: It is not built into the model with ships. There is no new build envisaged in that, but obviously there would have to be new build in the fullness of time, and Richard has built that into his costings.

Q587 Chair: There would have to be new purchase. In a sense I represent the Govan shipyards. They are not going to hang about waiting until a Scottish navy decides, 20 years down the line, to build some minesweepers. They will be shut long before then. We will come on to that in a moment, but I just wanted to be clear about that.
Lt Col Stuart Crawford: Yes.
Q588 Chair: Am I right in thinking that the first option, if you had more money to spend on capital items for a Scottish navy, would be submarines, or is that something that you want to seek other advice on?
 Lt Col Stuart Crawford: I think I would need to take advice on that because it would depend very much on what the foreign and defence policy priorities of the Government of the day would be. I have speculated enough.
 Chair: We do not know that, and I do not want to get you rebuked by my colleague for not being able to tell us the unknowable.

Q589 Iain McKenzie: You specified the number of vessels. Is that the optimum number to defend Scotland, or would there be a number of ships below that that could accommodate the defence of Scotland?
 Lt Col Stuart Crawford: I have deliberately designed the model to be at the modest end of the spectrum. I think that going below that would not be wise.

Q590 Iain McKenzie: Going below that would seriously question the ability to defend.
 Lt Col Stuart Crawford: I think so, yes.

Q591 Mr Reid: I want to pick up on something. You said that a terrorist attack on an oil rig would be a special forces job.
 Lt Col Stuart Crawford: Yes.

Q592 Mr Reid: Would Scotland have the resources and numbers to have special forces in the right numbers to be able to counteract that sort of attack?
 Lt Col Stuart Crawford: I think the answer is yes. Again, I am not the expert in this. It was eloquently covered at the Edinburgh conference by my good friend and colleague Clive Fairweather, who is ex-Special Air Services, and has considerable knowledge of special forces operations and also cyber warfare. He would be the man to speak to, but I can tell you that his script—because I have a copy of his script—said that, as a minimum, an independent Scotland would need a special forces squadron of in excess of 75 personnel, which would take up to three years to set up, and, to quote Clive Fairweather, might have to go “as far as the Foreign Legion” to obtain suitable recruits.

Q593 Mr Reid: How does that 75 compare with the number of special forces that the UK has at present?
 Lt Col Stuart Crawford: There are two special forces regiments—one regular and one TA. It would be about an eighth of the size.

Q594 Chair: Since we have touched on special forces, maybe we can deal with that now. I am intrigued by the idea that we will have to approach the Foreign Legion.
 Lt Col Stuart Crawford: I am quoting Clive Fairweather.

Q595 Chair: We have a combination of Dad’s Army and the Foreign Legion.
 Lt Col Stuart Crawford: I am quoting Clive.

Q596 David Mowat: On special forces, what do you think Scotland would end up doing under your model?
 Lt Col Stuart Crawford: I think it would end up setting up and training its own special forces squadrons of somewhere between 75 and 100 trained personnel, whose primary purpose would be protection of the oil rigs and protection against other terrorists.

Q597 David Mowat: Is that similar to how Norway protects its oil rigs?
 Lt Col Stuart Crawford: I do not know the answer to that question.

Q598 David Mowat: But that would give you an idea of how big it would need to be if you knew how big Norway’s was.
 Lt Col Stuart Crawford: I do not know the answer to that.

Q599 David Mowat: So your model has 100 special forces in it.
 Lt Col Stuart Crawford: Yes. I should say that it is still a work in progress.

Q600 David Mowat: That would be an SAS or SBS type of thing.
 Lt Col Stuart Crawford: An SAS-SBS type of organisation.

Q601 David Mowat: The question that arises with a thing of that size is that you must lose a lot of economy of scale in the training that you would need.
 Lt Col Stuart Crawford: Yes, but the training would not necessarily have to take place in Scotland and be exclusive to any other organisation. Quite a lot of joint training goes on in military circles. It would not be unusual or unheard of for much of the training of Scotland’s armed services, including special forces, to be done elsewhere, if the facilities in the country don’t exist.

Q602 David Mowat: Are you implying it could be like a company of Hereford, so there could just be a Scottish company?
 Lt Col Stuart Crawford: Exactly; yes, it could.

Q603 Chair: Let me be clear on that. We are talking about Scottish special forces training elsewhere when Scotland has potentially just walked out of NATO and thrown UK nuclear weapons out of Scotland without giving the rest of the UK time to build an alternative. Do you think that is likely?
 Lt Col Stuart Crawford: It is not likely, but that is the way that one would have to train one’s special forces initially.

Q604 David Mowat: It is like an outsourcing model; it is effectively that, being a friendly country.
 Lt Col Stuart Crawford: It is an outsourcing model, but they would obviously be under the command and direction of the Government.

Q605 David Mowat: You could extend that principle to nearly everything we are talking about today.
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Lt Col Stuart Crawford: Yes, and I have done.

Q606 David Mowat: You could literally say to the UK residual, “We will pay you 2% of our GDP to defend us.”

Lt Col Stuart Crawford: That is the other thing, and there has been debate about it, but the thing that was difficult with the model that the Scottish National party was suggesting—devo-max or indy-light—is that Scotland would have devolved responsibility for everything except foreign and defence policy, and would buy bits of that as it required it. But there would be conflicts of interest when it came to deployment of forces that included Scots forces, if the Scottish Government had a—

Q607 David Mowat: Also, if you have an outsourcing model like you have described and you are buying in things, you cannot do that if you are not in NATO. That would beggar belief, wouldn’t it?

Lt Col Stuart Crawford: I think it would be unusual, yes.

Q608 David Mowat: Well, it just could not happen.

Lt Col Stuart Crawford: It might not make much sense.

Q609 David Mowat: Do you think that model is something they might be thinking of, though?

Lt Col Stuart Crawford: I don’t know what they are thinking of.

Q610 David Mowat: If they did that, it takes away the whole diseconomy of scale stuff, doesn’t it, that otherwise Scotland is going to have in spades with the sort of proposals that you are putting forward?

Lt Col Stuart Crawford: Yes, that would be the case, but I don’t know what the plans are.

Chair: Nobody knows, you see. That is the difficulty we have at the moment.

Q611 David Mowat: The part of defence spending that is actually increasing in the UK is the whole area around terrorism, cyber defence, GCHQ and all that stuff. How do you see Scotland handling that?

Lt Col Stuart Crawford: With great difficulty, because to have an effective cyber warfare defence, one has to look at replicating what the UK has at the moment at GCHQ.

Q612 David Mowat: It would take a bit to build GCHQ in Scotland, wouldn’t it?

Lt Col Stuart Crawford: Absolutely. Again I would say, without dropping him in it, that Clive Fairweather is the man who could wax eloquent on these particular topics. I am sure that if time and space permitted—

Chair: He might very well be a future victim.

Lt Col Stuart Crawford: I think he would be quite a willing victim.

Q613 David Mowat: I am thinking out loud but, presumably, whatever it is covertly that GCHQ does inside the UK, it currently does for Scotland as well.

Lt Col Stuart Crawford: Absolutely, yes.

Q614 David Mowat: The question would arise, therefore, of whether Scotland wishes it no longer to do that for it, or whether it would pay for whatever it is that it does and pay for the intelligence.

Lt Col Stuart Crawford: I think an independent Scotland would be very keen to continue that facility.

Q615 Chair: But why should the rest of the UK wish to offer that facility to a separate Scotland that has just withdrawn from NATO and thrown out nuclear weapons?

David Mowat: I guess they would pay.

Lt Col Stuart Crawford: I don’t know, but I suppose one could see a scenario where you say, “You keep our Trident up there and we will give you your intelligence.”

Q616 David Mowat: Yes, or, “You will pay for it in some way.”

Lt Col Stuart Crawford: Yes.

Chair: Could we touch on the question of the air force?

Q617 Jim McGovern: The air force is a particular interest of mine. My father served in the RAF and my mother was a WAAF. My father-in-law was a rear gunner with Bomber Command during the second world war. Going back a wee bit about people wishing to join up, I think I need to say that the majority of people I know who wish to join the armed forces want to join a British armed forces rather than a Scottish armed forces. How would you see a Scottish air force and how strong would that be? How many aeroplanes and helicopters would there be?

Lt Col Stuart Crawford: That is a very good question. Given the tasks that I have suggested a Scottish air force might wish to carry out, such as defence of airspace, maritime reconnaissance, ground support and so on, I have come up with a model, as I have already mentioned, that has 18 advanced trainers—Hawks—which have a joint operational capability; three or four maritime reconnaissance aircraft, of which there are none in Scotland at the moment; six to eight Hercules transport aircraft, of which there are none in Scotland at the moment; and six Sea King aircraft helicopters, of which there might be two in Scotland at the moment. The answer is that there are not the appropriate assets in Scotland at the moment to constitute an independent Scottish air force.

Q618 Jim McGovern: In terms of the Scottish air force, it would actually increase if Scotland was separated from the rest of the UK.

Lt Col Stuart Crawford: Would it increase overall? I have also suggested that we would have no requirement for the Typhoon in Scotland that is up in Lossiemouth at the moment.

Q619 Jim McGovern: Does what you have outlined include combat aircraft?

Lt Col Stuart Crawford: That is combat aircraft, yes.
Q620 Jim McGovern: For clarification, there would be a greater air force in Scotland post-separation than there is now.
Lt Col Stuart Crawford: It would be a larger air force in terms of aircraft numbers, but the types of aircraft would be radically different.

Q621 Jim McGovern: On the subject of fast jets—and maybe this is a question for Richard rather than you, Stuart—is your reason for not including them based solely on financial reasons?
Lt Col Stuart Crawford: I will take the first part of the question.
Jim McGovern: Give Richard a chance.
Richard Marsh: It is probably a slightly unfair question. My understanding is that with the way the model has been put together—and I keep coming back to what Stuart said at the very beginning—this is what Scotland would need to defend itself. My understanding is that the Hawks are in there because that is what Scotland would need to defend itself. With regard to anything more, looking at fast jets—I think we mentioned Tornados and so on—it might not necessarily be what Scotland would absolutely need, though it might want it. Going through the figures, the fast jets are certainly more expensive to maintain than the Hawks, but that is not really why they were chosen.
Lt Col Stuart Crawford: From an operating point of view, I do not see how a small country like Scotland with limited military aspirations—I have assumed that, in the absence of foreign policy—would require Typhoon jets unless it wanted to make a specific contribution to some wider alliance, in which case the Government of the day could choose to go down that path. I do not think an independent Scotland needs aircraft like the Typhoon, which is hugely sophisticated and much more expensive than the Hawk aircraft.

Q622 Jim McGovern: What would a Scottish air force do if Russian military aircraft continued their current practice of coming up to the edge of Scottish airspace?
Lt Col Stuart Crawford: Intercept, shadow and warn away.

Q623 Jim McGovern: Intercept?
Lt Col Stuart Crawford: Intercept slower.

Q624 Jim McGovern: Does that mean shoot them down?
Lt Col Stuart Crawford: No. It would be as current RAF practice is at the moment. In days gone by, it was common practice for the Soviet Union and some of the Warsaw Pact allies to fly aircraft towards British airspace to see how quickly the Royal Air Force would react. It was part of that cat-and-mouse game. There was no malicious intent. Exactly the same sort of thing would happen with an independent Scottish air force should the same sort of scenario develop.

Q625 Chair: Surely all the Russians need to do is send something that is faster than a Hawk and the Scottish jets just cannot keep up.
Lt Col Stuart Crawford: That could be the case, yes, but they tend to send over reconnaissance aircraft like the turboprop Bear and whatever its modern equivalent is. It would not necessarily be the case that they would send over their fastest supersonic aircraft.

Q626 Chair: No, but if they wanted to play cat and mouse, the best way is to send up something that is quicker and then move about. The Scottish air force would be in pandemonium.
Lt Col Stuart Crawford: That would be correct.

Q627 Chair: They would have absolutely no idea whatsoever.
Lt Col Stuart Crawford: Yes.

Q628 Chair: Unless of course the regions wanted to co-operate, but that would depend upon whether Scotland was in NATO.
Lt Col Stuart Crawford: Yes.

Q629 Chair: Presumably the RAF would not intervene in any of that.
Lt Col Stuart Crawford: Unless, of course, the rest of the UK wants to feel secure about its airspace being penetrated from the north.

Q630 Chair: It would not be its airspace; it would be Scottish airspace.
Lt Col Stuart Crawford: Yes, but it would very quickly become UK airspace.

Q631 Chair: In which case it could intercept. Fast interceptors could be hovering at the last turn above Carlisle—I think the expression is “loitering”. They could be loitering above Carlisle waiting for the Russians to dodge their way past the sleepy Hawks.
Lt Col Stuart Crawford: Yes, and come straight down the M74.

Q632 Chair: Absolutely. Now you are taking this too far. It would be entirely feasible for the RAF to maintain security over the rest of the UK’s airspace by having jets up to Carlisle and then just leaving the rest of Scotland exposed.
Lt Col Stuart Crawford: It would be, but it would not keep the intruders off UK airspace, because you would basically be intercepting them on the border.

Q633 Chair: What is the border of Scottish airspace when you meet England? Surely it is directly above the plane above the border? In those circumstances, the RAF would be intercepting them at the border of UK airspace.
Lt Col Stuart Crawford: Unless it had permission to cross.

Q634 Chair: What is the border of Scottish airspace? Surely it is directly above the plane above the border? In those circumstances, the RAF would be intercepting them at the border of UK airspace.
Lt Col Stuart Crawford: Unless it had permission to cross.

Q635 Jim McGovern: Chair, you have touched upon my next question. If Scotland was outside NATO, would it need to negotiate an agreement with England or other nations for air protection?
Lt Col Stuart Crawford: Undoubtedly, yes.
**Q635 Jim McGovern:** That was good. That was a definitive answer.

**Lt Col Stuart Crawford:** I am trying not to be speculative.

**Q636 Jim McGovern:** If there is a Scottish air force, would it continue to rely on the RAF in the short and long term, and how long would this transition take?

**Lt Col Stuart Crawford:** Transition from the Royal Air Force being based in Scottish air bases to the Scottish air force being based in Scottish air bases—I do not know the answer to that. It would not be a short-term thing; it would probably be a period of years.

**Q637 Jim McGovern:** Does your model take into account the cost of finding maritime reconnaissance capability to replace the cancelled Nimrods that were to be based at RAF Leuchars?

**Lt Col Stuart Crawford:** The report is quite clear that there is no maritime reconnaissance capability in Scotland. A maritime reconnaissance capability would have to be sourced from outside Scotland, purchasing off the shelf. You have not seen my paper because it is not finished yet, but I have suggested something like the P-3 Orion, which is a bit long in the tooth now. I think the Spanish have an equivalent aircraft. They would have to be purchased.

**Q638 Jim McGovern:** Do you envisage it being from England?

**Lt Col Stuart Crawford:** England would be the obvious place to go initially.

**Q639 Pamela Nash:** First of all, apologies that I was not here at the beginning. I have the best excuse ever—I was hosting the Dalai Lama—but apologies that I couldn’t be here.

**Chair:** I hate namedroppers, as I said to the Queen last week.

**Pamela Nash:** I was going to say that the Chair is one of the worst for that. I want to be clear. The language around the equipment that we have in Scotland at the moment in England and Wales is quite dangerous. As part of the UK, doesn’t Scotland have access to all equipment that we have in our armed forces within the UK?

**Lt Col Stuart Crawford:** As part of the UK, yes, obviously. Scotland as part of the UK is defended by the UK’s defence inventory. Therefore, if there was a threat to Scotland as part of the UK, the UK defence forces would be the appropriate response to that.

**Q640 Pamela Nash:** Putting it simply for the person reading this in the newspapers tomorrow, in a Scotland that has left the UK, if we did not have Typhoon jets and we did not have the level of equipment we have at the moment, whether that is based in England or in Scotland, aren’t the people of Scotland going to be in more danger and more exposed to international threats?

**Lt Col Stuart Crawford:** Not necessarily, because the model that I have come up with covers all those threats, as far as I can see, but it is not to the level of sophistication and quantity of numbers that are currently in the UK.

**Q641 Pamela Nash:** I apologise if you covered this before I came in, but I take it that that is on current threats. How do you assess what the threats would be to a Scotland that has left the United Kingdom?

**Lt Col Stuart Crawford:** It is almost impossible to say, so one can take only an educated best guess at what that might be. Arguably, you can say the same about the UK at the moment in terms of territorial defence of the UK land mass. The preamble to the 2010 Strategic Defence and Security Review acknowledges that.

**Pamela Nash:** I am certainly not supporting that either.

**Richard Marsh:** I would like to add to what Stuart has said. From the way he has put the model together, part of the reason why there is a more modest set of equipment in the army is because he was envisaging it being a regional power, so there are a lot of things that simply would not need to be done, and would not be factored into the defence of Scotland.

**Lt Col Stuart Crawford:** I would see an independent Scotland as having a regional focus for its defence and foreign policy, rather than the global focus that the UK has at the moment, arguably.

**Q642 Pamela Nash:** Surely, though, that is for overseas operations. It is not about Scotland being attacked, which might seem unlikely in the current global climate, although history tells us that that is not always foreseeable.

**Lt Col Stuart Crawford:** An independent Scotland would not have the military facilities to contribute to overseas expeditions that the UK has. That is quite clear.

**Chair:** A vote in the House is due in a moment, and David will be unable to come back afterwards because of another commitment. We will therefore let him come in with his point, and then the rest of us can come back after the vote.

**Q643 David Mowat:** It seems to me that the key question in all this discussion is the number is in terms of percentage of GDP, because that drives everything. You have said 1.2%, whereas the UK right now is saying 2.7% declining to 2.2%, or something like that. You are assuming it is half.

**Lt Col Stuart Crawford:** Yes.

**Q644 David Mowat:** Why have you done that? That drives everything that we are talking about, really.

**Richard Marsh:** I think it is the other way round. What we have done is say, “What do you need to defend yourself and how much would that cost?” We get the number coming out that it is about 1.2% of GDP.

**Lt Col Stuart Crawford:** If you want to do any more than that, that is an option.

**Q645 David Mowat:** Let me challenge you a little bit on that, because that depends on how you choose to defend yourself and what you envisage that “defending yourself” means. To some people...
“defending yourself” might mean, “We are going to be like Ireland. We are going to be neutral, and if something really bad happens we will just assume that the rest of the world will fix it.” That is one defence policy. Another defence policy is, “We are going to punch above our weight”, and all that that means, which is arguably what the UK tries to do. In between that you try and get to the number. That is a judgment. A future Scottish Government could take any of those positions.

**Richard Marsh:** They could. We had a slightly longer list of countries and have presented a summary of them. You are absolutely right that there is a whole host of ways in which you could approach this and say, “I want the defence of my country to look as follows for the following reasons,” and they can be very different for different countries. At the conference that Stuart referenced, we were thinking in the second half that what you need to defend Scotland is not the way you would go about it. You very much need to prioritise the very strong presence of the defence industries in Scotland and think about how you hold on to those, and then think about what you could extract from that to defend Scotland. You would get very different models of how you would defend Scotland if you went down each path. What I am suggesting is that how much that accounts for your country’s GDP is just a product of that.

**Q647 David Mowat:** But you have taken a number that is lower than, Norway’s for example, have you not?

**Lt Col Stuart Crawford:** Yes, but the number came out of my model, not the other way round. I drew up the model and then asked Richard to cost it. The major flaw in my previous paper was that there were no costings.

**Q647 David Mowat:** The Scottish Government could say, “Actually, in our view we do need submarines for all sorts of reasons,” and therefore you would put those into your model and the numbers would be are different.

**Lt Col Stuart Crawford:** Yes, and those views have been made to me already by various people.

**Q648 David Mowat:** Similarly, they might take the view, “We need more special forces because we are going to be good at that. We don’t need 120; we need 300 because that is what we wish to do.”

**Lt Col Stuart Crawford:** Yes.

**Q649 David Mowat:** It is quite fluid in that respect.

**Lt Col Stuart Crawford:** Yes.

**Chair:** To be fair, you did outline earlier that this was the minimalist position and that you then could have a number of policy options that you add on. It becomes à la carte. You have to have a core, but then you have a à la carte to add on. That seems a perfectly reasonable perspective.

**Q650 David Mowat:** Yes, it is. The other thing that strikes me about this is that even if Scotland were to spend exactly the same percentage as UK residual, as we now call it, there would be an overall loss of capability because of the fact that you are losing economies of scale—you have diseconomies of scale.

**Lt Col Stuart Crawford:** Yes, and losing a level of sophistication.

**Q651 David Mowat:** Even if we were to be joined at the hip—RUK and Scotland—and to do everything together, the very fact that you go down the route you have postulated, even if the spending was identical, would mean an overall loss of capability because of the diseconomies of scale.

**Lt Col Stuart Crawford:** I think so, yes.

**Q652 Chair:** I want to turn back to a couple of questions about the air force. I can understand the point about 18 Hawk jets and having a certain number always in the air. I understand the point about trainers to train the people flying the Hawk jets. However, I did not quite understand the six to eight Hercules. They are presumably to move people about Scotland.

**Lt Col Stuart Crawford:** Yes. The Hercules is a tactical lift aircraft that can move troops or be part of a military expedition abroad and so on. It is just part of the lift capability by air for military purposes.

**Q653 Chair:** But do you need that in Scotland when you have a perfectly good rail service? If you are having things abroad that are done in conjunction with others, presumably somebody else supplies that, because you will be going abroad only as part of a coalition of the willing? I would have thought that the Hercules, under a home defence or Home Guard model, would spend most of the time just sitting idle.

**Lt Col Stuart Crawford:** Possibly, but it is a capability that armed forces would be very keen to have. It would be very keen to lift itself.

**Q654 Chair:** Where to though?

**Lt Col Stuart Crawford:** Wherever it was asked to go by the Government.

**Q655 Chair:** Do you mean round about Scotland?

**Lt Col Stuart Crawford:** Absolutely.

**Q656 Chair:** Like a bus.

**Lt Col Stuart Crawford:** It has applications for special forces; all sorts of things.

**Q657 Chair:** Where are these special forces going by Hercules then?

**Lt Col Stuart Crawford:** Wherever they are required.

**Q658 Chair:** Would you need six or eight of them?

**Lt Col Stuart Crawford:** That is the figure I have used. You could argue that there is a requirement for fewer.

**Q659 Chair:** I do not have a view. I do not have an understanding. I am just trying to pick your brains, as it were.

**Lt Col Stuart Crawford:** I am thinking in terms of troop lift. Whether it is for overseas expeditions, contributions to overseas alliances or military
operations in conjunction with others, it would be a useful asset to have.

**Q660 Chair:** It is a bit like the question of the six Chinooks. I am puzzled about why we would need that level of lift capacity for home defence—for a Home Guard force. I can see that if you want to have expeditionary forces, they would be valuable, but I would have thought that in those circumstances the bigger forces would have surplus capacity and that they would be working harder. There would be an under-usage of those, which would mean, to come to David’s point, that you could either save the money on that, or spend it on something else that might be a higher priority. That is my question.

**Lt Col Stuart Crawford:** You still have to build in operational availability. Of the six to eight Hercules, maybe only six would be operating. There are training purposes and so on and so forth, but I take your point absolutely.

**Q661 Chair:** I want to clarify something about the Scandinavian countries with which we are often compared, or with which the SNP wants to link us. Who else is of a comparable size? There is Norway, Belgium, Sweden and Denmark. Do they have fast jet capacity?

**Lt Col Stuart Crawford:** Yes.

**Q662 Chair:** Do all of them?

**Lt Col Stuart Crawford:** Yes.

**Q663 Chair:** If you have decided that Scotland does not need that, then why does Belgium, for example, need fast jet capacity?

**Lt Col Stuart Crawford:** I do not know the answer to that. I assume they will have been through the iterative process of saying, “What do we want our armed forces to do? What do we need to do these things?” We cannot just take the Danish model, as many commentators attempt to do, and say that because the Danish have four squadrons of F16 jets—or whatever it is—we should have that as well because we have the same population size. Their political stance on a whole host of issues is likely to be completely different. Their naval requirement, for example, given their huge coastline, all the fjords and so on, and their proximity to the Baltic, is likely to be completely different from the naval requirement of the UK.

**Q664 David Mowat:** I want to follow up on that. On the face of it, though, it is hard to explain why you would not need fast jets in Scotland, which has a lot more northern airspace compared with Belgium. It would seem an odd decision that Belgium has gone through an iterative process, as you describe it, but Scotland has come to a different answer.

**Lt Col Stuart Crawford:** The Belgian fast jets may be part of their contribution to NATO; I don’t know.

**Q665 Chair:** There is the point that we touched on about Scottish and English airspace being the border. Presumably Belgium has that problem, so its fast jets are going to fly around in a circle without going over somebody else’s border. Any Russian that reaches them has already had to come over somebody else’s airspace.

**Lt Col Stuart Crawford:** Yes. Sitting suspended for a Division in the House. On resuming——

**Q666 Chair:** I want to continue with the question of the air force. There has been discussion about the sharing of bases. Have you assumed that there will be any sharing of bases? Do you see any arguments for or against that?

**Lt Col Stuart Crawford:** I have not assumed that there will be sharing of bases, but I think it is a perfectly feasible option that the Royal Air Force shares bases with a Scottish air force.

**Q667 Chair:** How would the sharing of bases operate? We heard from one of the Defence Ministers last week that they were not willing to undertake any sharing that meant that anybody else would have a veto. If the rest of the UK wanted to send planes to do something from an airfield in Scotland and the Scottish Government could say no, they would not want that constraint.

**Lt Col Stuart Crawford:** No; that would be impossible.

**Q668 Chair:** How would that be overcome? Would it be sovereign UK territory within Scotland?

**Lt Col Stuart Crawford:** That is a possibility, as in Dhekelia or wherever it is in Cyprus where I served—I forget where I was. Yes, that would be an option. There seems to be a misplaced assumption that, if Scotland becomes an independent country, the Government of that country will be formed by the Scottish National party. That may well not be the case at all. If Scotland becomes an independent country, its Government could be formed from any of the political parties. Therefore, the whole tenor of force sharing, military sharing and training might change dramatically.

**Q669 Chair:** Surely that would be only in the short term. Any prudent UK Government would have to assume whatever the worst possible option was. The Communists or the Scottish Socialist party could take over, and then what would they decide?

**Lt Col Stuart Crawford:** It is impossible.

**Q670 Chair:** It is the only sensible way to proceed, so if there was any sharing of bases, there would have to be a guarantee of complete autonomy.

**Lt Col Stuart Crawford:** There would have to be a guarantee, and it would have to be written into whatever treaty arrangement was agreed between the two countries. In a hypothetical example, if the RAF chose to scramble 18 Typhoon jets from Lossiemouth, the Scottish Government would have no locus in being able to say, “No, you can’t send them through our airspace,” or, “No, you can’t use them for that purpose.” You are quite right that otherwise it would be useless.
Q671 Iain McKenzie: You have said here that Scotland might be required to buy two or three Lockheed P-3s for maritime patrol aircraft.
Lt Col Stuart Crawford: Yes.

Q672 Iain McKenzie: You go on to say “or unmanned aerial vehicles”. What do you mean by “unmanned”? Are those the type of vehicles we see used in Afghanistan and so on?
Lt Col Stuart Crawford: Yes.

Q673 Iain McKenzie: Do they not have great limitations placed upon them?
Lt Col Stuart Crawford: They have certain limitations, but as they become increasingly sophisticated, their utility is expanding exponentially. The US are now training more drone pilots than they are actual pilots who sit in the cockpits of manned aircraft.

Q674 Iain McKenzie: Do you consider the purchase of these to be a necessity, or an and/or?
Lt Col Stuart Crawford: I do not see it as a necessity. I see it as a becoming an option that would be available either straight away or, more likely, further down the line. They are ideally suited for marine reconnaissance because they have a huge range.

Q675 Iain McKenzie: You think further down the line they would be required.
Lt Col Stuart Crawford: They could well be. Yes. It is just an option. Initially you could say, “Will we have manned aircraft, which is the conventional safe option, or will we forget manned aircraft and go for UAVs with our maritime reconnaissance pod specialism on them?”

Q676 Iain McKenzie: But, overall, there will be a requirement for some form of reconnaissance aircraft.
Lt Col Stuart Crawford: Absolutely.

Q677 Iain McKenzie: What that then develops into will be determined further down that line.
Lt Col Stuart Crawford: There are no maritime reconnaissance aircraft in Scotland at the moment.

Q678 Iain McKenzie: How far down the line would you envisage they would have to do that? I would imagine it is pretty strategic to have that in place.
Lt Col Stuart Crawford: It would be strategic. If we are talking about wanting something in place immediately, there would be little option but to purchase off the shelf. There will be many defence manufacturers that would be only too keen to sell that sort of equipment to a newly emerging state.

Q679 Iain McKenzie: What kind of training facilities do you see a separate Scotland being able to provide, and what would you see them needing to source from other countries such as the UK?
Lt Col Stuart Crawford: We obviously have the NATO bombing range at Cape Wrath. We have the missile testing facility at Benbecula. Apart from that and some fairly low-level training areas in Scotland, there is not a huge number of training areas in Scotland. Much of the training in Scotland consists of light forces training on private ground by arrangement with landowners. That includes not just UK forces, because the Dutch marines have come over and done training and so on.

Q680 Iain McKenzie: Would this training include officers or specialists?
Lt Col Stuart Crawford: No, it will not—not initially anyway. We obviously have test facilities at Kirkcudbright for firing tank shells and so on and so forth. It was mooted recently that there might be an armoured vehicle training facility set up in the Scottish borders. I cannot remember the name of the town, but it came as a huge surprise to its inhabitants that there was to be a training area there. This was part of “Close all the military bases in Edinburgh and build a new super barracks at Kirkcudbright.” That was all predicated on out-of-date information on property values in that the super-barracks was going to cost £440 million and the revenue from the sale was £90 million. Just did not make economic sense; nor did it appear that setting up an armoured fighting vehicle training area in the borders made much sense. We are talking about a fairly big environmental and ecological impact. I have been on many armoured vehicle training facilities in this country, Germany and Canada, and they have a huge impact. I do not think that was a practical suggestion.

Q681 Iain McKenzie: Have you factored it into the defence budget that you are proposing?
Lt Col Stuart Crawford: I factored it into the programme. I have said, for example, that army officers would have to be trained at Sandhurst or elsewhere. There is nothing unusual about that. I was trained by the Americans at the American Staff College. Sandhurst always has a fair contingent of—

Q682 Iain McKenzie: Could Scotland train in-house as such? Could it do this?
Lt Col Stuart Crawford: It could be done.

Q683 Iain McKenzie: How quickly could it be provided?
Lt Col Stuart Crawford: If there was the political will to establish indigenous officer training for all three services, it could probably be done within a period of five years. The question is: is it worth it? Is it not easier—and probably cheaper—to export it? I do not know the answer to that.

Q684 Chair: Let me just take that question of officer training. What is the point, in a sense, of becoming independent if you then get all your army, navy and air force officers trained by the people you have just left?
Lt Col Stuart Crawford: It is just pragmatic. Lots of the African countries do it. It is common practice.

Q685 Chair: One of the Defence Ministers told us last week that since Sandhurst, in particular, was under tremendous pressure, there could be no guarantee that Scottish army officers would be given such priority as would allow them to block-book
places there. That would very much be dependent upon whether the rest of the UK was willing to give them places.

Lt Col Stuart Crawford: That is correct.

Q686 Chair: Why should they train them in NATO doctrine if a separate Scotland had just left NATO?

Lt Col Stuart Crawford: A good question; I do not know the answer to that. I suppose one would assume that there would remain a residual friendliness towards a former part of the UK.

Q687 Chair: Would there remain a residual friendliness towards a part of the UK that had just enforced unilateral nuclear disarmament upon the rest of the UK?

Lt Col Stuart Crawford: That would militate against it being quite so friendly.

Q688 Chair: I think that is possibly true, yes. I want to ask about the question of the bases and the ranges. Cape Wrath, for example, is used by a number of forces other than just the UK.

Lt Col Stuart Crawford: I think it is a NATO range actually.

Chair: A NATO range, right.

Lt Col Stuart Crawford: I think so.

Q689 Chair: Whether or not Scotland allowed NATO to use it once it left NATO would be a matter of price and so on. I want to turn to the question of Benbecula and the missile range. That is clearly something that could be replicated elsewhere because there was a big political fight to save it, wasn’t there?

Lt Col Stuart Crawford: That is correct.

Q690 Chair: Why should the rest of the UK keep it there when presumably there will be arguments from Welsh MPs and others to say, “Relocate it here”?

Lt Col Stuart Crawford: There is a good chance it could be lost. I am not quite sure whether that has been set up exclusively by the MOD, or whether there is a commercial buy-in from the defence industry in the UK.

Q691 Chair: QinetiQ is the contractor. We are obviously going to have to clarify that in due course.

Lt Col Stuart Crawford: Of course it could be moved.

Chair: There is a question of whether or not divorce leaves a residual friendliness, as you said. A lot depends upon the terms.

Is there anything else on bases and training that anyone wants to pick up?

Q692 Lindsay Roy: You would not envisage a separate Scotland using Benbecula and Cape Wrath.

Lt Col Stuart Crawford: No; it could use either of them.

Q693 Lindsay Roy: For what purpose?

Lt Col Stuart Crawford: For the current purposes—for weapons testing.

Q694 Chair: What weapons would a separate Scotland test at Benbecula?

Lt Col Stuart Crawford: It would test its anti-aircraft missile system, if it had one.

Q695 Chair: It will have bought it from the Americans anyway.

Lt Col Stuart Crawford: Yes, but it would need to carry out tests. It would need to carry out training firing as well.

Q696 Lindsay Roy: So there would be minimal use compared to now.

Lt Col Stuart Crawford: I do not know what the current levels of use are, but I would imagine that the use would diminish.

Q697 Chair: Let me pursue that. Taking Benbecula, presumably there would be no development of missiles by a separate Scotland since it would not have the economic base, and it would be only for the occasional test firing, which presumably would not sustain the level of employment and investment that there is at the moment.

Lt Col Stuart Crawford: I would think it is unlikely. I do not know what the test missile firing rates are. I do not know how many missiles an operator is allowed to fire to make sure he or she is competent in that particular trade. It is not very many because they are hugely expensive.

Q698 Chair: We have touched on the question of moneys. One of the points that David did not touch on is this: if your budget came under pressure, and notwithstanding the fact that you have done it as a minimalist one, are there sections of it that could be cut out if the Scottish Government decided that they could not afford it and wanted to spend on education and health programmes? Are there some obvious things that are almost in a sense self-contained? Would the size of the army be one of the first things to go? I mentioned the Hercules. Are there some obvious things that you would chop out that you have included almost as optional extras?

