



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 5 December 2013

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**EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
22nd Meeting 2013, 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)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab) (Committee Substitute)

Dr Colin Fleming (Economic and Social Research Council)

Professor Michael Keating (Economic and Social Research Council)

Professor Stephen Tierney (Economic and Social Research Council)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

Committee Room 2

Scottish Parliament

European and External Relations Committee

Thursday 5 December 2013

[The Convener *opened the meeting in private at 09:20*]

10:03

Meeting continued in public.

Independence White Paper

The Convener (Christina McKelvie): Good morning and welcome to the 22nd meeting in 2013 of the European and External Relations Committee. I make the usual request that mobile phones are switched off. Some members will be using iPads to reference some of the papers, which is fine, but you should not google on the internet or tweet your pals. I welcome Patricia Ferguson to the committee again.

We have taken our first agenda item in private. The second item is the Scottish Government's white paper on independence. We have a number of witnesses before us today from the Economic and Social Research Council's programme on the future of the United Kingdom and Scotland. This is the committee's first formal session on the white paper and we are putting a lot of faith in our witnesses to inform our deliberations on it and our lines of questioning for the Deputy First Minister next week.

I welcome Professor Michael Keating, who is professor of politics at the University of Aberdeen and director at the ESRC Scottish centre on constitutional change; Professor Stephen Tierney, professor of constitutional theory at the University of Edinburgh and director of the Edinburgh centre for constitutional law; and Dr Colin Fleming, research fellow at University of Edinburgh and project leader on defence and security at the ESRC Scottish centre on constitutional change. Good morning and thank you for your written submissions. You gave us a lot of homework to look at this week, which certainly helped to inform my remarks.

I believe that you have opening statements to make. We usually have quite short opening statements, but we will give you a bit of time each to allow us to gain some insight to the ideas and issues that you raise from the white paper and inform us on where we can go next.

I will open with Professor Keating.

Professor Michael Keating (Economic and Social Research Council): I am a political scientist and I am looking at the European implications—Scotland's membership of the European Union and its place within it. Stephen Tierney will look at the legal aspects of that and at questions of recognition, and Colin Fleming is working on defence and security matters. What I will say complements what Stephen will say. I will look after the more political aspects and Stephen will talk about the legal aspects. We have two papers that complement each other fairly well and come to similar conclusions.

My argument is that an independent Scotland would be a member of the EU for a number of reasons. One is that recognition of independent states tends to come pretty automatically if the host state recognises independence. Scotland's case is not like the case of Kosovo, for example, or the hypothetical case of Catalonia, where people are talking about unilateral secession that is not recognised in the Spanish constitution. If the United Kingdom was to recognise an independent Scotland, there is no reason why the other 27 member states should not. If all 28 members recognised an independent Scotland that met all the conditions for accession to the EU, under the basic principles of the European project and indeed the treaty of Rome the EU pretty much would be obliged to admit Scotland, although it would have to go through the regular procedure. There would have to be agreement of all 28 members.

It has been suggested that some members would not be happy with an independent Scotland becoming a member of the EU. What is true is that some member states would be very unhappy with the idea of an independent Scotland altogether, notably the Spanish, who would not like it at all. It would set some kind of political precedent for Catalonia and the Basque Country. The Cypriot and Romanian Governments might not like it, but no Government so far has said that it would veto Scottish membership of the EU. I read the Spanish Government's statement very carefully and it did not say that it would veto Scottish membership of the EU. Indeed, the Spanish Government has gone to great pains to say that Scottish independence would not set a precedent for Catalonia because Scottish independence would be done under the British constitution in a legal and constitutional way, whereas such a provision does not exist in Spain.

The mechanisms for Scotland becoming a member of the EU are several. Stephen Tierney can talk about the legal mechanisms. Certainly, it would not be necessary to go through a long accession process, such as Croatia has just gone through, because this is not a transition country. We already meet the criteria for membership as

well as any member state does. There are certain respects in which we do not, but then that is the same for all member states. Broadly, Scotland already meets the criteria and, with the way that Europe works, a way can normally be found to do such things. The European Council—the heads of states—the Council of Ministers and the European Commission would not go to the law books to see what they should do; they would decide what they wanted to do politically and then find a legal way of doing it, and there are legal ways of doing such things.

There is the question of the transition. It is realistic that preparation for membership of the European Union could take place simultaneously with the independence negotiations, if that is what is proposed, although that might take longer than the suggested 18 months. The objection that, for a while, Scotland would be outside the European Union before negotiating its way in is unrealistic, because it is in nobody's interests to create a hole in the single market and to disrupt all the relationships between Scotland and the European Union simply to put those back in place again. Everybody would lose out were that to happen, so there would be a strong interest in making the transition and doing the necessary negotiations simultaneously with the process of Scotland becoming independent.

A much more difficult and important issue is what route an independent Scotland would go in the European Union. We could talk about the euro and the Schengen area in that regard. I argue that we would not have to adopt those policies immediately but, in the long run, Scotland would have to decide whether to cling to the rest of a United Kingdom that seems to be moving away from, if not altogether out of, the European Union—it is certainly trying to detach itself increasingly from the European project—and the notion of Scotland making its own way in Europe. The white paper is a little bit disappointing in that it suggests that Scotland would simply take all the existing UK opt-outs; in other words, we would have exactly the same semi-detached relationship to Europe as the United Kingdom has.

In the future, if the United Kingdom wants to have more opt-outs and to move further away from Europe, the question arises whether Scotland would want to follow it or make its own way in Europe. I am looking for a vision of Scotland in Europe and what kind of Europe Scotland would want and what its priorities in Europe might be. I do not see that in the white paper.

The transition process and Scottish accession can be dealt with. Negotiations would be difficult; they always are. I am looking for a bigger vision of how Scotland would fit into the European project in the long run.

The Convener: Thank you very much, Professor Keating. Professor Tierney, would you like to brief us next?

Professor Stephen Tierney (Economic and Social Research Council): Certainly. As the committee will be aware, I submitted a paper on some of the legal aspects of accession. My paper is a bit technical, for which I apologise, but I will speak briefly and draw out the main points to complement what Michael Keating has said, as he suggested that I would.

Accession to the European Union has been fairly controversial. The white paper seems to accept the position that Scotland would have to join the European Union, which, for some time, did not necessarily appear to be the Scottish Government's position. What I am interested in addressing is how the process would take place. Michael Keating has largely looked at the terms on which it would take place, which he is better placed to talk about.

The United Kingdom after independence would be the continuing state in the European Union. Its status would not change; the remainder of the United Kingdom would carry on in the European Union. There would be issues to address about the degree of representation that it would have in the EU, but those would be unproblematic.

Scotland's accession comes down to the issue of negotiation. Would there be negotiations? If so, how would those take place? What treaty process would be used? The situation is unprecedented. Territories have left the European Union in the past, but we have never had a situation in which a member state has itself had a territory leaving and wanting to remain in the European Union. We do not have a clear set of articles that we can point to on admission for such a case.

