



House of Commons
Justice Committee

Devolution: A Decade On

Fifth Report of Session 2008–09

Volume II

Oral and written evidence

*Ordered by The House of Commons
to be printed 12 May 2009*

HC 529-II [Incorporating HC 75-i-x, Session 2007–08]

Published on 24 May 2009

by authority of the House of Commons

London: The Stationery Office Limited

£0.00

The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Taken before the Justice Committee

on Tuesday 13 November 2007

Members present

Mr Alan Beith, in the Chair

Mrs Siân C James
Jessica Morden
Julie Morgan

Dr Nick Palmer
Mr Virendra Sharma
Dr Alan Whitehead

Witnesses: **Professor Charlie Jeffery**, University of Edinburgh, and Director, Economic and Social Research Council's Research Programme on Devolution and Constitutional Change 2000–06; **Professor Robert Hazell**, Director, Constitution Unit (UCL); and **Professor John Curtice**, Deputy Director, CREST, and Director, Social Statistics Laboratory, University of Strathclyde, gave evidence.

Chairman: Welcome, professors three. Before we start proceedings, we have to declare any interest that may be particularly relevant to this inquiry.

Julie Morgan: I am married to the First Minister in Wales.

Q1 Chairman: I do not think there are any other specific interests that are relevant to the inquiry. We are absolutely delighted to have three people with us who have given a great deal of time and attention to the study of these things. Our inquiry into Devolution is not of course primarily an inquiry into how it has worked for Scotland and Wales, because there are two other committees of the House which give a lot of attention to that, but how it is functioning for the United Kingdom as a whole and of course additionally the questions that arise from the position of England. There are many issues which arise from that, some of which I think we will develop as our inquiry continues, but what we wanted to do this afternoon, although we are doing it in a formal evidence session, but perhaps slightly less formally than usual, was to take advantage of the knowledge that has been built up both about the working of the system and about public attitudes to it. In that respect, I think Professor John Curtice is going to open for us with a presentation about public attitudes.

Professor Curtice: Thank you very much, Chairman, and thank you very much indeed for the invitation to give evidence to the Committee. I was asked by your secretariat to address three questions, so that is what I am going to focus on. I am going to do it very briefly in that I am just going to give you one or two headline findings and then doubtless you may want to expand on it in questions and answers. The three questions I was asked to look at were: first of all, what impact has devolution had on national identity across Great Britain; second, what are attitudes towards how Scotland and Wales should be governed not just within Scotland and Wales, but also within England; and, thirdly and conversely, what, if anything, does the public think should be done about England, and again not just looking at attitudes within England, but also looking at

attitudes outside of England, particularly in Scotland? I need to say a little bit about the sources of evidence that I am using and also one or two limitations about what I can present to the Committee this afternoon. In Scotland, the Scottish Social Attitudes Survey has been charting attitudes towards devolution and national identity on more or less a yearly basis since 1999. However, some of the funding for this comes from the Scottish Executive, now known as the Scottish Government, and in particular some of the data for 2006 only enter the public domain next week and that for 2007 will not be in the public domain until next spring, so I cannot put that into the public domain at the moment. The crucial attribute about this survey, along with the others, is that we have kept on asking the same questions from year to year, so whatever you might think about the merits of the questions, their great advantage is that it gives us some idea in analysing how attitudes have changed over time. The second source of evidence that I am going to use is what is known as the Wales Life and Times Survey which essentially has been done at election times since the advent of devolution in 1999. Many of the questions are actually similar, if not identical, to those which have been asked at the same time in Scotland. The third piece of evidence comes from the British Social Attitudes Survey which has been asking a number of key items on attitudes towards devolution in England again since 1999, with quite a lot of activity between 1999 and 2003 and rather sparser thereafter. And indeed here in a sense is the biggest hole of the afternoon which is that we do at the moment have a further project on attitudes towards devolution in England currently being conducted in the survey that is still in the field, so I do not have the results for that until some time next year and obviously, given that the debate in England has in some ways taken off in the last 12 months, it may be that that will show a somewhat different picture from what I am going to present to you this afternoon. I am also quite happy to talk about commercial polling data afterwards in questions and answers, but these, I think, are the sources of evidence that are best as far as looking at change

over time is concerned. Let me take the first of the three questions, what impact has devolution had on national identity, which I am going to convert into: what changes, if any, have occurred in the distribution of national identity since the advent of devolution? Very simply, here is one piece of evidence where we actually forced people to choose one single national identity which would best describe how you think of yourself. In Scotland, the headline is that basically, whilst the creation of the Scottish Parliament may be regarded as a consequence of an increased sense of Scottishness in Scotland during the 1980s and 1990s, it is not clear that Scotland has come to feel any more Scottish since the creation of a Parliament in 1999; Scotland was already very heavily Scottish before that happened and, in truth, it can hardly get much more so. There are similar kinds of data for Wales. There, in fact, there is not any evidence that the proportion of people who, when forced to choose, say they are Welsh rather than British or anything else has in fact increased even since 1979; it is around three-fifths. Wales is less Welsh than Scotland is Scottish, but Wales remains as Welsh as it ever has been. Intriguingly, the one part of the United Kingdom where the distribution of national identity does seem to have changed since the advent of devolution is that part of the United Kingdom that does not enjoy devolution, England. As you will see, prior to 1999, when given this forced choice, people in England would prioritise their Britishness over their Englishness, in 1999 the two tied and, although subsequently a sense of Britishness seemed to become more predominant again, it never went back to the status quo ante before 1999. Then of course you will see, intriguingly, the figure for 2006 where all of a sudden the proportion that say they are English outnumbers those who say they are British. We are obviously, therefore, awaiting the 2007 data with a degree of bated breath, although I should say that the one caveat I should enter about the 2006 data is that the fieldwork did take place at the time of the Football World Cup, which may or may not have encouraged people in England to feel more English than they previously had done, though perhaps after the result maybe not. Let me then move on to the second question I was asked to address which is: what are attitudes towards how Scotland and Wales should be governed? Here, I have data through to 2007, although the Scottish data, I should say, are provisional, they are the first 1,300 cases of what will eventually be a 1,500 survey. The simple headline here is that there is no evidence at all of a consistent secular increase in support for independence in Scotland since the advent of the Scottish Parliament and support tends to bounce around the 25 to 30% level; indeed, intriguingly, in our most recent survey support for independence in Scotland is at a record low in our 10-year series, and this is in tune with all the commercial polling evidence in Scotland during the General Election campaign earlier this year where every single one of those polls which asked about attitudes towards the Constitution more than once uncovered a decline in support for independence. As you can see, support

for some form of devolution is consistently the most popular option and, equally, you can see that virtually nobody in Scotland wants to go back to the *status quo ante*. The position in Wales, however, is one of a degree of change and it is one in the direction in which public policy in Wales has been going. Here, by "Parliament" I mean essentially a body that has legislative powers and by "Assembly" I mean a body that does not have legislative powers, i.e. the Assembly as it was constituted before this year's election. As you can see, point one is that back in 1997, as reflected at the time of the referendum, 37% were actually saying they do not want it at all and that figure is now down to 16%. Meanwhile, we now have 42% of people saying not so good, that they want an Assembly, but actually that they would prefer a Parliament. Of course, the issues of how Scotland and Wales should be governed are not just, however, simply a question of whether in or out of the Union, but, as indeed already the Welsh data indicate, also issues about what should be the relationship between Scotland and Wales and the rest of the UK within the Union. Whilst it may be true that there is no evidence that in Scotland there is any increase in support for independence, there is plenty of evidence that people in Scotland may well back the idea of the Scottish Parliament having more powers than it has at the moment. Asked more generally, "Should the Scottish Parliament have more powers?", around two-thirds of the people of Scotland tend to agree. If you ask them whether or not, "Now that Scotland has its Parliament, services that are provided in Scotland should be paid for out of taxes raised in Scotland", as you can see, typically over a half in Scotland agree with that proposition. Finally, and in more detail, one of the things we did this time both in Scotland and in Wales is to ask people which of the UK Government or the devolved institutions should make the main, principal decisions about four policy areas, two of which at least in Scotland are devolved and two are reserved. These areas are the NHS, schools, welfare benefits and foreign affairs. What I am showing you here, first of all, if you take the first left-hand bar, it indicates that 63% of people in Scotland think that the Scottish Parliament should make the principal decisions about the NHS for Scotland and 26% say the UK Government. The second pair indicates that 61% of people in Wales think that the Welsh Assembly should make the principal decisions about the NHS in Wales and only 26% the UK Government, as you can see. For the most part, public opinion in Wales and in Scotland on all four issues is rather similar and what you will also note is that both in Scotland and in Wales it is only foreign affairs and defence where you get a majority of people saying that it should be the UK Government rather than the devolved institutions that should take the principal decisions. As you can see then, there appears to be plenty of support in both Scotland and in Wales for increasing the powers of the current institutions. What do the English think of all of this? Well, so far at least, and here this is where the data only go through to 2003, the evidence appears to be that people in England are quite happy

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certainly for Scotland to have its own devolved Parliament, but, equally, they are not particularly keen on throwing the Scots out, and only around 17% or so support the idea of Scotland leaving the Union. That takes me to the third and final question which is: what, if anything, should be done about England? What I am showing you here are answers to a question that has been asked fairly regularly which invites people in England to choose between one of three options. The first is that the laws for England should be made, as now, by the House of Commons; the second is that there should be some form of regional devolution responsibility for things like health and education, and it was designed to mimic the Welsh Assembly as was, and the third is that there should be an English Parliament. Now, it is one of those things where you can decide whether the glass is half full or half empty and the first thing to say is that, when asked in this way at least, a majority of people in England would prefer to stay with the status quo. On the other hand, it is only just over half the people in England. And of course one of the complications about England is that there is a debate about, even if you are in favour of devolution for England, is it devolution at regional level or is it devolution to England as a whole? So the devolutionists, as you can see, are evenly split between those two counts. Together, they come to about 40% of the English population, but between them they are split. Of course, what you will also notice is that now, as regional devolution seems to have gone off the English agenda, so an English Parliament seems to have become the more popular of the two options. There is now, however, one important thing to say about attitudes in England which make them very different from the attitudes, for example, in Scotland. I earlier showed you how it appears to be the case that England is beginning to feel more English and less British, but we should not necessarily presume from that that, as a result, there is developing a wellspring of potential support for some form of devolution in England. What I am showing you here is how attitudes towards that three-pronged choice for England vary according to whether or not you say you are principally British or principally English, and what I invite you to note is that, whilst it is true that those who say, "Yes, I am English" when forced to choose, rather than saying they are British, are somewhat more likely to favour the idea of an English Parliament; the difference is not very big. Perhaps it will make this even more clear if I do the equivalent analysis for Scotland where again, taking the three options posed there, it is broken down again by national identity. Now, even amongst those who say they are predominantly Scottish, only a minority support independence, but you can see that it is virtually only those who say they are Scottish who favour independence. Attitudes towards the constitutional question in Scotland are rather more clearly linked to national identity. So one of the intriguing things about England is that, although national identities may be changing, so far at least it is not clear that even those who feel English necessarily particularly feel that that Englishness needs to be reflected in distinctive

political institutions. That, however, of course does not mean to say that England is necessarily satisfied. There are our old friends of the West Lothian question and the Barnett Formula or, rather, the Scots having too much money allegedly, and what I am showing you here is just to give you an indication of how opinion both in England and in Scotland pan out on those two potential English grumbles. The first thing to say is that certainly, if you ask people on both sides of the border whether or not Scottish MPs should be voting on English laws, people in England say that no, they should not, and people in Scotland say, "Yes, we can think of something better for Scottish MPs to do than voting on English laws", and there is a majority of both sides of the Union that support that proposition—although I should say that on both sides of the Union also it tends to be agreement rather than strong agreement. On the other hand, the other grumble in England allegedly, which is about public spending is not as obviously a grumble or at least it is not obviously as salient a grumble as perhaps you might imagine. What we have done here with this question is simply to ask people, "Do you think Scotland gets more or less than its fair share of public spending?", and we asked it both sides of the border. We do not tell people, as most commercial polling evidence has done, actually what the difference in the level of spending is because that leads people and that makes it obvious to them what the difference is. Now, if you do not tell people in England what the difference is and, therefore, you get the indication of saliency, what you find is that there are 13% more people in England who think that Scotland gets more than its fair share than less than its fair share, but that is all it is, and most people in England, around 45%, say that it gets pretty much its fair share. Meanwhile, in Scotland, yes, it is true that rather more people think that Scotland gets less than its fair share than more than its fair share, but, intriguingly, that number is getting less over time, and people in Scotland at least as a result of the debate seem to be becoming more aware of the fact that they appear to be relatively well off. Finally, what do the Scots want for England? This is in a sense partly also another way of looking at Scottish attitudes towards independence. For the most part, as it were, the three left-hand bars are showing you attitudes in Scotland to what they think should be the constitutional position of England and the intriguing thing that is seen there is that basically, if I were simply to give you the data without telling you whether it came from Scotland or whether it came from England, you would find it very difficult to tell the difference, i.e. opinion in Scotland as to whether or not England should have its own Parliament or not or should have regional devolution is virtually identical to opinion in England, which is a majority, just, saying no and slightly more saying an English Parliament than regional assemblies. The two right-hand bars is a new question we asked this time which is asking people in Scotland what they think would be better for England, i.e. is it better for England to be in the Union or outside the Union, and there is a clear overwhelming majority in Scotland that believes that England should remain within the Union and it is in England's interests so to do.

Chairman: Thank you very much, Professor Curtice, for your wonderful gallop through that, and we have got that material, I think, in paper form as well, so we can take it away and think about it, but we will be asking you some questions later arising directly from the public evidence and it is very helpful background. We want to work through a number of issues now.

Q2 Julie Morgan: The first ones are on the legislative process itself. How do you feel that the legislative process in Westminster has changed to accommodate devolution?

Professor Hazell: I thought you might look at me! The short answer is not enough. It has got progressively a little bit better. We wrote a book about this which was published in 2005 called *Devolution, Law-Making and the Constitution*, but I have not done any serious research on it since, so some of my comments may be slightly dated. Our criticism then was that the approach was far too fragmented and that, in order for devolution issues to be properly treated in Westminster legislation, there should be much stronger leadership at the centre of the UK Government, preferably coming from the Cabinet Office and, in particular, from the Legislative Programme Committee and that the Legislative Programme Committee should be the main gatekeeper and should deny Cabinet consent to introducing bills unless they observed some consistent minimum standards in their treatment of devolution issues. We also observed that it would help greatly if more bills were published in draft, which is a general comment on the legislative process, and that, if the Explanatory Notes to bills contained more information about the devolution consequences at that time, there was a requirement only to comment on issues relating to Wales and no comparable requirement in relation to Scotland or Northern Ireland. Since then, in Scotland the Scottish Parliament's Procedures Committee has conducted its own inquiry, in particular, into the operation of the Sewel Convention, the convention whereby the UK Government and Parliament will not legislate on devolved matters without the consent of the Scottish Parliament, and they published a report, from memory I think, in 2005 and recommended tightening up the procedures in the Scottish Parliament and, incidentally, renaming the convention where they said it should be called the Legislative Consent Convention. There was a follow-up inquiry down here by the Scottish Affairs Select Committee which, I think, made rather fewer recommendations about the possible changes to the procedures here and I do not know, forgive me, whether the Explanatory Memorandum accompanying bills now does properly flag up devolution issues relating to Scotland, whether it does properly tag bills which are, or might be, Sewel bills so that everyone is properly alerted, when a bill is first introduced or very soon after, as to whether it raises devolution issues in Scotland. In Wales, the difficulty is a completely different one and that is, as you will all know, that the Welsh Assembly has no primary legislative powers and that is going

gradually to change under the procedures laid down in the Government of Wales Act 2006 where the primary mechanism for conferring legislative power on the Welsh Assembly will be Legislative Consent Orders, but the UK Government does not seem inclined to follow that primary mechanism, although it is early days, but it certainly does still confer legislative powers by ordinary legislation and indeed by a variety of other means, and there too there is a need for much greater consistency.

Q3 Julie Morgan: So you do not think that the mechanisms and the conventions are entirely appropriate at the moment, but is there anything that actually you want to add in terms of how they should be improved in the future?

Professor Hazell: No, I think I have offered as much as I want to at this stage about possible means of improvement.

Q4 Chairman: Do you think there is actually very much awareness, and perhaps we are in a better position to answer this than you are, amongst MPs who are not from Scotland of the whole Sewel motion issue and the need to consider it when looking at the legislation in the first place?

Professor Hazell: No, for an understandable reason which in effect you have suggested the cause of, namely that somewhere between 80 and 85% of Members of the House of Commons represent England and English constituencies, so it is only the Scottish or Welsh Members who might have a special interest, and that is why, in our view, the Explanatory Notes need to flag up quite strongly the fact that there is a devolution issue in a bill because, otherwise, it risks remaining hidden and being ignored.