Lt Col Stuart Crawford: Yes. If you look at the navy, the reason that I suggested two frigates there was to allow a Scottish Government to have the facility of being able to send a warship as soft power or to contribute to something else. If it was decided that the spending priority was on health, education, housing or transport, that sort of thing could be cut out. There will be a minimum level below which I would suggest you would not want to go. Ireland is below the minimum level, really. It is not even armed in neutrality, is it?

Q699 Chair: That is helpful. We have already touched on the question of intelligence and special forces. I want to turn to the question of the defence industry in Scotland. Scotland has quite substantial numbers of jobs involved in defence industries. As I understand it from your outline, that pattern of armed forces is not going to be able to sustain the present level of defence industry in Scotland. Is that fair?
Lt Col Stuart Crawford: Yes, I think so. I have always said that, if you are being pure in your approach to defence, you do not predicate your defence policy on the number of civilian jobs it provides. Those are very important but secondary considerations. You design your defence policy to do its primary task, which is to defend.

Q700 Chair: I completely understand that, but we are now talking about the consequences of your structure.

Lt Col Stuart Crawford: But I would say that the indigenous defence industry in Scotland is already very limited. There is no small arms manufacturer. There is no ammunition manufacturer now that Bishopton has gone. There is no aircraft manufacturing outside BAE Prestwick. I do not think it produces full aircraft. There is no armoured fighting vehicle production facility. There are obviously the shipyards, which are important, but whether the requirements of an independent Scottish navy would sustain the current level of shipbuilding in Scotland is, I think, doubtful. Where else was I going to go with that?

Q701 Lindsay Roy: There are guided missiles and Raytheon.

Lt Col Stuart Crawford: Of course, yes. There is the radar capability at Crewe Toll in Edinburgh, and then there is the very successful and sophisticated optics business, which was formerly known as Barr & Stroud in Anniesland, Glasgow, and is now called Thales.

Q702 Chair: Let me touch on some of those. First, with regard to BAE Systems Surface Ships in the Clyde, as I understand it from your proposals, there would be no new building of ships for some period. That is predicated on the Scottish navy getting what is divided up.

Lt Col Stuart Crawford: In so far as that satisfies the needs of the policy, yes. There would need to be—not necessarily in the navy, but in other aspects of the armed forces—some sourcing from elsewhere, either by buying off the shelf or whatever.

Q703 Chair: Therefore, unless you have purchases by either the rest of the UK or third countries, the shipyards would shut.

Lt Col Stuart Crawford: There will be a great danger of that, yes.

Q704 Chair: Looking at Babcock Marine, it is running Rosyth dockyard at the moment. If that becomes a naval base, that would obviously provide jobs for those who are perhaps diverted from ship repairs. We understand that the ship repair function might be lost to Babcock there. That might be okay, though we will have to go and speak to people about that. Vector Aerospace repairs military helicopters at Perth. The force that you have for helicopters, as I understand it, would not be sufficient to sustain that.

Lt Col Stuart Crawford: I would doubt it.

Q705 Chair: Therefore that, again, would be dependent on orders from either the rest of the UK or third countries coming in.

Lt Col Stuart Crawford: Yes, I would imagine so.

Q706 Chair: We have already touched on QinetiQ in the Western Isles. As I understand it, the function of SELEX Galileo in Edinburgh is to provide radar and electronics for the Typhoon.

Lt Col Stuart Crawford: Yes.

Q707 Chair: Given that Scotland is not likely to be ordering any Typhoons, unless I am mistaken, it is highly unlikely that that would remain there. Does that seem reasonable?

Lt Col Stuart Crawford: Typhoon is not just a UK aircraft. It is a European aircraft, and a number of European countries have either ordered the aircraft or have it in their inventories. I am not sure whether SELEX Galileo produces the radar arrays for countries outside the UK or not.

Q708 Chair: My understanding is that, if it does, that will have been part of a divvy-up between the countries about who gets what. If the SELEX Galileo orders are part of the UK’s share, they are then hardly likely to leave them in a separate Scotland, because it is part of the job share and therefore they are likely to move them. Does that seem reasonable to you?

Lt Col Stuart Crawford: There is an argument that that could be part of the negotiations. I do not know how the commercial arguments would fit in with that.

Q709 Chair: The same sort of issues would apply to all the other plants.

Lt Col Stuart Crawford: Yes.

Q710 Chair: I want to clarify whether you have taken into account, or you are aware of, what arrangements there are with Norway, Denmark and other Scandinavian countries to do procurement sharing.

Lt Col Stuart Crawford: Collective bargaining? I know what happens, but I do not have any of the detail. That is obviously another option that an independent Scotland might want to go with. All these things are always compromises.

Chair: We understand that, which is why we are so desperate to clarify what the negotiating position of the Scottish Government might be. Even though you said it might not necessarily be a Scottish National party Government eventually, presumably they will be conducting the negotiations if there is a vote for separation, because they will be in power on day one of year zero, or however it is termed, and therefore it will be on the basis of their foreign policy. I am conscious that you want to get away.

Lt Col Stuart Crawford: It is just the practicality of getting home.

Chair: I completely understand that, which is why I would ask my colleagues whether there are any other points they want to raise.

Q711 Lindsay Roy: I have one point in particular. We said at the beginning that the negotiations would
be a compromise. You have just reinforced that with the range of issues we have discussed. There will be no overnight transition.

Lt Col Stuart Crawford: No, absolutely. I am very conscious that my model is simplistic. There are so many intangibles and unknowns that I have either had to make an educated guess at, or indeed speculate about something, because there are no answers, so a lot of this comes out of my head. I do not know of any other model that exists at the moment.

Q712 Chair: Are there any answers you have prepared to questions that we have not asked?

Lt Col Stuart Crawford: No. I do not know what the time scale of your report on this inquiry is, Chair, but we are within about a week of continuous work on the work in progress for finishing it. There are some modifications to be made as a result of comments from colleagues like Professor Hew Strachan, Malcolm Fraser and so on. There is a thought that it might be published by RUSI, but obviously we would ensure that an early draft copy, without it being in the final production form, would come to the Committee, if that dovetails in with your inquiry.

Q713 Chair: We are hoping to decide by 17 July, which is the last day the House is sitting, on the form of the report that we are going to publish. There is then the publishing process, as it were, but we will be identifying lots of areas where there is no answer until the nationalists clarify what they mean. Hopefully, we will have moved the debate forward quite a bit. I must say that I think we have found your contribution very helpful, even though some of us were perhaps more frustrated than others at the fact you did not have all the answers—at least yet. You are the only people who have done this sort of work—sorry, you are the only people who are prepared to admit to having done this sort of work. There must be others thinking on it, but they have not come forward to us with it so far.

If, when you are travelling north on the train, you think, “Oh drat, I wish I had said such and such,” or, “I forgot to say such and such,” by all means get in touch with us. We would prefer this to be an iterative process as much as possible. We will probably want to look at defence again before the referendum takes place, so if you are not too put off by your experience today—

Lt Col Stuart Crawford: Not at all, no.

Chair: This has been for your own good.

Lt Col Stuart Crawford: Part of the questioning has allowed us to focus on things we have not thought about. Richard has already said to me, “That is two extra pages on your report.” It has been very valuable for us as well.

Chair: As I say, this has been for your own good as well.

Q714 Lindsay Roy: I want to clarify that this continued development is your own initiative. Has it been commissioned by somebody?

Lt Col Stuart Crawford: No, it is borne out of interest. I have written all this stuff out of interest. It is not commissioned by anybody.

Q715 Lindsay Roy: Is it self-funded?

Lt Col Stuart Crawford: It is self-funded only in my and Richard’s time, in that we are not paying ourselves to do it.

Q716 Chair: A mind needs a hobby.

Lt Col Stuart Crawford: Yes, it is a hobby.

Jim McGovern: The potting shed.

Lindsay Roy: We are indebted to you for the work you have done so far. We look forward to the further deliberations from you.

Q717 Jim McGovern: I would just like to say this to Stuart in particular. If in my frustration—I think you were referring to me earlier, Chair—it sounded like I was being hostile, I apologise for that.

Lt Col Stuart Crawford: No; I did not think there was any hostility there at all.

Chair: On that happy note of an apology from Mr Grumpy, we will close the meeting.
Wednesday 27 June 2012

Members present:
Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Iain McKenzie
David Mowat
Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: Jeremy Purvis, Reform Scotland, gave evidence.

Q718 Chair: Good afternoon, Jeremy. Thank you for coming along to this meeting of the Scottish Affairs Committee. Can I say that at one point you were my late mother’s MSP, and she always thought you were a nice man? Whether or not that is true we will possibly see later on this afternoon. Can I also say we are agreed that what has been produced is a very thorough piece of work, with an enormous number of exceedingly helpful facts and figures? I think it is in noticeable contrast, as many of us were remarking, to the lack of material that has been produced by the Scottish Government about any plans they might have for these or related matters. Can I first ask you to introduce yourself? Tell us your background and about the organisation you represent.

Jeremy Purvis: Thank you, Chairman, or convener, a term which I am more familiar using in my previous profession. Thank you very much for the opportunity to give evidence this afternoon. I am a member of the advisory board of the Edinburgh-based think tank Reform Scotland, which is a charitable public policy institute that has been in existence for going on five years now. I am a member of the advisory board with others from other political backgrounds—former SNP, Labour, Conservative and Liberal Democrat MSPs are on that advisory board. Reform Scotland has a very broad representation with its perspective. In 2009 it published a set of broad proposals termed “Devolution Plus”, and earlier this year it asked if, I together with a number of sitting MSPs, would help with putting together firmer proposals of how potentially those outline proposals could be implemented. Alex Ferguson, former Presiding Officer and Conservative MSP, Tavish Scott, Liberal Democrat MSP and former leader of the Scottish Lib Dems, and Duncan McNeil, Labour MSP, are on the Devo Plus Group, so again there is broad political representation.

The first report we have put forward, which I think the Committee has and you have referred to, “A Stronger Scotland Within the UK”, is our first set of proposals looking primarily at tax and fiscal policy. We are currently considering and will be publishing our second report on better outcomes, looking more at social protection areas and the interaction of welfare, which is a live topic at the moment. The third piece of work that we will do in the Devo Plus Group is looking at potential procedural changes that we think may be required if we are going to be seeing the delivery of devo plus. That is the focus of our work and the background of what we are doing.

Q719 Chair: Can I press you a little on the nature of the group? We did check the website. While it is true that there is a token Labour Party Member, an SNP Member, a Tory and yourself, and also somebody from the SNP VO on there as well, overwhelmingly it is bloated capitalists and people with a Conservative background. Is this a right of centre think tank?

Jeremy Purvis: I think you would be brave saying that Wendy Alexander is a token member of the advisory board. All of us who are part of that wish to contribute to better dialogue in Scotland and put forward proposals for the work programme of Reform Scotland, whether or not it is looking at reforming local government or broadband investment, which you may argue is procedural and economic. Currently you may have seen some of the work that it has put forward with the Centre for Scottish Public Policy on the Commission on School Reform. It is a broad approach. Similarly, I have been very keen that the devo plus approach does not come with any party ideology or baggage but is a set of proposals that addresses some of the fundamentals that we think should be addressed going forward for Scotland. I am sure you will be asking about that.

Q720 Chair: To pursue that, the funders that are named are Deloitte, Dundas & Wilson, the Buccleuch Group, who are not known for their enthusiasm for land reform, for example, and Skanska Scotland, with whom we may be having discussions in relation to another inquiry. It is a very establishment-oriented right-wing grouping of sponsors that you have, is it not? To what extent does that influence your judgments, and to what extent are you completely free from external influence?

Jeremy Purvis: The work that I have done for Devo Plus and the report that has been published are my views and those of the MSPs on that group. We have not been influenced by any external factors, either from what you may consider the left or right or funders or non-funders. They have not had any influence at all.

Q721 Lindsay Roy: Can I just echo what a very helpful and comprehensive report this is? For the record, could you tell us what further powers you consider should be devolved?

Jeremy Purvis: I do not wish to answer this in a lengthy way, but, if it is helpful, I can give a very brief snapshot as to why we have come to some of the conclusions we have.
Lindsay Roy: That would be most helpful.
Jeremy Purvis: We have looked quite closely at the way that the Scottish Parliament currently operates. We find it a very strong institution but it can be improved upon, and the relationship between Scotland and the rest of the UK similarly can be improved upon. If the question going forward for Scotland is, “What is the right relationship between the Scottish Parliament and Scottish institutions and the rest of the United Kingdom for the long term?” we have come to the conclusions that enhanced devolution and further powers are appropriate. It meets the principle that each level of Government should broadly be responsible for raising the revenue that it spends, with a strong caveat of equality. If Scotland is to be part of the United Kingdom, being able to gain the benefits from the United Kingdom—for example, tax revenues in the south-east of England and redistribution when there is a need for it—it is appropriate to have some form of equalisation.

Similarly, it is very appropriate that MSPs are properly accountable for decisions that they make. Part of our early analysis was looking around the world at other more federal-type approaches. There are no other examples that neatly fit the constitution of the UK, as you have been looking at, but there are broad examples—certainly, the OECD, which we looked at as well—which show that the UK is too centralised financially as a United Kingdom. Similarly, that has negative consequences when it comes to the operation of the Holyrood Parliament. So it meets two aims: for Scotland to continue to contribute to the UK and gain the benefit of being in the UK, but similarly to make sure that MSPs are more accountable and responsible to the people of Scotland for the decisions that they make.

Q722 Lindsay Roy: That comes through very clearly in terms of taxation and finance. Are there any other areas you feel that should be devolved?
Jeremy Purvis: The conclusion, therefore, looking at what the right balance is for the powers that the Parliament should have, is that we have been broadly comfortable with the principle established after the referendum in 1997 that all powers should be devolved other than when a specific case is made for their retention at UK level. We have questioned whether or not that should apply to fiscal powers also. That is why we have drawn the conclusions that we have. We move towards a situation where the Scottish Parliament should be responsible for most of the revenue that is raised, but there are very practical and pragmatic considerations that are taken into account for that. Therefore, when we have gone through the tax basket, in our report we have drawn a conclusion about those taxes where a case is made for them to be purely Scottish and the responsibility of the Scottish Parliament, those that could be shared at a UK level, and those that should be fully retained at UK level. That draws the conclusion about the taxes that should be devolved.

The work that we are currently doing for social protection is using broadly the same principle of looking at the areas of social protection spend and powers in Scotland. I will be open with you, Chairman. It is a complex area at the moment, given the fact that the implementation of the welfare reform legislation is live. There are some areas that it has been chosen to implement that have not been resolved yet in the Scottish Parliament and there is still the secondary legislation here. That is the work that we will be drawing to conclusion in a couple of months’ time.

The third key area is looking at the operation of UK bodies—UK regulatory functions. What is the right level of accountability that they should have to the Scottish Parliament? For example, the Sea Fish Industry Authority is statutorily responsible to this Parliament and the Holyrood Parliament for the regulation of white fish, but energy and broadcasting regulators are not accountable to the Scottish Parliament for areas that have an impact upon devolved issues, but not statutorily; their work has an impact on devolved areas. Again, we will be reporting on that in a few months’ time.

Q723 Lindsay Roy: That is a very comprehensive programme. Again, can I echo that it is a very helpful paper? How does your group plan to go about achieving its objectives?
Jeremy Purvis: They are a slight distraction to some extent from a proper discussion about what is the right solution. A lot of the discussion is about process. I do not mean that in a pejorative way for your inquiry, but we have tried to focus not on process or tactics but to try and identify what is the best long-term relationship and right balance of powers. That is why we have the position that we are not pressing for anything other than having a separate question, a separate referendum, or any particular type of process, for the strong reason that we believe many of our proposals could be implemented in a normal statutory manner as the Scotland Act has been delivered, but there are options that this Parliament, the Holyrood Parliament, Governments and you all should consider and take as the way forward. There are a number of options on process. We have tried to stand back from that and focus on how we would be able to deliver it.

Q724 Lindsay Roy: To sum up, you would argue that you might not need a referendum to implement the programme that you are setting forward.
Jeremy Purvis: I believe that we would not. The Devo Plus Group of MSPs believe that we would not. We believe the focus should be on trying to find agreement among the political parties that this is the best way forward and to have it implemented in a managed and staged way. Our report “A Stronger Scotland Within the UK” outlines what we believe could be a way forward over two terms of a UK Parliament in a managed way to address the technical aspects, if we are going to go down that route. Because we are not pressing for it in the referendum, we have been focusing on what would be required even if there was not a referendum.

Q725 Lindsay Roy: So, whatever the process, you would be looking for a consensual and collaborative approach.
Jeremy Purvis: I have found in my own experience that the best way of delivering constitutional change is through that process. On the way to the Committee I was thinking about how many different options and permutations there could be. I counted at least five; there is a yes/no referendum; there is a yes if no referendum; there is a yes/no plus other option referendum; there is a yes/no referendum plus other option referendum; and there is a statutory yes referendum, plus an advisory other option referendum.

Lindsay Roy: It sounds a bit complex.

Q726 Chair: We have considered this and taken the view that if you have identified only five options you have not been trying hard enough.

Jeremy Purvis: Plus there have been other considerations in the past. I think that highlights the difficulty that a group such as us would be in if we wished to chase after process. That is why we have chosen not to. We have not framed our proposals predicated on there either being a referendum or not a referendum; we have framed the proposals on what we consider to be the best way forward. It is for the political process to decide on the best way of delivery, but my reflection and experience is that by far the most effective way is broad party agreement. Obviously, there is one party that will never agree to the conclusion of our proposals of keeping within the UK, but, notwithstanding that, getting broad political consensus means there is broad public support with it.

Lindsay Roy: Congratulations again on the very detailed work you have done; it is very comprehensive.

Q727 Chair: Can I follow that up? The process of establishing a consensus as far as possible presumably would apply not only within Scotland. Some of your proposals would require a degree of consensus with parties in England as well, wouldn’t they? I am sorry; Hansard doesn’t record nodding.

Jeremy Purvis: Yes, I agree with you. In fact it is not just parties in England; it is the other Administrations in the rest of the UK. For example, if we are looking at powers over duties, currently we have a UK excise system. For example, as much as there could be merit, as the Calman commission considered, in alcohol and tobacco duties having social aims as well as raising revenue, they are linked with already devolved powers, but you cannot unilaterally argue that the UK excise system should be changed purely for Scotland. That is why in our report we have indicated that that would have to be in a third category of taxes that would have to come after there is wide UK support by the Welsh and Northern Ireland Administrations and the rest of England.

Q728 Chair: In terms of process—I am sorry to drag you into this—many of the proposals you are putting forward in a sense stand alone. It need not be the case that individual suggestions can only proceed if everything proceeds. On some of these things progress can be made more speedily than on other things.

Jeremy Purvis: That is correct. There are some areas where, for example, we could look to use the current Scotland Act proposals that have now received Royal Assent. They could be used for other taxes to become fully devolved. There are other areas where that could be used to have shared taxes through secondary legislation. However, we would not want to lose the fact that we have put forward a broad package, the conclusion of which means that the Scottish Parliament would be responsible for most of the revenue, though not entirely. That is a fairly fundamental element of our proposals, because it does shift the balance of accountability away from what the Scotland Act proposals would be, where Holyrood is responsible for 30% of its revenue, to well over half its revenue. That does change the way that that institution works, and to the better in our view. That is why, yes, it can be an incremental approach, but we would like that to be an incremental approach with a broad acceptance of the aim.

Q729 Chair: There is an argument that says the Scottish Parliament in particular has an unwise obsession with constitutional change at the expense of spending time, attention and focus on the matters for which it already has responsibility, and your suggestions would continue that. For example, we have been speaking to people recently in the highlands and islands about land reform where, as far as I can see, virtually all the powers are already with the Scottish Parliament; similarly, for improvements in health and education, which are, sadly, needed, virtually all the powers are already with the Scottish Parliament. Are you not diverting attention in the direction of constitutional change at the expense of improving those services for which the Scottish Parliament already has responsibility?

Jeremy Purvis: No. Parliament is perfectly equipped to consider a number of different areas, as this Parliament can as well. I do not think it is to the exclusion of that. I served in the Parliament during the whole of the Calman process, two UK Government White Papers, the conclusion of Calman and also publication of the draft Bill in the last Administration and introduced in the current Administration. It did not change my day-to-day work as a constituency MSP; it is just one of the things that is going to be necessary, but it is a judgment call whether or not you think that the Parliament being simply a legislature and spending body is the right approach when it is responsible for over £30 billion, but the discussion and interaction with the public in Scotland over the areas where there is responsibility for dividing up the cake and how it is spent is about whether or not, as an institution, that brings in some perverse incentives. For example, in our report—I know it is slightly economic techy-speak—moral hazard is referred to, as in the political imperative of Scottish MSPs and the Scottish Administration to show that they are growing their grant or their budget. Because it has limited powers over raising that, the definition of success for a devolved Scottish parliamentarian is if the Administration wins a dispute over the size of its budget. That means there is more focus on that and less on the better delivery of schooling and health, because what people believe is the accountability of MSPs is determined by how successful they have been in winning disputes with Westminster rather than how
successful they are at delivering devolved policies. Most constituents, when they are in discussions with you at elections, have an interest in how money is raised and taken from them, and how they hand it over, as much as in how it is spent. Holyrood has a considerable deficiency, even though it is a strong legislature and has been broadly effective at spending money efficiently. That is a personal view, but I think it is accepted. It is that accountability gap that the Calman commission had identified but we do not think it had properly addressed the solution for it.

Q730 Chair: Coming back to the question of land reform in particular, all the powers that are necessary to introduce quite a drastic programme of land reform are already with the Scottish Parliament, and regrettably it has done virtually nothing, or insufficient, with them. You are saying that that is because the whole dispute has been centred on who gets what from Westminster.

Jeremy Purvis: No, I am not. As to the areas where you could have legislative changes in Holyrood that have little financial implications, whether or not it is freedom of information legislation, PR for local government—all the areas on which I have gone through debates—as a legislature that is a broadly sound approach. That is why our approach is not to want to go back over all of the current powers that have been devolved since the Parliament was established. That is why we broadly accept the principle that the powers were devolved unless there was a specific case for their retention. The point we make is about the personality of the overall institution and whether or not it is broadly successful and, in broad terms, whether or not the country believes it is an effective institution or the politicians believe it is. It is our view—we may be challenged—that moral hazard and perverse incentives are starting to creep in because of lack of accountability. On an academic basis, the OECD finds that, and that is why most, but not all, countries that have central levels of Government or other legislatures have much greater financial power and accountability than the Scottish Parliament does at the moment. It is that area we have focused on, because, broadly, when it comes to looking at the devolution settlement, that is one of the key areas that we think currently needs to be addressed.

Chair: I understand the argument. I was going to say I am not entirely convinced; in fact I am not convinced at all actually. I think poverty of ambition is one of the difficulties that has faced the Scottish Parliament on things like land reform.

Q731 Iain McKenzie: To take you back briefly to the issue of tax, the Scottish Parliament is a Parliament because it has tax-raising and tax-lowering powers; from day one it has had them. If you accept that it spends money wisely and efficiently, why do you think the Scottish Parliament, regardless of who has been in control of that Parliament, has never used those tax-raising or lowering powers?

Jeremy Purvis: There are a couple of reasons. For the record, the only MSP who has moved a motion calling on the Scottish Government to use the tax-varying powers is me. It did not go very far.

Q732 Iain McKenzie: Was it up or down?

Jeremy Purvis: To cut it as a fiscal stimulus at the beginning of the recession and to identify savings from other areas, but it was not supported. One of the reasons is that it is a very blunt instrument. One of the concerns about the Scotland Act element that has a flat 10p reduction across the different bandings is that, similarly, that will be a blunt instrument. There are few countermeasures that any finance Minister could use to balance that within reason. That was why the tax power had never been considered properly to be used. The jury is out as to whether or not the Scotland Act power will be used if there are not very many other counteracting measures. The ability to borrow, however, under the Scotland Act is quite appropriate.

I was on the finance committee for five of the eight years I was in Holyrood and took part in all of the budget debates I was a member of, and I cannot recall much debate about how the money that we were spending was raised. Therefore, all of the debates tend to move towards competing interests of expenditure. You may argue that is fine if the role of the Parliament is to be simply a spending institution and the focus is on how you spend it, but, as you rightly say, Mr McKenzie, it is a Parliament and therefore it does not have many of the requisite fiscal levers that would allow the proper implementation of the legislative powers over other areas that it has.

All of this is within balance. In our proposal we absolutely and categorically reject devo max, which you may come on to—

Chair: Oh yes, we will.

Jeremy Purvis: —for the reasons that it has to be within a balanced approach, but one of the reasons the powers have not been used is that it was a very blunt instrument.

Q733 Iain McKenzie: Do you foresee in the future that, if more tax powers are devolved to the Scottish Parliament, it will not simply be a case of marking where the Westminster Parliament is putting tax on or off but will be decisions taken in Holyrood differently?

Jeremy Purvis: I certainly would not deny it and I think it would be naive to say that there would not be any consideration of what happens in other parts of the UK, because that happens in legislation and spending choices. It is already up to MSPs to make those choices if they decide what happens in other parts and if they wish to do more or less within the bounds of their powers. That would be the same with financial powers, but the difference is that to a large extent you would remove what is starting to develop, which is a convenient response. “If decisions are not made in Scotland it is because we would like to do this but we can’t because our grant has been cut.” Perhaps that will never ever go because the Scottish Parliament will always be a devolved Parliament, but it will remove a lot of that on the basis that MSPs would have to make decisions.
You mentioned land reform, for example. One of the interesting aspects about how that will operate will be decisions taken over stamp duty and decisions made by Ministers over that. They are consulting on it; they will be held to account whether or not they have a different approach in rural areas. They have already indicated a willingness to look at different bandings, so MSPs will be held to account for those decisions rather than simply saying, “We would like to have done this but we have been constrained because of Westminster.” I am not naïve; I am sure it will not remove that tendency in its entirety, but it will remove a lot of that, and it will mean that they can be more accountable for the decisions that they make.

Q734 Jim McGovern: Listening to what you have got to say is very interesting, but when you talk about lack of accountability, tax-raising powers and so on, going on from what my colleague Iain McKenzie said, it sounds like you are almost making the argument for a separate Scotland.

Jeremy Purvis: Not at all. I am not sure how I can categorically deny that in very strong terms. We have an opportunity now at what the long-term relationship should be between a fully functioning and properly devolved Parliament with the right balance of powers to make sure that there is a long-term relationship between that and the rest of the UK. The work we have done identified that one of the areas of deficiencies was the lack of breadth of fiscal responsibility. That would mean that, when that is addressed, that broadly puts the UK—

Q735 Jim McGovern: When what is addressed?

Jeremy Purvis: The deficiency at the moment. Holyrood is not functioning as it should do as a devolved legislature.

Q736 Jim McGovern: You agree with that.

Jeremy Purvis: On a constitutional basis, not simply because of policy choices, the UK is massively centralised, disproportionately, looking at comparable size countries around the world. That means that for the delivery of services in one part of the UK, as in Scotland, I repeat that moral hazard comes in. It means that taken in the way that it is configured, the Scottish Parliament is funded effectively through a departmental budget of the UK Government, which could arbitrarily be changed tomorrow. It is a statement of funding policy that has no basic statutory framework. That is not the right level of constitutional relationship that exists. Therefore, it allows there to be constant issues with regard to grievance at an institutional level, which are unhelpful. I think they can be resolved in a measured way, and it does bring about a situation where, in a generation’s time, we will not still be fighting issues about technical relations; it is more of a debate about the delivery of services.

Q737 Jim McGovern: But you do not believe we have that situation just now.

Jeremy Purvis: I do not, because the relationship is imbalanced. It is broadly strong in the legislative area; it is weak in financial areas, and, given the way it is configured, the Scottish Parliament is funded effectively through a departmental budget of the UK Government, which could arbitrarily be changed tomorrow. It is a statement of funding policy that has no basic statutory framework. That is not the right level of constitutional relationship that exists. Therefore, it allows there to be constant issues with regard to grievance at an institutional level, which are unhelpful. I think they can be resolved in a measured way, and it does bring about a situation where, in a generation’s time, we will not still be fighting issues about technical relations; it is more of a debate about the delivery of services.

Q738 Mr Reid: Thank you for coming along, Jeremy. It is a very thorough paper, and I commend you on that. In the paper you looked at an option that the media often describe as devo max, but you decided to reject that. First, can you tell us what you understand by devo max?

Jeremy Purvis: This is where I think I may well struggle with the rest of the Committee. It is a concept that has not been fully outlined, as far as we are aware, but what has been outlined we don’t think would work; in fact it would be negative. There are two main reasons for it. First, we analysed the reference that the Scottish Government have given for it to be operable in the Basque and Navarre regions of Spain and we showed that that could not be properly reflected within the Scottish context without considerable negative consequences. Secondly, it is a counter-argument to the issue of accountability that we raise. What we are seeking is that MPs are accountable for decisions that they make, and MSPs are more accountable for decisions that they make. If under devo max you have a situation, as we understand it, that all revenue is raised within Scotland and then there is a subvention to Westminster for UK services, that does not aid accountability for the delivery of those UK services.

There is a practical consideration for why we have rejected it outright and there is also a principled reason why we have rejected it. We have been concerned that it had been approached as or maybe considered to be quite an easy shorthand for a middle way or middle option. That was why we launched our proposals and are doing the work. Because we do not think devo max would work—in fact it would be negative—that is why we have been fairly strong in trying to analyse why it would not work. With regard to the assessment in our report if it was a Basque and Navarre illustration, the modelling using UK figures and Scottish Government data, as we understand it, is
the only modelling that has been done. Therefore, as it is put forward, it is more akin to a brand in search of a product than a worked-up scheme. It is very hard to identify named individuals who are putting it forward, but, if you are putting a car on the market, you should at least tell people whether or not it has an engine in it. At the minute it is a woefully inadequate response to this debate.

Q739 Mr Reid: What do you think would be the practical negative consequences for Scotland?

Jeremy Purvis: Using Scottish Government data from the GERS documentation, we found that, using comparable data, there would be not only a deficit in devolved expenditure but a deficit in the quota back for UK services. The sums are £7 billion for devolved services and £3 billion for UK services respectively. That would mean that the incentive for UK delivery of services would be not to invest in Scotland. It does not address a fundamental, as I indicated before, which is an understanding of how a balancing and equality framework should exist. We propose moving progressively towards a needs-based formula to move away from Barnett.

Q740 Mr Reid: Is your interpretation of devo max that there would be no equalising grant at all?

Jeremy Purvis: That is as I understand it. The slight difficulty is that the clearest outline of what devo max is—even then it is not that clear—has been from the Scottish Government, and that is now three years old. They did it in their National Conversation document. I reread it on the train on the way. It is quite interesting that in their conclusions they talk about devolution of other areas, which has been called “Devolution Max”. It says: “Unfortunately the various proponents of this approach have yet to bring it forward in a form in which it could provide the basis for a question in a multi-option referendum, although the inclusion of the concept in the National Conversation policy papers, and in this paper, will have helped that process.” It is up to the Committee to decide whether or not that did indeed help that process given that, as far as we are aware, there has been no further information about how devo max would work. That is why we have categorically rejected it.

Q741 Mr Reid: Do these calculations of the deficit also take into account that all of the oil revenues in Scotland’s waters would go to Scotland?

Jeremy Purvis: Yes. The comparable way for Basque and Navarre would be that Scotland would raise all revenue other than VAT and a component of national insurance, because the Basque and Navarre regions levy VAT but do not have authority over changing the rates, because you can’t within the EU; and they do not have their work-related taxes—their payroll taxes—at a devolved level. We have used comparable information for the tax revenue, but that does include a geographical share of North sea oil.

I think there is a glaring problem with some of the proposals for devo max as well, which comes through a little in the GERS documentation. They have been selective in the way North sea oil revenue has been considered, in that a geographical share should be used, but when it comes to the expenditure side, they believe that, when it comes to the financial services intervention, a population share would be appropriate rather than a geographical share of the actual institutions that received it and where they were headquartered. That is why we say it is more a brand in search of a product. We think we have done the clearest modelling using data within our country, and that is why we have drawn some of our conclusions from it.

Q742 Chair: It is not unreasonable for anybody involved in any negotiations where you have inconsistent measures to choose whichever one suits them best and hope that the people with whom they are negotiating accept their framework. Presumably, all of this will have to get sorted out in the wash when we do actually get to the process of haggling. Therefore, these inconsistencies on bases, whether it is population or geography, can all be resolved at some point later on.

Jeremy Purvis: From our perspective, we don’t want to get to a situation where it would have to be haggled over in negotiations, because we think our proposals are better and they can be implemented. The difficulty with devo max is that it is put forward, as far as we understand it, as a concept that should be ratified through a referendum process. As far as I am aware, devo max has not been put forward as a mechanism that can be delivered through an alternative route, for the good reason that I don’t think you can have devo max and the UK. I don’t think they are compatible for practical as well as constitutional reasons.

Chair: You have certainly taken some of the discussion on devo max further than others. Many of us here and the other witnesses have seen devo max as a bit like the third way or the big society. It is a nebulous concept, and any time you try to define it it becomes more opaque. Therefore, it was not something that people were floating seriously, except as a means of exerting pressure maybe to move things forward a little. That has been very helpful.

Q743 Jim McGovern: Jeremy, I was going to ask about the comparisons with the Basque country and Navarre, but possibly you have already covered that. Following on from what the Chair said about how understandable this paper is, I take it this is your paper.

Jeremy Purvis: Yes.

Q744 Jim McGovern: I don’t know if it is meant for public consumption or just for politicians, but there is a paragraph here: “While it is hard to discern what the additional devolved spend would be under Devo Max, as the proposals so far have been only general in nature, in order to calculate the Net Quota for Scotland we can make the balanced assumption that under the published information by the Scottish Government all spend other than what is termed ‘non-identifiable’, would be devolved.” What does that mean?
Jeremy Purvis: If you are saying that I should have put some semicolons in it, I take your point.

Q745 Jim McGovern: It is not the punctuation that is wrong; it is just that I do not understand what it means.

Jeremy Purvis: I think that could appropriately have been in three sentences. The first is that, to have a proper comparison with what we understand to be devo max, we had to make a judgment on what they thought would be more spending in Scotland. The second sentence is that to do that—

Q746 Jim McGovern: It is one sentence actually.

Jeremy Purvis: I am saying it would probably have been better if it had been written in three sentences. That is the first sentence. The second sentence is that I think the information we use to try to be consistent has been from the GERS paper—publications by the Scottish Government, and, before that, the Scottish Executive—looking at expenditure and revenue in Scotland. That document uses what they term “non-identifiable expenditure” to calculate an estimate of what the UK spends within Scotland on UK services but which is not identified line by line. For example, on defence, there is not a line-by-line MOD item saying, “This is how much we spend in the borders, in Pentycuick or the highlands.” The estimate is non-identifiable expenditure. We used that in our calculations and that is where we drew that.