Article 49 is the standard process for states joining from outside the European Union. The white paper suggests that article 48 would be used instead. In that case, a more simplified process would be used, under what is known as ordinary treaty amendment to achieve Scottish membership. There is some argument in favour of that approach. David Edward, a former judge of the European Court of Justice, put forward the argument in a blog and an article that there would be a duty on the other member states and the institutions to negotiate Scotland's entry in the European Union and that that duty stems from the fact that Scots are European citizens. I consider that argument to be plausible.

10:15

Article 48 is still a fairly demanding process. It is not as demanding as article 49, but it would require treaty amendments. In the first place, it

would require someone to propose Scotland's accession. That would have to be done by a member state—the United Kingdom, I presume—so there would be a political issue to be addressed. As Michael Keating says, one assumes that the United Kingdom would be willing to do that under the Edinburgh agreement, but that is a political question that I am not in a position to address.

Upon a recommendation that Scotland join, it would possibly be for the Council to convene a convention of member states and the institutions to discuss the terms of entry. That could be circumvented, but there would still need to be an intergovernmental conference of all the member states to discuss the terms of Scotland's admission. At the end of that process, Scotland's entry would need to be ratified by all member states, so it would still be a fairly onerous process. I am not entirely sure whether that could be done in the 18-month period between the referendum and the proposed date of independence. It would be possible, but there might be political stumbling blocks.

Those are the main legal issues. I do not see a particular legal problem. Article 48 seems to provide a plausible route and, failing that, article 49 does, too. Given that Scotland is already complying with European Union law, I imagine that, if the political will existed, the process could be fairly smooth.

Dr Colin Fleming (Economic and Social Research Council): I have provided a brief on the external affairs aspect and defence, particularly regarding NATO. The defence blueprint in the white paper is a sensible one that gives us as much pre-negotiation detail as it can. Of course, any negotiations would have an impact on what is or is not deliverable.

In terms of NATO membership, defence structures and commitments to personnel, the Scottish Government is trying to reassure not only the Scottish people but the rest of the United Kingdom and, importantly, potential future allies that it takes its defence responsibilities seriously, and that comes across. It is important to reiterate that the white paper has not been able to tell us everything. That is partly because negotiations will be required on issues such as Trident, the division of assets, NATO and the security provisions that Scotland might take on as part of the EU. Therefore, we cannot get a full sense of what all that will look like.

On NATO, the Scottish Government has been attacked on several fronts by those who oppose independence, particularly through the defence analysis of the UK Government but also in proceedings of the House of Commons Scottish Affairs Committee and Defence Committee. Those

committees have highlighted—correctly, I think—that Scotland would not be able to join NATO if it did not sign the strategic concept. I accept that and, in the white paper, the Scottish Government has now accepted that. If that had not been the case, membership of NATO would have been very problematic. As it is, the Scottish Government has said in the white paper that it will sign the strategic concept, and that deals with the main barrier to Scottish membership of that organisation.

Of course, there are other issues that are tangled up, and not just in defence: NATO membership, the division of assets and co-operation with the rest of the United Kingdom should there be independence. Trident is probably the most salient issue, and there is time to reflect on that important issue. The UK Government would want the Scottish Government to give it time on the removal of Trident, and it would also be important for allies in NATO that what would become the RUK would not be forced into nuclear disarmament. However, I have read the white paper thoroughly and I have not seen it said anywhere that the Scottish Government would force the United Kingdom to disarm its nuclear deterrent.

The white paper does say that the Scottish Government has a view to the removal of Trident within seven years. There is a range of viewpoints on that. The Scottish Campaign for Nuclear Disarmament talks about two years, and some analysts talk about perhaps 15 years. I think that seven to 12 years is a realistic framework, but again that will be subject to negotiations. It is important that that is kept in mind.

On other aspects of the defence section, in particular I thought that the approach to how the Scottish defence forces would form was very sensible. It would not, of course, have been credible to say that a Scottish defence force would be up and running on day 1 of independence. I think that the right approach is a phased one with a transition over 10 years, which will entail close co-operation with the rest of the United Kingdom.

We get a sense that all those issues—NATO membership, the removal of Trident and defence co-operation—are tying together and will have to be negotiated as a whole.

Defence co-operation is a very sensible way to go. Over the past few years, there has been a normalisation of defence co-operation, which is intensifying with NATO's smart defence initiative. We are also seeing the merits and usefulness of defence co-operation in other aspects in Europe. The best example for Scotland is Nordic defence co-operation in NORDEF. Co-operation is a normal part of defence and international relations, and we will continue to co-operate. I think that, if there is independence, it would be in the best

interests of both states to co-operate closely on defence and security.

Perhaps I could talk later on about recruitment and the threats that are posed to Scotland. There is a lot in the white paper.

I found interesting the discussion in the white paper about defence forming an integrated part of an overall framework with other departments in the Scottish Government. I am reassured by that and think that it is the right way to go, but I would like to see more information about how the Scottish Government could unpack that. What does it mean? In the UK, these sorts of issues are interlinked, but the usefulness of that has not always been apparent. Indeed, in the Ministry of Defence's annual accounts monitoring these sorts of interdepartmental work, the targets are often not met. It would be interesting to see how the Scottish Government would assess how such targets would be met in the future, or, if it did not use targets, what measurement we would have for that in evolving a defence structure that is embedded in a deeper sense of Scottish values and the Scottish Government.

The Convener: Thank you very much.

I will open with a question to all the witnesses. I want to get your feelings about the significance of the Edinburgh agreement, which both Professor Tierney and Professor Keating mentioned—including for defence, Dr Fleming. Can the witnesses give me some insight into their feelings on the importance of the Edinburgh agreement and what significance it will have in negotiating in the transition period between the referendum and the date that has been announced as a possible independence day—24 March 2016?

Professor Keating: The Edinburgh agreement is of enormous importance. It is of enormous importance internationally, as it is very rare for two Governments to agree on such a matter. The Canadians never managed to get an agreed procedure, although they had two referendums in Quebec, and the issue has never been resolved in Spain. Stephen Tierney may know some precedents, but I know of very few.

The Edinburgh agreement is a remarkable achievement of both Governments, because it removes at a stroke most of the constitutional and legal problems that might otherwise have arisen. However, it does not resolve the details, negotiations, precise terms, and economic and financial implications, and it does not in itself answer a lot of the questions that are raised in the white paper.

The Edinburgh agreement is of relevance to Europe. Although Europe is not in the agreement, it is implicit that, if the UK agrees on the procedure for Scotland becoming independent, it would

agree on Scotland becoming a member of the European Union, because both Governments knew perfectly well that what was being proposed was membership in the European Union—it was not proposed that we vote on independence outside the European Union. It is quite clear that the UK Government has committed itself in some way to accepting Scottish membership of the European Union.

On the details, the agreement does not resolve the question of how you share the pound, which is problematic. It does not resolve many of the questions that are raised about the relationship of an independent Scotland to the United Kingdom—in particular, questions such as how many regulatory agencies you continue to have, what is meant by the social union and how much of the infrastructure of the United Kingdom would remain after independence. All those issues are yet to be negotiated. That is in the event of independence, of course—we are assuming that there is a yes vote in discussing these things. All those issues would have to be negotiated. That is why it is going to be a very complicated process.

Professor Tierney: The important provision is the commitment in the Edinburgh agreement to respect the result. Given that the referendum legislation has been passed—the acts are very good pieces of legislation, in my view—and is likely to lead to a fair, lawful and democratic referendum, there should not be anything about the result that would lead the UK Government not to respect it. If there were a yes vote, that would presumably include helping to facilitate Scotland's membership of international institutions.

