



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 20 March 2014

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**EUROPEAN AND EXTERNAL RELATIONS COMMITTEE**

**8<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

**DEPUTY CONVENER**

\*Hanzala Malik (Glasgow) (Lab)

**COMMITTEE MEMBERS**

\*Clare Adamson (Central Scotland) (SNP)

\*Roderick Campbell (North East Fife) (SNP)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Jamie McGrigor (Highlands and Islands) (Con)

\*Alex Rowley (Cowdenbeath) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Rt Hon Alistair Carmichael MP (Secretary of State for Scotland)

Chris Flatt (Scotland Office)

**CLERK TO THE COMMITTEE**

Katy Orr

**LOCATION**

Committee Room 6



**Scottish Parliament**  
**European and External Relations**  
**Committee**

*Thursday 20 March 2014*

[The Convener *opened the meeting at 09:30*]

**Decision on Taking Business in**  
**Private**

**The Convener (Christina McKelvie):** Good morning and welcome to the European and External Relations Committee's eighth meeting in 2014. As usual, I request that mobile phones be switched off. I welcome our adviser, Dr Daniel Kenealy.

Agenda item 1 is a decision on taking business in private. Do members agree to take in private item 5, which is on the work programme?

**Members** *indicated agreement.*

**Independence: European Union**  
**Membership Inquiry**

09:30

**The Convener:** Agenda item 2, which is the main item on our agenda, is on the Scottish Government's proposals for an independent Scotland's membership of the European Union. We will hear from the Secretary of State for Scotland, the Rt Hon Alistair Carmichael MP, and his official Chris Flatt, who is a deputy director at the Scotland Office. I welcome you both to the committee. Thank you for coming, secretary of state—we appreciate it greatly. I believe that you have a brief opening statement.

**Rt Hon Alistair Carmichael MP (Secretary of State for Scotland):** It is very brief, but I think that it might assist. I thank the committee for inviting me to contribute to the inquiry. I welcome the opportunity to present the evidence that explains why the Scottish Government gets a better deal in the European Union by being part of the United Kingdom.

Scotland benefits by being part of a large member state. The UK's 29 votes in the Council of the European Union and 73 members of the European Parliament mean that the UK has delivered for people and communities in Scotland. We have secured important changes to the common fisheries policy on discards and other issues that will benefit Scottish fishermen for many years to come. Last year, the UK negotiated the first-ever real cut to the EU's multi-annual budget, and we have defended the UK budget rebate, which is worth more than £3 billion each year to UK taxpayers.

Pressure from the UK led to the first-ever EU-wide exemption from new EU red tape for microbusinesses. We intervened in recent common agricultural policy reform negotiations to ensure that the new CAP can be implemented in the UK in line with our constitutional arrangements, and we have secured many other Scottish priorities, such as allowing a smoother transition from historical to area-based payments. We have succeeded in ensuring that, in international trade talks, the EU prioritises protection for Scotch whisky and other important Scottish exports.

Scotland's voice rings loudly in the Brussels negotiating chambers, which I very much welcome. Routine consultation takes place with the Scottish Government on new EU legislative proposals and there is regular high-level ministerial contact on EU issues through the joint ministerial committee on Europe. Scottish Government ministers regularly attend meetings of

the EU Council as part of the UK delegation—that has happened 179 times since 1999 and 52 times since 2011. The UK Foreign and Commonwealth Office routinely facilitates visits to member states and beyond by Scottish Government ministers.

Scotland benefits by being part of the UK when it comes to delivering in the EU on what matters to the Scottish people, but I know that the committee is considering what might happen if people in Scotland vote to leave the United Kingdom. The legal position is clear: the EU is a treaty-based organisation and the United Kingdom is and would remain the contracting party.

We no longer hear people give the view that somehow there would be automatic membership for an independent Scotland. In its place, there is an acceptance that voting to leave the UK means leaving the UK membership of the EU and seeking to negotiate our way back in. Twenty-eight EU leaders, many of whom have only recently had to make tough policy choices to meet the requirements of membership, would need to agree to the process and, critically, they would need to agree the outcome. Ratification would need to be secured from 28 member states, which in many cases would involve votes in Parliaments.

According to the Scottish Government, that can all be done in just 18 months and, in that time, we could secure not just membership but favourable terms that would deliver, according to the Scottish Government, a rebate that is equivalent to the United Kingdom's, even though no other state has managed to negotiate anything comparable. We are also told that the terms would deliver EU structural funding at the levels that are currently foreseen in the UK allocation—even though Scotland is currently €228 million better off on structural funds than it would be if it was independent—and a better deal for Scotland's farmers and fishermen.

At the same time, the Scottish Government indicates that it would ensure that Scotland retained the UK's opt-outs from the euro and Schengen, despite all other new member states now being required to join them. Contrary to EU law, the Scottish Government would also discriminate against students from another member state—the continuing United Kingdom. Is it realistic to assume that all member states would agree to that? I cannot answer that question, but neither can the First Minister. However, in my book, it all sounds too good to be true, which I suspect it probably is.

Members do not just have to take my word for it. The message from those who are best placed to know—from the President of the European Council to the President of the Commission and from the Prime Ministers of Spain and Croatia to the former director general of the Council's legal

services—is clear. As with all new members of the European Union, the legal route for Scotland's membership would need to be through article 49 of the Treaty on European Union, and it is likely that the negotiations would be tough and long with no certainty of outcome. The committee has also heard that message in its evidence sessions.

Everyone agrees that there is no precedent in the EU for what would happen if Scotland voted to leave the United Kingdom and its membership of the EU. The risk that all of us in Scotland face is that the Scottish Government is taking us down an untried and untested constitutional path with no idea where it will lead. My concern is that Scotland will be treated as a guinea pig, with no idea of what the experiment will lead to.

**The Convener:** Thank you, secretary of state. It is clear from your statement that being in the EU is a good thing for Scotland.

**Alistair Carmichael:** That has always been my view.

**The Convener:** Absolutely. Will you give us some insight into Nick Clegg's comment that,

"Once Britain finds itself with one foot out the door, we won't just be able to turn back"?

Is it not rather hypocritical to suggest to a UK audience that we are being dragged out of Europe but to suggest to a Scottish audience that the only way to secure Scotland's place in Europe is with a no vote?

**Alistair Carmichael:** No. With respect, I do not share that analysis. Nick Clegg's comment was made in the context of putting the pro-EU case to the whole United Kingdom electorate—something that my party has always done enthusiastically. It is perfectly legitimate for him to warn those in the rump of other parties—or in parties such as the United Kingdom Independence Party in their entirety—who would want to remove us from the EU that that would not be good for us. That is perfectly consistent.

**The Convener:** The UK Government faces an election in 2015, after which there is the possibility of another coalition Government, irrespective of who the main party in that coalition Government is. Would an in/out referendum be a red line for the Liberal Democrats, should they go into such a coalition?

**Alistair Carmichael:** I am delighted to say that that question is well above my pay grade. You know my party's position. We are—and have consistently been, going back to the mid-1950s when the European Economic Community was established—enthusiastic about Britain's participation in Europe. We have always seen it as being in our national best interests and I do not

foresee circumstances in which we would go beyond the position that we have articulated.

We will have to draw up our manifesto for the 2015 general election. If that election resulted in another balanced Parliament, which might lead to a further coalition Government, we would need to see what was asked of us at any given time.

**The Convener:** You can give us no guarantee that the UK would still be in Europe in 2020.

**Alistair Carmichael:** With respect, that is a very different question. You asked what my party's position would be if we were negotiating a coalition agreement after coming through another general election.