Q5 Dr Whitehead: I was going to ask you at this point whether your proposals solve the West Lothian question, but perhaps that would take us well into next year! The way I would couch that instead is to ask you whether you could give us some of your thoughts on the strengths and weaknesses of the various options that are really current which are proposing, so they claim, to settle the English question, such as the question of an English Parliament, such as the question of English votes for English laws, an English Grand Committee perhaps and regional devolution within England. What are your views on the strengths and weaknesses of those various proposals?

Professor Jeffery: I am trying to pass the responsibility to Professor Hazell! The fundamental problem surrounding all of these proposals is the relative size of England *vis-à-vis* the rest of the UK, that 80 to 85% of one state requires special consideration of how that part of the state is governed in itself, but also, and in particular, how it impacts on the other parts. There are, I think, serious reservations about a number of those proposals because of the way that they connect with the other parts of the UK or impact on the other parts of the UK with devolved powers. It would be, I think, historically a unique situation to see an

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English Parliament with an equivalent set of powers to the Scottish Parliament, the Northern Ireland Assembly and, in evolution, the Welsh Assembly forming a federation or something like it when one of the units has 80 to 85%. There is a presumption in that type of political system that there is equality of units and I suspect that entrenching a sense of equality across units ranging in size from less than two million to 50-plus million would be extremely difficult.

Q6 Chairman: Texas and Rhode Island?

Professor Jeffery: There are 48 others which range in between and which qualify that difference. We have a very small number of units and one which is so predominant would make the operation of that kind of system very difficult. There are a range of other issues attached to proposals on English votes for English laws or an English Grand Committee, in a more recent iteration, which presume that you can disentangle business for England from business for the other parts of the UK. Now, I will defer to Professor Hazell on this in the detail, but one of the issues is certainly that many of the bills considered in this House are England and Wales bills and not just England bills and produce various consequences for Wales, some of which Professor Hazell outlined. There are a range of other issues as well, not least finance. The financial allocations awarded to the devolved administrations are based on decisions on comparable spending programmes in England and I think, if you try to establish a situation where only MPs representing English constituencies are voting on such matters which have such consequential effects for Scotland, Wales and Northern Ireland, there is a problem, there is a kind of disconnect between the structure and the effect which points to the fundamental problem and that is that decisions made for England, because of its size, inevitably impact outside of England and I do not think any of the proposals for an England-level solution have properly addressed that problem. It would be less of a problem if you went towards a regional assemblies solution. I am reluctant to go into a full discussion of that, not least given the events in the North East in November 2004 which appear to have knocked that off the agenda for some considerable time. I really do not think it is an option, given the scale of rejection then and, remember, it took quite a long time for the rejection of a devolution scheme in Wales by roughly the same margin to return to the political agenda.

Q7 Chairman: I think the Committee would still be interested in your views on such a possibility, not least because someone might want to argue that, despite it having been rejected, it may be the only way of dealing with a particular aspect of the problem and to have certain weaknesses which we ought to be aware of before considering it again.

Professor Jeffery: Well, I could refer you to the report which I helped to draft by the then Committee on the Office of the Deputy Prime Minister which held an inquiry on the draft Regional Assemblies Bill which I think dissected its weaknesses in some

detail. Let me draw out just a couple. One of them would certainly be the weakness of identification of the people of England with the regional units which were put before them, as it were, not just in the North East, but more generally. I think there is a problem of political mobilisation around those particular lines on the map, even in the North East, the region of England which, alongside London perhaps, is the one which we tend to assume has a very strong sense of regional identity. The other issue which I think really helped essentially to scupper those proposals was the reluctance in Whitehall ministries to consider ceding significant powers to the proposals for English regional assemblies, and in fact only one Whitehall ministry at the time did consider ceding significant powers and that was the Office of the Deputy Prime Minister, but no others did. I suspect that is both a problem in terms of selling the idea to the people of the North East, and there was a very strong perception in the public attitudes data that we collected that this was going to be an expensive talking shop which would not make any difference because it had no serious powers, but I suspect it also says something about governing mentalities in Whitehall and those governing mentalities have not changed in the interim and I do not foresee any particular change in the future, and that is the conception of governing England in a regionally disaggregated way and that conception is not there.

Q8 Dr Whitehead: Except of course certainly a number of other countries in Europe have simply declared regionalism, and I have in mind France, for example. Spain did it in rather a different way, albeit not with the same sort of double-lock referendum and consequent local government reorganisation that was attempted as far as the North East referendum was concerned. In the context of what we are discussing about the English question, is it, or would it be, your view that the issue is so unresolvable in terms of various democratic details that perhaps a resolution by fiat is the only way forward?

Professor Jeffery: That would certainly remove some of the obstacles. I suspect that we have probably established, in the very British way that we do make constitutional convention, that we have referendums on matters which appear to have constitutional impact, and it may be difficult to make that argument, but, if one were to take a very dirigiste, Jacobin approach and copied the French, I am sure it could be done by the powers of this Parliament.

Q9 Dr Whitehead: Do you think that the proposals that are presently current for regional select committees have any bearing on this issue or do you think it is in any way a pointer in a particular direction of the further consideration of regional devolution within England?

Professor Jeffery: Although I think that the institutional solution of moving to elected regional assemblies would be difficult to return to in short order, I do not think some of the problems

underlying the proposals to introduce such assemblies have gone. We were able to do some detailed public attitudes research around the North East referendum which showed that, whilst people were absolutely unconvinced of the model put to them, the people of the North East were, in a clear majority, convinced that they were politically marginalised, that they did not have a voice at the centre in Westminster and Whitehall, but also that they were economically marginalised *vis-à-vis* other parts of the UK, and the lack of political voice and the sense of economic disadvantage were clearly very, very important issues. I think you could say much the same for other parts of England, the North West, Yorkshire and certainly parts of the South West as well, and I suspect that that kind of issue underlines the need for a disaggregated consideration and I think regional select committees offer one mechanism for doing that.

Q10 Dr Whitehead: Before I ask Professor Hazell a question about representation, could I just return briefly to your thoughts on the fact that England has 80 to 85% of the population of what might in the future be the federation. Does that mean, in your view, that ideas which relate to some form of constitutional relationship of England to other countries in the federation are inevitably swayed by that consideration or are there formulae which you consider could overcome that and, if you do not, does that inevitably, therefore, seem to point, however unpopular that may appear to be with the population, to some form of regional devolution within England?

Professor Jeffery: I think there are other ways of addressing the question, and let me name two. One would be to disaggregate in the working of government, not of Parliament, but of Whitehall ministries, England-only and UK-wide roles much more systematically and effectively than is currently the case and, on that basis, pursue a more systematic approach to the relations between the governments of the UK, that is the UK Government acting for the UK and for England and the devolved governments. I think there is a possibility of doing that and it may be fairly remote, but in that sense of taking the UK Government in its UK role slightly above the territories of the UK to perform a kind of arbitration function, and that may be one way, though it may be very difficult to achieve, but it may be one way of accounting for the weight of England in policy-making across the UK. One other route would be to pursue a solution which is not that uncommon and certainly it applies in Italy, has applied in Spain, although less so now, and also in some other places which have further-flung island regions, and that is to continue to govern England as we govern England now and, as we saw from Professor Curtice's data, that appears to be what the English think should happen and what the Scots think should happen for England, but then treat the devolved territories in some form of special status which disconnects them more systematically from the work of this House and which in that way would control some of the spillover effects that an 80 to

85% unit has on the rest. That may not be an obvious consideration, and very few are proposing it, not least because it would raise concerns about the disintegration of the UK if you disaggregate it by special status in that way, but that may be one way.

Q11 Chairman: Is the main reason not the disproportionate role which the representatives of these somewhat separated territories would have in the distinct Government of England?

Professor Jeffery: In that case, I guess they would not have—

Q12 Chairman: Sorry?

Professor Jeffery: If you were moving to a situation of special status, I think one of the corollaries is that you would reduce the input of representatives from the non-English parts in the Government of the centre, including the Government of England.

Q13 Chairman: So you are moving towards the English votes on English laws position in that argument.

Professor Jeffery: But with additional consideration of the distinctive needs of the devolved territories. This would presumably mean awarding them further powers and further fiscal autonomy beyond the very small amounts that are currently available. That is one way of dealing with England, and that is more comprehensively to demarcate the Government of England from the rest.

Q14 Dr Whitehead: Professor Hazell, the technical issue or one of the technical issues that has been put forward as a counter to the English votes for English laws is, as it were, the unitary status of the UK MP, the fact that it is difficult to have, as it were, a two-tier membership of the House of Commons. Would that in any way be met by securing the end of the alleged under-representation of England in the UK Parliament, in your view?

Professor Hazell: Yes, in terms of the electoral quotas I do not think it is quite right to say that England is under-represented. The territory which is over-represented is Wales. Since the changes in 2005, Scotland, which was over-represented with 72 MPs and now has only 59, has come down into line with the English quota, but Wales is still over-represented with 40 MPs when, if it were in line with the English quota, it should have only about 33. So at the very least, I think, Wales should have the same electoral quota as the other parts of the UK. However, there is an argument for going further, the precedent being what happened during the first Northern Ireland Parliament in Stormont between 1922 and 1972 when, as you all know, whereas Northern Ireland in population terms was entitled to 18 MPs, in practice it had 12, so there was a discount of one-third to take account of the lesser interest and workload which Members from Northern Ireland at that time had at Westminster because of the devolved Parliament sitting in Belfast, and similar arguments could now be deployed. We have done a little work on the reduced workload now of Scottish and Welsh MPs post-devolution and, no surprises, and there is

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nothing wrong in this, nothing shameful, they do on certain indicators have less work to do, and that is entirely what one would expect. They have significantly less in terms of incoming and outgoing correspondence, and we can show that in terms of the volume of their postbags, faxes and emails and in terms of the amount that they spend on postage going out, and they have less work in terms of constituency caseload, and no surprises there because many of the constituency cases involve devolved issues which their constituents now take up with their devolved representatives. I think that is an issue which arguably should be addressed and it was not generally noticed, but it was in fact Conservative Party policy at the last General Election in 2005 to reduce the number of Scottish and Welsh MPs at Westminster by around about a third. If that were done, there would be about 40 Scottish Members and there would be about 22 Welsh Members.

Q15 Chairman: Surely the issue there is not just one of workload though, is it? I can imagine, especially having three Welsh Members of Parliament sitting here with me, that one could get into an argument about that! Was it not, by those who advocate that, a desire to reduce the influence of the representatives of areas where there is devolved power on the Government of England? Was it not quite explicitly for that purpose?

Professor Hazell: Well, it is a partial answer to the West Lothian question. The reason why the West Lothian question bites sharply in political terms is a two-fold reason, one of which is the number of representatives that Scotland and Wales should have, but the second, because of the way the first past the post operates, is the very heavy over-representation of Labour in Scotland and Wales in terms of seats to votes, so one answer to that, a generic answer which your Party, Chairman, might support and the other parties might not, would be to introduce a more proportional system of representation for this House. Another answer which occurred to me at a seminar we were all attending this morning would be to try and revive the fortunes of the Conservative Party in Scotland and Wales and I—

Q16 Chairman: Well, we did by giving them proportional representation!

Professor Hazell: Well, I have a proposal in relation to party funding which is that Lord Ashcroft's fund should be increased and it should be especially directed towards Scotland and Wales and it should be called the "West Lothian fund"!

Q17 Chairman: You forget the Laidlaw element in Scotland! Professor Curtice was shaking his head at me.

Professor Curtice: Yes, can I just make one technical caveat about the Scottish representation in this House. Scotland is in fact still over-represented in this House and there are two reasons, one, arguably, legitimate and one less legitimate. At the last Election, the average electorate of the average Scottish constituency was around, if I remember

rightly, 65,000 and that of the average English constituency was around 70,000. Now, part of that is to do with the Northern Isles and the Western Isles and you may say, "Well, that's fair enough", but, beyond that, the problem is, because the population of England is growing more rapidly than that of Scotland, that, therefore, during the course of any redistribution the constituencies in Scotland are gradually getting smaller relative to those in England. There is also, however, a bigger issue here. The Scotland Act was, frankly, technically deficient in the way in which it cut Scottish MPs. What it did was to introduce a once-and-for-all cut in the number of Scottish MPs and under the rules of redistribution, as amended, the quota in Scotland at the next redistribution will be whatever is the electorate in Scotland at the date of the next redistribution divided by 59. It will not be the English quota, and, given the way in which the Scottish Boundary Commission is now interpreting the rules for redistribution, actually you can probably anticipate that the number of Scottish MPs will gradually increase by one or two in the course of the next few redistributions and, therefore, the gap will re-emerge. The Scotland Act failed to say that the quota in Scotland should be the same as that in England at each and every redistribution and you have to do that to at least ensure that you catch up with what is, frankly, something which, because of population movement, you are constantly catching up with to reach equality.

Professor Hazell: Just to go back to some of the matters which Professor Jeffery was raising in answer to Dr Whitehead, as you will all know, there is no perfect answer to the West Lothian question. The closest to a complete answer would be to have an English Parliament. There is no significant public demand for that, as Professor Curtice's data already have shown, and no heavyweight politician of any party has come out in support of an English Parliament, which is a huge contrast to the position in relation to devolution in Scotland and Wales 10 or 15 years ago. It would, as Professor Jeffery has said, lead to a terribly unbalanced federation of the four nations of the UK and, finally, an English Parliament serving a population of 50 million people would, arguably, be perceived as being as remote and distant from their concerns as the Westminster Parliament is, so it would not necessarily be a solution in devolutionary terms. Secondly—

Q18 Dr Whitehead: Presumably, you could, in theory, have a combination of both, that is, an English Parliament with devolution within that English Parliament structure?

Professor Hazell: Yes, and, if I may, I will come on to the other two possible solutions. On English votes on English laws, and again we have touched on this, it seems only logical and fair, and Professor Curtice's data show that it is quite strongly supported in England and, interestingly, in Scotland, but there would be huge, technical difficulties in identifying what counted as an English law for the reasons that Professor Jeffery has referred to and I think it could draw the Speaker into

quite sensitive areas politically in giving rulings on what was and was not an English law when clauses in bills were being voted on, and there are very major political difficulties which we have also touched on in terms of the effective majority within this Parliament. I am in no doubt that over time what was introduced as, seemingly, a modest procedural change could lead to a Parliament within a Parliament and no one should be in any doubt that this would be a very big change indeed with potentially very grave, long-term consequences. Lastly, on regional government in England which you also asked about, as Professor Jeffery has said, following the defeat of the referendum in the North East in 2004, that is clearly dead for the time being, but I do not think it is necessarily dead for ever. Let us not forget that in 1979 the people of Wales voted by four to one against the then proposals for devolution, exactly the same ratio as defeated the proposals for regional devolution in the North East, but just under 20 years later the people of Wales changed their minds, so do not write off regional government in England for ever. As you will know very well, because I know some of your own academic work was on this subject, there has been a form of creeping regionalism over the years and over the decades and I suspect that it is likely to continue and in time growing public awareness of those regional structures and the powers which they hold over people's lives may lead to re-emergence of the demand to democratise those regional structures.

Q19 Chairman: Would it be fair to say that successive governments have felt it necessary to create regional structures for the purposes of administration, whatever view they may have about whether there should be any democratic element in that structure?

Professor Hazell: Yes.

Q20 Dr Palmer: I wanted to probe Professor Curtice a little more about his surveying of public attitudes. First, on the fourth question, "Do you feel English or do you feel British?", I did notice that the number who said neither has increased quite markedly, that in the first point of your graph it was 4% and in the last point it was 12%, if I remember correctly. I wondered whether you had a view on the reason for that. Is it that they are people who are saying they are nothing in particular or they are European or they are Pakistani or what is going on here?

Professor Curtice: The question gives people about 10 or so options which include Scottish, Welsh, Northern Irish, Irish, European—and that is pretty much the list, though there may be one or two others. The first thing to say is that a very small proportion of people say they are European, it is about 2 or 3%; it is very low. The second is that I suspect what you are picking up is, probably to some degree, what would be principally the ethnic minority/migrant population into the country, at least for the time being, not necessarily wishing to pick up either one of those two identities. But I can look a bit further into that for you, if you wanted.

Q21 Dr Palmer: It is quite a substantial number, 14%.

Professor Curtice: Yes, sure. Some of it is also people saying they are Scottish, and there are about 800,000 Scots living in England and, equally, people from Wales also.

Q22 Dr Palmer: How strongly did the public actually feel about this at all? My impression is that, if you ask people in almost any context, "Do you want a bit more power in the place where you live?", they will say, "Yes, go on", and, if you say, "Are you in favour of different services according to where you live?", they will say, "No, that's a bad idea", but in both cases I am not sure that they feel very strongly. What is your view?