As for those people who will have an interest in it, it is a mixed audience, but, whatever way forward is put into the public domain, people should understand it. When we tested public opinion through a Reform Scotland opinion poll last week, the question was asked, “Which level of Government do you think is best to raise the revenue that the Scottish Parliament spends?” I think that people understand that. A large proportion of people felt that the Scottish Government should raise the revenue. When we tested opinion about devo plus, the question was framed as, “If the Scottish Parliament was responsible for raising most of its revenue, is that something you would support?” That is the language that we term, but we recognise that, within all of these, to have further changes and reforms there are complex areas, and that is why sometimes there are technical documents and language, I am afraid.

Q747 Jim McGovern: I would regard my mother and father as reasonably politically savvy, but if I showed them that they would say, “What’s this person talking about? Does he visit planet earth once a year, or what?”

Jeremy Purvis: I am afraid I can only use what the previous Labour/Lib Dem Executive and current SNP Government use for their Government expenditure and revenue documents. If they called it something different from GERS—I suspect most people would think the debate about “Gers” at the moment relates to something else—

Q748 Jim McGovern: Is that OldCo Gers or NewCo Gers?

Jeremy Purvis: I will retreat from that fiscal debate.

Q749 Chair: You have mentioned the Basque country and Navarre. Are there other examples abroad that might be more appropriate to be examined in this context to which you would draw our attention?

Jeremy Purvis: For devo max?

Q750 Chair: Yes, or for forms of devolution along the lines that you are proposing. The proponents of devo max have identified these as being their role model. Do you have an alternative role model?

Jeremy Purvis: The answer to the first part about looking at other areas for devo max is no—I’ve not been able to find, and I don’t think it has ever come up that others have found, an international example of how it can be used. We have used the example that the SNP Government used, which they cited in their paper, of the National Conversation and “Fiscal Autonomy in Scotland”.

Q751 Chair: But that is not the strongest basis on which it is possible to proceed, of course.

Jeremy Purvis: If they have put forward the strongest basis for it, even then, we have found that it is fundamentally weak. I am being careful with language now. On our proposals, we do not necessarily want to take a federalist or fiscal model from the OECD, but Australia, Canada and Germany follow a broadly similar approach. They are federal countries with federal written constitutions and federal arrangements. We know we cannot unilaterally impose that on other parts of the UK, but the basic essence of it and the balance of financial and legislative power that the Scottish Parliament have would put Scotland comfortably within the provinces and other areas of most federal countries. In our report we put in the OECD charts about the areas that have a broad balance between devolved spend and revenue. It would put us squarely within a comfortable bracket.

Q752 David Mowat: I want to ask you about taxation. In your proposal you have come up with a different allocation of taxes from devo max. The one I was most interested in was that you have excluded oil taxation. Can you explain to the Committee why you have done that?

Jeremy Purvis: We started our consideration on the premise that it is a taxation of a natural resource. Most of it is squarely within the geographical waters of Scotland and in an already defined and agreed UK shelf, so we start from the strong basis that it could be devolved. The next thing we looked at was the benefit or otherwise of dividing up the UK continental shelf for regulatory reasons and the way the oil and gas industry operates. We felt that that had some strong negatives, historically as well as legislatively. We also looked at very practical considerations. If we look at the profile of revenue, oil and gas has been the most volatile. If we take 10-year data using the data of the Scottish Government and their predecessor, our calculations showed that the standard deviation from the average is £2.5 billion, from a peak of £8.5 billion in 2003 to £3 billion in 2009. Our figures are in the report. It would be massively destabilising if it was devolved.

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Those are the two principal reasons we do not think it is a candidate, but, when you look at it closely, there are three components of the tax regime. There is the historical tax on the fields linked with the decommissioning rights—the corporation charge. You may question whether there should necessarily be a different, principled approach if corporation tax is levied on an oil field in the North sea or an offshore wind farm.

The third area is the supplementary charge, which is not ring-fenced and is levied on profits. We simply explore that there could be discussions as to how that is used. We reflect, for example, on how the Green Investment Bank is being capitalised and how a component of that is being ring-fenced for investment within Scotland, because the Treasury knows it will have to capitalise that anyway. It is a fairly smart use of fossil fuel funds, and the use of that resource could be triggered for that. We use that as an illustration to show that there is a component of it that can be debated in the future.

Q753 David Mowat: One of your points on it was that the standard deviation is very high, so the volatility is high. In a sense you anticipate one of the potential problems of separation.

Jeremy Purvis: Absolutely.

Q754 David Mowat: Obviously, on separation, all the oil revenue would go to the separate Government, but it would begin to have some of the characteristics of a petrol-currency, because you could have extremely good years and extremely bad ones because of that.

Jeremy Purvis: Yes. Part of the benefit of being within the UK is that, because the public finances are much broader across the UK, volatility can be evened out for that source. If, with devolved Scottish expenditure, or if there was independence, there was reliance on all revenues raised in Scotland, that becomes a much higher proportion of the revenue, so it is much more volatile.

Q755 David Mowat: Your position is totally logical. I just wondered when I saw it whether or not there was an emotional issue. One of the issues here is Scotland’s oil, and that is the bit you are leaving in UK residual. As I read your paper, it was a surprise, but I understand how you got to the conclusion.

Jeremy Purvis: Chairman, you asked about other examples. We did look at Canada where, for example, natural resources are an area that the provinces have the right to tax over. You received evidence from Professor Kemp earlier in your consideration in a different context. I would probably highlight Alberta that almost had a reverse situation of devolution when it realised that its finances were becoming increasingly dependent on one predominant source of revenue. When that crashed, it felt it would gain more from being part of the federal system.

Q756 David Mowat: As to the thrust of your proposals about accountability, you could argue that you do not get much of that depending on what the oil production was that year.

Jeremy Purvis: Absolutely. Perhaps I should have said before that one of the key elements of our proposals was that the candidates for devolution of taxes should be as closely linked as possible to the decisions that MSPs make. For some it is clearer than others. Stamp duty is a clear example. If MSPs make a bad decision, in your view, and revenue goes down, they should become accountable for that and pay the electoral price for it. Similarly, if they make good decisions, the tax base increases and it goes up. Oil is a key example where MSPs, with the best will in the world, will not shape wholesale prices.

Q757 David Mowat: It is, as I say, very logical. Can I just ask a question about chart 2 in here? Mine is not in colour, so it may be I have misread it. It shows that the total Scottish expenditure for the last decade has been higher than the taxes plus the oil revenue.

Jeremy Purvis: Correct.

Q758 David Mowat: My guess would have been that it was roughly in balance once you took in the oil revenue. It might be that is over two decades. What you are showing to me that chart is that Scotland is getting—I hate to use the word “subsidy”; it is the wrong word—more than it earns in terms of its public expenditure.

Jeremy Purvis: That is correct, certainly over the last decade.

Q759 David Mowat: Perhaps in the previous decade it was the other way. I thought that, in the round, once you put the oil in, Scotland came out roughly about right, even though the Barnett settlement was quite generous. I just note the fact. You have quoted your source.

Jeremy Purvis: The difficulty comes when you try to capture what devolved expenditure is. There is no strong equivalent to that before 1999, so it is a case of simply taking the previous estimates for expenditure in Scotland. I won’t conjecture; it is in our report.

Q760 David Mowat: That is your number; that is what you are saying.

Jeremy Purvis: Yes.

Q761 David Mowat: That takes us to the Barnett formula, which you address at the back of your report. Your position on it also surprised me, because you said that, if it went to a needs basis, which is what Holtham and many others, including the House of Lords, have said, you did not think that the difference between that and the current settlement would be that much, whereas others have said different things.

Jeremy Purvis: The principled position is: what is the core basis of the appropriate level of spend in Scotland? That is more akin to a macro-economic judgment as to what the right balance of spend is in Scotland on a per head basis compared with other parts of the UK. We believe it is fair to say that can be done on a broader UK judgment as to what spend is. Then the question is how far that can go up and down depending on choices made within Scotland or other parts of the UK. That is effectively the Barnett minus.
You have the block grant and then reduce it in terms of its relationship with what revenue is raised. That is a fairly core fundamental, which we are broadly comfortable with, but the proposal is to try to have that as reduced as possible.

Q762 David Mowat: I understand that once you start devolving things. Maybe I misread the paper, but at the moment Scotland gets roundabout 120% of the UK average. It has been said that a fairer formula would be 108%, but in a sense that doesn’t matter. I was just interested that you seemed to think that, if it went to a needs basis, as some people say it should, it would not give that answer.

Jeremy Purvis: The data for the 121% relate to the Welsh position from the Holtham commission.

Q763 David Mowat: And the House of Lords.

Jeremy Purvis: I am sorry. It is 105% for Scotland and 121% for Northern Ireland. If England is 100%, Wales is 115%, Scotland is 105% and Northern Ireland is 121%.

David Mowat: I did not see that in your report. I do not think those are the Holtham numbers, but we probably do not need to go any further.

Q764 Chair: This is relevant to matters that we have been and will be discussing.

Jeremy Purvis: For the record, it is page 42, table 16. Those are the calculations of the Independent Commission on Funding and Finance for Wales on relative need per capita compared with the English average. That is relative needs. That is what they would estimate to be the need, if it moves towards a needs-based formula.

I alluded before to the difficulty of having comparable spend at the moment. For example, how do you classify what spend on the financial services intervention would have been? There are a number of areas where I think an argument could be made from whichever perspective. The fundamental is: do you want to move away from the Barnett formula to adjust the block grant, or can you have a needs-based formula that replicates it? We accept the Calman commission view, which was that there could be long-term merit in moving towards a needs-based formula, but we also recognise that there are major technical aspects of that before you get to that situation, and the time you would wish to do that would be if you are moving the statement of funding policy, which effectively the Barnett formula is, on to a different footing.

Q765 David Mowat: What you are saying is that you would need a period of transition.

Jeremy Purvis: Yes.

Q766 David Mowat: I agree. But you accept the principle of a needs-based formula.

Jeremy Purvis: We certainly think that there is absolute merit in it, but the reason I am being cautious in the reply is that I think I am right in saying that the last exercise to look at how that would operate in Scotland was in the 1970s. The Holtham commission has the advantage that it has done modelling and looked at it. That is the caveat to my answer, but, broadly, yes.

Q767 David Mowat: I agree that a needs-based review might come up with lots of different answers and the devil is in the detail. That would be inevitable, and it would take a long time to agree all of that stuff. As to the various proposals, you have got devo plus, devo max and then independence. One thing that is clear about independence is how many Scottish MPs there would be in Westminster—that, at least, is a clear point—whereas, with devo plus and devo max, presumably that would be a negotiation. How would you imagine that happening? Your paper does not cover that point.

Jeremy Purvis: It does not: that’s right. We will be considering that in our third paper looking at some of the areas that may be required for some procedural changes. Broadly, we recognise that, if there are increased powers to Holyrood, it raises the issue of the role of Scottish MPs at Westminster. Fundamentally, that is a relationship that Westminster will need to resolve itself. We cannot put forward firm proposals on the basis that it has an impact on the relationship among English, Welsh, Northern Irish and Scottish MPs, but the continuing role of MPs would be absolutely necessary. Indeed, we think there is a case to say that it could aid public understanding of what MPs are responsible for. I have certainly found in my experience as an MSP that the electorate did not think I was responsible for raising the revenue that funded the Scottish Parliament, but many thought I was responsible for council tax. There is a fairly skewed situation at the moment. On devo max, I am not equipped to answer that question because I do not think it has ever been said, but I cannot see that there would be a role for Scottish MPs other than if their entire job was to do with foreign affairs and defence.

Q768 David Mowat: But there would have to be some representation in the UK Parliament, I would imagine, wouldn’t there?

Jeremy Purvis: For devo max we just don’t think it would work, and therefore it is another deficiency.

Q769 Chair: Presumably, under the Liberal proposals we would all be in the House of Lords under devo max. Lots of vacancies would be created there, so, you and I would be there, Alan, surely.

Jeremy Purvis: That was a rhetorical question.

Q770 David Mowat: I suppose that, if ever there was to be a vote on this question in a referendum, one of the things that would have to be clear is what the answer to that question would be. So, if the Scottish people were voting for devolution max or devolution plus, they would have to understand what that meant in terms of their representation in Westminster as part of that vote; otherwise, it would be a nonsense.

Jeremy Purvis: That was not a rhetorical question, was it?

David Mowat: No, it’s not. It wasn’t, no.

Jeremy Purvis: Where we stand as far as concerns devo plus is that, by the autumn, we will have put forward the three areas that we believe have been
Jeremy Purvis: As to the judgment of the number of MSPs, you will be able to correct me, but there were two fundamental considerations in the mid-1970s and the early 2000s of the right number of Scottish MPs, you will be able to correct me, but there are those who want Scotland to stay within the union, to outline what the consequences of a no vote would be, whether or not there is some more devolution. As far as the key point is not the size of constituencies. Something broadly similar happens with what the number of MSPs should be. Q772 David Mowat: But the key point is not the number per MP; it is the relative number compared with parts of the United Kingdom that do not have that much devolution—that is the key point—and therefore, what scaling down factor you would use. Q771 David Mowat: But it would be a fair question to you. You have come up with devo plus as being superior to devo max—I follow the logic of that—and therefore you would like it to take over in consciousness as the other alternative to a yes or no vote. Given that, I suppose a reasonable question to you would be: how many Scottish MPs do you think there should be in Westminster if this proposal was implemented? Jeremy Purvis: As to the judgment of the number of Scottish MPs, you will be able to correct me, but there were two fundamental considerations in the mid-1970s and the early 2000s of the right number of electors per constituency MP. I think that periodically happens. It may well happen once there is a further process of devolution, notwithstanding discussions or debates going on in Parliament at the moment about the size of constituencies. Something broadly similar happens with what the number of MSPs should be. Q773 Chair: That is helpful. The road that you are travelling seems to assume a reduction of MPs as powers are transferred. That is not necessarily something many of us here would accept on the basis that, if England chooses not to devolve itself into different regions, that is its choice, and the number of Scottish MPs involved at Westminster should not necessarily be allowed to be reflected by that figure. We would still want to have a fair proportion for defence, foreign affairs and all those matters that are retained centrally. That is a matter that we will continue to debate. David Mowat: A fair proportion, whatever that means. Chair: A fair proportion; absolutely. Jeremy Purvis: The core of our proposals is looking at financial powers, but there are some other areas that would have some consequences. Q774 Pamela Nash: Let’s move on from David trying to get rid of most of the people at this table. It is mentioned in the introduction to this report that the Devo Plus Group “believe that there is merit in devolving more social protection spend from the UK Government”. That is the exact phrase used, although I appreciate that is not gone into in depth in the current report. Jeremy Purvis: Correct. Q775 Pamela Nash: Would you be able to tell us a bit more about the Devo Plus Group’s opinion on welfare and social protection spend, as it is referred to here, being devolved to Scotland? Jeremy Purvis: We use the term “social protection” because that is the broad term that is used in the Government papers, and it does capture health and welfare payments. The proposition is broadly similar to legislative areas and tax powers that we would look at. For example, the principle behind devolving legislation to the Scottish Parliament was that powers are devolved unless there is a case for them to be reserved. We think that is broadly acceptable for financial powers, and we question whether or not that is broadly acceptable for all social protection as well. What it means is that when it comes to legislation, there is a strong case for some areas to be done across the UK; when it comes to financial powers there are some elements that we think continue to be done by the UK. That is why with income tax we think there is a case for having all of the powers over the rates of income tax being devolved, but there is a case for saying that the personal allowance should be reserved. So, if you are a worker in Cornwall or Kirkwall, you know that the personal allowance kicks in. Broadly, that should be the same for the operation of the single market: employment benefits and pension entitlements. There are those where a very strong case can be made that, if you are a worker, you know what the entitlements are regardless of any part of the UK in which you are working. On top of that there is quite a bit of discretionary social protection spend. I don’t know if you get casework on it but I certainly did from an alternative angle. People would ask about their winter fuel payments. One constituent said, “Why is the fuel payment coming from Gordon Brown, whereas my free boiler is coming from Alex Salmond?” As far as
the constituent is concerned, with regard to the free central heating programme, the discretionary spend, and, in the jargon, passported benefits—the devolved areas of free school meals, education support allowance and so on—there are blurred lines as to how they operate. We are looking at taking a step back to say: what is the principled reason why these should be delivered on a UK basis, and what is the additional benefit if Scotland wishes to do it through its own budget?

Q776 Pamela Nash: Is that just existing benefits through a UK basis? You just referred to the boiler scrappage scheme. Would you re-reserve that or keep it within the Scottish Parliament?

Jeremy Purvis: That is the starting point in looking at it. The next stage is complicated by the fact that I am giving evidence to the Committee today. If I was giving it in six months’ time the situation may be different, because there has not yet been agreement on the way the Welfare Reform Act will be implemented in Scotland, the relationship with how the universal credit is calculated, the floor for it and entitlements associated with it, and how that links in with existing devolved spend. Therefore, we have been hampered by timing, but we certainly think there is the potential for increased devolution of some of the components of the universal credit to Scotland to ensure much better delivery of them. One of the areas, for example, is the way that work programmes are funded. I think there are 47 school leaver programmes in operation across the UK at the moment. Some work okay with a linking-in with Scottish colleges and Jobcentre Plus in Scotland, and for some there are problems. I have casework on that and you may as well.

Q777 Pamela Nash: Is that an argument for further devolution or, “We don’t like that policy and we want to bring it to Scotland”? Is it working any better in England?

Jeremy Purvis: It’s a very good question. We have tried to be careful not to conflate the policy choices that could be made from the power with where that power resides. Yesterday, I was attacked for being effectively part of a neo-Liberal conspiracy and agenda to slash tax and spend.

Chair: We are coming on to that.

Jeremy Purvis: The week before, the accusation made against me was that, if you devolve all these taxes, corporation tax and personal income tax will be hiked; it is going to be a socialist state. When you separate out what is the appropriate level for that power to reside, sometimes it is hard not to overlay it with some decisions on what that policy would do. What we thought was lacking in the debate on the welfare changes was that it was not preceded by a debate about the appropriate support and entitlements at a UK level for a UK worker and citizen. If Scotland wishes to make additional entitlements, how is that linked in with that? If councils then wish to make further entitlements, how do they lie on top of that?

At the moment we may well have a situation where councils have to make administrative changes for the operation of council tax benefit forced upon them by Scottish Government and UK spend in fairly arbitrary ways rather than taking a step back. I am sorry it is a broad answer, but what we are trying to identify is whether you can establish in a broad area of principle the right balance of entitlements. If we are part of the UK, what does it mean to be a UK citizen, earner and worker, and, if you need support and entitlement, what is the right level of that?

Q778 Pamela Nash: I am trying to see where the line is between the policies we like and those we don’t like, and where that power should lie. For instance, I might not like the work programme, but I would want to fight for that to be changed at UK level. I don’t think it is a problem particularly for Scotland; it is the UK. That was just one example that we picked out.

Jeremy Purvis: I have watched some of the debates on welfare reform, and certainly Scottish MPs in the Chamber here have raised the poor interaction between work programmes that Jobcentre Plus is delivering at a UK level and decisions made by the Scottish Parliament. You can have a perverse situation that a young person can be eligible for one but cannot be eligible for the other on an arbitrary basis because they are funded in different ways, because if the same person is able to benefit from a work programme, they should not fall between those two stools. There are other examples. Eligibility for the energy assistance package of the Scottish Government may well be different from the components of the universal credit.

Q779 Pamela Nash: Would that not be an argument to keep it reserved to ensure universal access to these benefits?

Jeremy Purvis: It would effectively mean that the Scottish Parliament would have no discretion over additional entitlements or support. That is not what we are proposing. I use the example—I am not arguing its merits—of council tax benefit being devolved. You could consider that to be a positive; you may consider it to be a considerable negative that has had a 10% cut in it, but it is being devolved. That means it is linked much closer to the actual person. The council tax discount scheme is much more related to the personal circumstances of the individual rather than set from Westminster. It may mean that for better delivery of some of these services you devolve the budget, and then it is up to the Scottish Parliament to make sure that links better with the entitlement. What happens to that devolved budget and how it links with the remainder of the grant is a matter for political debate, but there is merit in having that debate in the approach we have outlined.

Q780 Chair: There are two things about that. The first is the question of a postcode lottery and there are all the pressures against that. Secondly, it raises the question of Glasgow, for example. You quoted, quite rightly, all the polling evidence that said people wanted to have this in Scotland rather than in Westminster and so on. The same would apply in Glasgow. They would much rather have lots of these things decided in Glasgow by Glaswegians and people they elect rather than by the Scottish Parliament. Indeed, part of my constituency includes Govan, where many people still regret Govan borough being
incorporated into Glasgow in 1912. Therefore, there is a balance to be struck. I am not sure that we are going to get this resolved today. It seems to me this is one of the big issues that will be part of the wider debate when we start moving down the road of what could be devolved and in particular the balance between centralisation and equality, and what seems to be equality as distinct from democracy at a local level.

Jeremy Purvis: I agree with you entirely. You know the borders extremely well. The same case that I would make repeatedly within the area I formerly represented is that there is little point in having a constitutional debate on powers if it is simply about Holyrood rather than where the services are most appropriately delivered. One of the elements of devolution plus is that, while it can’t be replicated identically, the core principle is robust for local government too.

Q781 Chair: I do understand that, but the principle of devolution is also applicable to local government, and the exact opposite has been the path followed by successive Scottish Governments, who have centralised various functions, facilities and policy over the years. One of the major disappointments of the devolution process is that it has not been carried through. We did tours of various parts of Scotland in relation to our inquiry into the Crown Estate. It was quite clear that a lot of people felt that Holyrood was not looking after their interests and was sucking power into the centre. This perhaps is a discussion for another day because we could spend some considerable time on that. Having links in the borders, I am aware that they do not necessarily see Edinburgh as being any closer to them than London, even though geographically it might be.

Jeremy Purvis: Correct. If you establish the principle about services and the level of Government people rely on and if, as they see it, it does not have any financial power or accountability, they perceive it differently. As a personal view, probably many people think the Scottish Parliament is now almost entirely responsible for council tax because of decisions made continuously to freeze it, even though it should be councillors who make the decisions and are accountable for them.

Q782 Chair: A point about benefits was mentioned. Can I come back to the question of corporation tax and the neo-Liberal conspiracy theory? The argument, presumably, is that that is something that has to be dealt with on a UK-wide basis because, otherwise, you just simply have a race to the bottom. The plutocrats whom you would be seen as representing in your Reform Scotland group and who fund it are clearly more interested in cutting corporation tax than raising it. It would result in all the deleterious effects that have been much discussed. In those circumstances, there is an argument that corporation tax surely should not be devolved. A lot of this debate has developed since your original paper was written. Would you reflect upon that and perhaps see that corporation tax is not as appropriate for decentralisation as you once thought?

Jeremy Purvis: I alluded to the fact before that there has been some comment that I am seen as part of a neo-Liberal plot to cut tax and slash spending, and, on the other side, that you are simply going to be the midwife to a perpetually socialist Scotland. Of course neither is the case at all. On corporation tax, we approached it on the same basis of the principled reason why it should not be devolved on a constitutional basis and similarly for legislation. There isn’t a strong principled argument why corporate income tax should not be devolved, but, when businesses pay rates on the land they use, that should be fully devolved, so there is no question if you are a business. For 95% of businesses in Scotland that would pay business tax, it is going to be income tax because they are not past the threshold for paying corporation tax. The same argument has not been used for small businesses, where there is an understanding that they will be liable to pay the new Scottish rate of income tax under the Scotland Act. That is the broad aspect.

As to the specifics, if you are a business across the UK, is there a case to stay at the UK level and the thresholds make sense on a practical, administrative basis and should be retained at that level? We have broadly accepted that case. We have also looked at international experience of other countries where corporation tax is devolved. Again, we refer to the OECD. There are eight countries in the OECD that have corporation tax devolved. The political imperative they found is that the sub-central level of government wants stability in its revenue, because it knows that if it wishes to engage in tax competition with central Government it is unlikely ever to win. The OECD therefore came to the conclusion that there had been little tax competition between a sub-central level of government and the national level of Government.

The proposition that has been used by the SNP in particular—the First Minister in Los Angeles was arguing that they would instantly cut corporation tax to 20%—is problematic, because there is similarly very little evidence that that would promote a change in the way investment profiles are made, given the fact that the Scottish Government have not done any modelling about what actual yield is. We stress in our report that the debate is hampered because there is little robust data about actual yield. Mr Mowat made reference to the Holtham commission, which gave the spread of what it found in Wales. If you use the GERS criteria in Wales to estimate corporation tax, it was £1.2 billion for the last year; if you look purely at Welsh registered businesses, the estimate is £600 million. There is a huge variation. We need the Scottish Government to do a proper modelling of its proposals.

In essence, there isn’t clear evidence internationally of a race to the bottom. There is a case for devolving not only rates, because there isn’t a much stronger argument against it on a principled basis. Finally, we looked at the operation of the reliefs. Similarly, there is no strong, principled constitutional reason why the Scottish Parliament, if it so chooses, should not self-finance targeted reliefs, whether that is on employing young people or capital investment.
That is why we have drawn the conclusions that we have. That illustrates, hopefully, that it is neither a neo-Liberal nor socialist plot for either one of them. If we want to have the Scottish Parliament broadly responsible for more than half its revenue, corporation tax revenue plays a component in that. But we have indicated that there are complexities to it, and that is why we have put it in the category of category 2 taxes.

Q783 Chair: There is an argument for retaining the rate centrally, but the take, as it were, goes locally on the basis that those who grow their business by other means would benefit. I understand the argument that if all of it goes to the centre there is no incentive to grow business. The issue that concerned us, as typified by Ireland, was about unfair competition, and also parasitic places like Jersey, Guernsey and Isle of Man and the practice of brass-plateing where profits are transferred. There was a genuine anxiety, which I am sure you understand, about Scotland becoming a tartan tax haven for people who would switch profits around the UK simply to benefit from the lower rate, and that would be seen as an act of economic aggression by our partners in England, Wales and the rest of the United Kingdom. You then get into a circumstance of conflict and so on rather than having the harmony we would want to see if there was separation.

Jeremy Purvis: One of the core elements is the proper incentives for MSPs and the decisions they make. At the moment there is little incentive for them to grow the tax base in Scotland, even though they have statutory responsibility for economic development. I will give you one example from my own experience. You have a situation where the previous Executive identified market failure and made a decision to invest in broadband in the Scottish highlands and lowlands. That budget line was removed because there was a decision that telecommunications was a reserved matter and the UK should pay for this. There was political dispute over who paid for it, because to some extent you might think that, if there is going to be economic benefit and an increased tax base because businesses are doing better but Holyrood does not gain from that, why on earth it would put in an infrastructure investment?

Q784 Fiona Bruce: As you say, we have talked a lot about taxation. So, very briefly, because I think my colleagues want to move on to other issues, is there anything you want to add with particular reference to the powers available under the Scotland Act? Are they sufficient to devolve more taxation powers to the Scottish Parliament? If not, where would you start?

Jeremy Purvis: From our view of them, they are certainly able to be used to devolve some others. Under section 80 you can certainly devolve other aspects of devolved taxes. There would need to be other primary legislation across the tax basket, whether or not that is a further Scotland Act or simply a managed process of looking at other secondary legislation. Most of it is secondary legislation.

Q785 Lindsay Roy: We know your views about whether a referendum is required to implement what you are proposing, but we know too that there is going to be a referendum. Should a further devolution option be on the ballot paper for the referendum?

Jeremy Purvis: We are certainly not pressing for that. We certainly agree that there should be absolute clarity as to whether or not people would wish to continue to be part of the UK.

Q786 Lindsay Roy: So, if there were to be something about further devolution, what level of detail would be required? You have been quite scathing in your comments about the lack of detail in devo max, for example.

Jeremy Purvis: The discussions we have had with the political parties have been on the basis that we hope our proposals can form the basis of consensus among them in advance of the referendum, so that when people vote in the referendum they are aware that by voting no to independence, whatever that may well be, it means there will be further devolution to strengthen the Scottish Parliament. That is the focus of our work and one of the objectives or the reason why the group has been established. That is the position we are taking at the moment, and we are having further meetings to seek to persuade them to do that.

Q787 Lindsay Roy: So, your position, quite clearly, is that it is a single-question referendum.

Jeremy Purvis: I am trying to be careful with language. Tempting as it is to engage in the issues of process, I still think that as a group we will never leave those issues. We think there is a stronger case for persuading the parties that don’t support independence to coalesce around our proposals. Ultimately, whether or not it is one of the five options I talked about before—we looked at many more—is it for the parties, the Parliaments and the process. As much as I am tempted to think I am still an active politician, I am not, so it is over to you.

Q788 Chair: Why are we having a referendum in your view? The question of why we are having a referendum on one thing to some extent determines whether or not something else should be the subject of that referendum as well.

Jeremy Purvis: That is fair.

Q789 Chair: So why do you think we are having a referendum?
Jeremy Purvis: The Scottish Government have a natural and to some extent moral mandate to put to the people whether or not Scotland should be an independent country. I don’t think they have a moral mandate to put anything else to the Scottish people. If there are those who do not agree with independence, what is the most effective way forward to deliver what we believe is a strong case to improve the devolution settlement and strengthen Scotland? There are a number of options other than that, given the fact there will be a referendum. That is where it comes to the process, but effectively the only mandate is to put the question as to whether or not Scotland should continue to be in the UK.

Q790 Chair: Can I press you on that? What is the electoral mandate?

Jeremy Purvis: The opposition party’s stance in the Parliament when I was there was that, if there was a majority of MSPs in the Scottish Parliament in favour of independence, they would be able to have the electoral mandate to test that. There was not a majority in the last Parliament; there is a majority now. If Willie Rennie, Ruth Davidson or Johann Lamont were here, they would have to explain for themselves. The Devo Plus Group acknowledges that the Scottish Government have that entitlement, if they wish. The question becomes therefore: how is anything else tested? There is the case that the best way of securing devolution for the long term is to have that ratified by popular mandate. The counter-argument is that people decided in a previous referendum to have a Scottish Parliament with financial powers. This is simply enhancing those powers in a staged way. That is why I think that we as a group could do nothing else other than talk about process.

Q791 Chair: I want to be clear. You continue to recognise the mandate that came from the referendum and establishing the Parliament and having financial powers, and it is not necessary to reiterate that in order to continue to have a mandate to explore further devolution.

Jeremy Purvis: That is correct. Our proposals are as valid even if there was not a referendum. I put forward an early paper in 2004, well beyond the prospect of there being an SNP Administration, saying that the structures were not appropriate and there needed to be further enhancement of powers. Those that have argued, for example, on a home rule proposition take a similar stance, and those who may be part of the Red Paper Collective will be taking a stance, all separate from whether or not there is going to be a referendum. The point for us is that there is a case for this.

Q792 Chair: That is helpful. You will understand that we are trying to clarify it. Your view, as I understand it, is that the party that won a majority of MSPs had a stipulation in its manifesto that that was what it was seeking. It got a majority and, therefore, that goes forward, whereas other things were not on offer and not campaigned for and, therefore, do not have the same mandate from the electorate, which is the moral point, as I understand it.

Jeremy Purvis: That seemed similarly to be the Scottish Government’s case in their 2009 document, when they said that those who wanted devo max should present the case for it and a case had not been made. All I observe is that it continues not to have been made.

Q793 Chair: Ah yes, but that was before it looked as if they might lose.

Jeremy Purvis: Was that another rhetorical question?

Chair: Not entirely—not entirely.

Q794 Pamela Nash: Is the Devo Plus Group completely against a multi-question referendum?

Jeremy Purvis: It is tempting, again, to involve process. To be as clear as I can, in the response to consultations from both the Scottish and UK Governments, Reform Scotland as a think tank said it had no preference on process but there could be a number of options available to implement it. We have rehearsed some of those before. The Devo Plus Group, however, simply said that, whatever that process is and whoever decides it, the result of whether or not Scotland is part of the UK should be very clear. That is then a platform for devo plus, but the clarity is enhanced if the parties that don’t support independence coalesce around an agreed position so that makes the position very clear in the referendum. That is why we are not pressing for any other questions or issue, because, broadly, we accept that there is a mandate for a question to test independence and nothing else.

Q795 Pamela Nash: That is very clear. Does the group have an opinion on other groups, namely, the Scottish Government, pushing for a multi-option referendum paper at the moment? You said that at the end of the day it was about the clarity of the decision. To turn that round, do you feel that decision would not be clear if we go ahead with a multi-option referendum?

Jeremy Purvis: I can reflect on what the Secretary of State, Willie Rennie and Johann Lamont have said. All have raised difficulties about some of the ways that questions could be framed if there are multi-options. They have said that. I would probably refer back to our proposition that the best way of having clarity is that the public are aware that there is broad party support for a way forward. It is a judgment call—this is the point Mr McGovern was making—whether or not the public will understand and it is sufficiently clear if the parties come together behind devo plus, enhanced devolution, home rule or whatever you call it. I feel they will do if it is presented in a clear case, and that is part of the discussions we have been having with the different parties so that there can be a clear position.

We tried, for example, to enhance the debate in our paper when we put the spectrum of different choices—it is going to be hard to explain for the Official Report—from a unitary state pre-Scottish Parliament right through to full republican independence. In the coming two years, it is
incumbent on anyone who has a position to make sure that the facts are there and to try to have as little baggage as possible, for it not to be pejorative and to get that information out.

Q796 Pamela Nash: I don’t want to put words into your mouth. I want to be very clear on the original point about why a multi-option referendum ballot paper might not be as clear as others. Is it just the confusion around a multitude of options and getting the definition of each of those options out there, or are you also thinking about the figures in the result and how a result would be calculated? For instance, if there was a new settlement reached through the referendum where the minority of those who voted actually got their way, is your group looking as well at how the result is calculated or just the facts at the start?

Jeremy Purvis: It is a very fair question. We did an opinion poll. Of course, it is an opinion poll and we accept there will be others in the mix. We asked, “To what extent do you agree or disagree that those who want to stay in the UK should campaign for more powers for the Scottish Parliament within the UK as an alternative to independence?” We were asking people, “Do you think the pro-union parties should come together on a view?” The MORI poll indicated that 66% of people agreed with that and 17% disagreed with that. We believe there is an appetite among Scots for those who don’t support independence to come together and have a broadly agreed position of what no means in the referendum. Similarly, that is why we believe we have a strong case that those who believe in yes should clearly outline what that is. What is not clear at the moment is the difference between devo max and independence.

