HOUSE OF LORDS

CONSTITUTION COMMITTEE

English Votes for English Law

Oral and written evidence

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The Committee's report on English votes for English Laws draws heavily on evidence taken for the Committee's inquiry, The Union and devolution, the evidence for which is published online at: http://www.parliament.uk/union-and-devolution.

David Beamish, Clerk of the Parliaments—Written evidence (EVE0001)

Impact of EVEL in the House of Lords

Thank you for your letter of 14 June seeking my "assessment as to whether EVEL has had any impact on House of Lords procedures; or on how those procedures operate".

The first part of your question is easy to answer: no, EVEL/EWVEWL has not had any impact on House of Lords procedures. The new procedures set out in House of Commons standing orders 83J to 83X relate to that House alone. Nor, in answer to the second part of your question, am I aware that EVEL has yet had any noticeable effect on how Lords procedures operate.

The procedures are in their early days in the Commons and there has not, to my knowledge, been an occasion as yet when the procedures have shown a difference of view between the majority of English, or English and Welsh, MPs and the Commons as a whole, either in relation to a Bill or a statutory instrument. I expect that the potential effects in the Lords of EVEL / EWVEWL are likely to be political rather than procedural.

Please do not hesitate to contact me should you think I can provide any further information.

June 2016

Rt Hon. Tom Brake MP, Liberal Democrat Party—Oral evidence (QQ 1-7)

Rt Hon Tom Brake MP, Liberal Democrat Party, and Pete Wishart MP, Scottish National Party

Evidence Session No. 1 *Heard in Public* *Questions 1 - 7*

WEDNESDAY 15 JUNE 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Beith
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord Morgan
Lord Norton of Louth

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Examination of Witnesses

Q26 The Chairman: Welcome, Mr Wishart and Mr Brake, shadow Leaders of the House for your respective parties. We are very grateful to you for coming. We are just starting our inquiry into EVEL. We are interested mainly in the impact on the House of Lords but obviously also in the broader constitutional position. Your views, which I hope will emerge in the course of questions, will be of great interest to us. Do you agree that the West Lothian question is a constitutional issue that needs to be addressed, and, if so, in what way?

Pete Wishart MP: Thank you, Chairman, for the very kind invitation to come along to your proceedings this morning. It is a bit unusual to see a Scottish National Party Member in the House of Lords. I would like to reassure all the Scottish viewers who have of course tuned in today that there is no change in the Scottish National Party's approach to this undemocratic House, but we will do what we can to help you with your proceedings because it is important that you look at this.

Do I think that it is a constitutional issue? No, I do not believe it is a constitutional issue, but English votes for English laws should be treated with concern, the proper approach and respect. I have been Chief Whip and Business Convener for the SNP for the best part of the past 15 years. In the Scottish National Party, we have always taken this very seriously indeed. When we looked at the business for the following week we always scoured the legislation to see whether there was a Scottish interest. If there was not one, we did not take part in any of the proceedings on that legislation or any votes on it. There is a practical reason for that, too. I am the Member of Parliament for Perth. Why should I take an interest in the policing arrangements, for example, of Peckham or Plymouth when it has absolutely nothing to do with my constituents? There is a practical element. There is also respect for the asymmetric devolution in the arrangements we have throughout the United Kingdom.

We very much believe that English Members of Parliament should get on with managing their own affairs and that we should leave them to do that. I think they can do it quite well without Scottish Members of Parliament.

I do not think that even the Government believe this is a constitutional issue, because, if they did, they would introduce legislation in a Bill. Instead, they have just changed the rules of the House of Commons to try to accommodate the concerns. If it was a constitutional issue, we would see a constitutional Bill with full proceedings, not just in the House of Commons but in this House too. Obviously, the Government do not take that view. The short answer to your question is no, but there is an issue that needs to be addressed fairly.

Tom Brake MP: Thank you for inviting both of us to give evidence this morning. In contrast to Mr Wishart, I think the West Lothian question raises some constitutional issues. It certainly raises very strong political issues. Anyone who has been out and about campaigning in recent years will know that it is an issue that regularly comes up on the doorstep. I guess it is portrayed as an issue where Scottish MPs are voting on issues that affect England, whereas the opposite does not happen in relation to many things that are devolved to Scotland. It was both a constitutional issue and a very strong political issue.

As to whether what has been brought forward is the solution, my party's position was that the proposal in front of us for English votes for English laws and what has now been implemented by the Government was a useful trial and could be implemented quickly. It fails to address much more fundamental issues about our constitution, particularly how the Westminster Parliament relates to the Scottish Parliament and the impact of a whole suite of devolutionary measures: for instance, the city deals, where we see diversity of decision-making in different parts of the country. They are changing not just the relationship between Scottish MPs and the Westminster Parliament, or between English MPs and the Westminster Parliament, but the relationship English MPs will have with their own regions in decisions being taken perhaps at regional level by city mayors in which the MPs representing those areas will now not have much say.

The Chairman: Thank you very much. To pursue those issues, I bring in Lord Hunt.

Q27 Lord Hunt of Wirral: For Mr Wishart, it is an issue that needs to be addressed, and for Mr Brake it is a useful trial. Do you think there is a better answer than this form of EVEL, with a veto for English and Welsh MPs, and, if so, what is it?

Pete Wishart MP: There is a better answer. I do not see much difficulty in what had gone on previously, which was an arrangement whereby we would look for the Scottish interests in English legislation, and, if there were none, we left it alone. I propose that we could get together at a business level where shadow Leaders of the House, with the Whips, could look at the legislation. It would be an arrangement whereby, if there was clearly no Scottish interest, we would not take part. It would be an agreed and consensual process. With this proposal, we seem to have the opposite of that; it is a matter of exclusion. What it has done—we will probably go into this in some of the questions coming to us later in this session—is create a situation where there are two classes of Members of Parliament: those involved in all sections of legislation who participate fully in the House, and Scottish Members who are effectively excluded from certain parts of a Bill. That has an impact on the way the House assesses itself, given that we are the UK Parliament—the unitary Parliament

of Great Britain and Northern Ireland. All of a sudden, this has been created. There are ways to do it.

I know this is an issue. I listened to Mr Brake's response. He is quite correct that it seemed to emerge as a key issue during the last general election campaign. We want to do all we can to help find a solution that meets the concerns of everybody throughout the United Kingdom but does not create the two classes of Members of Parliament that we seem to have created in the past few months and the past year. Through consensus, agreement and reaching a considered position, we could achieve that solution.

Tom Brake MP: I am not sure that I can articulate a well worked-through answer to the question. We have not yet challenged the English votes for English laws procedure that we have in place. For it to be challenged, there needs to be a vote at national level that is contradicted by a vote at English level, and it has not happened. We do not know yet, and we may not know in this Parliament, whether the trial we have now can work in practice or whether there are perhaps unseen consequences in the arrangements. That is why we have always argued that, given the changes that have happened in the relationship between the Westminster Parliament and the Scottish Parliament and the devolutionary thrust that we are seeing in cities around England, we need to take a step back and instigate a constitutional convention that would look at these issues and possibly others.

I accept that the problem with that sort of approach is that, if you start with a narrow remit, people will want to add things to that constitutional convention. There will be those who want to add the issue of whether young people should have the vote at 16 and 17, so you could start to expand the scope of it and guarantee that perhaps you would never come to a conclusion at the end of the convention.

A convention set up to look at the relationship between the constituent parts and the impact of city deals and devolution down to individual regions, at different rates and levels of devolution, is something we need to undertake. Out of that might come a better arrangement. Historically, as a party we have always argued for regional governments, but that did not find much favour with the public when it was attempted under the previous Labour Government.

Q28 Lord Norton of Louth: Where would you put the process that has been adopted in allowing for what is in effect a double veto? I chaired the Conservative Party Commission to Strengthen Parliament. We came up with one scheme, but the Government have implemented another. The whole point of the double veto, is it not, is that it gives a veto to English and Welsh Members but still allows other Members to participate, so the underlying concept is that it does not exclude Members from participating. Do you think there is value in that? Do you think it achieves a balance?

Pete Wishart MP: I think I understand what the Leader of the House was trying to achieve with the double majority. You are right to describe it as such. There is nothing to stop me participating in a debate, but where we are stopped is in the vote. That is the key issue; we are not allowed to give our view on certain sections of legislation, which creates the notion that there are two classes of Members of Parliament in the House of Commons.

We have seen some curious examples. Perhaps I may read the first two sentences of a whole page of guidance from the Speaker on an EVEL-certificated Bill on Monday: "Under the provisions of Standing Order 83L, the Speaker must, after the conclusion of Report on any

government Bill that has been amended since Second Reading, reconsider the Bill for certification under Standing Order No 83J. To assist Members …" It goes on and on. It is convoluted and barely comprehensible. I asked the Deputy Speaker, who is also Chair of Ways and Means, when he made another indecipherable statement like that from the Chair, to try to explain to me what on earth it meant. He said he was sorry; he could not tell me.

We are now at a stage where not only do we have this solution, which has a double majority, but we break down legislation into compartmentalised nonsense. We then have to attempt to understand what is going on. It is my job as shadow Leader of the House to look at legislation, to look at Bills. Sometimes things are presented to me and I do not have the foggiest what is being attempted. I hazard a guess that very few of my fellow Members of Parliament understand one thing that is going on. It is a convoluted and deeply indecipherable process and nobody seems to understand what is happening.

Tom Brake MP: I agree to some extent with what Mr Wishart said. If this is a process that the public are looking at, clearly it is a very complex one that they would find hard to decipher. I agree with Mr Wishart that indeed some of our colleagues may find it hard to decipher, although I would commend to them this flow chart, which I found online and which does a good job of explaining it. I spent some time familiarising myself with the flow chart before I came here to make sure that I understood the process in detail. I think I now do so, but without my glasses I am not sure whether I showed you the flow chart upside down or the right way up.

For the public, it is not clear, but as a compromise—a typical British compromise—it helps. However, because the driver in previous years has always been some, perhaps small, antagonism towards Scottish Members of Parliament taking part in English decisions, or votes that affect England, and obviously they are still doing that, the public's perception may be that it does not quite do the job. Notwithstanding what Mr Wishart said, in this Parliament there have been at least a couple of votes when Scottish MPs chose to vote on purely English matters, for reasons that were perhaps political.

Lord Norton of Louth: I wonder whether one can distinguish between the concept and its delivery, because what you have been stressing is the way it is implemented and that it is very difficult to decipher. Is the concept one you would see some merit in and that, therefore, it could be delivered in a different way?

Tom Brake MP: Do you mean by concept the idea of the double-voting process?

Lord Norton of Louth: Yes.

Tom Brake MP: We see it very much as a trial. I would want to withhold judgment on whether it has merit until we see it used in anger. It has not been used in anger, and it is only at that point that we would really know whether it functioned for Members of Parliament, or indeed the House of Lords, and what the public thought about the process. There might be some significant clashes in the future when Parliament as a whole adopted one position and English MPs adopted another. At that point, we would really understand whether the public thought it was a sensible solution to the West Lothian question.

Pete Wishart MP: If it helps you, Lord Norton, as well as being indecipherable it is unnecessary. The Government have a majority within England and in the United Kingdom, so effectively we are doing all this for nothing, because the Government will always get their way when it comes to what is considered to be English-only legislation. I cannot imagine that

the Conservatives are going to do any worse than one Member of Parliament from Scotland, so that condition is unlikely to change.

The Labour Party has already made it explicit that one of the first things it would do is change the Standing Orders. That is a very easy thing to do because it is not legislation; all it would need is a majority of Members in the House of Commons to reverse what has been agreed on English votes for English laws, and the Standing Orders can be changed again. We are in a really strange situation. First, it is unnecessary. Secondly, nobody knows what on earth is going on. Thirdly, if we decide to change it we can do so because it is not legislation.

Q29 Baroness Dean of Thornton-le-Fylde: I would like to ask about the advantages and disadvantages of the way the change took place: that is, a change in the House of Commons Standing Orders, which meant that it was less liable to be challenged in court. It is also possible to change it, and the Government are to review it this autumn. If they wish to change Standing Orders and get the support of the House of Commons, they will be able to do that, whereas primary legislation would have been subject to much more scrutiny and, equally, would have come to this House for scrutiny under its procedures. Chris Bryant, Labour's shadow Leader of the House, said they did not support a change in Standing Orders; they would have preferred the proposal to be subject to much more detailed scrutiny, which implies that they would be in favour of legislation on this, not, as Mr Wishart said, just going back to where it was. I do not think that is the view. From your individual standpoints, what are the advantages of its being a Standing Order, which, after the review this autumn, could change relatively simply but with less scrutiny, as opposed to being in primary legislation?

Tom Brake MP: I felt comfortable with the idea that it should happen through Standing Orders, for the very reason that it could be changed relatively easily, because we cannot predict the impact of the English votes for English laws procedure. We might, post-23 June, be about to get into a quite complicated political scenario in the House of Commons, and it is hard to predict what might happen to allegiances. We might be about to go into a period when, who knows, the provision might actually be tested and we may find that there are unanticipated consequences. Had we pushed it through in the form of a legislative measure, there would have been some hard work to do to unpick it. The Liberal Democrat view at the time was that we should allow it to go forward as a trial, through Standing Orders, and that would provide the capacity to change it, should we need to do so.

Baroness Dean of Thornton-le-Fylde: Can I press you on that, Mr Brake? You agreed earlier that this was a constitutional change. Of course, a change in the constitution is normally subject to the scrutiny of both Houses, whereas a change in Standing Orders is not. Are you saying that after the review in the autumn you would like to see the provision changed to primary legislation, following the trial period, or that it should remain where it is?

Tom Brake MP: My personal position is that I want to see it used in anger before we consider switching to a legislative measure, although, as I said in my opening remarks, I do not think that what we have in front of us is necessarily the solution to the West Lothian question. I am hedging my bets as to whether, even if we get to test this in anger at some point, we would back the idea of introducing it as a legislative measure. For instance, we might want to push another agenda for devolution throughout the UK that is more extensive than it is currently.

Pete Wishart MP: You are absolutely right, Baroness Dean. This was done through Standing Orders because it might be open to legal challenge had it been done through legislation. I chair the Scottish Affairs Committee. We had a couple of conversations with some of the clerks who helped to frame some of the Standing Orders and had looked at this previously. There was a real concern and worry that, if it became legislation, it would be opened up to all sorts of legal difficulties and technicalities. Members of the public, who perhaps disliked the Speaker's certification, would have the opportunity to challenge it.

If the Government are serious about this, and if it is a constitutional issue, as it seems to have been presented to us, they should have the courage of their convictions and bring forward legislation so that it can be tested in both Houses of Parliament. We have had so little scrutiny of this. I tried to do it with my Committee, and I am really grateful, Chairman, that your Committee is doing it here. We have not had a chance to have a look at some of the consequences and hidden things down the line. I hope we get to talk about Barnett consequentials, because that is my real concern about the issue. We have not had an opportunity to look at that. If it was primary legislation, we would have that chance; it would go through Committee and come to the House of Lords, and there would be the usual study and examination. We have not had any of that. We had two days on the Floor of the House to consider it, which may be why we are seeing—I use some good words for you, Chairman—bourach or guddle when it comes to how these things are being enacted.

Baroness Dean of Thornton-le-Fylde: Could you translate that for me, please?

Pete Wishart MP: A mess—a dreadful mess, if that helps the Committee. Maybe we have these difficult and indecipherable bits of nonsense because that the provision has not had the scrutiny it should have. No other parliament in the western world has decided that there must be two classes of Member of Parliament in its national legislature. To have a day and a half, maybe two days, to look at it is totally bizarre, so, if the Government have the courage of their convictions, bring on the legislation.

The Chairman: I am very glad you find the House of Lords useful.

Q30 Lord Morgan: Gentlemen, as you know, we have asymmetry in devolution, much to the disadvantage of Wales, I think. Does the EVEL proposal suggest almost an asymmetry of a different kind within the House of Commons? How far do you think it affects, mitigates or undermines the role of a House of Commons where Members of Parliament reflect equally all parts of the United Kingdom?

Tom Brake MP: That is a perfectly valid question. I referred earlier to city devolution, for instance; that is exactly what is happening there. I am a London Member of Parliament, and many of the decisions that relate to transport infrastructure in London—the Tube, the buses, the DLR and so on—are matters over which I have no real say. They are matters on which the Mayor of London makes decisions. Although from a budgetary perspective we allocate the overall amount, the decisions on how that money is spent are taken by the Mayor of London, with scrutiny by the London Assembly.

Whichever constituency MP you look at, I think you will find that there are already asymmetries in the extent to which that Member of Parliament is involved in decision-making processes in their locality. I do not feel that as a Member of Parliament representing a London constituency I am being excluded, or that I am a second-class citizen, because I am not able to influence spending in relation to London buses. I hope that other colleagues who

are Members of the Westminster Parliament, whether they represent a Scottish constituency or any other constituency around the country, equally feel that they still play a major role in our Parliament.

Pete Wishart MP: There has been a deep psychological impact and effect as a result of bringing forward English votes for English laws and changing Standing Orders, because we have created two classes of Members of Parliament. There has been real anger and resentment in Scotland during the process. Lord Lang and I are deeply familiar with the notion, "Welcome. We want you to be equal members of the family of nations". The minute they got back to the House of Commons we were branded as second class and not allowed to participate in all aspects of legislation as it goes through the House of Commons. The Government have been deeply divisive in the way they created this situation. I understand that there seems to be some sort of desire for an English voice when it comes to English-only legislation. Here is a solution: get your own parliament. Do it yourselves. Why try to usurp the unitary Parliament of Great Britain and Northern Ireland to make it a quasi-English parliament? If there is serious intent to ensure that an English voice is exclusive to English legislation, surely the solution must be to get an English parliament. As 87% of the population of the United Kingdom is based in England, we understand that maybe it would not solve all the asymmetry, but it would solve at a stroke the concern that somehow the invidious Scots are coming down here and getting involved in all this English-only legislation and imposing our view on the rest of the nation, when nothing could be further from the truth. There has to be a test down here. If you want to do this, go ahead and do it. We will give them our absolute blessing, if that is the way they want to proceed.

Tom Brake MP: To follow up that point, the difficulty with an English parliament, which on the face of it is a simple solution to the problem, is that there is a real risk that the devolution and subsidiarity that Liberal Democrats want to see in England would simply not happen. What you would have with an English parliament, in the way that has happened, I am afraid to say, in relation to the Scottish Parliament and the Scottish Government, is a transfer of responsibilities from local level back to central government. That would be the consequence. Far from encouraging devolution to Cornwall or Essex, it would concentrate power in the English parliament to the detriment of areas being able to take their own decisions. That is why we would not support the idea of an English parliament.

Lord Morgan: I take your point, and I agree with you about English regional government, but is there not a qualitative difference between excluding London matters, which are an extension of local government, from the operations and debates of the national Parliament, and removing a large territorial chunk of the country—in the case of England, the largest one—and saying that Parliament cannot deliberate on that?

Pete Wishart MP: That is an elegant solution to what has emerged as a problem. Several politicians in the last general election made this a real issue. You will remember some of the posters we saw where Ed Miliband was in Alex Salmond's pocket, such was the fear of the Ajockalypse, as it was called—the coming of the Scots having a view on all English legislation. If this is the serious concern the Government seem to be telling us it is, given that it was a priority in their first few months of office, that is the only solution. We cannot have a unitary UK Parliament of Great Britain and Northern Ireland with two classes of Members. This Parliament is as much mine as it is Mr Brake's. I should have equality in that Parliament, just as Mr Brake can participate in every part of every piece of any legislation. I cannot. There is

something deeply flawed about that approach. No other parliament in western Europe attempts to have classes of membership and we should not either.