The legal position is that, should a European treaty require the transfer of powers, the terms of that treaty would need to be put to a referendum. You know that the Conservative Party has a policy of seeking an in/out referendum in 2017. You also know that, as a result of the intervention of my party in the coalition Government, that was blocked from being Government policy and that, as a result of action by my colleagues and Labour Party colleagues in the House of Lords, the private member's bill that sought to give effect to that policy was defeated.

**The Convener:** So it is a possible red line.

**Alistair Carmichael:** It has been a red line hitherto and I expect that to continue in the future. Perhaps we are just establishing a course of conversation here. When we look into the future and try to guess what will happen, we see that very little is ever certain.

**The Convener:** Indeed.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** In your opening remarks, you talked about the clear legal process and spoke of the European Union as a treaty-based organisation. Will you explain what article in the Treaty on European Union sees Scotland leaving the EU?

**Alistair Carmichael:** The Treaty on European Union lists the countries that are member states by virtue of having acceded to membership. The United Kingdom is listed in the treaty as a member of the European Union; Scotland does not appear as a member. As a legal entity or personality, it is not listed as a member, other than as a part of the United Kingdom. That is why I say that, should Scotland choose to walk away from the United Kingdom, it would be walking away from the institutions and the treaty obligations of the United Kingdom, of which the Treaty on European Union is just one.

**Willie Coffey:** If we assume that there is a yes vote in September, is it your view that, at and

beyond that point, Scotland and its 5 million citizens will remain part of the EU?

**Alistair Carmichael:** Until the day when Scotland leaves the United Kingdom, Scotland remains part of the United Kingdom and therefore part of the European Union.

**Willie Coffey:** In the case of a yes vote in September, will you see it as your duty, as part of the United Kingdom Government, to represent Scotland's interests in the negotiation period with the European Union to secure the best deal that Scotland can get?

**Alistair Carmichael:** None of us yet knows what the position would be on negotiations of any sort. It is not for me to insist that I would negotiate on Scotland's behalf.

**Willie Coffey:** You are the Secretary of State for Scotland, and I assume that you will still hold that post in September.

**Alistair Carmichael:** You are taking me into a very different constitutional position.

**Willie Coffey:** It is part of the debate.

**Alistair Carmichael:** It is very much part of the debate, and it raises some interesting conundrums. The purist version of the issue is that, to apply for membership of the EU, the applicant must be a sovereign state. If that position is followed to its logical conclusion, it suggests that Scotland could start the negotiations for EU entry only if she were to wait until she got her independence from the rest of the United Kingdom.

You are inviting me to speculate on an interesting and completely unprecedented constitutional position, in which the United Kingdom would be engaging with other EU member states and the EU itself as the United Kingdom of Scotland, England, Wales and Northern Ireland on behalf of Scotland, which would be seeking to negotiate her entry terms, and—I presume—on behalf of the continuing United Kingdom of England, Wales and Northern Ireland. You can see the difficulties that would be caused.

**Willie Coffey:** Surely it would be your duty, as the Secretary of State for Scotland, to negotiate in and argue for Scotland's interests.

**Alistair Carmichael:** I suggest that I always negotiate and argue for Scotland. I am very proud of that.

09:45

**Willie Coffey:** Will you tell us here and now that, if there is a yes vote in September, you will promote Scotland's case?

**Alistair Carmichael:** I always promote Scotland's case, and I will certainly respect the Scottish people's view. However, surely you have to accept that, if Scotland votes to be an independent country, that will have implications for other parts of the United Kingdom and the European Union and there can be no certainty in that regard. I presume that that is why, as part of the Edinburgh agreement, the Scottish Government and the United Kingdom Government said that there should be no pre-negotiation.

**Willie Coffey:** The evidence that the committee has heard up to this point has been that there is a duty and an obligation on the UK, after a yes vote, to negotiate on Scotland's behalf its terms to remain a part of the European Union.

**Alistair Carmichael:** Whose evidence was that?

**Willie Coffey:** Substantial evidence to the committee clearly points to the fact that, under the Edinburgh agreement, there is a duty on the UK to negotiate Scotland's terms.

**Alistair Carmichael:** The legal obligation on the United Kingdom Government is to continue to function as the United Kingdom Government.

**Willie Coffey:** Yes, but until the—

**Alistair Carmichael:** I am not suggesting that anyone in the United Kingdom Government would be obstructive, but you are asking me to speculate about what my position, as a Cabinet minister, would be when a very different constitutional position was anticipated. I am sorry, but I do not see how that speculation assists us.

**Willie Coffey:** What you say seems to be completely at odds with what is enshrined in the Edinburgh agreement, which is that the United Kingdom Government will respect the referendum's outcome and that it still has a responsibility to negotiate on Scotland's behalf Scotland's terms to remain a member of the European Union. Otherwise, you would be arguing against Scotland's interests.

**Alistair Carmichael:** With respect, I think that you are reading a little more into the Edinburgh agreement than might be justified.

**Willie Coffey:** Do you agree that, if you were not negotiating on behalf of Scotland's interests, you would be arguing against Scotland's interests after a democratic yes vote?

**Alistair Carmichael:** I have already explained to you the position. You can see the attraction of the purist position, which is that it would be for Scotland, once she became an independent country, to negotiate that sort of thing for herself. That is a fairly clear position that does not create the difficulties that we are trying ourselves up with.

**Willie Coffey:** Are you saying that Scotland will be out on a limb after a yes vote in September, until the point of independence?

**Alistair Carmichael:** No.

**Willie Coffey:** What will be our constitutional status?

**Alistair Carmichael:** Our constitutional status will be that we remain a part of the United Kingdom.

**Willie Coffey:** You are the Secretary of State for Scotland. You have to represent our interests.

**Alistair Carmichael:** Forgive me, Mr Coffey, but you are inviting me to start negotiations when many things about an independent Scotland's constitution would be unclear. Absolutely central to any negotiation on Scotland as a potential EU member is what currency she would use and whether she would have a central bank. Those matters would need to be established first, before anything could be considered with regard to an application. Surely that is a matter of agreement.

**Willie Coffey:** Convener, I had better let other colleagues come in.

**Roderick Campbell (North East Fife) (SNP):** On the evidence that we have had, Sir David Edward said:

"there will be a gap between a vote for independence and the moment of separation. My point is that, during that period, there will be an obligation to negotiate a solution that does not lead to the absurd result that is being suggested."—[*Official Report, European and External Relations Committee*, 23 January 2014; c 1705.]

Professor Armstrong, who is professor of European law at the University of Cambridge, takes an article 49 view. He said:

"whichever route is chosen, negotiations can begin following a yes vote. I am in complete agreement with Sir David Edward that there are good faith obligations".—[*Official Report, European and External Relations Committee*, 23 January 2014; c 1693.]

That is the point. It is being suggested that the UK Government cannot just sit and do nothing; there will be an obligation on it to take steps to advance—

**Alistair Carmichael:** Forgive me, Mr Campbell; I am not suggesting that anybody would sit and do nothing. I merely point out that, in order to have a meaningful negotiation, certain things are required to be established first as part of the bilateral negotiation between Scotland and the rest of the UK before anything could be done with regard to the European Union.

**Roderick Campbell:** For clarity, you support David Cameron's view that he supports Scottish membership of the European Union, so we would move on that basis.

**Alistair Carmichael:** Ultimately, I thought that that was a positive and helpful intervention from the Prime Minister, but he was talking about being Prime Minister of a United Kingdom that would not include Scotland, so I would not be in a position to bring any influence to bear on him anymore.