We are not considering this today, so I will just say this briefly. One of the key things that other international institutions such as the United Nations and international treaty bodies consider if one state breaks away from another is the attitude of the state that is left behind. If that state is co-operative and willing to recognise the state breaking away, the rest of the international community usually falls into line.

The European issue is a bit more complicated. The Edinburgh agreement would seem to commit the UK Government to helping to facilitate Scottish entry. As Michael Keating suggests, it would be in the UK's interests to do so. However, that does not really affect the terms of EU admission, and there are a number of big issues there, such as the currency, the common travel area and the protocol on justice and home affairs. It might be that other European states would have strong views on one or more of those issues, regardless of the attitude of the United Kingdom.

I do not want to say too much about the currency issue, but my understanding is that the Scottish Government hopes to negotiate a

currency union with the rest of the United Kingdom. Were that to be problematic, and were the conditions and terms that the UK Government sought to impose for such an agreement to be difficult, is there a proposal by the Scottish Government to consider the euro as a fall-back position? What would be the attitude of the European Union to that?

The Edinburgh agreement would certainly seem to facilitate UK co-operation, but it does not entirely clarify what the terms of negotiation would be, particularly on the part of other European member states.

The Convener: Dr Fleming, before I ask you to comment on the general question of the Edinburgh agreement, I point out that, on page 10 of our briefing papers, there is a paragraph referring to what would happen “at the midnight hour”. I think that it was David Edward who said this, but one of the key things that jumped out at me is that

“all the waters between Scotland and Norway would cease to be within the jurisdiction of the EU”

if we did not negotiate staying within the EU, which would be

“an important security consideration quite apart from fishery rights.”

I would like to hear your comments on the general question of the Edinburgh agreement, but could you first address that point about the implications for defence if either Scotland is not supported by the UK to be a member of the EU and all those treaties end or the UK withdraws from the EU? In the latter case, would there not also be an issue?

Dr Fleming: I echo Michael Keating’s earlier comments. Scotland is very unlikely to be outwith the EU if it votes for independence. I was not aware of the argument that has been referred to. It is not a view that I share at all.

There are different mechanisms to protect Scottish waters. One is NATO, and we can talk about that later. Within the European security architecture, there is movement towards the protection of maritime zones, which is very important for the EU. That also provides for non-EU states to be involved directly. It would therefore be in no one’s interests for the other argument to come to fruition.

With regard to the defence debate, three key areas of strategic importance for Scotland if it became independent would be the North Sea, the western and eastern Atlantic and the high north. In my mind, there are security provisions in place for taking over the defence role, which I think the EU would accept, as would Scotland’s neighbours in NORDEFCO. We can discuss later how that would work in a NATO context, but I would not agree with the view that you have mentioned.

10:30

The Edinburgh agreement is—to echo my colleague’s words—very significant, partly for that reason and also because it will give Scotland the ability to form its defence forces and capabilities. The Edinburgh agreement includes an agreement to co-operate on those issues, which is in the interests not just of Scotland but of the rest of the UK, which has a large number of bases. The UK Government’s defence analysis paper sets out a range of areas where it has bases and interests, and it would be in the UK’s interest to keep those going for some time—perhaps with a view that they could remain in Scotland after the 10-year period.

That issue is very important. Of course, Scotland will need the help of the rest of the UK to a certain extent as it builds its capabilities. NATO membership is also very important, but I do not think that that will be a problem for Scotland, as most NATO members would be happy for Scotland to join.

Michael Keating mentioned that some EU states would not want membership for an independent Scotland, but I think that the decision will come down to political rather than legal questions. Politics would find a way. Scotland is certainly a very important strategic actor; its geostrategic position is very important and, as new threats from climate change arise from the high north and the Arctic, that importance will increase. It would be in the best interests for both states to have membership, and the Edinburgh agreement will facilitate that quite well.

The Convener: We will come back to many of the examples that you have raised, but first I will open up the meeting to questions from my colleagues.

Clare Adamson (Central Scotland) (SNP): Professor Keating’s evidence mentions the implications of having a hole in the single market, even for a small amount of time, and how that would be particularly unhelpful. We have heard on a few occasions that, if the political will is there, a degree of pragmatism in how the EU operates will enable some of the legal issues to be solved.

Can the panel give us some more information on how unhelpful the hole in the single market would be, not from Scotland’s perspective but from the perspective of the rest of the UK and other EU nations in relation to EU nationals resident here and the EU treaties that Scotland would, for that period, no longer be party to?

Professor Keating: If that were to happen somehow, it would mean that Europeans working in Scotland would no longer have the right to work here; students studying in Scotland would no longer have the right to study here on the same

terms as Scottish students; investors who are investing here would no longer be treated as Europeans; and European firms would not be eligible to contract for public procurement on the same terms as Scottish firms. In addition, it would mean that European competition policy would cease to apply, so the Scottish Government could give certain privileges to its own firms without having to exercise the principle of non-discrimination.

A hole in the single market would also mean a great deal of uncertainty about the exact legal provisions for business. In so far as Community law has not been transposed specifically into Scottish law, uncertainties could arise as to which law would apply. Spanish fishermen, for example, would be excluded from Scottish waters and the UK Government and UK businesses could be disadvantaged because of uncertainty over whether Scotland would remain in the EU and the terms under which it would remain. There would be a penalty for business on both sides of the border, given Scotland's importance as a trading partner for the rest of the UK and given that important investment flows in both directions. Such a move could be highly disruptive and I cannot see in whose interest it would be.

Hanzala Malik (Glasgow) (Lab): I want to ask Michael Keating a few yes-or-no questions to allow me to build the question that I ultimately want to put. You have very enthusiastically made it clear that, if there were a yes vote in the referendum, no one would veto Scotland's membership of the EU because to do so would be in no one's interests. However, are you in a position to guarantee that that would happen?

Professor Keating: No, I cannot guarantee that. Only the 28 member states can do so.

Hanzala Malik: Indeed. So one might surmise that there is no guarantee of membership.

Professor Keating: There is no legal guarantee.

Hanzala Malik: Indeed. This is a fundamental question with regard to EU membership. If you are saying that there is no such guarantee, I have to take that as fact.

You also said that NATO membership should not be a problem. What would happen if NATO decided that in order to be a member Scotland had to have Trident, which is something that the Scottish Government would not want? Would that not cause problems?

Professor Keating: I think that I know the answer to that question, but I will pass it to Colin Fleming, as this is his field.

Dr Fleming: I am sorry—can you repeat the question?

Hanzala Malik: The Scottish Government has said that it would like to be a member of NATO, but it has also made it clear that it would not want Trident on its soil. What would happen if NATO said, "If you want to be a member of the team, you'll have to meet certain responsibilities, one of which is the defence mechanism—in other words, you have to retain Trident." Could that be a problem?

Dr Fleming: No, I do not think so. As I have said, it would have been a problem if the Scottish Government had said that it would not sign the strategic concept—that would be a major barrier to membership—but the concept itself reaffirms that NATO is a nuclear alliance until such time as nuclear weapons can be completely eradicated. As a result, it would be signing up to the fact that it is a nuclear alliance.