Lord Beith: If I understand what Mr Wishart is saying, if you think there is a knock-on consequence for Scotland—I am not talking about Barnett consequentials—from a piece of very English legislation on, say, hunting or Sunday trading, you are entitled to take part in a vote on it as long as there is a United Kingdom Parliament, but the day we create an English parliament you are happy then to bid goodbye to all that and say, "Now there is an English parliament, we no longer worry about the knock-on consequences for Scotland of what the English parliament decides to do".

Pete Wishart MP: Absolutely. That is the fair way to approach it. I understand and respect that Mr Brake does not have a say in the Scottish Parliament. Nor do I as a Member of the UK Parliament, and I would get no opportunity to do that if there was an English parliament constituted on the same basis as the Scottish Parliament. If we can have a bit of clarity about what we are trying to describe, we are talking about something that I thought the Liberal Democrats agreed with, which is a federal arrangement throughout the United Kingdom whereby we would be in charge of nearly all our own affairs, whether that be budgetary issues or immigration, and we would come together on what are, according to most definitions and understandings of federalism, the big macroeconomic issues such as foreign affairs and defence. I am not arguing for that, but I am listening very carefully to Conservative colleagues who tell me this was about the most important issue they heard on the doorstep.

Lord Beith: I think you answered my question in your first few words. You have made your position clear.

Tom Brake MP: We as a party are in favour of federalism, but that does not mean that an English parliament is the last building block to put federalism in place. I set out earlier the concern that an English parliament would simply concentrate power in that parliament at the expense of the regions of England, and could also concentrate power in that parliament to the detriment of the Scottish Parliament, the Assembly and the other constituent parts of the UK.

Q31 Lord Judge: May I go back to the beginning? As I understand it, Mr Wishart, what you really think should have happened is nothing very much, because in your case you had what I would describe as a self-denying ordinance and you would not take part in English-only matters. Was there an offer to the Government of a discussion about these sorts of questions before we got to the EVEL Standing Order?

Pete Wishart MP: No, there was not. I gave evidence to the McKay commission, with which you are probably familiar, which preceded the current arrangements. It was initiated by a former Leader of the House, now Lord Hague. He put forward a number of options to try to resolve some of the issues. There has been ongoing debate in my 15 years in Parliament. There have been several attempts to try to ensure we get some sort of progress. All of a sudden, we had the Hague proposals, which were then brought forward as a change to Standing Orders. There has always been debate and discussion about it.

To be fair to both the previous Government and this one, we made our position quite clear. We talked about our approach to issues that are apparently English only. We offered that as a way forward, but the way the Government have proceeded is deeply non-consensual. Only

the Conservative Government supported what was proposed and enacted. Every other party in the House opposed it and voted against it. Our approach is a way to try to solve some quite complex issues that probably need a lot of debate and discussion. To go ahead and do it without any political support demonstrates an unwillingness to work on it.

Listening to Lord Beith's comments about Sunday trading and fox hunting, which are always the examples given to us, the gloves are off now. If we are having this imposed on us without consensus and agreement, the Government have no right to expect that we will meekly go along with what has been imposed on us. We are not playing the game any more, because of what has been done. We have been made second class in our Parliament. The days when we just accept that because we are going to be good boys have more or less gone.

Lord Judge: Was an offer of self-denying ordinance made to Mr Grayling, the Leader of the House, before the House of Commons decided that Standing Orders should be changed?

Pete Wishart MP: No. The direct answer is that there was no conversation about it at all; we were just told that it was going to be done by a change in Standing Orders.

Lord Judge: If Standing Orders come to be reviewed in the next 12 months, will such an offer be made?

Pete Wishart MP: I doubt it very much. From the conversations I have had with the Leader of the House—we had him in front of my Committee to discuss these very proposals—he seems very determined to pursue them. There was an opportunity early in the process to have a review, given the very deep unhappiness in the House of Commons about the issue. The opportunity was not taken, and I do not predict that there will be much change to the Standing Orders when they are reviewed.

Tom Brake MP: An offer of discussions was made to us as a party and we indicated that we were willing to go along with the proposals as a trial. I do not recall exactly, but I wonder whether an offer of discussions was made to the SNP and it was not taken up.

Pete Wishart MP: It was not.

Tom Brake MP: No offer was made?

Pete Wishart MP: The consultation went out and we were asked to contribute to it. No one came to the office to say, "Let me discuss your plans with you", or, "Yes, Mr Wishart, I think the SNP's proposals are a very sensible way forward". There was nothing like that. It was simply, "Here are the plans. This is what we are going to do. If you have anything to say about it, please write to us".

The Chairman: We have time for just one more question, and I am afraid it is not about Barnett, Mr Wishart.

Q32 Lord Brennan: Gentlemen, using your positions as public representatives for a moment, what do you assess to be the public reaction to the principle of English votes for English laws, particularly as to the position of England and the union? Do you think that view differs across the different parts of our devolved country?

Tom Brake MP: I suppose that before the measure was implemented there was a fairly strong demand that something should be done about English MPs being able to vote on

English matters. Now that the procedure is in place, the public's reaction to it, or their awareness of it, is absolutely minimal. I cannot recall anyone having contacted me since it came in, saying, "Why has this procedure been implemented? Why are the Government doing this, as opposed to adopting some other approach?" It may well be different in Scotland, but certainly in England the public have zero awareness of the issue. It may be that, because we have a referendum on 23 June, that matter, and the issue of sovereignty wrapped up in it, has taken over the concerns members of the public might have had previously about this slightly different sovereignty issue. If I were to go to Woodcote Road in Wallington on Saturday morning and ask people what they thought about EVEL, I am sure I would get lots of responses, but none of them would relate to English votes for English laws.

Pete Wishart MP: That is a very good question, Lord Brennan. I can speak more qualitatively on the effect in Scotland. I did not think it would have much of an impact in Scotland, but I detected outrage about it. It was going through at the same time as the Scotland Bill. Chairman, you will recall that we proposed over 100 amendments to the Scotland Bill, as it was then, only for the nearly 99% of Scottish Members of Parliament who voted for the amendments to be voted down by English Members of Parliament. That was being progressed at the same time, so in Scotland something curious seemed to be going on in the way Scottish Members of Parliament were being treated, particularly after all the warm comments and words we had secured during the referendum process. I was quite surprised at the anger that started to emerge in Scotland. It has dissipated a bit because we have not really challenged the measure, although we will get back to challenging it in time. I do not know about England. When we had the debates in the House of Commons, we were told it was the most important thing heard on the doorstep. I have no right to doubt Mr Brake's assessment that he heard very little about it. If I was an English member of the public, I would be looking at the arrangement and thinking, "What on earth is this? Does this satisfy what I thought I was going to get? How do I even start to understand it? Is it really what I want from a Government who were telling me day in, day out that they were going to address this?"

The Chairman: I promised I would get you away by 11 o'clock. You have kept your side of the bargain by being extremely articulate and, on the whole, pretty concise. Thank you very much for covering the questions we asked. We are very appreciative. We look forward to pursuing our report, and we will see how much of your views emerges in it.

Chris Bryant MP, former Shadow Leader of the House of Commons, Labour Party—Oral evidence (QQ 18-24)

Chris Bryant MP, former Shadow Leader of the House of Commons, Labour Party

Evidence Session No. 2 *Heard in Public* *Questions 18 - 24*

WEDNESDAY 29 JUNE 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Beith
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

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Examination of Witness

Q18 The Chairman: Mr Bryant, thank you very much for coming. We particularly thank you because you are here in a private capacity rather than as shadow Leader of the House. We appreciate your availability and look forward to your comments with even more excitement, as you may feel able to speak more freely than you might have done.

Chris Bryant: I would have always spoken fairly freely.

The Chairman: I am aware of that. English votes for English laws seems to be somewhat in the shadows at the moment with other events that have developed. Nevertheless, it remains important. We undertook, as others did, to review the progress at the end of this first Session, which is where we are now, and that is the purpose of our exercise. I start the questioning by asking if you think that a future Labour Government would retain EVEL and would adapt it in any way, and, if not, how they might address the West Lothian question.

Chris Bryant: You have to presume that there is a Labour Government first, on which at this juncture it is difficult to conjecture, but what goes around in politics comes around. My fundamental principle is that we do not have enough checks and balances in relation to government in this country. One of the few that we have is the fact that the House of Commons is never a perfectly arranged set of dominos, so you can never be quite sure how things are going to work out. Since the Government get to appoint Members of the House of Lords—it has 95 Members of the House of Commons who are members of the ministerial team, and 45 PPSs—it is pretty much winner takes all in our system. That is why, if I were a Labour Prime Minister or Labour Leader of the House, I would want to dismantle EVEL:

because in effect it has given a supermajority to the Government when we should be trying to make the House of Commons freer rather than governed by the Government.

The Chairman: In some of your earlier remarks reported to us you seemed to be supportive of the principle of a clearer English voice in some aspects of legislation.

Chris Bryant: Yes. That is why I thought there was a perfect argument for saying that you could have some kind of vote but not a fundamental blocking vote. Incidentally, there is another, real, side issue in relation to the House of Commons, which is that on any day of any remaining stage we now take at least half an hour on the whole business of legislative consent motions and all the rest, which frankly would be better used for debate and proper consideration of legislation rather than what thus far has certainly been a rather irrelevant shenanigan.

The Chairman: Thank you. Let us pursue some aspects of that.

Q19 Baroness Dean of Thornton-le-Fylde: When the changes went through the House of Commons, one of the new aspects was that they went through by a Standing Order rather than as legislation scrutinised by both Houses. You spoke at the Select Committee and said that you felt that was unfair. The obvious arguments are that if it is done by Standing Order it can be changed so that a government majority can decide what it wants, whereas with legislation it can be challenged in court. Have you had any subsequent thoughts on that that you can give us? In the review that is due to take place this October, would you wish to see that change go from Standing Orders to legislation?

Chris Bryant: It is not just that it was unfair to do it by Standing Orders; it was inappropriate. It was a major constitutional change. The checks and balances of a bicameral Parliament are important, even though, as Members may know, I am not in favour of a fully appointed House of Lords. None the less, the checks and balances are important. There are few countries in the world where the Standing Orders of parliament can simply be changed on the whim of the Government. The Government can always get rid of the Speaker of the House of Commons. The Government can always change the Standing Orders by definition, because it has a majority in the House of Commons; that is what makes it a Government. Although I am a leftie, a radical revolutionary or whatever, I still believe that sometimes being able to apply the brakes to constitutional change is an important part of any system; otherwise, the danger is that you lead to autocracy.

Lord Hunt of Wirral: Mr Bryant, having just heard you describe yourself as a leftie revolutionary, could you assist by telling us, if indeed this is a trial run, against what measures it should be judged to have succeeded or failed?

Chris Bryant: My first question on the Government's trial, as it were, is whether it has made any fundamental difference. In all the time I have been a Member of Parliament I could not detect more than two votes that would have been any different since 2001 if you had applied this. The same is true since EVEL has come into play. We have had quite a few difficulties implementing it in the House of Commons. We have not yet come up against one of the constitutional rows where the Speaker would be required to adjudicate in a way that not everybody might be happy with, but we have been fairly close to a couple of those moments.

The bigger question for me is whether it has made any difference at all, because by definition the Government have a majority in the House of Commons and the Government of the day have also always had a majority of English MPs.

What is difficult to ascertain is whether the process of creating Wales-only Bills or England-only Bills rather than more generic Bills covering all the different legislatures has happened yet. I do not think we will be able to judge that for another year, because this legislative programme is rather curious and may be being thrown out of the window even as we speak. Certainly, when we have a new Prime Minister, it may be thrown out of the window entirely.

Baroness Taylor of Bolton: Can I follow up on what you have said about constitutional rows? We are entering a period in which there is scope for a great deal of constitutional rowing regarding Brexit and the position of Scotland. Have you thought about that as a potential difficulty that is going to face the Speaker and the House of Commons?

Chris Bryant: Historically one of the things that Parliament does particularly badly—your House does it better than ours—is scrutinise EU legislation. I have said this many times, and I said it when I was Deputy Leader of the House. It is partly because MPs have very little interest in going to boring committee meetings up on the top corridor where nobody is going to report what they say or do. Governments have tended to be very reluctant to take many EU legislative moves to the Floor of the House, particularly in the last five years because they have been more nervous about losing the vote because a combination of Labour votes and Brexiteers and Eurosceptics might defeat the Government. There will have to be a major rethink of how we conduct our parliamentary business in the House of Commons. One Conservative Member said to me yesterday, "Oh, it's all going to be very easy. We just have to delete the European Acts and then everything else follows on". I am not sure that it is anywhere near so simple. There will be 10 years of legislation, and even at the end we will find things that have not quite worked and there will be legal battles in the courts, businesses will not be sure how to resolve things, and with Scotland in play it will be even more difficult to resolve those things. For me, Parliament needs to grow up as a legislature and realise that we are there not to scrutinise government but to legislate, and good legislation requires people sitting in boring meetings going through the fine detail and having enough time to do so.

Lord Norton of Louth: You interpret difference purely on the basis legislative output, but is not one of the arguments for it also about perception? How important is that, and although it may not yet have made a difference, might it?

Chris Bryant: That is the fundamental conundrum in the middle of the question. I have not met a member of the public yet who has said anything to me about EVEL, so perception is difficult to measure. There is the issue of whether we do our job of scrutinising legislation properly in Parliament. There are other elements, such as Private Members' legislation, which are in such a mess that they are bringing the whole process into disrepute, because members of the public think, "On Friday there's going to be a vote on banning fox hunting", or whatever, and then it turns out there is not. We need to do a great deal more to make our processes transparent. Incidentally, I would be amazed if there were more than two MPs who understand the Standing Orders of the House of Commons, and I would be amazed if there is a single Member of the House of Lords who understands them. No, that is unfair, because you have a couple of former clerks who you have stolen from us.

The Chairman: You do not understand them yourself, possibly.

Chris Bryant: I understand most of them. On the whole, it is better if you have clear, transparent and simple rules. Our rule book now is very, very lengthy, not least because it has something like 42 pages of amendments to Standing Orders to implement EVEL, which has made the whole thing ludicrously incomprehensible.

Q20 Lord Morgan: The week before last—perhaps last week should be forgotten—we had evidence from a member of the Scottish National Party who observed that he thought that different categories of MPs had been created—you are probably familiar with the arguments—and that now Scottish MPs could not consider certain legislation in the House. Bearing in mind that you sit for a Welsh seat yourself, do you feel that this is a factor? Does it affect the role of the House of Commons in representing all regions and nations in the United Kingdom?

Chris Bryant: If we were a federal country this would be easier, but we are not. We are also asymmetrical, which renders it very difficult to provide a neat solution to the fundamental conundrum, which is: why should I be able to affect legislation on the health service in England when an English MP cannot affect legislation on the health service in Wales? My anxiety is that the fundamental principle of all MPs being equal is important. I never wanted to surrender it. We have ended up with two, three or four tiers of MPs. I give one instance. When the health Bill was going through, which made it illegal to smoke in public places, there was a big row about whether the amendment that had been tabled meant that we were making it impossible for Wales to decide for itself to ban smoking in public places in Wales. Those kinds of rows will come again. That is my major anxiety: that we have created several tiers of MPs.

It is a waste of time in the Commons process. I do not suppose a single person has ever looked up the difference between a majority and double majority. There is the added problem of what happens in the relationship between your House and our House. I worry that, theoretically at least, Lord Strathclyde's report is on the table. One of the problems is more and more government business, including significant pieces of legislation, going through as secondary legislation, as happened with working tax credits. Secondary legislation was never designed for that purpose. If the idea is that your Lordships should not be allowed to have a say, I think you would be within your right to say, "We are not going to have any more legislation that has clauses that say that the Government may allow the following things to happen by statutory instrument or order".

Lord Morgan: As you know, we are awaiting the Government's response to our response to the Strathclyde report. We have been waiting quite a long time. You raised the conundrum about public smoking in Wales and said that there were different views. What is your own view on that?

Chris Bryant: At the time I was trying to tell everybody that if we carried the amendment it would mean that the Welsh Assembly would not be able to decide that private members' clubs could allow smoking. Everybody in the Commons Chamber said that I was talking a load of nonsense, but I was right.

Lord Morgan: Yes, you are without doubt.

Lord MacGregor of Pulham Market: To follow up that very point about smoking, is the dilemma or clash not intrinsic to further devolution to Wales and Scotland? I am not sure how you would have resolved that particular issue.

Chris Bryant: I resolved it by voting for what I believed in, which is that private members' clubs should not expose their staff to smoking.

Lord MacGregor of Pulham Market: If there had been a clash between the UK Parliament and the Welsh Assembly, would that not have been a real dilemma?

Chris Bryant: It would have been. I think they wanted the power to do exactly the same, so the dilemma was not as keen as it might have been. My point was that the vast majority of people in the debate had no idea how the amendment worked. I am not sure in the present EVEL situation how the Speaker would have treated that amendment. Certainly I think it would have been challengeable.

Lord Judge: Would it be fair to encapsulate what you have been saying as requiring a root and branch re-examination of our entire legislative processes?

Chris Bryant: Yes.

Lord Judge: When we come to review EVEL, might that be a vehicle for doing so?

Chris Bryant: I hope so. Lord knows what we might be re-examining by the end of this year. Not only EVEL but Brexit might force us to do so, because there is a lot of legislative process that we will have to do in a better and more thorough way here. In a sense, you could argue that the European Parliament, the Council of Ministers and the Commission in some areas of legislation, for instance on broadcasting and telecommunications, did a substantial chunk of that pre-legislative scrutiny before it came here. When we transposed all the framework directives into UK law in the Communications Act 2003, we did not have to do a great deal more legislative scrutiny because it had been done very thoroughly already and the British Government were pretty satisfied with it, whereas now, if we are going to do our own telecommunications legislation, broadcasting legislation and intellectual property legislation, we will have to do it far more effectively and tidily than in the normal legislative process in this country thus far.

Q21 Baroness Taylor of Bolton: Can we talk about the House of Lords for a moment? It has been said that EVEL in the Commons has no impact in the Lords, and none has been seen so far. Clearly we have a lot of Lords from Wales and Scotland, and it is perfectly possible that legislation that has been designated as EVEL in the Commons could be subject to amendment in the Lords on the basis of votes, including those of Welsh and Scottish Lords. We are masters of our own procedures, but that could affect the relationship between the two Houses. Can you put aside your personal views on reform of the Lords for a minute?

Chris Bryant: You want me to put them aside for ever.

Baroness Taylor of Bolton: Of course I do. You know that. Do you have any thoughts on that?

Chris Bryant: One of the ironies is that everybody thinks that political life in here is about votes, but as often as not it is about avoiding votes and about the Government making concessions because they know the reality of the political situation in either Chamber. Historically, one of my anxieties has been that in the House of Commons Ministers will say,

"It's all right, we're going to tidy it up in the House of Lords", and then the House of Commons never votes on it. That has always seemed to me to infantilise the House of Commons, and we should grow up. You will know extremely well that the legislative process, even before anything gets to either House, involves government Ministers and civil servants saying, "What are we going to concede when it gets to the House of Lords?", so you build in something even before you have written the Bill that is going to be conceded later. My concern is that the play between the two Houses is not grown-up now. Baroness Gale of Blaenrhondda, who is a very close friend of mine—Blaenrhondda is in the Rhondda—will certainly have more say on legislation that affects the United Kingdom than the Member of Parliament for the Rhondda, which is bizarre.