**Alex Rowley (Cowdenbeath) (Lab):** As I understand it, you are saying that if Scotland voted yes for independence in September we would need to wait until 2016 when, under article 49, as an independent state, we would negotiate an agreement for Scotland to be part of the European Union. The Scottish Government and some of the legal opinion that the committee has heard in evidence seem to suggest that those negotiations could start immediately under article 48 and that amendments to the EU treaties could be brought about that would allow Scotland to remain part of the EU. Sir David Edward said:

“The Treaty shall apply to the Kingdom of Belgium, the Kingdom of Scotland and the United Kingdom of England, Wales and Northern Ireland.”—[*Official Report, European and External Relations Committee*, 23 January 2014; c 1711.]

The arguments and the differences between legal opinions seem to be about whether article 48 would allow a Scotland that voted for independence to negotiate its way into Europe by amending the treaties. Could that happen? The Scottish Government says that it could happen, and that it could be achieved in 18 months. What is your view on that?

**Alistair Carmichael:** Let us take the process first and consider the timescale after that. Article 48 has never been used for accession of a new member state. That has always taken place under article 49. I think that the pretty widely accepted position is that Scotland would be removing itself from EU membership and then applying to re-enter, which is the clear statement that we have had from Barroso, Van Rompuy and others. Jean-Claude Piris did not give oral evidence to the committee, but I saw his written evidence on that point. He is a very highly regarded former head of the legal service and he said clearly that article 48 would not be appropriate and that the process would have to take place under article 49.

The evidence from Sir David Edward was fascinating and I suspect that it probably could be the source of a PhD thesis for a better academic mind than mine at some point. As I understood it, when he gave evidence to the committee, he said that he started from a different point from other witnesses. The other witnesses all saw the EU as I have described it: a treaty-based organisation between sovereign contracting states. Sir David had particular regard to the question of citizenship. I cannot remember if it was in his oral or written evidence, but he referred to the 1963 Van Gend

en Loos case and the way in which EU citizenship would bring with it obligations to the constituent member states. That is a radically different approach, as I think Sir David accepted.

My own subsequent inquiries have brought a couple of things to my attention, and I think that the committee will probably want to consider them when deciding on the likelihood of an article 48 procedure being successful. The first of those is that there is a clear statement in article 20.1 of the Treaty on the Functioning of the European Union that EU citizenship is contingent upon the nationality of a member state. A further declaration on nationality of a member state that is annexed to the treaty on European Union states:

“The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.”

The concept of EU citizenship is therefore rooted in the citizenship and nationality law of the member states, as I understand that.

I have also had drawn to my attention a judgment in a European Court of Justice case—*Rottmann v Bavaria*—in which a citizen who had dual nationality with Germany and Austria had his German nationality withdrawn and also lost his Austrian nationality, and hence his EU citizenship. In that case, the court held that a member state must exercise its powers to withdraw an individual's nationality compatibly with the principles of EU law.

That is clear recognition by the ECJ that the question of EU citizenship of the sort that Sir David is talking about is quite different, and it can be withdrawn. It would be quite consistent with that judgment to say that, if Scotland were to vote to leave the UK, and hence to leave the EU, one of the consequences would be a loss of EU citizenship. That would certainly not be contrary to any of the principles of EU law. I remember the discussion that the committee had with Sir David Edward on that point.

The question of an article 48 process does not really advance the discussion much. An article 48 process would still require a simple majority agreement within the Council, but there would still have to be negotiations. You would still have to establish that, as a potential member state in her own right, Scotland was sufficiently compliant with all 35 chapters of the *acquis communautaire* in order to be admitted to the EU. In that respect, I have always thought that 18 months seemed to be an ambitious timescale, especially as we do not yet know the answers to some of the most fundamental questions, such as those about the currency and central bank.

10:00

**Alex Rowley:** This seems such a crucial question. If article 48 is an acceptable way for Scotland to negotiate, we are not facing the threat of being outside Europe—or there is less likelihood of facing that threat—yet there seem to be differences of opinion in the evidence so far. It is like bringing five or six lawyers into a room: you might have a debate, but you will not get an answer.

**Alistair Carmichael:** You will get at least five or six opinions.

**Alex Rowley:** The Deputy First Minister, Nicola Sturgeon, said in her evidence that she was more than willing to seek a legal opinion from the European Union on article 48, although it had to be up to the UK Government to ask for that opinion, as the UK Government is the member state. Has the UK Government considered getting that legal opinion, given the seriousness and importance of the question for the future of Scotland?

**Alistair Carmichael:** We know that the view of the Commission is that article 49 is the correct procedure. We have that from the President of the Commission. The Deputy First Minister already has a letter from the Commission saying that there would need to be a specific proposal. We do not have a specific proposal to put to the Commission. We do not agree on article 48. The view of the United Kingdom Government is that the only way to seek accession to membership of the European Union is through article 49. In any event, and as I have indicated already, we are well short of the sort of specification that we would be able to seek an opinion on.

**Roderick Campbell:** Whether article 48 or article 49 is used, you have referred to the opinion of Barroso on this point. Sir David Edward was clear on the matter. He said that that opinion, and the earlier opinions, failed to take account of the

“gap in time between the vote and the moment of independence.”

Sir David said:

“That has been ignored by Barroso, Van Rompuy and all those who talk about it.”—[*Official Report, European and External Relations Committee*, 23 January 2014; c 1705-06.]

Reference to that opinion—without putting words into Sir David’s mouth—would be misleading and partial.

**Alistair Carmichael:** That is Sir David Edward’s opinion, and I always listen carefully to him. He is a senior Scottish jurist. However, I also have a high regard for Barroso and Van Rompuy. It should be noted that the position of Barroso is not novel and has not just come out of the clear blue

sky. Romano Prodi said much the same thing in 2004. What Barroso is saying now is entirely consistent with what Prodi said then.

Sir David Edward’s opinion is exactly that. It is not an opinion that I share, and I have offered the committee some reasons for that. On the basis of the evidence that you have had, you can reach your own conclusions on that, but I do not share Sir David’s opinion on the matter.

**Roderick Campbell:** The role of the President of the Commission, under either article 48 or article 49, is one of consultation. They are not the decision maker.

**Alistair Carmichael:** Indeed not—it is all 28 member states that would require to make the decision.

The committee might also wish to have regard to the fact that, although a simple majority on the Council can, I think, undertake an article 48 process, the outcome requires unanimous agreement. Spain is already saying that an article 49 procedure would be the correct route. The difficulty with insisting on an article 48 procedure if member states do not unanimously agree that it is appropriate is that it would be open to legal challenge. If any party were to bring a legal challenge to a decision to go down the article 48 route, it would become ever more difficult to work against what is already a very tight timescale. That is another consideration that would, in practical terms, make an article 48 procedure—even if one was able to undertake it—fraught with difficulty.

**Roderick Campbell:** I presume, however, that we can assume that the rest of the UK would be keen to try to preserve the single market and not to blow a hole in it, and to try to resolve the difficulties, whatever the legal position.

**Alistair Carmichael:** Forgive me for a second—I am nursing a rather heavy cold and I am hoping that my voice will last.

It is certainly in the United Kingdom’s interest that there should be a single market and that the single market should be completed. However, we are considering a scenario that would arise not at the hand of the UK but as a result of the people of Scotland choosing to remove themselves—[*Interruption.*]

It seems that someone did not remember to turn off their phone.

The scenario would arise from the people of Scotland voting to remove themselves from the rest of the United Kingdom. That is not something over which the rest of the UK has control; it is a decision for us as Scots to make.

**The Convener:** I want to pick up on a couple of points. First, I apologise to the committee for

leaving my phone on after warning everyone else—I thought that it was off.

Secretary of state, you picked up on the point about Jean-Claude Piris, which is very sensitive for the committee, because we had real concerns about how his evidence was used in the media and by members of this Parliament without it being seen by committee members. That was a real concern, given that it was evidence to this committee.

Can you confirm that Jean-Claude Piris has written the legal opinion for the UK Government through his consultancy firm and was paid for it by the UK Government?