Professor Curtice: Well, I certainly think it is worth bearing in mind that the answers that you get to questions about devolution and about the distribution of power do vary very substantially depending on how you ask the question. In both Scotland and in England, if we simply say to people, "Do you think that Scotland should be independent or do you think that England should be independent?", and I do not define what I mean by "independence", in Scotland you can easily get at many points in time over half the people saying yes, they want independence. And there has been some work done in England at the end of last year and the beginning of this at around the 300th Anniversary of the Union with again around about half the people saying, "England, yes, it should be independent". But of course we do not know what they mean by that. That is an indication of possibly two things. One is that people do not necessarily immediately fill the word "independence" with all the resonance and meaning which perhaps most people in this room would do. If you simply say to people, "Should Scotland be independent?", "Well, yes, we don't want to be run by England", may be what they are simply telling us. But actually do they mean that they want it to be constitutionally independent? That may be another thing? The second thing is that, yes, therefore, it may well be true, but I have almost an indication that these views are not necessarily always that strongly held and certainly on a number of items, for example, on the West Lothian question in England and, equally, on more powers in Scotland, the mood tends to be one of agreement rather than necessarily of saying, "We strongly agree". You certainly are also correct that, if you ask people, for example, in Scotland, and we have done this in the past, "Do you think the Scottish Parliament should be allowed to increase, or reduce, the level of unemployment benefit?", they say no and that, if you ask, "Should Scotland decide what level unemployment benefit is?", they say yes to it. But then that is telling you something also. It is telling you, that a lot of this is about the importance of symbolism, that at the end of the day people in Scotland would like, it seems for the most part in many of these things, people in Scotland making the decisions, even if at the end they would also like it to be clear that those decisions are not disadvantageous *vis-à-vis* their counterparts south of the border.

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Q23 Dr Palmer: Yes, this question of disadvantage is interesting because I think all of us would agree that, if you have devolved decision-making, the inevitable outcome will be differences in services, differences in health and the areas that they manage. My feeling is that people are really quite averse to that, but what is your view? Have people who favour devolution really taken that on board, that they will sometimes have worse services and sometimes better services?

Professor Curtice: The answer to that is obviously not necessarily, but I think it is also worth saying that it also depends on the dynamics of the politics, and I think here there is a difference between England and Scotland. Obviously it has been true recently that some of the differences in public policy between Scotland and England that appear to advantage Scotland *viz.* free nursing care, students not paying tuition fees and in about four years' time free prescriptions, those have been picked up by particularly Members of the Opposition in this House, saying, "This is not fair". There are, however, examples of policy whereby provision in Scotland is, arguably, not as good as that in England. For example, whereas in England it is going to be true by the end of next year that it is meant to be only 18 weeks from initial GP appointment to treatment, Scotland has to wait until 2011 for that event. It looks as though we are going to see the school leaving age in England raised to 18 and there is no plan at the moment in Scotland so to raise it. Of course, the interesting thing there is that the Opposition, now the Government, in Scotland, but for eight years the Opposition in Scotland, who might want to say to use the comparison with England as a way of criticising the incumbent administration, in the way that the Conservative Opposition has done here, did not do so because of course it is a nationalist party and the last thing that a nationalist party wants to do is to say, "Hey guys, what we want Scotland to be like is to be like England". So the degree to which these things get politicised depends also on, as it were, the perspectives of the opposition parties in the countries concerned and there is a crucial difference in the dynamic. It, therefore, means as a result, I think, that there is undoubtedly certainly more debate in England and, therefore, perhaps more public awareness of the ways in which Scotland has services that England does not which is the other way round. But, in truth, the other way round does also exist.

Q24 Dr Palmer: Were we to have either English votes for English laws or an English Grand Committee or any other such system was in the UK Parliament, the obvious difference from the Scottish arrangement would be the absence of an English executive. Is there potentially support actually for a parallel English executive?

Professor Curtice: Let me go back very slightly because it also goes back to some of the questions Dr Whitehead was asking. In a sense, looking from the perspective of public opinion, you have to ask yourself, "What is the English problem?" Now, so

far as public opinion is measured in England so far, if there is an English problem, it is simply that they feel that where this place is dealing with just English legislation, it is not obvious why Scots and Welsh MPs should be voting on it. Otherwise, it is not obvious that the English think there is a problem. They seem to think, "Yes, it is fine for the Scots to have devolution, but no thanks, we don't want it for ourselves". There does not seem to be the same sense in England of feeling that a distinctive sense of identity, be that Englishness or to do with regionalism, has to be reflected in distinctive political institutions. We, therefore, as far as public opinion is concerned, have ended up with an asymmetric devolution settlement because we have an asymmetric state of public opinion, though that still leaves, as you have quite rightly said, the question of English votes for English laws. Now, I think insofar as you believe the English public opinion can be eventually driven by what we might call "the anomaly perspective" which is, "Why haven't we got what the Scots and Welsh have got?" as opposed to, "Why haven't we got what is best for England?" which is, arguably, a different question—insofar as you think you can drive that, my own personal view is that English votes for English laws will prove to be a very unstable halfway house. Because, if at the end of the day the argument is that the Government of England should be treated in the same way as the governments of Scotland and Wales, then yes, first of all, the first thing to say is that devolution did not just give Scotland and Wales a legislature/assembly, but it also gave them a government. It would seem, to my view, not obvious at all why, for example, we might have a House with a majority of Conservative MPs but we still have a Labour, English, Health and Education Minister with substantial freedom of manoeuvre to do what they want so long as it does not require Parliamentary approval. It seems to me fairly rapidly you move to the question: why does England not have a government? There are also other anomalies. The first and most obvious is that Scotland and Wales have systems of proportional representation, England does not. Indeed, arguably there is an even bigger English question than why is it that it is possible for an English majority to be overturned by the Scots and Welsh, and that is that the English plurality in the last election was overturned by the electoral system within England. The Conservative Party had the most votes, the Labour Party has a majority of seats. That strikes me as a pretty big English question. There is then in addition the fact that you have another anomaly remaining, which is that you would still have English legislation coming within the remit of the House of Lords yet Scottish legislation does not. This has had a practical effect. The reason why both fox-hunting and Clause 28 were got rid of in Scotland before they were in England was because the House of Lords was unable to block it. So if you are going to go down the road of "Hey guys, England should be treated in the same way as Scotland", there should not be any anomalies, it is not going to stop at English votes for English laws. You are going to rewrite the constitution for England.

Q25 Chairman: Professor Hazell has an interesting quizzical expression. Do you want to address, from the standpoint of theory rather than of public opinion, whether you think English votes for English laws really requires the existence of some kind of English executive?

Professor Hazell: I wholly agree with what Professor Curtice has said that it is the beginning of a very long and slippery slope and none of us can say for certain where we would end up, but I think it is quite likely that we would end up with a parliament within a parliament and we would *de facto* have created an English Parliament. So it is potentially a huge change.

Q26 Chairman: That is very interesting. Can I turn now to the inter-governmental relations which exist within the system as we have it now, which are non-statutory, and both Professor Hazell and Professor Jeffery have expressed concern about this, or concern as to whether it is sustainable. Would you like to add to or perhaps briefly refer to the arguments that lead you to that conclusion?

Professor Jeffery: I am less concerned whether inter-governmental arrangements are statutory or non-statutory, formalised or not, written into a constitution or not. I think the question is much more a set of arrangements which are fit for the purpose before them. What we have is a set of arrangements which are not fit for purpose because they are the arrangements which were essentially used before devolution for the accommodation of the Scottish, Welsh and Northern Irish interests into UK government positions. That is a set of arrangements based on civil servants working together in a spirit of collegiality and goodwill across departments of a single government, as was, with any problematic issues or disputes ultimately being arbitrated by ministers in a single government, as was. Now we have different governments, we have civil servants responsible to different governments in managing relationships between those governments, and we have ministers from different governments and, after the election in Scotland this year, a new party political division has entered that equation. I think those arrangements are very, very difficult to make work in that situation when you have governments produced by different electoral processes throwing up different party constellations. We have something which was fit for 1997; it is not terribly fit now. I think there are a number of examples of the unfitness of those arrangements. Firstly, there are many examples in which legitimate devolved interests have not been considered adequately by UK Government because there are no regularised forums of communication which would make UK Government aware of those concerns. There is a problematic attitude towards differences of opinion, which are pretty much natural conditions of decentralised politics. We have seen rather more of them since May of this year in the Scottish-UK relationship than beforehand.

Q27 Chairman: They existed prior to then, not least because the Government was different in political complexions, a government of two parties, but there might have been some even if that were not the case.

Professor Jeffery: Yes. We have a particularly vivid expression of those now, and I think the problem both before May of this year, and especially since, is a sense of dramatisation of dispute. Before May this year this led to an exaggerated effort to keep dispute behind closed doors and not to carry out in a public sense what is in effect an issue of public interest, that is, one government produced by voters disagreeing with another government. What we have now is a rather more public version of that but also a sense of crisis attached to difference. I think we have to de-mystify dispute and accept that this is absolutely normal and governments need to work together when their constituencies coincide on the same territory to provide answers to disputes in a more considered way. There is a further problem which arises from the way we have translated the old system into the new system, and that is we have a very limited sense of using relationships between governments to define common interests and pursue them. This may well have happened in the pre-devolution situation, it certainly needs to happen now but we do not have that sense of regularised forums for interaction which would allow the definition of the pursuit of common interest. I think we have a whole series of failings which essentially reflect the way that these arrangements were transformed from pre-devolution to post-devolution contexts.

Q28 Chairman: Was there no mechanism, for example, whereby the Scottish Executive could secure the assistance of the UK Government in the successful bid for the Glasgow Commonwealth Games as an example where both governments might well think this is something in the UK's interests? Presumably they found some way of talking to each other about it.

Professor Jeffery: Possibly they did but we do not really know about it, and I suspect the lack of transparency in these arrangements is one of the biggest problems. When governments which are responsible to different electorates engage together in the resolution of disputes for the pursuits of common interest, I think there is an accountability issue. We really ought to know what positions were brought in to discussions, where the differences lay, because differences are legitimate, and what was done to address them. One of the problems of those relatively few occasions when we have had a formalised engagement of UK and devolved governments in joint ministerial formations, the commitment to communicating what happened in those engagements has very rarely been carried through. I think Professor Hazell will confirm there is actually a formal commitment to do so in relation to at least one of these formations on Europe which was made to a House of Lords inquiry. We just do not know what is happening in our name, and I think that is a problematic feature

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of arrangements designed for use within one government but now adapted for use between governments.

Q29 Chairman: Perhaps I can confess that during the foot and mouth crisis, the previous one, I found it easier to ring up the Scottish minister, who would tell me what was going on because he was attending the meetings which were taking place at UK level, because there was shared responsibility.

Professor Curtice: Nothing to do with the party at all?

Q30 Chairman: There might just have been.

Professor Hazell: Could I just reinforce three of Professor Jeffery's points, one, that disputes are perfectly normal between governments post-devolution and only to be expected. They happen in all devolved and federal systems. Secondly, the way to handle these disputes is, as Professor Jeffery said, through the machinery which was established at the beginning of devolution and is described in the Memorandum of Understanding that was negotiated and agreed between the UK Government and the devolved governments and that provides, at the very least, for there to be a meeting once a year of the plenary Joint Ministerial Committee between the UK Prime Minister and Deputy Prime Minister and the First Ministers and Deputy First Ministers from the devolved governments. In fact, no such meeting has taken place, I think, since October 2003 so four years have now elapsed with no plenary Joint Ministerial Committee being held, my understanding is because the UK Prime Minister has seen no need to convene such a meeting. But in a healthy system there would also be sectoral joint ministerial committees, of which the only effective example is those on Europe, that have been regularly held, and our understanding is they are very effective forums in which, in particular, before important European meetings the devolved administrations make their views and interests known to the UK Government, which will generally lead the UK delegation in these European negotiations. Thirdly, can I reinforce Professor Jeffery's points about the need to make the system more transparent and accountable, and to publicise when these meetings take place and to give some brief account, be it through formal minutes or issuing a communiqué, as to the main subjects that have been discussed and what has been decided. There were for a time such communiqués on the website of the old Department for Constitutional Affairs. They are no longer to be found, so this is a small "for instance" where the requirement on all government departments to be more proactive in publishing information under the Freedom of Information Act has actually taken a step backwards rather than forwards.

Professor Curtice: Can I just add a parenthetical point about rows and public opinion? One of the views I have come to quite clearly about public opinion in Scotland, and certainly one of the motivations as to the way in which people decide to vote in Scottish Parliament elections is they seem to think it is quite important to have an administration

in Edinburgh that they regard as standing up for Scotland's interests—and that does not just simply mean effectively and efficiently disposing of the devolved powers. It also means representing Scotland's interests within the Union. If that is correct, can I suggest to you that at least while it may be true that having a more voluble government in Edinburgh might persuade the Scottish electorate that perhaps the Union is not worthwhile, it is also at least as plausible that a more voluble government in Edinburgh may actually convince people that Scotland is now being more adequately represented within the Union and that therefore as a result people may become rather happier with the devolution set-up than so far appears to be the case.

Q31 Julie Morgan: I was going to ask about arrangements in Whitehall. Do you feel that the present arrangements for the management of devolution policy in Whitehall are appropriate?

Professor Hazell: No, they are not yet ideal. The difficulty has been the fragmentation within Whitehall, where there have been several different centres responsible for different aspects of devolution, in particular, obviously, the three offices of the territorial Secretaries of State, the Wales Office, the Scotland Office and the Northern Ireland Office, and when there was an active policy of regional government in England there was a fourth centre in what was the old DETR and then the Office of the Deputy Prime Minister. There was a fifth centre with nominal responsibility for devolution strategy in the old Department for Constitutional Affairs and they had a division in their Constitution Directorate that was responsible for devolution policy. So there were five centres within Whitehall, each with an interest in devolution. In effect, there still are. We still have the three territorial offices. Regional policy in England has gone rather quiet as an active area of policy but there must be a part of the Department for Communities and Local Government responsible for regional policy in England, and the Ministry of Justice does still have an interest in overall responsibility for devolution strategy and indeed, very recently has appointed a senior official, Jim Gallagher, at Director General level to be Director General responsible for devolution policy within the Ministry of Justice two days a week and two days a week in the Cabinet Office.

Q32 Julie Morgan: How do you think the situation could be improved?

Professor Hazell: Ideally, I think in the medium to long term I would like there no longer to be three separate territorial Secretaries of State. They are part of the pre-devolution structure and post devolution I do not think Scotland, Wales or Northern Ireland need any longer to have a privileged position in Cabinet through having designated Secretaries of State to represent their voice and interests because that voice and interest is now strongly represented through the devolved institutions. So over time I would like to see the merger of those Secretaries of State.

Q33 Julie Morgan: Do you remember when the Constitutional Affairs Department was set up there was an outcry, certainly from Wales, and I presume maybe from Scotland as well, because the implication at the beginning was that there was no longer going to be a Wales Office and a Scottish Office. There certainly was a great deal of concern about that. How do you think that sort of view can be overcome if you think the best idea is for the three bodies to come together?

Professor Hazell: I hope over time, as the devolution arrangements bed in, that in Scotland and in Wales there will be much greater confidence that they no longer need a Scotland Office or a Wales Office. Professor Curtice can tell us whether there was a similar outcry in Scotland. I am not sure that there was. To the extent that these interests do need to be represented, I think they should be represented in the Cabinet Office as a part of the central secretariat supporting the inter-governmental machinery. That is logically where they should be, at the centre of government, supporting the UK Government in its relations with the devolved governments, and that is where you find that machinery in other central governments in other systems.

Q34 Julie Morgan: So you do not think there is a role for Secretaries of State of the three different bodies?

Professor Hazell: No. Forgive me, but they are a hangover from pre-devolution days.

Q35 Julie Morgan: I do not know if you could tell us about Scotland, whether there was any feeling at that time?

Professor Curtice: There was an elite feeling. I am not sure anybody even bothered to ask the question in an opinion poll about the subject. Certainly in Scotland the Secretary of State now has a pretty low public visibility because he or she has usually got something more important to look after. Insofar as the role is a public one of speaking on behalf of the UK government to the Scottish media, it tends to be performed by the Parliamentary Under-Secretary.

Q36 Julie Morgan: Do you have anything to add?

Professor Jeffery: Just one additional point to that. I think that kind of reform would need to be seen as part of a package. There may be a sense of loss of voice for Wales or Scotland or Northern Ireland through the loss of a Secretary of State but if we move to a more systematic pattern of inter-governmental relations, including meetings of the Joint Ministerial Committee at Prime Minister/First Minister level, there is going to be a different route, and arguably a route more fitting for the current circumstances, for representing Welsh, Scottish and Northern Irish interests at the centre. I think one goes with the other. It is a balancing effect.

Q37 Julie Morgan: What about the context of policy making in Whitehall? How do you think that has responded to devolution and the differences that have emerged in policies?