Q22 Lord Norton of Louth: You are on record as predicting that a consequence of EVEL will be more but smaller Bills. Could you flesh out your reasoning on that and on the normative dimension, because the implication is that you think that would be bad rather than good?

Chris Bryant: The latter is a very good point. When I was Deputy Leader of the House, we considered in the legislative sub-committee of the Cabinet whether a Bill was in good shape before it came to either House. One of the decisions under EVEL would now be that we should take all the Welsh parts out so that it is an England-only Bill. That will happen on contentious matters. We saw that in the attempts to deal with Sunday trading and fox hunting. Thus far, because we have not had long enough and not had a full legislative programme after EVEL was implemented, it is difficult to tell whether that will happen, but that is my working assumption. That is bad, because the honest truth is that no MP or Member of the House of Lords can keep more than four or five Bills in detail in their head at any one time. Getting 35 Bills through Parliament every year rather than 25 is going to be a tall order.

Lord Norton of Louth: Is the argument that there is a problem with big Bills at the moment—omnibus Bills—and with lack of clarity? Your point is not a problem with smaller Bills per se but with those types of Bills deriving from the provisions of EVEL.

Chris Bryant: That is a fair point. I am not a fan of Christmas tree Bills either. There should be a Standing Order that says that the Home Office shall never be allowed a Christmas tree Bill, because large chunks of those Bills end up never being implemented. Sometimes people are so conscious that it is declaratory legislation rather than effective legislation that they do not bother to scrutinise it properly.

Lord Norton of Louth: I am interested that you would do that by Standing Order rather than legislation.

Chris Bryant: Touché, Mr Turtle.

Q23 Lord MacGregor of Pulham Market: Previous witnesses have told us that for EVEL to be successful the Government need to present it as a pro-union not as a narrow pro-English measure. Is that correct?

Chris Bryant: I find that difficult to answer, because I have no idea where the union is going now, although I have a sinking feeling in the pit of my stomach. John Donne was an MP and a clerk in holy orders—he did it in a different order from me—but was right: "No man is an island entire of itself … never send to know for whom the bell tolls; it tolls for thee". I believe that we achieve more by our common endeavour than by going it alone, and I have a terrible

anxiety that Scotland will leave. Any union-minded Government or political party should be doing everything in its power in the forthcoming months and years to strengthen that union rather than dismantle it.

Lord MacGregor of Pulham Market: On the criticism of the English votes point, opinion polls tell us that on the whole there is support for that in England. Taking the wider point that you have made, it seems that the hints that we are getting now from Nicola Sturgeon and others in Scotland that, as a result of the referendum decision, they may wish to go it alone is much more a threat to the United Kingdom than anything to do with English votes for English laws.

Chris Bryant: I am sure that is right, but because it is a bigger threat does not mean that it is not an additional threat. I would want to try to minimise any threats that there are. It is certainly true in the House of Commons that the SNP is deliberately trying to stir this up as much as it can, and that is not a good outcome for anybody who is in favour of the union remaining. It seems to me very possible that Scotland will leave the union. That is one of the main reasons why I campaigned for us to stay in the European Union, so I am a double unionist.

Lord MacGregor of Pulham Market: I agree with that. The likely consequence of Scotland leaving is because of the referendum decision rather than English votes for English laws.

Chris Bryant: Indeed. If I am honest, the better answer to the concerns of English voters about having a say over their own destiny is devolution within England. We have been a far too centralised Government. A mayor of a major city in the UK, even with the new powers they are being granted at the moment, has many fewer resources and levers of power than in most other major cities in the world. My answer is therefore more devolution within England than EVEL, which frankly is neither here nor there to the ordinary voter.

Lord Brennan: You anticipate my question: if not EVEL, what should we do about devolution in England?

Chris Bryant: Again, the difficulty is geography. I think everybody knows what Greater Manchester looks like, although some people who are now being lumped in with Greater Manchester may not feel as much affinity to Manchester as others. Likewise, if you were to do the same in Wales, the Rhondda would not feel part of Cardiff, although it would probably be lumped in with Cardiff if you were creating larger city regions. You have to have asymmetric devolution within England as in Spain, a country I know you know well.

Q24 The Chairman: You may not have had a chance to read the report that we published recently on the union and devolution, in which we studied ways of strengthening the union, raising its profile and re-establishing its primacy as the dominant sovereign Parliament, but also improving the relationship between the union and the devolved Parliaments. It is more than 100 pages long, but if you have a sleepless night you would be very welcome to dip into it. It might reassure you to some extent, although I suspect it may also have been overtaken by events.

Chris Bryant: I have a lot of sleepless nights.

The Chairman: Have any of my colleagues any further questions to ask? In that case, thank you. You have been very forthcoming and given some stimulating and interesting answers, and done so in 28 minutes, which is brilliant. We are very grateful to you.

Chris Bryant: I am normally accused of being prolix, so I am grateful.

The Chairman: I can tell you that is admirable. Let us hope our future witnesses do the same. Thank you very much for coming.

Rt Hon. Baroness Evans of Bowes Park, Leader of the House of Lords—Oral evidence (QQ 46-58)

Rt Hon Baroness Evans of Bowes Park and Rt Hon David Lidington MP

Evidence Session No. 4 *Heard in Public* *Questions 46 - 58*

WEDNESDAY 14 SEPTEMBER 2016

Members present:

Lord Lang of Monkton (The Chairman)
Lord Beith
Lord Hunt of Wirral
Lord MacGregor of Pulham Market
Lord Maclennan of Rogart
Lord Morgan
Lord Norton of Louth
Lord Pannick
Baroness Taylor of Bolton

Examination of witnesses

Q46 The Chairman: I welcome our two witnesses. You are both very busy individuals, Leader and Lord President, so we are very grateful to you for coming. We know that there is a great deal going on in the world and that, by comparison with some other events, EVEL is now a quiet backwater. Nevertheless, we are keen to fulfil the commitment we gave to your predecessor, Lord President, that we would produce a report on EVEL from the House of Lords point of view. That is where we are at the moment. We much appreciate it and will press on with the questions.

I would like to ask the first question myself. It is a rather general question. What are you hoping to achieve with English votes for English laws? What is the basis on which you will judge whether or not EVEL is a success? Would you like to start, Lord President?

David Lidington: Thank you, Lord Chairman. A one-word answer would be fairness. In recent years, there has been increasing resentment among a significant number of MPs representing English constituencies—to some extent, it is reflected in the country, too, although it varies from one part of England to another—that it was wrong that, while certain powers and decisions were reserved to the devolved Administrations, Members at Westminster representing those devolved constituencies should continue to vote on English matters and that, even when a majority of English MPs might come to one view, they could be outvoted by Members taking part in a Commons Division who could not vote on that matter as it affected their own constituents. That is particularly true in Scotland, but it can apply to Northern Ireland and even to Wales, in certain circumstances. How we judge it will

depend on whether we have a situation in which there is greater content among English Members of Parliament and their constituents about the state of affairs, as well as just the safeguard of knowing that, when matters are devolved elsewhere in the United Kingdom and the legislation at Westminster affects England or England and Wales exclusively, ultimately there is a right of veto for Members representing the constituencies affected by that legislation.

The Chairman: The word "veto" is one that has not passed the lips of one or two previous Ministers on this matter. Nevertheless, it is an interesting statement. Thank you.

Baroness Evans of Bowes Park: I echo what David said. From the House of Lords perspective, it has not changed the way we engage with legislation. We remain in a revising and scrutinising role, looking at Bills as we did before. As David rightly pointed out, it was around constituencies and MPs wanting to be the voice of the people who elect them. From a House of Lords perspective, we remain in our role doing the important and effective work that we do. As you have heard, I do not think that EVEL has had an impact procedurally or indeed on how this Chamber does its work.

The Chairman: We may want to pursue the nuances of the Lords situation later in the session, if we have time. In the meantime, I would like to bring in Lord Hunt.

Q47 Lord Hunt of Wirral: We understand that there is to be a review of EVEL next month. It might be helpful if you could share with us whom you will be consulting, given the Government's emphasis, particularly under the Prime Minister, on consultation. Will you be consulting the devolved legislatures and Governments? Will you attempt in any way to assess the impact of EVEL on public perceptions?

David Lidington: It will be a government review. There will not be public evidence sessions, but we will welcome representations from any interested party. In particular, we will be interested in the conclusions that this Committee reaches and in the conclusions of the House of Commons Committees on procedure and on Scotland respectively, each of which is conducting its own inquiry into the matter.

Baroness Evans of Bowes Park: As David said, we will be consulting for the review. Obviously the conclusions of this Committee will be important. I understand that other individuals—other noble Lords with an interest—can submit evidence as well.

David Lidington: Lord Hunt asked specifically about the devolved Administrations. Changes to the Standing Orders of the House of Commons do not have any impact on the procedures in any of the devolved parliaments or assemblies. If the devolved Governments or the devolved parliamentary institutions want to make representations, obviously we will treat those with respect and look at them carefully.

Lord Hunt of Wirral: The real question is whether or not this is just a procedural review, or are you going to address wider questions of whether EVEL is achieving its objectives?

David Lidington: We will publish the terms of reference for the review in due course—pretty soon, I hope, given the timescale we are looking at. Clearly, there will be aspects that look at the technical issues involved, but it is perfectly fair that it should also take stock of the success or otherwise, depending on people's opinions, of the EVEL procedures so far and of their scope. Personally, I do not yet detect a wish to alter the scope, but that is the sort of thing people are welcome to make representations on, if they wish.

Q48 Lord Norton of Louth: I should declare an interest, which is relevant to the question that I want to put. Some years ago, I chaired the Conservative Party's Commission to Strengthen Parliament. One of the tasks we were given was to come up with a procedure to deliver on English votes for English laws, and that we did. With our proposal, the emphasis was on English votes for English laws. The Government have brought forward something where EVEL really stands for an English veto over English laws. The emphasis is very much on that aspect, rather than on giving voice to the English dimension. I wonder what the rationale was for that particular emphasis and for adopting that procedure rather than one of the alternatives.

David Lidington: Lord Norton is quite right to say that, in effect, this is an English veto. When the last Government looked at the matter, there were a number of competing pressures. There was certainly a wish on the part of Members of Parliament representing English constituencies, in certain cases, for not quite an English Parliament, but a special arrangement whereby only English Members voted on matters that exclusively related to England. Against that, there was quite a strong feeling—not just from Members representing other parts of the UK, but from people instinctively of a unionist disposition—that they did not want to stop Members representing other parts of the United Kingdom participating in debates on English matters. There was also awareness that, in certain circumstances, it might produce some tricky problems when a Minister from one part of the kingdom was speaking on English matters, even though he or she did not represent an English constituency.

In the mind of the previous Government, there was also a question about the process involved. Self-evidently, it was a simpler, more straightforward matter to change the Standing Orders of the House of Commons, rather than to seek primary legislation. We had the McKay commission report in front of us. That had produced a menu of options, of different levels of complexity. The then Government looked to the devolution settlements and used the allocation of competences set out in those settlements as the framework within which we should devise the particular arrangements for English legislation at Westminster.

Lord Norton of Louth: The Conservative part of the paper produced by the last Government looked at the different options. The option we came up with in the commission was identified as having the advantage of simplicity, whereas what we have gone for is somewhat complex. You mentioned the McKay commission. In a way, the emphasis there was more on voice than on veto. I wonder whether you feel that what you have gone for on veto squeezes out the particular emphasis on voice.

David Lidington: On the second point, no, I do not think that it squeezes out voice. Self-evidently, it is perhaps a more straightforward operation in most circumstances when the Government in office have both a majority in the House of Commons as a whole and a clear majority among English constituencies, but I do not think that English MPs have been short of a voice. The current third party in the House of Commons has contributed to debates, quite properly, although the SNP Members are not able to take part in English Grand Committee proceedings.

I do not think that the arrangement we have now is excessively complicated. On current records, it does not take up a huge amount of time. I do not want to prejudge the promised review, but I would say that so far it has gone relatively smoothly.

Baroness Evans of Bowes Park: On your point about squeezing out voice, I do not think that it has squeezed out the voice of this House, as regards its role. Anyone who was involved in the passage of legislation in the last session—including myself, as a Whip on a number of measures—can certainly say that the Lords continued its important scrutinising and revising role, in the way it always has.

Q49 Lord Pannick: When you take stock, as you put it, and review the way EVEL is working, will you look again at whether it is really appropriate for a constitutional change of such significance to be introduced and maintained by Standing Orders, rather than by legislation, which enables this House, as well as the other House, to look at all the implications?

David Lidington: Since the procedures affect the House of Commons only and not this House, it is perfectly proper in constitutional terms for them to have been addressed by Standing Orders. Nor is this the only occasion, in my experience, when changes to Standing Orders of the House of Commons have had quite important constitutional implications. Looking in particular at the development of Select Committees in the House of Commons, I would adduce in recent years the implementation of the Wright Committee recommendations for the direct election of House of Commons Select Committee Chairs. In my judgment, that has made a profound difference to the status of Select Committees and in how they are seen by the House as a whole and by people outside the House, yet that was just a Standing Orders change.

Baroness Evans of Bowes Park: As David said, it is about Commons procedure and Commons decisions, so I allow him to answer on that.

Lord Pannick: Do you have any concern that the ease with which Standing Orders can be amended by the Government in the House of Commons casts doubt on the permanence of the change? Obviously legislation can be changed as well, but it is very easy to change Standing Orders. Do you have any concern about that?

David Lidington: At the end of the day, a different Government who wanted to change Standing Orders would have to calculate the political cost of doing that. However, as Lord Pannick says, that is true of legislation as well. My view is that a change to Standing Orders that went back to the situation where legislation that affected only constituencies in England could be voted through, against the wishes of the majority of English MPs, by Members representing parts of the kingdom where those matters were devolved, would be seen very widely as unjust. Any Government who sought to do that would pay a political penalty.

Baroness Taylor of Bolton: I get the impression from what you have said, what other people have said and what you said in answer to Lord Norton, before Lord Pannick, that one of the reasons why you went for this particular solution was the ease with which you could make the change, and that that was really the main driver behind your decision not to go for other kinds of proposals. Is that fair?

David Lidington: It is part of the explanation, as I said in answer to Lord Norton, but, as I also tried to say, there were principled arguments as well. There is very strong concern on the part of most members of my party, and certainly on the part of the Government collectively—this Government and the previous Government—to try to strengthen the integrity of the union. Therefore, the arguments about the potential risks of excluding Members representing parts of the UK other than England even from participation in

debates on these matters weighed on the minds of the Ministers who were taking decisions on the matter under the previous Government.

There is—you will hear this in the House of Commons—a coherent case, which some argue, for a formal federal structure for the UK. There are all sorts of arguments both for and against that. That probably goes further than the terms and subject matter of this inquiry, but there are other approaches to this big constitutional subject. What we faced was genuine dissatisfaction in English constituencies and in the Commons about the previous state of affairs, but a wish not to exclude altogether Members from other parts of the UK from even taking part in a debate.

Q50 Lord Beith: You have described how the procedure satisfies one of the concerns. It is not possible for a legislative change to be inflicted upon England that the majority of English MPs reject. However, if the majority of English MPs, and the Government, believe that a radical change should be made in the way some England-only matter is dealt with, that change will still require the consent of the whole House—the double veto—so half of the problem we are talking about is not actually dealt with by the procedure that has been introduced. You can imagine a situation in which a legislative change for England would command the support of the majority of English MPs, but Scottish MPs taking part thought that it might set an unhelpful precedent for their Government's policies in the same area. You are left with half of the problem unsolved, are you not?

David Lidington: I do not think that Lord Beith's particular example in any way undermines the policy. There is, of course, provision in Standing Orders of the House of Commons for the Speaker, when deciding whether to certify a particular Bill or clause as subject to the EVEL procedures, to consider whether there are minor and consequential impacts on other parts of the kingdom. It is quite hard to argue that the EVEL arrangements should be abandoned, or an exception found, because a policy that commanded support from English MPs might set a precedent that, if successful, a Scottish Government or a Northern Ireland Administration would want to copy.

Lord Beith: That is the argument I am reminding you might be used to justify Scottish MPs preventing England, as represented by English MPs, from doing what it thought was right.

David Lidington: There will certainly be people on my side of the House—I suspect, some on the Opposition Benches in the House of Commons, too—who would like to have gone further than the current arrangements, and not only to have the current power of veto, but to give English Members the right to carry into law, against the wishes of an overall majority in the House of Commons, a question affecting England alone and devolved elsewhere. The judgment that the then Government made in fixing on this particular approach was that that would cause greater tensions in a union that we wanted very much to strengthen. So far, my judgment is that the arrangements we have work fairly well, but there are others on my Benches who would indeed like to have gone much further.

Lord Beith: In future, are you going to face the argument, "We cannot stop the Scottish Government banning hunting, but they can stop us legalising some aspects of hunting"? I give that just as an example.

David Lidington: In that case, there was a particular issue of certification, because the way the Bill had been drafted meant that the Speaker felt that he could not certify it. To some extent, the new arrangements require discipline and attention to detail on the part of

Ministers and government departments to try to make sure that they take account of these procedures when they bring forward either primary or secondary legislation in the first instance. The argument that Lord Beith puts forward is the logic that lies behind calls for a more formal federal system in the UK. That is not where the Government are at the moment, but I am sure it is something that other Members of Parliament will continue to press.

Q51 Lord MacGregor of Pulham Market: We have been told by some that so far EVEL has had no impact at all on procedures in the House of Lords and how it might operate. You have hinted at that as well. Do you agree with that assessment? Some have suggested that there might be some political implications for the House of Lords, which I cannot myself see at the moment. Do you agree with the assessment that it is unlikely to have much impact on the Lords?

Baroness Evans of Bowes Park: The evidence so far is that that is the case. In his evidence to you, the Clerk of the Parliaments said that it has not had much impact on us with regard to procedure. As I said previously, I have not sensed around the House that it is having a huge impact on how Lords approach their important role. For instance, although the Housing and Planning Bill had some certified clauses under EVEL, it certainly did not make any difference to the rigour and scrutiny applied by Lords involved in those discussions, or to their willingness to put amendments in debate or votes. I do not feel that it has had a huge impact or that it is constraining the role of the Lords. We continue to play our important role.

David Lidington: With the current constitution of the House of Lords, I do not see that there are real implications. In the hypothetical circumstance that there was House of Lords reform that meant that there were Members of the House of Lords representing distinct parts of the United Kingdom, on some kind of constituency basis, it would be a different matter, but that is not where we are.

The Chairman: It used to be like that, years and years ago—elected from among their own number.

David Lidington: Indeed.

The Chairman: Those were the days.

Q52 Baroness Taylor of Bolton: That was an interesting hint about the future shape of the House of Lords. Perhaps we should not go there.

The House of Lords has no different specification for English Members, Scottish Members or anything else. You said that it was hypothetical, but it is quite easy—maybe we have had an easy parliamentary year—to see a situation arising where the Lords rejects amendments that the Commons has put in under EVEL, or we make changes to a Bill and end up in a ping-pong situation, which happens quite frequently. We could be in a situation of ping-pong where English MPs have decided one thing and Scottish, Welsh and English Peers have decided something different. There is a potential for aggro, conflict or making life more difficult all round, which could lead to calls for changes and reforms to the House of Lords, I am sure. That is a genuine problem that could arise. Mr Lidington, you said earlier that it had been a relatively easy process so far. I wonder whether you think it has really been tested.

David Lidington: It has been going for only one year.

Baroness Taylor of Bolton: Can you reach conclusions?

David Lidington: As I said earlier, when you have a Government who have a majority both in England and in the House of Commons overall, it is, by definition, more likely—I say this cautiously—to be an easier experience than if you have a Government who have a majority in the House of Commons but not among English constituency Members.