**Alistair Carmichael:** I am sorry—I know absolutely nothing of that.

**The Convener:** Okay.

**Alistair Carmichael:** If it will assist the committee, I will happily inquire about it, but nobody has ever suggested that to me until this moment.

**The Convener:** That would be helpful.

**Alistair Carmichael:** What is the exact suggestion?

**The Convener:** That a legal opinion was given to the UK Government, which is the article 49 opinion, and it was written by Jean-Claude Piris's consultancy firm.

**Alistair Carmichael:** Right. As I say, that suggestion is entirely novel to me. I presume that you will have explored it with Monsieur Piris himself.

**The Convener:** Yes, we have.

**Alistair Carmichael:** And what did he tell you?

**The Convener:** Very little.

**Alistair Carmichael:** I would have thought that it would be a yes/no answer.

**The Convener:** He has written to me as convener, and it is not a very detailed response; let us leave it at that.

**Alistair Carmichael:** It would not need to be detailed. That is an entirely novel suggestion to me; I was certainly not aware of it. I confess that I would, in the normal course of things, expect to be made aware of something like that.

I am afraid that I do not know what your concern is about the sensitivity in the use of the evidence. I understood that the evidence is now in the public domain.

**The Convener:** It is now in the public domain, but it was used in the public domain before any member of this committee had sight of it.

**Alistair Carmichael:** Right—I can understand why you want to protect the integrity of your procedures as a parliamentary committee.

**The Convener:** Yes, of course.

Earlier, you mentioned the citizenship rights of Scottish citizens in Scotland, which have been conferred on them over 40 years. Under the EU constitutional settlement, those rights are conferred on the individual and not on the member state. I understand that you are saying that Scottish people may find themselves without those rights.

What planning or detailed work is being done to ensure that the rights that are conferred on EU citizens who currently work, live or study in Scotland will be maintained? Are you suggesting that, if Scotland loses all its rights as a member of the EU, all the fantastic people from the EU who work, live or study in Scotland will lose their rights, too?

**Alistair Carmichael:** There are two elements to that, and I will take them piece by piece. As I have already said clearly, the rights of Scottish citizens as members of the European Union and the advantages that come to the people of Scotland as a consequence of the United Kingdom's membership of the EU would go if Scotland voted to leave the United Kingdom. That is one of the consequences of a vote that would take Scotland out of the United Kingdom and out of the EU.

The issue of the rights of people who are here already as part of their entitlements in the European Union—under the free movement of workers provision, for example—and the students who are here under a scheme such as the Erasmus scheme is interesting. It is their right to be in the United Kingdom. If the United Kingdom is then redefined by the people of Scotland choosing to remove themselves from it, such people would still, on paper, have the same right to be in the United Kingdom; it would just not include Scotland any more.

In those circumstances, it would, I suppose, be for the Government of an independent Scotland to decide what arrangements to put in place for people who found themselves in that position. As you say, they make a tremendous contribution and I very much hope that a Government in an independent Scotland would look on them sympathetically.

One would think that it would not take massively complex arrangements to ensure that the existing entitlement of people who are here in Scotland as part of the EU could be put in place. I recollect that one of the committee's witnesses, Sir Patrick Layden, spoke about a bilateral treaty between Scotland and the EU. I do not know how feasible

that is, but the committee has heard his evidence on that area.

I accept that the issue that you raise would certainly be a concern.

**The Convener:** That gets to the nub of the point about whether article 48 or article 49 is used. You said that practicality would be the overriding factor. Would an article 48 process not be the most practical and pragmatic route, given that there is no doubt that Scotland, as a member of the EU as part of the UK, already meets all the *acquis*, aside from certain home affairs and justice issues that could be resolved very easily?

**Alistair Carmichael:** It is true that, as part of the United Kingdom, we meet all the conditions of the *acquis*. It would, of course, be for an independent Scotland to satisfy the other members of the European Union that, as an independent country, it satisfied all the conditions of the *acquis*. We have touched on a couple of those already.

In those areas in which Scotland does not have legislative competence in its devolved Parliament, the legislation is done at Westminster. If those areas—such as regulation of the financial services sector, which is significant and very important to Scotland's economy—are to be transferred to an independent Scotland, we will need to satisfy the European Union that, as an independent country, we meet the conditions that are required from the *acquis communautaire* in all 35 chapters.

10:15

**The Convener:** That takes us right back to what is practical and what is acceptable to the EU, and to the point that, during the interim period after a yes vote, there will be a duty on the Scottish Government and the UK Government to come to an agreement. Whether that involves sitting down and going through 35 chapters, which I do not think they need to do, and I do not think that you think so, either—

**Alistair Carmichael:** It is not what I think, but what the other 28 member states think—

**The Convener:** Obviously, because of the Lisbon treaty and the different legal set-up in Scotland, we transpose many directives into Scots law, and in many cases Scots law is more ready for those directives than UK law is. For instance, we could immediately implement the directive on trafficking in Scots law, but that cannot be done at the UK level, so primary legislation is required. To suggest that Scotland is somehow lagging behind on all the *acquis*—

**Alistair Carmichael:** That was not the suggestion. All that I am suggesting is that Scotland, as an independent country, would have

to set up all those various areas of legislative competence independently. That is something that one would expect to be done when a new country is set up. Having done that, it would be for Scotland to persuade the other 28 member states in the European Union that she was compliant with all the chapters in the *acquis*.

**The Convener:** We would suggest, on the basis of the evidence that we have had, that that is a pretty straightforward route, but—

**Alistair Carmichael:** Evidence from whom? I missed that.

**The Convener:** From various witnesses who have come before the committee. Every one of them, including members who have come here and said, "I am a unionist; I would be a no voter," and including Kenneth Armstrong, who gave evidence to the Scottish Affairs Committee one week and to us the next, said that the EU would find a way and that that way would be found as long as the Scottish Government and the Government of the rest of the UK came to some agreement on where Scotland should sit in Europe.

That takes us straight back to the question that Willie Coffey asked about whether you or your Government would be interested—for the single market and for the continuation of rights for EU citizens who come from other parts of the EU to work in Scotland—in finding a pragmatic way of dealing with that by sitting down immediately after a yes vote and coming to an agreement, presenting it to the Commission and allowing it to go through the proper procedures.

The process could be much like the one that was followed with East Germany, where a remedy was found almost overnight. It cannot be right to suggest that 18 months is not enough time, given that the European Free Trade Association countries, which did not meet all the *acquis* requirements but then met them all within a few weeks, joined the EU. Given that, and given the situation with East Germany, do you not agree with all the witnesses who came before the committee that Europe will always find a way?

**Alistair Carmichael:** It depends what you mean when you say that Europe will always find a way. I keep coming back to the point that it is a treaty-based organisation and that, in order to get accession, it is necessary to have the agreement of all 28 member states.

You are right to say that bringing eastern Germany into the Federal Republic was done in very short order and was perhaps informed by a degree of pragmatism, but that was done in different political circumstances—it was done in a situation in which the Federal Republic of Germany was the contracting party to the treaties,

as they then existed, and in which it was still the Federal Republic of Germany that was the contracting party afterwards. The treaties were not rewritten in the sense of adding to—

**The Convener:** The EU always finds flexibility when it needs to.

**Alistair Carmichael:** I would say that it does that not so much when it needs to but when it wants to. There is an element of having regard to some of the politics. There are some member states in the European Union, such as Spain, that have their own view. Spain is a member state that has its own internal tensions—Catalonia is seeking her independence from the rest of Spain. In such circumstances, I suggest that it would not be in the Spanish national Government's interests to make it look too easy for a part of a member state to secede from that state and to walk right back into the EU. Spain has said that it would expect the article 49 procedure to be used. I think that the Spanish foreign minister said that, like all other potential members, Scotland would have to join the queue.