Professor Hazell: In the early days of devolution certainly I think different Whitehall Departments were more sensitised to devolution in different ways, and there were some that were notoriously insensitive and, since their names have changed, we can name and shame them. The DTI was one and DETR, as was, was another. Those were both pretty hostile to devolution in Whitehall. Again, I think it was not helped by the different centres within Whitehall responsible for handling devolution relations. There was no single strong centre that could tell all the Whitehall Departments how to come to terms with devolution save for the Cabinet Office, which in the scenario I painted previously was a very weak player, except in the very early days when there was a Constitution Secretariat in the Cabinet Office that was primarily responsible just for putting the devolution legislation through. That capacity in terms of officials did not last very long and so the Cabinet Office has had effectively no devolution secretariat since the Constitution Secretariat was wound up, but it needs a stronger centre, I think, to ensure more consistent performance in awareness of devolution across all the Whitehall Departments.

Professor Jeffery: An addendum to that, if I may. I think we have seen waves of sensitivity which are often based around individuals or groups of individuals who build up relationships between Whitehall Departments and counterparts in the devolved administrations and, as those relationships develop, you get better sensitivities but, in the way of things, people move on. I think the problem lies probably at a civil service training level in mainstreaming devolution sensitivities right from the outset for all civil servants. We are in a situation where we rapidly lose gains when somebody moves on to a new job.

Q38 Mrs James: I wish to come to devolution and the governance of Britain now. You have already touched upon this slightly. The Prime Minister has started a debate about the British statement of values, *et cetera*, and one of the quotes that I have been very interested in is Vernon Bogdanor's, when he says that the question of Britishness is now a surrogate for the problem of holding together the post-devolution multi-cultural United Kingdom. What do you three think has been the role of devolution in bringing about the current focus in political debate on British identity and British values?

Professor Curtice: I am tempted to say "not much" because I think in truth the debate about Britishness is different in the four territories of the UK. The interest in Britishness as a multi-cultural concept that might be capable of being defined in such a way that all of the populations of England may feel able to sign up to it, including not least those from the ethnic minority communities, has clearly been quite important in England. And certainly, if you look at the polling evidence, it suggests that in England members of ethnic minorities find it easier to adhere to a British identity than to an English identity. It also seems to be true that those people who adhere

to an English identity are usually adopting views that are somewhat less friendly towards immigrant populations or members of ethnic minorities than those who adopt a British identity. In contrast, in Scotland what you will discover is that the ethnic minority population there is relatively small but that population seems more inclined to adopt a Scottish identity than a British identity, and certainly when you look at the pattern of attitudes, you do not find the equivalent pattern in England, i.e. you do not find that those who feel predominantly Scottish are more likely to be hostile to immigrants or members of ethnic minorities than those who adopt a British identity. In Scotland, in other words, it appears that the identity that has been turned into a multicultural identity is Scottishness rather than Britishness. Certainly if you hear nationalist politicians talk, I think it is true that the First Minister of Scotland on the announcement that Glasgow won the Commonwealth Games said this was an indication or a celebration of the multi-cultural nature of Scotland. So you can see how the nature of discourse is different. I will leave Wales because I am not so expert there but obviously there it is partly tied up the issue of the relatively high level of English immigration into Wales and there is a whole issue about language, but then obviously, in Northern Ireland Britishness is associated with one of two communities. In contrast to the other three parts of the UK it is seen as being largely antithetical to Irishness. For example, when I do the kind of research I do in any of the three parts of the UK, around 40% of people will say, if you give them the chance, "I am both English or Welsh or Scottish and British." In Northern Ireland only about 2 or 3% of people will say they are Irish and British. Britishness in Northern Ireland does not look like a form of identity that is capable of uniting the two principal communities, let alone anybody else. One of the problems that faces this idea of using Britishness as a way of bringing communities together is not necessarily that it divides Scotland from England or England from Wales or whatever but rather that Britishness has different meanings and associations within each of the four territories and that, to some degree at least, those meanings and associations are contradictory to each other.

Q39 Mrs James: So a British statement of values is going to open the debate?

Professor Curtice: My own personal view is that an awful lot of the debate about British values that has been instigated by our current Prime Minister was that in part it provided a mechanism for talking about his view of the world before he was Prime Minister, a view of the world that was sometimes subtly different from that of the then incumbent Prime Minister. But, by putting it in terms of British values, this at least in part provided him with an uncontroversial way of doing so, because these are things that everybody is in favour of. Having said that, it is also obviously clear that the current Prime Minister does feel very strongly this idea that Britishness matters and Britishness is important and that probably, for him at least, it is also about an

idea of a commitment to the Union. But I think in truth, as you can guess from some of the data I have shown, his perspective is not a perspective which is relatively common amongst most of his fellow Scots.

Professor Jeffery: If I could add a couple of thoughts, one is that the Governance of Britain Green Paper was surprisingly silent on devolution and in that paper these issues were not connected to devolution although I think, as Professor Curtice has said, the inspiration behind that paper has a bit of previous on the matter and did present a series of speeches over the years which did connect the notion of shared values across the parts of the UK as one of the glues which might provide coherence for a post-devolution state. I would like to inject a note of scepticism about values in that setting. I think the values which were raised in those speeches and alluded to in the Green Paper are values which are just as good a justification of the union of England with Canada as they are with Scotland, because they are pretty universal values which are shared across western liberal democracies. There is nothing peculiarly British about them.

Q40 Chairman: Some would say that is because Canada owes so much to Scotland.

Professor Jeffery: I could have changed Canada for Germany and said Germany instead, and that probably would not work in the same way. I suspect that if you really want to build a sense of commitment to the Union, one needs to go beyond values. They might be important in a symbolic sense but I think there should probably be a rather stronger reference to the shared interests which union can deliver. For example, social security as a Union-wide policy, delivering benefits irrespective of location. I think that kind of concrete demonstration of the benefit of the Union, of sharing risk in as big a pool of people as possible, is probably an articulation of the benefit of the Union which has more grip on ordinary people than a loose statement of values.

Professor Hazell: If I may, I would like strongly to support that. I think Britishness depends on much more than values. The United Kingdom and the Union state rests on far firmer foundations than you might believe simply from reading the Prime Minister's speeches on values. It depends, critically, on the shared interests that Professor Jeffery has just referred to, of, for example, the tax and benefits system, which are both reserved functions fulfilled by the UK Government, and which lead to very significant redistribution amongst the whole population of the UK; shared interests of defence and national security; and you can go through all the list of reserved functions and show how they support shared interests of all peoples in the UK. Lastly, I would also mention common institutions, institutions like the BBC, like the armed forces, like this Parliament at Westminster, which are all British institutions and are fundamental to the governance of the UK, but also, I think, part of people's shared vision and understanding of what it is to be British.

If you just talk about values, I do think you miss two very important pillars of Britain and the UK, which are the pillars of interest and of institutions.

Mrs James: Listening to what you said earlier and those responses now, it seems to me that it bears repeating, and repeating often, that we have these shared interests and that we have these shared pillars, because I feel that in the interest surrounding devolution we could have lost sight of those at times, how strong that does make us, in addition to the benefits of devolution. It is interesting to hear those thoughts. Thank you.

Chairman: That probably does not need a response. It was a statement.

Q41 Dr Whitehead: If I could reflect, Professor Hazell, on your last thought, is there not any sense in which, as the EU becomes a more secure economic framework within which to live, what it is to be devolved takes a different form in the public view, that is, you can actually have a “breakaway nation” without it making any difference whatsoever in terms of your overall economic and structural security? As we have seen recently, Belgium, at the heart of Europe, has existed apparently reasonably well without any government at all for 150 days, and it is conceivable it would break up into two constituent parts with no effect whatsoever on the economy and well-being of Belgium. Is that a factor, do you think?

Professor Curtice: The decision of the SNP in the late 1980s to go for independence in Europe is central to the whole debate. The point is that the kind of independence that the SNP is promoting is one that would not make any difference to the freedom of labour, to the freedom of capital; whether it would make a difference to the currency depends on whether it decides to stay with sterling or to go to the euro but, either way, Scotland is not going to have its own currency. It probably would not mean any change to passport controls because presumably you would have exactly the same arrangement as the Irish Republic has with the UK Government. It need not even necessarily make any difference to citizenship insofar as if the British Government is still prepared to allow people to have dual citizenship, and therefore those people in Scotland who wish to retain their British identity, British citizenship, can do so, but at the same time people are allowed to take up Scottish citizenship if they want to as well. Again, lots of people have both Irish and British citizenship. Yes, precisely in other words, one of the reasons why it is possible for the Scottish National Party to put up a case in favour of independence is because independence does not necessarily mean as much as it once did. That is fundamental to the whole debate. Indeed, if you listen to a lot of the more serious debate about the subject, it is essentially a debate about what is the best way of positioning a relatively small country within a globalised world; is it better to be playing on the international stage as part of a big player or is it better to have your own team, albeit one that in some respects may not be so strong or have as big a voice? That is essentially what the debate is about.

Q42 Dr Whitehead: Is there then, putting it round the other way, a sense in which—not in Scotland; in England—the public’s attitude, and we saw earlier constitutional preferences in England, which with substantial plurality is “What is the problem? Carry on as we are.” Is that informed by the other side, in your view, of that particular debate, i.e. people think “Well, actually, what is the problem? We can continue to go on with devolution in this asymmetric way.” I suspect if you went on the doorsteps and ask people “What do you think about asymmetric devolution?” you would get a rather short reply. Is it the case that they think “Well, we can carry on like this” or is it the case that the issue simply has not been addressed in most people’s minds in England and, if it were addressed, they might come to different conclusions?

Professor Curtice: I think the answer is, leaving and awaiting the results of my 2007 research, so far the evidence suggests that people in England do not see the need for devolution for themselves. As I said earlier, they do not seem to feel the need for whatever distinctive identities they have to be reflected in having a distinctive body of politicians. Indeed, the argument that is used, and for example was used in the regional assembly referendum in the North East, is “Why do we want more politicians?” It is extra politicians we do not need as opposed to extra politicians that might symbolise our distinctive sense of identity. There is not that connection being made. Having said that, obviously, the open question is whether or not the apparent unfairnesses of the asymmetric situation so far as England is concerned means that, while it may be true that originally England did not want some form of constitutional change—let us leave aside what it might be—maybe that opinion will change, maybe, for example, as a result of political parties campaigning on that issue and therefore politicising the issue, public opinion in England becomes more aware and begins to divide more strongly on this issue. All that one can say is that, as it were, those who wish to politicise this issue and to make it more salient have a task in front of them, which is that they are having to make an English audience which so far at the moment seems relatively unaware and relatively unconcerned about these issues more concerned than they have been so far.

Q43 Dr Whitehead: Professor Hazell earlier implicitly pointed to the emergence of various regional bodies—you did not say this exactly—which are essentially accountable to nobody and had been set up, or might be seen to be set up for the purposes of administrative devolution, perhaps coming into the public consciousness over a period of time and perhaps therefore informing that view that maybe something more needs to be done. Is that in any way in evidence in your polling?

Professor Curtice: I have not, in truth, asked about it since 2003 but certainly between 2001 and 2003 we were asking people “Have you heard anything about your regional assembly/chamber/regional development agency?” and I have to say that—I cannot remember the exact figures—but the

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proportion of people in England who said they had heard anything very much at all about those bodies in their region was absolutely minimal. The North East of England was the one that had the highest level of visibility but even there it was not that dramatic. The truth is that these are not bodies that have made that much impact on the public consciousness so far. You are right, of course. It may well be true that if we establish stronger, more visible regional institutions by fiat, that might help to encourage a sense of identification with these institutions, might persuade the public in England that they might want them. But I would again simply say to you, in exactly the same way as those who want to make people concerned about England's unfairness for Scotland have a task of persuasion to perform. Those who wish to try and promote a sense of regional identity and a requirement that that identity be reflected in distinctive political institutions also have a task of persuasion to perform.

Q44 Dr Whitehead: I ought to add, for the record, that I was not proposing that the regions should be brought into place by fiat. In terms of written constitutions or the moves towards the preparation of constitutions for Scotland, Wales and Northern Ireland, would that underline the asymmetric devolution, in your view, or would that hasten perhaps the development of regional constitutions for the United Kingdom as a whole? Would the politics of catch-up perhaps develop?

Professor Curtice: I am not sure I am getting the force of your question. Scotland and Wales in effect have constitutions as provided by the Scotland Act and the Government of Wales Act and their subsequent amendments, so various aspects of constitutional procedure that are still largely a question of convention here or indeed of royal prerogative are laid down by statute in those two bodies. It is already asymmetric in that respect. I am not quite sure where your question was taking us.

Q45 Dr Whitehead: My question really is a thought that we have in the air, shall we say, some discussions about whether there should be a written constitution

for the UK, which, one might say, could be a sinecure for that view of national identity, i.e. there is a constitution for the UK, therefore that binds the UK together, but in practice what has happened, as you say, is that you have a sort of constitution subject to the UK Parliament for Scotland, Wales and Northern Ireland.

Professor Hazell: Very briefly, I do not know of any country in the world which has codified its constitution in cold blood. Generally, there are pretty seismic political circumstances which force a country to write a constitution, or a new constitution. Those are, classically, following a revolution, like in France or the United States in the 18th century; following defeat in war, like the post-war constitutions of Germany or Japan; following the grant of independence; or following the complete collapse of the authority of the previous system of government, as we saw in South Africa post apartheid or in the Soviet Union post-Communism. There is opinion polling showing that when people in Britain are asked do they want a written constitution, they say yes by majorities of around 80%. But for me—Professor Curtice is the expert—it is the classic kind of cost-free polling question that Dr Palmer was referring to earlier; it is all upside and no downside. It is asked without any context about what the consequences of a written constitution might be, namely greater power for the judiciary, much more difficult to change the constitution, possibly more frequent referendums. If all the potential or likely consequences were considered, I think you might get a much more nuanced response. Shortly, I do not see any growing demand for a written constitution, either as a consequence of devolution or indeed in general.

Chairman: Time is calling these proceedings to a close. I just want to say that there is one other issue which we have not got time to delve into today but which Professor Hazell and others have certainly commented on, which is of course the whole funding basis of devolution, the Barnett formula—not a subject I am going to open up at two minutes to six but we shall certainly be returning to it. I am very grateful to the three of you for your assistance this afternoon. Thank you very much indeed.

Tuesday 29 January 2008

Members present

Mr Alan Beith, in the Chair

Jessica Morden
Julie Morgan
Dr Nick Palmer

Mr Andrew Tyrie
Dr Alan Whitehead

Witnesses: **Rt Hon Des Browne MP**, Secretary of State for Scotland, and **David Middleton**, Head of Department, Scotland Office, gave evidence.

Q46 Chairman: Secretary of State and Mr Middleton, welcome. We are very grateful to you for assisting us with our inquiry into how devolution is working after 10 years. It is not a review into how Scotland is governed but rather into how the whole devolution structure has developed and might develop in the future. What about your job as Secretary of State for Scotland? There was an estimate in one of the newspapers this morning that you spend 10 to 15% of your time on it. It is clearly not the job that the Secretary of State was before 1997. What is it?

Des Browne: I saw that article in *The Times* this morning and I have to say that, as an arithmetical exercise, if I had handed that to the person who taught me arithmetic they would have said, "Can I see the workings, please?"

Q47 Chairman: So is it more than 10 or 15%?

Des Browne: It was not immediately obvious how that figure had been arrived at. My honest answer to that is that it is difficult to give an estimate because the work that I do is intermingled. I have tried to be open and transparent and if people draw their conclusions, they draw their conclusions. The job that I do is the job that all Secretaries of State for Scotland have done since devolution in 1999 and that is fundamentally to promote the devolution settlement and act as the guardian of it here in Westminster. That has a number of manifestations which you may want to explore, but that is fundamentally it.

Q48 Chairman: Is it a relatively small minority of your time?

Des Browne: I think the answer is yes.

Q49 Chairman: Has it changed in terms of the character or extent of the work you have to do with the arrival of the new SNP administration in Edinburgh?

Des Browne: I do not think the role of the Secretary of State has changed. I find it difficult to answer that question because I have had no experience of the job in another environment. I have only been the Secretary of State for Scotland in a context where there has been a minority led SNP administration in Scotland so I have no comparator. Rather than speculate, the best thing is to say to the Committee if you could persuade somebody who previously did

the job to come and explain what the job entailed then you could draw your own conclusions just as the columnist in *The Times* did this morning.

Q50 Jessica Morden: Mr Middleton, in your biography it states your job title as being "Head of the Scotland Office, at Senior Civil Service Director level, within the Ministry of Justice". Can you explain what that means in practice? Why does Scotland not have a Permanent Secretary?

David Middleton: The Scotland Office is only a relatively small department of around 50 people and would not justify someone at Permanent Secretary level for that number of staff. It has been at that level, director level—in old money Under-Secretary—since 1999 and that has been found to be a satisfactory level to conduct the business of the Office. Obviously everyone has to report into somewhere and I believe between 1999 and 2003 the Head of the Office reported into part of the Cabinet Office, but since 2003 it has reported into first the Department for Constitutional Affairs and now the Ministry of Justice.