That said, only three of the 28 members of NATO are nuclear powers—

Hanzala Malik: That was not my question.

Dr Fleming: My answer to your question, then, would be no.

Hanzala Malik: Let us keep things specific. We are talking not about other countries wanting to join the European Union but about Scotland and the Scottish Government's aspirations. If the Scottish Government's aspiration is to be a part of NATO without having Trident, what would happen if NATO decided that, in order to be part of NATO, Scotland would need to keep Trident? Would that situation be easy to resolve?

Dr Fleming: If Scotland votes for independence, it will be the Scottish Government and Parliament's right to say that they are not going to have nuclear weapons if that is what they wish. I do not think that that would be a barrier to NATO membership.

Hanzala Malik: How would you substantiate that claim?

Dr Fleming: As I was saying, there are many examples of other NATO member states that do not have nuclear weapons; in fact, it is the norm among those states.

A major barrier would arise if the Scottish Government forced the UK to remove nuclear weapons within a very short timeframe and, in that respect, I think that suggestions of two years are very wide of the mark. If that kind of timescale were forced, that would be a barrier to NATO membership. I do not think that it would be a barrier in the long term, but it would be a barrier in the short term. That is understandable from a UK perspective, and we also have to factor in United States interests.

Hanzala Malik: One issue with regard to some of the other countries that do not have nuclear weapons on their territory is that they have not necessarily negotiated that; it may just be that geographically their countries are not suitable for those weapons. I just wanted to tease that issue out a little.

The other thing that I wanted to come back on is the Edinburgh agreement, which has presumed that the rest of the UK is automatically obliged to assist Scotland to join the European Union. Where did that idea come from? Why would the UK be automatically obliged to help? What if it decided that it did not need to do it?

Professor Keating: Nobody has said that the UK would automatically be obliged to facilitate Scottish membership. What I said was that it is implicit in the Edinburgh agreement that the UK would recognise an independent Scotland and that it would therefore recognise the Scottish right to join the EU, as every democratic state in Europe has that right.

Hanzala Malik: Not necessarily. How does that become—

Professor Keating: If you go back to the treaty of Rome, it says—

Hanzala Malik: Recognising a country as an independent country is one thing, but wanting it to join the European Union is a different matter altogether.

Professor Keating: I said that it was implicit. No UK Government minister has ever denied that Scottish membership of the European Union would be part of becoming independent, because that is what is being proposed by the yes side in the referendum.

Hanzala Malik: Indeed.

Professor Keating: We have all said that the negotiations would be difficult and that there would be a lot of haggling. Also, if you want guarantees, there is no guarantee that the United Kingdom will be a member of the European Union after 2017—

Hanzala Malik: Yes, but if—

Professor Keating: All of that is in flux and all that we can do is make a reasonable judgment on the balance of interests and how the legal questions can be dealt with. We cannot give guarantees.

Hanzala Malik: I just wanted to clarify that particular point, because the point that has been made is that, if a yes vote is successful and Scotland votes for independence, that does not necessarily mean that the rest of the UK would support our membership of the European Union. Are you guaranteeing me that it would?

Professor Keating: None of the 28 members has ever said that it will not allow Scotland in the European Union. The countries have been asked that question and they have refused to say, “We will veto Scotland.” I have a quotation from the Spanish Prime Minister in which he avoids the question.

Hanzala Malik: They refuse to say yes.

Professor Keating: The UK Government also has not said that it would veto Scotland. That would be a simple thing to do: it could make its position clear and say, “You can become independent but you won’t be allowed in Europe.” It has not said that.

Everyone has said that the question of membership is about the terms, transition and negotiation. It is about applying and going through the process, and the argument is about the details of those terms, how long it would take and what Scotland would have to accept. That is where the argument has been.

Hanzala Malik: I accept what you say, which is that none of the Governments has said that it would oppose European Union membership, but none of them has said that it would encourage it either, and the point that I am trying to make is that there is no clarity. That is why I asked earlier whether you could guarantee me that nobody would use their vote to prevent Scotland’s membership.

The Convener: I want to pick up on a point about the Edinburgh agreement. In my opinion—I hope that you will clarify this—it is a legally binding agreement between two Governments to respect the outcome of the referendum, so I want to ask about what that means in relation to the European Union and to international obligations and institutions. What is your opinion on what the agreement actually gives both Governments in terms of a framework to negotiate?

Professor Tierney: There is not a great deal of detail on those substantive points. The Edinburgh agreement was really about the process of the referendum, to reach an agreement on how the referendum itself would be conducted. The crucial phrase for members’ discussions is the one regarding the commitment to respect the result, and I can see the point that Hanzala Malik was trying to make.

10:45

I agree with Michael Keating’s argument that the white paper, which is a fairly detailed document, makes it clear that the yes vote is a vote for Scotland in a European Union. The commitment to respect that result is a commitment to help to facilitate the implementation of that result. That is

not to say that the terms would be easy, but that is how I would read it.

The other important point with which I would supplement the discussion is that European law is its own system—it cannot be considered as just a branch of international law—and the Court of Justice has been making significant strides to emphasise the rights of citizens of Europe and the importance of ensuring that citizens of Europe are not excluded from exercising them. On a number of occasions, individuals have found themselves in one country or another and the Court of Justice has stepped in to ensure that their rights, as citizens, are protected.

David Edward has been arguing that the Court of Justice might well take a view that there would be a duty to negotiate on the part of member states to avoid the kind of period that Michael Keating was talking about, wherein not only would citizens of Scotland find themselves outside the EU but people who usually fish in Scottish waters would find that they could not, students from EU countries would be hit with overseas fees and so on.

David Edward is a former judge in the Court of Justice, and he has examined the situation not so much from the perspective of the UK's obligations but from the perspective of obligations that might well be on the EU organisations themselves to enter into negotiations for Scottish entry. That is the perspective from the European side, rather than from the Edinburgh agreement side.

Roderick Campbell (North East Fife) (SNP): Could the panel comment on the argument that an independent Scotland would be excluded from the EU? Do members of the panel agree that that mistakes the nature and purpose of the EU, which, I suggest, is enlargement rather than contraction?

Professor Keating: Yes, I think that it does. The founding treaty of the EU—the treaty of Rome—states that the idea is that, eventually, all of Europe will be part of it. You can have arguments about where Europe stops and whether it includes Turkey—the view was taken, for instance, that it does not include Morocco—but it certainly includes Scotland.

That would be one of my starting points: the explicit commitment to eventually admit all qualifying European countries. At the moment, the commitment is to include the whole of the western Balkans, and then to talk about some sort of association agreements with some countries further to the east. The other countries would certainly like Norway, Iceland and Switzerland to join—there is an open door for them; no one is trying to keep them out.

That is the kind of thing that motivates the whole process of European integration: an attempt to

create a single space. If there is a preoccupation in Europe in the moment, it concerns the possibility that the UK might leave. That is the big fear in European countries, as that would mean a step back for the entire process.

Roderick Campbell: Does anyone else want to comment?

Professor Tierney: I echo that sentiment. Integration is the issue, and Scotland would seem to be an important territorial area for the EU, for all kinds of reasons related to wealth, fisheries and so on.