**The Convener:** You know that there is no queue; the process does not work in that way.

**Alistair Carmichael:** I am just telling you what that minister said.

**The Convener:** It is interesting that you said earlier that you could not speak for your Government in Scotland, but you can now speak for the Spanish Government.

**Alistair Carmichael:** I am just telling you what that minister said; I am not speaking for the Spanish Government. I am doing my best to assist the committee. I think that he said that Scotland would have to leave and join the queue.

This is where we get into more practical terms. The issue is not the legalities of article 48 or 49 but the terms of membership. The people of Scotland will wish to have serious regard to and concern about that. As part of the United Kingdom, we have over the years built up a favourable body of terms and conditions. We have the rebate on our budget contribution, to which I have referred. We have an opt-out from the Schengen arrangements, which I understand from the white paper that the Scottish Government would wish to continue in an independent Scotland. We have an opt-out from the euro and, when it is considered to be appropriate, from justice and home affairs legislation.

If we go back into the European Union, will it be a case of taking the terms and conditions that are offered, as the Croatian ambassador said? I paraphrase him, but he seemed to suggest that membership was offered more or less on a take-it-

or-leave-it basis. We know the terms on which Croatia was given EU membership.

Alternatively, will we insist on negotiating the opt-outs from which we currently benefit? That negotiation will not be easy. One aspect of the debate so far that I find remarkable is the extent to which the Scottish Government appears to have laid out its negotiating hand. On Monday night, I was on a panel with the Deputy First Minister, who said categorically that an independent Scotland would not join the euro. I understand why she takes that view and why she stated it so clearly, but the truth is that every new member state is required to accept at least the principle of membership of the euro.

Given the bold and categorical statement that has been made, I wonder how the negotiation will proceed when it is put to the negotiators on behalf of an independent Scotland—however the negotiation is done—that we should join the euro. If they give that undertaking in principle, one would really have to question whether that is a good-faith undertaking. If the other 28 member states come to the conclusion that undertakings that the Government of an independent Scotland had given were not given in good faith, one has to think that that would colour the conduct of the other negotiations. Once we get past the procedural issues and start to look at the challenges that would be faced in the negotiations that would be required, that has a bearing.

If we accept the Croatian ambassador's view that an independent Scotland would take what we might regard as the off-the-shelf terms and conditions of entry—the same as the ones that, most recently, Croatia took—that means that we would be in a significantly worse position than we are currently in, because we would not have the benefit of the opt-outs.

Of course, there would be implications for the conduct of the bilateral negotiation between Scotland and the rest of the United Kingdom. For example, we know from the white paper that the Scottish Government wishes to enter into the common travel area with the rest of the United Kingdom, Ireland, the Isle of Man and the Channel Islands. I have concerns about that because, at the same time, the white paper tells us that Scotland would have a radically different immigration policy, and I do not think that those things are necessarily compatible. Parking that concern for the moment, if Scotland is to be part of a common travel area with the rest of the United Kingdom, the Republic of Ireland, the Isle of Man and the Channel Islands, we will not be able to join Schengen. We can either have Schengen or the common travel area.

I expect that the sensible approach would be first to establish what the bilateral arrangements

would be between Scotland and the rest of the United Kingdom and then to have the negotiation with the rest of the European Union members. However, that is only my view. You will see the complexity and difficulty of the undertaking that we are being offered.

**The Convener:** Yes. You say that we would be out of the EU but forced to be in the euro and that we would be out of the common travel area because of different immigration policies, even though Ireland has different immigration policies. For me, that is very confused.

**Alistair Carmichael:** I am sorry, but actually—

**The Convener:** We are running out of time, so I am going to move on.

**Alistair Carmichael:** I am sorry, but you said that Ireland has different immigration policies. Ireland is careful to keep her immigration policies closely aligned to those of the United Kingdom, which is why the Irish and British Governments speak constantly about those things—both of us value the opportunities that come from a common travel area. However, I do not think that it is a sustainable proposition to suggest that Ireland has a radically different immigration policy of the sort that is proposed in the white paper.

**The Convener:** We should give credit to the UK and Ireland for negotiating that position, but I am baffled as to why the UK would not negotiate a similar position with Scotland. However, we need to move on, because—

**Alistair Carmichael:** I am sorry, but I would not want the committee to be left with the impression that I am saying that the UK would not want Scotland to be part of a common travel area. However, Scotland would have to be part of that area on exactly the same basis as currently exists. That is the whole point of it being a common area.

You must understand that, if we are part of a common travel area, we could not be part of Schengen. I think that that is fairly readily understood because, if Scotland were part of Schengen, she could not have an open border with the rest of the United Kingdom, which would remain outside Schengen.

10:30

**The Convener:** That goes back to those in-good-faith negotiations.

**Alistair Carmichael:** Indeed. Good faith is absolutely critical in any negotiation, especially one that will go round 28 member states. That is why it matters. When I look at the prospectus that has been laid out, I think that something will have to give if that good faith is to be established and accepted.

**The Convener:** That is the practicality of negotiation, of course.

**Clare Adamson (Central Scotland) (SNP):** Good morning, secretary of state. In your opening remarks, you talked about the UK's position as a strong representative in Europe and said that Scotland was therefore best served by being part of the UK, but is it not the case that the UK's perceived Euroscepticism, the in/out referendum promised by your coalition colleagues, the Labour Party's position on a possible in/out referendum, and the veto that the Prime Minister used in 2011 have greatly reduced the UK's influence in Europe?

**Alistair Carmichael:** You refer to Labour's position on an in/out referendum, but I understood that Ed Miliband said that he would not have one.

**Clare Adamson:** I misunderstood. My understanding was that he might have one in certain circumstances should there be significant change in the treaty.

**Alistair Carmichael:** If there is significant change in the treaty, there is, as a matter of law, a requirement to have a referendum on the treaty. I recall that, when Ed Miliband made his policy statement last week, he also said that he did not expect there to be any treaty of that sort in the course of the next Parliament. In all the circumstances that surround the economic position in Europe and the difficulties that the countries in the eurozone still face, that is a statement of the blindingly obvious. I see no prospect of that.

On whether Euroscepticism damages Britain's standing in the European Union, perhaps other parts of the European Union have learned to live with and accept that over the years. However, we are not alone among the countries of Europe in having Eurosceptic parties. I was in Denmark last week; the Danish People's Party is quite Eurosceptic. There is Geert Wilders in Holland, there is Marine Le Pen in France, and there are a number of Eurosceptic parties in Italy.

It does not help Britain to be seen as somehow being a reluctant participant in Europe. If a country is going to be in Europe, it is sensible to be whole-hearted about it. Therefore, I do not agree with our Conservative coalition partners on their desire to renegotiate and have a referendum. As I said to the convener earlier, that was why it was sensible and, indeed, necessary that the Liberal Democrats, as part of the coalition Government, should block that. I think that Britain's standing in Europe is significantly enhanced as a result of that decision that we took.

**Clare Adamson:** I agree that there is Euroscepticism across Europe, but there is a big difference between having Eurosceptic parties and

having a Prime Minister who used a veto in 2011 that had no impact on the UK's interests—indeed, it could be argued that it damaged the eurozone members' route out to recovery from the financial crisis. That is not my opinion—the House of Commons Foreign Affairs Committee produced a report that cited many witnesses who argued that that resulted in a general weakening of UK influence. Indeed, the Deputy Prime Minister, Nick Clegg, said that the decision was “bad for Britain” and could leave it “isolated and marginalised”. I believe that he has also said that the UK is flirting with an EU exit and that that is not good for Britain.