Lady Taylor is perfectly right in the illustration that she gives. I do not think that it raises any different constitutional principle from that which we face anyway in the normal course of exchanges between the two Houses, and during ping-pong, in particular. There are particular issues about what happens if the House of Lords changes the extent of a Bill, to make it UK-wide rather than for England and Wales only, but there are very clear procedures that guide the Speaker, in our House's case, on certification in such circumstances.

Baroness Taylor of Bolton: There have been quite a few instances when the Commons has been suspended while people make a judgment, have there not?

David Lidington: There have been a few, but they are normally of very short duration. If the Committee would find it helpful, I can probably write with some specifics on that. In my experience, one is looking at five or 10 minutes at a time, perhaps.

The Chairman: It would be helpful, if you find that it is different from that. Pursuing the same theme, I would like to bring in Lord Morgan.

Q53 Lord Morgan: It has been suggested that there might be a divisive effect among the different groups or a majority of Members of Parliament, in the sense that you could have legislation passed by the whole House of Commons, and, indeed, by the House of Lords, but it could nevertheless be blocked by a group of either English-only or English and Welsh MPs. Do you think that is a real fear?

David Lidington: Clearly, that is a possibility. The existence of the EVEL procedures in itself provides a disincentive for any Government to test that. If a Government know that they have to secure the consent of English Members, when a measure applies exclusively to England, or to England and Wales, as appropriate, that ought, in my judgment, to guide the Government in drafting their legislation in the first place.

Lord Morgan: Do you think that, in one rather important way, it diminishes the status of the devolved legislatures in Scotland, Wales and Northern Ireland? It might appear to conflict with the Sewel convention, to the extent that they could legislate freely in their own nations but nevertheless find decisions being taken about that at Westminster.

David Lidington: No, I do not think it does. The devolved Administrations, of course, have all been established by Act of Parliament here at Westminster. They are devolved centres of power. Nearly 20 years on from the settlements in Wales and Scotland, not only has devolution been accepted as a fact of life, but we have had measures—in respect of Wales, some went through the House of Commons earlier this week—that have added to devolutionary powers. In Scotland, there is an active debate about the extent of fiscal devolution. I do not think the evidence suggests that there is any rowing back on the devolved settlements. If anything, the contrary is true.

It is also the case that when Whitehall departments and Ministers draft new legislation for Westminster, they take account, as a matter of course, of the need for legislative consent Motions, where those are required. Without breaching government confidentiality, I can say to Lord Morgan that earlier this week I chaired a ministerial meeting where we were

discussing future legislation and where the need for legislative consent from one or more of the devolved assemblies or parliaments was one of the matters discussed. I assure the Committee that the Secretaries of State concerned are fully cognisant of their responsibilities to respect the devolved settlements and to seek such Motions accordingly.

Q54 Baroness Taylor of Bolton: This question is in the context that it is the first year and that every potential pitfall or consequence has not yet emerged or been developed, and it follows from the last question. The Speaker can certify that a matter is devolved or reserved. There has been speculation that such a decision could be challenged in the Supreme Court. The basic question is: do you think that is likely? If it were, would very significant implications and difficulties not arise? Is it something that the Government and Ministers have thought through? Will you take account of the possibility of such things when you do your review?

David Lidington: Successive Speakers have over many years applied a certification procedure with regard to money Bills. Speakers also have to make judgments, on occasions, about the application of the Parliament Act and whether a particular Bill meets the tests required in that legislation. This is a further development of certification, but it is not a new principle. For the purposes of Commons procedure, the Speaker's decision is final. Given parliamentary privilege and the Bill of Rights, any attempted challenge in the courts to the Speaker's decision would be very unlikely to succeed; I do not think the courts would entertain it. There should be some certainty about that.

If, on the other hand, after a piece of legislation became an Act, we had a Supreme Court judgment that made a ruling on legislative competence, that is a separate matter from the procedure of the House of Commons. Clearly, in those circumstances, when you are looking at how to interpret a piece of law, rather than proceedings in Parliament, the Supreme Court would be the arbiter.

Baroness Taylor of Bolton: I am not the expert on this, but it seems that people are talking more about the potential for taking action of that kind. There has certainly been recent speculation. It seems to be something that needs to be taken into consideration.

David Lidington: It is a principle that has generally been respected over the years that the courts and Parliament are respectful of each other's particular roles in our constitutional arrangements. The courts have respected the boundaries laid down by the Bill of Rights and parliamentary privilege, just as Parliament has tried to be pretty strict with itself in observing sub judice rules.

Lord Pannick: For the reasons you give, I do not think the concern is so much that the Speaker's certificate could be challenged in the courts. The court would say, "This is a matter of parliamentary privilege and the Bill of Rights". The concern is rather that the certificate given by the Speaker may be shown to be inconsistent with a ruling that the Supreme Court gives on a similar issue in relation to the competence of a devolved Assembly. You are right to say that that may occur at a later stage, but it may occur contemporaneously. It may be that the legislative competence of a devolved Assembly on a similar issue is going through the courts and coming to the Supreme Court at around the same time. The concern is about a tension there. How will the Speaker deal with those matters? Will he wait until the court has determined, which may not be possible? Will he take legal advice? There is a tension and the possibility of an unsatisfactory conflict.

David Lidington: It is a matter for the Speaker to take certification decisions. The Government provide information to the Speaker, through the Explanatory Notes on a Bill, on the Government's best judgment about territorial extent, which, of course, will normally have been informed by the Government's legal advice. If he wishes, the Speaker may ask the Government to provide additional advice or evidence. The Speaker has access to Speaker's Counsel, if he chooses to draw on that. I suppose it is open to the Speaker, if he so wishes, to draw on external legal advice as well. Those are entirely matters for the Speaker. My belief is that the Speaker will come to the best judgment that he or she is able to make, on the basis of the law as it is understood to be at the time of the decision.

If, through subsequent judicial interpretation, the law is found to operate in a different way, a future Speaker's judgments will take account of that reality, just as Ministers, in operating policy and preparing legislation, act on the basis of the best understanding of the law as it currently is. Successive Governments are well used to the idea that judicial reviews from time to time interpret the law differently from what Ministers had assumed the law to be.

Q55 Lord Maclennan of Rogart: I wonder whether you have addressed the issue of making Members of Parliament from Scotland, Northern Ireland and Wales second-class citizens. Would that not influence the thinking about support for the union?

David Lidington: Lord Maclennan is right to be concerned about the union, but, as I tried to say earlier in these proceedings, that was one of the reasons why the then Government came to the decision they did on this particular approach to the English question. I do not agree that Members representing Wales, Scotland and Northern Ireland could reasonably say that they have second-class status. They retain the right to speak and to vote on all legislation in the House of Commons. What the new rules mean is that English MPs, or English and Welsh MPs, must be asked to give their consent to laws not only that affect only England or England and Wales, but where equivalent powers have been devolved elsewhere. There are those two tests, each of which has to be met.

Previous to the EVEL rules being brought in, there was resentment among a significant number of MPs representing English constituencies that it was they who were being accorded second-class status. While they could not vote on health or schools matters in Scotland or Northern Ireland, Members from constituencies in those parts of the UK were nevertheless able to vote, and possibly even determine the majority, on schools or health matters that affected English constituencies only. The EVEL rules have redressed that imbalance.

Lord Maclennan of Rogart: Positively, Members from Scotland and Northern Ireland may make suggestions that are relevant to the legislation but have not been thought about by English Members of Parliament. Do you not think that would be a contribution to better legislation?

David Lidington: Not only is there nothing to stop Members from Scotland or Northern Ireland advocating improvements to legislation affecting England, but they have the power to move amendments to that legislation. If Members in English seats are persuaded that those are right, they will not exercise the power of veto that they have under the procedures and the amendments will go into law.

Baroness Evans of Bowes Park: In this House, all Peers can continue to contribute and vote. In that sense, the voice remains here. All Peers can be involved.

The Chairman: When I first became a Peer, I thought that I would enjoy the fact that I was a United Kingdom Peer, able to ask questions about all parts of the United Kingdom, but any question I asked about Scotland was referred to the Scottish Parliament. There we are. We move on to Lord MacGregor.

Q56 Lord MacGregor of Pulham Market: Is it realistic to state that all ministerial posts are open to MPs irrespective of the location of the seat they represent? For example, in practice, could an MP representing a Welsh, Scottish or Northern Ireland seat become Secretary of State for Health, given that much of the legislation by the Department of Health in the recent past applies only to England? I understand that it is very rare anyway—since 1999, I think there has been only one Secretary of State for Health or Education from Scotland and that all the rest have been from England—but should it be made mandatory?

David Lidington: I would not want to make it mandatory. These are matters that can and should be left to the judgment of the Prime Minister of the day. As was hinted in Lord MacGregor's question, following the devolution settlements, when the bulk of a department's responsibilities relate to England alone, that may weigh in the judgment of the Prime Minister. The Blair and Brown Governments had Members from the majority of seats in Scotland, but they chose not to appoint Members from Scottish constituencies in the Health Department, for example, once health had been devolved to the Scottish Parliament. Clearly, there are political judgments that will weigh in the mind of any Prime Minister, but making it mandatory would introduce an unnecessary bit of inflexibility to the system.

Lord Morgan: You say that it can be left to the judgment of a Prime Minister, but different Prime Ministers may form different judgments on these matters. It is by no means clear to me when a clear decision would be taken, or by whom.

David Lidington: In modern times, the appointment of Ministers is entirely a matter for the Prime Minister of the day. There is not really any uncertainty about that. Of course, different Prime Ministers may come to different decisions about this matter, but each Prime Minister will make those judgments bearing in mind not only the particular qualities of the men and women they have in the pool available, but how particular appointments will be seen by Parliament and by the public. In my time in the House of Commons, and even before that, every Prime Minister, regardless of party, has always had an ear that is very wide open to the views of the general public and an eye on the longer-term political implications of that kind of decision for the Government he or she leads. It is a matter of prime ministerial judgment, and we should leave it that way.

Lord MacGregor of Pulham Market: In practice, it is unlikely to happen.

David Lidington: In practice, history has established a particular pattern. It would be foolish to rule out the idea, let alone have a mandatory prohibition, of Members from, say, Scotland serving in a department whose business related mostly to England.

Q57 Lord Norton of Louth: Going back to something you touched on earlier in relation to the union, you indicated that one of the reasons for bringing in EVEL was to try to address the English question. There was a clear level of dissatisfaction in England, not least over the West Lothian question. We know from survey data that it was clearly one of the factors triggering that dissatisfaction, so you introduced EVEL to try to address it. You could say, "Well, we have brought it in. We have EVEL". Do you think that that really has helped to address the English question? I do not think that there is much evidence that people outside

are aware of the Standing Orders and the effect they are having. How far has it gone towards addressing the English question?

David Lidington: Looking first at the House of Commons, it has largely done so. We will make an assessment of that as part of the review, but at the moment I do not pick up much evidence of dissatisfaction on the part of Members from English constituencies with the way the procedures operate. As regards public opinion, the fact that there does not appear to be huge dissatisfaction suggests to me that the procedures are working satisfactorily. There are parts of the country—by which I mean England, in this case—where one could have gone a couple of years ago and seen an audience get quite het up about the idea that Scottish MPs could take through a measure affecting only England, against the wishes of the majority of English constituency representatives. That has gone.

Lord Norton of Louth: Do you think that could be because they are deflected by certain other issues at the moment and that is focusing the mind, rather than public awareness of the procedures? You might be a victim of your own success. You said earlier that they were bedding in quite well and were not taking up too much time. That could have the effect that people outside are not that aware that they have changed.

David Lidington: Of course, it is always difficult to prove a negative: had we not made those changes, what would the state of opinion be? A real and perceived unfairness has been removed; a cause of discontent and dissatisfaction has been removed. That is a good thing.

Lord Norton of Louth: Yes, but my point was about linking that to people being aware of it. If there is dissatisfaction, they have to be aware of the changes to address it.

David Lidington: People who have followed these matters are aware that this has happened and are not getting cross about the fact that things happen the other way, as they used to do from time to time. At a time when public confidence in the political system, whether left or right, is a bit frayed, to put it mildly, removing things that have caused public dissatisfaction is not a bad thing to have done.

Lord Norton of Louth: Yes. That was not my point; it was about the public being aware, once you have removed it, that it has been addressed.

Baroness Evans of Bowes Park: I would assume that where MPs, for instance, had quite a vociferous set of constituents who were unhappy about the situation, it would be very much in their interests to make sure that they were aware. To a degree, it is within the gift of MPs themselves to make the case to constituents who were particularly exercised by this.

Lord Norton of Louth: Yes. You make the point that Members are aware of it. It is about whether you go beyond that and whether your review will look at the perception of the process, not just how the process itself is working.

David Lidington: I will reflect on Lord Norton's points, but I am not immediately attracted by the idea of commissioning widespread opinion research, at significant cost to the public purse, on this. The absence of complaints is itself a useful measure.

Q58 Lord Norton of Louth: You might get it on the cheap, because quite a number of other organisations have been polling. That is how we know about the current satisfaction. It may be that you can tap it through that.

Can I follow up with some wider questions related to that? Two other things we have been

looking at in the Committee are the union and devolution, and the extent to which there is not much joined-up thinking. Now we have decentralisation, with the northern powerhouse, but that is seen as a separate issue from decision-making in relation to the different parts of the union. Do you think that should be addressed, or do you see it as a discrete issue? What is to stop somebody saying, "Lancashire votes for Lancashire laws"?

David Lidington: Lord Norton tempts me on to the question of English devolution more broadly. There is an important distinction to be made. In the Acts of Parliament that established the three devolved Administrations and Parliaments or Assemblies, in all three cases, the devolution settlement involved conferring legislative powers on Scotland, Wales and Northern Ireland respectively. In the case of London and in what has been proposed for Greater Manchester and the West Midlands, we are not looking at legislative devolution; we are looking at, in effect, executive devolution, giving an elected chief executive of some kind, usually a mayor, considerable devolved executive power and having some kind of assembly or council whose prime function is to hold to account and question the mayor in the performance of his or her responsibilities. That is of quite a different constitutional character from the three devolved Administrations.

Lord Norton of Louth: It probably is now. Originally, Welsh devolution was closer to administrative devolution, but it has now moved to legislative devolution.

The Chairman: It is very much to your credit that your answers have been lucid, concise and extremely informative. We are nine minutes ahead of the deadline. This has also been the climactic session of our evidence-taking process. We shall now go through the difficult bit of putting it all together and coming up with what we will try to make a constructive and useful report. On behalf of the Committee, I thank both of you for coming. We know, genuinely, how busy you are and we very much appreciate it.

David Lidington: Thank you, Lord Chairman.

Baroness Evans of Bowes Park: Thank you.

Elizabeth Gardiner, First Parliamentary Counsel—Oral evidence (QQ 25-35)

Elizabeth Gardiner, First Parliamentary Counsel, Jonathan Jones, Treasury Solicitor and Head of Government Legal Service, and Adam Pile, Head of the Parliamentary Business and Legislation Secretariat, Economic and Domestic Secretariat, Cabinet Office

Evidence Session No. 2 *Heard in Public* *Questions 25 - 35*

WEDNESDAY 29 JUNE 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Beith
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

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Examination of Witnesses

Q25 The Chairman: Good morning. Such was your enthusiasm to come and talk to us that you were in through the door before we could invite you in. You are very welcome. We are impressed by the CVs that accompany you and feel that we have a very strong and authoritative bench in front of us to answer our questions on EVEL and its implications.

One of the things that concerns us is whether there are subliminal changes in the way the Government prepare Bills and draftsmen draft them to take account of EVEL, with a view to achieving certification more easily. Is that something that you identify yourselves? Do you have any thoughts about it that would be of interest to us?

Elizabeth Gardiner: From my perspective there are no obvious impacts at the moment. The Government's policy is that they are not drafting to the Standing Orders; they are continuing to draft Bills in the way they always have. I did a survey of my office before I came here to see whether there was any suggestion that people were looking to the Standing Orders to influence the drafting of Bills, and I have no evidence for that.

There is one provision in the Finance Bill currently before Parliament where the structure of the rates of tax has been set out in such a way as to ensure that there is a vote here corresponding to the vote on the rate of income tax that will occur in the future in the Welsh Assembly and the Scottish Parliament. Above and beyond that, I am not aware of any impact on the drafting of Bills. Indeed, the policy is that that is not the way we approach it. We

approach it as we always have: to produce the best quality of legislation regardless of the Standing Orders.

The Chairman: Mr Jones, do you agree?

Jonathan Jones: I do. I should add a few words from my perspective, particularly in relation to statutory instruments, where again the lawyers for whom I am responsible, who are drafting statutory instruments, do not report any difference in the approach taken to the way policy is translated into the legislation. The evidence base is relatively modest so far; we are talking about 24 SIs that have been certified. There is no evidence so far of some systemic change in approach.

The Chairman: Mr Pile, do you take the same view?

Adam Pile: I have seen no evidence that departments are changing the extent or the way they draft their legislation.

Q26 The Chairman: I hope you did not all sit outside agreeing on what your answers would be. You are a close-harmony group so far. Let us talk about the certification process itself. Is the system working smoothly, or are there any rough edges that create problems?

Elizabeth Gardiner: In the certification process, it has taken the office a little while to get its head around all the Standing Orders and how they are going to affect the office and what sorts of questions we have to be asking ourselves. The certification unit in the Cabinet Office is taking the lead on that and is advising our office and the departments. We are involved in that but we are not taking the lead. It is similar to any new process; it takes people a little while to get used to it. It has been time-consuming in the first Session on some Bills, but that is as much because we are not familiar with it as anything. Hopefully it will settle down and people will understand how the rules apply, and I imagine that our involvement will reduce and the certification unit will take more of a lead.

The Chairman: Mr Jones, any thoughts?

Jonathan Jones: We are agreeing again. It is a new process. It has involved the production of a new form of Explanatory Notes, and it is taking a while for people to get their heads around that, but people are doing it. I dare say that we can refine the process and the format of the notes, which we will look at when we come to review the way in which the whole system is working. It is not creating serious problems. To go back to the earlier question, it is not making a difference in the end to the way in which the legislation is constructed. It is about getting used to the process rather than any substantive change.

The Chairman: Mr Pile, do you agree?

Adam Pile: I concur, yes.

The Chairman: We will move on then.

Q27 Lord Norton of Louth: My question picks up on Chris Bryant's view earlier of how the Government will look at legislation. His view was that the Government will want to make life easier for themselves and are therefore more likely to draft Bills that are English-only or English and Welsh-only, and that a consequence would be more but smaller Bills. There are two questions. First, do you think there is anything in that? If there is, the question I put to him was normative: would that be a good or a bad thing? The Good Law initiative is based

on greater clarity and perhaps shorter Bills, and some people might think that it is quite helpful to move away from the large omnibus Bills to which we have tended to move, even though you could say that there is a distinction between the two. Is there anything in his interpretation or in the consequences of it? Did you feel that it was a valid interpretation?

Elizabeth Gardiner: On the question of there being more England-only Bills, the evidence to date is that there is not, in the sense that there have been a couple of Bills in which just one provision prevented them from being certified as English only. People might like to see how the rules operate on an England-only Bill, but in fact there has been no pressure to remove those provisions to create one. The appetite is not there at the moment; I am not seeing it anyway. As to whether there would be more England or England and Wales-only Bills in the future, that is perhaps an inevitable consequence of the changes to the devolution settlements as opposed to the Standing Orders. I can see that there may be.