Roderick Campbell: Professor Keating, you said that you were disappointed with the Scottish Government's vision in the white paper with regard to Europe. Have you read the Government's "Scotland in the European Union" document?

Professor Keating: The recent one?

Roderick Campbell: Yes.

Professor Keating: Yes, I have read that. It seems to me simply to expand on the white paper, and I have the same criticism of it, which is that I do not see in it a vision of Europe that is substantively different from the UK vision of Europe. That is what I would have expected to be offered as part of the independence package. There are political reasons for that, because there are divisions in Scotland about Europe, just as there are in the rest of the UK.

Roderick Campbell: There is within the document a section in an appendix that deals with the role of small states. It talks about Denmark's role in debates about what vodka is and Sweden's role in pesticides. It presents a vision of Scotland emulating similar small states in Europe.

Professor Keating: Yes, but "similar small states" is not an analytical category. Finland is in the euro but Sweden and Denmark are outside the euro. Denmark is shadowing the euro—it is pegged to the euro—but Norway is not. All the Nordic countries have a different relationship with the European Union.

I venture a few questions that I would want to ask. The first is about migration. This morning, on the news, the UK Government said that it wants to restrict freedom of movement within the European Union. I would expect the Scottish Government to have a different attitude because it has a different attitude to migration. That would create various difficulties if we had a single travel area. Which direction is Scotland going to go in?

There is also an issue in the area of freedom, security and justice, which is in the justice and home affairs field. The UK opted out of that and then adopted several of the EU measures. The UK had to decide whether to opt in or out completely

by 2014 and it decided to opt out completely but to try to negotiate its way into some of the provisions. The Scottish Government's position was quite different—it did not want to opt out. However, in the white paper it says that it will opt out and opt back in again, so it is adopting the same view as the UK Government on that. There may be some practical reasons for that, but the issue needs to be addressed.

The treaty on stability, co-ordination and governance, which was signed last year by everybody except the UK and the Czech Republic, is about fiscal co-ordination and incorporates a lot of things that already existed but in a stronger way. That is pointing towards greater monetary and fiscal co-ordination with, eventually, some kind of banking union. It even includes states that are outside the euro. The UK Government said that it is going to opt out of that, but I would want to ask the Scottish Government whether it wants to opt into that. A small state is extremely vulnerable, and we may need a rescue package at some time in the future—the UK may, too. Who will our friends be? Will we look to the UK and the Bank of England for bail-outs, or is there a European framework for that? Do we want to go towards a European banking union? If we do, can we keep the pound?

Those are a few of the issues that are on the agenda at the moment. My question was more generally about the direction of travel, but those questions are going to become more relevant in Scotland within the next five or six years. Scotland will have to decide whether it is going to follow what is emerging as the UK view, which is to try to opt out of things as much as possible—in its position on the treaty on stability, co-ordination and governance, the UK is very isolated—or whether it wants to join the rest of Europe and what the implications of that will be.

Roderick Campbell: Do you have anything to say on that, Professor Tierney?

Professor Tierney: No, I have nothing to add.

Roderick Campbell: On the question of guarantees, do you have any general comments on the UK Government's no pre-negotiation position as regards relations between Scotland and the rest of the UK, which somewhat skews the argument and discussion?

Professor Tierney: The Electoral Commission's report on the referendum process seemed to suggest that given that a key principle of the referendum is that voters should be as well informed as they can be, it would be in the interests of voters if, in advance of the referendum, the two Governments were to lay down some form of agreement on what the terms of negotiation would be in the event of a yes vote.

From the perspective of providing the best information for citizens, it would be in people's interests for the two Governments to do that in advance. That is a politically naive point to make, I assume, but that seemed to come out of the Electoral Commission's report.

Hanzala Malik: I agree that for an approach to be user friendly, people ought to know all the options, but one must take account of the other side in the debate, which is suggesting that there will not be a yes vote. In that case, why go through the whole process of coming up with a solution to something that is not going to happen?

Professor Tierney: I understand that. The elaborate Scotland Act 1978 was passed but never implemented when devolution was not voted for. There is a half-way house, which could be to look at headline principles, for example whether access to the European Union would be facilitated and whether the UK would facilitate a currency union and allow discussion with the Bank of England to be entered into.

Hanzala Malik: Those are strategic issues; I do not think that anybody wants to open up those books at this early stage.

Professor Tierney: I understand that there are many political reasons not to do that in the middle of a referendum campaign. However, I am not speaking from that perspective; I am simply giving my interpretation of what the Electoral Commission was saying would be in the interests of citizens.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I am interested in the concept of citizenship that the two professors have mentioned and which is covered in their submissions. I want to open up the discussion to include the significance of that topic.

Although we are in a debate, there has been a lot of bluff and bluster, possibly on both sides of the argument, on the notion of guarantees. Perhaps our unionist members are trying to create a culture and a sense of doubt among the community and to put a false focus on that. The message that I take from what has been said is that, in the spirit of co-operation, with the agreement of the UK Government as enshrined in the Edinburgh agreement, a different realpolitik would come into play, rather than the doubt that might be being instilled in people's minds.

Will you tell me a wee bit about the importance of citizenship in the European Union? Professor Keating's paper says:

"Scottish citizens are EU citizens and could not be deprived of their rights arbitrarily."

That was a very useful comment to make. Will you expand on what that would mean were there to be a yes vote?

Professor Keating: Yes, but before I hand over to Stephen Tierney on that one, let me just say that that is an argument that has been put. I am saying not that it would be legally enforceable, but that the point is arguable. That picks up Sir David Edward's point, which Stephen Tierney mentioned, that we are talking not about two states but about the rights of individuals and how they might be affected. Stephen knows more about that than I do.

Professor Tierney: The notion of citizenship is a strong commitment of the European Union, as it has been for some 20 years. Were Scotland to find itself suddenly outside the European Union for a time, that would affect many of the core issues of free movement—in both directions—and the right to work, and it would impact on students studying here. Therefore, a yes vote would have practical consequences for Scots and other Europeans living in Scotland.

Given that the European Union takes citizenship seriously and the problems that would be caused, logically it would be sensible for the European Court of Justice, for example, to step in and say that the situation would be avoided through a process of negotiations. Citizenship is such a key component of European expansion or integration that it is incumbent on member states and institutions to negotiate to ensure that citizens' rights, including those of Scots and other Europeans affected by such a situation, are respected and that the deleterious consequences of Scotland suddenly being outside the European Union are avoided if possible. That matter is fairly clear and straightforward and I do not see that it would create any controversy for most people.

The bigger issue, to which Michael Keating and I have alluded, is what the negotiation terms for Scotland would be. As a lawyer, I find it strange that people are perhaps getting caught up on the legal issues that do not seem to be all that significant. Far more problematic for an independent Scotland would be under what terms it would be admitted—that is when the hard negotiations would start.

In a nutshell, on the citizenship issue there is a pretty clear direction from the European Union, to get heads down and negotiate.

11:00

Willie Coffey: Absolutely. That is extremely interesting.