**Alistair Carmichael:** No. I think that what he said was that some of the Conservatives were flirting with that, which is not quite the same thing. My reading of the opinion polls at the moment is that the Conservatives speak for just north of 30 per cent of the United Kingdom.

**Clare Adamson:** In terms of—

**Alistair Carmichael:** Sorry, but as you ask about the use of the veto, I think that you will recall that there was a tension and divergence between the parties in the coalition on that point. It is also possible that a Government of any colour at any time on any issue can act in a way that ultimately does not strengthen our position because it is not seen as being positive participation in the wider EU interest. That is easily understood, but it is a very different proposition from the one that we are discussing today, which is fundamental because it is about EU membership.

**Clare Adamson:** You talked about Scotland's voice in Europe as part of the UK. However, prior to 2008, the devolved Administrations had an open invitation to attend the official-level meetings between the UK Cabinet Office European secretariat and the UK permanent representation to the EU, now referred to as the Cunliffe-Rogers meetings. The invitation was rescinded in 2008 by the then UK Europe minister, Jim Murphy. The First Ministers of both Scotland and Wales have made representations to the UK Government citing that as a diminution of their voices in a European context. Would you support the reinstatement of the previous open invitation to those meetings?

**Alistair Carmichael:** I suppose that that would essentially be a matter for the Cabinet Office and the Prime Minister, and I cannot really answer for them.

**Clare Adamson:** Finally, your partners in the coalition Government have been conducting a review of the balance of competences between the UK and the EU for the treaty negotiations. Bearing in mind that any renegotiation of that

balance would have to achieve the support of the other 27 member states—

**Alistair Carmichael:** Indeed, which is one of the reasons why Nick Clegg has, frankly, been very sceptical of the purpose of the review. I share in broad measure his scepticism.

**Clare Adamson:** We find ourselves in a position in which the Prime Minister has indicated that he wants to renegotiate the UK's position in Europe. Do you have any information on what treaties he is looking to change or influence in the negotiation process and on what basis he seeks to do so?

**Alistair Carmichael:** No, I am afraid that I do not. I would not normally expect to be party to the detailed proposals of another political party, unless they are put in the public domain, in which case you would know as much about them as I would. I would expect to know what was being proposed only if it were Government policy. Because of the presence of the Liberal Democrats in the coalition Government, the treaty renegotiation is not Government policy. You would therefore need to ask a representative of the Conservative Party what was intended.

**Clare Adamson:** Has any policy come out of the review of the balance of competences to date?

**Alistair Carmichael:** As I understand it, the review of the balance of competences is on-going. I am afraid that the person who could have given you a much more detailed answer on that question is David Lidington, the Europe minister, who has given evidence to your committee before. I offered to bring Mr Lidington with me to this meeting, but I was told that his presence was not required.

**Clare Adamson:** I am sure that we could get him back on that point, with the convener's assistance.

**The Convener:** Indeed.

**Jamie McGrigor (Highlands and Islands) (Con):** The convener mentioned Kenneth Armstrong. We would like to shoot this fox about whether article 48 or article 49 would apply with regard to an independent Scotland's membership of the EU; otherwise how can people make a decision when the referendum comes?

Kenneth Armstrong said:

“I take the view that article 49 is what would be called the *lex specialis*”.

He went on to say:

“To me, the article 48 route is legally implausible, because article 48 is a way of renegotiating the treaties between existing member states and not a way of dealing with the relationship between existing member states and some other non-member state.”—[*Official Report*,

*European and External Relations Committee*, 23 January 2014; c 1694, 1695.]

From your preamble, I take it that you agree that article 49 is the probable way forward. That is backed up by the original words of Mr Prodi in 2004, who said:

“when a part of the territory of a Member State ceases to be a part of that state, e.g. because that territory becomes an independent state, the treaties will no longer apply to that territory.”

Is the UK Government going to try to pursue the article 48 route, or does it think that that is a non-starter? The Scottish Government seems to think that article 48 is the way that it will go.

**Alistair Carmichael:** You have put the position clearly in the preamble to your question. There are two provisions. Article 48 exists as a revising provision—there is a term of art for it that I do not have to hand, but the purpose of article 48 is clear—and article 49 exists for the accession of new member states. I come back to my earlier point about the possibility of challenge. If we were to find ourselves in a situation where, somehow, Scotland had managed to embark on an article 48 procedure—I do not see how that could be done, but let us park that for the moment—what questions would the European Court of Justice pose to itself in the event that a challenge was made? It would look, first, to the articles. It would look to the fact that the United Kingdom was the continuator state, and it would look to the fact that Scotland was seeking admission as a new country.

I do not see why the Scottish Government would seek to use article 48 when article 49 exists and is very clear. That was the basis of the written statement that Jean-Claude Piris gave to the committee. The purpose of article 49 is to deal with situations exactly such as this. The views of the Government are largely academic when the position is as clear as it is in the articles and given the statements of the various member states that have already put their views on the matter on record.

**Jamie McGrigor:** Let us turn to the loss of the rebate. Some people have said that Scotland would get more money out of the CAP budget, for example, by getting €196 per hectare or whatever it would be. However, the Scottish Government would have to pay towards the UK’s EU rebate and other member states would have to pay for Scotland getting more from the CAP budget. Am I correct in that assumption?

**Alistair Carmichael:** Yes, you are. It would be deeply ironic if Scotland walked away from the United Kingdom and its rebate but the taxpayers in an independent Scotland then ended up paying

their share towards the rebate for the continuing United Kingdom that it had just walked away from.

10:45

The question of a CAP application is interesting. I think that Croatia started on 25 per cent CAP receipts, to be phased in over a number of years. In practical terms, you have to wonder why Croatia would offer a better deal to Scotland, as a new entrant country, than she had got for herself. The CAP settlement that we currently have runs until 2020. If Scotland were to get all that extra money out of it, that would mean other member states giving up money that they currently have for their farmers, agriculture and food-producing industries. That gets us into the granular detail of what a negotiation would actually involve.

It is not just about Scotland’s interests; each one of the 28 member states will have a national interest of its own that it wishes to promote. Sadly—it does not always work to the benefit of the European Union as a whole—and especially when times are tough, national interests tend to trump the wider collective interests.

**Jamie McGrigor:** I refer to the evidence that we received from members of the Irish delegation. They told me that they were jealous of the power of the UK block vote, which I think is some 30 votes on the Council.

**Alistair Carmichael:** It is 29, I think.

**Jamie McGrigor:** I do not know how many votes a separate Scotland would have. Would it be six votes or something like that?

**Alistair Carmichael:** I have heard the figure of five mentioned, but establishing these figures is an art, rather than a science, I believe.

**Jamie McGrigor:** In your view, would Scotland suffer from having only six votes as opposed to having a part of the larger number of 30 votes?

**Alistair Carmichael:** This is not just my view. I am thinking of conversations that I have had recently with senior figures in the organisations that represent Scotland’s fishermen. They have told me that, in their view, there is a significant advantage to being part of a country that has 29 votes on the Council of Ministers.

I can tell you more than just my view. I have some experience of this now, having been a Government minister since 2010. Previously, when I was the Government’s deputy chief whip, I was a member of the Cabinet sub-committee on European affairs. I am now a member of the full Cabinet committee on European affairs.

In that time, the German Government has been very keen and active in developing stronger bilateral relations between ourselves and

Germany. I myself have been part of Government delegations that have gone to Berlin to advance those bilateral relations. The German delegations are quite candid when they tell us that they see a real advantage to them in building stronger bilateral relations with the United Kingdom, because we are a big voting bloc in the Council of Europe. Once Britain and Germany are together, it does not take an awful lot more to get to the voting figures that are needed to get your own way. The reason for that—as those of you who are familiar with German politics will probably be aware—is that there is a fairly widely held view in Germany now that it was left at a point of difficulty, with the eurozone having to bail out southern European nations especially.