As to whether more small Bills is a good idea, the Christmas tree-type Bills are a challenge to handle for the Government as much as anybody else. We are constantly looking at how we manage business and at the scope of Bills as a result of them being very large. Sometimes a large Bill can be quite focused. I would say that there are pros and cons to large Bills under the procedures of the House, so it is always a balancing act for discussion with the Whips when looking at whether we divide things up or put them together.

Adam Pile: I do not think there is any evidence that we have been paring back the extent of UK Government Bills. If you look at the figures for legislative consent motions, there are three or four for the current set of Bills for Scotland and about the same for Wales. They are areas where the UK Government have been working with the devolved Administrations and have decided to extend beyond England, or beyond England and Wales, so they are still working actively with the devolved Administrations and choosing to extend the Bills beyond England.

Q28 Lord Hunt of Wirral: Is there a risk that attempting to create English-only legislation could reduce the attention paid by officials who are compiling instructions to parliamentary counsel to potential knock-on impacts in the devolved nations? Of course, I speak as someone who was Secretary of State for Wales for several years and as a lawyer. We are dealing here with a trial period. Rather than all giving the same answer to every question, could you open up—

The Chairman: Without perjuring yourselves of course.

Lord Hunt of Wirral: —and explore with us the best way forward? During every trial we should learn the lessons from what has happened already. Certainly Andrew RT Davies expressed concerns in our evidence session in Wales about the impact for cross-border service users, most prominently people living in Wales whose local hospital is in England. Could you take us through the lessons that we need to learn to avoid the pitfalls?

Jonathan Jones: To be boring, first, I do not think there is any evidence of that yet. In the end, the content of Bills, and indeed of statutory instruments, will be driven by the policy, and if the policy is that the Bill should apply solely or mainly in relation to England because that is the territory that is being legislated for, that will be the effect of the Bill. As Elizabeth has said, that is likely to become the case more often as the scope of devolution settlements becomes wider.

On the technical point of whether there is a risk that less attention is paid to the cross-border knock-on effects, again boringly I would say that there is no evidence for that. In fact, the requirements of the new procedure mean that officials, including lawyers, have actively to turn their minds to the precise devolution effects of any given provision. In a way, that is helpful. Whatever the policy may be, officials have to think about the devolution effects and cross-border implications of a given Bill.

We will look at the process behind the Explanatory Notes, and its format, to see whether it is working in the most efficient way, and whether it is indeed making officials turn their minds to those questions in the way that was intended, but on the whole I think it is a positive development from that point of view.

Adam Pile: I completely agree. This has not changed the policy approach or the way we have drafted Bills. It has ensured that devolution is brought to the front sooner and we are more open about our analysis of whether it is reserved or devolved and how it applies to different parts of the UK.

If we take the example of cross-border services in Wales, EVEL is not the reason why a policy will or will not apply to each part of the border; that is devolution. More often than not, the policy does not extend to Wales or another part of the UK because it is a devolved matter and the devolved Administrations have a separate policy.

Elizabeth Gardiner: We have evidence now of greater attention being paid both in the context of preparing the draft for introduction and of things that are picked up during the passage of the Bill as a result of concentrating on looking at the application and the extent of the Bill. Our drafters are acutely aware of having application and extent first and foremost in their minds. We also have closer communication now with the territorial offices to make sure that we are all joined up and are talking to each other, probably in a way that we were not as aware of before. I think it has bought it to the fore for us.

Lord Hunt of Wirral: Are you able to share with us specific examples of the evidence to which you have just referred?

Elizabeth Gardiner: Issues were raised when it came to preparing the notes on the Housing and Planning Bill, and we realised, when we had to explain the policy and how it was going to apply to the various parts of the UK, that perhaps the drafting did not accurately reflect the policy, so examples would be its extent and application. I was not directly involved in that, but that is one example. Certainly when we were looking at the Enterprise Bill, it brought to the fore on every provision that we had to consider where this was meant to apply and the effect of it applying only there. It definitely brought it to the fore for the drafter in a way that we were probably not as aware of before.

Lord Hunt of Wirral: Thank you very much. That is very helpful.

Lord Judge: I rather got the impression from the answers you gave the Chairman that, to use your phrase, Ms Gardiner, "getting your head around" the certification process and so on is simply ongoing. I rather gather that is true of all three of you. What do you see as the next hurdle?

Elizabeth Gardiner: We have probably not come across every permutation of a Bill and how it will apply, so we have to apply the Standing Orders to particular Bills all the time, and that might raise particular issues. One example is the Childcare Bill; we had not—we should have,

and I personally failed to do so—picked up that a provision about HMRC meant that, although it was only one very small provision in the Bill, the Bill would not be certified. We had not been thinking about it in that way, but it was brought to our attention and it was quite right that it was not certified because of that. We learned from that and we have spread that through the office so that everybody now understands that. There are bound to be points like that that come up on new Bills as we are doing different things.

Lord Judge: Mr Pile, you are responsible for the Cabinet Office's *Guide to Making Legislation*.

Adam Pile: Yes.

Lord Judge: Can you tell us in advance what your next edition will provide in relation to this?

Adam Pile: We have already updated chapter 11 to reflect how the Explanatory Notes have changed. We will be providing extra chapters on the procedures and guidance on how the EVEL process works. It is worth remembering that the *Guide to Making Legislation* does not represent all our guidance. A lot more goes on in government behind the scenes that you guys will not see.

The Chairman: I find that rather disconcerting. Could you give us a hint of the sort of behind-the-scenes guidance that you issue?

Adam Pile: Yes. There is quite a lot. The team in the Cabinet Office that leads on EVEL has introduced a workshop for policy officials, Bill teams and the wider array of policy officials who feed into the policy in the Bill. We are also developing an online module for Civil Service Learning, which, crucially, will be accessible to people right across the UK Civil Service, not just the ones in London who can attend courses. The Cabinet Office is developing a module for the Government Legal Service as part of the induction for new government lawyers. I have already mentioned the *Guide to Making Legislation*. The main thing to remember here is that we have all sorts of formal guidance and training, but we are not leaving Bill teams and policy officials in the lurch. They have support from the specialist team in the Cabinet Office, from the Office of the Advocate-General for Scotland, from the three territorial offices—the Scotland Office, the Wales Office and the Northern Ireland Office—from my team in the Cabinet Office, from parliamentary counsel and from the Whips' Office, so we are taking them through this process all the time and sense-checking their evaluation of extent and devolution.

The Chairman: This is a slight digression, but I have heard anecdotal comment to the effect that Bill teams change personnel very rapidly and so are not as on top of the job as they perhaps were in times past, or that they perhaps do not have the relationship with parliamentary counsel that they should have. I am not suggesting that is true but I have heard comment to that effect. Do you think that is nonsense, or is there something in it?

Adam Pile: You get good and bad Bill teams across each Session. Yes, you have lots of personnel changing, because the project, policy area or department is different all the time. Training is like painting the Forth Bridge. If you think that part of our goal is to increase knowledge and understanding of Parliament in the Civil Service, the more people can work on a Bill and pass on that knowledge is a good thing.

The Chairman: Do you have a thought on that, Ms Gardiner?

Elizabeth Gardiner: We bring our cohort of Bill managers together fairly regularly and train them. During the Bill process, I do not think there is a huge turnover in the Bill team now,

certainly not at the senior level. I think they are better trained and prepared now and have a lot of just-in-time training as they are going through than was the case five or 10 years ago. We do not have a lot of people who make it their career to be a Bill manager. We have some people like that and some not. Some of our best Bill managers may do it only once, but they do a really good job, and, as Adam says, they take that out and spread that good working practice elsewhere.

The Chairman: Do you want to add anything, Mr Jones?

Jonathan Jones: I was going to add that lawyers, if I may say so, play an important part in this process. The drafters in Elizabeth's unit and the lawyers in departments for which I am responsible are often a point of continuity, because legislation in various forms is a core part of the skill and the practice of government lawyers. Adam has referred to some of the training that we do, both on induction and on specific aspects of Bill work, including EVEL now, throughout lawyers' careers, so they are not substituting for the role of Bill managers and policy leads, but there is lots of embedded experience and learning in the legal community, which I think is an important part of the process.

Q29 Baroness Taylor of Bolton: Can we say a word about the House of Lords? I think it is generally accepted that so far EVEL has not particularly affected how Bills are handled in the Lords. Do you anticipate that having to be factored in when you are preparing legislation? A Bill might be designated with certification in the Commons, and EVEL has been considered, and then it comes to the Lords, where we have lots of Lords from Scottish or Welsh areas who then vote through an amendment. Is that at the back of anybody's mind as a potential area of difficulty in the future?

Elizabeth Gardiner: As I was on the way here I was trying to think of any impact that it would have on the House of Lords, and I struggled to see how we would do things differently, taking into account the business in the House of Lords. Any legislation in the House of Commons has to have the consent of the whole House, in the same way as if it were an England-only Bill it would have to have the consent of English MPs, so I do not think there are particular considerations for us. We have not identified those at the moment.

Baroness Taylor of Bolton: Do you have anything to add?

Adam Pile: Regarding the House of Lords, it has not changed how we handle Bills or draft the policy. When the Bill is nearing the end of its passage through the House of Lords, there is a lot of extra work, in having to prepare for its return to the House of Commons, knowing that we have to have the Government's view on certification for amendments, but it is not affecting how we are handling Bills in the Lords.

Q30 Lord Brennan: The complexity of the system that is created by the Standing Orders is challenging to everybody and will be so with respect to every Bill that comes through. Forgetting the theoretical structure of this process and looking at its practical application, a jaundiced observer might say that this system for EVEL offends our bicameral system in which, if the House of Lords disagrees with something, it might not be accepted in the Commons. Instead, for EVEL, we have a unicameral system.

Adam Pile: I am not sure that I would recognise that view, in the sense that, as Elizabeth has already said, all the legislation passed through the House of Commons under the new procedure has to be approved by Members from across the House, so nobody is being

excluded from approving the final piece of legislation, and although you may have Peers from different parts of the United Kingdom, ultimately the House of Lords is a UK Chamber. I think that both constituent parts of Parliament are playing their role as they were before.

Lord Brennan: I asked you about the practical application, not the theoretical one. Is it not almost inconceivable that the Commons is going to go back on certification and the double-majority system?

Adam Pile: This is the steer that we have had from Ministers, and these are the House of Commons Standing Orders that they have agreed, so, yes, I think they are here to stay.

Q31 Lord MacGregor of Pulham Market: As part of that, how does EVEL affect the work during ping-pong in a Bill's passage through Parliament? Clearly, you are very much aware of the speed of how that applies. Are you planning ahead for those sorts of eventualities, and how do you see that being dealt with?

Elizabeth Gardiner: Yes, there is lots of planning ahead for all the possibilities. It was always thus. This is just another factor. When planning ahead for ping-pong we always thought, "If these are accepted, what is the result? If these are rejected, what is the result? If these are rejected with amendments, what might those look like and what would we do?" We are always trying to plan ahead. Although the actual stages might happen quickly, that work ought to have been done ahead. Looking at and considering the advice and information that we might give about EVEL certification is just another element of that now. Yes, it is about advance planning. You are in trouble if you have not been planning ahead.

Lord MacGregor of Pulham Market: Does that include non-government amendments that are coming through in the House of Lords?

Elizabeth Gardiner: Yes, it does.

Adam Pile: While we can say that this has made the situation more complicated in procedure and administration, particularly if you have last-minute amendments in the House of Lords made on Third Reading, where a lot of work goes on behind the scenes to work out the extent and devolution implications for those amendments, as Elizabeth said, that is work we have always done. If amendments are made at the last minute in the House of Lords, we have always needed to establish the extent and the devolution implications. The Government have always abided by the Sewel convention, so we have always needed to know whether they will trigger an LCM. Even for reserved matters, we have always needed to know whether the new pieces of the Bill are compliant with Scots law, Northern Ireland law and the different administrative arrangements in different parts of the UK. It is work that we have always done behind the scenes; we are just more open and transparent about it now.

Lord MacGregor of Pulham Market: So if last-minute amendments from Back-Benchers in the House of Lords come through and the implications of EVEL have not been thought through, you would advise the Front Bench to draw this to the attention of the House, and then, presumably, it would be looked at again when it returns to the House of Commons.

Adam Pile: Yes. We need to be clear about the devolution implications. Has someone inadvertently through drafting triggered the need for an LCM? Elizabeth will know better than I, but quite often when we have Back-Bench amendments, there have not been

consequential amendments to amend the extent clause, so it is not quite clear when a Bill returns to the Commons what the extent will be, and that is what we have to work out.

Q32 Lord Beith: With some of the earlier public comments that were picked up about knock-on consequences, I wanted to clarify how you saw your role, because it would appear to me that knock-on consequences are policy matters as opposed to issues of extent. If you look at it the other way round, decisions of the Scottish Parliament have exactly the same implications for residents in England who use Scottish hospitals. I assume that it is not the job of any of you in the course of the process that we are describing to deal with knock-on consequences that are policy issues.

Elizabeth Gardiner: I think that is right. From my point of view, if it is a policy question I just try to ensure that the drafting properly reflects the policy, whatever that might be.

Lord Beith: It may or may not be a good thing that England looks after Welsh hospital patients and Scotland looks after English hospital patients, but that is not what this process is there for.

Elizabeth Gardiner: No, it is not.

Adam Pile: That is the role for the territorial offices—the Scotland Office, the Wales Office and the Northern Ireland Office. They are part of all the Cabinet committees that agree amendments, so those are the things that will be taken into account when they decide what the Government's position on an amendment should be.

Q33 Lord Beith: Has the process for compiling the "Territorial extent and application" annexes involved the devolved Administrations and a lot of interaction between your teams and the devolved Administrations?

Adam Pile: The thing to remember is that the extent table in the back of the Explanatory Notes is the UK Government's view on the extent and the devolution implications. That is drawn up by departmental officials working with their lawyers. They will come to a view within the department and they will stress-test that with the territorial offices, the office of the O-General for Scotland and the special team dealing with EVEL in the Cabinet Office. They will not consult the devolved Administrations directly. However, that does not mean that there have not been discussions throughout the policy development for the drafting of a Bill with their colleagues in the devolved Administrations. We are always encouraging Whitehall officials to have that dialogue with counterparts in the devolved Administrations.

Lord Beith: Of course, there is no reciprocal or reverse procedure under which the devolved Administrations are required to show that they do not have secondary effects.

Adam Pile: No.

Lord Beith: Indeed, some of you might remember that under the Scotland Act 1998 (River Tweed) Order 2006, the Scottish Parliament can make and modify criminal offences in England by statutory instruments that are not subject to annulment in this House, but there is no reverse process for a similar order coming forward from Scotland.

Adam Pile: It is also worth pointing out that we were thinking of producing the grid in the back of the Explanatory Notes before EVEL came along. Before then, they had a very short sentence describing the general gist of the extent and the devolution implications of the Bill,

but if you are a Scottish or English MP you want to know whether the this legislation applies to their part of the UK, so we were working on this before EVEL came along.

Lord Beith: Does the same process apply to statutory instruments?

Adam Pile: There is an assessment in the Explanatory Memoranda, so the same process is gone through within government, yes.

Elizabeth Gardiner: It is different in an SI because, from an EVEL point of view, you are either in or you are out, so you do not have to go through the line-by-line scrutiny in quite the same way in your information.

Q34 Lord Beith: On a technical point, can a Bill that has a clause allowing it to be applied to the Channel Islands and the Isle of Man be certified as an England-only Bill?

Elizabeth Gardiner: I think not.

Jonathan Jones: No, I do not think so. That would be part of England and Wales.

The Chairman: Is there any reason why you should not consult the devolved institutions earlier in the process?

Adam Pile: We are always pushing Whitehall officials to have that engagement and dialogue behind the scenes, not just when they are about to legislate. They should be sharing ideas, knowledge and know-how all the time.

Lord Morgan: Several of the Explanatory Notes for defining the range and implication of particular Bills say, "Blah, blah, blah, applies to Wales", "applies to Scotland", "applies to Northern Ireland". Do you consider the distinctly different point about whether a Bill affects Wales or Scotland or Northern Ireland? I am thinking, for example, of the implications of a Bill for the Barnett formula.

Adam Pile: We are quite clear that the notes relate only to the application of the legislation. There may be wider policy effects across the UK, but the notes are quite clear for MPs and peers: where does this legislation apply?

Lord Morgan: Do you mean territorial application?

Adam Pile: Yes.

Lord Morgan: So the territory of Wales or Scotland, although obviously they can be affected in all sorts of other ways.

Adam Pile: They can, yes.

Lord Morgan: Financially or culturally or whatever.

Adam Pile: I think we have to be clear in the Explanatory Notes that that is an assessment of where the legislation actually applies, so it forms part of the law.

Q35 The Chairman: Are there any other issues on EVEL on which you would like to unburden yourselves that we have not asked you about? You can even volunteer personal opinions on its political viability or suitability or desirability, or anything you like.

Adam Pile: I would point out that this is a new process and that parliamentary process does not change that often, so we are doing a lot of work within government to bed this in and make it work. It is really important to note that this is highlighting work that we have always

done. We have always worked with the devolved Administrations. We have always tried to work out where our Bills apply across the UK and whether they trigger the Sewel convention. The transparency and openness that this has led to is a good thing. It definitely has some issues bedding in, but so far we seem to be going quite well. I think it is definitely here to stay, and we seem to be handling it quite well so far.

The Chairman: You talk about having consulted the devolved Administrations, but do the government departments do that? You talk about your relationship with government departments, but are the departments sufficiently in touch with the devolved Administrations?

Adam Pile: Yes. There is always a dialogue between policy officials in the UK Government and the devolved Administrations.

The Chairman: That does not have quite the tone of what some of them said to us in our earlier inquiry on the union and devolution.

Adam Pile: So far we have had seven legislative consent motions for Scotland in this Parliament and six for Wales. The evidence is there. There must have been lots of dialogue to make that happen.

Lord Beith: Are you agreeing with the witness who told us that the procedure has not been tested in anger, that it has not been stress-tested?

Elizabeth Gardiner: I think that is true, because we have had few Divisions. There has been one Division on a to-and-fro Motion. Given the current make-up of the House of Commons, I would say that it has not been tested in anger.

The Chairman: Mr Jones, is there anything you would like to say to us?

Jonathan Jones: No, except that our overarching responsibility as lawyers is to deliver legislation that meets the policy of the Government in legally the most coherent, cleanest way, and that is what we are trying to do. That might sound a bit unglamorous, but that is ultimately what we are responsible for. I underline what has been said: that so far this has not been tested in anger, but the system is working with the grain of the new arrangements, so to that extent it is not creating major problems.

Elizabeth Gardiner: From my point of view it has gone very smoothly. We have worked very closely with the House authorities to consider how it is going to work in practice, and, on particular Bills, we are making sure that we talk early and understand where each is coming from. From our point of view, the decision is in the hands of the Speaker. We are quite relaxed about that. We have provided the Speaker with the information that he requires, and if he has required more information we have been very happy to provide it. In drafting terms, I think we will look back at it and think that it has been a good thing because it has focused minds on extent and application, which is really important, particularly with the evolving devolution settlements, and that is probably a good thing for drafting.

The Chairman: Thank you very much. It has been a very interesting session. You have been very forthcoming and admirably concise. We are very grateful to you. Thank you.