Q797 Chair: Separatists are being delightfully—and deliberately—vague about what the implications would be, but I am not sure that the poll you quoted is an entirely fair one. If you give people the choice, to paraphrase slightly, “Would you agree that all the political parties should come together on an agreed pattern of devolution, or would you rather they continue to fight like ferrets in a sack?” it is fairly clear what the answer will be. I do not think that your phrasing of the question, as I understood it, is all that far away from that. Therefore, in these circumstances you will get the response that the question is skewed to bring forward. I am not sure we are going to get all that much further on this.

Jeremy Purvis: First of all I broadly accept your point. I read with interest—I agreed with it—your report “Do you agree this is a biased question?” I accept your point. However, we do believe that, rather than there being three different versions of what a no vote might be, the public would prefer those parties that don’t support independence to coalesce around an agreed way forward. One of the reasons we have that view is that there are precedents within the Scottish Constitutional Convention and the Calman commission. That is less so in the Calman commission but stronger on the basis that one of the conclusions of that commission was that the three parties that stood in the 2010 general election had the implementation of Calman in their manifestos, and the public were simply aware that there was broad political agreement. The SNP chose not to, but that was its choice. Therefore, it comes back to the earlier question: what is the most effective way of delivering constitutional change? Broad political support, finding common ground in the convention, followed by the constitutional steering group, which was a transparent piece of work, led to the Scottish Parliament. The Calman process led to the improvements, but it comes back to our proposition that Calman analysed the problem correctly but further work needs to be done.

Chair: Iain, do you want to pursue that?

Q798 Iain McKenzie: No. I think that eventually Pamela covered all the positions on multi-options. I think that eventually Mr Purvis did say that Devo Plus was not supportive of a multi-option question. That was my take on what you eventually arrived at.

Jeremy Purvis: We are not pressing for that.

Chair: Kremlinologists will pore over the text later on.

Q799 Jim McGovern: Would it not be fair to say that, in a single-question referendum, whatever the wording of the question, if separatism is rejected, any further powers could be negotiated after that, rather than muddying the waters by putting umpteen different questions on a ballot paper?

Jeremy Purvis: That is a political judgment that the parties will have to make.

Q800 Jim McGovern: Yes, but I am asking your opinion.

Jeremy Purvis: I think that the case against separation, as you put it, and the case against independence as others have put it, is much stronger if the public are aware that the parties that are part of the Better Together campaign have an agreement as to what devolution will be afterwards and what the process will be under way. We have put forward what we believe is the best basis for that. They will make a judgment as to whether or not they coalesce around a single view—we would like it to be devo plus—or they go into the referendum campaign with three separate positions. We know, for example, that the Scottish Labour Party has established a commission through Johann Lamont to look at further devolution.

Q801 Jim McGovern: It is a fairly straightforward question. Do you not think that one question on the ballot paper would be sufficient? Following that, if the electorate vote to say they want Scotland to be separated, presumably that would happen. If they say they do not want Scotland to be separated, we could then discuss further powers.

Jeremy Purvis: My point is that it is better to do it now and find agreement because, as I was saying, two of the parties have established their policy commissions.

Q802 Jim McGovern: One question or multi-questions.

Jeremy Purvis: As I have said, it is absolutely—
Q803 Jim McGovern: You can say yes or no.
Jeremy Purvis: Is that going to be the question?

Q804 Jim McGovern: Do you want one question or multiple questions on the ballot paper?
Jeremy Purvis: The most effective way of going forward—

Q805 Jim McGovern: No, tell me: one question or multiple questions.
Jeremy Purvis: One question.
Jim McGovern: Thank you; that will do.

Q806 Chair: I think we have just about covered everything. I hope you feel you have had a fair hearing.
Jeremy Purvis: I do, Chairman, other than that I just will not be able to have my last half-sentence on the Official Report.

Q807 Chair: I was just going to ask: are there any answers you have prepared to questions that we have not asked? Are there any points that you are absolutely bursting to share with us, which might include the second half-sentence of the answer to the point raised by Mr McGovern? Alternatively, depending on how the report was written, it might be the third sentence of what should have been or was originally a single sentence.
Jeremy Purvis: No, Chairman. You have been very kind with my long answers to the questions. I am very grateful. The final point is that, if there is going to be a single question, the best way of securing the answer of no is if the parties coalesce in advance of that referendum around proposals for devo plus rather than wait until after the referendum. That is the most effective way of securing a no vote.
Chair: I think, if by no other means than reiteration, we have grasped that that is your position. Thank you very much for coming along.
Wednesday 4 July 2012

Members present:
Mr Ian Davidson (Chair)
Fiona Bruce
Jim McGovern
David Mowat
Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses


Q808 Chair: Good afternoon, lady and gentlemen. Thank you very much for coming. I will start off by asking you to tell us who you are, what organisation you represent and why you are here.

John McCormick: My name is John McCormick. I am a member of the UK Electoral Commission and I am the Commissioner with special responsibility for Scotland. I believe we are here to talk about some aspects of the regulation of a proposed referendum in Scotland.

Lisa Klein: I am Lisa Klein. I am Director of Party and Election Finance at the Electoral Commission. I am here for similar reasons to the gentleman on my right.


Q809 Chair: To what extent does the present regulatory framework affect referendum campaigns?

John McCormick: I will kick off for a sentence and then pass on to my colleague Lisa, if that is okay, Chairman. We have a number of principles relating to referendum regulation. They differ from election regulation and we always make that point clear at the outset of any of these discussions. There is referendum regulation and election regulation. We have a number of principles that underpin the regulation about transparency, fairness, making it easy for people to campaign and to register to campaign. We have a regulatory framework that has been in practice, as designed in the PPERA, which set up the Commission, in three referendums, most recently last year in the referendum for Wales and the PVS referendum for the UK.

For the details of the regulatory framework I will ask Lisa to say something and then back to Andy and myself.

Lisa Klein: I interpret the question as relating to what the laws and regulatory framework are before you are into a referendum period, because PPERA does have a whole chapter on referendum. Is that correct?

Chair: Yes.

Lisa Klein: The regulatory framework applies in a couple of ways. First, political parties are under an obligation to report a certain level of donations and loans to us. They do that on a quarterly basis. Some of the funds that come in to political party coffers would be reported according to that process. It is not segregated out in terms of its being referendum money at this point.

Equally, there are member associations. Perhaps it would be helpful if I were to define that term. Those are groups that consist mainly or wholly of party members who are grouped together in an attempt to influence internal policy of the party, whether that be leadership elections or policy formulation. Those entities also have an obligation to report to us on an ongoing basis if they receive donations over a certain threshold, the threshold being £7,500.

Q810 Chair: Those are semi-secret groups like Progress and things like that inside the Labour Party?

Lisa Klein: Yes. One that comes to mind is the Muslim Friends of Labour, for example. Secondly, you have individual regulated donees, who may be members of political parties or elected office holders. There are obligations about reporting donations that attach to that role as a regulated donee.

Thirdly, just to provide the whole framework, there is third party regulation. I am mindful to say that third parties are groups or individuals who spend money campaigning on an issue for a party or a platform. They do not try to influence what is happening within a political party internally but more externally. They, too, are regulated, but that is either during the regulated period, meaning for an election, or during the referendum period. If they are active during that time period, they are obliged to submit a campaign expenditure return that documents donations and expenditures made. That applies only during a regulated period, whether it be referendum or election-related.

Q811 Chair: Andy, do you want to add anything to that?

Andy O’Neill: No, not at the moment.

Chair: That is clear as a background.

Q812 Pamela Nash: Can you confirm that the Yes campaign in the referendum in Scotland is not automatically regulated? If that is the case, can you explain why?

John McCormick: Yes. Lisa will expand on why.

Lisa Klein: If I go through the options, they could be regulated as a political party. Neither has registered with us as a political party; so there is no hook, if you will, in the legislation for the regulation. In my view, they do not meet the definition of a members’ association, both in terms of their purpose and membership. The closest they would be is to a third
party, or, when it is during a referendum period, third parties are known as permitted participants. That period for regulating has not yet commenced.

**Q813 Pamela Nash:** Is this something that concerns you? To the outsider, this is a campaign that promotes the objectives of a single political party. It seems that this campaign has fallen through a loophole. Is that something that concerns the Electoral Commission?

**Lisa Klein:** Obviously, as Commissioner McCormick has already identified, transparency is important to us. We think that that is an important underpinning principle, but it is within the legislative framework, which of course is decided by the relevant Parliament. Within that we have, for example, suggested in our report following the 2011 referendum that there be some pre-polling disclosure by campaign committee, but there is no regulation at this time period. I should say that it is very similar to the context of elections in the UK. There are periods when there is no continuous regulation. If you take, for example, elections to the Scottish Parliament, there is a regulated period of four months. If you look at the UK, model, it has been 365 days. It is clear to everyone that in certain instances there is active campaigning that goes on, and what happens beyond the regulated period has been discussed within this House.

**Q814 Pamela Nash:** Clearly this is different when there are formal launches of campaigns far outwith the regulated period for a referendum.

**Lisa Klein:** I am sorry; I missed the beginning.

**Pamela Nash:** This is a different situation when you have formal launches of campaigns—a campaign that is ongoing so long before the regulated period of a referendum.

**Lisa Klein:** It is. You can draw that distinction in terms of whether it is formally declared or not in the context of some of the electoral campaigns that have been going, but it has to fit within the framework that regulates it.

**Q815 Chair:** The Yes campaign is so obviously a front for the SNP, but by creating itself as a front, it avoids the regulation in terms of where donations are coming from that, were the SNP doing it directly, they would have to abide by. Is that not a loophole?

**Lisa Klein:** I have not conducted any investigation into the financial arrangements. I am only going to accept your positing, as you have described it—if that were true. I can’t ascribe a motivation to it, but that is the way the rules work and they would be fully compliant with the rules as they are.

**Q816 Chair:** By definition then, if a political party sets up a front organisation that is clearly all about fulfilling the objectives of that party, it is not under the same regulations that the party would be under if it was doing exactly the same thing. John, do you want to answer that?

**John McCormick:** Basically at the moment we have two campaign groupings that have been launched. There is Better Together, which has a number of prominent politicians associated with it and the support of some political parties. There is also the Yes Scotland campaign, with which three different political parties have said they are associated. One of the things we will always stress in terms of a referendum, and especially one that moves on over a longer period, is that referendums don’t just involve political parties. We know that other people will be involved with both campaigns who feel strongly about the issue that will be the subject of the referendum. So it is political parties plus. Lisa is absolutely right that, if we operate within the existing regulation, in the regulated period they will be there, but at the moment they are not as registered campaign organisations.

**Q817 Chair:** The idea of popular fronts and all the rest of it is fairly common in political history, isn’t it? Political organisations set up front campaigns and they have a couple of token members. We used to have a token vicar, a token worker and so on, but the political organisation actually ran it from behind the scenes. Here, given that separation is the whole raison d’être of the SNP, you effectively have a campaign designed to fulfil the objectives of the party, and that campaign is not regulated in the same way as the party would be. They can do things as a front that the party couldn’t without having to make full disclosure. Is that correct?

**John McCormick:** Well, in—

**Chair:** I think yes is the answer actually.

**John McCormick:** We have recommended a minimum of 16 weeks as the regulated period for the referendum. I just have to go back over this for the record. After the PVS referendum last year, we recommended that there should be a minimum period of 16 weeks as a regulated period. The Scottish Government adopted that. The regulated periods for the two referendums last year were closer to 11 weeks than the 16 weeks. The 16 weeks, as Lisa said, is the period for the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly and the Euro elections. The 16 weeks is well known to people and has been accepted as a regulated period. The 16 weeks that the Scottish Government has proposed as the regulated period is what we are working under at the moment. But we are a bit in the dark, as everybody is, about when the referendum will be, what the question or questions will be and when legislation will come.

**Q818 Chair:** I do understand that. You are not addressing the point I am making. In the unregulated period, a front organisation can draw in money, spend money and undertake activities without the degree of supervision that would apply were a political party doing that. That is correct, isn’t it?

**Lisa Klein:** I choose my words carefully here. There is a group that has assembled on both sides of the emerging issue that consists of multiple players. That is what we have at present. If there was a situation—and I take it into the abstract—where there was evidence that a political party was trying to circumvent any reporting obligations to avoid disclosure, for example, then that is something we should be considering. I don’t see that evidence here.
Q819 Pamela Nash: Just to be clear, we mentioned earlier that there were three political parties. One of those political parties in the Yes campaign has already withdrawn support and also the independent MSP. I believe, has withdrawn. That leaves one political party other than the SNP. If they withdraw support, would the Yes campaign then be treated as an arm of the Scottish National Party and therefore be subject to the same regulation as the party?
Lisa Klein: I don’t think it is quite as easy as you make out. You have groups coming together; you also have individuals who are coming together. It is overly simplistic to suggest that, if the political parties drop out of this working group, you are then left with only one party, and that will transform the position. I can’t go further in terms of speculating about exactly where we get to. All I can say to you is that, if there was evidence of that, it is something I would want to be looking at.

Q820 Pamela Nash: It would be helpful for us to find out where the line is. You mentioned organisations within a political party, which consist only of members of that political party. If they have just one member who is not a political party member, does that make it a campaign group?
Lisa Klein: Not necessarily. If you go back to the legislative history in terms of members’ associations, they were designed to be internally influencing the affairs and structure of the party. The idea was that you would want that to be subject to disclosure because the influence is inward towards the political party and potentially to the policies of the party. It is the converse, if you will, so I am not sure that that shoe fits.

Q821 Pamela Nash: If it was solely made up of members of one party and if the influence they were trying to have was only external, would the party still be treated as a campaign group and therefore not subject to regulation of the party?
Lisa Klein: I have to go through what is subject to regulation under the law. I have outlined that for the Committee. If there was evidence of an attempt to circumvent the transparency requirements of law, I think that is something that should be brought to our attention.

Q822 Chair: I want to be clear on this. A political party can evade the supervision requirements by having a big chunk of its membership involved in a front organisation. They get a token vicar or Liberal to broaden it out, and they can then campaign without financial supervision in a way that they could not if they were actually campaigning as that political party?
Lisa Klein: That is not what I have said and it certainly is not what the members’ association—

Q823 Chair: But I am asking if it is true, though.
Lisa Klein: No; that is not what the law is saying here. What is regulated would be if it is a members’ association that has certain specific requirements.

Q824 Chair: But that is internal.
Lisa Klein: That is right.

Q825 Chair: I understand that completely. The point I am trying to address is the question of external campaigning. What is the difference between a political party campaigning for something, which is then subject to all the rules and regulations about disclosure and so on, and exactly the same structure but with a couple of additions—two extra people to pretend it is a front—doing exactly the same thing? Presumably that is entirely without supervision and regulation and surely that is the legislation being avoided. I am sorry, but Hansard doesn’t record grimacing. If you have a comment to make rather than just making a face, that would be helpful.
Lisa Klein: I am sorry. I am pausing to reflect.
Chair: It doesn’t reflect that either.
John McCormick: As Lisa said earlier, the political parties are still subject to the PPERA funding regulatory regime.

Q826 Chair: That is right, but, if the parties want to avoid it, they just get a couple of other people, call themselves something different and carry out the objectives of the party. They would avoid supervision through the external organisation. They would then be treated as a campaign group and therefore not subject to regulation of the party?
Andy O’Neill: No, because the parties wouldn’t be able to stand. If the parties didn’t stand during an election—

Q827 Chair: We are not talking about during elections. This is in an unregulated period.
Lisa Klein: I am very happy to take this away and ponder it some more, if that would be of assistance to the Committee. It sounds an awful lot like third party and, as I said, third parties are regulated during the referendum period. I have not been confronted with something and turned my mind to whether there could be circumcision and at what point that would be. It would depend on the facts, but I am very happy to come back to the Committee having thought this through.

Q828 Mr Reid: Reference was made to elections. If the timetable is as we expect, the European elections will happen just before the start of the regulated period for the referendum. If this Yes campaign organisation was campaigning through the European election period in support of the aims and objectives of the SNP, how would that be regulated in terms of the European elections?
Lisa Klein: I am sorry. Are you talking about a joined-up regulated period?

Q829 Mr Reid: The timetable that we expect is the European elections at the start of June 2014 and the referendum in October 2014. That would seem to suggest that the regulated period would start a few days after the polling day for the European elections. The European elections campaign itself will be a regulated period for the political parties. We also have this Yes organisation, which is campaigning in support of the objectives of one of the parties in the European elections—i.e. the SNP. From what we have heard, because it is outwith the referendum regulated period, the Yes campaign organisation won’t be regulated, yet during an election campaign it is campaigning for the
objectives of one party competing in that election. I would like clarification on how the election regulated period would affect the activities of the Yes campaign.

Lisa Klein: If the activity is ongoing during the European regulated period, it would qualify as a third party and be subject to the regulation.

Q830 Mr Reid: What do those regulations entail?
Lisa Klein: The regulations entail that there be disclosure of donations received by the third party and expenditures made during the regulated period, but it would be a post-poll disclosure.

Q831 Mr Reid: You said “donations made during the regulated period.” If, say, a few million pounds were given to the Yes campaign before the regulated period started, would that have to be declared as well?
Lisa Klein: That is an interesting question. Donations that are received before the commencement of a regulated period or a referendum period that are used for material and for the campaign after the commencement of the regulated or referendum period are subject to the campaign expenditure limit and to regulation.

Q832 Mr Reid: If a campaign organisation spends money during the regulated period and it has also spent money before the regulated period, presumably all the money goes into and out of the one bank account during the regulated period. How do we know which money was spent before the regulated period started and which money was spent during the regulated period? We know the amount but we don’t know whose donation was spent.
Lisa Klein: Yes, and that is true on any account. For any campaign expenditure return you don’t know which funds are being particularly used to buy those posters or to pay for a particular item.

Q833 Mr Reid: But if it was a political party they would have to declare the donations no matter when they received them. The point we are trying to make is that this campaign organisation does not have to declare donations that it received before the regulated period started. What you have said is that it would have to declare expenditure during the regulated period. It now seems very unclear to me what they have to do about donations before the regulated period. You have said that it applies if they spend the money during the regulated period, but of course we don’t know whose donation was spent during the regulated period because it has all just gone into one pot. If they got, say, £10 million in donations before the regulated period and spent £5 million during the regulated period, which of the £10 million donations became that £5 million?
Lisa Klein: Under the rules you would not be able to marry up the exact—

Q834 Mr Reid: But what donations do they then have to declare?
Lisa Klein: If it is a third party, they would have to declare donations received over £7,500 during the regulated period.
**John McCormick:** The context of this makes it difficult for us to try to put it on the record. The fact is that in legal terms the referendum does not exist at the moment. There is no legislation; there is no date; we don’t know whether it is one question or two questions; and we don’t know which Parliament will approve the legislation. Therefore, the law doesn’t take account of that situation. That is what we are discussing here. Chairman. The law can’t just immediately come in to discuss that. As I think I said at the beginning, we are very aware of looking at referendums around the world and the referendums we have had in the UK. Each referendum is different and you can only take so much experience from one referendum and apply it to another because one size does not fit all.

In my view, this referendum is unique because we have a number of political parties who have become associated with umbrella campaigns right from the outset when it would seem that there are at least two years before the referendum might take place. The law does not take account of that. That is the context in which we are working. When more proposals come through and when we have something concrete to deal with, we will be giving advice and comment then, but we have got to see the shape of it.

**Q841 Chair:** It is only fair that we do understand and accept that you are not responsible for the law and, therefore, it is not your fault.  
**John McCormick:** I wasn’t worried about being the head of blame, Chairman—really I wasn’t.  
**Chair:** But you are here, you see; you are the witnesses, and so it is reasonable for us to raise these things with you. What we see as possibly the inadequacy of the existing position, as you have outlined to us, while not your fault, will be reflected in the report. Don’t take it personally. I am sure you’ve had worse.

**Q842 Lindsay Roy:** I want to ask about the interface between the European elections and the referendum, if indeed it is in October 2014, and the regulatory period. What happens if, for example, political parties mention overtly in their manifesto and leaflets the position with regard to the referendum campaign? Is that counted or discounted?  
**Lisa Klein:** When there are overlapping regulatory periods, there has historically been an accommodation made in terms of the amount of campaign expenditure. There are assessments that the parties and campaigners have to go through in how to allocate that.

**Q843 Lindsay Roy:** Could you clarify how that would work?  
**Lisa Klein:** With difficulty, I would say.  
**Andy O’Neill:** Possibly an analogy is that until recently the Scottish Parliament and local government elections were combined. That was in 1999, 2003 and 2007. There are party and candidate campaign rules for the Scottish Parliament. There are candidate campaign rules for councillor candidates. If you got a leaflet that was 70% Scottish Parliament and 30% councillor, you would allocate that to the different returns. That is one practical example of how you would do it.

**Q844 Lindsay Roy:** But they were run simultaneously, whereas these are not.  
**Andy O’Neill:** They were run simultaneously, but if you were overlapping you may do the same. The leaflets would be going out in the overlapping period presumably.

**Q845 Lindsay Roy:** But would the European elections be outwith the regulatory period?  
**Andy O’Neill:** I don’t know when the referendum is proposed to take place so it is difficult to comment.

**Q846 Lindsay Roy:** If it was October 2014—  
**Andy O’Neill:** All we have is the Scottish Government consultation paper, which says autumn 2014.

**Q847 Chair:** Let me just be clear about this. I understand the principle of allocation, but, if the Labour Party produced leaflets for the European elections and on one side was its position on European elections and on the other side its position on a potential Scottish referendum, half of the cost of that leaflet would not be allocated to the election campaign, would it? It would be allocated to this other campaign on the referendum, which would not in itself be regulated, thereby enabling you to produce twice as many leaflets for the same cost effectively because half the cost would go somewhere else.

**Lisa Klein:** What is required is that the parties have to make an honest assessment of what goes where in terms of the allocation. That would count against this combined spending limit that they would have.

**Q848 Chair:** Yes; that is right. If I produce 5,000 leaflets for £5,000 and half of it is for the European elections and half of it is for the Scottish referendum, I only need to declare in the European elections half of the cost.  
**Lisa Klein:** That is right.

**Q849 Chair:** For the same amount of money I can therefore subsidise my European elections by using this unregulated money.  
**Lisa Klein:** If that is how you chose to do it, yes.  
**Chair:** That is helpful to know.

**Q850 Mr Reid:** You said earlier that donations given to one of the campaigns before the regulated period started would not have to be declared. Would it be legal for these campaigns to accept donations from outwith the UK before the regulated period started?  
**Lisa Klein:** There is no prohibition on the source of donations received by campaigning organisations for expenditure that would be before the regulated period.

**Q851 Chair:** If all these American funding bodies decided to give a lot of money to any campaign in Scotland before the regulated period, they could absolutely pour it in, unqualified, with no need for regulation or clarification? If the CIA or KGB want to give money, they could do that? I just want to be
absolutely clear. They could all do that if they wanted.

Lisa Klein: Provided that they receive it in or are using it before the commencement of the referendum period, yes.

Q852 Chair: But you wouldn’t know if they were using it before the commencement because, of course, you have already outlined that you don’t know where the money has come from because it is impossible to follow it back.

Lisa Klein: I could give you an example. Let’s say you took money from whatever source, you knew that you were doing some sort of flyer and you were using that money, and you put them in store because you wanted to use and distribute them in your door-to-door canvassing during the referendum period. Then you should be required to pay for those—

Q853 Chair: If you choose to do so. But if the KGB wanted to get Scotland out of NATO and decided to support the separation campaign, they could give lots of money, and then when the SNP printed leaflets they could say that any money that has been given by widows and orphans is the money that is declared and the other money is not declared at all.

Lisa Klein: That is right.

Chair: That would seem to be an error, wouldn’t it?

Q854 Fiona Bruce: Following on from that, in terms of expenditure during the regulated period what are the restraints that the regulations impose?

Lisa Klein: I can only talk about the PPERA legislation as I don’t know what the legislation will provide. There is a spending limit that is set—that is the main regulation—and that there be a reporting of the expenditure after the poll. That is the form of regulation that that takes.

Q855 Fiona Bruce: And that spending limit still has to be set obviously in this case.

Lisa Klein: Yes. Under PPERA, just to be clear, with regard to the reporting for participants who campaigned in the 2011 UK-wide referendum if they spent under £250,000, any expenditure over a certain level is, within three months and campaign expenditures over a certain amount are due within six months because they have to be audited. That is the requirement.

Q856 Fiona Bruce: You have talked about the expenditure. What lengths were the regulated periods in the previous referendums and what was the rationale behind those periods?

Lisa Klein: As to the periods, I must make sure I get it right. If we start with the north-east referendum in 2004, I believe that was 15 weeks. Please challenge me if I am wrong on that. Then you had both the Wales referendum and the UK-wide referendum where the referendum period was 11 weeks. In both of the latter instances, it commenced upon Royal Assent to the legislation, which is a factor. What we found through the experience—because there has to be legislation for the referendum—and in discussions with the campaigners is that that was a very short period of time to mount the campaign and get the rationale out to voters. In the light of that, we came forward in our report and recommended a minimum of 16 weeks. That is the period that was chosen in the Scottish Government proposal.

Q857 Fiona Bruce: Do you know why those shorter times were chosen previously? Was there any reason why those shorter lengths were chosen in the previous referendums?

John McCormick: They clicked in as soon as the Royal Assent came in. There was only 11 weeks. PPERA makes it a duty on the Commission to ensure that there are 10 weeks between Royal Assent during the period. We have recommended it be 16 weeks. Both of those referendums just made it, in effect.

With regard to the spending limits and the Scottish Government’s recommendation for the spending limits for the regulated period for the lead campaigners, the political parties and for other non-party campaigners, you will know that in our response to them we have said we think they are on the low side in what they have recommended and we would recommend a higher expenditure limit because it is in line with the expenditure limits that were spent on the Scottish parliamentary elections. That is in our submission that we presented in March.

Q858 Chair: Coming back to this question of foreign money and related matters and how it is spent, there is no reason why all the groups involved shouldn’t voluntarily decide that they will have no foreign money and then make open declarations to you, even though they are not legally obliged to do so. If they did that, would you be willing to receive those submissions? If they decided that between now and the regulated period, because of the gap in the legislation that I think we have identified, people were prepared to be honest and open voluntarily and handed in to you notes saying, “We have had no KGB money, no money from the CIA, no money from the United States, and we are spending only in line with such-and-such limits and here are all our accounts”, would you be willing to receive and view that?

John McCormick: We have been discussing this at some length with the Chairman, as you might expect and we are a bit wary of that. Lisa will give you the longer answer and I will come back to it because it is an important issue.

Lisa Klein: Just going back to 2011, there was voluntary disclosure by the two main campaigners at the end during that shortish referendum period. It was during the regulated period—the referendum period—that they decided there would be some disclosure. There were different formats, information and time periods for releasing it. It definitely shows that, if there is going to be some pre-poll disclosure, it would be good to have it in a consistent format. I can certainly see the value of it. We have a question as to whether it is really the Commission that has a role in this as the regulator. There are a couple of reasons why the Electoral Commission would not be the appropriate body for it. We are talking about a period that is not subject to regulation and we are a regulator. All the information
that we put forward is subject to regulation. We have some say over the format of it and whether it is permissible. We have authority to test it out and make sure that information is correct and robust. In the situation that you have described we would not have any of that. If the information, although voluntarily agreed by everyone, and every campaigner who were to present between now and then, were there, and if the information lent itself to any type of controversy and there were questions, it could draw into questioning the validity of the information that we have. There is potential confusion for the voter and the electorate in that.

**Q859 Chair:** If you didn’t do it, who could? **John McCormick:** It is not for us to speculate on who it might be, but certainly if the different political parties and the different campaigners who are interested in taking part in this forthcoming referendum wanted to come together and agree on a voluntary approach, we would be happy to give advice on the basis of our experience about what we learned from the last voluntary arrangement, where it fell short and that kind of thing. If they could set it up, we would give them some advice, but they would have to self-administer it or find a third party. One or two come to mind, but I would not like to speculate on them because it wouldn’t be fair.

**Q860 Chair:** You have just told us that one or two spring to mind. **John McCormick:** It is not for me to say to people I have not spoken to that I have mentioned in Parliament that perhaps they would like to take on that role. One or two do come to mind, but I am not authorised and nor have I had open discussions with them about it. It is an interesting area for transparency. It is interesting, and we have some experience of where it didn’t come up to muster the last time and could have been improved on. If some people came together and said, “We would like to help the voluntary arrangement here”, we would pass on our advice to them.

**Q861 Chair:** If, as a Committee, we asked you to give us advice about the rules and guidelines of any scheme of voluntary disclosure, not to be implemented by you, would you be willing to do so? If you gave us what you thought a scheme of voluntary disclosure should include and we then chose to pass it on to somebody of complete political virginity who could stand there and be seen to be holding the jackets and all the rest of it, that would distance you from it but it would be your experience. **John McCormick:** We would be very happy to pass on our experience. It would be very much along the lines of what Lisa was saying about consistency, formatting of reporting and so on, so that everybody can have the same template for reporting and that kind of thing. **Lisa Klein:** What I am concerned about is this, Chair. We know what the disclosure is of the rules that are required to assist in the publication of information. In the voluntary period, there may be other rules that are chosen. It is not really for us to decide what those rules should be.

**Q862 Chair:** No, no. I think you are misunderstanding the point or maybe I’m not understanding your answer. Unless I am very much mistaken, we want to see some degree of control during the uncontrolled period. We were originally looking to you to do it, but you have indicated, for reasons which I understand though I don’t accept, that you don’t want to do it. I am asking now whether you are willing to give us your guidelines for those rules—and I think you are—and then we would try and find maybe somebody else, this above suspicion Caesar’s wife figure, who would be the recipient of information put in in the format that you have suggested. **Lisa Klein:** Yes; we could do that.

**Q863 Chair:** Is that a big task? Are we talking six months, three weeks or tomorrow morning? **John McCormick:** It is not a big task. It is somewhere between tomorrow morning and three weeks.

**Q864 Chair:** That is helpful. In that structure, on the question of foreign money, I am tempted to say that I would be very strongly against any foreign money coming in. Apart from Northern Ireland where, if they did not have permission for foreign money to come in, the IRA were going to continue to kill people—other than that—there are no other circumstances where foreign money can be used in an election or a referendum in the UK. Is that correct? **Lisa Klein:** On the permissibility of donations under PPERA, one of the goals was to eliminate foreign money. I can’t say that there is an absolute ban on it. I think our experience has shown that, because there are companies who do business in different parts of the world, funds can come in, or there can be businessmen who operate with companies overseas. Is the intended ban an absolute one? I would have to say no. The situation for the Northern Ireland registered parties is different from that.

**Q865 Chair:** Leaving Northern Ireland aside, it comes back to the question of tax avoidance, evasion, dodging and so on. There might be ways around it but the intention is that there should be no foreign money. **Lisa Klein:** That’s correct. **Chair:** That is immensely helpful.

**Q866 Jim McGovern:** For me it is the definition of “foreign money”. If the separatists have their way, then England, Wales and Northern Ireland will be foreign countries. How do you define what foreign donations are? John mentioned earlier on that one or two names spring to mind. The phrase came to my mind, “We’ve been expecting you, Mr Bond.” I imagine you were thinking of Sean Connery probably as a large donor to the SNP. How do we define “foreign money”? For example, a Scottish couple won the Euro lottery. I can’t remember how much they won, but I think it was over £100 million and I think they have donated £2 million to the SNP’s campaign. I would suggest that...
everybody in Europe contributed to that, so how do you define that? Where do you draw the line?

Lisa Klein: That is a good one; that’s interesting. We operate PPERA. PPERA defines the permissible sources and this is where our realm of expertise and our jurisdiction lies. It requires that an individual be on the electoral register within the UK. If it is a trade union, it must be on a certification officer list. The list goes on. That is why we can help and assist in terms of what we have gained in our experience and how you gather information and how it is published. The content of whatever that voluntary code might be would really not be within our jurisdiction.

In terms of the lottery winners, yes, you might say that everybody contributed to it.

Q867 Jim McGovern: Everybody who bought a ticket, yes.

Lisa Klein: I think the law is that, once it is lawfully theirs and they are on the electoral register, that probably would suffice for purposes under PPERA.

Q868 Chair: On the point that it is lawfully theirs and they are on the electoral register, somebody who is dead is not on the electoral register any longer and therefore that raises the question of bequests and wills and so on.

Lisa Klein: That is also covered in the legislation, if they are on the electoral register within a certain period of time before their death. It is covered; they thought of that.

Chair: I’m glad to hear they thought of some things.

Q869 Lindsay Roy: Perhaps I could ask for an easier definition. In relation to a referendum, what do you mean by a “designated organisation”?

Lisa Klein: A “designated organisation”, okay, terminology: it does get a bit arcane. The referendum legislation under PPERA enables and requires us to consider what campaigning organisation can be designated as the lead organisation. That is where the “designated organisation” comes from. We have tried to make this a little bit easier and digestible. We just called them the lead campaigners.

Q870 Lindsay Roy: But regulation doesn’t just apply to them.

Lisa Klein: No, it doesn’t. You have the lead campaigners and it applies to them. As we have talked about, it applies to the political parties during the referendum period. It applies to what the legislation refers to as “permitted participants.” That is the equivalent of a third party but during a referendum period. There are rules under a PPERA referendum that would apply to the amounts they can donate if it is a lead campaign organisation. Where the legislation provides for it, there may be grants that they are entitled to. There may be Freepost and there may be broadcasts. There are some benefits that go along with that.

Q871 Lindsay Roy: How would you decide the amount that they are allowed to spend?

Lisa Klein: We would anticipate that that would be set out in the legislation.

Q872 Lindsay Roy: Is that in relation to the size of organisation?

John McCormick: The Scottish Government have said in their consultative document that the designated lead organisation would be able to spend up to £750,000.

Q873 Lindsay Roy: What about the others?

John McCormick: They have gone down to political parties at £250,000. They have a list.

Andy O’Neill: It is £250,000 for political parties, £50,000 for each non-party campaigner, and there would be a threshold of £5,000 before you had to register. It would depend on what sort of organisation you were.

Q874 Lindsay Roy: But does it depend on the size of organisation—the number of members or the number of adherents?

John McCormick: The Electoral Commission under the PPERA interviews people who compete to be the lead organisation on either side. It may be that there is only one lead organisation that puts itself forward to be designated as the lead organisation on either side. If that is the case, we have a set of criteria underpinned by the Act and we test it against those. If there is more than one on either side, we go through a process of interview and scrutiny and so on, and certain tests are applied to them before one is given the lead organisation status, if at all.

Lisa Klein: That is correct. For the sake of completeness, if the member’s question was, “Does the spending depend on the size for anybody who wishes to participate?”, the answer is no.