The Germans see Britain as a bulwark of budgetary rectitude with which they can make common cause. There are other northern European countries that are just as robust in their budgetary and fiscal procedures as we are, but the nation with which the Germans see it as being in their interest to build the stronger bilateral relationship is the United Kingdom, because we are a bigger player. Everybody who sees EU negotiations up close, be they farmers or fishermen or any trade interest, will tell you that there is a palpable advantage from being part of one of the big countries.

**Jamie McGrigor:** Have I got time for one more question, on fisheries?

**The Convener:** Yes.

**Jamie McGrigor:** I believe that I am right in saying that the present organisation of the North Sea, especially from Scotland's point of view, is based on a derogation and that that is the reason why we have such a good quota of haddock. The original Treaty of Rome *acquis communautaire* stressed equal access to a common resource as being the way in which fisheries should be managed. If we go down the article 48 route, or if Scotland has to come out of the EU and go back in, is there any danger that she would not be able to hold on to those derogations that have been fought for by the UK over such a long period?

**Alistair Carmichael:** Those derogations, as you call them, have had a significant impact on the operation of common access as a principle. We do not, in truth, have common access to the North Sea as a resource because, over the years, regardless of what the treaty says, we have built up this body of law that says that we will have things such as the Hague preferences, the principle of relative stability and the Shetland box. Those are all the practical mechanisms that determine things rather than the basic principle that Mr McGrigor has pointed to.

The United Kingdom does very well. Our white-fish quotas in the North Sea are significantly higher than they would be without the operation of that body of law. That is just one of the aspects that mean that we would be walking away from a situation in which we do very well as part of the UK, and we would be seeking a better deal than is given to others when we went back in, if we were to do that.

**The Convener:** Secretary of state, I believe that your next meeting has been cancelled and you have a little bit more time to spend with us.

**Alistair Carmichael:** That is news to me. Sorry, but I am not aware of that. I said that I would be here until 10.45. I am reluctant to be difficult but—

**The Convener:** We must have been given the wrong information.

**Alistair Carmichael:** I am sorry about that. I am happy to come back on some other day, but my experience is that once my diary starts to run late, everything gets later and later. We have already done an hour and 23 minutes.

**The Convener:** One committee member has not yet managed to ask any questions and I want to ensure that I am being even-handed.

**Hanzala Malik (Glasgow) (Lab):** Good morning.

**Alistair Carmichael:** Good morning, Mr Malik. I should also say that I do not know how much longer my voice is going to last.

**Hanzala Malik:** We have something in common—we are both nursing a cold.

When some of my colleagues suggested that, if there were a yes vote, the rest-of-the-UK Government would somehow be responsible for negotiating on Scotland's behalf, you made the point that that would be fraught with difficulties because of Scotland's financial position and other issues. I understand that, but with regard to that view held by certain people, can you imagine any theatre of operation where you would be supportive of having responsibility of that sort on your shoulders and on the shoulders of the rest-of-the-UK Government, or do you feel that that is outwith your remit?

**Alistair Carmichael:** As a Scot, I would want Scotland, if she chose to be independent, to be a member of the European Union. I state that unashamedly and unabashedly. However, what concerns me is that the people of Scotland are being told that that would somehow be a straightforward, easy and seamless process, when the preponderance of the evidence that you have had in your inquiry suggests that it would be anything but. I am not going to sit here and say

that, in the event that Scotland votes yes, I can offer you certainty where no certainty exists.

**Hanzala Malik:** Given that you are here as Secretary of State for Scotland, I thought that I would take the opportunity to ask you a question that is not strictly on today's subject: it is on education. There has been a substantial reduction in our student income from overseas. What are you doing to assist us with that? Who is going to fulfil—

**Alistair Carmichael:** Which income did you say?

**Hanzala Malik:** Income from foreign students. Who is going to bridge the shortfall in that income? What representations, if any, are you making on behalf of Scotland to bridge that gap?

**Alistair Carmichael:** The data that I have seen on overseas students suggest that the figures for just about every country sending overseas students here have gone up—with the exception of India, where there has been quite a marked drop. It is for the institutions themselves to speak to the Scottish Government and make their case. As you know, the funding of higher education in Scotland is very properly devolved but if institutions have particular concerns about immigration policy or anything of that sort, I will be more than happy to hear from them.

**Hanzala Malik:** I am very keen for you to make representations on our behalf. There has been a 4 per cent drop in students from Saudi Arabia; a 13.5 per cent drop in the number of students from Pakistan; and a 23.5 per cent drop in those coming from India. Those are substantial numbers. Given the serious challenges that our education sector is facing, shortfalls of that sort are very unhelpful and I am very keen for you to make some supportive gestures in that regard. You could even come back to the committee to advise us what steps, if any, you have been able to take to redress the issue.

**Alistair Carmichael:** The sensible way to proceed on this point might be to write to me with the detail of your concerns. I will certainly act on them, because I greatly value the contribution—financial, academic and cultural—that overseas students make to our higher education system. If there is anything within my power that I can do to assist you, I am happy to do it. If necessary, I will copy the correspondence to the convener, which is probably the sensible, obvious way of disseminating it further.

**The Convener:** I have two quick questions for you, which I hope you will be able to answer succinctly. First, what is the role of the devolution unit?

**Alistair Carmichael:** Chris Flatt will give you the civil service definition.

**Chris Flatt (Scotland Office):** I work very closely with the Foreign and Commonwealth Office devolution unit, which ensures that European Union and international issues that pertain to Scotland, Wales and Northern Ireland are understood across the UK Government and, particularly, that Governments understand the context of the devolved settlements when they form negotiating positions.

The unit's work has outward and inward-facing aspects. It plays an internal co-ordination and information role for the UK Government and an external role in working with our partners overseas to ensure that, internationally, people understand the UK's constitutional position and the fact that we have devolved Administrations that work at different levels and which are responsible for different policies.

11:00

**The Convener:** Should the devolution unit's main role be to extend the interests of the devolved nations across the UK to the rest of the world?

**Chris Flatt:** As I have described, the devolution unit's role goes both ways. It ensures that the interests of Scotland, Wales and Northern Ireland are well understood in UK Government policy making and that our position is well understood around the world. Expressing the UK Government's policy is important for the devolution unit, and that policy is that the UK Government's position and our devolution settlement are right for the UK.

**The Convener:** Could the unit furnish the committee with the detail of discussions with a Russian diplomat about Scotland's independence?

**Alistair Carmichael:** What Russian diplomat was that?

**The Convener:** It has been reported that

"Itar-Tass, citing a source in the ... Prime Minister's office, said Britain was 'extremely interested' in referendum support from Russia".

The *Sunday Herald* followed up on that last Sunday and reported that

"a member of the FCO's 'Devolution Unit' ... briefed a diplomat at the Russian Embassy at Russia's request".

Could we have information about that?

**Alistair Carmichael:** What are we being asked to provide? That seems somewhat inchoate.

**The Convener:** The detail of the conversation that went on.

**Alistair Carmichael:** You are asking me to provide the detail of conversations between two people, neither of whom you have named.

**Chris Flatt:** I have briefed an official from the Russian embassy and officials from dozens of other embassies. An interesting element of our position is that we have a lot of interest from around the world in the situation in Scotland, and lots of people come to me to ask what the UK Government's position is. When I explain it, I, as a civil servant, set out the UK Government's position objectively, and I am also careful to explain that the Scottish Government holds a different position.

When I briefed the Russian embassy, the diplomat to whom I spoke expressed great surprise at the *Sunday Herald's* story on what the Russian news agency had said. Beyond that, we had a straightforward conversation about what the UK Government is doing. I have had such conversations with officials from Russia, America, Canada, Belgium, the Philippines, Kurdistan and Italy. The list could go on and on, because everyone is interested. That is a good thing, because it makes Scotland's position on the world stage much more prominent.