Q51 Jessica Morden: Your staff is at 50. What would be the budget of the Scotland Office and how does that compare to 1997 and then 2001 and in terms of staff levels as well?

David Middleton: It is almost hard to compare with the old Scottish Office because the old Scottish Office prior to devolution ran into thousands. Indeed it depends how you define it. If you define it as the relatively small number that deal with policy it is about 4,000 or 5,000. If you include all the staff of the various agencies of what is now the Scottish administration it could run into 10,000, 12,000 or 13,000. So the comparisons are between a very small organisation focused on secretariat liaison duties and a big organisation which not only had a policy capability to advise ministers but also to direct and manage services throughout Scotland.

Q52 Jessica Morden: What about the budget?

David Middleton: The budget is about £7 or £8 million. It is a budget which covers the staff of myself, the Office of the Advocate General and it also covers a small amount of capital expenditure for the buildings that we occupy both in Edinburgh and London.

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Q53 Chairman: How do the staff numbers compare with the London end of the Scottish Office prior to devolution?

David Middleton: I think that is hard to give a direct comparison to because the London end of the old Scottish Office was composed of a small number of permanent staff that stayed in London, but it also included Scottish Office staff who travelled up and down to serve on Bill teams and who came down to meet with colleagues in Whitehall. Therefore in a sense Dover House in full session might have 70, 80 or 90 people in it on a given day, but that would be a different 70, 80 or 90 on any working day. The actual permanent staff in Dover House prior to devolution would still be relatively small compared to the large number in the Scottish Office.

Q54 Julie Morgan: Secretary of State, Mr Middleton mentioned the merger of the Scotland and Wales Office with the Department for Constitutional Affairs. What do you think was the rationale behind that arrangement?

Des Browne: I am reluctant to do this, but just as far as the figures are concerned, the outturn of the budget for the Scotland Office last year was £5.793 million. Mr Middleton got those figures slightly wrong, but that is the actual figure. I have the figures for the outturn of the budget divided between the Scotland Office and the Office of the Advocate General and the figures for staff for the years from devolution in 1999 all the way through to 2006–07. It may be of assistance to your inquiry to see these and I would be happy to send them to you. There is no point in going through them here in the context of this evidence. I was the PPS to Donald Dewar in the latter years of the Scottish Office. My sense certainly, although I never counted the staff when I was in it, is that the staff that was in the Scotland Office then was significantly more than the staff that is in the Scotland Office now.

Q55 Chairman: As you would expect. They were running hospitals and prisons.

Des Browne: Absolutely. As Mr Middleton points out, the staff who were coming down to do policy and other work were coming down to England to advise ministers and there was a different level of accountability here in Parliament so that is a significantly different office. To get to the linking of those devolved administrations' offices with the DCA, I did research this in anticipation to today because I thought you might ask about it and I cannot find any substantial written material in relation to this, but as I recollect it, at that point the then Lord Chancellor who was in charge of the DCA took on responsibility for constitutional reform across the Government and for devolution and that was the logic of bringing the Scotland Office and the Wales Office into that parenting and that has been the consistent policy. Since then the MoJ has had that overall responsibility for constitutional matters and constitutional reform and that is just a logical place for devolved administrations to be. It has the advantage that Mr Middleton pointed out, which is that for pay and rations purposes we have a bigger

organisation that has an administration. We do not need to replicate that administration for those purposes. Thirdly—and I think this is really important—from the point of view of those people that work for us, it gives them opportunities in terms of development and in terms of career progress and a coherent environment that we could not offer them because of the scale. We have only got 48 or 50 people working for us so we cannot offer that to people; we cannot offer their own development progress. It makes sense and it sits, arguably, exactly where it should be, in the Government.

Q56 Julie Morgan: Even though the Constitutional Affairs Department has now become the Ministry of Justice and Scotland has its separate legal system, do you still think it is an appropriate place?

Des Browne: Scotland has always had a separate legal system. That goes back to the Act of Union 1707 when the right for Scotland to have that separate jurisdiction was preserved, although necessarily, because it shared the parliament for a long period of time, there has been convergence in terms of the law in Scotland in certain areas and there have been changes in law in the rest of the United Kingdom which have been inspired by things that have happened in Scotland and that has been to the benefit of the whole United Kingdom. Justice is devolved now of course. To the extent that justice is different in Scotland, it is devolved; there is a Minister for Justice in the Scottish Executive so that is devolved. There are still areas of reserved powers such as, for example, counter-terrorism that work their way through the justice system which are reserved for very obvious reasons.

Q57 Julie Morgan: One of the Scotland Office's main objectives is to "ensure that Scotland's interests in relation to reserved areas"—like the one you have just mentioned—"are known and represented within the UK Government." How do you achieve that in practice?

Des Browne: We do that in a number of ways. The principal way is that there is a Secretary of State sitting at the Cabinet table. So when these issues at the high level of policy are discussed then there is a Scottish representative there, not just MPs or ministers who happen to be from Scotland, but there is a person there who has a responsibility to ensure that the decisions that are being made take into account the circumstances of Scotland and particularly the fact that, for example, on terrorism, the administration of justice is devolved. Secondly, my Minister of State, who is an assiduous and hard working and very good minister, works very hard right across the whole of Whitehall to ensure that there is a constant awareness of the difference in Scotland where there needs to be awareness of that difference. So there is quite a heightened awareness across Government that when people are considering policy changes or the development or application of policy they have to take into account the possibility that the fact that some powers are reserved to Scotland may be of relevance to the development of that policy. I have a Minister of

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State who reminds them of that constantly at ministerial level and makes sure our officials do it at official level if they do not remember. Then we have the constant networking that goes on among officials. We have a unified Civil Service that goes all the way into Scotland and that is an enormous advantage because officials talk to each other all the time. People ask questions constantly about how often, as the Secretary of State for Scotland, I talk to Executive Ministers. I do not have formal meetings as the Secretary of State for Scotland or as the Minister of Defence with other ministers across Government very often because I rely on officials to do it at different levels, at the level that is appropriate and that is happening all the time. There are hundreds of those contacts north and south of the border going on every day and there is probably the same number of contacts going on across Whitehall. That is not intended to be exhaustive but indicative of how it happens.

Q58 Julie Morgan: Do you see your role as representing Westminster's policies to the Scottish Executive?

Des Browne: I think I have a function in that where I have responsibility for it. It was reported widely in the media on Friday that I had met the First Minister and we were discussing issues to do with the administration of elections in Scotland and, in particular, the recommendations of the Gould Inquiry. We hold responsibility for that in the Scotland Office and in terms of the Scotland Act. If necessary, there is an Order presently before the House of Commons about the administration of elections in Scotland. We have a responsibility to do that. To that degree—and that is a very specific point—I do represent the policy position of the United Kingdom Government to the Scottish Executive and through them to the Scottish Parliament. On occasions we otherwise represent Scottish Government policy in other areas. For example, my Minister of State has developed a significant expertise in the area of climate change and energy where there needs to be discussions going on. He has expertise in other areas such as broadcasting and other areas where responsibility is reserved. There is also quite a lot of communication between departmental ministers and secretaries of state and their equivalents in Scotland. I can think of conversations which have taken place between the Minister of Justice in Scotland, the Home Secretary and Jack Straw, as the Head of the MoJ and as the Lord Chancellor. That sort of conversation goes on. Our department is not the exclusive conduit of that; there is a lot of bilateral discussion goes on. I know that the minister with responsibility for fisheries in Scotland talks regularly to the fisheries minister here in the UK Government. I cannot be exhaustive about this, but it just happens all the time, it is routine.

Q59 Chairman: I am wondering why they need you. You have told us about all these wonderful processes of discussion and that is all to the good, but why do they need you?

Des Browne: The purpose that we serve in the Scotland Office is primarily to ensure that the devolution settlement works for the people of Scotland. That does require a degree of concentrated expertise in Government here with a Scottish focus. Scotland traditionally has had a voice in the Cabinet. I do not think any party who aspires to Government in the United Kingdom has a policy not to allow Scotland to have that voice in the Cabinet. I might be wrong about that. I know from the Conservative Party's Manifesto at the last election they committed themselves to that quite explicitly. If there is any party that wants to tell the Scottish people that they want to remove that voice then it would be nice to hear it, but I have not heard it. That is part of the way in which this settlement which has led to the United Kingdom is preserved, it is part of its history and I am very much in favour of it. Our exclusive province is not to represent Westminster policy to the Scottish Executive or to the people of Scotland. As I constantly remind people, Scotland is still part of the United Kingdom and the United Kingdom's ministers' powers still run in Scotland in the reserved area unencumbered and in some of the devolved areas there is shared responsibility.

Q60 Dr Whitehead: I get the sense from our discussion that whilst there may be a number of bilateral arrangements there does not appear to be so much of what one might call the management of devolution in Whitehall. Is that a fair comment or is there an active management across the three devolved administrations of management of that process in Whitehall? If there is a management process, do you have a strategic role in that?

Des Browne: The phrase "management process" is undefined and I am not asking you to define it. There are flexible structures here in Whitehall and in the UK Government that are designed to allow devolution to work in the best interests of the people of Scotland principally but in the best interests of the United Kingdom. The process is spelled out in the provisions of the Scotland Act which has this inbuilt flexibility. There are a number of provisions—I can go through them specifically for you if you like but it would be tedious—of the Act which allows Orders to be made here to manage that process and they can be made for a number of reasons. They can be made in order to reflect the effect of legislation that is passed in Scotland where, in order for it to work properly, legislation down here needs to be changed and we make Orders to do that, to revise devolved legislation or to adjust it to make effective legislation in the Scottish Parliament. There are provisions that allow us to devolve either executively to the Executive of the Scottish Parliament or legislatively to the Parliament powers to make Orders there where we think that adjustment is appropriate. There are provisions, for example, to allow UK ministers to exercise what would otherwise be devolved powers if it is considered that that would be expedient in terms of the management, and then there are provisions, which we all know about, which used to be known as Sewel Motions but are

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now known as Legislative Consent Motions, which allow effectively the Scottish Parliament to decide for expediency purposes it would be better if the legislation was carried through here at a UK level although it would affect an otherwise reserved area. That is part of the management process. There is a Cabinet committee—it is now known as the CN Committee—which has existed in one form or another to allow these issues to be administered at the high level as a sub-committee of the Cabinet by ministers who have responsibility and we meet regularly to discuss issues. Presently we meet under the chairmanship of Jack Straw in the CN Committee, but it used to be known as the Constitutional Affairs Committee and before that it had a name which was about devolution to Scotland, Wales and Northern Ireland. I cannot remember what it was called.

David Middleton: It was devolution to Scotland, Wales and the English regions.

Des Browne: Then there are Memorandums of Understanding and there are concordats. There are other bits of this structure. I am maybe giving you too detailed an answer here. There is plenty of structure there and, frankly, it works. It is tested on occasions. It has the advantage that there has never been an Executive in Scotland that has not had what you might call an opposition party in it. The Liberal Democrats have been part of it before. Presently it is an SNP-led minority government. It has stood the test of the involvement of different parties in Government here and it works. I know there is a kind of demand for an infrastructure of committees which will meet whether there is something to discuss or not. I am not sure that that would help.

Q61 Dr Whitehead: Thank you for what I might summarise as describing in detail the battleship and its parts but not necessarily whether the battleship fired any guns or not. Would you say the Cabinet committee that you have described is the management device for devolution? A number of the structures that you have described are things that could or could not be operated or implemented or done anything with. On the other hand, I imagine that the management of devolution is, or should be, an act of process, particularly in terms of the description that you have set out of part of your role being to ensure that the devolutionary process works as well as it can as far as Scotland is concerned.

Des Browne: I think what I am balking at is the idea that somehow we can from here manage the powers that we have devolved either to Wales or to Scotland or to London or to Northern Ireland for that matter. They have been devolved into a political system. They were devolved because as a party fundamentally we trusted the people to make political decisions to have responsibility for the politics and the Executive that would administer those powers for them in a situation which was closer to them. I am slightly balking at the idea that somehow we sit here and manage that because clearly we do not. There are elections and people are elected to make policies. As a democrat I fundamentally respect the decisions the Scottish

people made. I am constantly being reminded that I should and I do. Therefore I see my role in terms of management to ensure that this organisation that is the UK Government and its supporting administration does not thwart those decisions of the Scottish people, that that space is left and that it is not invaded accidentally, and that we do not inadvertently do things which offend that settlement. Equally well, part of my function is to recognise when that space is spreading into an area which is properly reserved. So to that extent this works because it has been successful. It has provided the Scottish people with the sort of government which they craved up until 1997 and which we promised them. Of course it has its challenges, but every part of life that involves people and people that have different views has its challenges and it is tested and it will be tested. It was tested with the previous Executive and Parliament as it will be tested with this one.

Q62 Dr Whitehead: I think I am looking to understand very much the question of what remains happening in Whitehall as a result of the devolutionary process. For example, there are five government departments that have an interest in devolution policy and strategy: we have Scotland, Wales and Northern Ireland Offices, we have the Ministry of Justice and the Cabinet Office all with an interest in that process. Do you not think perhaps there should be one centre for that or do you think that devolved interest is something that works?

Des Browne: I think it is being seen to be important for the people of Scotland, Wales and Northern Ireland that they are represented at the UK level by a Secretary of State for the reasons that we have already discussed, I will not go over them again. The manifestation of that is the Scotland, Wales and Northern Ireland Offices. I have views about Northern Ireland and less well-informed views about Wales. I have some experience of Northern Ireland, but that is not what you want to hear from me, other people can speak for them. You will see the Secretary of State for Wales after me and I am sure his views will inform you. We have already recognised that those offices, because of devolution, are entities which are much smaller than they were before and for reasons which I think are logical we have put them into a “family” with another larger department. Beyond that, decisions about the machinery of Government are matters for the Prime Minister. With only one exception that I can think of, in the time that I have been a Member of Parliament all sorts of decisions have been announced and not debated and discussed in advance. I think there are very good reasons for that.

Q63 Chairman: It is something we have criticised in the past.

Des Browne: There is accountability and if they do not work then that is the ultimate criticism, but people need to take responsibility for the decisions. I think this system works. This process has changed decisions that have been made. We have heard today, although I have not got my head round the

detail of this, that there is to be a reorganisation in the Ministry of Justice. I do not know what consequences that will have, if they will be marked for us to any extent, but it is happening. In administration terms, people are constantly changing and responding to lessons that they learn, but this works. If at some stage somebody chooses to change it then I am sure they will change it to something that will work too.

Q64 Dr Whitehead: There was a full Cabinet meeting early this month which discussed devolution. Without going into what transpired in detail, what was the nature of those discussions?

Des Browne: I think there is a long-standing good tradition that Cabinet Ministers do not discuss or hint at what has been discussed in Cabinet or Cabinet sub-committees. I intend to respect that. I am sorry to disappoint you. It was a valiant attempt!

Q65 Chairman: I suppose we have to conclude that there are general issues around devolution which made it appropriate to gather together the members of the Cabinet to talk about them.

Des Browne: There are regular meetings of the CN, which is a sub-committee of Cabinet, which discuss issues to do with the constitution and devolution. Of course these are live issues.

Q66 Dr Palmer: If one looks round the world, there are plenty of examples of devolved administrations which have different political parties to the national government. What is a little unusual is that the devolved administration has a declared objective of long-term separation. Are the current mechanisms for inter-governmental relations sufficiently robust now that we have that built-in potential difference in long-term objective between the Westminster Government and the Executive of Scotland?

Des Browne: That is essentially a political question which does not lend itself to an empirical answer. I will give you a view. My view is that the devolution settlement in Scotland is robust. It has proved itself to be robust for over 10 years now. All sorts of people made all sorts of predictions about what the consequences of it would be. They have not yet manifested themselves. It seems to me that it serves the Scottish people well. Has it encouraged the Scottish people to be more pro separation? No. The latest opinion poll in Scotland suggests that in fact support for independence is—certainly in my lifetime—at an historic low, it is at about 23%.

Q67 Dr Palmer: I suppose what I mean is whether you have found that, given the difference in long-term objectives, there are practical ways in which difficulties arise in day-to-day co-operation or is it all going smoothly behind the scenes?