The same could be said about citizens of the remaining part of the UK. Neither the citizens of

the rest of the UK nor the citizens of Scotland have expressed a view about leaving the EU; the Scottish people are not even being asked about that in the referendum, so it would be odd to suggest that Scottish citizens would somehow be forced to leave the EU when they had not been asked about it, while the citizens of the remaining part of the UK would somehow remain in it. I fail to see how such different scenarios could apply. In my view, the same one would apply to both countries at that point: the people of both countries would remain citizens of the EU. From what you say, there would seem to be more of a push for the pragmatic politicians in the EU to recognise that and for the rights of citizens to rise above some of the concerns that we have heard about in the debate to date.

The Convener: Do any members of the panel wish to comment?

Do you have any further questions, Mr Coffey?

Willie Coffey: No.

Jamie McGrigor (Highlands and Islands (Con): First, I would like to thank the panellists for their submissions; I think that they were given a rather difficult task. Professor Keating mentioned the word "guarantees", and undecided voters will be looking for guarantees. The difficulty is that, from what I can see, I think—like the panellists—that the white paper does not give any guarantees.

Professor Keating said that he agreed, more or less, with the conclusion of Professor Tierney's submission, which seemed to be that the likely scenario—this is backed by the President of the European Commission—is that, in the event of independence, Scotland would be considered a seceding state and, therefore, the international treaties and memberships that are currently held by the UK would continue to be held by the UK without Scotland, with an independent Scottish state having to renegotiate those treaties and membership of the EU and NATO. Do you agree?

Professor Keating: Yes, although the treaties are another thing. There are ways in which existing treaties can be continued in seceding states. That has happened in the Czech Republic and Slovakia, because there are thousands of them. However, for membership of NATO and the EU, it is the case that Scotland would have to join and the rest of the UK would remain the member state.

Jamie McGrigor: That being the case, Scotland would be outside everything for a bit. It would not be in the EU, because its membership would have to be renegotiated.

Professor Keating: As I understand it, that could be done simultaneously with the process of negotiating independence.

Jamie McGrigor: That is not what I take from the conclusion of Professor Tierney's paper.

Professor Tierney: No, I think that that is the case within the EU. The point that I make is that, at a technical level, Scotland would be seceding from the UK and the UK would continue as a member of all the international organisations.

Jamie McGrigor: Surely it is inevitable that an independent Scotland would have to negotiate an out from the Schengen agreement, from the euro and from justice and home affairs, if it wanted to. Adherence to the Schengen agreement is an obligatory condition for any joining country, is it not? That would result in border controls between the UK and Scotland, unless the UK decided unilaterally to dismantle the common travel area, which I am told is highly unlikely.

Negotiating such opt-outs would delay any future membership. If that were the case, what would happen with things such as the single farm and environmental payments that farmers receive? You mentioned fisheries. Are you suggesting that Scotland would have sole access to the waters off its coast? You said that the Spanish could be kept out, but the common fisheries policy already keeps the Spanish out to a great degree, because they do not have a track record for a lot of species.

All these things are unknowns. You say that you cannot give guarantees, and I am not looking for guarantees, because nobody can give absolute guarantees on anything. However, I am looking for advice on what voters can look for on those sorts of issues. For example, what about single farm payments? Where will they be paid from?

Professor Keating: The proposal in the white paper is that Scotland would accede to the EU on the same terms as the UK has at the moment. I find that there is a certain lack of imagination in that notion, but I can see the reasons for it as it enormously simplifies all those kinds of things. Remaining outside Schengen and in the single travel area would be a lot easier to negotiate than getting into Schengen. If Scotland were to adopt Schengen, which it would be open to it to do, it would be really complicated. Maintaining the present free travel area and the Schengen border would be a great deal simpler.

The Scottish Government's proposal is that the single farm payment—all those things—would remain in place. I suspect that there would be a lot of haggling about that, but the point is that for all such things work would be done simultaneously with the other independence negotiations, which would also be very complicated, so that the accession could be arranged to take place simultaneously with the date of independence. My criticism is that the Scottish Government may be

underestimating the complexity of such negotiations and the time that they take, but I do not see a problem in principle in proceeding that way.

Jamie McGrigor: I am not a Eurosceptic and it worries me greatly that Scotland would find itself out in the cold, literally on its own. You made the point about fisheries. The UK has bilateral fisheries agreements with a lot of other countries. Is it your opinion that those agreements would continue with an independent Scotland?

Professor Keating: Maybe Stephen Tierney could say something about succession to treaties.

Professor Tierney: Succession to treaties that are not European treaties is a lot more straightforward, although there is disagreement among international lawyers on whether states that are willing to continue with commitments automatically succeed. A safer way is to send a note that says, "We're a new state and we intend to succeed to the following treaties," and I think that there is a commitment to do that in the white paper.

The white paper could not contain guarantees. It is a paper by the Scottish Government and guarantees could come only from the UK Government and the EU. If there is a search for further clarity on what would happen to Scotland after independence, it should be made elsewhere.

Another interesting question that I have considered is whether, when it comes to European negotiations, there are lines in the sand and things that the Scottish Government would not be willing to accept. It is clear from the white paper that

"There are no circumstances in which the Scottish Government would countenance any measure being taken that jeopardized the ability of citizens across the rest of the UK and Ireland to move freely across our borders".

It seems very clear that the Scottish Government is saying that the common travel area is a line in the sand. There might be a lot of such issues and it would be very useful if there was some discussion by the two Governments to bring out what would be in the interests of both Scotland and the rest of the UK in such areas.

Another question is: would citizens get a say on such matters? People voting in 2014 presumably are voting for an independent Scotland that would be in the EU, but what would the terms of that membership be? Is there an argument for a broader popular process at the end of that, to see whether Scottish citizens are satisfied with the terms of entry to the EU?

Jamie McGrigor: The Chancellor of the Exchequer, George Osborne, has stated quite clearly that a currency union between an independent Scotland and the rest of the UK

would be very unlikely. However, I understand that Danny Alexander, the Chief Secretary to the Treasury, has pointed out that in the event of this actually happening, decision-making powers regarding taxation and budgeting would still be situated in London, which would then be a foreign capital. Therefore, if Scotland seeks independence, it would give away significant amounts of sovereignty and powers straight away if it did things that way.

I understand that the other option, which Alex Salmond wants—Dennis Canavan seems to want a different currency, but Alex Salmond seems to want to keep the pound—is sterlingisation. In that case, who would be the lender of last resort, for example? The white paper does not tell us that.

Professor Keating: Yes. You have to go into the details to see the difficulties of that. There are different ways of using the pound, and there is a difference between using the pound and sharing in the management of the currency. Using the pound is quite straightforward—you do not even need anybody's position on that—but then you would be entirely dependent on decisions that are made in London, as you suggest. Monetary policy and interest rates will be made in London, and there would be a lack of a lender of last resort.

The Scottish National Party proposes a currency union in which it would somehow share not only sterling but the management of sterling. That seems to me to be much more problematic and the UK is saying that it will not necessarily give that. Even if the UK conceded that Scotland could use the pound sterling, I do not see it sharing the management of the pound in the sense of allowing Scottish representation on the court of the Bank of England or a specific Scottish input to the making of monetary policy.