Daniel Gover, Mile End Institute, Queen Mary University of London—Oral evidence (QQ 8-17)

Professor Michael Kenny, Mile End Institute, Queen Mary University of London, and Daniel Gover, Mile End Institute, Queen Mary University of London

Evidence Session No. 1 *Heard in Public* *Questions 8 - 17*

Members present

Lord Lang of Monkton (Chairman)
Lord Beith
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord Morgan
Lord Norton of Louth

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Examination of Witnesses

Professor Michael Kenny, Mile End Institute, Queen Mary University of London and **Daniel Gover**, Mile End Institute, Queen Mary University of London

Q8 The Chairman: I welcome Professor Kenny and Daniel Gover, both from the Mile End Institute, Queen Mary University of London. Thank you for the written evidence that you sent into us. You had a bit of a warm-up by hearing the previous witnesses. We have a number of questions for you. They are not all the same questions, but we are on a fairly tight timetable. You have been told that we should finish in 40 to 45 minutes. We will try to keep to that.

Let me start. To what extent has the introduction of English votes for English laws helped or harmed the Government's aim of securing the union and making it fair for all four nations? Would you like to start, Professor Kenny?

Professor Michael Kenny: Yes. As a preamble to our responses, I should say that we are conducting academic research on this question. That involves interviews with people from Government and in Parliament—both parliamentarians and people charged with operating the system. We are currently in the process of producing a report, which we hope will feed into the Government's review. Our remarks reflect the research that we have conducted. Some of our judgments are of an interim character, while some of them are perhaps more clear-cut.

On the question you put, which is a very important one, the starting point is that clearly this particular system is motivated by a belief that English opinion has shifted in important respects in relation to politics in general, and to aspects of Parliament in particular—

specifically, the West Lothian question. A strong argument has developed, and has become more robust over time, for a confidence-building measure, or measures, designed to make clearer to English opinion that English interests are, in some sense, more clearly protected and that an English voice of some kind is heard within the parliamentary system. Obviously that has to be balanced against the constitutional position of the lower House—the House of Commons—as an expression of the Parliament for all parts of the UK.

We have been very sensitive to that issue in the research we have conducted. As you have already heard this morning, clearly there are different perspectives on this question. To focus the answer on how the system has operated so far, for the most part, it has operated in a way that has not generated particular controversy. There is a question about how the system is understood by parliamentarians, and by those charged with operating it—a slightly separate issue. Although concerns have been aired about whether this alters the character of the UK Parliament, key features of the current reforms are intended to address those concerns. I refer particularly to the so-called double veto system: the requirement that all Members of the House have the opportunity to vote on all parts of a Bill, that point has been retained, alongside the introduction of the new veto right. We are in the process of seeing how that will work out.

The Chairman: Mr Gover, would you like to add anything?

Daniel Gover: The only thing I would add is that the data on public opinion that we have so far suggests that a reform along these lines is popular in England. According to the data we have so far—there has not been any that I am aware of since the implementation of the new procedures—it also seems to have support in Scotland. There are questions about how the questions are interpreted. It remains to be seen how people across the UK will react to the system once it is fully embedded, but there is a case for at least seeing how it goes and exactly what the effects will be.

The Chairman: We will probe those issues further as we proceed. I bring in Lady Dean.

Q9 Baroness Dean of Thornton-le-Fylde: Good morning. In our report, *The Union and Devolution*, the Committee stressed the importance of consent and the perception of maintaining the union. Indeed, we had some criticism in the evidence that we received about the manner in which EVEL was announced by the Prime Minister, the morning after the Scottish referendum. In your written evidence to us, you emphasise the importance of presentation. You say that the Government "needs to present EVEL as a pro-Union—not as a narrowly pro-English—measure", which is very similar to what we said in our report. Has that been achieved? If you are saying that it has not, what is the substance of your response to that question?

Professor Michael Kenny: We wrote the submission fairly soon after the general election. We were acutely aware, as I am sure you were, that in that particular election the question of how English voters might feel about a potential Government that involved a party in Scotland was a very live issue. Of course, in general election campaigns, these things are expressed in the vernacular. We thought it very important to make the point that, if this kind of reform were introduced, it ought to be presented, and indeed understood, as something that applied to the UK Parliament in the round. Partly, it is a question of timing. We were sensitive to how the Government were going to proceed with presenting and developing the change.

There is also a question of principle. Our own view, which we formed in the course of doing the research, is that this is most likely to be embedded—to become legitimate—if it is understood as a change that reflects a broader principle that has emerged in the wake of devolution: the principle that, in any particular territory within the UK that is affected by UK legislation, where that legislation has what the McKay commission calls "separate and distinct" effects, they should not happen without the express consent of a majority of representatives from that territory. That is a principle that many people can understand, across the UK as well as in England. When we raised that point, we were starting to think about urging the Government—we still urge them to think about it in their review—to consider it in the context of the UK Parliament and how it develops, rather than, as you say, considering the measure as something that evens up the score for the English. I certainly think that it is possible to develop a form of English votes for English laws that is congruent with that principle. Whether the particular system we have now is so is another matter. That was really the concern that we were starting to develop.

Baroness Dean of Thornton-le-Fylde: That was your concern, but has it been met?

Professor Michael Kenny: It depends on what that refers to. In some of the language used about this, the Government have been broadly mindful of that consideration. As they came to appreciate that there were different concerns within the House about this particular system, they moved to a more explicit recognition of that kind of feeling.

There is a second issue, which I think you are also alluding to, about consultation, and whose voice has been heard in the development of the process. That is a slightly different question. It seems to me that, there, we are into a question about politics. The Government felt that, broadly, they had this system included in their manifesto. The Conservative Party has talked about this reform for some considerable while, so clearly the Government felt they had a mandate to introduce a reform of that kind. The question to ask about all this is whether the reform they have introduced is likely to survive without ensuring wider consensus among other political parties in the UK Parliament. That is really the question that the Government ought to have in their mind in relation to these issues.

Q10 Lord Norton of Louth: A different, but rather important, dimension is the consequence of EVEL on the relationship between Government and Parliament and the devolved Administrations. What do you think are the possible consequences or implications of EVEL for those relationships?

Daniel Gover: So far, the English votes procedure has not had much noticeable effect, although at least some of the devolved institutions are certainly paying very close attention. For instance, the First Minister of Scotland published an open letter that raised particular issues, some of which were to do with the relationships, often behind the scenes, between devolved bodies and the UK Government. Particular concerns were raised in the letter about whether or not the Scottish Government, in this case, would be able to participate in discussions about the UK Government's assessment of whether a provision met the two-part EVEL test. There were also questions about policy development, such as how it will affect existing relationships when policy is developed that may have implications for other parts of the UK.

As far as we are aware, there have been no particularly controversial cases. To some extent, that is an indication of how early we are in the process. The Speaker has certified provisions

of seven Bills so far. None of them, to my knowledge, has been particularly contentious for the devolved institutions. Whether that will change remains to be seen. Overall, my sense is that the existing networks between devolved Governments and the UK Government are able to adapt, to some extent, to facilitate dialogue on these sorts of questions, but how successfully remains to be seen.

Lord Norton of Louth: Is there a potential implication for things like the normal process of seeking legislative consent from a devolved body, given the new procedure?

Daniel Gover: In what sense?

Lord Norton of Louth: It has been raised in evidence to us in Scotland that it is not clear whether there might be a problem in relation to the normal process of seeking legislative consent.

Daniel Gover: If I have understood correctly, that was one of the issues raised in the First Minister of Scotland's letter. All I can say on that is that I am not aware of it so far, but it is early days. It remains to be seen.

Lord Norton of Louth: Should there be any anticipation of what the problems might be, rather than waiting, as you suggest, for the normal processes to discuss this and see whether we can resolve it?

Professor Michael Kenny: That is a good question. There is an aspect to all of it that is somewhat experimental. The point about the networks that exist and have developed between the devolved institutions and central government departments is a very important one. In all honesty, you will find different answers to your question in the different devolved Administrations.

Lord Beith: Do you agree with Mr Brake's evidence, which you heard earlier, that we will not know whether the system works or indeed whether it has public acceptability until it has been used in anger?

Professor Michael Kenny: Yes, but—the "but" reflects the fact that we have some pretty robust polling evidence that shows that people in England, and, as Daniel said, even people in Scotland, broadly agree with the principle that lies behind this reform. With all due caveats about question wording and what exactly people understand by that, that tells us something, and this is a reform that can be presented as moving in line with that shift in opinion.

On the transparency and accessibility of the process, it is true that it is hard to think that there is much public consciousness of it. Yes, it is most likely to be the case that people will become aware of it when things go wrong. On the other hand, it is important to say that the Government feel that they have a democratic mandate, in that this was part of their manifesto promise. A scrutiny process, of sorts, has taken place; it is not as if this has been dropped in entirely from nowhere.

Although I think that was a fair point to make, it is important that the political parties are able and willing to talk about the procedure to the wider public. One of the things we have urged in the various written submissions we have made to various Committees is that the Government think harder about how they communicate the workings of and the principles behind this system.

Q11 Lord Beith: In your helpful paper, you talk quite a bit about the issue of consequentials. As I see it, that has two aspects. There are direct consequentials, as in the Barnett formula. We happen to have a system—not one I really approve of—in which particular decisions have direct consequences on the funding that will be available to the Scottish Parliament. There are also completely indirect things, simply because there is a border and a different jurisdiction on either side of it, and people access services across borders. Indeed, there is a more extended version of it: if this legislation is passed, it might lead to pressure for similar legislation in Scotland. There is a huge spectrum of consequentials. Is there any way we can clarify this, or do we simply accept Mr Wishart's view that, as long as it is possible for Scottish Members to be involved in issues with vague consequentials, they will be, but he would be quite happy if there were an English parliament and they were not involved at all?

Professor Michael Kenny: The current system is driven by a different proposition, as you say—that it is possible, broadly, to delineate consequentials, for the most part. That responsibility falls both on the Government, as they draft legislation and make their recommendations about certification, and on the Speaker in the other Chamber. It is interesting that so far, based on our analysis of Bills that have gone through, there have been very few disagreements, although there have been some, both between the Government and the Speaker and more generally. When it comes to interpreting potential consequentials, we have not hit too many very difficult cases. It appears that many cases are fairly straightforward. No doubt we will come to cases that are more difficult to determine.

That throws an emphasis on to the nature of the Standing Orders that have been drafted, which reflect an attempt to produce a very comprehensive system of veto—a detailed, and if I may say so legalistic, formulation of the veto right. One of the things we are looking at is whether it is possible to be that comprehensive and clear-cut in the rules that are stipulated in relation to the many different consequential issues that will arise. That remains to be seen. There is a question about the nature of the Standing Orders that have been drafted in relation to this sort of issue.

Q12 Lord Hunt of Wirral: Delineating and interpreting consequentials—the mind boggles. Can I turn to the more constitutional impact in Parliament? I hope that you have had the opportunity to read our report, *The Union and Devolution*, where we emphasised how the union—particularly the political union—is embodied in the sovereign UK Parliament and the UK Government, which represent and act on behalf of the whole United Kingdom. Taking that more overall view, how does EVEL affect the role of the House of Commons in representing all parts of the United Kingdom?

Professor Michael Kenny: Undoubtedly it affects it. This goes back to the first answer that I gave. It is clearly the case that introducing a reform such as this raises anxieties and worries on the part of some non-English Members about whether different classes of MP have now been created. As you know, that is a very long-standing worry, and an objection, in some cases, that has been put to this kind of reform.

To go back to my earlier point, we are in a different situation now. The attempt to develop a measure that ensures greater English confidence in some of the workings of the UK Parliament may well now be justifiable; indeed, it may well now be unavoidable. The question is how to introduce it in a way that does not cause the kind of tension and concern, and accentuate the sort of worry, you refer to.

I return to the point about the double veto system. It seems to us extremely important, as a characteristic of this reform, that the Government have accepted that all Members of the House should vote on the final Reading of all Bills. Indeed, as you have seen, they have accepted that non-English Members should be allowed to attend and to speak at the legislative Grand Committees, which we happen to think is an important concession that they have made.

It is very important to be extremely mindful of the role of the House as the key part of the UK Parliament, but it is not impossible, we think, to balance that against this new system, whatever one thinks of some aspects of it. In principle, that ought to be possible to do. We also think that the Government need to be very mindful of the sensibilities you are talking about.

The Chairman: Lord Morgan has a supplementary.

Lord Morgan: It seems to me that one of the problems in determining this kind of distinction between the role of different MPs and different kinds of legislation is that it is complicated by the fact that the situation is so fluid. Discussions of devolution right now will be different from those in six months' time, with the extension of more fiscal devolution to Scotland and the likelihood of more reserved powers going to the Welsh Assembly. Does that not make the change in Standing Orders even more of a tentative and temporary expedient than it already seemed to be?

Professor Michael Kenny: That is a very good point, but I want to make a distinction. Hopefully, there will be an acknowledgement by the Government that there is a somewhat experimental aspect to this. We hope that that will be reflected in the way they embark on their review process, and that they will consider some of the possible downsides of the current system, as well as ways in which it has worked. That is a rather different point from the idea that, because things are fluid, this measure can only be temporary and we must not aspire to make it durable. It seems to me important if we are making a change that is of considerable constitutional significance, as you well know, that it is incumbent on its architects to attempt to devise a system that is likely to endure.

One way in which that is more likely to come to pass is if a process happens that involves other political parties. It seems to us feasible to imagine a version of English votes for English laws that might ensure more consensus, or more buy-in from some other political parties. I doubt very much whether the Scottish National Party would buy into any of these models, but potentially other parties would. That seems quite an important ambition—that we try to put these reforms on a footing that means they become embedded and accepted as the legitimate rules of the game within the House of Commons.

Q13 Lord Morgan: At the moment, it is perhaps fairly straightforward to get that kind of harmony between parties, but one can see all sorts of conflicts that might come. It seems to me that the revised Wales Bill is likely to make less harmonious an agreement than would otherwise have been the case. Heaven knows, next week's vote may increase the ill will between Edinburgh and Westminster even more.

Professor Michael Kenny: That is indeed possible. I do not disagree with any of that. It still seems important that the Government attempt to put this issue on a footing that means that it enjoys wider legitimacy than it does currently.

Lord Judge: Will it enjoy wider legitimacy merely because there has been wider consultation, or do we have to have a different system and a different approach to it?

Professor Michael Kenny: Consultation is important, but I agree that it is a necessary, not a sufficient, condition for legitimacy. That is an interesting question to consider in relation to the existence of different models of English votes. It is interesting to go back to the McKay commission, which produced a very elaborate argument for a rather different system and model for English votes, although it included a suite of different options in its conclusions. What is notable about McKay, and is rather different from the current system, is that it gave more emphasis to a system that prioritises voice rather than veto. One of the conclusions we have begun to move towards in our research is that it is extremely difficult to combine voice and veto in one institutional device. It is extremely difficult to do both at the same time. McKay talks much more about the symbolism of making it clear and more transparent that the views of English representatives are considered, but it does not give those a veto right. There are some indications that other parties, notably the Labour Party—perhaps, the Lib Dems, too—might have been prepared to engage in talks on the basis of that kind of model.

That is not the only model. There are different versions of EVEL in circulation. The question about legitimacy goes to the question of which model we think we should start with. That is where we think that a more experimental attitude towards this may well be appropriate.

Q14 Lord Judge: Assuming that you had a blank sheet of paper and were all-powerful, what model would you advise us to have?

Professor Michael Kenny: That is always the question that academics are most reluctant to answer, of course. I will not be quite as blunt as perhaps you want us to be, because we are in the process of writing a report that will make—

Lord Judge: Subject to the fact that you have not finally made up your minds.

Professor Michael Kenny: Subject to the fact that we have not quite completed the research. I go back to the point that I have just made. We are leaning towards an argument that it is probably difficult, and perhaps unwise, to attempt to do voice and veto in one particular change. We think that there is a compelling argument for giving greater emphasis to voice than the current system does. If we want to take voice seriously, we ought perhaps to think about different kinds of forums: for instance, an English Affairs Committee, which is just one example of something we are looking at in the report.

There are different options that you can follow. The key point is that it really depends on what you are trying to do. One of the things that we will talk about in the report is the importance of the Government clarifying their ambitions in this area, and then thinking about which of those are most likely to result in a change that can be regarded as broadly legitimate or more likely to become legitimate. There are different options that we will consider. It seems to me that there is also a question, which we will reflect on, about the nature of the Standing Orders as they have been drafted—their quasi-legalistic character and the attempt to develop a very comprehensive veto. Whether that is wise in the current circumstances is something we will look at.

Q15 Lord Morgan: We have heard much discussion—you alluded to it yourselves, gentlemen—about two classes of Members of Parliament perhaps being created under this EVEL arrangement. It seems to me personally quite clear that it is happening. It has been

said, both by leading members of the Scottish Government and by the First Minister of Wales, Carwyn Jones, that that would mean that a Member of Parliament holding a seat in Scotland or Wales—for example, Lord Home, Lord Callaghan or Gordon Brown—would not be eligible to be Prime Minister, on the grounds that they would be putting forward a legislative programme on parts of which they could neither vote nor speak. What do you feel about that?

Professor Michael Kenny: We have certainly heard that concern expressed in the course of the research. On the Prime Minister question specifically, we are not particularly convinced by that argument, in all honesty. There is nothing within the remit of these procedures that directly inhibits the selection of a party leader or Prime Minister who is from a territory outside England. There is nothing that you can read off directly from these changes. Ultimately, that would probably be a question about politics and the decisions that the parties wanted to make, and would, I suspect, be only one of a number of considerations that would bear on that judgment.

There are some technical issues in relation to the process that are worth mentioning and which would be difficult for a Minister, or indeed a shadow Minister, to be directly involved with. Do you want to comment on those, Daniel?

Daniel Gover: On the broad point, I agree with everything that Michael has just said. It is really helpful to distinguish clearly between the English votes for English laws procedural change and the wider dynamics around politics and attitudes. They may be related, but I agree that the English votes for English laws procedure itself does not have the effect of making it any more difficult for an MP from outside England to be Prime Minister, particularly because English votes for English laws is basically about legislation.

On the point that was just made, it makes it marginally more challenging for an MP from outside England or England and Wales to be appointed to certain other ministerial posts that would require them to take through legislation that would have England-only or England and Wales-only provisions, particularly if the whole Bill were England only. Even in those cases, there are ways around it. However, it is about those positions, because they relate to taking legislation through the Commons. It is not about the Prime Minister's position.

Lord Morgan: My MP is Mr Cameron. If he sat not for Witney, but, let us say, for Merthyr Tydfil—admittedly, an improbable thought—he would not have been able to vote or speak on the Housing and Planning Bill about a month ago.

Daniel Gover: He would have been able to speak and to vote on the Housing and Planning Bill. He would not have been able to vote in the legislative Grand Committee.

Lord Morgan: That is right.

Daniel Gover: He would have been able to speak there. This is why I make the distinction between the procedures and the politics. What the procedures themselves affirm is the right and the legitimacy of all MPs, from everywhere in the UK, to speak and to vote on all legislation that comes before the Commons. My reading of them is that they affirm that all MPs have an interest in all of that legislation. Whether there are different things going on in the realm of attitudes and politics is another question, but I do not think that it is directly about these procedural changes.

Q16 Lord Hunt of Wirral: In paragraph 3 of your evidence to us, you say, "There is also a question to be asked about whether EVEL will in any way change the relationship between the two Houses of Parliament, given that the legislative process in the Lords will remain unchanged". What change did you have in mind?

Daniel Gover: Various issues were raised in the early debates in the House of Lords about the English votes for English laws procedures: for instance, a concern that amendments passed in the Lords would effectively be certified under the English votes for English laws procedures in the Commons. There was some concern in those debates about whether that would change the relationship between the two Houses. We mentioned it in our submission as a question. Having reflected on it, I see no direct impact on the House of Lords. For instance, this process is not like a money Bill, which effectively changes the ability of the House of Lords to propose amendments. It is not like the designation of amendments as engaging financial privilege, which, by convention, affects how this House would be expected to respond. It is not like that, in that it does not have an implication for the procedure of this House or how this House would be expected to respond to the Commons.