Des Browne: I am not aware of practical difficulties in relation to co-operation. I think you can rest assured that there is a lack of shyness among those who currently make up the administration in Scotland and if there were they would point them out to us. My observation is that in the day-to-day business that needs to take place between the

administration in Scotland and the administration down here people get on with the job. There are hundreds of contacts among officials every day. In another capacity a document crossed my desk in which officials from the Scottish Executive were in touch with our officials seeking advice in relation to something and we gave it to them, that is not a problem. Ministers meet each other. The Minister of State in the Scotland Office speaks to the minister who has responsibility for parliamentary affairs, I think his name is Bruce Crawford, on a bi-weekly basis. Contrary to the politics because the politics go on, at Executive level my experience is that people take their responsibilities seriously. That means the people who are charged with the responsibility of delivering for the people in Scotland have to get on with that job, and the media and other processes of scrutiny make sure that they do and they have to get on with the job and we have to get on with the job as well. Actually, despite what may surface occasionally and make people think that there is constant tension, there is nothing of the sort; people are getting on with it at bilateral levels. The JMC Europe meets regularly and does its business, fisheries ministers talk to fisheries ministers and people get on with it.

Q68 Dr Palmer: It sounds very cosy. Professor Jeffrey has said to the Committee that he feels there is a lack of understanding that conflict is a normal and healthy reality of devolution and you are telling us that this conflict is only at the top political level and otherwise there is really no creative tension.

Des Browne: No, no, I am not. Frankly, there is creative tension inside the Government here in Westminster and I would be astonished if there was not creative tension inside the Government and the Executive in Scotland. People do not always agree with each other and that is a perfectly healthy position, but by and large we have a convention that we do not surface that disagreement because people concentrate on that and that we arrive at agreements and those agreements we get on and deliver. I am not privy to these conversations, but I cannot imagine that people do not come with a position and that our officials say, “Well, we’ve got an alternative position, it is conflicting, but let’s see where we get to.”

Q69 Dr Palmer: How would you respond to the suggestion that the mechanisms for inter-governmental relations be made more transparent so that, apart from the political debate that we all see, people are actually aware of all these discussions going on?

Des Browne: I think the convention that applies inside Government that by and large Government keeps these debates away from the public— When ministers debate with others and when we have discussions in Cabinet sub-committees these conventions which apply that we do not discuss them in public are healthy because people want to see the matured and formulated policy rather than the debate necessarily that leads up to it. Once the Government surfaces its position you can then have

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a debate about whether or not that is a sustainable position and it can come under the challenges that are appropriate in terms of scrutiny. It does not seem to me necessarily that governance would be improved by having all of this out in the public domain. That is not to say that other people may have a different view.

Q70 Dr Palmer: During the 10 years I have been in Parliament I have only met a member of the Scottish Parliament once for five minutes. I think by and large relations between the two parties are almost non-existent. Is that a problem for you given that you have got this close relationship between the Government and the Executive? Would you like to see more joint discussions between the parliaments on issues of joint concern?

Des Browne: It may not be surprising that since 1999 you have not had a lot of exposure to members of the Scottish Parliament. I have no idea where your detailed interests have lay over those years. I know lots of them and I know lots of MPs who know lots of them and know them very well. At the heart of devolution is that we have devolved to that Parliament responsibility for certain areas of public policy and reserved to ourselves other areas of public policy. I am not sure whether we need to try and manufacture areas of common interest in order to have cross-fertilization. I have no way of knowing whether that is a good thing or a bad thing. I know that those MPs who share common geographical areas with members of the Scottish Parliament know them very well. Scotland is not that big a place to be honest.

Q71 Chairman: We talked earlier about Legislative Consent Motions or Sewel Motions. Do you think there should be a framework of principles guiding when such motions are appropriate? Is anyone trying to develop one within Government or do you think it is a bad idea?

Des Browne: I actually think constraining Legislative Consent Motions would be a bad idea because at the heart of Legislative Consent Motions is a decision by the Scottish Parliament that they think in a pragmatic and sensible way, that rather than insist on their right to exercise a devolved power it should be exercised by the UK Parliament. In an area where there is an agreement of policy and they are content as a Parliament, reflected in the motion that they pass, those provisions should apply to Scotland. I will tell you why I think constraining that would be a bad idea because it covers a really wide range. Towards the end of the last term of the Scottish Parliament there was a recognition across the United Kingdom that the law acted upon was to the disadvantage of mesothelioma sufferers. This is a disgusting and terrible disease, which is a horrible death and once you get it it is a death sentence. There was, quite rightly, I think, a consensus right across the political spectrum that something should be done about this. We agreed to do it here in the UK Parliament. Compensation is a devolved area. Quite sensibly and, I think, unanimously the Scottish Parliament took the view that if they had to go

through an equivalent process it would take some months and the practical reality of that would be the people who could otherwise have benefited would be dead so they said, "This has to be done. It normally is a devolved area, but we think the UK Parliament should do it because it is ahead of us and let it get on with it". That is one set of circumstances. There are currently, I think, five Legislative Consent Motions arising out of our programme for legislation announced in the Queen's Speech. Three of them the Scottish Parliament has already passed. This used to be an issue of great contention but it is no longer. These have been passed quite quietly. They are eminently sensible. Two of them I will give you examples of. One of them is to do with climate change where there is a recognition that since there is a coherence of policy approach across the UK to the issue of climate change there is no reason for there to be two separate pieces of legislation and since the climate does not recognise the border then it is sensible that the legislation should not. The second one that I would draw to your attention is about dormant bank accounts and releasing the ability of the Scottish Executive to take advantage of the funds that will be released from dormant bank accounts for investment. With respect, Chairman, I do not know how anybody would draw up a set of principles that applied to such a diversity. How many have there been? I cannot remember now exactly but it is quite a significant number. There used to be this really sterile debate in Scotland about whether or not the Scottish Parliament should insist on having this power when in fact this was just a practical answer to a problem. It is not giving up its reserved position, we are not taking it from them, but now all of that has quietened down. Quite interestingly, the SNP minority led Executive has five agreed Legislative Consent Motions or Sewel Motions when as a matter of principle they opposed them. I remember when the Tories as a matter of principle used to oppose timetabling motions in this parliament, but that has kind of slipped away as well now. The figure is 95 Bills since the introduction of devolution have contained clauses requiring the consent of the Scottish Parliament.

Q72 Mr Tyrie: Professor Curtice gave evidence to us and he told us that the Scotland Act was "deficient in the way it cut the number of Scottish MPs" because it did not take account of demographic changes whereby the English population was likely to rise, and continue to rise, faster than the Scottish population. Do you agree with him?

Des Browne: No. The problem does not lie in the Scotland Act. The Scotland Act did not actually cut the number of Scottish MPs. What it did was it repealed a provision which I think lay in a piece of legislation in 1986 which put a minimum on the number of Scottish MPs. I think it was 71 was the minimum number that was fixed. We know who was running the Government at that stage so it must have had the support of that party in power. They fixed the number of Scottish MPs artificially at 71. Part of the devolution deal as it were was that that would be repealed. It was in the White Paper. The

people of Scotland accepted it. It was repealed. That meant that Scotland was no different with the one exception of the Shetland and Orkney Islands constituency. It may well apply to all of the Islands' constituencies for demographic and geographical reasons. Scotland was put into exactly the same position as the rest of the United Kingdom and the Boundary Commission was charged with exactly the same responsibility of fixing the size of the constituencies against the same criteria. Therefore the number of MPs in Scotland came down to 59. This is no respectable argument in my view, given the nature and the importance of the decision which the UK Parliament makes and the importance of those to the people of Scotland, that they deserve to be less well represented than the rest of the United Kingdom. They did not deserve to be better represented after devolution. I am not privy to what caused the 1986 provision to be made in the first place, but maybe those who were in Government know about that.

Q73 Mr Tyrrie: As the average size of the voting population increases faster than those in Scotland will the number of Scottish seats fall below 59?

Des Browne: I think we should make these decisions about representation across the whole of the UK. At the moment this Parliament by legislation gives the Boundary Commission a set of criteria to apply. If the demography of the whole of the UK makes a mockery of those criteria then we should look at those criteria, but what we should not do is make decisions about the UK Parliament based on some prejudice or argument about the representation of a part of it as opposed to another part of it. We should make these decisions right across the whole of the UK and therefore other factors will come into play. Clearly there are factors that you would apply even now to the consideration of representation in Northern Ireland that you might not apply elsewhere.

Q74 Mr Tyrrie: Would you consider that a good way of providing for what you would see as the necessary equivalent treatment right across the UK is the creation of one Boundary Commission for the whole of the United Kingdom?

Des Browne: I think the reality is that we have devolution in Scotland and we have another set of constituencies so we are going to have a separate Boundary Commission for Scotland in any event.

Q75 Mr Tyrrie: I am talking about for the Westminster Parliament.

Des Browne: There are a number of reasons why it makes sense to have a separate Boundary Commission for Scotland. One is that they have another Parliament. We would have to have a separate Boundary Commission for that in any event. So we are going to have a separate Boundary Commission for Scotland. The second is the point that we started on, which is that Scotland is a different legal jurisdiction and it always has been. The interaction between the Boundary Commission and the justice system in Scotland is quite well

known to the people of Scotland. If I recollect correctly, the Boundary Commission in Scotland is chaired by a Senator of the College of Justice, a Scottish High Court judge. The appeals system goes into the Sheriff Court process. I think it makes sense to leave it where it is because that works.

Q76 Mr Tyrrie: So you want decisions to be taken right across the UK as a whole but you do not want a Boundary Commission that is empowered to do that?

Des Browne: If we are going to change the criteria that we ask the Boundary Commissions to apply to the size of constituencies then we should make those decisions across the whole of the UK and not niche decisions in relation to England. That is exactly what we agreed to do at the point of legislating for the Scottish Parliament. We said this minimum number, which no doubt had been imposed for very good reasons, no longer is relevant and we will remove it.

Q77 Chairman: In order to achieve that, is it not necessary that at least the two Boundary Commissions should be able to meet together and decide what the quota for any constituency in the United Kingdom is, even if it is a separate Scottish Boundary Commission goes on to work out how you divide the actual boundaries to achieve whatever number it turns out to be for Scotland on this population, 57, 58 or 59?

Des Browne: I am afraid, Chairman, you bring me into an area where my knowledge base is not informed. I do not have the factual information to engage in that. I do not know whether Boundary Commissions do meet with each other and discuss. I have no idea if there is any statutory impediment to them doing that. I do not know whether they do it on an informal basis. Secondly, I do not think the criteria that they apply north and south of the border are different. I do not accept that this coherence is there. Finally, I do not know if the Boundary Commission has the authority to determine by law how many constituencies there should be in Wales, Northern Ireland or wherever. I suspect they do not. I suspect that we probably preserve that to this Parliament. I suspect there is nobody round about this table, with the honourable exception of the clerks who might have a view about this but keep it to themselves, who would dispute that that should stay here.

Q78 Mr Tyrrie: Could you say something about the West Lothian question and whether you think that the current asymmetric arrangements between England and Scotland are sustainable without some accommodation of what is becoming known as the "English question"?

Des Browne: I think it is 25 Bills in the Queen's Speech. As far as I can see more than 20 of them apply to Scotland and some of them completely in the sense that they are climate change and we have discussed the Sewel Motion in relation to that. I cannot give you the break down of this as I do not have it off the top of my head, but the degree to which this whole legislative programme applies to

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the whole of the United Kingdom and in quite significant parts to Scotland is actually quite impressive. Even those celebrated cases that exercise people such as the legislation in relation to student fees had significant implications for Scotland. It is quite illuminating that those who were espousing this overt argument about votes for English laws now seem manifestly to be rolling back from it as they try to work out the practical implications of dividing up bits of legislation so that you can have specific votes about the bits that only apply to England or England and Wales and the bits that apply to Scotland because it is almost impossible to do.

Q79 Mr Tyrrie: I was not asking you whether some other solution was sustainable, I was asking whether you think the current arrangements are unsustainable.

Des Browne: If all you want is a one word answer then I am quite happy to give it to you rather than explain to you why I have come to the conclusion. I was trying to explain to you why I have come to the conclusion I have come to. The conclusion I have come to is it is sustainable and it is sustainable because all of those people who attack it discover as they get into the detail of it that life is never as straightforward and does not divide along the lines that they would want it to in order for them to produce some sort of clear cut solution so they end up with a degree of asymmetry. I think what you do is you end up with asymmetry right across the United Kingdom. I remember once being asked this question at the height of another furore about it in the Scottish media, "How can you vote on these matters when they don't affect your constituents?" I gave the answer that Parliament decided. That is how I can vote, because Parliament decided. The UK Parliament in the majority made this decision. I remember people thinking that that was a ridiculous answer, but it is not a ridiculous answer. Parliament makes lots of decisions that generate asymmetry for very good reasons. London enjoys a degree of devolution, so people in London and people who represent people in London have another decision-making process that is not accountable through this Parliament. Wales has devolution and it has been progressive and changing and it serves the purpose of the people of Wales. I know that devolution in Northern Ireland, which we reinstated after a long period of suspension and which none of us really wanted to see, has generated another asymmetry there, but that has served the people of Northern Ireland very well and there are hundreds of them alive today who would not have been if we had not been able to do that. Life is diverse. The United Kingdom is diverse. It is its strength. Its diversity generates an asymmetry. You will only end up replacing one asymmetry with another and somebody will say, "There's unfairness in that asymmetry. How about we change it again to suit that?" I think, frankly, the answer is that the diversity of the United Kingdom is its strength and that it will survive.

Q80 Mr Tyrrie: Your answer to the question that you were posed in that TV interview was that the UK Parliament made that decision. If the UK Parliament comes to some other decision at some subsequent time on this issue this must mean that you will be prepared to accept that, does it not?

Des Browne: We are into the area of speculation now. I do not anticipate—I used this word in the media over the weekend and everybody interpreted it as meaning "expect" but it does not mean that—that change because I think that people will come to the conclusion I have come to when they start to look at this in detail. The legislative process here, the complexity of the United Kingdom, the effect decisions that are made by the UK Parliament have on the people of Scotland and to some degree vice versa does not lend itself to those clean cut lines and we will end up with a degree of asymmetry. I think this Parliament consistently will come to the view that the asymmetry that we have at the moment is preferable to the mess that we would get into. I also fundamentally believe that if you generate an English Parliament inside the UK Parliament then you would need to do that in the confident knowledge that eventually that would lead to the break up of the United Kingdom.

Q81 Mr Tyrrie: What about the Barnett Formula? Do you think that the Barnett Formula is sustainable indefinitely?

Des Browne: The Barnett Formula has not existed forever. It is a temporal measure like most measures are so it goes back about 30 years or thereabouts to 1978. I think it has served us well in those years. I think it has been transparent. People understand it. It lends itself to an incremental increase in a proportionate fashion. I think it is for those people who think we should change it to come up with an alternative.

Q82 Chairman: They certainly understand it in the north of England where it gives Scotland a lot more money than we get.

Des Browne: You get into very interesting debates about what is public spending. If you only look at it in certain areas and compare it in certain areas then there is an apparent unfairness. How do you take into account the size of Scotland and its spread of population and the fact that a lot of people live on islands? I say a lot of people, but it is a fact that small numbers of people live in these remote communities and generate a level of expense. That is another debate. The Barnett Formula itself has served us well and is a transparent way of dividing up increases in public spending.

Q83 Mr Tyrrie: And what is your message to the English on the Barnett Formula, your message to the Chairman's constituents as to why they are getting less than just across the border where there is not some huge disparity in density of population, which is what you were referring to a moment ago?

Des Browne: I do not know the Chairman's constituency well enough to know about the spread of population. I know Scotland really well.

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Q84 Chairman: It is the most thinly populated in England.

Des Browne: As a comparative measure, I suspect that even the Chairman is not arguing that to live in the Shetland Islands is the equivalent of living in his constituency.

Q85 Mr Tyrrie: What is your answer to my question? What response do you give to the English people?

Des Browne: We have seen significant increases in public spending in every part of the United Kingdom and all of our communities have benefited greatly from them and that is as a result of the economic stability that this Government has generated and they should be thankful they have a Labour Government.

Chairman: On that more partisan note than the rest of the contribution we thank you very much.

Witnesses: **Rt Hon Paul Murphy MP**, Secretary of State for Wales, and **Alan Cogbill**, Director, Wales Office, gave evidence.

Chairman: Secretary of State and Mr Cogbill, welcome. When you and I were together towards the end of last week I was not expecting to be pressing you in this new capacity, nor you to be sitting there! On one of your very first outings we welcome you very much. I think we have a couple of interests to mention.

Julie Morgan: I am married to the First Minister in Wales.

Jessica Morden: I am Paul's PPS and so will be remaining silent!

Q86 Chairman: You have found yourself suddenly in the job of Secretary of State for Wales. Is there a job?