Andy O’Neill: To add for completeness as well, in relation to limits for political parties under a PPERA referendum in Wales, we recommended that they be based around the turnout at the last relevant election. We gave an opinion to Government and that was that the relevant election should be the last devolved election. It does vary for different types of organisation. At the moment, as John said earlier, we consider the limits that are in the draft Bill in the Scottish Government consultation to be a little bit low. We have said, “We would like to come and talk to you and talk through the issues.”

Q875 Lindsay Roy: Is it your understanding that you will regulate the referendum on separation for Scotland?

John McCormick: Our understanding is that we will have a role. As the Scottish Government have announced, they will be asking us to test the question—that process—and we will have a regulatory role. The extent of that regulatory role has not been defined yet, nor would we expect it to be defined yet. The short answer to your question would be yes.

Q876 Lindsay Roy: Presumably you have views on what the role would be, given your past experience?

John McCormick: We would expect the role to be broadly as defined in PPERA, with the broad exception that in PPERA the Electoral Commission provides the counting officer, the Chair of the
Commission or deputy or delegate as the counting officer for the referendum. We have proposed to the Scottish and UK Government as a Commission that the counting officer should be the convener of the Electoral Management Board, a body which is in Scotland and rooted in Scotland; we have recommended that. With that major change, we would expect our role to be broadly similar to that in PPERA.

Q877 Lindsay Roy: Are you expecting to be consulted on the question?
John McCormick: Yes.

Q878 Chair: It is a bit more than just being consulted on the question, isn’t it?
John McCormick: Yes.

Q879 Chair: The ridiculously biased question that we identified and discussed previously has now, as I understand it, been abandoned. Efforts are going to be made to bring forward a fairer question, which you will then road test and so on. We would anticipate that your advice would be accepted by all involved.
John McCormick: We anticipate that we would go through the full testing process as we have defined it to the Scottish and UK Governments in a consultation, which we have done before and have some experience of. Yes, it is a full testing process.

Q880 Chair: So some progress has been made?
John McCormick: Yes.

Q881 Pamela Nash: If you end up regulating this campaign, it will follow the rules that we have already set out so that there will be designated organisations and designated lead campaign groups appointed?
Lisa Klein: Because the legislation is not yet in place it is a bit hard to know, but we would anticipate that there would be designation of the campaign groups at this point.

Q882 Pamela Nash: It would be the same as previous legislation?
John McCormick: That is our expectation.

Q883 Pamela Nash: If that is the case, will the lead campaign groups in this case also qualify for the grants that are available for UK-wide referendums?
John McCormick: The Scottish Government have not proposed that there be grants applied to the lead organisations. In the last referendum it was £500,000 and more. We think grants are a good thing for referendums because we don’t want the arguments for the referendum question not to be put forward because people can’t afford to deploy all the resources to get the arguments across to the voters. In this case there seems to be no shortage of funding that might come forward on both sides of this referendum, but it is something that we are wary of. We think grants for a referendum argument allowing the democratic process and the voters to be fully informed are a good thing. We support grants from the Scottish Government and we said that in our consultation response to the Scottish Government, but at the moment they are not proposing that.

Q884 Pamela Nash: Just to be clear, if there were to be grants awarded in this referendum, it would need to be legislated for specifically within the Act that is going through the Scottish Parliament?
John McCormick: Yes.

Q885 Pamela Nash: And that is dominated by the party that has adequate funding at the moment for the campaign?
John McCormick: It is a parliamentary decision.
Chair: Nicely avoided.

Q886 Jim McGovern: In the Scottish Parliament’s timetable for the referendum, the regulated referendum period would not begin until 16 weeks before the referendum—possibly October 2014. Is this in line with other referendums?
John McCormick: Broadly it is, yes. That was based on our recommendation from the PVS referendum.

Q887 Jim McGovern: That is your recommendation?
John McCormick: No. After the last referendum last year we recommended that the minimum period should be 16 weeks. I believe that is the basis of the Scottish Government’s proposal in their draft.

Q888 Jim McGovern: You obviously think 16 weeks is reasonable.
John McCormick: That is based on our experience thus far, yes. It is a minimum of 16 weeks. To allow the proper planning and to allow campaigning to take place, we feel that 16 weeks is the minimum that the regulated period should be.

Q889 Jim McGovern: When you say that you are basing it on previous referendums, are you talking about the AV referendum?
John McCormick: The AV referendum and the Welsh referendum particularly, when we felt that under the PPERA guidelines, as I was saying to Ms Bruce, the PPERA says 10 weeks and those were PPERA referendums. The regulated period became 11 weeks. We felt that was just a bit tight to allow all the planning to take place. As we have said in our document, the 16 weeks’ regulated period has to be preceded by a period of between six and 12 weeks to allow the planning to take place and the guidance to be prepared so that the counting officers across the country on the basis of the legislation can set up the planning and get things in line before the regulated period begins. That period could be as short as six weeks and might be as long as 12 weeks. It is probably closer to the six weeks. On that basis, we thought that was 22 to 28 weeks, as we put in our document, at the end of the process that has to be protected.

Q890 Chair: I want to follow up with a point on that. You are saying to us, I think, that the Scottish Government are proposing the minimum regulated period that is possible with 16 weeks because it cannot
realistically be any shorter than that at all. They are proposing the minimum period; yet the unregulated period must be about the longest in living memory. I cannot think of any other referendum where the unregulated period has been over two years and counting. Can you tell us of any other referendums where the unregulated period, either in Britain or abroad, has been as long as two years?

John McCormick: I will ask Lisa to comment on that because there are one or two international examples. We had difficulty with the recommendation in our report to Parliament about the PVS referendum last year that, following that experience and the Welsh Assembly experience, we felt that the 11 weeks was a bit tight and therefore the minimum should be 16 weeks. That is what the Scottish Parliament adopted. I understand that is where the 16 weeks is from. The 16 weeks allowed sufficient time for campaigning and—

Q891 Chair: I understand that 16 weeks in your view is the minimum period that is necessary to allow all the bureaucracy and so on to churn through, but of course it is not just a question of the bureaucracy, is it? It is also a question of regulating spending. Here we have the shortest possible period of regulated spending and a longer time of unregulated spending than has ever been known in the UK. I can’t think of any other referendum in the UK where there have been two years or more of unregulated spending. Indeed, I can’t think of an international example, but you may know of one that you can draw to our attention.

Lisa Klein: We have identified the 2004 one, which was 15 weeks. There were the two in 2011 that were 11 weeks each. Although they are not exactly like for like, the longest regulated period for elections is the UK general election, which is 365 days.

Q892 Chair: That is right; I am just trying to clarify. But what about unregulated periods? Unless you assume that the first day of the next election starts when the election is counted, there is no other situation where there is an unregulated period as long as we have here, potentially open to abuses of unregulated spending and all sorts of things. Is that correct?

John McCormick: As far as we know, Chair. For example, if you went back to the referendum on the Scottish Parliament in 1997, some people had been preparing for that for years. When the Yes/No campaigns came about, it had been after a long period of people discussing it.

Q893 Chair: Yes, but until Labour won the election it was not certain there was going to be a referendum. There were no structures; there were no campaigns—Better Together or separation campaigns—lodged then, were there?

John McCormick: I am just trying to make the general point that I don’t think it is unique to this referendum—and referendums do vary greatly, as we said—that the arguments on major constitutional issues have been the subject of public debate for a long time.

Q894 Chair: Give me another example when umbrella organisations, fronts or whatever have been established so long before the actual date of the vote, as we have now?

John McCormick: The only one that comes to mind in terms of a long period is the New Zealand referendum in 2011. The polling date was announced on 2 February. The polling day was to be 26 November and the regulated period did not begin until August. There was a regulated period of 12 weeks—three months—in New Zealand last year. They had a long unregulated period.

Q895 Chair: I am not asking about the regulated period. I am deliberately asking about the unregulated period.

John McCormick: I am just saying there was an unregulated period between the announcement of the date of the referendum—

Q896 Chair: Which was how long?

John McCormick: They announced it in February and the regulated period began in August.

Q897 Chair: So the longest period that we can identify is six months?

John McCormick: That is the one that comes to my mind at the moment.

Chair: But this is over two years of potentially unregulated spending and behaviour, which clearly in a sense needs to be addressed, doesn’t it? It is very helpful to have clarified that.

Q898 Lindsay Roy: Would the Scottish Parliament be able to legislate to regulate the referendum campaign? Is that a devolved power?

John McCormick: As I understand it, the Scottish Government, as they have said in their consultation paper, intend to legislate, and the UK and Scottish Governments are in discussions about the basis of that legislation. I know that there is some disagreement between different people about the legislative basis of it, but, as we understand it, the Scottish Parliament can legislate for an advisory referendum.

Q899 Chair: As you understand it, the Scottish Government can legislate for an advisory referendum.

John McCormick: The Scottish Parliament can legislate for this referendum.

Q900 Chair: It is not an advisory referendum. You did use the word “advisory.”

John McCormick: It has been described as an advisory referendum on the basis that it would give advice to the Parliament. I do not want to pre-empt the discussion.

Q901 Chair: Is that your legal advice?

John McCormick: No; I am talking about what I understand to be the Scottish Parliament’s position. They have legal advice, which I have seen reported and I have no reason to dispute that reporting or to question them, that they have the legal basis on which to conduct a referendum. On that basis they would be
able to legislate for us to have a regulatory role in that referendum process.

Q902 Lindsay Roy: That differs from the UK Parliament view.
John McCormick: I understand that, yes.

Q903 Lindsay Roy: So there is nothing certain here?
John McCormick: I am hoping the matter will be resolved.
Lindsay Roy: So are we.

Q904 Chair: I want to clarify the basis upon which you are asserting the Scottish Parliament’s legal advice. Have you seen it?
John McCormick: No. I am not questioning it. The Scottish Government have published a consultation paper. We are working on that same consultation paper.

Q905 Chair: In which they have asserted—
John McCormick: They have stated their intention to have a referendum.

Q906 Chair: And they have asserted that they have legal advice that would support that?
John McCormick: Yes.

Q907 Chair: But you have not seen it and you have not taken legal advice to clarify whether their legal advice is correct?
John McCormick: I am aware of the fact that the UK Government take a different view, as Mr Roy has said. I believe that matter will be resolved one way or another in discussions at some time before the legislation process is under way, and it is a matter for us to abide by the legislation.
Lindsay Roy: It is assertion rather than fact.
Chair: That is a fair point. It is assertion rather than established fact.

Q908 Fiona Bruce: I want to go back to the grant question. I believe you have said that you consider that a Scottish referendum should have a lower grant than a UK-wide referendum. Is that right and, if so, what are your reasons for that?
John McCormick: All I said, Chair, was that we thought grants provided for lead campaigning groups were a good thing in principle because it allowed the process to take place. The Scottish Government are not recommending at the moment in the proposed legislation that there be grants. That is as far as I went. The level of the grant would be another matter.

Q909 Chair: Those who have lots of money already are not keen for it to be a balanced referendum by ensuring that each side has public money.
John McCormick: I have no idea how much money the different sides will have or have at the moment.

Q910 Chair: Do you read the papers?
John McCormick: I do.

Q911 Mr Reid: We have already established that before the regulated period starts there is no limit on what donations can be given or where they come from, but, once the regulated period starts, can you tell us what limits there would be on donations and expenditure?
Lisa Klein: Yes and no. Under PPERA there are no limits on the actual amounts of donations. There are some party funding talks that are progressing and a cap may be involved, but the current state of play is that there is no donation cap or limits on donations to parties and campaigners at this point in the UK.

Q912 Mr Reid: During the campaign itself would donations have to be from people or businesses within the UK?
Lisa Klein: Yes. They would have to meet the permissibility requirements under PPERA during a regulated or referendum period.

Q913 Mr Reid: What about expenditure? I think we have already had the evidence on that. We have already had evidence about limits on third party expenditure but what about donations to third parties? How is that regulated?
Lisa Klein: They are regulated in the sense that they would have to meet the statutory requirements of PPERA for donations that are received in connection with the campaign activity of a third party. There may be multi-purpose organisations and the campaigning segment may be fairly narrow. I am not saying this would be the case in the Scottish context here but just generally speaking for third parties. The regulation goes to money received for use in its electoral activity.

Q914 Mr Reid: Do you think there should be limits on individual donations during or before the campaign?
Lisa Klein: That is something that is really for Parliament to decide. There is ongoing discussion at the moment.

Q915 Mr Reid: We heard in evidence earlier that there does appear to be a loophole in that, before the campaign starts, donations can come from anywhere and for any amount. That money can then be spent after the regulated period starts. Will you be making recommendations to the Government that this is a loophole and it ought to be plugged?
Lisa Klein: To the extent that there is a loophole, it is because there isn’t the legislation and there isn’t a regulated period at this time. One of our obligations under this will be to report on the operation of the Scottish referendum. Certainly it will be something that we would consider. We have made recommendations in the past to address various issues that arise during electoral events. This would be no different.

Q916 Mr Reid: Will you be making these recommendations in the near future rather than waiting until after the referendum has finished before making recommendations?
Lisa Klein: No; we report on an electoral event after the event. The next opportunity will be to see what the response is from the Scottish Government to their
consultation exercise, which is something that we are going to be doing a running commentary on.

Q917 Chair: Once the horse has gone, you would recommend that the stable door should definitely be bolted?
Lisa Klein: No; that is not what I am saying.

Q918 Chair: But you are not commenting as things are going along. If you notice abuses of any sort while things are under way, you would not actually comment until the end.
Lisa Klein: No. Under PPERA we have a statutory obligation to report on elections, and that is what we do. What we have right now are consultation documents that have been issued. We have submitted our consultation report. It would be inappropriate for us as a regulator to be commenting every week on something new that might be floating around. When there is an appropriate opportunity and time, we would be able to address these issues when there is a legislative proposal upon which to comment. There is not one at this point.

Q919 Mr Reid: The Scottish Government are presumably going to propose legislation to the Scottish Parliament. Would that be an opportunity for you to comment and perhaps make some of the points that have been raised today?
Lisa Klein: Yes, I think that would be an appropriate opportunity to do so.
Andy O’Neill: Our understanding is that they are independently assessing the 21,000 responses and they will report those responses some time from mid-September onwards. At that point we may get substantial proposals, and we will then look at them and comment if we feel it necessary.

Q920 Chair: But is it correct that your recommendations and comments can be ignored?
John McCormick: Anyone can ignore what we say. Chair:
Perish the thought. It would be considered first, certainly.
Lindsay Roy: Certainly we won’t.
Chair: No; certainly we wouldn’t do that.
John McCormick: The point about the regulated and unregulated period that Mr Reid mentions would certainly raise a challenge for further drafters of legislation. It would always raise a challenge as to how you could ensure that the regulated period began early enough to cover the areas that you are concerned about and what you refer to as “loopholes” before the regulated period, and what the trigger would be if the legislation for the referendum was not on the statute book. It raises challenges. I am not saying any challenge is insurmountable to lawyers or to legal draftsmen, but it does raise an interesting point about how all the issues that are concerning you could be captured timeously within a legislative framework.

Q921 Mr Reid: Before this Parliament’s Bill was passed, a UK general election could happen at any time at the whim of the Prime Minister. The regulated period, as you said earlier, started 365 days before that unknown date. So there is precedent for regulated periods having started even though people don’t know at the time that they have started. The precedent seems to be established.
John McCormick: Now that they are, the fixed-term Parliament allows it.

Q922 Mr Reid: But in this case, even though we don’t know the date of the referendum, what is to stop the rule being that the limit that can be spent is £x million and that limit is retrospective from polling day, even though we don’t know when the polling day is, because that is what happens with general elections?
John McCormick: On the issue of expenditure, we look at a 16-week regulated period and we look at expenditure limits for that. They are based on what we think can allow a good campaigning process to take place so that campaigners can spend sufficient funds to deliver the arguments. If that stretches across a longer period, then of course it would raise issues about the extent and limits of the campaign expenditure. A whole lot of other issues would come in on the back of that; none of them insurmountable to the legislators, but it would create other issues that would have to be looked at in making sure the campaign was effective for the voters. We always like to put the voters first to make sure that they get all the information they need on which to make their decision.

Q923 Mr Reid: As to foreign donations, surely it would be straightforward enough to legislate to say that no campaign in a referendum could accept money from a foreign source before the regulated period starts.
John McCormick: There are circumstances of course in which that could be put into generic legislation, yes; there are certain specifics, of course.

Q924 Chair: I want to clarify again the question of whether regulation is effective if it is only reported on and some sort of recommendation made after the whole process is finished. It is a “The horse has bolted and we must do something about it” sort of question. I understand your anxiety not to be constantly providing a running commentary, but on the other hand surely there must be some mechanism by which there is supervision while things are going on. If something that is patentley an abuse is occurring, you or someone should be able to intervene.
Lisa Klein: I agree with you. That is one of the reasons why we have recommended that there be pre-poll reporting during the referendum period. That was one of our recommendations that we should—
Chair: Sorry; I did not hear that because people were coughing.
Lisa Klein: I said that I agreed and that that was one of the bases for us to recommend in our 2011 report that there should be some form of pre-poll reporting on donations during the referendum period.

Q925 Chair: Would that be designed to address all the potential abuses such as men arriving at Glasgow airport with bags of money and all the rest of it?
**Lisa Klein:** Everything.

**Chair:** Excellent; you might very well regret that.

**Lisa Klein:** Can I record on the transcript that I have a broad smile on my face? You raise a very important point. I have been in this business for a very long time on two sides of the Atlantic. No matter how much you close the gap in being able to address breaches that may arise, you have to be realistic. The due process that is required in our democratic traditions for being able to investigate and address them can always go to the wire and is often after the result.

Q926 **Chair:** Absolutely; I think that’s right. The point we have been trying to clarify is that, where there is something blatant, obvious and noticeable, there should be some opportunity for somebody to intervene while that is going on and take some sort of action. People themselves within the political process would be very unhappy if there was seen to be an abuse, and, even though there might not be legislative power to stop it, public opprobrium would be quite a powerful weapon in those circumstances and would tend to keep the participants honest. But, if they thought it would only come out afterwards, then they might be much more willing to take the risk.

**Lisa Klein:** Could I assure the Committee and the Chair that one of the things that we do is engage in campaign monitoring, which is live time? What we try to do is get the parties and the participants to abide by the law. It could happen here a lot where the law doesn’t quite exist. One of the things that we do is campaign monitor. We try and get compliance so that if something arises that is prospectively a problem we will contact campaigners and be in touch with them. During the UK referendum in 2011, we designated one person within our staff to be a point of contact for campaigning organisations so that if they had questions there was one place that they could come and we could get their questions answered. There is a lot of effort, and the Commission is very proactive in trying to get the information out and trying to get people to comply with the law. If something is not going right, they try to be able to identify it early.

Q927 **Chair:** Will that person be somebody who, at some stage in the past, has either been involved in campaigning or will have access to people who have some knowledge of campaigning? On the other side, there is an anxiety that the political process is being regulated by people who have had no involvement in it and don’t understand the day-to-day processes, pressures and so on. Therefore, without wanting to seem lax, there is a certain degree of necessity for flexibility in all this.

**Lisa Klein:** There is. Indeed, we have talked a lot here today about putting our voters first. One of the things that we do is look at things through the lens of the campaigners as well so that there is vibrancy and an ability to campaign. We currently have under way a review of PPERA, looking at it to see whether there are unnecessary burdens that can be eliminated from campaigners. So that does go into the mix.

**John McCormick:** We are all well aware, and we say in a lot of our publications, comment and advice to people, that the last few weeks of a campaign are the most intense. The burdens that we put on in terms of reporting should be sensitively handled. For example, during the UK general election period the reporting is done on a weekly basis. We understand that weekly monitoring is a burden to people, but we hope by the time it is up and running and comes through it becomes routine. I would reassure you in terms of our contact with the political parties across the UK that we have the political parties’ panels, and we keep in touch with them and take advice from them.

**Chair:** Some of the implementation of the rules really does become jobworthy. They are small, petty things. You are not meant to stand within a certain area of a polling station, even though it is pouring with rain and you are soaking, whereas moving five yards that way would let you stand under shelter. It is almost as if it is implemented out of badness, but presumably of course that is not your responsibility. You are not responsible for rain or badness.

Q928 **Fiona Bruce:** What are the main aspects of non-financial regulation?

**John McCormick:** There is not much beyond non-financial regulation.

**Lisa Klein:** “Party election finance” is the title here. **Fiona Bruce:** Perhaps I could give Ms Klein and Mr McCormick a rest and ask Mr O’Neill to answer that question. That is your title. It is finance, isn’t it?

**Andy O’Neill:** Yes. Could you repeat the question?

**Fiona Bruce:** What are the main aspects of non-financial regulation?

**Andy O’Neill:** Of campaigners? It would depend on what the rules were for the referendum. Beyond imprint there is not really very much. Often we get parties and campaigning organisations, to use a colloquialism, “shopping” each other to the Electoral Commission. We are not the Truth Commission. It is not our job to opine on what people say about each other. There are rules of defamation and so on, but beyond imprint it is not very much.

Q929 **Fiona Bruce:** For the record could you say what you consider are the key principles behind campaign regulation?

**Andy O’Neill:** Campaigning in the political sense?

**Fiona Bruce:** Yes.

**Andy O’Neill:** We don’t have any expertise in that area. It is really down to the political parties and candidates to get their messages across.

**John McCormick:** What we are looking for in terms of a referendum, as I said at the outset, are transparency and fairness. We hope that by putting the voter at the centre of the process we can ensure that the legislation takes account of that so that they can trust the campaign, be informed during the campaign and the campaign can be appropriately financed to make sure the arguments get put across. Transparency and fairness underpin everything.

**Andy O’Neill:** And within the laws that govern it.

Q930 **Mr Reid:** We have talked about the Yes and No campaign and regulating that. Say we ended up with a three-option referendum. What does that mean for regulation?
**John McCormick:** It is an interesting issue if there is more than one question and more than two outcomes, as it were. We have covered this ground in this Committee before in terms of the number of outcomes and the number of designated organisations. We could not say anything specific about that until we had tested the question. As I said around this table, and there may be some frustration repeating it, you test a question or questions and then that testing and research process gives you the number of outcomes. The number of possible outcomes informs the designation process. We don’t speculate on models. I know some people have been speculating in the press about the number of outcomes you could have. Our experience tells us that you should not presume the number of outcomes until you have done the research testing.

**Q931 Mr Reid:** If there are three outcomes, that could obviously be arrived at in different ways. You could have the three options on the ballot paper and order them 1, 2, 3, or you could have different questions. Is that something you would be giving advice on? If the Government came to you and said, “We want a referendum with three options”, what advice would you give on how that should be put on to the ballot paper?

**John McCormick:** We would expect Parliament, whether it is the Scottish or UK Parliament, to come to us with proposals for questions to be tested, rather than for us to inform that process. As we said before, if we are testing the question, we should not be a part or perceived to be a part of the formulation of the question. Lisa, do you want to add anything on the designation question?

**Lisa Klein:** When you register with us to be a campaigner for the referendum, if you are a designated campaigner, and spending over whatever the threshold is—under PPERA it is £10,000 and under the proposal put forward by the Scottish Government it is over £5,000—one identifies the outcome for which one is registering. There is a bit of an anomaly because there is nothing that actually requires that spend. You are free to spend all the money on one outcome. What I can say is that if you are a campaigner you get one limit. If you want to spend it between two options, you may be able to do that, but for a permitted participant or people who are participating as registered campaigners there is a limit that would have to be allocated according to their wishes.

**Q932 Mr Reid:** Let me give you a scenario. Say three options were put forward. Let us call them independence, devo-max and the status quo. Say the lead organisation for status quo worked out from its canvassing halfway through the campaign that it was going to end up third and decided that the least worst of the other two options was devo-max and started campaigning to urge its supporters to vote for devo-max either as a second option or to vote that way if the question was devo-max. If that organisation is registered as voting for the status quo but it ends up campaigning for one of the other options, how does that affect the spending limits?

**John McCormick:** As I understand it, the Act does not restrict the number of options that people can campaign for. It may be an anomaly in the Act but it does not restrict that process.

**Lisa Klein:** That is correct.

**John McCormick:** You have one limit, but, if you read the Act, on the basis of that, it does not prohibit you from campaigning for more than one option, but you have one limit. It may be an anomaly.

**Q933 Chair:** Simultaneously?

**John McCormick:** Yes.

**Chair:** You can simultaneously campaign for two different things?

**John McCormick:** It does not restrict it, as I understand the Act.

**Lisa Klein:** This is the PPERA legislation.

**John McCormick:** This is PPERA.

**Q934 Chair:** I want to pursue this slightly. I understand your point that you don’t want to enter into the question. We did detect that last time. If there are three possibilities, does that mean you would have three lead organisations authorised by you and there would be a lead organisation for each possible outcome?

**John McCormick:** It is a possibility, yes.

**Lisa Klein:** It’s a possibility.

**Q935 Chair:** I know it is a possibility but would that be the expectation? If you had three options, you would have a lead organisation for each.

**John McCormick:** If that were defined in the law that establishes the referendum, yes. It may be defined in the law, but the scope of the designated organisations and the lead organisation would have to be defined. As I have said, it would seem to us that PPERA has an anomaly in it where it does not restrict campaigning on more than one option but it does restrict expenditure—

**Chair:** I understand that point.

**John McCormick:** We can’t presume what is in the law.

**Q936 Chair:** I understand that people can switch if they think they are losing; I understand that. People did it in the campaign for a coalition. They started off on their own and so on. If you had three options then, you would have three lead organisations. If you had four options, since it is entirely possible that you would have devo-lite, devo-plus or something similar as an option, for each option potentially it would be appropriate to have a lead organisation?

**John McCormick:** That is a fair expectation.

**Q937 Chair:** Then spending limits would apply to each of those. You are saying that at the moment there would be no constraint upon them being set up to pursue one option, deciding they were going to lose and then deciding to campaign either for another or to say, “Voting for us first but then vote for them second”?

**John McCormick:** We are defining that anomaly in PPERA. Since we have now learned of this anomaly and will be drawing attention to it, the next legislation may take account of that.
Q938 Lindsay Roy: Would it be right to say that you have no experience of multi-option referendums on that constitutional basis?

John McCormick: That is right, yes.

Q939 Lindsay Roy: Are you aware of any multi-option constitutional referendums that have taken place on such an issue throughout the world? What percentage are binary, single options and what percentage are multi-options?

John McCormick: I could not give you a definitive answer to that. I have not done the research definitively.

Chair: Can you give us any answer?

Lindsay Roy: Very few indeed.

John McCormick: Are you aware, Lisa?

Lisa Klein: No, I’m not.

Q940 Chair: So none of you are aware of any?

John McCormick: We are not aware of them. That is not to say there aren’t any.

Chair: Absolutely.

Q941 Mr Reid: You have already said that, if the Scottish Government put a proposed question to you, you would do research and comment on that question. If we are going to have three possible outcomes, obviously that means that the design of the ballot paper will be something completely new and it is something we have never had before. Would you also expect to be giving advice on the design of the ballot paper?

John McCormick: Yes.

Q942 Mr Reid: Would you be giving advice as to whether, if there are three options, the best way to conduct the referendum would be to rank them 1, 2, 3 or to have three separate questions? Would you be giving advice on that?

John McCormick: That would be covered within the question assessment and the research process that we would undertake. We have long said in a number of different elections and referendums that ballot paper testing is something we recommend. The ballot paper should be tested with real-time voters. Sometimes you can take the conceptual side of a ballot paper that we have all agreed, but the layout and the design of the ballot paper can have an impact on how the voter perceives it. We also look for real-time ballot paper testing.

Q943 Mr Reid: So your advice to the Scottish Parliament would be that the legislation should include a phrase where you comment on the ballot paper itself?

John McCormick: Yes, and we anticipate that may precede the legislative process because of the process within the Scottish Parliament where the question would be part of the Bill.

Andy O’Neill: Our advice to the Scottish Government is that whilst they are the question formers—they should form the question—they should also look at the design of the ballot paper. We have drawn their attention to our “Making your mark” guidance, which is a design guidance document for ballot papers and such. The Scottish Government have a record of testing ballot papers. They tested the council election ballot paper used last May.

Q944 Mr Reid: Within the Electoral Commission do you have any expertise or experience of referendums with three possible outcomes?

John McCormick: We don’t have that experience, no. Every referendum is different, Chair.

Q945 Mr Reid: You are effectively saying that we are in uncharted territory here?

John McCormick: I make the point light-heartedly, but generally it is something we hold on to. When you look at a referendum in one country, you cannot transpose it into another country with a different electoral system. This is a major constitutional question that is going to be put to the people of Scotland. We don’t know the basis on which it is going to be put yet, but it is a major issue and therefore there will be a lot of passion, concern and interest around this referendum. To some extent, one should never qualify it, but every referendum is unique. We start from the basis of looking at it afresh. There will be fresh legislation for this referendum. There will be a fresh context. It will not import from any other referendum that we are aware of.

Q946 Mr Reid: I am sure you remember the difficulties in 2007 where we had a ballot paper of a type that we had not experienced before. How would you ensure that, as we are in uncharted territory, there would not be a repeat of the mistakes that happened then?

John McCormick: As Mr O’Neill said, as part of the testing, we all learned a lot from the 2007 experience. We were pleased that when we got to the local elections this year and the Scottish Parliament elections last year there were no repeats of those problems. We have learned from that. The “Making your mark” document about the design of ballot papers—I know it is a bit anoraky—covers materials in polling places, the design and some of the issues that our researchers found. It is a good basis on which to start the design of a ballot paper and then test it with the voters. As Andy says, the Scottish Government did that with the last local elections.

Q947 Mr Reid: The comparison between a multi-option referendum and the 2007 situation was that in 2007 there were effectively two questions on the one ballot paper—one for the constituency and one for the list. That was not a situation that arose in 2011 or 2012. There will be similarities. So what lessons did you learn in 2007 regarding two questions and one ballot paper that you would put in?

Andy O’Neill: You have to test the ballot paper.

John McCormick: Also, you should have a national standard for a ballot paper. The same design was used. Mr Reid raises an important point, Chair. The design of the ballot paper across Scotland with the Electoral Management Board was a common design across Scotland. In 2007, when the problems arose, you were faced with different designs of ballot papers in different parts of Scotland. That gave birth to the “Making your mark” research process and to the
principle of testing ballot papers. That lesson has been learned; I hope it has.

Q948 Mr Reid: We had advice from previous experts and sessions that the rules for counting could affect the result. Would you also expect to give advice on how the counting should be done if you have three options?

John McCormick: The convener of the Electoral Management Board was the Scottish counting officer for the UK referendum last year.

Q949 Mr Reid: Yes, but that was just one question.

John McCormick: There is a lot of experience around the Electoral Management Board table. Andy sits on that Electoral Management Board and will be—

Q950 Mr Reid: But if there are three options, should it be two or three questions on the ballot paper?

John McCormick: That will come through the testing, which will precede—

Q951 Chair: So, if this goes wrong, who gets the blame? Is that you?

John McCormick: I presume people will apply blame quite widely if it goes wrong.

Q952 Chair: No, not necessarily. I think you are likely to be standing pretty much in an isolated position, unless I am mistaken.

John McCormick: Can I clarify what would go wrong that we would be blamed for, Chair?

Q953 Chair: There are several things. Leaving aside the question of the result, if there is deep confusion about what people were voting on, in the result people might come out and say, “I didn’t know that that’s what I was doing.” We don’t need to have hanging chads, or the mistakes that we had in the previous Scottish elections. If I knew what might go wrong, I would be telling you now. It is a question of just identifying responsibility. As Alan has said, some of the advice we have had is that, if there are three options, then there really needs to be three separate questions. If you had four options, it goes up to six questions in order to pose each against each other. This is under the dead Frenchman rule. Then it goes on beyond that. That obviously then has a political constraint about how many questions and options it is reasonable to put in front of people.

John McCormick: Our testing is rigorous. As we mentioned in the previous session, Chair, we have said that the 12 weeks may have to be expanded to 20 weeks to re-test what comes out of that first round. If there is more than one question, there may be an extended period beyond that. We are very much aware of that and very alert to the speculation that is going on about the number of questions. For us, that will extend the question testing period. It is important that that testing is rigorous on all options across the country. It may take much longer than we anticipated the last time we spoke.

Q954 Mr Reid: If we have three options, would you be advising that the ballot paper should have three different Yes/No questions, pitching each of the options against each other?

John McCormick: That takes us into the area we don’t want to get drawn into. It is a hypothetical situation and I couldn’t answer that question with any validity at all.

Q955 Mr Reid: Who else could answer that question?

John McCormick: We take it and we test it. We don’t speculate on it.

Q956 Mr Reid: You are testing on how the voters can understand the ballot paper, but you will have three separate counts. Would you also be putting forward recommendations on how those three separate counts should all be aggregated together to give a result?

John McCormick: Yes, that is all part of the research process. I would like to underline that it is a rigorous process. We would take what was offered to us by the Parliament or Parliaments to be tested. We would test it rigorously and all the points Mr Reid has covered, Chair, would be part of that testing.

Q957 Mr Reid: I am not quite sure who initiates the process. Say the Scottish Government or the Scottish Parliament come along and say to you, “We want three questions.” Are you expecting them to do the initial design of the ballot paper and the initial rules about how the three different counts should be aggregated, or would you be offering advice?

John McCormick: We would expect the proposals to come from the Parliament and then we would test them.

Andy O’Neill: What has happened in UK referendums is that the Government have proposed a question and we have commented on the question and done the question assessment. Then Parliament has decided. Our understanding is that the Scottish Government will propose the question and we will comment on it.

Q958 Mr Reid: Or questions.

Andy O’Neill: Or questions.

Q959 Mr Reid: So your role is to research and feed comments back. Would you make suggestions, though? Do you just react to what the Scottish Government are putting forward to you or are you proactive and say, “How about trying it this other way?”

Andy O’Neill: No; we don’t get involved in question formation. It is for the Government to propose the question. We will test it and then make our question assessment report public.

Q960 Mr Reid: The Government or Parliament obviously decide the questions they want to ask. I am talking about ballot paper design and how you then work out an outcome from what people have marked on the paper.

Andy O’Neill: We have already drawn our “Making your mark” document to the attention of the Scottish Government, which gives the principles around ballot paper design. They already have that.
John McCormick: And then it would be tested. 
Chair: This is a trifle unfair on you—not that that necessarily stops us—because we are hypothetically at two different levels. We are hypothesising that the Scottish Government get the permission to do more than one question. The section 30 notice might very well specify that it is one question only, in which case all of this about multiple questions and dead Frenchmen falls by the wayside. Okay, I think that is clear. Are there any other points that any of my colleagues want to raise? 
Mr Reid: I wouldn’t say “clear” is the right word. 