Lord Hunt of Wirral: Having raised the question, you are now saying, "There has been no sign of it so far. We no longer think there is a question to be raised".

Daniel Gover: It is always worth asking the question. It is an important constitutional change, and it is important to investigate those matters. I agree that I do not see any direct implications for the House of Lords of this change in the Commons. It may well be that a change in the Commons affects how this House interprets its role. For instance, if the House of Commons takes account of English interests more explicitly in its decision-making, might that affect how this House conceives of its role, perhaps in relation to a more explicitly union perspective? However, that is a political question. It is not about the procedural implications of the change.

The Chairman: Professor Kenny, do you want to add anything?

Professor Michael Kenny: No. That is a very full answer.

Q17 Lord Brennan: After its first year of operation, there is to be a review of how the system should continue. What do you think? Should it be by Standing Orders or by legislation? If it is by Standing Orders, is it a point of danger in our constitutional system, whereby the right to vote on a particular issue in Parliament, which is a primary right, is determined extra-legislatively? I have an example in mind from the Lords. Supposing the Lords disagrees with the certification of a Bill as an English law that requires English votes, and/or, after an English vote gives a majority in the Commons, the Lords, through Scottish, Northern Ireland and Welsh peers, changes that law. How will all of that work?

Professor Michael Kenny: Let me answer the first question. Daniel can pursue the second, the specific follow-up on the Lords.

On the question of statute or Standing Orders, there are clearly arguments either way, but we would agree with the Government that this was probably the best way to go, primarily on the grounds that it was less likely to open up decisions by the Commons to judicial review. That seems to be broadly the balance of judgment on that. Of course, as you point out, it opens up the possibility that a future Government could decide to revoke the current orders. That goes to the question of durability, which we have talked about, and whether it

is possible to put the new system on a firmer footing—a footing that is likely to last. As we understand it, there would be nothing to prevent a future Government attempting to revoke the Standing Orders. It would be open to them to do that. Of course, political considerations would kick in and could affect the nature of that judgment, but there is nothing in the procedures themselves to prevent that happening.

That is the downside of going for a reform through Standing Orders. If the Government conduct a serious review process, address the question of legitimacy and think about how this might be made to endure and try to construct a model that is more likely to survive, they may well take the question of cross-party consensus seriously at the current moment. Do you want to move to the second question, Daniel?

Daniel Gover: Could I clarify something? The question was to do with a Bill in which a provision had been certified and that was then changed by the Lords.

Lord Brennan: The Lords may say, "This is not a proper certification. This law is wider than an English law". It is perfectly entitled to raise that argument. I am giving you an example of where you could have potential conflict. Equally, my point was that non-English Peers could create a majority on an English law issue.

Daniel Gover: I am not sure what the complaint would be. Presumably, a provision would be taken out of a Bill in the Commons because there was an English majority that opposed that clause. Is the issue that the Lords might want to put that back in, because they felt—

Lord Brennan: It is perfectly open to a Government, for their own reasons, to certify something as an English law because it suits them politically. Others may disagree. My question is: what happens if the Lords takes a wider view?

Professor Michael Kenny: As I understand it, the Lords can certainly take that view, but it has no right to pursue that query about certification. It may pass an amendment that alters the legislation. That then comes back to the Commons, when certification happens once more. There is nothing the Lords can do that has an effect in any direct sense upon the certification process that is overseen in the Commons.

Lord Brennan: Asymmetry may be attractive through necessity. However, for Scotland, Wales and Northern Ireland to have statutory devolution and for us in England to have it by Standing Orders of the House of Commons appears to take asymmetry a long way from what one would have expected.

Professor Michael Kenny: It certainly perpetuates asymmetry. There is a bigger question there about whether asymmetry is something that could ever be resolved within the union model we have. I am reminded of various constitutional authorities who have long argued that for the union to survive, if the English want there to be a union, they will have to put up with some kind of asymmetry. Although that is right, this change—or some version of English votes for English laws—at least offers something, potentially, to the English, who have undoubtedly become more mindful over time of what they do not have in relation to devolved Governments elsewhere. It is something. It may not be ideal. It does not address the asymmetry issue, but in the territorial constitution that we have now, given the fluidity that we mentioned earlier, it is probably the most viable option we have, if we want to try to introduce a confidence-building measure at this point in time.

The Chairman: We have just enough time for a one-sentence answer from each of you to Lord Judge's final question.

Lord Judge: What Standing Orders give, Standing Orders can take away. Is that not a very flimsy basis for this constitutional change?

Professor Michael Kenny: That is very hard to answer in one sentence.

Lord Judge: Yes or no might do.

Professor Michael Kenny: Possibly, yes. I understand the basis of the question. It is flimsy in one sense, in that Standing Orders are revocable, but it is robust in that the procedures that result from them are pretty far-reaching and that, as I said earlier, have been drafted in a way that attempts to set out a rather comprehensive system. Actually, a very unflimsy system has resulted from the reform. It does not seem to me that the flimsy nature of these reforms is the difficulty, as we start to review how the system operates.

Daniel Gover: I would add only one thing. This is one of the reasons why we have emphasised the importance of some sort of cross-party consensus. Ultimately, if this reform is to survive, it will need to be perceived as legitimate, both in popular opinion and through some sort of cross-party consensus. If it is able to get that sort of backing, it may well be that it is not flimsy—that the Standing Orders implement and rest on something much more stable. That remains to be seen.

The Chairman: Thank you very much. I am sorry that we have had to curtail it. You have given us an extremely interesting and very thoughtful 45 minutes, which will be very useful to us. If you have any further thoughts about things that we have not asked or if there are things you would like to add, please do not hesitate to update us, because your last written evidence, useful though it has been, was really for our previous inquiry. In particular, we have to consider the implications for the House of Lords. You have dealt with those very well, but there may be other things that come to mind in that context. Thank you.

Jonathan Jones, Treasury Solicitor and Head of Government Legal Service—Oral evidence (QQ 25-35)

Transcript to be found under Elizabeth Gardiner, First Parliamentary Counsel

Professor Michael Kenny, Mile End Institute, Queen Mary University of London—Oral evidence (QQ 8-17)

Transcript to be found under Daniel Gover, Mile End Institute, Queen Mary University of London

Rt Hon. David Lidington MP, Leader of the House of Commons—Oral evidence (QQ 46-58)

Transcript to be found under Rt Hon. the Baroness Evans of Bowes Park, Leader of the House of Lords

Adam Pile, Head of the Parliamentary Business and Legislation Secretariat, Economic and Domestic Secretariat, Cabinet Office—Oral evidence (QQ 25-35)

Transcript to be found under Elizabeth Gardiner, First Parliamentary Counsel

Rt Hon. Baroness Smith of Basildon, Shadow Leader of the House of Lords, Labour Party—Oral evidence (QQ 36-45)

Rt Hon. Baroness Smith of Basildon, Shadow Leader of the House of Lords, Labour Party; and Rt Hon. Lord Wallace of Tankerness QC, Leader of the Liberal Democrats, House of Lords

Members present

Lord Lang of Monkton (Chairman)
Lord Beith
Lord Brennan
Lord Hunt of Wirral
Lord Maclennan of Rogart
Lord MacGregor of Pulham Market
Lord Morgan
Lord Norton of Louth
Lord Pannick
Baroness Taylor of Bolton

Examination of Witnesses

Q36 The Chairman: We live in very interesting times, particularly today, and on behalf of the Committee I am very grateful to Baroness Smith of Basildon and Lord Wallace of Tankerness for coming to this meeting. We fully appreciate how busy you both are and we will not detain you longer than necessary. In that spirit I will forge straight ahead with the first of the questions we would like to ask you. We are talking about EVEL today, for clarification, since there are so many other things on our minds, but perhaps these are slightly calmer waters. We have been told that the EVEL procedure has not raised many unexpected political impacts, or any other kind of impact, between the two Houses. Do you agree with that assessment, Baroness Smith?

Baroness Smith of Basildon: I am not sure it has been tested properly yet. It is not until there is a conflict or difference that it will be tested. So far we have not had any issues that have caused great concern. I would say one of the difficulties for Lords' starters is, there is no clarity or information as to whether they are going to be designated EVEL when they get to the House of Commons. The Bus Services Bill applies to England but there are some issues around Wales as well, so it was slightly confusing, and so we called the Lords Legislation Office. They said they did not know. We were referred to the Public Bill Office at the House of Commons. No one could say straightaway whether it would be or not. Then I was told it would not get an EVEL certificate until it reached the Commons. In theory, you could have a Bill that started in the Lords that is going to be designated EVEL, and we will not know about that. I do not know yet whether that will cause additional complications, but it would be helpful to know.

The Chairman: So you would like to see the Bill certified by the Speaker of the House of Commons before it starts in the House of Lords.

Baroness Smith of Basildon: Or for them to know whether or not it would be. The problem was that nobody knew what was going to happen. There is a lack of clarity.

The Chairman: That is an interesting point. Lord Wallace, do you have any thoughts?

Lord Wallace of Tankerness: That is an interesting point. I do not know whether it is feasible for the Speaker to pre-certify, but for the Lords proceedings it would be useful to know. I agree with Baroness Smith: we have not had enough experience yet to know whether there are any procedural or detailed implications for the House of Lords.

I recall raising one point when this issue was being debated quite extensively a year ago. We can now find ourselves in a position where, for the sake of argument, a Bill starts in the Commons and comes to the Lords; the Lords passes amendments; the amendments go back to the Commons; a Commons majority accepts these amendments, but the English Members of Parliament do not, so the provision in question does not form part of the Bill. We will therefore have a situation where a particular provision has been passed by the Lords and Commons, but it is not submitted in that form to the Queen for Royal Assent. I think that is quite a constitutional change.

The Chairman: I know you raised it earlier.

Lord Wallace of Tankerness: I do not know whether it has a direct impact, but it raises the issue of whether the will of Parliament as a whole can be vetoed by a subset of the House of Commons. I think that is an important constitutional issue.

Baroness Smith of Basildon: Could I add to that? Recently some of the amendments we have had passed in the House of Lords have had large majorities. A Bill could be passed with a substantial majority in the House of Lords—cross-party, Cross-Benchers; we are more likely to have those wider cross-party alliances—but when it goes to the House of Commons, there may be a very small majority against what we have done. I think that reinforces the point that Lord Wallace has made.

The Chairman: You are both anticipating what was going to be my supplementary question, about emerging problems in the longer term and any limited experience we may have had with ping-pong or how we anticipate ping-pong developing in the future. Do you have anything to add on that?

Lord Wallace of Tankerness: As I say, I think it is too early to say. These Standing Orders have not been tested in wartime, if you want to put it like that, because anything that they have applied to so far has been fairly uncontentious. We have also not had a situation where we have had a different Commons majority from an English MPs majority. It is only when you get into that situation that the system will be properly tested.

Baroness Smith of Basildon: This is why we were so supportive of Lord Butler's Motion to have a Select Committee or Joint Committee to look at this, because, as Lord Wallace says, in peacetime it is relatively smooth. We do not know what problems we may have in the future, and I would rather anticipate problems and prepare for them than get down the road, find we have a serious problem and that no one has thought how to deal with it, and a serious constitutional issue arises. I would have thought the idea of both Houses looking at it in more detail and anticipating all the potential problems is a helpful one. It is good that you are doing your investigations, but I am sorry the Government did not take that route themselves.

Baroness Taylor of Bolton: I wanted to follow up this peacetime/wartime theme because, given what happened on 23 June and the uncertainty around Brexit and all its consequences, and how Parliament, and, indeed, the Government must deal with this, maybe that is when wartime will break out and all these issues will be tested. The situation is already incredibly complex and then you have this additional factor, especially with the Scots wanting their own negotiations with Europe.

Baroness Smith of Basildon: It is a problem that follows all Governments; piecemeal constitutional change is very difficult, and you have to anticipate the impact across the board, not just on that day, at that time, for that institution. One of the things about peacetime/wartime is that upon Brexit—and this brings in Scottish MPs—you are more likely to have a non-Conservative Government who draw support wider than England, if you look at the political arithmetic. I think this point was made during one of the debates we had. You could have a Government in place who draw the majority of their MPs, depending on what happens post-Brexit, from Scotland, Wales and large parts of England, but the Opposition have a majority of MPs in England. That will be a terribly complex position. You could even find that on Budget matters, the Budget or parts of it are voted down by English MPs, and then it becomes almost impossible for Government to do business. We do not know how it is going to work yet.

The Chairman: We may get back into these issues with later questions.

Q37 Baroness Taylor of Bolton: We have been speculating, in a sense, about whether we could end up with a form of EVEL in the House of Lords and what the consequences would be there.

Lord Wallace of Tankerness: I think that is a non-starter, at one level for a very simple reason: with very, very few exceptions—I think there are two hereditary Peers who are Peers solely of the Scottish peerage—we are all Peers of the United Kingdom, regardless of the territorial area in our title.

Baroness Taylor of Bolton: What are MPs?

Lord Wallace of Tankerness: MPs have constituencies.

Baroness Taylor of Bolton: Yes, but they are Members of the whole Parliament.

Lord Wallace of Tankerness: And I think that is important. They are representing people in a defined geographical area and that does not apply to us. Where would you start? Is Lord Lamont of Lerwick a Scottish Peer because Lerwick is in Scotland—although Shetland might query that—yet his political career has been in England? Lord MacGregor of Pulham Market represented an English constituency and it is an English title, but he is a Scot. I do not think you could do it. Apart from anything else, I think we would lose something in the House of Lords, where we all take part. If one of the arguments we put forward for justifying it is the expertise we bring, I think that is far more important than any tenuous geographical link.

Baroness Smith of Basildon: I would concur with that in large part, but I think there is an added complication. I have just put in my notes here, "How?" and I think that bears out a lot of the comments. It is also changing the nature of how the House of Commons works.

I looked up an Edmund Burke quote before I came along today. As some of you will know, it is from his speech to the electors of Bristol: "Parliament is not a congress of ambassadors

from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole".

It is the nature of how the House of Commons works. When you represent a particular area or region, you are supposed to represent the national interest as a whole. Once you start dividing that national interest, as we have seen with the possibility of Scotland becoming independent, where does that end? It is not that long since I was an MP, but I saw a change in my time, and others will have seen it as well, in the focus of your role with your constituency. Members of Parliament are a lot more focused on their constituencies now than they would have been, say, 100 years ago. Having structures such as EVEL, we are in danger of losing that representation of the whole. I am told that some of the minor parties no longer nominate anyone to serve on Delegated Legislation Committees. That is quite a serious matter, because they are seeing their representation as of part of the UK, not the whole UK. I do not know how we would do it in the Lords, but I do not think we should even consider it, and I am uncomfortable with the legacy it is leaving in the House of Commons.

Lord Brennan: By way of testing the proposition of how it will work between the two Houses, let us take a simple example. Let us say in the House of Lords there is a vote that the certification of a Bill was wrongly made; it is not an appropriate Bill for certification. It would appear that, even if the Lords did that, the Standing Orders of the Commons would prevail if it went back to the Commons. It strikes me that in practical terms, this is almost like a Parliament Act consequence achieved through Standing Orders. The Commons decides how it will vote; it votes. The Bill has to go back to the Commons; it votes again, and it is determinative in practical terms. That is achieved through Standing Orders and not legislation.

The Chairman: There is no need to answer. That was a statement rather than a question.

Baroness Smith of Basildon: I nodded.

The Chairman: You are welcome to answer if you would like to.

Lord Wallace of Tankerness: There is a later question on Standing Orders rather than legislation and we may come to that in more detail, but I think, on balance, I prefer the Standing Order route at the moment because I think other issues could arise if it was through legislation; not least, possibilities of it being challenged in the courts. Where we are is very new, and I think Standing Orders give us the opportunity to be flexible if it needs changing, whereas, as we all know, opportunities to change primary legislation are sometimes few and far between.

The Chairman: Do you want to add anything, Baroness Smith?

Baroness Smith of Basildon: We will come on to this point later, but I suspect the reason it was done by Standing Orders was not to give flexibility, but to get it through as quickly as possible with as least fuss as possible.

Lord MacGregor of Pulham Market: May I follow up on Lord Wallace's first answer to this question? Do you see the House of Lords treating parts of a Bill or a Bill that has come up from the Commons certified as English-only any differently from the way we treat any other Bill? If so, what happens when we pass amendments which have been looked at in the

House of Commons as English-only? When those go back, who looks at the amendments we have passed?

Lord Wallace of Tankerness: To take the first point of whether it makes a difference, I do not think it has yet. There were some Bills where at least parts were certified, and I suspect we were not all that aware of that when they came to our House. It might make a difference when there is something a bit more controversial. It is in the nature of a veto, you would not get it coming to us, because it would have been knocked out at that stage in the House of Commons. If a Bill starting in the Commons had a provision knocked out by English MPs, that provision would not get to us. It might be more interesting if it then became another amendment, and if the amendment that had been knocked out in the Commons was reinserted in the Lords. I think that would create an issue.

My understanding of the Standing Orders—and let us presume that is what happens—is when a provision goes back to the Commons, there is a certification when it comes to deal with Lords amendments and that particular amendment would be certified again. It is my understanding—and I notice one of my colleagues, Tom Brake, when he gave evidence to you, said he found a very helpful flowchart, which I think I have managed to track down—that at that stage, there would be a double vote, and it would require a vote both of the House of Commons and of English MPs for it to be incorporated into the Bill. If it only passed the Commons but not the English MPs, it would not be incorporated in the Bill, and no doubt that would be explained in the Reasons when it came back to our Lordships' House. That is the point I made earlier: that you then have a situation where Lords and Commons have both passed it but a subset of the Commons has not. That is where we get into uncharted waters.

Baroness Smith of Basildon: That is when the Lords would be most unhappy. If an amendment to a Bill comes through the Lords, and it goes to the Commons and is passed but English MPs veto it, I think we would find that quite difficult, having had our debate and sent something to the Commons. That is where some of the complications arise and the relationship between the two Houses becomes difficult.

The Chairman: We must press on. We will come back to these issues in other questions. Lord Morgan.

Q38 Lord Morgan: There has been concern expressed that EVEL threatens a very important principle of all members in the House of Commons having equality of status and equality of weight in debates. I noted in yesterday's Cardiff *Western Mail* a statement that it could be very difficult for Stephen Crabb if he were to become Prime Minister, as he is the Member for Preseli Pembrokeshire and would not therefore be able to speak and vote on large chunks of business. The Scottish nationalists have raised this point. Are you sympathetic to it at all?

Baroness Smith of Basildon: I am entirely sympathetic to that point of view. I think it changes the nature of representation along the lines of the Edmund Burke quote. Many years ago, when we were discussing in the other place the reform of the House of Lords, I was one of those MPs who refused to vote for something that gave a hybrid character to the House of Lords, because I could not see any sense or anything proper about having different categories of Peers. You are absolutely right; we are going down the route where we have different categories of MPs. It is affecting MPs' behaviour. That might play out—and I have

mentioned the Delegated Legislation Committees and you have mentioned Stephen Crabb—and continue and become more obvious, and possibly more extreme.

Lord Morgan: You explain it, as always, with enormous lucidity. Is that the Labour Party's view? I have never heard Jeremy Corbyn utter anything on a constitutional matter. Do we have a position on this?