Mr Murphy: First of all, Chairman, and members of the Committee, I am delighted to be here. If you were shocked about what happened last week then you can imagine what I must have felt like! It is a great pleasure to be back in a job that I did from 1999 to 2002. It is a considerable pleasure to come before this Committee. You and I have talked over the years about how significant a Committee this is and this is the first time that I have had the opportunity to contribute towards your deliberations. Yes, there is a job. It is a question, incidentally, that I was asked constantly in 1999 all the way to 2002. The fact that there was a job then and there is a job now and there has been a job in between indicates yes there is. I think it is an integral part of the devolution settlement. When people voted for devolution in 1997 they voted for the package, which included the position of the Secretary of State for Wales, enshrined as it is, as few others are, in legislation by name. In addition to that, the Wales Office has been an integral part of the settlement too. I think the first important point to make is that when people voted for devolution they did not vote for separation, they voted for devolution within the United Kingdom and in Wales they only just voted for it at all in 1997 so they saw it as part of the settlement. I think the chief role of the Secretary of State post-devolution is in a sense a personal one, it is about relationships, it is about ensuring that the devolution settlement develops, but also that it is as smooth as it possibly could be between Cardiff and London. It is representing Welsh interests within the Cabinet of the United Kingdom Government, it is representing Wales and its interests throughout all the Whitehall departments, but it is also representing the United

Kingdom Government in Wales too. A lot of the job that I did when I held the position before and I am sure I will do as well now is to ensure that the policies of the United Kingdom Government are explained in Wales and it is also a symbol of the partnership between ourselves and the Welsh Assembly. I am convinced that the awareness of Welsh matters in Whitehall is the job of the Welsh Secretary. It also means that we give proper scrutiny through the Wales Office to legislation which affects Wales, but we will probably come on to that in future. I am convinced that the job is a part of the settlement and is an important part of it.

Q87 Chairman: This job was done as a part-time activity by the Secretary of State for Work and Pensions until last Thursday. Does your appointment to it in a different way, with sole responsibility, mean that the job is now going to change?

Mr Murphy: The job has changed since the second Government of Wales Act anyway in that the methods of Orders in Council, LCOs as they are termed, which will incrementally transfer power to the National Assembly, mean that there is a different type of role for the Secretary of State compared to when I was in the job so far as the legislation is concerned. Your question revolves more around times rather than the functions of the job. Peter Hain was a very assiduous minister, very hard working. He held my job initially on its own, but at that stage I believe he was dealing with European matters too. He then held a number of Cabinet posts together with the post of Secretary of State for Wales and undoubtedly it was a very hard job because of having to do all that. In my own case, I am not doing this job as a standalone because the Prime Minister has asked me to do other things. Perhaps I can take this opportunity to outline it to the Committee so your question is answered more fully. In addition to the job of Secretary of State for Wales I have now been appointed the Minister for Digital Inclusion, which involves a lot of cross-departmental work, and in addition to that I have been asked to chair the Cabinet committee on data security, which is something that of course is of enormous interest to Members of Parliament after what happened before Christmas.

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Q88 Chairman: This Committee has reported on it recently.

Mr Murphy: I shall look forward to reading the report. In addition to that, I have to chair the Cabinet Committee on Local Government and the Regions, which is very interesting in a comparative sense, to look at how regional activities and possible government might occur in England. It is still a job which is important, but you can combine, as the Prime Minister has asked me to do, other jobs with it within Government.

Q89 Chairman: Mr Cogbill, you are described as Director of the Wales Office but of course you are part of the Ministry of Justice. What does that mean in practice about the role and status and your relationship with the rest of the Ministry of Justice?

Alan Cogbill: I suppose the first thing to say is that I am accountable exclusively to the Secretary of State for Wales in all matters which ministers will take an interest in. What it means is that the Wales Office as an associated office of the Ministry of Justice comes within a much bigger administrative pool, which means that, for example, we can look more broadly at bringing people into the Wales Office and we can look to the Ministry of Justice for all kinds of corporate services which it would be very difficult to sustain for an office of fewer than 60 people, i.e. the IT, financial systems and that kind of thing.

Q90 Chairman: What are your current staff numbers and budgeting in broad terms, so we can understand?

Alan Cogbill: In broad terms, we have currently 55 people. We are looking to recruit just a couple more at the moment.

Q91 Chairman: So almost exactly the same size as the Scotland Office?

Alan Cogbill: Yes, and the spend is about 5.5 million a year.

Q92 Chairman: Do you have many dealings with the Scotland Office part of the Ministry of Justice on matters of common interest? Do you ever find yourselves engaged in discussions with them?

Alan Cogbill: Yes, quite a bit. Since last year the Ministry of Justice has had a new Director General looking at handling devolution and strategy across all the devolved countries of the UK and we have periodic meetings which involve both the head of the Scotland Office and me so that we can see how developments are running in the different countries, and before that we used to come together on a fairly frequent basis, more or less formal basis, just to share the problems, see the trends and see if there were any common factors that we wanted to have in mind.

Q93 Chairman: Do you make common cause?

Alan Cogbill: Well, yes, to this extent. I have as my main building a listed heritage building, which is a bit of a headache in some respects. The maintenance and refurbishment of that is a little project for which, as it happens, I have been able to arrange for some

people in the Scotland Office to help us. They happen to have someone who has the necessary skills and we can use that, and those kind of working arrangements happen quite a lot.

Q94 Julie Morgan: My questions are to the Secretary of State. You mentioned the changes to the jobs since the 2006 Act, and one of the Wales Office's stated main objectives is to ensure that the changes to the constitutional settlement which flow from the Government of Wales Act are implemented and operate smoothly. How do you propose to do that?

Mr Murphy: I think it is back to relationships again in the first instance. I think one of the important jobs of a Secretary of State is to be able to have a good relationship, we are necessarily a part of them, because, as you know, we are in coalition in Wales at the moment, but a good relationship in Wales with all ministers in the Assembly Government in dealing with these new proposals of how we deal with the transfer of powers incrementally. The first thing to do is to ensure that when the Welsh Assembly Government decides to ask for a transfer of functions that there is a good ability to be able to talk about those things between ministers here in London and ministers in Cardiff. Secondly, I think, the process itself is now beginning to bed in. It had a bit of a bumpy start, but all processes do. It is not the easiest process to understand, but I think it has really got going over the last number of months. I think it is working rather smoothly in terms of relationships between the ministers, in terms of the Welsh Select Committee, which has a responsibility to give prelegislative scrutiny to these new orders, to its equivalent committee in Cardiff. What we have not tested yet, of course, is how the matters will be debated here in the House of Commons and the House of Lords, because it has not yet come to that stage, but I think that the initial teething troubles that were experienced on that process of devolving these different functions are gone and I think things have improved quite a lot on that.

Q95 Julie Morgan: So you are confident that this can go forward smoothly?

Mr Murphy: I have no doubt that the process will be one that people will get used to and that it will be smooth. It is also a question, of course, of dealing with the other government departments in Whitehall, some of whom, of course, were not in the past used to dealing with a devolved administration. I think that is getting much, much better than it used to be when I was a minister in the Wales Office before. People are understanding the role of devolved administrations differently, they understand it is a very important role that they have, and in our case, of course, because English and Welsh matters are more linked than Scottish and English are for all sorts of reasons, it is important that those relationships do flourish, and that again is part of my job. When Mr Beith asked me about what my role is, it is also a role in liaising with other Cabinet ministers in the United Kingdom

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Government on matters such as the ones you have just described: handling the process of transfer, for example, is one of them.

Q96 Julie Morgan: You have only been in the job a few days, I think, but has it struck you as being different from when you were in the job the last time?

Mr Murphy: Yes, it is different, first of all, in the sense that the processes are different. When I was dealing with legislation from 1999 to 2002 there were perhaps one or two, at the most, Welsh bills going through the legislative process in Parliament. They would be bid for by the Welsh Assembly Government through me, through the system, and that is all we would deal with, except perhaps some parts of bills which had Welsh matters in them as well. Now it is very different. It has resulted in the second Government of Wales Act. The other thing, of course, is that we have a different political landscape in Wales than we did when I was Secretary of State before, obviously, with the advent of coalition politics that we have now got in Cardiff, and so that clearly is different as well. People have not changed an awful lot; most of the main players are the same. Wales is a relatively small place and I think, in many ways, one of the great advantages of devolution has been the accessibility of government—people know each other in a different way—something I experienced when I was the Northern Ireland Minister well. I think that that is beneficial and it means that you can talk to people in perhaps a different way than in an English context because England is so very big.

Q97 Julie Morgan: We have just seen the Secretary of State for Scotland, Des Browne. How do you think your relationship with the Welsh Assembly Government and the Welsh Assembly would be different than the relationship in the Scottish context?

Mr Murphy: I think the roles were different anyway, as it were, from the beginning. The perception of people in Scotland about devolution has always been different, but in Wales there was a much smaller majority. In the referendum in Scotland for devolution, it had its own Parliament in the past, it has got a separate legal and judicial system, a different educational system, different police forces and so it is a different place altogether, and the relationship between a First Minister in Scotland and then in Wales is different for those reasons alone. I also think there is a question of size. Scotland is bigger and it has more politicians. I do not think there are really good comparisons to be made between the two places, because these are different devolution settlements, just in the same as Northern Ireland. We have that type of devolution, asymmetrical devolution, in this country, and I think actually we benefit from it, and there is no reason, in my personal view, for example, why eventually we cannot have regional government in England which, like in Spain, is different from place to place.

Q98 Dr Whitehead: Do you have a sense of the management of devolution from Whitehall in addition to the bilateral arrangements you have described between Whitehall and Wales? Is there a strategic overview of devolution which is on-going as a result of the process and do you have a role in this, or will perhaps you have a role in this in the future?

Mr Murphy: There would be trouble if I did not. I think certainly that the change I have seen since I have come back is that from an official's point of view particularly, of course within the Ministry of Justice there has been established this new unit, so to speak, which deals with the overall policy of management of devolution, which I think is a good thing because it gives an extra reason why it is that Whitehall departments must now understand devolution generally and understand the differences between Scottish, Welsh and, indeed, Northern Ireland devolution, and I think that is a good development. I do not think it can ever replace the bilateral arrangements, though. Because I am a Welshman representing a Welsh seat, I go home to my constituency and I am going home to the area that I am responsible for in government here in Westminster, and also (the point I made to Mrs Morgan just now when we were talking about the need for personal relationships between politicians) to soothe things through. In a way all my ministerial life for the last nearly nine years now, on and off, has been about that type of politics, about dealing with people personally to overcome difficult areas and problems that we might have, and I think that is as much applicable to Scotland, Wales and Northern Ireland in different ways. So, as important as the central unit is in the MoJ, and I do think it is very important and I will be having meetings with the relevant officials over the next few days, it will not replace, nor can it replace, the political bilateral relations which the Wales Office, Scotland Office and Northern Ireland Office actually represent.

Q99 Dr Whitehead: Do you think the Secretary to the MoJ and perhaps the Cabinet Office, which also has a role in this, and, of course, the individual offices for Scotland Wales and Northern Ireland, do have, or should have, a collective view of reviewing how the machinery of devolution works and whether it works well or less well apart from the particular devolved administrations and governments that it is dealing with? Is there, in your view, as it were, a Whitehall barometer of success of devolution which needs to be managed and do you think, perhaps, that might be managed in one centre rather than the different centres there are at present altogether?

Mr Murphy: It depends what you mean by the success of devolution, I think. In terms of the machinery of government and how the British Government deals with the devolved administration, I think there is a very important need constantly to monitor that. There is no problem at all with that. I think when it comes down to assessing the political advantages and disadvantages of devolution, they are essentially political questions and people have different views,

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obviously, about that, very diverging views, but devolution is also about allowing the devolved administrations to get on with governing Wales, Scotland and Northern Ireland and sometimes it is quite difficult to let go, I guess, over the years, if you have been dealing with government. It is particularly difficult for members of Parliament to understand that; it is difficult for me. I have been a member of Parliament for 21 years and certainly for the first half of that it was the old Welsh Office system where you could go to the House of Commons, ask the Welsh Secretary questions, have an input into the health and education service and all the rest of it, and that has changed and we have to accept that. In the same way, incidentally, I think that colleagues in the Assembly and in the Scottish Parliament have to accept that these, too, as MPs, still have a role in the governance of Wales. But that is a political question which, I think, in a sense, is different from the point that you were making, which is the machinery of dealing with devolved administrations constantly needs looking at because it is changing all the time—the landscape is changing. I think, certainly initially, in the late 1990s Whitehall was not really ready for devolution in the way that it should have been and there was sometimes a constant battle with Whitehall departments to get them to understand the significance of what was happening in Cardiff and Edinburgh and, indeed, to understand and appreciate that sometimes, even in the same party, that they might be going down different roads. I think that has changed a lot and, I suppose, in answer to the question you asked about what has changed the last few years, the awareness within government departments about that still needs attention but it is different from what it used to be.

Q100 Dr Palmer: You have touched on this several times, but one of the tests of the success of devolution is whether it is able to work effectively when the devolved government has a different political complexion to the Westminster Government. I realise that you cannot really speak for the Welsh Office before last week, but is it your feeling as a close observer that the structures are sufficiently robust or is there anything further to accommodate potential differences, objectives and beliefs?

Mr Murphy: In a way, I suppose, time is going to tell over the next couple of years how the new arrangements are going to work, because they are very new. Not one of these new orders has yet come to the floor of the House, but they are in the process of so doing. My own feeling is that the vast bulk of the functions which we asked to transfer—“we” by which I mean the British Parliament—I cannot see will be hugely controversial, because the real test of all this is how people’s lives are improved because of the governance of the places we are talking about. If I as a Welsh person feel that my life is better because of devolution, then devolution will have succeeded. Better in a number of ways: obviously the democratic deficit that was there before, but also, more significantly, my school is better, my hospital has improved, is it a better place to work in, is the

environment good, and all the rest of it, and that is the real test. I think also that the very sensible Orders in Council we have seen coming through so far—for example, I will give you one on domiciliary care, additional learning—go easily with the functions that the Assembly now has and have been passed in order to make those education and social services functions be more effective in Wales so that people’s lives are improved as a consequence. That is the real test, it seems to me.

Q101 Dr Palmer: The person in the street probably does not have a very clear picture of how the Government in London and the administration in Cardiff actually work together. Do you think there is scope for it to become more transparent or do you think it is better that it goes on quietly without too much trouble?

Mr Murphy: It is part of my job really, and certainly my colleagues who represent Welsh constituencies, to be able to show that it is a genuine partnership in government, that we do certain things and the Assembly does others but that we do work together. It is easier, of course, when it is the same party, but every settlement has to be based on the assumption that there could be different parties governing in different parts, as there now are, of course, in Scotland and the United Kingdom, or, slightly different again, in Wales and completely different in Northern Ireland; but I do think that people in Wales are beginning to understand the constitutional differences too. Your constituent, for example, is likely to go now to an Assembly Member, in my case, in Wales, to deal with health issues and they will come to me to deal with employment, welfare or tax issues, whatever it might be, and that did not at the beginning work like that, people would not understand it, but they are beginning to, more than beginning to, in fact they have understood that, and it is shown by the very basic business of where my constituents go to, to the Assembly Member or to me and, of course, some of them go to both to see if they can get a very good deal out of both of us, but that is another issue.

Q102 Dr Palmer: Do you think the intergovernmental relations are also transparent, not just different roles of the two Parliaments?

Mr Murphy: Yes, I think so, but I am not sure that the precise workings of how Orders in Council devolving these functions would be a matter of concern in the Splott market on a Friday. No, I do not think they would necessarily, but I think that if our friends in the media, for example, explain, as they do, what is happening in Wales, people would understand those issues, but it is not something naturally that would be of interest. What is of interest to them, of course, are the subjects that we are dealing with. I have given you two just now: domiciliary care and additional learning needs. They are of importance to the people in the markets because they are not usually important issues, and because they will see on the television and read in the newspapers who does what, I think the awareness is improving there as well, but some of the things that

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you and I, inevitably, as constitutionalists and politicians have to talk about are a bit more esoteric. It does not mean to say they are less important, but they necessarily are not going to be that popular as a means of communication with each other.

Q103 Dr Palmer: Would you like to see greater co-operation between Parliament and the Assembly? For instance, the Health Select Committee talking to their counterparts in Wales, or do you basically feel that they have got their own departments to deal with?

Mr Murphy: No, I think it is a very good idea. One of the issues that I have been dealing with in the last few days is to say how important it is that members of Parliament and Assembly Members physically meet more often to talk about issues.

Q104 Dr Palmer: But not that much.

Mr Murphy: It is very difficult. Of course they meet in the constituencies, but if you are in one part or another and there is 150 miles between you, it is logistically very difficult sometimes for those meetings to take place, but I think there is a case for AMs understanding more about what we do and vice versa, and I think that is happening. I also think your suggestion, for example, about the work of Select Committees, typically Select Committees, is very important now that the Assembly has changed the way it is organised through the Government of Wales. That is a long and corporate body, just like us, with a separate Executive and Parliament, and so, therefore, the scrutiny role of the Assembly is now much more significant than it was and, frankly, I think that it will be very useful for members of the Assembly to see how Select Committees operate and see whether any best practice could be used in Cardiff. That applies, incidentally, to policies as well, but that is another issue. I know Edwina Hart, for example, recently went to Bristol to look at our National Health Service drop-in centre's work. So, you learn by best practice from each other, but in terms of Parliamentary work, I think that is an excellent idea and one that ought to be encouraged.