Q961 Chair: Are we all exhausted? As I asked you before, are there any answers you had prepared to questions that we haven’t asked that you want to get off your chest? 
John McCormick: I would just like to add a PS. It is a very arcane point to end with, Chair, but I would like to clarify something in response to Mr Reid. In the Welsh referendum and in the PVS referendum the question that was given to the Electoral Commission to test was modified subsequently. The Electoral Commission went back to the Parliament and the Assembly with revised questions and they were accepted by the Parliaments. That is an important point in terms of the question. Parliament and the Assembly were happy to accept the revised question that came from the research. I am sorry to be so pedantic, Chair. 
Lindsay Roy: That is very helpful. 
Chair: I reassure my colleagues that anybody such as Mr McCormick, who likes Woody Guthrie, can’t be all bad. In those circumstances I will draw matters to a close. 

__Examination of Witnesses__

Witnesses: Professor Sarah Birch, Department of Government, University of Essex, and Professor Justin Fisher, Professor of Political Science, Brunel University, gave evidence. 

Q962 Chair: Thank you very much for coming to see us at what might be a slightly inconvenient time. Welcome to the Scottish Affairs Committee. As you may have identified, we are pursuing the question of a separation referendum in Scotland and the various aspects thereof. Would you introduce yourselves and tell us what your experience is that makes you qualified to express views to us today? 
Professor Birch: My name is Sarah Birch. I am a Professor of Government at the University of Essex. I specialise in the study of electoral administration. 
Professor Fisher: My name is Justin Fisher. I am Professor of Political Science at Brunel University. I specialise in party finance and campaigns. I was adviser to the Hayden Phillips inquiry and also the most recent inquiry by the Committee on Standards in Public Life. 

Q963 Lindsay Roy: Good afternoon. What would you identify as the key principles to ensure that a referendum is fair, because, after all, that is what we are all seeking to pursue? 
Professor Fisher: I think it is reasonable to regulate the maximum spend over a certain period. One of the key questions is the length of the regulated period. It is essential that the question asked is clear and unambiguous and, indeed, not leading. I also think it is very important that we don’t try and regulate the life out of politics. 
Professor Birch: I agree with Professor Fisher. The referendum has to be credible and has to be perceived as being credible. There are two aspects to this. First, the process through which the rules are decided has to be credible and perceived as being credible. Secondly, the rules themselves have to be credible. Ideally, the rules governing an election are successful if they are not talked about at all during the election campaign or the referendum campaign. 

If you think about the typical general election in the UK, nobody talks about electoral administration. It is just taken for granted that we have quality electoral administration in this country, there is no problem with it and there aren’t articles in the press about whether the votes will be counted fairly. That is what you want in a referendum. You want a substantive discussion about the substantive issues. You don’t want a debate about whether the rules governing the issues are credible. If the rules are made in a way that is credible, through a process that everyone recognises is a fair process, and if there is a buy-in for everyone who is involved in making those rules and the rules themselves, the rules will be credible. Secondly, the rules will be credible if they provide a level playing field for everyone who is involved, if they give equal opportunity for all sides in the campaign to express their views and the voters are well informed, and obviously if the ballots are printed and counted correctly and one has an opportunity to vote and so forth. 

Q964 Lindsay Roy: Professor Birch, you have done some specialist work on electoral malpractice. 
Professor Birch: I have. 
Lindsay Roy: Would you like to highlight some of the things you have discovered? 
Professor Birch: I have discovered that electoral malpractice tends to occur in countries that are undemocratic. We don’t have a tremendous amount of electoral malpractice in the UK. I have also discovered that there is a perception among established democracies, including many European democracies, the United Kingdom and the United States, that there is a fairly high degree of electoral malpractice when in fact there usually isn’t. The trick is to build confidence in the electoral process. Even in the UK there may be 20% or 25% of
people who are not entirely confident that the process is free of malpractice, when most people who are involved in elections are fairly confident that malpractice only occurs in very isolated cases. The question is how you build that confidence. That is why I talk about credibility and people believing that the process is fair.

Q965 Lindsay Roy: Given the unique circumstances here in terms of a separation referendum from the UK, what would you highlight?

Professor Birch: As I said, a buy-in on the formation of the rules so that everyone feels that their views have been taken into consideration. If there was a perception that a body that was associated with one side in this referendum imposed the rules, they would not be perceived as legitimate. The rules can be perceived as legitimate only if everyone accepts them from the outset.

Q966 Lindsay Roy: I suppose it is really how you build trust.

Professor Birch: Yes.

Q967 Chair: I want to follow up on some of the points with Professor Fisher first. Your first point was regulated maximum spend. I cannot remember if you were in the room when we were talking about the regulated period and the unregulated period. We are anxious about the unregulated period, the length thereof and the complete lack, as far as we can see at the moment, of any controls. To which were you referring? I think you said the regulated maximum spend. Was that referring to the regulated period?

Professor Fisher: Yes. I was in the room when you were discussing that previously. There is a balance to be struck. In my view, it would be wrong to regulate everything between now and the likely date in autumn 2014. That would be excessive and probably cause more problems than it would solve. However, there is a case potentially, given the long lead time, to extend the regulated period beyond the minimum that has been recommended by the Electoral Commission, which I believe is 16 weeks. How far you go seems to me to be a question of judgment. At present, for national elections in the United Kingdom the regulated period is 365 days. If you then take elections, for example, which is a fixed-term Parliament, we know when election campaigning is going to take place and we also know that the regulated period is far shorter. A lot of spending will go on in the period before the regulated period starts.

It seems to me that the difference relates to the admissibility of certain kinds of donations. This is one of the areas, building on the trust argument, which may be of concern to both sides. For example, if the designated organisations don’t exist, there would not be any legislation to stop donations from the wider Scottish diaspora. That has been a controversial issue ever since PPERA was introduced. You could, on one side, say there is foreign money pouring into a Yes campaign, but, equally, those in favour of independence could argue that the same would apply to money pouring into the No campaign from south of the border. That is one of the issues that needs to be considered and it is one of the ones that could damage the very trust that Mr Roy refers to.

Q968 Chair: What is the solution to that one?

Professor Fisher: It is possible to look at a longer regulated period than the minimum of 16 weeks. Given the kinds of sums for maximum spend that we are talking about—if I recall correctly, the Scottish Government have proposed £750,000—then we have to be careful about regulating relative to the amount of money that can be spent over a regulated period of time. If you extended it to 365 days, analogous with a UK general election, that would be an awfully long period of regulation to regulate the spending of that sum of money, which, in the context of an election, is fairly small.

Q969 Chair: If the Scottish Government’s proposal was for £750,000 to be spent during the existing regulated period and you then had a second regulated period, so to speak, it would not necessarily mean that only that £750,000 could be spent in the longer period. It would mean that in the longer period you would have to report what you were spending. Just listening to you. I am assuming that you would, in a sense, have a regulated period but have, as it were, regulation-lite or some equivalent.

Professor Fisher: There is already an example of that. Before the last election, the Political Parties and Elections Act 2009 introduced two periods of regulated spending for candidates. There was a long period and a short period. The effect of that was to increase the permitted candidate spend to an excessively high level, in my view. Thankfully, very few candidates got anywhere near that level of spend; it was around £40,000 each. You could do that, but my feeling is that that introduction in 2009, which was a sort of compromise agreement that came out from the Hayden Phillips review, led to more confusion than clarification. If you are going to have a regulated period, it should be one regulated period and not a kind of light period and a strong period, if you see what I mean.

Q970 Chair: It is a question of what we are regulating and what we are worried about. One of the worries that I certainly have—and it is reflected in some of the views expressed by my colleagues—is that the referendum gets bought by huge amounts of money flooding in, as we sometimes see in the United States, during a period when there are no expenditure limits. That is seen to be unfair and, therefore, there ought to be a degree of honesty and openness about amounts of money raised and spent during a much longer period; otherwise you can just spend mega dough in the period immediately before the regulated period.

Professor Fisher: That is a perfectly reasonable concern. The question for you is how far back you go and at what point you designate an organisation. That seems the critical issue to me. At one point is there a designated group, because before designation in effect they don’t exist?
Q971 Chair: In Scotland at the moment there are two groups that have designated themselves, so to speak. It is not official. I do not know if you were here at the very beginning when we were saying there is the Yes campaign, which is basically a front for the SNP. Then you have a broader based campaign. They are clearly identifiable at the moment. Surely there is an argument for saying that what they draw in and what they spend should be regulated as of now. If you then have a third option such as devo-max and if you have an organisation to campaign for that, they would be regulated as from the date that they announced themselves. Does that seem reasonable?

Professor Fisher: You could consider that to be a reasonable judgment. My concern with these kinds of things is that we try and regulate for every eventuality and we end up simply providing loopholes, which leads to a greater lack of confidence in the rules. There is an argument that says that, the more rules you create, the more loophole-seeking emerges and therefore a greater lack of trust.

This is not an argument against transparency, but, for example, if you look at the period after PPERA where parties were required to declare all their donations, the result was that there was a greater lack of confidence in party finance because there were simply more stories going around. People were finding out about all sorts of things that weren’t previously there. There is a balance to be struck. I recognise the point you speak about, but, in the context of other pieces of legislation that regulate these kinds of things, anything over a year would be excessive in my view.

Q972 Chair: You said that laws provoke other things. Surely there is nothing else that covers the front organisation and the broader base campaign; there is nothing else that regulates them at the moment?

Professor Fisher: That is true, but I am talking about other elections.

Q973 Chair: We are not talking about elections. We want to focus on this. As I understand it, there is nothing at all to stop, legally, either of these two organisations taking huge amounts of money. I do not know whether you were in the room when we were saying that, if anyone wanted Scotland to leave NATO, the KGB could be funding the SNP in order to bring that about. Theoretically, there is nothing to stop that, and that would not need to be declared. It would not need to be above board and nobody would necessarily know. It just seems appropriate that there is some sort of transparency about money both spent and raised during this unregulated period.

Professor Fisher: I agree, but on the other hand the other legislation is not irrelevant in this case. Prior to the introduction of PPERA in February 2001, we had no information about any of the income going to the parties. Any of the parties could raise as much as they wanted from wherever they wanted. In a sense, the situation that you describe as being unfortunate is unfortunate only in the context of the last 15 years. The other elections are relevant in that sense.

Q974 Chair: Professor Birch, you have kept silent during this. Do you want to comment on any of this?

Professor Birch: Yes. I agree with Professor Fisher on this. The fundamental problem is that countries such as the US, for example, have special organisations and a special designation as being political campaigning groups and political lobbying groups. We don’t have that in this country. An organisation that sets itself up potentially to be one of the lead organisations in a referendum has the same status basically as a stamp collecting club before it is designated as that type of organisation. It would be somewhat unfortunate if you gave organisations a different designation simply for the purposes of this referendum rather than changing the law broadly and creating a new status of organisation that was recognised as a political lobby or campaigning group that would then be something relevant for all organisations in the UK. Organisations in Scotland might feel that they had been singled out for treatment that was different from other organisations in other parts of the UK, which might potentially be setting themselves up to campaign for some referendum that they might want to have in the future.

I agree with Professor Fisher that, without that designation of a special type of organisation, it would be odd to have organisations regulated this early. I also agree that having some regulation that might extend to up to a year before the referendum would make quite a bit of sense. It seems to me that the current minimum period is very short and you would want some regulation extended quite a bit longer than the current regulations stipulate.

Q975 Jim McGovern: On a point we were making earlier, I am reminded of a visit I made to America in 2006. I was paired up with a Congressman from Kansas. It was coming up for mid-term elections. He was doing a phone-round to try and drum up financial support. After that he said to me, “That’s me up to half a million dollars now. How much do you spend on an election?” I said, “Probably about £11,000 is the maximum.” He said, “Is that per day or per week?” I said, “No, that’s it.” He could not actually believe it. I think our system is probably better and I am certainly in favour of regulation, but do either or both of you have a view on who should regulate a referendum on separation for Scotland?

Professor Birch: PPERA very clearly sets out the regulations for referendums. As set out in PPERA, the Electoral Commission is the natural body to regulate the referendum.

Q976 Jim McGovern: Do you think it is important who the regulatory body is?

Professor Birch: Yes. As I said before, to make special rules for this referendum that would govern campaigning groups and who is regulating would seem extremely odd. Why make special rules? The rules that we have are accepted as being fair. There are lots of things said about the referendums we had last year, but I don’t think too many people said that the regulatory structure was unfair. If the regulatory structure for referendums is broadly accepted, and we have had several referendums under the new
The principal problem has been that, since PPERA was passed, there were some drafting difficulties that meant that some areas of the law were uncertain. For example, in the AV referendum there had to be an amendment to remove the confusion about media organisations and expenditure limits. There was a series of drafting difficulties, which is not a surprise given the size of PPERA and the radical change that it led to.

Going back to your point, I completely agree with Sarah. Going back to this trust argument, the idea of setting up a duplicate Electoral Commission for one referendum seems to me to have no reason behind it and would cause the sort of uncertainty that you speak of.

Q978 Jim McGovern: Going back to what the Chair raised earlier about the regulation period, I refer back again to my experience in America. I don’t know if this applies to presidential elections, but research in America seems to suggest that the candidate who raises the most money and then spends it tends to win the election. If the regulation period is only going to be 16 weeks and one campaign is awash with money while the other might not be, that sounds pretty unfair to me.

Professor Fisher: What works in the States doesn’t always work in this country. This is an area where I have done quite a bit of research and find that at both national and constituency level the amount of money you spend—certainly at constituency level—can have an impact but it can easily be offset by the efforts that are made for free. We have just written a paper, for example, that demonstrates that, although the Conservative Party at the last election had much more money to spend and on average their candidates spent lots more than any of the other parties, their efforts were offset by the voluntary efforts of Labour and Liberal Democrat supporters.

You can’t run an election without money and nobody would pretend otherwise, but the simple link between higher spend and higher votes doesn’t work quite as neatly. Certainly at national level there is barely any evidence for that applying at all. If you take the last election, the Conservatives raised £20 million, which is broadly speaking the limit they could spend nationally, in the last two quarters before the election. They spent right up to that limit and Labour was only able to spend something like £11 million. Yet the bang for buck for the Conservative Party simply wasn’t delivered. There is some relationship but it is by no means perfect. The argument that you can buy an election doesn’t quite work as well here, partly because of the very sensible restrictions that we have on what money can be spent on. Our campaigns can’t buy airtime, whether it is referendum election and referendum broadcasts. That is what keeps our costs down.

Professor Birch: I would just add this. The other thing to bear in mind is that in the United States most of the candidates are not very well known to the electorate and the political parties don’t play such a large role. People’s views are more likely to change when the options before them are unknown and they have to inform themselves to make a decision.

In the UK, when most people vote in elections on the basis of a political party, they are less likely to be swayed by the types of things that money might buy. Likewise in a referendum, some people might be somewhat unclear as to what devo-max means, but people in Scotland have had a long time to think about the question of independence. They have been asked about it before. So we could anticipate that money would have less of an impact on that decision than it would, say, in a typical US election campaign.

Q979 Pamela Nash: I was going to come back on your comments there, Professor Fisher. I don’t think anyone would say that money was the only element in an election campaign, but, using the examples that you used, if you had a candidate with a lot more money and a candidate who didn’t but they both had the same amount of volunteers doing the same amount of work—when you equalise every other part of that campaign—the money is going to make a massive difference.

Professor Fisher: It depends how you spend it. You can spend money wisely or unwisely.

Q980 Pamela Nash: If they each spend it wisely, if one has more money, that is going to make a huge difference.

Professor Fisher: It could potentially make a difference; absolutely. The point I wanted to stress is that there is not a simple pattern that suggests that if you spend £x you get x votes. Of course the power of the argument is terribly important, particularly in the context of a referendum on independence, which I assume in the Scottish context is a very emotive topic where there will be people with quite entrenched opinions who are unlikely to be swayed. Campaigning is usually about getting your own people out rather than persuading others. In this context—and, forgive me, I am not up on the most recent polls in Scotland—unless there is a huge group of undecideds, the money is unlikely to make as much difference as we might expect.

Q981 Pamela Nash: If we take the argument out, that is obviously established at the start of the campaign and different elements will affect it; but on the undecideds, if every other element is similarly
matched, then the money could potentially make a difference to the result. **Professor Fisher:** Forgive me, I am not suggesting for a moment that money is irrelevant. Of course you have an information advantage, effectively, if you have more money, but there is a point at which the spending could deliver diminishing returns. This was one of the arguments, for example, in the last election. If you are swamped throughout the unregulated period with glossy booklets about the candidate from x party, there comes a point at which this is unlikely to make much of a difference.

**Q982 Chair:** But that last point is simply not true surely. If you look at the Ashcroft money, for example, there are a whole string of Labour candidates that believe it was Ashcroft money that beat them more than anything else.  

**Professor Fisher:** Forgive me, Chair, but believing is not the same as evidence.

**Q983 Chair:** That’s true; okay, that is a not unreasonable point. If you look at the correlation between Ashcroft money and activity and all the rest of it and the results of the election, people who were involved in the election presumably had a fair view of what was having an impact upon the electorate in which they were competing. I am not clear if you are saying that it had no impact whatsoever.

**Professor Fisher:** I am not making that point. What I am saying is that it is very difficult to make the argument that, if you are able to spend x more than the next party or the next campaign, you will automatically deliver that advantage.

**Chair:** That’s true.

**Professor Fisher:** That is not to say that you shouldn’t regulate money. In a sense money is one of the only things you can regulate, but it can be offset by all the other things that go into an election campaign.

**Q984 Chair:** It was clear that the Tories spent more in Scotland per successful candidate than anybody else because they got one. No matter how much you spend trying to market rotten fish, people are not going to buy it, without making that an exact parallel, I understand that, but I think you have tended to take an extreme position on this on the basis that I have not yet come across anybody campaigning for my party who does not feel that a campaign would be improved by having more money. In my constituency, for example, the SNP, who had very few volunteers, were paying people to deliver leaflets.

**Professor Fisher:** That’s illegal.

**Q985 Chair:** They were paying people to deliver leaflets as distinct from us delivering them with volunteers. Had they not had that money, the leaflets would not have gone out. It is not true to say that it does not have an impact. There is then the question of whether having leaflets out there makes any impact, but I find it difficult to imagine that there has not been a regression or some sort of mathematical stuff done somewhere.

**Professor Fisher:** Forgive me, it is not an extreme position; if anything, it is a moderating position. The point I am trying to make is that it is not a simple relationship between the amount you can spend and the support you get. For sure, you have to have money in an election campaign. No reasonable person would argue that you don’t need money.

**Q986 Jim McGovern:** I want to go back to the point I made earlier about my experience in America. It wasn’t only the Congressman who told me that the candidate who spends the most money generally wins. Every politician, every researcher and everybody I met said that the stats proved that. It is not an exact science, but in general the campaign that spends the most money—

**Professor Fisher:** In general, in the States, that is true.

**Q987 Jim McGovern:** And in the UK, I would think.  

**Professor Fisher:** I am afraid that the evidence doesn’t always support that finding.

**Jim McGovern:** As I said earlier, it is not an exact science, but general trends would suggest that the campaign that spends the most money will usually win.

**Professor Fisher:** It is not as simple as that.

**Jim McGovern:** Maybe I am being simplistic. I don’t know; I don’t intend to be.

**Professor Fisher:** No; I am not suggesting you are.

**Q988 Chair:** Professor Birch, do you want to argue against anybody?

**Professor Birch:** Not on this point, no. I defer to Professor Fisher; he has much more expertise on campaign money than I do.

**Q989 Chair:** Let’s drag ourselves back to the referendum. Relating to money, there is the question of the multi-option question. In those circumstances, where there are two pretty well defined positions—separation or part of the Union; it might have knobs on it and all the rest but the gist of that is known—if a third option enters the fray, which is unknown, then surely the question of having money to be able to publicise is exceptionally important, along with questions of raising and spending and so on. That takes us back to the question of where that money is coming from, would it not all be clear and all the rest of it. Since you have come in first a couple of times, maybe I could ask you, Professor Birch, whether or not you have an observation on that.

**Professor Birch:** Before you define the organisations you have to know what is being campaigned on. Without knowing exactly what the ballot paper is going to look like, what the structure of the ballot is going to be and how the questions are going to be set out, it is impossible to define the entities that would be doing the campaigning. For example, if you had several different questions on the ballot, then there would be different permutations and combinations of answer. It would make sense to have a campaigning group for every possible permutation of responses rather than a campaigning group for Yes on this, No on this, Yes on this and No on this. The outcome of the whole process is not simply the answer to one question; it is the answer to a combination of questions. So before you start regulating the groups...
you need to define the questions because, before that, you can’t even define what the groups might be.

Q990 Chair: We had a discussion about that earlier. Under the dead Frenchman option—de Condorcet—we had a discussion about Yes, Nos and all the rest of it, but we came to the view that you just identified of how many options there were and then there was one campaigning organisation for each option. If you had devolution, devo-max, devo-lite and separation, you would have four campaign groups even though you might have six questions to pose against each other. That was comprehensible rather than having every possible option of Yes/No, No/No, Yes and all the rest of it. We took that view, and we were also anxious about the question of how you then organise the spending to make sure that each of those, particularly the lesser known options, was able to reach out. Again, there was the question that those options that have had a long period of time to campaign would be better known; if there are tight limits, they will not be able to get their case across as well, and therefore the period ought to be much longer to make sure that there are controls. Does all that not seem reasonable to you?

Professor Birch: When it comes to actual campaign spending, the point zero should be the point at which the options on the ballot are determined. You can only really identify an organisation as being on a particular side when you know what the sides are. From that point, when the options are determined and you determine which types of organisations are going to be recognised, then it would make sense, as I said before, to regulate the spending for longer than 16 weeks. I do agree with you on that. But, if some organisations have been in existence longer simply because they happened to form in anticipation of there being a particular option on the ballot before that option on the ballot had been decided, there is not very much you can do about that really. Have I misunderstood your question?

Q991 Chair: No, I am just following that up. But what you could say is that, as soon as you know what the options are on the ballot paper or the campaign group, regulation will apply. It obviously depends on the regulation. I can see the reservation about saying that the regulation will give you a limit of spending, but, if the regulation was that you have to take no foreign money or such and such. I don’t justify why they were not doing it or why they were making a recommendation about people being open as it is. I would have thought that, if we made a recommendation about people being open and accountable, there is some precedent for that. I am not sure whether it provides a satisfactory answer. It might provide ammunition for one side over another if one side did it and another side didn’t, but in terms of regulation it would not have—

Q994 Chair: But is that in itself not a step forward? There may be some political proprium if one side does it and the other side doesn’t because the suggestion is then, “you are not being open; you are not being honest. What have you got to hide?” It is a question of trying to keep people honest voluntarily.

Professor Fisher: Yes, of course. Before PPERA was introduced that is precisely what Labour and the Liberal Democrats did. They voluntarily declared their donations in excess of £5,000 once a year in their annual report. So there is some precedent for that. I am not sure whether it provides a satisfactory answer. It might provide ammunition for one side over another if one side did it and another side didn’t, but in terms of regulation it would not have—

Q995 Chair: I think you possibly underestimate the impact of this Select Committee in making recommendations. I would have thought that, if we made a recommendation about people being open as from now, other campaign groups would then have to justify why they were not doing it or why they were accepting foreign money or such and such. I don’t want to prejudge what we might come out with.

Professor Fisher: The same sort of argument has been put in terms of the opposition to caps on donations. The principle that has been put forward by some who are opposed to it is that parties should take a voluntary stance that they won’t accept a donation over x. That
sort of argument has been rejected simply because it wouldn’t be enforceable.

Q996 Chair: That is right, but people get the opprobrium and the adverse impact depending on the extent to which it sticks. If it is seen by some to be a scam by one side to favour themselves, then it is not seen to be fair. The idea that everybody should declare what they are getting and nobody should take foreign money seems to me—

Professor Fisher: I don’t see any harm in making that recommendation. It is just whether the recommendation—

Q997 Chair: That is a less than ringing endorsement of it though, isn’t it? Professor Fisher: If the recommendation is that both sides should be honest and above board, it seems a perfectly sensible thing to do. Whether it would achieve the outcome that you are after is open to question.

Q998 Chair: Since you are both experts in malpractice of one sort or another, if I can put it that way, is there anything in particular here that you have identified in this referendum that we ought to be wary of, that you ought to be warning us about, trying to identify or saying, “Here is something you haven’t thought of”?

Professor Birch: I am a bit concerned about the proposal that has been put forward by the Scottish Government not to have any public funding of the campaigns of the two sides. This is something Professor Fisher probably wants to comment on as well. In some research that was conducted not long ago it was found that in election campaigns, where there was public funding of political parties, they were in general held to have a higher level of legitimacy than those in which everyone just gets as much money as they can. I would be very concerned if there were no public funding for the different lead organisations in the campaign. The basis for the level playing field is giving each organisation an opportunity to get its message across. That is one thing that I am quite concerned about.

Q999 Chair: Would the money from the public purse be the maximum spend or could parties or organisations, in your view, supplement that themselves?

Professor Birch: It is probably unrealistic to say that they wouldn’t be able to supplement that themselves. There is no tradition of putting that type of cap on only allowing public money and not allowing any private money. My personal view is that it would be best if election campaigns were largely funded out of public money but I don’t think that is realistic. You would have to allow them to raise some private funds. I don’t think it would really be acceptable to the British public to say, “No, it is just the public money.”

Q1000 Chair: Do you accept that, Professor Fisher?

Professor Fisher: Absolutely. The point about grants was embedded in PPERA to try and ensure at least some equity. You can never ensure a completely level playing field.

Q1001 Chair: What is the next point?

Professor Birch: The next concern I have is about the way the electorate is informed about the different options on the ballot. When PPERA was first put forward, the Electoral Commission was given a number of functions, but informing the electorate of the different options in a referendum was not one of them. Obviously the Electoral Commission can inform people about how to vote and so forth, but actually giving substantial information about the different options in a referendum has been regulated subsequently in the legislation that has been passed to regulate individual referendums. In the referendums last year the Electoral Commission was given slightly more powers to tell the electorate a little bit about the different sides. The Electoral Commission is still relatively reluctant in comparison with electoral commissions and electoral authorities in other countries to inform the public about the substantive implications of the different possible outcomes in a referendum. The basis for the level playing field is giving each organisation an opportunity to get its message across. That is one thing that I am quite concerned about.

Q1002 Chair: I want to explore that a little before I come to your colleague. It is unlikely that this referendum is going to sneak up on people unnoticed. The press coverage is going to be enormous, the campaign is going to be enormous, and there is going to be a huge amount of debate about what things actually mean. The SNP are being delightfully vague on a number of things about what the consequences
of separation might be. Surely it is then very difficult to say that objectively this is what will happen. As I understand the SNP proposal, you would have a decision for separation and then you would have a period of negotiations. You cannot determine beforehand how those negotiations will work out. Therefore, how can you possibly put objective information in a booklet?

**Professor Birch:** Inasmuch as there is objective information, it should be possible to put it in a booklet. What is an independent state or a separate state? I was thinking more of devo-max. What exactly would this be? You would not want to include speculation because there is always going to be speculation about the outcome of a referendum. That clearly would not be appropriate to put into some kind of booklet, but a clear indication of what is being proposed by each side is something that would be relevant to include and to inform the electorate.

**Q1003 Chair:** Is there any evidence that anybody actually read the booklet about the AV referendum or that it had an impact? There was one, wasn’t there? I was involved in the campaign and I cannot quite remember it.

**Professor Birch:** The Electoral Commission is probably better placed to answer that question than I am. The report that they issued after that certainly suggested there was a dramatic increase in public awareness of the referendum following the various different efforts they made to inform the public, including the booklet and televised information about how to vote and so forth. Their activity, combined with what was going on in the media—

**Q1004 Chair:** A lot of their activity about telling you how to vote and telling you there was an election was one thing; telling you what it was about was something different. The argument will be, “Everybody in Scotland knows this is going on. We don’t need any guff from civil servants or somebody else that is likely, by definition, to be so bland that it is going to be useless. So therefore why should we bother?” I am not quite sure what your response would be to that accusation.

**Professor Birch:** It is different from the referendum we had last year on the electoral system. As you say, the electoral system is very difficult for most people to understand, including scholars of electoral systems. Independence or separation is in some senses clearer, although when it comes to something like devo-max there is more ambiguity. It would be desirable to have a body that could potentially police what is said during the campaign.

**Q1005 Chair:** Surely devo-max, which by definition requires the agreement of the rest of the United Kingdom in a way that independence doesn’t, is unknown; it is an unknowable. Unless you have the negotiations before the vote, you will have a clear idea about what the proponents of devo-max might want but you have no idea whether it will be agreed. Therefore, separation is very much a pig in a poke and devo-max is, if anything, a smaller pig in a bigger poke. You have even less idea of what it actually means.

**Professor Birch:** Maybe that is what should be in the booklet then. Anyone who proposes a referendum is always facing an uphill battle because the other side that is in favour of the status quo can always try to provoke fears and say, “Oh, if you vote for this, then this would happen, this would happen and this would happen.” If it is something that is going to be negotiated, then perhaps some of those fears are groundless. The electorate should be very clear as to what they are voting on.

**Q1006 Chair:** That is right, but with devo-max it would be “don’t know; don’t know; don’t know; don’t know; don’t know; to be resolved; don’t know; some time; maybe.” Therefore, that would bring the whole thing into disrepute. I am sorry. I do not want to be unduly harsh, but I know that, if I go out and propose this, this is the sort of thing that bad people will raise with me. Therefore, it is only fair that I take it out on you at the moment. I will turn to Professor Fisher.

**Professor Fisher:** On this point I would disagree with Professor Birch for two reasons. First, it seems to me that, if there is a dispute over potential outcomes, that is something that should be settled through campaigning. What we saw in the AV referendum last year was that the No campaign put forward some arguments, which may or may not have been based in fact, and the Yes campaign was simply unable to counter them because they were very bad at campaigning. I don’t think having an interventionist commission would have made any difference. The other thing that is pertinent here is that, if you are advocating that sort of Commission, it would require a fundamental shift in the Government’s position on the role of the Commission, which has been in place for around 10 years now. In the early years of the Commission, it was both a regulator and, in effect, a research organisation. From the mid-2000s the message was very clear that it should stick solely to regulation and the promotion of voting.

**Q1007 Chair:** But that objective can be achieved by just getting somebody else then; I understand your point.

**Professor Fisher:** But why? The implication there is that you would have a regulator in a general election to say, “Labour is lying about this, the Conservatives are lying about this and the Liberal Democrats are lying”, or whatever. That seems to me to be the job of good campaigning. The idea that you have to regulate against negative campaigning seems to me to be perverse.

**Q1008 Chair:** I take it you disagree.

**Professor Birch:** There are a lot of other things that you could not regulate. I agree with Professor Fisher that most things have to be settled through dialogue, debate and so forth, but there might be factual statements made in the course of a referendum campaign that are simply inaccurate. It would be desirable to have some means of dealing with that. When you have an election campaign where individual people are standing for office, they are
protected by defamation laws. If something is inaccurately said about them when they are campaigning, they can appeal under the defamation legislation to protect themselves. That is not true in a referendum campaign.

Q1009 Chair: Channel 4 did a fact check. A number of stations did that sort of thing. Is that not a speedier mechanism?

Professor Birch: Yes, I agree in most cases. That is why one of my suggestions might be that it would be desirable to have televised debates on the referendum so that the allegations that are made can be countered by the other side immediately. That would be the best way to try to air differences of view as to what the implications are.

Q1010 Chair: I presume you have a long shopping list of items. You have given us two. Give us the next one.

Professor Birch: Chair, I didn’t come with a manifesto; I came mainly to answer questions. Televised debates were the other thing that I thought would be desirable.

Q1011 Chair: I think you will find it hard to keep them off the television.

Professor Birch: I am here to answer questions.

Q1012 Chair: The question is, do you have any suggestions that we ought to be taking account of? There is no much point in us just asking you things because there will be ideas that you, in your wisdom, will know of that we don’t. We are therefore trying to flush them out of you. Are there any other proposals that you think we ought to be taking account of, both to encourage good participation but also to stop bad people getting up to mischief?

Jim McGovern: Chair, you have possibly answered your own question about the effectiveness of leaflets, booklets and so on, when you said that you were involved in the campaign but you could not remember what was in the booklets.

Chair: I could then; I could at the time, you see. I don’t need to carry it in my head.

Professor Birch: The other issue I was thinking about before I came today was the number of different questions on the ballot paper and how you deal with that. I can’t say I have a view on that, but I thought perhaps the Committee might be interested in the experiences of different countries and how they deal with that issue.

Chair: I could then; I could at the time, you see. I don’t need to carry it in my head.

Professor Birch: The other issue I was thinking about before I came today was the number of different questions on the ballot paper and how you deal with that. I can’t say I have a view on that, but I thought perhaps the Committee might be interested in the experiences of different countries and how they deal with that issue.

There are some jurisdictions such as, for example, New Zealand, in some of the referendums they have had on electoral reform, and also the US state of Washington, that ask first whether the voters prefer the status quo or change. Then in a separate question they ask them, if they have voted for a change, which of the various options they want. There would be two separate questions. In some cases only the people who have actually voted for a change are eligible to answer the next question as to which option they want. In other cases, regardless of whether they have voted for a change, they are able to give an opinion on which of the options they prefer. That is one way of organising a ballot when you have more than one option.

The other way is obviously preferential voting, where you say, “My first preference is this; my second preference is this; my third preference is this.” That deals with the dead Frenchman issue in the best way possible. Certainly the Scottish electorate is accustomed to preferential voting, having STV for local elections. That is another way of doing it. Another option is to vote Yes/No on different questions. The question that has the greatest number of Yes votes would win. It would be an odd situation if you had Yes/No on independence and then Yes/No on devo-max. Say the Yes/No on independence got 52% support and Yes/No on devo-max got 53% support, and the Scottish electorate, having voted by a majority for independence, got devo-max because that had slightly more support. That would seem to me a strange result.

Q1013 Jim McGovern: It has been suggested that the solution to that might be two referendums.

Professor Birch: Yes; that would be the other solution.

Q1014 Jim McGovern: It would possibly be a procedural and bureaucratic nightmare but that has been suggested a few times.

Professor Birch: The first vote would be for a change in the status quo and then in a separate referendum some months later—which has been done in New Zealand—you vote on the different options if the outcome of the first referendum is for change.

Q1015 Chair: The converse to that is that, if you have opinion roughly divided a third, a third and a third between status quo, devo-max and separation, in the first vote, if it is change or no change, you then have two gangs against one gang and then the two gangs fight it out between themselves. Whichever of the three options has the two others posed against is likely to lose.

Professor Birch: That is why preferential vote is probably the most effective in sorting that out.