Baroness Smith of Basildon: As far as I am aware, at present the Labour Party would have a constitutional convention to look at these issues, and that is the policy. I would make the point strongly that when we are dealing with anything that has a constitutional impact we have to be very aware—and all Governments have been guilty of failing to do this in the past—of the knock-on effects and unintended consequences. We have been pretty poor, as Governments, in governance over the years at doing that. EVEL has compounded the situation. Also you have the proposals to change the boundaries, EVEL and Brexit. These three things happening at the same time have enormous constitutional implications. I do not know if anyone is thinking of the medium and long-term let alone the short-term implications.

Lord Wallace of Tankerness: I agree with much of what Baroness Smith has said. My own party's policy is to have a constitutional convention. That picks up a point this Committee has made a number times about piecemeal legislation. I remember as a Minister getting it in the neck sometimes about piecemeal legislation. I think this is another example. It is not just a question of asymmetries between Scotland, Wales, Northern Ireland and England. Even with England now, you have London and the City deals, which are changing the relationship between parts of England and the centre. There are quite a number of asymmetries and I do not think trying to address it Standing Order by Standing Order is the way to do it; an overall view would be much better. Therefore, I have some sympathy with the point Lord Morgan made—that some MPs might feel they are on a different plane.

There is an important political and practical point to this. When I was thinking about coming to the Committee today, I remembered that back in 2004, when I was in the Scottish Government as the Minister for Enterprise and Lifelong Learning, Westminster passed the legislation on university top-up fees. You could argue about it, but I suspect that would have been seen as English because it applied only to English universities. However, I gave a statement to the Scottish Parliament on 24 June 2004—I went and looked it up—the opening line of which was: "I would like to make a statement on cross-border student issues arising from the proposed implementation of variable fees in England from the academic year 2006-07". What was expressly English, had—and I remember it well—consequences in Scotland. Obviously Scottish MPs would be able to vote at the Second and Third Reading, but they would not be part of the Committee looking at it, and a lot of these issues, which are perfectly legitimate issues for Scottish MPs to take up, would have been missing from deliberations in the Committee. There is a potential difficulty there, where in the strict legal sense it might not apply to Scotland, but in a very real, practical sense it would.

Lord Beith: What about the reverse situation, if it had been the Scottish Parliament introducing variable fees that would apply to English students going to Scotland?

Lord Wallace of Tankerness: That is the case. That is the anomaly that this seeks to address, but I would suggest it does not address it very well. That is why our party has recommended a constitutional convention. Ultimately, we would want to see a federal solution, but that is

probably not on the table in any near future. A constitutional convention to tease out these things would be very helpful.

The Chairman: There is huge confidence in the potential of a constitutional convention to solve all problems.

Lord Wallace of Tankerness: At least it would air them in a coherent way.

The Chairman: I did not mean to start a hare running there. Lord Hunt.

Q39 Lord Hunt of Wirral: When I first entered Parliament 40 years ago, the West Lothian question was very much being asked by everyone, and the then Prime Minister, Harold Wilson, had well-known views on conventions and royal commissions. Although he went out of another door on the very day I arrived in the House of Commons, it has been a problem for many, many years. Whatever the intention of using House of Commons Standing Orders, in the view of the shadow Leader, what are the advantages and disadvantages of implementing EVEL through these Standing Orders rather than through legislation?

Baroness Smith of Basildon: I suspect it depends which side of the argument you are on. If you are the Government, the advantage of Standing Orders is that it would be quicker and there is less consideration. There are pages and pages of Standing Orders—is it 17? I have lost track now—but it was dealt with pretty much in an afternoon, so there was not the consideration; legislation would have taken much longer. It also can be undone more quickly. A future Government might look at this, or indeed this Government might, and say, "Have we given it proper consideration?" I understand the issues about the West Lothian question, but I wonder if this Government are going for belt, braces and a piece of rope around the waist to keep the trousers up. We have the boundaries Bill, Brexit and this. There are so many ways it is being looked at, and a little more thought and reason on how to do it would have been better. It did not have the deliberation and consideration it deserved.

Lord Hunt of Wirral: Should it have had that consideration in this House?

Baroness Smith of Basildon: I think it should have because I do not think we yet know what the implications are for this House. I mentioned the Bus Services Bill, and one of the reasons we were looking at it was to see what was in the current Bill and what the interests were. It is the point Lord Wallace made. It is very difficult to disconnect ourselves legislatively from other parts of the UK. Decisions being taken on bus services in this Bill could affect buses in the north-east of England, in Berwick, that will also have that connection with Scotland. Again, I do not think it has been thought out. There could be some further consideration about what happens to Bills when they get here and what happens to our amendments. The fact is the Lord Speaker could certify a Lords amendment as EVEL. I do not know what the implications of that would be or how we would manage that, or whether it would come back to us because it has been certified EVEL. I am not convinced we had that full discussion. Legislation would have provided the discussion; it may have led to some amendments and been more difficult to dismantle. However, I think the reason we have Standing Orders is because it was quick and easy to get through.

Lord Hunt of Wirral: Lord Wallace, given that these Standing Orders could be revoked by the House of Commons at any time, while we are exploring this step-by-step approach, what do you think of the shadow Leader's idea that we ought to introduce our own procedures alongside the Commons Standing Orders by giving the Lord Speaker the right to certify?

Baroness Smith of Basildon: No, I did not suggest that.

Lord Hunt of Wirral: It is a possibility.

Lord Wallace of Tankerness: I would be very wary of giving that power to the Lord Speaker or, indeed, to anyone in your Lordships' House. I am not quite sure what would happen if you had one certification in one House and a different certification or non-certification in another. That would be a recipe for considerable confusion. I think Baroness Smith is right that it was done by Standing Orders because it was quick. I am not saying it was quick and easy—when you look at the Standing Orders it clearly was not—but it was quick. Given that it was done, as I think Ministers said at the time, on a trial basis, I think there was merit in doing it that way because they can be amended. We have not had enough experience to see how they should be amended, but it points to the fact that Lord Butler's proposal for a Joint Committee of both Houses, which we overwhelmingly endorsed, to work through the procedural implications for both Houses was very positive. It is regrettable that the Government did not respond more positively to it, given that it was passed in a very cross-party, Cross-Bench way.

Baroness Smith of Basildon: As a point of clarity, I hope I was clear: I was not for a moment suggesting we give powers to the Lord Speaker. I was querying the process by which the Speaker of the House of Commons could certify a Lords amendment.

Lord Pannick: Is the best way to ensure that the constitutional implications of this profound change are properly analysed to have legislation? I cannot see any other way of doing it, other than to have the tried-and-tested method. Can you think of any other similar, profound constitutional change which has been introduced by Standing Orders?

Lord Wallace of Tankerness: Maybe Lord Norton will know of something from the Irish experience in the late 19th century, because I think the Standing Orders of the Commons were changed a few times then in response to Irish nationalists. I suspect we would have to go back that far to find it.

Baroness Smith of Basildon: You describe it as a profound constitutional change, and I think it is. As Lord Morgan was saying, it changes the status of MPs and how the House of Commons operates as a United Kingdom Parliament, so there is an argument for legislation. Had there been fuller and greater consideration of amendments, it may not have ended up in its current form, but I still find the principle of it unsound.

Lord Pannick: Lord Wallace mentioned earlier a concern that if there were legislation there might be a legal challenge. I am a bit puzzled; on what basis could legislation be challenged in the courts?

Lord Wallace of Tankerness: I meant that that legislation could pave the way for a challenge to the Speaker's certification.

Lord Pannick: I see.

Q40 Baroness Taylor of Bolton: You have both said that it is early days, but the Leader in the Commons has said, as you mentioned, that this is going to be trialled and at some stage it is going to be assessed. What measures would indicate whether it was a success or a failure? Who do you think should be assessing this? Should it just be the Government? Should it be the Commons? Should it be the whole of Parliament?

Lord Wallace of Tankerness: I think it would be preferable, and this goes back to what Lord Butler proposed, if the whole of Parliament were involved. I would reiterate that I think it is too early. We have not had proper experience. When you ask who should assess it, if the driver for this—and I do not in any way minimise this because I have had enough colleagues from England who have mentioned it to me—was a perception, perhaps a reality, of a democratic deficit, and people in England feeling that it was possible for the Scots and Welsh to override the majority view from England, we may want to know whether the constituents of English MPs feel that their concerns have been better addressed as a result of this change or not. Again, they probably think it is too early and I suspect people are not talking about it terribly much in the pubs.

Baroness Taylor of Bolton: And will not do so until there is some kind of crisis.

Lord Wallace of Tankerness: I think we described it earlier as a wartime issue, which might well provoke the discussion, yes.

Baroness Smith of Basildon: The way most Governments decide on success in these kinds of matters is whether they can get their legislation through. My worry is that will be the major deciding factor in assessing if this has worked. That is not true only of this Government; it is the priority of all Governments, and this would help them do so. My worries are more the constitutional long-term impacts on the role of MPs, and if the Government are talking about a review in October, as was said originally, I do not think that is any time at all to assess something of this significance.

Q41 Lord MacGregor of Pulham Market: Lord Wallace referred to the feelings among a lot of English MPs and constituents. I recall vividly the early debates. I think I spoke immediately before or after Tam Dalyell in a particular debate, and I have held the view since that it is a matter of great concern. Is there a better answer to the West Lothian question than this form of EVEL?

Lord Wallace of Tankerness: I would like to argue that federalism provides a rather neat way of addressing it, but it is not without its problems. I am not one who is readily persuaded—although I hesitate to say this because as a Scot I am looking from the outside—that an English Parliament is the answer either, because it would be so large. We want to see decentralisation, but what we have seen with the Scottish Parliament under the present Administration is that there is more centralisation within Scotland. I am not persuaded that an English Parliament would be the answer. Obviously, efforts made during the last Labour Government to establish regional assemblies in the north-east to start with did not work. We are starting to see different solutions in different places, but again it is piecemeal. It may go some way to addressing this, but I still think it would be better to have an overarching look at this.

There are issues within England as well. It is maybe not so much the West Lothian question as the West Yorkshire question. There is no easy answer to this, given the considerable asymmetries that abound. I am not necessarily persuaded that this, which in many respects is a very narrow veto, is the answer. If push comes to shove, I rather suspect it will not satisfy people. It begs the question whether, if a subset of the House of Commons can have a veto, democratically elected Members of the Scottish Parliament can have a veto, which would mean repealing Section 28(7) of the Scotland Act. I am not proposing that, but the genie is out of the bottle.

Q42 Lord Morgan: I want to make a general point. We have heard quite a lot of serious criticism of the possible implications of EVEL. As an historian, it occurs to me that so many experimental temporary procedures under our constitution—such as the Barnett formula—last for ever. Is there not a danger that these will be perpetuated because people cannot think of an alternative?

Baroness Smith of Basildon: It follows on from the previous question. There is a danger of that because people do not know the answer. Given that most political parties and most people in the UK are committed to retaining the United Kingdom, if finding a solution to the West Lothian question was easy it would have been done. Because it is not easy, it has not been done. We have had numerous ideas. I do not think the idea of regional assemblies was a particularly elegant response. It was a response to a different question; not to that question. There is a danger here that because nobody can think of anything better, we are stuck with this.

My grandmother used to say that sometimes, the best thing to do is nothing. Let us step back and, if we really want to do something, consider the alternatives, the options. We have a difficulty that the four nations are not equal in size, shape and population, so there are always going to be various imbalances. Great minds have been putting their thoughts to how we best address that for many years and have not come up with an elegant, ideal solution, and perhaps we never will.

My main objection is that it has not been thought through. If we sat down and thought it through, we might come up with something better and say, "Actually, we could tweak something here; this isn't it", but I do not think those discussions were ever had.

Lord Morgan: I am with your grandmother.

Q43 Lord Norton of Louth: My question derives from my reflections on Lord Wallace's question to me about Standing Orders in the Commons. When you think back to those of the 19th century, they were very much internal to the Commons and did not raise wider implications. The last time one might have had a major change to Standing Orders of the sort Lord Wallace mentioned was probably 1907, and to some extent that affected the relationship between the House of Commons and Government, and, in a way, that leads to the question about wider implications. We have been discussing whether there are implications for the House of Lords, but there is the wider one which Lord Wallace touched upon a few moments ago, which is the relationship between Parliament and Government and the devolved institutions. Do you think there are implications? Your earlier comments suggested you think there are.

Lord Wallace of Tankerness: I suspect no one is thinking terribly much about it in the Scottish Parliament, but it is one of these things where something could happen, and the issue could then become very stark. The Scottish Parliament might well say, "If a subset of the House of Commons can veto something, and that is not the Queen in Parliament, surely some other body which has a perfectly good democratic mandate"—some might argue, under proportional representation, an even better one, but let us not go there—"should have that right, so why shouldn't we?" We went some of the way in the debates we had on the Sewel convention in the context of the Scotland Bill, but, as we well know from these lengthy debates, it does not actually answer the issue. I think that could become an issue if a particular set of circumstances arose on a particular matter.

Lord Norton of Louth: So it is something we need to be alert to?

Lord Wallace of Tankerness: We should be alert to it, yes.

Baroness Smith of Basildon: It is not just the relationship between the constituent parts of Government and Parliament; one of the selling points was that it was said the public wanted this and that this would address the question of the English deficit. I do not know about anybody else, but if I go to my local pubs, clubs and supermarkets, nobody says to me, "Well done on EVEL; that's really changed things". There is no excitement about Standing Orders. It is like when statutory instruments became exciting over tax credits, and no one had paid attention to them before. I am not at all convinced that this addresses the question, or that it is something people are crying out for, or are even aware of or know anything about it. My own view is that it was a tool for Government, not for the country and good governance.

Q44 Lord Beith: Reflecting on what Baroness Smith just said, that may not have been a political issue in the general election, but what was most certainly a political issue was a fear that Scottish influence over legislation in the form of the Scottish National Party might be too strong after the general election. I think we all experienced the consequences of that.

I want to turn back to the Speaker's certificate. It seems to me that the courts rightly would be very wary of trying to challenge the Speaker's certification. However, the courts could not avoid resolving a devolution question in which the devolved Assembly was seeking to assert that a matter was within its devolved competence, even though that conclusion was at variance with the way the Speaker had certified the Bill. How does the former Advocate-General think we would have to handle that situation?

Lord Wallace of Tankerness: I think I raised that point at one of the debates. It is a very difficult issue. It was part of my job when I was Advocate-General for Scotland in two ways. In relation to UK legislation, there were extensive discussions between my department and the Scottish Government as to whether legislative consent Motions would be required. They were always conducted in a very positive spirit, but there were sometimes difficult issues. The other part of my responsibilities was that on every Bill passed by the Scottish Parliament, along with the Attorney-General and the Lord Advocate, I had to decide whether to refer it to the Supreme Court with regard to whether it was within the legislative competence of the Scottish Parliament. Some were fairly straightforward, but others were very difficult indeed and fine judgments had to be made. Speaker's Counsel has been given a pretty challenging task.

In one debate I said you could have a situation where a piece of legislation has come before the House of Commons, and the Speaker has certified, as per the wording in the Standing Orders, that it would be within the legislative competence of the Scottish Parliament to make any corresponding provision for Scotland in an Act of that Parliament. Twelve months later the Scottish Parliament might produce an exactly parallel, identical Bill to apply to Scotland; someone might challenge it—possibly not the Law Officers as private individuals can challenge it—it might go to the Supreme Court and the Supreme Court might find that it is outwith competence.

I do not think anything could be done with the UK Act because that would be done and dusted, and it would be history. Potentially you can see situations arising where an aggrieved party might say, "If that had been determined the other way before the Speaker gave or

withheld his certificate, things might have been very different". It is the law of unintended consequences. We could well find issues arising which could be quite important, with people's rights involved.

Lord Beith: Reverting to the situation in which a Lords amendment had been rejected by the English Members of Parliament in the Commons, even though it would have had majority support in the whole House of Commons, surely that situation is not procedurally different from any other reason the Commons might return to the Lords and say, "We are not accepting your amendment", and would have to give Reasons. Politically it would be very different, but procedurally the argument would go on until the Houses agreed between them, in the case of the Commons by its special procedure, to include or not include that amendment, or some variant of it.

The Chairman: You are talking about a sort of Mac ping-pong.

Lord Wallace of Tankerness: That might be one of the more understandable reasons.

Baroness Smith of Basildon: That would affect the relationship between both Houses, particularly if we had passed something on a cross-party basis with a large majority and then it comes back having been rejected by a small majority. We are very restrained on ping-pong in this House—most of the time—but it could create a difficulty that I do not think any of us here wants to see.

Lord Wallace of Tankerness: It is not that it might have been lost by a small majority; it might have been passed by a large majority in the House of Lords and Commons but defeated by a small majority of a subset of the House of Commons.

Lord Beith: That was why I said it was politically different, not procedurally.

Lord Wallace of Tankerness: It is political, not procedural.

Baroness Smith of Basildon: It is not just politically. There will be political concerns that political parties will have, but it is constitutionally difficult because the relationship between the two Houses is altered.

Q45 Lord Brennan: The Government wanted EVEL to be introduced to satisfy the English constituency in the devolved arrangement, but in fact EVEL ought to play a part in the general picture of devolution of powers across the entire union, if it is feasible and practicable. Does EVEL have any chance of being pictured as a successful and fair part of the overall union framework?

Baroness Smith of Basildon: I represented an English constituency for 13 years as somebody who is half-Scottish. I do not see people being satisfied that this addresses the question if they were asking it in the first place. It is quite difficult. I take the point made by Lord Beith that people raised the question during the general election of whether the Labour dog was being wagged by the SNP tail. They raised this question but I do not think they have an answer yet, so it is probably no. It does not satisfy the questions that were raised. I come back to the point that we do not have an answer yet. The problem we have is that this is now depicted as an answer, but I think the issues will remain, which is the point you made. We will be in the same situation as we are now but with complications, some of which we are not yet aware of.

Lord Wallace of Tankerness: I think this will be revisited. It will go on its way at the moment because it has not been tested. Even since we have had this, on the issue of fox hunting, regardless of your views, there was the threat of SNP members voting against what the Government were proposing. They could do that because it is a very limited English veto and it does not stop the House of Commons as a whole voting on something at the end of the day. Having had a self-denying ordinance for all these years, they used their political muscle to try and influence that particular resolution. If that can still happen, it will not satisfy the underlying concerns.

I do not think these particular Standing Orders will be a permanent feature of our constitution. I do not think anyone in Scotland, Wales or Northern Ireland thinks very much about this issue at the moment. For good or for ill, they do not think about it. I have always accepted there is an issue to be addressed. I do not think this is the answer to it and I am not pretending there is a silver bullet because, if there was, we would have found it long ago. The more you have lots of different arrangements within England, as well as Scotland, Wales and Northern Ireland, in some sense it may make it more difficult but in another sense it may be part of the resolution. The more people feel within their own communities, as city regions or whatever, that they have more control over important issues, the less the clamour may be.

The Chairman: It has been an extremely interesting and very thoughtful session. You have given us a huge number of good insights. The fact that they are insights into problems rather than solutions is something we have to accept. It is not going to make our job easier, but I hope it will give it slightly more substance than it might otherwise have had. The Committee is extremely grateful to you. It is a very busy time for both of you and we much appreciate it. Thank you very much.

Rt Hon. Lord Wallace of Tankerness QC, Leader of the Liberal Democrats, House of Lords—Oral evidence (QQ 36-45)

Transcript to be found under Baroness Smith of Basildon, Shadow Leader of the House of Lords

Pete Wishart MP, Scottish National Party—Oral evidence (QQ 1-7)

Transcript to be found under Rt Hon. Tom Brake MP, Liberal Democrat Party