**The Convener:** Will you furnish the committee with information on all the countries that have been briefed one to one and on the basis for those briefings?

**Chris Flatt:** Yes—absolutely.

**Alistair Carmichael:** Actually, I do not know whether it is for us to give an undertaking on that.

**The Convener:** The majority of the information has been released following freedom of information requests anyway. We would just like the rest of it.

**Alistair Carmichael:** You have given a wide specification. It is for the Foreign and Commonwealth Office to release information on what it has done. I cannot give an undertaking on that.

**The Convener:** I have to say that I am confused. I am not sure whether, as the Secretary of State for Scotland, you are Scotland's man in Westminster or Westminster's man in Scotland. That has shifted backwards and forwards all morning. If you are saying that the committee has to go to the Foreign and Commonwealth Office to retrieve the information, that is what we will do.

**Alistair Carmichael:** I am the Secretary of State for Scotland. Chris Flatt is one of my officials and he is answerable to me. You have requested the release of information, with a broad specification, from another Government department. Given the broadness of that specification, I do not know whether Government colleagues can meet it.

In international relations, there might be any number of reasons why that might not be appropriate. Had you told me that you were going to ask about that before I came here, I might have been able to speak to the Foreign Office to get you that information. Had you taken me up on my offer of bringing Mr Lidington with me, he might have been able to give you the answer on the spot. If it is possible to comply with your request, I will certainly ensure that that is done, but I cannot give a categorical assurance on the matter here today.

**The Convener:** Okay. We will ask the question as a committee, then.

We have time for a final question from Willie Coffey. I am sorry, Mr Carmichael—I know that you have to run.

**Alistair Carmichael:** I am sorry, but we have been going for an hour and 35 minutes and I undertook to be here for an hour and 15 minutes. I have other engagements today. I am happy to come back and continue this on a future occasion.

**The Convener:** If members still have questions, we will write to you.

**Alistair Carmichael:** I will be delighted to get that correspondence.

**The Convener:** I know that your diary is very full. It was difficult to secure a meeting with you today.

**Alistair Carmichael:** It has not been straightforward to have this meeting. However, once you made the request, it was important to me to accommodate it. I was required to get up at 5 o'clock this morning to be here.

**The Convener:** We very much appreciate your coming to the committee today to answer all our questions. We could have spent a lot longer on them, but we will be in constant communication and will keep the lines open.

**Alistair Carmichael:** Indeed. If this morning's discussion has done nothing else, it has illuminated the enormous complexity of the situation that you are currently investigating. I wish you good luck with your investigation. As parliamentarians, you have a duty to ensure that the policies and aspirations of the Executive that you are here to scrutinise are sensible and realistic. From what I see, I have some concerns that they are not. You have the opportunity to make that clear to it; indeed, that is your duty as parliamentarians.

**The Convener:** Indeed. The Deputy First Minister will be at our next meeting, and no doubt we will ask her the same questions. Thank you very much.

11:07

*Meeting suspended.*

11:12

*On resuming—*

## “Brussels Bulletin”

**The Convener:** Agenda item 3 is consideration of the “Brussels Bulletin”. Do members have any questions about, comments on or clarification that they seek in relation to the information in the bulletin?

**Willie Coffey:** On page 7, we are told that there has been further progress on broadband infrastructure matters, and that the European Union is making efforts to reduce the costs of physically installing the infrastructure—in other words, digging up roads and laying cable. Although that is a consequence of the reduction in the provision that has been set aside in the budget for such work, it is nevertheless a step in the right direction if the Commission is trying to reduce the costs of deploying high-speed networks throughout Europe. Committee members have a continuing interest in that.

**The Convener:** Indeed, and we are currently putting together a briefing on the subject.

**Willie Coffey:** That is super. I really appreciate that.

**The Convener:** We will bring that to the committee in the near future.

**Hanzala Malik:** Can we investigate the possibility of specialist additional funding for rural areas, given that Scotland’s rural areas are the most deprived with regard to this service? If we are employing someone to assist us and give us advice on European matters and funding, can we also find out whether there are any additional means of funding our rural communities to assist them in acquiring such connections?

**The Convener:** Yes, we can ask the clerks to look at that.

11:15

**Jamie McGrigor:** On Hanzala Malik’s point about broadband, it is all very well talking about lowering costs, but if you do not have broadband in the first place, you will not give a hoot about the cost. There are so many places in the Highlands that do not have it, including where I live. We cannot get it.

**Roderick Campbell:** That is not only the case in the Highlands.

**Jamie McGrigor:** There are such places all over Scotland.

**Willie Coffey:** Jamie, it was your Government that wanted the cut in the budget that led to this.

**Jamie McGrigor:** What?

**Willie Coffey:** It was your Government that negotiated a cut in the budget that led—

**Jamie McGrigor:** No, I think that you will find that the EU cut the budget for telecommunications—

**Willie Coffey:** The Prime Minister negotiated the cut in the budget that led to that consequence.

**Jamie McGrigor:** That is blatant nonsense.

**Willie Coffey:** I am sorry, but it is true.

**The Convener:** The detailed paper that is going to come before us will, I hope, include the costs in the budget, so perhaps we can settle the matter then.

**Jamie McGrigor:** I can show you people who are using their Arqiva satellite dishes, or whatever they are, for feeding hens, because they are that useless.

**The Convener:** That is novel.

**Jamie McGrigor:** There is one law for the central belt and another law elsewhere.

**Clare Adamson:** Hanzala Malik’s point about rural exclusion is well made, as are Jamie McGrigor’s points. Given that the EU has drifted further in its target for reducing the number of people at risk of falling into poverty and social exclusion, it is an important matter for the committee.

**The Convener:** Are we happy to bring the “Brussels Bulletin” to the attention of the other committees?

**Hanzala Malik:** Yes, but who we are going to ask about the possibility of finding specialist funding for rural areas in Scotland?

**Clare Adamson:** The clerks and the Scottish Parliament information centre will look at that.

**Willie Coffey:** I want to ask about the process of bringing such matters to the attention of other committees. I have been on the Public Audit Committee for seven years now and I have never seen anything from the “Brussels Bulletin” brought to its attention. How does a matter get brought to the attention of the Public Audit Committee?

**Roderick Campbell:** It goes to the committee clerks.

**Willie Coffey:** Nothing has ever appeared.

**The Convener:** I believe that the “Brussels Bulletin” is sent to all the committee clerking teams, with the areas relating to their committees highlighted. A number of times, we have written specifically to the Rural Affairs, Climate Change and Environment Committee and the Infrastructure

and Capital Investment Committee, and I suggest that we make a more assertive point to those two committees about broadband and rural exclusion. I know that both are doing work on the matter, and it might inform the information that our committee receives.

**Willie Coffey:** The bulletin is helpful and I would like to get it to members. It does not come to me as a member of the Public Audit Committee.

**The Convener:** I suggest that it is worth asking the Public Audit Committee clerks about that.

**Willie Coffey:** I shall.

**The Convener:** We have extensive work to discuss in private and I know that members want to get away quickly. Are members content for us to pass the bulletin on, with the caveats about the two pieces of work that need to be looked at and drawing the attention of the Rural Affairs, Climate Change and Environment Committee and the Infrastructure and Capital Investment Committee, in particular, to the items that have been discussed?

**Members** *indicated agreement.*

**The Convener:** Thank you very much. We now move into private session.

11:18

*Meeting continued in private until 11:30.*



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e-format first available  
ISBN 978-1-78457-021-7

Revised e-format available  
ISBN 978-1-78457-038-5

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Printed in Scotland by APS Group Scotland