We know from the experience of the eurozone that a monetary union needs some kind of fiscal co-ordination on taxes and deficits. The Scottish Government proposes that there would be some kind of fiscal pact with the rest of the United Kingdom, as there is in Europe, but it is inevitable that such a pact would be asymmetrical, because Scotland would be the junior partner and the UK would be the senior partner. It seems to me that, once we get into the detail, some very difficult questions still have to be answered.

Jamie McGrigor: I believe that the First Minister of Wales, for instance, has pointed out that there could well be referendums in all the UK countries on whether the currency union would be an option. What would happen if, for example, Wales decided to use a veto?

Professor Keating: Wales does not have a veto. There is no equivalent of the Edinburgh agreement with Wales saying that the Welsh

people will be able to decide certain kinds of things. With all respect to the First Minister of Wales, the issue will be between the Scottish Government and the UK Government.

There is a very asymmetrical power relationship there, and it seems to me that Scotland will always be in the weaker position if it tries to share a joint currency with the United Kingdom. Even if the United Kingdom concedes it, there is a disparity of power and influence and, as you say, that attenuates sovereignty. Independence would be gained, but lost on the monetary side. Perhaps that is the way the world is, but we have to accept that that would reduce independence in its classic, traditional sense. There would be a strong degree of dependence there.

Of course, as you have said, other people say that we could have our own currency. That raises a different set of problems. Colleagues in our project from the National Institute of Economic and Social Research are investigating that. They have done some very interesting work on what the appropriate thing would be for Scotland, assuming that it becomes independent, and have concluded that sharing the pound is not necessarily the best option for an independent Scotland to take.

Jamie McGrigor: Okay. That is fine for the moment.

The Convener: I would like to clarify an issue around pre-negotiations. The governor of the Bank of England has offered discussion on currency union and how it will work. We should always remember that the Bank of England is independent of the Government and that it does not matter what the UK Government says in this respect; the Bank of England will make the decision. Is the UK Government being unreasonable? Would it be more practical for it to have the sense that the governor of the Bank of England has and to enter pre-negotiations?

11:15

Professor Keating: To come back to Stephen Tierney's point, in an ideal world the UK Government would do that. Politically, however, I do not think that that is going to happen. One of the things that the no side has going for it is uncertainty; given that it is to its advantage to maintain that uncertainty, it is not going to give it up.

Of course, the yes side is trying to say that there is certainty, but it cannot guarantee that, either. None of us can guarantee certainty; all that we can do is model scenarios with the instruments that we have. We have said some things with a degree of confidence, but on other matters, all that we can say is that we do not know. There are uncertainties and things that have still to be

resolved, and part of our project is to try to clarify them. Politicians will not do that, because they have an interest in not doing so.

We have made progress in clarifying some issues; for example, I think that we have made progress on EU membership and our colleagues have made progress on the currency question. In a political world, however, we cannot give guarantees.

The Convener: Is it unreasonable for the no side to be demanding guarantees from the yes side without providing clarity itself?

Professor Keating: That is a political question, so I will pass.

Roderick Campbell: Page 12 of Professor Tierney's submission says that there would

"be a need for treaty amendments"

if Scotland were negotiating EU membership. I presume that that would happen in parallel with negotiations on continued membership, which the UK Conservatives have pledged—if they are returned with a majority at the next election—to carry out prior to a referendum in or around 2017. As a result, there could be a lot of negotiations going on that could lead to treaty amendments.

Professor Tierney: My understanding is that if the Conservatives win the next UK general election they will be interested in beginning a process that would lead to some treaty amendments that they would want in advance of an in/out referendum. The most obvious route for that would be article 48, which is what is proposed by the Scottish Government. There could be parallel processes at that time, although that is still some way away.

The Convener: The next member to ask questions will be Patricia Ferguson. As I want to give Patricia the bulk of the time that is left, I ask anyone with a quick supplementary to let me know now.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Good morning. I thank the witnesses for their helpful submissions. First of all, though, I think that the scenario that my colleague Rod Campbell has just highlighted would serve to further muddy the waters for Scotland and, perhaps, make it even more difficult for a newly independent Scotland to accede to EU membership.

I want to explore the idea of citizenship. I understand perfectly what Professor Keating has said about the EU not wishing to see citizens of Scotland unilaterally deprived of EU citizenship, but would a court in Europe not take the view that by voting not to be part of an EU member state

Scotland would be giving up that right to citizenship?

Professor Tierney: It is possible to give up European citizenship. If a country votes to leave the European Union and decides that it actively wants to do so, article 50 provides an avenue for that. Similarly, people cannot be forced into the EU against their will. However, that scenario is very different from one in which a territory that is leaving a member state indicates that it fully intends to retain EU membership and to comply with the full terms of that membership.

Patricia Ferguson: What about a scenario in which a country takes a positive decision not to be a part of a member state that itself has EU membership? I realise that the white paper contains commentaries on that issue, but it is not a legal document and so I suggest that it has no more weight than a manifesto—which is what it fundamentally is.

Professor Tierney: Nothing in European treaties makes it unlawful for part of a member state to leave the member state, so there would, on that basis, be no violation of any area of European law by Scotland's doing so. I see that as a separate point.

Patricia Ferguson: As I understand it, the position that Professor Tierney and Professor Keating have now come to is that, if Scotland voted for independence, it would then have the assistance of the UK to negotiate, it would face no legal problems to acceding to membership and there would be no political problems, in that none of the 28 member states would use its veto. Although there might be difficulties in negotiating the terms of membership, it would be possible to do so within 18 months. Is that really what you are saying?

Professor Keating: I think that it would be difficult to do it in 18 months; that seems to be too ambitious and I would not expect the active assistance of the UK. Scotland would have to do its own negotiations, and the rest of the UK would look after the interests of the rest of the UK. Largely, the interests of the rest of the UK would be to ensure that Scotland did not remain outside the European Union for any period of time. The rest of the UK would, of course, be pretty tough in looking after its own interests. It would not be negotiating for Scotland, which would have to negotiate for itself. Apart from that, you have summarised my position.

Patricia Ferguson: Do you foresee no political difficulty with any of the other member states?

Professor Keating: None of the member states has said that it would veto, nor has any even threatened to do so. They have all said that somebody else might do that. It comes back to

negotiating. Some member states would be very unhappy about Scottish independence, so they might be unco-operative. They might try to increase the price, just to show their own minorities how costly independence would be and to tell them, "You might do it, but there is a price to pay." That would be part of the negotiations. On the question whether any of those countries would say that it was a matter of principle, I point out that, in the interrogation of the Spanish Prime Minister he refused, when he was offered the opportunity to do so, to say that Spain would veto Scottish independence. It is not a question of vetoes; it is a question of tough negotiations and how strong Scotland's position would be to get the terms that it might want.

Patricia Ferguson: I think that I am right in saying, however, that the Spanish Prime Minister did say that Scotland would have to renegotiate entry to the EU. I also point out that the Committee of the Regions—although it is not by any means a decision-making body—suggested when it was asked to consider what process a new country such as Scotland would have to use, that there would be a process of negotiation. It then had a vote, which was something like 128 to 14. That is not necessarily representative of the member states, but it gives you an idea of the strength of feeling within the countries concerned about what the situation would be.

The issue of the 18-month period bears further consideration. I wonder whether you think that all the issues, including the Schengen area opt-out and budgetary considerations that the UK currently enjoys could be considered and resolved in anything like 18 months. You have said that you think that 18 months is "ambitious", but how realistic is it? What timeframe do you imagine would have to be applied to negotiations?