Q1016 Chair: I don’t know whether you have looked in your work at the way the Speakership was determined here when Michael Martin was elected Speaker. That was a wonderful mechanism if you were Michael Martin because he became the nominee and then every other candidate was posed against him. If you supported any other candidate, then you would support Michael Martin against any other candidate, if you see what I mean, until your candidate came up, and then you would vote for him. A lot of evidence has come forward to us indicating that the way in which the ballot paper is constructed can help determine the result. We are conscious of that and that is why we are going to see the Electoral Commission and what they propose.

Professor Birch: The research that has been done on this question of strategic voting, which you are probably familiar with, is that voting instrumentally to try to engineer the outcome you want, is that the best way of avoiding that is by allowing people to
vote for all of the options that they would accept. If you have, say, five options on the ballot, four options or three options, they can have as many votes as they want. They could use three votes for all three of them if they want, or two votes or one vote. It is called approval voting.

The research in electoral systems shows that that is least vulnerable to that type of strategic voting. However, giving people more than one vote is not a familiar form of voting to most people in the UK and might be confusing. They would say, “It’s not one man, one vote because some people can exercise two votes.” Potentially, from an electoral system design point of view, if you asked academics what the best way of sorting out that problem would be, that type of voting system would probably be the best. That is the system we use in my university; we use that system where I work in my department because we are all academics.

Q1017 Chair: How many spoiled votes do you have?
Professor Birch: However, I am not sure that system would be acceptable to the electorate and it might be quite confusing. You are probably going to have to come up with a system that is not perfect. The question is how you want to trade things off and what things you are prepared to give in on in order to develop a system that is easy for the electorate to use.
Chair: We are aware of the principle of losers’ consent, whereby you make sure that those who lose are happy with the result. I would have thought the most likely body to have that sort of support is the Electoral Commission coming back, however they determine it, and then it will be seen to be somebody who is neutral, above the fray and all the rest of it. We are reasonably settled in our view on that.

Q1018 Jim McGovern: Although Professor Birch has said that the people of Scotland are quite used to multiple-option voting and STV, even at the recent local government elections I was present at the count and the number of spoiled papers was just phenomenal and very sad. People were putting two “X’s”, which was ruled did not show a first preference, and so it was a spoiled paper. It was fairly obvious who the two candidates were that they wanted to vote for, but it was a spoiled paper because they did not put “1” and “2” but two “X’s”. I tend to slightly disagree with you when you say that Scottish people are very familiar with the system and are comfortable with it. I don’t think that’s the case.
Professor Birch: As the Chair said, the Electoral Commission will do research.

Q1019 Chair: Do you want to comment on all that, Professor Fisher?
Professor Fisher: I have some other comments, actually.

Q1020 Chair: What are your other ones?
Professor Fisher: On the “how many questions” argument, it does seem to me that there is scope for tremendous uncertainty in the outcome if you have more than one question on this particular referendum. The only reasonable way of organising this to avoid confusion among the electorate and to avoid strategic voting would be to have two referendums, with the second one applying only if independence was rejected. It seems to me that there would be considerable problems if you put two questions on the ballot paper.

Q1021 Chair: I understand your point about independence being rejected. If you have three gangs, so to speak, you are now inviting the two others to gang up against the independence gang and to beat it, and then you end up with the status quo or devoplus. Whichever one is the gateway issue is at a disadvantage, it seems to me.
Professor Fisher: Potentially, yes, but the stakes are so high. To go back to the example you posed earlier, let’s say you have a third, a third and a third, with two questions together. You could very easily argue that there was no legitimate case for any of the options taken. It seems to me that this would produce more uncertainty.

Q1022 Chair: That is where the dead Frenchman option presumably comes in, because people then have to choose between the other alternatives that they do not favour. I am not entirely familiar with that.
Professor Fisher: It is a good theoretical proposition. I am not sure it is necessarily a practical one for an issue as important as this—whether the country remains part of the United Kingdom.

Q1023 Jim McGovern: In your opinion, the most straightforward way to get a definitive answer would be one question?
Professor Fisher: One question and, depending on the answer to that question, you could then move to a second one on devo-max. There are political issues here of course. Let’s say independence was rejected by 60% or 70% of the people. It would seem to me that you could not have a devo-max one within three or four years.

Q1024 Chair: What I am not clear about is why you would need to have a devo-max referendum at all in those circumstances. You had a referendum to establish devolution, but then all the other transfers of power to the Scottish Parliament have been done by a process of haggling and without a referendum. Given that devo-max is, first, multifaceted and, secondly, it is unclear what the reaction of the rest of the United Kingdom will be to each of the individual proposals, seeing it as a package does not do justice to some of the elements.
Professor Fisher: That is a very fair point, yes. You could make the case that the referendum should only be on independence or not and then treat the so-called devo-max as a process of negotiation. There is an argument to be had for that, yes.

Q1025 Chair: That is the devo-plus people’s position because we had them in front of us. They are saying that they disagree with some elements of devo-max but they see it as being divided into different categories of power, which could be settled over
different periods, and all of them could be done by a process of haggling and arrangements. Rather than the Big Bang theory, it was a growth theory.

Professor Fisher: There is certainly room for that point of view. I accept your point that it doesn’t follow from having a referendum on independence that you must also have a question or indeed a separate referendum on whether devolution should be extended. That is a very fair point.

Jim McGovern: The Prime Minister is on record as saying that if Scotland rejects separatism there will be room for negotiation for further powers for the Scottish Parliament.

Q1026 Chair: There is a wonderful phrase from you which I have not heard before that said, “There’s room for that point of view”, which is damning by faint praise, I suspect.

Professor Fisher: No, not at all.

Q1027 Chair: Professor Birch, do you have anything to say on those observations?

Professor Birch: Yes. The other option would be to have a referendum on the status quo. “Do you want to retain the status quo or would you prefer change?” Then that would be followed by a separate referendum with different options for change. Ideally, there would be only two different options for change.

Chair: That comes back to the two gangs against one gang. One of the two options could be a haggling option, and, if you agree to that, it is the pig in the poke argument, isn’t it? It is a wee pig in a big poke because you don’t know what devo-plus is unless you have gone down the road of the negotiations.

Q1028 Jim McGovern: How could you possibly put on a ballot paper what change would mean?

Professor Birch: Perhaps that would have to be better defined rather than just being an invitation to initiate negotiation. There would have to be a more concrete proposal on the table.

Q1029 Chair: Professor Fisher, you have more on your shopping list.

Professor Fisher: Yes. I have mentioned the issue of diaspora before, which relates to unregulated periods.

Q1030 Chair: On diaspora I would ask you for observations on one thing. This is the question of foreign money really, isn’t it?

Professor Fisher: Depending on where you draw the line of what is “foreign”—whether it starts south of Edinburgh or whether we are talking outside the United Kingdom.

Q1031 Chair: I think we understand that issue. One thing that has been suggested to us is that the separatist armed forces would be open to anybody that wanted to join them who was in the existing British armed forces. It would seem reasonable, and we have had it suggested to us, that anybody who would be eligible to die for Scotland should at least be able to vote on whether that country should be created. That would mean that those in the armed forces who would be eligible to join the Scottish armed forces would get a vote. Do you have any observations on that? Is there any parallel for anything like that?

Professor Fisher: Off the top of my head I can’t think of one. It strikes me that we are talking about a relatively small number of people.

Q1032 Chair: I suppose it is everybody in the British armed forces. We will have to check, but my understanding is that you obviously have a division of assets if you have separation and there is the question of the people in the forces.

Professor Fisher: Presumably it would apply to the Scottish regiments and not the—

Q1033 Chair: Why not? There is not a Scottish Air Force at the moment. With the Scottish regiments, there are some Scots in them and a large number of Fijians. There are some English people in them. There are some Scottish regiments that are based in Scotland. There are some Scottish regiments based in Germany. There are some English regiments that are based in Scotland who will be on the electoral register. There will be some Scots in English regiments. There is no Scottish Air Force. There is no Scottish Air Force. My understanding is that those who want separation have said that anybody who is in the British forces who wants to join separate Scottish forces would be able to do so. The argument then is, if they potentially join and maybe die, should they be entitled to vote?

Professor Fisher: I don’t think there is such a problem. Theoretically, someone could decide that if Scotland became independent they would like to move there, but we would not give them the vote. It is reasonable to work on the basis of residence. Whether or not somebody might or might not in the future wish to make a particular decision does not seem to me to be a reason to give them the vote.

Q1034 Chair: Coming back to the question of Scottish regiments, if a Scottish regiment is based in Scotland they would get a vote for residence, but if a Scottish regiment was based in Catterick, say, they wouldn’t.

Professor Birch: Did they vote in the Scottish Parliament elections?

Q1035 Chair: It would depend upon whether they were registered in Scotland. It is a question of whether these are exceptional circumstances, given that it is the creation of a state.

Professor Fisher: I don’t know the answer to that.

Chair: That has the merit of honesty.

Professor Birch: I do have a view on that. It is not particularly on what I think about service voters but just in general. I think that, if you start tinkering with the franchise, you get into the situation again of having special regulations simply to govern this referendum that don’t govern other types of elections and other referendums. That is very dangerous because there is the perception that somehow the rules are being fiddled and are not legitimate. If there is a change made to the rules that normally govern referendums, people might start to wonder why that is. They might wonder, “Why did they do that? Maybe they are trying to influence the outcome.”
I would think that, as happened with the Welsh referendum last year on the extension of the powers of the National Assembly for Wales, you would want to use an existing franchise and not tinker with it in any way. That is what you would normally expect to happen. The national franchise used would be the franchise for the Scottish Parliament and the Scottish local elections, which is what happened in Wales last year.

This links in with the idea of voting at 16. I personally believe that voting at 16 is a good idea in general for elections. However, in this case it is not desirable to tinker with the franchise because there would be a perception by some people that that change was being made in order to benefit one side and to change the outcome, not to mention the logistical problems of what you would do about 15-year-olds who were about to turn 16 and therefore weren’t on the register and the changes to the electoral registration system anyway. It would be a logistical nightmare to have voting at 16.

In general, it would be very dangerous to make any special provisions for this referendum because of the perception that they were being made with the intention of changing the outcome.

Q1036 Pamela Nash: I completely agree with the existing franchise, but how do you choose which franchise it is, because there are different ones existing in Scotland already? You mentioned the Scottish parliamentary one, but that excludes other people in the UK who are going to be affected. Why not use the general election franchise?

Professor Birch: Again, if we talk about the precedent from other elections that have happened in parts of the UK, there was provision for an Assembly in the north-east. That referendum happened several years ago. There was the Welsh extension of the National Assembly of Wales election that happened last year and the referendum for that. They were both conducted on the basis of the electorates in those areas that would have been affected.

I agree that potentially there is an argument for allowing anyone in the UK who is on the electoral register to be able to vote. However, that would be very unusual internationally. I don’t know of any case when there has been an independence or a separation referendum in which the entire country was allowed to vote. Normally it is only people who live in that particular bit that want to break off that are allowed to vote. It would be highly unusual.

Q1037 Chair: Following up Pamela’s point about having two existing electoral registers in Scotland, one is for the Scottish Parliament and the other is for the general election. The argument would be that the general election one applies to elections to the state. Since this is an issue affecting the future of the state, surely it is more appropriate to have the state election register used rather than the local government election one.

Professor Birch: Yes, but the electoral register for local government is also the electoral register for the Scottish Parliament. Inasmuch as it is the Scottish Parliament that now has a mandate to conduct this referendum and would presumably—

Q1038 Chair: They have the mandate but not the powers. The powers are reserved to Westminster under the referendum that took place in 1997, if I remember correctly. This is a point that is disputed. We are clearly of the view that the powers reside with Westminster and Westminster will give permission to the Scottish Parliament to have it under a section 30 notice and so on and so forth. There is the issue of the mandate as well. The argument is that it is not going to be an overwhelming mandate with only 23% of Scots having voted for the SNP; a bigger number voted for Westminster parties. The water is muddied. It seems to us that the question of the state, and the future of the state, using the same ballot paper as the elections to the state is one that is perhaps worth considering.

Professor Birch: I do accept that view and I think it is a valid argument. Ultimately it is a political decision, but, again, any deviation from the precedent that has been set with—for example, the referendum that happened last year in Wales—might potentially lead to some suspicions that the different provisions for this Scottish referendum were being established with a view to affecting the outcome. That consideration would need to be balanced against the chance of one—

Q1039 Chair: Would you accept that the Welsh referendum was a different thing?

Professor Birch: All referendums are different things.

Q1040 Chair: Yes, very good. Let me come back to the initial referendum that was set up for the Scottish Parliament when that was established. My understanding is that that was the general election register rather than the local government register because they had a choice there. We have made the point. The Welsh one was not about the creation of a state and therefore it is not an exact parallel. The Welsh one and the north-east one I can see as being similar because it was within a state. We have explored that. Professor Fisher, are there any points you want to raise?

Professor Fisher: I echo Professor Birch’s points about not tinkering, not least because I am opposed to lowering the voting age as well. I think it is a bad idea on two counts: the tinkering and giving 16-year-olds the vote.

I would raise the issue of something that the Electoral Commission has been concerned about, which are games around designation. That was an issue in the Welsh referendum. If one side chooses not to designate itself, then the other side can’t be designated, and therefore that lowers the maximum spend for both sides during the regulated period. If you have this relatively short regulated period of 16 weeks and there has been lots of spending beforehand, then potentially there is an issue. That is something you ought to look out for. The Electoral Commission certainly flagged that up.
Q1041 Chair: I do not see that there is going to be a difficulty about having the Better Together side and the independence side being recognised because they are clear. It is a question that presumably comes in if there is a third option.

Professor Fisher: No. Let’s say there is just one question—

Q1042 Chair: If the third option gang, as it were, decided not to be designated—

Professor Fisher: None of them would be.

Q1043 Chair: That is right; that is the point. Most people listening to this debate would think that that is not likely to be a real problem in Scotland because the Yes and the No sides are pretty well clearly identified. But if there is a third option and it chooses not to be designated then it would be.

Professor Fisher: It is a problem even if there are two. Even if you have a recognised Yes and No side, and let’s say the Yes side decides not to designate, then neither side can be designated and neither side can spend a higher sum in the regulated period. Hypothetically, if the Yes side has spent a considerable sum in the unregulated period, it therefore gets an advantage. You need to be careful about that.

I would echo the point on grants. I can see no reason why the Scottish Government wants to remove something that was caught in PPERA. Finally, there is the point that has not really been tested in any previous referendum in this country as far as I am aware. It is the issue of the period in which the Government cannot issue information about the referendum.

As I understand it, that is currently 28 days before the ballot. If, for the sake of argument, the Scottish Government presented a very biased opinion in a short regulated period, there might be some concern about the extent to which Government were trying to sway the electorate in one way or another. In the AV referendum that did not occur because, of course, the Government themselves were split through the coalition, but you can see the potential for this happening.

This is one of the reasons why this 28-day embargo was introduced following the Fifth Report of the Committee on Standards in Public Life. There were concerns, particularly from one member of that Committee, that that is precisely what happened in the 1975 referendum on Britain’s continued membership of the European Economic Community. There was a desire to limit what Government could do to try and shape how people vote. That has not yet been tested. It currently stands at 28 days. If there is a short regulated period, you might want to look at how the Government behave in the period from the start of regulation to minus 28.

Q1044 Chair: “You might want to look at” is a recommendation. I take it? Are you recommending that?

Professor Fisher: It is something that is untested and would require careful observation.

Q1045 Chair: “Observation” implies that you only look at it afterwards. You are not suggesting that we do something beforehand?

Professor Fisher: You would have to change PPERA.

Q1046 Chair: If we want to make recommendations, it will be on a whole number of things.

Professor Fisher: Here then is the argument. If there is a concern that the existing Government are firmly on one side of this referendum question, then it would be reasonable to ask whether or not they would be able to provide fair and impartial information for a period beyond the existing 28 days.

Q1047 Chair: That could be the restricted or regulated period.

Professor Fisher: It could be, yes; that is quite feasible.

Q1048 Chair: That is helpful. We will produce a whole number of recommendations, not all of which, regrettably or otherwise, we will have the power to implement. Some of it will be a question of whether things are fair and honest. If recommendations are being made and they are accepted by people in general, and then somebody breaks them, there will be accusations.

Professor Fisher: This is the first referendum since regulation where this sort of issue has occurred and it strikes me as a potential problem.

Q1049 Chair: My colleagues do not appear to have any further questions. As we always ask our witnesses, are there any answers that you have prepared to questions that we have not asked you or anything else that you feel we have not touched on that you think we should?

Professor Fisher: There is something I raised at the beginning. Select Committees and, indeed, Governments that legislate on these things should resist the temptation to try and regulate against all eventualities because you will never be successful. The point of the exercise is to ensure, as far as is possible, some sort of parity in the contest. You will never have a level playing field. Some groups are wealthier than others and some groups are simply more popular than others, but you can create some sort of equality of opportunity. You should not get into the realm of trying to close down every possible loophole. Fundamentally, these are voluntary organisations that are making a case to try and persuade the public one way or another. It is politics that should win out rather than law. That would be my general point. Look at the lessons that can be learned from the Wales and AV referendums, such as the designated groups and the length of the regulated period. Do be aware that, despite the legislation being in place now for eleven and a half years, we are still relatively new to regulating referendums in this country. So, in a sense, you will miss something.

Q1050 Chair: Professor Birch, do you have any final points?
**Professor Birch:** There has been talk in the Electoral Commission of possibly publishing campaign donations before elections. I don’t know what Professor Fisher thinks of this, but it seems to me that this would make a lot of sense, especially if there is an extended designated period. What is the point of knowing after an election or a referendum has finished who has given all the money? If you know afterwards, you could say, “I wish I had voted the other way”, but you can’t vote the other way. It is transparent but it is transparency when it doesn’t matter any more. I know the Electoral Commission is exploring possibly requiring publication of donations before the poll and that would seem to make an awful lot of sense. The other thing that is very difficult to regulate but you might perhaps be interested in considering is media regulation. You can regulate the broadcast media much more easily than you can regulate the print media. I am not familiar with the Scottish press. I would not know which newspaper would be on which side in this. Certainly it is accepted that newspapers will put forward a particular view. There is nothing you can do to stop that. There is nothing you can do to stop them massively increasing their circulation if they want to get their view across by giving out free copies of their newspaper on the streets and advocating one particular view. Sometimes people choose their newspaper because they like the sports coverage or the book reviews, not because they agree with the particular political position of the newspaper. Sometimes you might be swayed by that.

There is relatively little that you can do about that, but it seems to me that that is all the more reason for encouraging the broadcast media to give ample opportunity for televised debates and other such opportunities for the two sides to have an equal opportunity to put forward their view and so that there can be opportunity to counter the claims that the other side is making. There will then be a balance at least in the broadcast media, recognising that there is never going to be a complete balance in the print media.

**Q1051 Chair:** We are conscious of the point about balance in broadcast media. There have been quite a number of rows in Scotland so far with allegations flying about on whether programmes such as Newsnight Scotland are fair and balanced, and who takes what agenda. We are well on top of that.

The point maybe that I could come back and seek clarification from you is about the money for the extended period. We were discussing with the Electoral Commission, possibly before you came in, whether or not that will be monitored. I think they thought it was a good idea but not by them. We are not entirely clear where this group of wise virgins can be found who can monitor these sorts of things. We might end up just calling for voluntary disclosure by the groups, even though there is not a formal regulator to whom this would be given. In your experience, do you think it would work if we just simply called for voluntary regulation or disclosure of all foreign donations or any donations above a certain limit and so on?

**Professor Fisher:** There is precedent for it, which I described before, with two parties in the mid-1990s, but it would not give you that much transparency. Those two parties engaged in voluntary declaration but on an annual basis. This is going back to Professor Birch’s point, which I entirely agree with. If declaration is going to be meaningful, it needs to be periodic declaration in order to give voters an opportunity to see where the money is coming from. It would be a suggestion that all sides could sign up to, but it would need to be more than saying, “We will declare it.” It would have to be a declaration such as, “We will not take money from voters not registered to vote in either the United Kingdom or Scotland; and we will declare the sources of our donations over £7,500 every quarter or every six months”, whatever it is.

**Q1052 Chair:** I was thinking of either monthly or quarterly.

**Professor Fisher:** It is quarterly outside the final short election period for parties. That is already something of an administrative burden for professional organisations. Going back to the point again, these groups are still voluntary organisations. You are not legally imposing but still imposing a burden on them of declaration. I think quarterly would be legitimate. Once you get to the regulated period, of course you could increase it to monthly, but that increases the cost. You would need a compliance officer then.

**Q1053 Chair:** I want to clarify the point about the £7,500 limit. On the principle of “Many a mickle makes a muckle”, which is a Scottish phrase that means lots of small sums add up to a big sum, my understanding of United States’ politics would be that on occasions there are lots of small donations that come in that have been big donations but broken up. Is £7,500 therefore not too large a sum?

**Professor Fisher:** It is the sum that is used at the moment under PPERA, as amended. It was originally £5,000.

**Q1054 Chair:** We were not aware of that. You don’t have any principled reason why you settled on £7,500?

**Professor Fisher:** Not a principled one. It is simply that that is the existing practice. I think there is a problem if you go too low, inasmuch as there is an argument that it is an invasion of privacy.

**Q1055 Chair:** What would you define as too low?

**Professor Fisher:** Anything below four figures.
or not you and I make donations of maybe £4,000 seems to me to be neither here nor there. If we want to spend our already taxed money on that, it seems legitimate, and it is legitimate to keep it private. It would be difficult to make the case to put the declaration limit lower for a national election. If you are talking about a constituency election the limit is lower, but this is a national level election.

Q1057 Chair: Professor Birch, do you have any observations on that?

Professor Birch: No; I have no further views. I agree with Professor Fisher on that.

Chair: Thank you very much for coming along and sharing your expertise with us. I am sorry that we were slightly late in starting. If you have any observations that upon reflection you want to let us have, please let us know. Quite often people go away and think, “If only I had told them such and such”, or, “What I really meant to say was this.” By all means be in touch with us. Thank you very much.
Written evidence

Written evidence from Daniel Kenealy

This written evidence addresses the specific questions set out by the Committee, viz:

Would Scotland automatically become a Member of the EU, or would it have to apply through the normal membership procedures for candidate countries? Would adopting the Euro be a condition of entry? Would Scottish membership of the EU (and potentially the Euro), be subject to a referendum?

Executive Summary

This evidence argues that following a “Yes” vote for independence Scotland would not find itself excluded from the EU. While from the standpoint of public international law it would likely be classed as a seceding state, from an EU perspective it seems most likely that a pragmatic negotiation process would take place to manage the continuation of Scotland’s membership. Whether or not Scotland continued to possess some form of opt-out on EMU would, the evidence argues, not alter the fundamental reality that the EU cannot compel Scotland to join the eurozone against its wishes. In short an independent Scotland would in all likelihood continue as an EU member and decisions about its currency arrangements would remain in the hands of the Scottish Government.

A. Membership of the European Union

1. The conventional starting point in this discussion is public international law and, specifically, the question of state succession. Put simply there is no definitive answer to the question of whether the break up of the UK would be considered (1) UK continuation and Scottish secession; (2) separation; or (3) dissolution. The question of who would decide between these scenarios remains fuzzy. It would have to be negotiated and, if deemed necessary, the International Court of Justice could be asked for an advisory opinion.

2. From a public international law perspective it is hard to argue that the situation would not be that of scenario (1) in which the UK would be deemed the continuing state and Scotland the seceding state. The notion that this would hand Scotland a blank slate is debatable given prevailing trends in international law towards a presumption of some form of continuity for the seceding state. However, it is contestable whether public international law would be the ground on which the particular issue of the EU would be contested and decided. Following the logic of public international law it could be argued that the TFEU is a treaty with multiple personalities, some territorial and some personal/political, and that some elements would continue to apply to a seceded Scotland and others would not. But this is an exercise in legal thought and it is unimaginable that such parsing of the TFEU would be attempted.

3. The politically pragmatic route to take, and the likely scenario, would be this. Following a “Yes” vote in a referendum a working group of the Council of Ministers, working closely with representatives of the other EU institutions, would be formed to manage the continuation of Scotland’s membership of the EU. Under such a scenario Scotland would not have to apply for admission, it would not at any point be a 3rd party outside of the EU. It is highly likely that, because Scotland would become the 28th member of the EU, a unanimous vote in the European Council would be required for this and this does raise the theoretical, but faint, possibility of a veto being exercised.

4. This scenario could be buttressed with a significant legal argument. The legal argument rests on the notion of EU citizenship and Aidan O’Neill has persuasively suggested that the EU Court of Justice might be inclined to ask whether “the fact that Scotland became independent required that all (or any portion) of the previous UK citizenry thereby be deprived of their acquired rights as EU citizens?” O’Neill suggests that, framing the issue in this way, the Court of Justice would be inclined to answer in the negative and thus suggest that Scotland’s membership of the EU continues but now as a 28th Member State as opposed to a region within a Member State.

5. A related argument relates to the mechanism for withdrawal from the EU, enshrined in the Treaty on European Union (Article 50). This reflects the long and drawn-out procedure for exiting the EU and serves to further the notion that Scotland could not somehow find itself automatically on the outside. The previous example of Greenland’s long and drawn out withdrawal from the EU, which occurred before the insertion of Article 50 TEU, further buttresses the point that Scotland would not automatically find itself excluded.

6. In conclusion: the notion that Scotland, after voting “Yes” to independence, would find itself automatically out of the EU and having to apply for membership as any other 3rd state rests on debatable legal ground and almost unimaginable political and economic ground. The most likely scenario is that negotiations to continue Scotland’s membership of the EU, with the necessary institutional amendments that would require, would proceed in parallel to Scotland’s negotiations with the UK on the details of the separation. It is highly questionable whether public international law will form the basis for these developments.
B. Membership of the Eurozone\(^6\)

7. There is considerable confusion on the issue of eurozone membership for an independent Scotland. There are a few issues that have to be considered here, the first of which is whether Scotland would inherit the UK opt-out. As stated above it is hard to see how Scotland could be anything but a seceding state and thus the specific opt-out on EMU, which is of a political/personal and not a territorial nature, is unlikely to be granted to Scotland. If however the European Council, in the negotiation process over Scotland’s continuing membership—the scenario sketched above—decides to allow Scotland to have the opt-out then the issue is null-and-void; Scotland would be in the same class as the UK and Denmark.

8. The issue becomes more complicated in the event that an independent Scotland does not have an EMU opt-out. Whether the European Council quickly voted to continue Scotland’s EU membership or whether Scotland had to navigate the formal EU accession process the reality would be one in which Scotland would be in the same situation as the 8 EU member states who either do not currently use the euro or who do not possess an opt-out.

9. That situation is one in which Scotland would be expected to adopt the currency and join the eurozone. To be clear, this would not be an immediate requirement. Put differently, Scotland would not be required to immediately begin planning for the withdrawal of the pound and the introduction of the euro in its territory.

10. Scotland, quite apparently, would not meet the conditions for entry into the eurozone on becoming independent. These conditions are known as the convergence criteria and there are five of them (see Annex B). Scotland would receive, as did the Member States admitted to the EU in 2004 and 2007, a derogation. Article 139(1) TFEU says that “Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as “Member States with a derogation”.

11. It is incorrect to say that states with a derogation are not legally obliged to join the eurozone at some point. Derogation is not the same as an opt-out. It means that the state in question does not have to adopt the euro immediately because it is not ready for some reason/s.

12. Article 140(1) TFEU goes on to say that “at least once every two years … the Commission and the European Central Bank shall report to the Council on the progress made by the Member State with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union”. There is thus a clear process that Member States with derogations are expected to follow on the path to eurozone membership. The title of the section of the TFEU in which these articles are found is revealingly titled “Transitional Arrangements”. Article 140(2) goes on to say that the Council “will decide which Member States with a derogation fulfill the necessary conditions … and abrogate the derogations of the Member States concerned”. The next step in the process is to fix a rate at which the euro would be substituted for the currency of the Member State (Article 140(3) TFEU), a process that requires a unanimous vote among existing eurozone members.

13. Thus a Scotland that acceded to the EU, or whose membership of the EU was continued by a vote in the European Council without the UK opt-out, would undoubtedly enter derogation with the expectation that steps would be taken to meet the convergence criteria and, at some unspecified point, join the eurozone. This is the legal situation; the political reality is, however, somewhat different.

14. Sweden is the best example of the political reality in contradistinction to the legal requirements. Sweden, to be clear, is required to join the eurozone according to the EU treaties but it has not yet done so. This is because it has wilfully avoided meeting the convergence criteria on technical issues to do with the legislation governing its central bank and also on account of its failure to join ERM-II.\(^7\) Here is the bizarre contradiction in the logic of the system: while eurozone membership is expected (absent an opt-out) one of the mandatory requirements for joining, namely two years membership of ERM-II, is voluntary. Bulgaria, the Czech Republic, Hungary, and Poland are similarly not in ERM-II. Indeed, at present, only three states are members, Denmark (which has an opt-out from the euro but maintains a solid peg), Latvia (which aims to join in 2014), and Lithuania (currently without a target date for joining).

15. Membership of ERM-II would thus be voluntary for Scotland, as it is for all other Member States, and this certainly contradicts the requirement to join the eurozone. There are other issues pertaining to Scotland’s ability to meet the convergence criteria. For example, without its own central bank—assuming it continues to use sterling post-independence—it would be difficult to meet the interest rate convergence criteria. Indeed there is no precedent for how to deal with a state lacking its own currency and central bank in terms of its path to eurozone membership. A Scotland without its own currency could not realistically join ERM-II given that it would exert no control over its monetary policy and could not intervene, as per ERM-II requirements, to keep the exchange rate of its currency within +/-15% of the euro.\(^8\)

16. The issue of possible contributions by Scotland to the ESM\(^9\) (the stability fund that comes into effect later this year to deal with the eurozone crisis) would only be activated upon Scotland becoming a member of the eurozone. Given that, within the coming years, arrangements for the eurozone will likely have developed beyond their current state there is little point in dwelling on this issue at present. Suffice it to say were Scotland to ever become a member of the eurozone it would have to abide by all of the requirements of that membership.
17. In conclusion: Scotland will be in a very different legal position should it possess an EMU opt-out as opposed to if it does not. However, the political reality is that there is no precedent or mechanism by which the EU can compel a Member State to join the eurozone against its will. An independent Scotland would retain its sovereign right to determine its currency arrangements.

C. THE REFERENDUM ISSUE

18. This is the simplest issue of those posed by the committee in that it at least has a straightforward answer. There is no legal requirement for a referendum on either EU membership or Euro membership. Of course, the political question is rather different and the SNP had confirmed that any adoption of the Euro would be subject to a referendum.10

9 May 2012

Annex A

CURRENT STATUS OF THE 27 EU MEMBER STATES VIS-À-VIS THE EURO

<table>
<thead>
<tr>
<th>Member States</th>
<th>Status</th>
<th>Outlook</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Eurozone Members (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain)</td>
<td>Members of the Eurozone.</td>
<td>N/A</td>
</tr>
<tr>
<td>Denmark, United Kingdom</td>
<td>Secured opt-out from membership.</td>
<td>Retains the ability to opt-in if desired.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Active derogation.</td>
<td>Issue deemed to be dormant given Sweden’s refusal to join ERM-II.</td>
</tr>
<tr>
<td>Latvia</td>
<td>Active derogation.</td>
<td>Target date for adoption of the euro 1 January 2014.</td>
</tr>
<tr>
<td>Romania</td>
<td>Active derogation.</td>
<td>Target date for adoption of the euro 1 January 2015.</td>
</tr>
<tr>
<td>Bulgaria, Czech Republic, Hungary, Lithuania, Poland</td>
<td>Active derogation.</td>
<td>No target date for adopting the euro.</td>
</tr>
</tbody>
</table>

Source: European Commission.

Annex B

CONVERGENCE CRITERIA FOR MEMBERSHIP OF THE EUROZONE

<table>
<thead>
<tr>
<th>Factor</th>
<th>Measured by</th>
<th>Convergence criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price stability</td>
<td>Consumer price inflation rate.</td>
<td>Not to exceed 1.5% above the rate of the 3 best performing Member States.</td>
</tr>
<tr>
<td>Soundness of public finances</td>
<td>Government deficit as % of GDP.</td>
<td>Not to exceed 3%.</td>
</tr>
<tr>
<td>Sustainability of public finances</td>
<td>Government debt as % of GDP.</td>
<td>Not to exceed 60%.</td>
</tr>
<tr>
<td>Durability of convergence</td>
<td>Long-term interest rate.</td>
<td>Not to exceed 2% of the rate of the 3 best performing Member States in price terms.</td>
</tr>
<tr>
<td>Exchange rate stability</td>
<td>Deviation from central rate.</td>
<td>Participation in ERM-II for at least 2 years without severe tensions.</td>
</tr>
</tbody>
</table>

Source: European Commission.

Notes

1 Daniel Kenealy is a doctoral candidate at the University of Edinburgh currently completing a PhD on European integration. He works at the University’s Academy of Government and teaches EU politics and international law. He has published academic papers on the EU, Scottish public policy, and intergovernmental relations in a post-devolution UK. He holds an MSc in EU law and politics from the University of Edinburgh.

2 Essentially scenario 1 would see the UK retaining all of the outstanding international legal obligations of the UK and Scotland starting from something approaching a blank slate; scenario 2 would see both the UK and Scotland inheriting existing international legal obligations; and scenario 3 would see both the UK and Scotland starting from something approaching a blank slate.


6 I have not covered the issue of Schengen membership due to space limitations. My understanding however, from conversations with EU lawyers, is that the issue hinges on whether Scotland somehow retains the UK’s opt-out from the Schengen Zone. If it does inherit the opt-out then it is simply for Scotland to decide when and if it wished to join. If it does not inherit the opt-out it will be legally required to join but this is not an automatic process. Indeed, of the current EU Member States Cyprus, Bulgaria, and Romania are not part of Schengen (Ireland has an opt-out along with the UK) because on ongoing/unresolved issues. All Schengen members must approve the addition of any new member so Scotland’s membership would not be automatic. Given that the opt-out on Schengen is territorial in nature then a stronger case could be made for this, as opposed to the opt-out on EMU, carrying over to an independent Scotland. But, as with EMU, this would simply be an issue for negotiation at the European Council and it would be almost certainly be resolved politically.

7 ERM-II is the successor to the ERM and is designed to ensure that exchange rate fluctuations between the euro and other EU currencies do not disrupt the economic stability of the common market. It is a compulsory part of the convergence criteria for eurozone membership (see Annex B).

8 This raises the issue of whether an independent Scotland would be wise to adopt its own currency or perhaps some form of peg or currency board arrangement with the G-7 currencies. This issue remains outside of the scope of this evidence however.

9 ESM is the European Stability Mechanism, the permanent eurozone support fund that will replace the previous funds as of July 2012. The treaty establishing the ESM was signed on 2 February 2012. See <http://www.consilium.europa.eu/homepage/showfocus?lang=en&focusID=79757>. For the full text of the treaty see <http://www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf>.

10 “SNP urged to publish secret legal advice on separate Scotland EU membership”, The Telegraph, 10 September 2011.

**Written evidence from the Church of Scotland**

**Summary**

1. The Church of Scotland is impartial on the question of independence. It has a wide range of policy positions on social, economic and international affairs. This evidence submission highlights some of the key underlying principles that the Church holds with regards to the issues that the Scottish Affairs Committee has identified. This response is not an attempt to provide solutions or frameworks for how the unanswered questions might be resolved, but rather are our sets of key beliefs which we would like to see underpinning policy in these areas, whether or not Scotland votes to leave the Union.

2. The EU—The Church of Scotland is committed to the European Union as an instrument for peace, justice, democracy and social cohesion.

3. Pensions and Social Security—The Church of Scotland is committed to a welfare system that is dignified, supportive, well-resourced and suitable for taking forward a joined-up approach to tackling poverty.

4. Economics—A newly published Church report sets out four priorities for economic life in Scotland: reducing inequality, ending poverty, ensuring sustainability and promoting mutuality.

5. Defence—The heart of the Church of Scotland’s principles around the ethics of defence is for our armed forces and foreign and defence policies to take the lead in supporting the United Nations in its peacekeeping and peace-making role. The Church also has a role in ensuring the Military Covenant is kept, and offers its pastoral and spiritual support to armed forces personnel.

6. Citizenship and Immigration—Ultimately we try to recognise people not by nationality or identity but through our common humanity. We aspire that for our society there is a wish not just to tolerate our neighbours, but to show love for them.

**Response**

7. The Church of Scotland has not taken a view on the question of independence. The Church and Society Council in its report to the General Assembly in May 2012 has said:

“We do not expect or wish that the Church of Scotland should take a position on the question itself, though we do hope that the Church can, at local and national level, engage with the issues, encourage informed and respectful debate, and contribute our own vision for Scotland’s future so that, whatever the decision of the people, Scotland might be a healthier, happier and more peaceful place in the years to come. The Council would urge those campaigning for or against independence to consider
that they present the arguments in terms of what is their vision for the future of Scotland and then how does their preferred option help in making this vision a reality.”

8. It is in this spirit that the Church and Society Council makes this response to the Scottish Affairs Select Committee call for evidence on the referendum on separation for Scotland: unanswered questions.

9. We do not have answers on these questions, or even suggestions for answers. What we do have are our reflections and opinions, gathered and formed not in the haste of recent weeks but from our long-standing policies and beliefs, produced by dedicated experts in public policy and theology, and agreed by the General Assembly, a body whose members represent all parts of Scotland and which has a long pedigree of debating and considering issues connected to the welfare and wellbeing of the people of Scotland.

10. Our priorities in all discussions have been and will remain:
   (a) social justice, through tackling poverty and reducing inequality; and
   (b) developing Scotland’s place in the wider world through leadership in tackling climate change, in reducing tensions and building peace, and in achieving the Millennium Development Goals.

11. The following points are very brief highlights of our main “headline” response to the issues that the Committee has posed. Behind this response there is much deeper thinking and much longer work. We would be happy to share these with the Committee if that would be helpful, but mindful of the word limit we have tried to remain concise.

12. The Church and Society Council would be happy to follow up any of these points with the Committee, and we are able and willing to give oral evidence in London or Scotland at the Committee’s invitation.

CURRENCY

13. We do not consider the matter of currency to be one which can fall within our competence or concern. The Church of Scotland’s concerns lie always with the equitable distribution of money, ensuring that the most vulnerable in our society are cared for and are afforded dignity. Whether euro, pound or any other form, it is how it is used that matters.

THE EUROPEAN UNION

14. In 1996 the General Assembly of the Church of Scotland reaffirmed its commitment to the principle of an ever closer union between the peoples of Europe and urged HM Government to continue to support fully the development of the European Union as an instrument for peace, justice, democracy and social cohesion throughout Europe and between Europe and the Third World. If Scotland were to become independent, the Church of Scotland would wish that Scotland remains in the European Union and that Scotland would play its part in helping to develop the European Union along these lines.

PENSIONS AND SOCIAL SECURITY

15. The Church of Scotland is committed to a welfare system that is dignified, supportive, well-resourced and suitable for taking forward a joined-up approach to tackling poverty. If Scotland were to become independent, it is these values that must be at the heart of a future welfare system.

16. In 2004 the Church of Scotland called for a simpler and more equitable national pension system which would allow dignified lives free from financial worry, which relies less upon means-testing but rather to target resources to those most in need by means of taxation. The Church has also called for a replacement of the basic state pension with a universal pension not linked to a contributions record that would be set initially at the level of the Minimum Income Guarantee and in future raised in line with National Average Earnings.

17. Our fundamental belief in this area is that as all people are created by God and loved by God, they have inalienable worth and dignity. God has expressed particular concern for the weak and vulnerable, and people of God are enjoined to be concerned too. Leviticus places impositions on the better-off members of the community in order to provide for those who had no other means of support. In the eyes of Jesus there are no distinctions to be drawn along lines of background—whoever is in need is “my neighbour”. Visions of the “kingdom” involve dignity, security and opportunity for everyone, including those traditionally disadvantaged. The need to work, and the importance of work to personal well-being are stressed in Thessalonians, but the point is that we should have something to share with those in need. Equally, there is a recognition that life is not simply about earning everything—some things are given freely, in loving concern.

ECONOMICS

18. A Special Commission on the Purposes of Economic Activity has just published its report, which will be considered by the General Assembly in May 2012.

19. The report sets out four priorities for economic life in Scotland: reducing inequality, ending poverty, ensuring sustainability and promoting mutuality.
20. It proposes policies including capping the rate of interest for all kinds of consumer credit at 40%, supporting the living wage, improving financial education in schools, encouraging the Credit Union movement, condemning tax dodging and specifically calling on Government to set targets to reduce economic inequality.

DEFENCE

21. The heart of the Church of Scotland’s principles around the ethics of defence is for our armed forces and foreign and defence policies to take the lead in supporting the United Nations in its peacekeeping and peace-making role.

22. The Church of Scotland continues to call for the United Kingdom to relinquish its nuclear weapons. If Scotland were to become independent and the Trident missiles only relocated from Faslane/Coulport to some other part of these islands, we would not regard that as an event worth celebrating. It is global nuclear disarmament which we the Church of Scotland desires, not simply Scottish nuclear disarmament.

23. The Church’s commitment to members of the armed services and their families would remain, especially all those who daily face danger in the course of their duty and those who continue to suffer or who have paid the ultimate sacrifice in the service of others. Military chaplaincy is an important ministry of the Church which we would not repudiate if Scotland were to become independent.

CITIZENSHIP AND IMMIGRATION

24. In our response to the Calman Commission, we recognised that there was a tension between recognising the benefits to the life of church and nation in Scotland of the wider British Union and identity and our ongoing commitment to the principle of subsidiarity, so that decisions taken about the lives of citizens in Scotland best reflect the needs and aspirations of Scotland.

25. Ultimately we try to recognise people not by nationality or identity but through our common humanity. As a Church we aspire to offer that radical hospitality that Jesus showed when he met with the outcasts of society. The Church has often raised concerns about the poor treatment of refugees, particularly asylum seekers who have had their claim refused and yet cannot be returned due to instability in their home country, and who are therefore left destitute on our streets. We aspire that for our society there is a wish not just to tolerate our neighbours, but to show love for them. A reform to the UK’s immigration system along these lines would be welcome, as would this principle being at the heart of an independent border control.

8 May 2012

Written evidence from Patrick Layden TD QC

1. I should make it clear at the outset that any views expressed in this brief note, or in my oral evidence to the Committee, represent my personal views, and do not in any way reflect any opinion of the Scottish Law Commission.

SUMMARY

2. If Scotland were to become independent from the remainder of the UK (RUK)—

   — It is not certain that either state would automatically be a Member State of the EU: that is a conclusion which does not lie within our gift;
   — The situation would be covered by EU law, not international law, and there is provision in the Treaty which could be taken as covering the situation;
   — Whatever formal legal route were taken:
     — the process would require detailed negotiation between all three entities—the EU, RUK and Scotland; and
     — the existing Treaties would have to be amended;
   — The process of negotiation could affect not only opt-outs under the current arrangements, but also other aspects of the Treaties.

DISCUSSION

What’s in a name?

3. The nation state which joined the European Community in 1972, and which is now a Member State of the European Union, is the United Kingdom of Great Britain and Northern Ireland. It is a discrete geographical, legal, political and historical entity. As a matter of domestic law “Great Britain” means the united kingdom of Scotland and England.1 Ireland was added by the Union with Ireland Act of 1800,2 and the independence

1 Treaty of Union, 1706, Article 1: “That the Two Kingdoms of Scotland and England shall—be United into One Kingdom by the Name of Great Britain—”.
2 [T]hat the said kingdoms of Great Britain and Ireland shall——be united into one kingdom, by the name of the United Kingdom of Great Britain and Ireland,
of Southern Ireland was recognised by the Royal and Parliamentary Titles Act 1927. The name “United Kingdom” could be changed, as a matter of domestic law, without altering the identity of the State to which it applies.

4. If Scotland were to become independent, it would be possible for the UK Parliament to characterize the independence of Scotland as the removal of a part of the United Kingdom. In such a situation RUK could retain the present name, as a matter of domestic law. Such a characterization would be effective in terms of UK law, and as between RUK and an independent Scotland, and might well leave RUK as the existing nation state for the general purposes of international law (UN, NATO etc).

5. But it does not follow that such a characterization would be accepted by the other Member States of the European Union. European law is a free-standing legal system binding the Member States and their citizens. The content of the obligations which it imposes upon Member States is determined by the Court of Justice of the European Union (CJEU), which tends to take an expansive view of the scope of EU law and of the competences of EU institutions. As a matter of international law, no doubt the other Member States of the EU would accept the legal and political fact that the UK had become two states. But neither those Member States, nor the EU institutions, would be compelled to change the structure of the EU to reflect the altered structure of the United Kingdom.

What would have to happen?

6. The creation of two states where there is now only one would require certain alterations in the organisation of the EU, and some of those would necessitate alteration to the Treaties. By way of example, when Bulgaria and Romania joined the Union in 2007, the Protocol entered into by the (then) existing Member States included:

- provision as to different aspects of the acquis, including protocols, declarations etc. added to the then Constitution;
- specific provision as to the euro, with some transitional provisions;
- specific provision as to the applicability of the Schengen rules;
- alterations to the Statutes of the Court of Justice and of the European Investment Bank, and to the composition of various EU committees;
- provision requiring the Parliament and the Council to adapt their rules of procedure;
- provision as to the appointment of new judges to the Court;
- provision adding more members to the European Parliament; and
- minor adjustments inserting the names of the new Member States in the appropriate places in the various lists in the Treaties.

**European Parliament**

7. It may be instructive to look in a little more detail at the question of representation in the European Parliament. At present the number of MEPs is limited by the Treaty of Lisbon to 750. Seats are allocated to Member States on the basis of what the Treaty calls “degressive proportionality” (sic). No Member State can have more than 96, nor less than 6, MEPs. In practice, Member States with a population broadly comparable to that of Scotland (approximately 5.2 million) have 10–12 MEPs. So the current Scottish figure of 6 would be just compatible with the Treaty, but would leave Scottish citizens under-represented by comparison with the citizens of other Member States with similar populations. Similarly, RUK’s population post independence (57 million) would scarcely justify the current figure of 73.

8. Any reallocation of seats within the current UK figure of 73 (assuming that RUK would be prepared to consider such a move) would result in an under-representation of the citizens of RUK, or of Scotland, or (probably) of both. Alternatively, if nothing were done, the citizens of both RUK and Scotland would be under-represented. The only practical solution is either a general reallocation of the 750 seats (which would mean fewer seats for other Member States), or an increase, temporary or otherwise, in the total number of seats. Either of those courses would require the unanimous agreement of the other Member States and the consent of the European Parliament.

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3 “Section 2(2) In every Act passed and public document issued after the passing of this Act the expression ‘United Kingdom’ shall, unless the context otherwise requires, mean Great Britain and Northern Ireland.”.

4 Costa v Enel, ECI Case 6–64.

5 Protocol Concerning the conditions and arrangements for admission of the republic of Bulgaria and Romania to the European Union—L 157/29, of 21.06.2005. (That Protocol also did the other, necessary, housekeeping matters such as adding judges to the CJEU, inserting the names of the new Member States in the appropriate places, etc.)

6 If a body is elected by a number of regions, states or other subdivisions, degressive proportionality means that while the subdivisions do not each elect an equal number of members, smaller subdivision are “overrepresented” in terms of their population.

7 TEU Article 14(2) “The European Parliament shall be composed of representatives of the Union’s citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.”
ATTITUDE OF UNION INSTITUTIONS AND OTHER MEMBER STATES

9. If the UK breaks up, neither state is, arguably, the state which entered into the obligations of the European Union. Seen from the (political) perspective of other MS, the UK would simply be splitting itself, with the result that there would be more British MEPs (and fewer others), an extra British judge, an extra British seat on the Council and on the Commission, and more British members on the Committee of the Regions etc. It is not at all clear that that would be acceptable to other Member States. Not every Member State would welcome the idea that a Member State can split itself into two (or more) separate states, and that each of the parts can demand, as of right, membership of the EU on the same basis as was enjoyed by the original state.

10. Whether the matter would be regarded as a needless distraction from Europe’s wider problems, or as a welcome diversion from them, is a matter of opinion. It would certainly provide opportunities for what we might see as mischief-making.

What might happen?

11. If any Member State wished to take the matter up, the means are to hand. Article 50 of the Treaty provides for the withdrawal of a Member State from the Union, and Article 49 provides for the accession of new States, including States which have previously withdrawn. Both Articles provide for a process by which Member States can withdraw or, as the case may be, accede. Both processes, unsurprisingly, involve agreement by the other Member States and the Parliament. Any attempt by, say, the European Commission to recognize one or both of the new States as continuing Member States could be challenged in the CJEU by any Member State. The basis of the challenge would be that by seeking to treat either or both of the new states as existing Members of the EU, the Commission was denying the Member State bringing the litigation its rights under the Treaties.

12. It is not necessary to attempt to predict what the outcome might be. It is sufficient to say that the CJEU would have to rule (at least) on whether the challenge was competent, as a matter of European Law. Since, as I have indicated, the CJEU tends to take an expansive view of the all-encompassing nature of EU law, I would suspect that it would find that it had jurisdiction to deal with the matter—whatever its decision might be on the merits. I suggest that that is enough to demonstrate that there can be no legal inevitability about the continuation of RUK, or a newly independent Scotland, as a Member State.

Opt-outs?

13. If it is the case that either or both of the new states would require to apply to join the EU afresh, any existing opt-outs enjoyed by the UK would (legally) be of purely historical relevance. Each and all of them would technically require to be re-negotiated. Much would also depend on the then position in a range of different fields. It is not clear that the euro will exist in its current form in, say two or three years from now. More specifically, under the Lisbon Treaty, pre-Treaty JHA measures are to be assimilated into the ordinary legislative system by 2014. The UK has the option of accepting or rejecting all of them en bloc. If the decision were to reject them, that is a matter which other Member States might raise on an application by RUK to join the EU. Against that background, and at this remove from the actual process, it would not be sensible to speculate as to the result of any negotiation.

14. Nor does it necessarily follow that the same terms would be available to, or sought by, both of the new states.

On the other hand—

15. Conversely, on that matter, an open negotiation would provide an opportunity for either of the two new states to raise issues, such as the existing Common Fisheries Policy, which either or both might see as not working as we might prefer that they should.

Procedure and timing

16. Since changes will require to be made to the Treaties, there will need to be a negotiation. That might be a short, amicable, technical negotiation or a long, politically charged, fractious process. I have suggested that Articles 50 and 49 of the TEU might be used as the basis for the procedure. But there is no reason why the operation of that—or any other—procedure could not be carried on at the same time as the internal UK negotiations to implement any political decision to move towards Scottish independence. Then the treaty setting out the withdrawal of the current UK and the treaty admitting the two new states to the EU could be signed at the same time.

Conclusion

17. My conclusions are summarized at the beginning of this note.

11 May 2012
Written evidence from No Campaign Limited

Background

1. Concern has been expressed that rules equivalent to the long/short campaign spending restrictions which now apply to, eg a General Election, should be carried over to catch activities before the formal start of a Scottish Referendum.

2. However, it is not the case that this expenditure is currently unregulated altogether. Some of it would be caught if the referendum were held under either PPERA or the Draft Bill published by the Scottish Executive (which copies the provisions of PPERA). Furthermore, the Scottish Executive’s proposals could create a “limbo” problem for campaigners who incur significant pre-referendum period expenses.

3. The long/short campaign expenditure rules are feasible because it is possible to predict when the election will be held, and hence when the controlled periods commence. Elections are contested by established political parties which have a continuing existence and thus an interest in consistent compliance.

4. Referendums have none of these features. Each referendum has its own polling day and therefore each has its own unique “referendum period” during which controls apply. Campaigns will be led by bespoke groups formed for the purpose who are unlikely to continue after the referendum has been held.

5. PPERA defines “referendum expenses” as “expenses incurred by or on behalf of any individual or body which are expenses falling within Part I of Schedule 13 and incurred for referendum purposes” (section 111). “For referendum purposes” means “(a) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in the referendum, or (b) otherwise in connection with promoting or procuring any such outcome.” The Draft Bill has identical wording (Schedule 4, paras 10 and 11).

6. In broad terms, spending today will count towards the referendum limit if it represents something that is used later during the referendum period. How much of the expenditure is declarable depends upon the nature of the item involved:

— **Entire amount**
  
  All of the cost counts, irrespective of when it was incurred.

— **Use-apportionment**

  Stock is acquired before the referendum period, some of which is unused by the start. The cost is spread across the entire stock. The proportion representing the unused stock counts as referendum spending.

— **Time-apportionment**

  An item which is used continuously is acquired before the referendum period. The cost is spread across the entire period from the date the spending was incurred until polling day. The proportion of the cost representing the referendum period counts as referendum spending.

7. The same principles apply to “notional expenditure”, where a campaign receives the benefit of free or discounted goods or services (PPERA section 112). The Draft Bill has identical wording (Schedule 4, para 12).

8. Donations used to pay for declarable referendum expenses are also declarable, irrespective of when they are received (PPERA Schedule 15, para 1). The Draft Bill has identical wording (Schedule 4, paras 29–41).

Literature and leaflets

9. These items are treated by use-apportionment. If the leaflets have all been delivered by the start of the referendum period then none of the cost would be declarable.

Rallies and Public Meetings

10. These items are treated as incurred on the day they take place. If that is before the start of the referendum period then none of the cost would be declarable.

11. However, if a recording of an event was made and was available during the referendum period, eg on a website, then the cost of that would be declarable. Also, it may be that events are held for the purpose of collecting supporters’ contact details. There is a reasonable argument that some of those costs would be declarable if the data could be used by a campaign group during the referendum period.

Websites

12. Material on a website may always be accessed for as long as it remains in operation. In effect, they are like a leaflet which is re-delivered every day. Any element of cost for hosting of the website for a period before the start of the referendum period would be excluded but all other design, content and establishment costs would count.
13. During the AV Referendum, both sides established initial “holding” websites in late 2010. These were replaced by more complicated websites launched prior to the start of the referendum period. Nevertheless, both sides declared all of their website costs in full, for both versions, because the original domain names were retained and the holding websites had been used to garner contact details.

14. An “early website” would not constitute declarable referendum expenses only if:
   — It was not used to garner supporters’ data for later use;
   — It was switched off before the start of the referendum period;
   — None of its material was accessible during the referendum period;
   — It had a different name from the website used during the referendum period; and
   — The original site name did not redirect visitors to any website being used during the referendum period.

MARKET RESEARCH

15. Market research and canvassing are declarable referendum expenses (PPERA Schedule 15, para 1; Draft Bill Schedule 4, para 11), but it would seem a difference of interpretation has arisen as to how pre-referendum period costs should be declared.

16. During the AV Referendum, NO to AV distinguished two types of “market research”:
   — Opinion tracking, ie spot polling of the form “if there were a referendum tomorrow, how would you vote?” We regarded that as information which had no long-term value and therefore was not declarable if incurred before the referendum period.
   — Message testing, eg focus groups and related services. We regarded that as a resource which was continuously used throughout the campaign and as such the entire amount was declarable irrespective of when incurred.

17. From studying the filed expenditure returns, it is clear that the Yes Campaign applied a time-apportionment basis to pre-referendum period costs. They regarded market research as an asset whose value was wasted away until polling day.

18. Both approaches were acceptable to the Electoral Commission. The two campaigns had spending limits of £5 million each, and neither would have breached their threshold if the amounts involved had counted in full. The Commission was mainly concerned that campaigners made an honest assessment of costs that can fairly be attributed to spending on the referendum campaign. The Electoral Commission would appear to accept the use of time-apportionment for costs which we would argue are either declarable in full or not declarable at all.

19. A Scottish Referendum is likely to involve considerably more market research than AV, and the participants are much more likely to spend closer to their limits overall.

REGULATORY LIMBO?

20. It is a criminal offence to incur expenditure in excess of a threshold without having registered as a permitted participant. Under PPERA this limit is £10,000 (section 117). Under the Draft Bill a limit of £5,000 is proposed (Schedule 4, para 18).

21. Spending only qualifies retrospectively as declarable expenditure once it is certain that a referendum will occur. In theory an organisation could then find it had already spent in excess of the threshold without having registered. However, PPERA is silent as to whether campaigners can register in advance of the start of the referendum period. So is the Draft Bill, which merely repeats PPERA.

22. This problem has not arisen in the past. There has never been an interval during which campaigners could be caught in limbo.
   — The North East Referendum was called by the The Regional Assembly and Local Government Referendums (Date of Referendums, Referendum Question and Explanatory Material) (North East Region) Order 2004, which was made on 23 July 2004 and provided that the referendum period commenced on the following day.
   — The Welsh Referendum was called by The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010, which was made on 15 December 2010 and provided that the referendum period commenced on the following day.
   — The AV Referendum was called by the Parliamentary Voting System and Constituencies Act 2011, which received Royal Assent on 16 February 2011 and provided that the referendum period commenced immediately.

23. The timetable proposed by the Scottish Executive envisages the Scottish Parliament passing legislation in November 2013 for a referendum to be held in Autumn 2014, with the referendum period not starting until
16 weeks before polling day (say, a referendum period running from June to October 2014). Such legislation would explicitly state the polling day, not delegate it to a subsidiary Order (Clause 1).

24. The Draft Bill therefore creates an interim “limbo period” (from November 2013 until June 2014) where it is certain that there will be a referendum, and hence that campaigners could have incurred declarable referendum expenses already, but it is not obvious that campaigners can register as official permitted participants.

25. A campaign group that had already spent in excess of the registration limit by November 2013 would be in a difficult position. It would be unjust to hold that they were guilty of an offence retrospectively. However, it would clearly be wrong for them to continue incurring campaign expenses when they had exceeded the threshold for registration.

26. To avoid the risk of criminal prosecution, campaigners in that position would be faced with a choice between:

- Registering as permitted participants in November 2013 (assuming that the Electoral Commission would allow them to)—which ought to mean they would start to use up their spending limit eight months early, and arguably any time-apportioned pre-referendum period costs should start to count from that point onwards (ie increasing the proportion of pre-referendum period expenses which were declarable); or
- Ceasing and desisting from all campaign activity until the start of the referendum period in the following Summer, and registering then.

27. Under the Draft Bill, a campaign group which is not a political party or the designated lead group for one side will have a spending limit of only £50,000. Political parties will be limited to only £250,000. No group will be designated, and eligible for the maximum spending limit, until six weeks into the referendum period (Draft Bill Schedule 4, para 6), ie probably around late July or early August 2014. Campaigners who have incurred sizeable expenditure in 2012 or 2013 are likely to spend the first six months of 2014 either doing nothing or breaking the law.

28. The Draft Bill also includes a badly thought-out provision for expenses incurred according to a “common plan” (Schedule 4, para 20). This covers groups which reach an arrangement about expenditure. All such spending counts towards the limits of each group, leading to double-counting. Between them groups acting in concert could well have used up a significant proportion (perhaps all) of their spending limits in advance of the formal controlled period.

Evasion

29. No new measures are needed to capture pre-referendum period campaigning. If the referendum is fought under PPERA, or the Draft Bill which copies it, the legislative framework is already more than sufficient. Perhaps the guidance available on how to interpret the rules may need further attention. The real issue is likely to be how to give assurance that those rules have not been evaded.

30. Evasion could come in two possible forms. Firstly, there might be simple non-reporting of expenditure (which would be an offence). Secondly, there could be an attempt to establish dummy organisations which are notionally responsible for early campaigning costs but which do not later take part in the formal referendum. Both of these devices would have to be countered by monitoring activity and keeping track of what occurs.

10 May 2012

Written evidence from CBI Scotland

Introduction

1. CBI Scotland is an independent organisation funded by its members and representing firms of all sizes from across the country and from all industrial, commercial and business sectors.

2. CBI Scotland welcomes the opportunity to respond to the second phase of the Scottish Affairs Committee’s inquiry, following our previous written submission to phase one and our subsequent oral evidence to the Committee on 21 March 2012.

3. There are gaps in knowledge about what Scottish independence would mean for business and our economy as well as what the business environment would look like in the event of independence. We recognise that in a few instances full clarity would have to await the outcome of any negotiations between the Scottish and UK administrations following any referendum vote in favour of independence. However for many other aspects that clarity and certainty could and ought to be provided well in advance of the referendum, in order to inform a productive public debate but also to allow businesses and others to plan ahead. We look forward to the Committee’s deliberations and would urge them to press the Scottish, UK and where appropriate European authorities to provide that greater clarity and certainty in a timely fashion.
4. In our response to the Committee’s first phase of its inquiry, we highlighted a number of questions relating to the currency of an independent Scotland: what would the currency be? How would Scotland’s inflation target be set, and how would it be met? What level of interest rates would be set to control inflation and offset the risks of the international financial markets holding a separate Scotland-only currency? What are the Scottish Government’s estimates of the benefits and costs to businesses in Scotland of exchange rate risk and currency conversions between Scotland and England?

5. In order for the public debate to be as productive and as informed as possible and to help companies and others plan ahead more detail and information is required about: for example, what would be the monetary and fiscal framework and policy that would be applicable if Scotland were to become independent? If an independent Scotland was to retain Sterling and monetary policy were to continue to apply across the UK, what level of influence would the Scottish Government have over it, and would any parameters or restrictions apply eg would the Scottish Government be prepared to agree to constraints on its spending and borrowing, and if so to what extent? What assessment has been undertaken of the stability or otherwise of creating a monetary union without a concurrent political or fiscal union?

6. This raises the question: would an independent Scotland have its own central bank? If yes, what would be the governance arrangements for this central bank, and would it have a degree of independence as currently enjoyed by the Bank of England? Would this separate Scottish central bank have an explicit objective of protecting the stability of the financial system as is now the case with the Bank of England? What would be the set up and on-going running costs of establishing the central bank, and has any attempt been made to assess the gaps in skills, expertise and knowledge that would need to be overcome in order to staff it effectively?

7. Who would act as “lender of last resort” to Scotland’s financial sector and government, and be prepared to stand behind financial services firms with large deposit or policyholder liabilities? Who would be responsible for any significant injections of new capital should that be required? Would this “lender of last resort” be willing to guarantee deposits or the policyholders of Scottish financial providers, and if so to what extent and on what terms?

8. This inevitably raises questions as to the financial services regulatory framework and supervisory regime that would be put in place in an independent Scotland. Would an independent Scotland have its own regulator(s), or would it seek to continue within the current regulatory framework and indeed would that be possible and if so on what terms? What would be the proposed legislative timetable for establishing the new regulator(s)? Would the regulator’s future approach seek to mirror that in England and the remaining part of the UK, or would it diverge over time and to what extent? What would be the governance arrangements for the financial services regulator(s), and what degree of independence from government would it have? What would be the set up and on-going running costs of establishing the regulator(s), and has any attempt been made to assess the gaps in skills, expertise and knowledge that would need to be overcome in order to staff it effectively?

9. The Committee could usefully ask both the Scottish and UK administrations what if any work they have undertaken and discussions they have had to consider these issues.

THE EUROPEAN UNION

10. In our response to the Committee’s first phase of its inquiry, we asked about an independent Scotland’s expected diplomatic footprint overseas—which includes the European Union itself and the 27 individual nations of the EU. We also asked: what would be the estimated set up and on-going costs of establishing this overseas presence?

11. In order for the public debate to be as productive and as informed as possible and to help companies and others plan ahead more detail and information is required about a number of issues, such as: what is the process for an independent Scotland becoming a member of the EU and on what terms? Whether in doing so it would be required to join the European single currency, the ERM II and new fiscal pact? Joining ERM II and the euro requires currency convergence, so how would an independent Scotland that retained Sterling seek to target and accomplish this when monetary policy would be the preserve of the Bank of England? The estimate of an independent Scotland’s likely annual fiscal contribution to the EU budget and receipts from it? Would an independent Scotland have automatic opt-outs from the Working Time Directive, Schengen Agreement, and immigration policy?

12. In addition, what would be an independent Scotland’s approach to issues like employment rules and regulations emanating from the EU, and would its influence be more or less than is currently the case?

PENSIONS AND SOCIAL SECURITY

13. In our response to the Committee’s first phase of its inquiry, we asked: will estimates be forthcoming for the set-up and on-going costs of establishing departments of state and associated regulators? This would equally apply to the creation of a pensions and social security department in an independent Scotland.
14. In order for the public debate to be as productive and as informed as possible and to help companies and others plan ahead more detail and information is required about a number of areas, for example: which authority would be responsible for regulating pension schemes offered to customers in an independent Scotland? What kind of regulatory framework and consumer protection authority and regime would be established? Would an independent Scotland seek to establish a Pension Protection Fund as is the case currently in the UK, and what framework and levies would be put in place as a result? In which currency would employer-paid pensions be paid, in Sterling or another currency if adopted? If the latter, would pensioners be protected against currency risks and costs of conversion? Would an independent Scotland have its own version of the financial services compensation scheme and the financial ombudsman service, and if so how would they be funded, and in the case of the former what thresholds would apply? What taxation regime would be put in place to cover pensions and other forms of personal savings? Would an independent Scotland continue to have access to the National Employment Savings Trust or would it seek to establish its own arrangements? If new regulatory regimes were established, how would it be determined which regime applied to a pensions scheme operating in both Scotland the rest of the UK?

15. What implications would there be for an independent Scotland assuming full responsibility for public sector pensions and liabilities? Would state pension provision mirror that elsewhere in the UK, and would similar rules apply for eligibility and retirement ages? Would the pension regime for personal and employer/occupational schemes mirror that elsewhere in the UK, or would it progressively diverge over time? The pensions of university staff are currently organised on a UK basis, how would this be resolved in the event of an independent Scotland and would it have any funding implications for Scotland’s higher education sector?

ECONOMICS AND TAXATION

16. In our response to the Committee’s first phase of its inquiry, we asked a number of questions about economic policy making and taxation, eg would an independent Scotland have its own Treasury and revenue authority and what would be the set-up and on-going costs of establishing these? Would an independent Scotland be fiscally sustainable in its own right, particularly in an era of declining oil and gas production, and what would be the implications for taxation and public expenditure? What estimates have been undertaken of the initial and on-going costs to the private and public sectors of disaggregating PAYE, personal and business tax assessment and collection systems in an independent Scotland? Has any thought been given to the implications for firms from, in some instances, the bulk of their customers being resident in a foreign country post-independence?

17. In order for the public debate to be as productive and as informed as possible and to help companies and others plan ahead more detail and information is required about a number of areas, for example: will the Scottish Government’s proposed Independence White Paper be accompanied by an authoritative economic and regulatory assessment of the impact of independence, including the likely impact on business competitiveness? What would be the implications for the single market and level playing field on taxation, laws and rules that firms currently benefit from across the UK?

18. What share of the UK’s public debt would Scotland assume were it to become independent, what would be the likely annual interest payments on this debt and what implications would this have for public spending, borrowing and taxes? What estimates of the expected credit rating of Scottish sovereign debt have been undertaken? What would be the implications for the ownership, assets and liabilities of state-owned enterprises and companies, eg Royal Mail, the banks?

19. What would be an independent Scotland’s approach to fiscal policy, and what would be the implications for taxation of business? What would be the governance arrangements for the Treasury and the revenue collection authority, and has any attempt been made to assess the gaps in skills, expertise and knowledge that would need to be overcome in order to staff these bodies effectively?

20. How would corporate profits earned out with Scotland be treated for tax purposes? Would an independent Scotland retain the two main rates of corporation tax and the tax base, and the related Research & Development credits and reliefs currently available in the current UK system? A number of current UK tax incentives, including many capital allowances, only exist because they pre-date the introduction of EU State Aid rules which now proscribe which new allowances are allowed; would an independent Scotland be able—indeed would it seek—to retain such allowances? Would the non-domestic poundage rate, and the methods of valuing commercial and industrial properties, continue to be pegged to those in England? Would tax relief be available on pension contributions and long term savings products, and to what extent? Would Gift Aid apply and would the regime and rates be different to those currently in place across the UK?

DEFENCE

21. In our response to the Committee’s first phase of its inquiry, we asked: what would be the set-up and on-going costs of an independent Scotland establishing its own armed forces? How would an independent Scotland replace defence jobs at Faslane and in shipbuilding and ship repair employment in Scotland which is currently reliant on UK military orders?

22. In order for the public debate to be as productive and as informed as possible and to help companies and others plan ahead more detail and information is required about: what approach to foreign policy would
be adopted by an independent Scotland and what would be the implications for the profile of its defence capabilities? How would an independent Scotland protect and defend Scottish interests and trade routes overseas?

23. Additionally, how likely is it that Scottish based defence and naval contractors will be able to win defence related work from foreign governments? What would an independent Scotland’s defence industry strategy be, and how would it seek to sustain exports? What would be the approach to public procurement of an independent Scotland’s defence department, and will higher prices have to be paid for military hardware due to a loss of economies of scale from UK-wide purchasing?

CITIZENSHIP AND IMMIGRATION

24. Would an independent Scotland have an automatic opt-out from the Schengen Agreement, and if so would it choose to adopt the opt-out? Would an independent Scotland seek to establish a body similar to the existing Migration Advisory Committee to advise it on the economic and business needs of immigration policy? What regime would be established to determine the availability of work permits for skilled and non-skilled migrants and intra-company transfers, and what if any fee structure would exist in terms of charging for work permits?

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