Professor Keating: There would not just be negotiation about the EU—it would be about the whole package. It strikes me that 18 months is too ambitious. The original idea was that it would take two years, which would be more realistic, but it came down to 18 months in the white paper. It might actually take a bit more than 18 months, given the complexity of such things.

The white paper says that Scotland would enter, or would want to enter, the EU on the existing terms, which would simplify matters rather than complicate them because there is already a template. If Scotland wanted to renegotiate its terms—in the past, the SNP has talked about fisheries policy—that would be much more complicated. That is, I presume, the reason why the Scottish Government has said that it will simply take the existing terms.

That applies in particular to the Schengen area. It is very difficult to get into Schengen, and

countries have to go through all kinds of things to prove that they have sealed their external borders effectively before they get in. If Scotland does not do that, it will not get into Schengen. There is no question of being forced into Schengen unwillingly, because countries must be willing to meet all the obligations of membership. I do not think that that would be a problem.

The budget would be a problem, financial details would be a problem and agricultural policy, which is a big financial instrument, would be a problem. Details on questions such as whether Scotland will want the same arrangements as the UK for the area of freedom, security and justice would also be problematic. We are getting down to details here, but I reiterate the point that Stephen Tierney and I have made: in the past few months we have made a lot of progress on this, to the extent that we can say that there does not seem to be an issue of principle or a legal obstacle, although there are huge practical difficulties to be overcome. Details and negotiations will be where difficulty lies.

Patricia Ferguson: I might perhaps suggest that Europe might find it more difficult than you do.

Dr Fleming mentioned that he does not think that there is an issue now about an independent Scotland becoming a member of NATO without having Trident and everything that comes with that. I am not by any means a supporter of Trident, but would there not be a feeling among the other NATO countries that there was something slightly hypocritical in the position of a country that said that it wanted to be part of an organisation that fundamentally upholds the principle of having some kind of nuclear defence system but which also says that it does not want such a system in its territory? It strikes me that that would be quite difficult to negotiate around.

Dr Fleming: My personal view is that it would not be a huge problem to overcome. As I said before, most NATO members do not have nuclear weapons. If Scotland democratically—

Patricia Ferguson: I am sorry to interrupt, but Scotland would be saying, "We don't want the nuclear weapons that we already have. We want someone else to take those." That is the bit of it that seems to me to be quite hypocritical.

Dr Fleming: That is not necessarily the case, because they would not be Scotland's nuclear weapons after independence. In that instance, the rest of the UK would want to have nuclear weapons, and I can understand why it might want to do so.

There are several factors regarding NATO membership that are important to highlight. One is that NATO has moved on from its days as a traditional alliance to a position of risk

management—as is set out in NATO's new strategic concept of 2010. If you look on the NATO website, you will see that it has an open-door policy on membership and that it is willing to allow any democratic European state that wants to join to do so. Yesterday, the secretary general of NATO said that partners are important for NATO and NATO is important for its partners. I think that that is true.

It might be right for NATO to ask what Scotland could offer. If Scotland can offer capabilities and defend itself rather than having a free ride, it would be a valued member of NATO, for a host of reasons. The problem with membership of the organisation would come if the Scottish Government said that the UK had two years or less to get nuclear weapons out of Scotland. That would be a massive obstacle. However, if the Scottish Government had a timescale for removal of the weapons that enabled the rest of the UK to think about what it wants to do with them, discuss the future of the system and find a base elsewhere, that would be an important step.

It is important to realise that we are talking about something that is a bargaining chip for both sides. Further, if Scotland votes democratically to become an independent state, Westminster cannot be seen to bully Scotland with regard to nuclear weapons—

Patricia Ferguson: I am not suggesting that. I accept that NATO has an open-door policy and that there are other issues around Scotland having a certain position in the world, but do you agree that, if Scotland wants to join an organisation that brings with it certain protections, one of which is nuclear, and says, "Yes, that's fine, but we do not want it in our country," the other member countries might think that that was a hypocritical position?

Dr Fleming: I cannot answer that question. I have not spoken to all the member states.

Patricia Ferguson: You were suggesting that it would not be a problem. That is my point to you. You cannot really say that.

11:30

Dr Fleming: To echo earlier comments, I do not have the gift to guarantee anything, but you could take the view that if Scotland were to become independent a very different set of rules would apply and strategic rationale and realpolitik would take over. In that case, Scotland can offer quite a lot to NATO. Again, the onus would be on Scotland to demonstrate that it does not want a free ride and that it can participate and can provide capabilities; the white paper goes some way towards defining what those capabilities might be. They would be subject to change and negotiation, but my view is that NATO

membership would not be a problem in terms of the nuclear front.

The white paper also suggests that states that carry nuclear weapons would not be asked whether their vessels had such weapons if they were in Scottish territorial waters, and that is important. It follows the examples of Norway and Denmark, which have a similar don't-ask policy.

Willie Coffey: On NATO, I suppose that one could argue that if there is any hypocrisy in the air it is from folk who say that they are against nuclear weapons but are quite happy to keep them in their own country. As Dr Fleming said, the interesting document—or the only document—is the signatories to the strategic concept, which I think NATO would be more interested in. That open-door approach seems to satisfy everyone in NATO, as 25 out of the 28 NATO members do not have nuclear weapons on their territory.

Dr Fleming: Yes, it would. In the case of the EU, there might be states in NATO that do not particularly want Scotland to be independent, but their view would change in the event of a yes vote and it would be in the interests of the UK and of other European states for Scotland to be in NATO.

It is important to put NATO in context; America's role in NATO is changing and is pivoting towards the Pacific and the middle east, and there is a concern that the Americans will pull out of NATO. There are significant areas where Scotland could enhance the security and defence of the British Isles and of the high north and Nordic region. That will not happen overnight, but in 10 or 15 years Scotland could enhance the security of the region. I think that other states would be interested in that; a lot of Nordic states in particular are watching events with a close eye.

I reiterate that, in my reading of the defence analysis paper by the UK Government and of the other Commons committee reports, it has been highlighted that it would be an obstacle to membership if Scotland did not take the view that the rest of the United Kingdom should have time to find a suitable alternative. If Scotland were to allow time to find a suitable alternative, that would get rid of another barrier to membership of NATO. If Scotland did not do that, it could become a member in the long term, but membership of NATO would be more difficult in the short term.

The Convener: I am aware that we have drastically run over our time, and we have parliamentary sitting time coming up, so the committee needs to stop. I thank all three witnesses for their evidence. We have found it interesting and it has raised a lot of questions that we can take up with the Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities next week.

I suspect, gentlemen, that this will not be the last that you will hear from the committee; I am sure that there are many specific and discrete areas that we can investigate. We look forward to hearing from you again in writing or in person. Thank you for your time.

Our next meeting is next Thursday morning, with the Deputy First Minister. We have allotted a decent amount of time with her, so we need to be well prepared. I look forward to seeing all members then.

Meeting closed at 11:33.

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e-format first available
ISBN 978-1-78392-269-7

Revised e-format available
ISBN 978-1-78392-285-7

Printed in Scotland by APS Group Scotland