Q105 Chairman: You mentioned health and education a moment ago. At the next General Election you could find yourself leading for the Government on Wales, as a member of the election campaign, arguing for policies which might be diametrically opposed to some of the policies in that field of the Assembly, which has powers in that field on something like, say, prescription charges, to take one example. You will be campaigning in support of the policies of the Westminster Government, and your party is part of the Westminster Government, and seeking to be elected to carry out those policies, while at the same time being (a) responsible for relations with the Welsh Assembly and (b) fighting a constituency in Wales; so we come to the Welsh version of the West Lothian question, if you like.

Mr Murphy: It is something that we have not experienced to any extent yet, probably for the obvious reasons that there has been a Labour administration and now there is a labour-led

administration and a Labour Government. The issue, as you rightly say, Chairman, comes down to whether there are diametrically opposed parties in government.

Q106 Chairman: No, it is not that, actually, it is that even within the same party you could find yourself having to argue for Westminster Government policy in a General Election even though that policy, in this particular case carried out by a government led by your own party but shared with another, is diametrically opposed to the one you are arguing for.

Mr Murphy: As I said, I have not yet come across such a robust and stark example of that. The thing is that, if you are within the same party, the chances are that a manifesto being, for example, drawn up for the United Kingdom election would have a Welsh element to it and there would be lots and lots of discussion between the United Kingdom ministers politically and the Assembly ministers politically on what goes on that and vice versa. In other words, if an Assembly election was to held, then the chances of the, for the sake of argument, Welsh Labour Party putting something in there which would be so starkly and dramatically different from the United Kingdom Government, I think, would be quite rare, but not impossible. There are differences. You mentioned one—prescription charges is the classic one, I suppose—student fees is another, but there are a number of them which are different, but they are not differences which would bring down the end of government in either place. They are not that dramatic. I think also we have to accept that devolution is about devolution; that devolution is about the devolved administrations making their own decisions and being accountable to the people of Wales when their elections come up, and we have to accept that there will be differences like that, but they have been, and I am sure they will continue to be, manageable. The point which you quite rightly said was not the point you were making is another issue altogether.

Q107 Chairman: But what about the fact that then you and your colleagues and Scottish members as well will be voting for a different set of priorities in England, confident in the knowledge that your own constituents will not have to live with those priorities. For example, removing prescription charges is not on the English priority list—your constituency in Wales do not have to suffer that; they get their free prescriptions—and then you come along and vote to assert the priorities of the Westminster Government?

Mr Murphy: I suppose the technical answer to that is that when someone votes for Paul Murphy in Torfaen, they vote for the party, whose manifesto is UK-wide, and although it does not necessarily apply in my constituency, they will have seen what has been argued for on television day in and day out and, if they felt diametrically opposed to that, they would vote for another party. Whether they think those things quite so deeply as that is another matter. They vote Labour, or whatever it is that they vote for,

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because they believe that is their party, but, technically, it could be argued that in the manifesto which has been presented to the whole of the United Kingdom there is a bit on English health and you will have voted for it even if you are a Welsh voter.

Q108 Dr Whitehead: Do you think there is a case for retaining the current levels of Welsh representation at Westminster when, post devolution in Scotland, the number of Scottish representatives in the UK Parliament overall has been reduced?

Mr Murphy: It is a funny old thing to argue for less representation for your country in the national parliament. Let us have 20 fewer and let us have less influence, shall we? No, I think it is bonkers, to be honest, to want to do that as a Welsh person, to have less influence in the British Parliament by reducing your numbers. Others, undoubtedly, would argue the case, but a lot of people in Wales would not. No, I think the Scottish situation is different anyway because of the nature of the Parliament. It is a much different Parliament, it is historically very different, as I have said earlier on, the powers that they have over criminal justice and so on are very different from ours, and that is the reason, of course, that Scottish representation was reduced, but Wales has no tax-raising powers, it has not got primary powers in the way that Scotland has, it has not got the historical Parliament that Scotland inherited, and so, for all those reasons, it is different. My argument is let others argue the reduction of Welsh members of Parliament, but not the Welsh Secretary of State.

Q109 Dr Whitehead: Scotland now has a quota equivalent to the rest of the UK. Wales does not, so Wales, as you might say, has had devolution and has retained an additional number of MPs in the UK Parliament over and above the quota. If you were a disinterested observer rather than the Secretary of State for Wales, would you not accept that that view might have some force?

Mr Murphy: Only, I think, if tax-raising powers were given to a Welsh Parliament, because, as a lot of us know, the purpose of Parliament is to raise money, and so long as there is no such power in Cardiff in the way that we have got that power, then I think the case for the representation for Wales—. I think we represent slightly fewer than an English member of Parliament, but nothing like the Scots MPs did, and we are a country in our own right, a nation in our own right but without those parliaments that Scotland has, and so I think until you get to that situation of a Scottish Parliament with tax-raising powers, then I do not think there is an argument at all, to be honest, and even then I am not sure it is for me to argue it.

Q110 Dr Whitehead: Seven extra MPs compared with the English quota is the price for tax-raising powers?

Mr Murphy: Yes, it is not going to break the bank though, is it, really?

Q111 Dr Whitehead: Have you had discussions with the First Minister and the First Minister's Deputy with regard to the potential referendum on further powers for the Assembly, given that in the Government of Wales Act there was a commitment to proceed to a successful outcome of a referendum before law-powers, I think before the end of the Assembly term.

Mr Murphy: I am not sure that was in the Government of Wales Act. I think the commitment in the Government of Wales Act would have been before powers had been given.

Q112 Dr Whitehead: I am sorry, the referendum itself is outlined. The possibility of a referendum was outlined in the Government of Wales Act. The commitment was part of the arrangement between—

Mr Murphy: The answer, Dr Whitehead, to the first question is that I have had discussions with the First and Deputy First Ministers, but not in detail, in the last six or seven days, on the referendum. I have talked to them again about other issues but not in detail on that, no. I undoubtedly will do, but the first point about having a referendum in principle before law-making powers of the nature you have described are given is something I was particularly keen on. When I was in government last I thought it was a very important part of the Government of Wales Bill because of the very narrow majority that devolution obtained in 1997 and that, in order to change the fundamental settlement, the people of Wales needed to agree to such a change. So I think the referendum principle is absolutely vital on that. The other part of the question was about the "One Wales" settlement, which goes a bit further than that and, as you know, is separate from the Convention, to test the waters, if you like, as to whether there is any appetite in Wales for a referendum for law-making powers to be completely given to the Welsh Assembly, and that is rather different.

Q113 Chairman: Secretary of State, thank you very much indeed. We much appreciate your evidence this afternoon and it will help us form our views.

Mr Murphy: Thank you. Chairman, can I thank you particularly for chairing this session. As you said earlier, I did not think that this was going to happen but I have very much enjoyed my session with you and, if I might put on public record, I have enjoyed two and a half years on the ISC with you as well.

Chairman: Thank you very much.

Tuesday 19 February 2008

Members present

Mr Alan Beith, in the Chair

David Howarth
Daniel Kawczynski
Alun Michael
Julie Morgan

Mr Virendra Sharma
Mr Andrew Turner
Dr Alan Whitehead

Witnesses: **Rt Hon Kenneth Clarke MP**, **Lord Tyler CBE**, a Member of the House of Lords, and **Professor Vernon Bogdanor**, gave evidence.

Q114 Chairman: Lord Tyler, Mr Clarke, Professor Bogdanor, my apologies for the delay. We are never entirely sure when these things happen, but I do not think we are going to be interrupted again. Let us start off by asking you, in a couple of sentences, how you would define the English Question. Let us start with Professor Bogdanor.

Professor Bogdanor: I believe there are two questions. The first is the constitutional question of the imbalance that is resulting from devolution. Secondly, there is a political question, which is the more important question, in my view a sense perhaps of alienation on the part of many people in England who feel that government does not take as much notice of them as perhaps it does of the Scots and the Welsh.

Q115 Chairman: Do others agree that that is the nature of the question, the balance of the issues?

Lord Tyler: I would just add that there is within the English Question a number of English questions; there is even the Cornish question—that feeling of alienation is stronger the further you go away from London—and while it would appear that a solution has been arrived at for Scotland, Wales and Northern Ireland, I think there are many other parts of what is traditionally referred to as England where that is identified as well.

Mr Clarke: I think there is an English Question, as defined by Professor Bogdanor, and it is not just confined to the problems that have arisen from devolution. In answer to the question of devolution, I think there are doubts about legitimacy when legislation is passed by the votes of people whose constituents are not affected by it in their nation where there is now devolved power, and I think it is giving rise to a certain amount of English irritation which could sometimes get rather stronger. I do not share that; I think it is rather irritating. I personally find English anti-Scottish feeling or Scottish anti-English feeling childlike but perfectly all right as long as it is confined to the football stadium or the rugby match or something of that kind. Although it is not widespread, I actually think over the last 10 years there has been a distinct growth in the number of people who are irritated by the relationship between Scotland and England and I would like to nip that in the bud by some sensible constitutional minor change, in my opinion, to finish the business of devolution.

Q116 Alun Michael: In *The Observer* on 4 November Professor Bogdanor said, “. . . 528 of the 645 MPs in the Commons represent English constituencies. On any issue that unites them, English votes will predominate. The English have no need to beat the drum or blow the bugle. If they do, they will strain the devolution settlement, which rests fundamentally, as the Union has always done, on a sense of restraint by the dominant nation in the UK.” Could I first ask Professor Bogdanor, following those comments, do you think that the English Question is still a legitimate one, and what are the potential risks in attempting to address what you defined in your introduction of the English Question?

Professor Bogdanor: The constitutional aspect of the English Question cannot be resolved unless and until England or regions of England want legislative devolution, and that is obviously a long way away. There is certainly no sign of that at the moment. But I believe that the political aspects of the English Question can and should be answered—the sense of alienation felt by many people in England that the Government does not take enough notice of them. I would, however like to repeat what I said, in the “*Observer*”, and which you kindly quoted, that England is the dominant nation in the United Kingdom and the price that has to be paid for keeping the Union, which I think is very important for all of us, is English self-restraint; that itself is nothing new; it has probably always been there since the Union with Scotland in 1707, because England has always been the dominant nation and the Union has only been threatened when England is seen to take advantage of that. For example, in the poll tax legislation of the late 1980s it seemed that Scottish opinion on the whole was thoroughly against it, but the English perhaps did not take sufficient notice of that. I think it has always been the case that English self-restraint is the key to maintaining the United Kingdom.

Q117 Chairman: Lord Tyler, Mr Clarke?

Mr Clarke: Firstly, just to correct a factual error, it was not the English inflicting the Poll Tax on Scotland. Let me make it clear, the Poll Tax was an unmitigated disaster from the moment it was first mooted to the moment it eventually collapsed—I am in no doubt about that—but actually it was just a political misjudgment. It was our Scottish colleagues

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who wanted to rush the Poll Tax into Scotland because they were terrified of the consequences of a forthcoming rating revaluation which they would have to see through if they did not have this marvellous new tax. The idea the English used it as an experiment was a very skilful argument later used by Scottish Labour and Scottish Nationalists to beat us over the head for putting in the ridiculous tax in the first place. So I do not think the English have ever consciously experimented on Scotland. I do not agree with Vernon, with respect. I think there is a parliamentary problem which needs to be parliamentarily addressed before what becomes a niggle gets worse, and I think devolution has changed things. These historical analogies about Northern Ireland always having to put up with legislation that Northern Irish MPs did not always want, and so on—nobody can usually force things on them—has all changed. We have had, in my opinion, with hindsight, quite correctly and quite successfully, change so that the key matters are now devolved to Scottish decision in a Scottish Parliament and probably will be in Wales. That is the way we are going as well. The same thing applies there. It does now give rise to parliamentary problems. Everybody in this Committee is as familiar as I am with foundation hospitals. It is not such a great problem. I voted with the Government on foundation hospitals. It was Liberals and a Labour revolt that meant that there was not an English majority on it. The key one was student fees, which Vernon's argument says the English should tolerate. The fact was the majority of English MPs voted against English students paying tuition fees. Scottish MPs provided the majority which brought the fees in. In Scotland, those Scottish MPs had no vote; it was the votes of Scotsmen and women in the Scottish Parliament that decided that Scottish students should not pay university fees. The English have kind of put up with that, but when you explain it to an Englishman or when you meet an Englishman who knows that history, it causes considerable annoyance, not least to students alongside each other in the same university, one paying fees because he is English, the other not paying fees because he is Scottish. That should be a warning. That is the West Lothian question in its starkest form. If you had a Parliament where this was unusual again, it was all to do with party developments and things. If you had a Parliament where that started happening over and over again, I think you would be damaging the union and you would be taking a risk. To rely on English tolerance would not be good enough. I think some politicians would exploit it: a sense of mounting English anger that things were being done when the English MPs would not have voted for it or were in the majority against it and all those MP's who have got devolved government in their own territories were being wielded to produce a majority.

Lord Tyler: I do not think the restraint has been one way. I think it has been a two-way process. Basically, I agree with Professor Bogdanor's analysis here, but I think if you look at it over a longer period, Scots and Welsh have had to be restrained in the way in

which they have had to put up with the way in which England has tended to dominate so much political discussion, and I think the new anomaly since devolution is simply an attempt to address previous equally dramatic anomalies in the past.

Q118 Alun Michael: Perhaps as a Welshman I ought to welcome the idea of anybody describing Scots and Welsh as restrained.

Mr Clarke: Can I just come back on board? Devolution, it seems to me, was the end result of mounting Scottish and Welsh resentment against governments, probably particularly the Thatcher Government, which they did not like anyway, but a government to which a majority of their MPs were in opposition and which was increasingly imposing on Scotland things they disliked. This eventually led to an irresistible demand for devolved government in lots of key domestic policy areas. Because the English are 85% of the population of the United Kingdom, it may take them very much longer to start getting into the kind of mood that will make it wise to move to devolution in England, but what is the point of going down that road?

Q119 Alun Michael: Could I ask one other question. We are parliamentarians and, therefore, the interest in parliamentary process and legislation is obviously very much of interest to us, but for many people there is devolution in England in the sense of the Government of London, so should not the English Question be the England outside London question?

Lord Tyler: I certainly agree with that. I think there is continuing resentment in areas furthest away from London within England where it is thought everybody else now seems to have a measure of devolution; even if it is not legislative devolution, administrative devolution. For example, in relation to the two big issues that we are told the public are concerned with—the Health Service and crime—in both cases the only accountability would seem to be through a secretary of state in London. I used to be a member of a police authority as a local authority member. Today members of police authorities are all appointed by the Home Secretary. Similarly, if you have a complaint about the Health Service in your region of England, you have to go to the Secretary of State, effectively, to get somebody who can take a major decision. So I think there is a resentment outwith London that London-based London thinking, the bubble around Westminster, seems to be where all the major decisions are taken where only accountability can lie, particularly in relation to these two key public services. I think that is a very general issue, and there I do agree with Kenneth Clarke. I think there is resentment that perhaps Scottish and Welsh citizens have greater accessibility to people who take decisions.

Q120 Chairman: London can actually make its own decisions about crime and about the congestion charge—not about the Health Service, but it has its own democratic process.

Lord Tyler: Chairman, that is precisely my point. That reinforces the resentment outwith London that London, where all this power lies anyway, seems also to have that extra dimension.

Mr Clarke: It has no powers over the Health Service. I come from the East Midlands, my constituency is in the East Midlands, and actually that is where I come from as well. That probably affects my view. There is no part of the United Kingdom where regional consciousness is weaker than in the East Midlands. The inhabitants of Corby do not associate their interests with those of the inhabitants of Skegness and it is a completely debunked concept. It is what is left over when you have defined other regions, so I think I probably come from the part of the country where there is least demand for regional government and where the abolition of the regional assemblies is popular. If people ever noticed the existence of the Assembly, they are now welcoming its dismissal. If you wished to go to more devolved power locally, which I would like to actually, you have got to go to the smallest possible local unit that is practical and efficient and will be in contact with the residents. Their county is pretty big, but the idea that some regional body that does for Northamptonshire and Lincolnshire as well is just ridiculous to my constituents and they are not interested in it. The Government knew that and so they, therefore, went to the North East, where I would have thought that regional feeling was as strong as in Lord Tyler's South West. In fact the people in the North East preferred a more local system of local government and feared the bureaucracy of regional government and I think regional government is pretty dead in England now. It would be a very reckless government of any complexion that tries to revive it, whereas more devolved local power is called for. The snag is, as someone who has done some of the jobs you have touched on, the fact is that people are all in favour in principle of devolved responsibility but, as Alun knows, they go straight to the Secretary of State, or the First Minister, or whatever, the moment the local variation that has been decided on is in their opinion, out of line with their own preferences.

Q121 Chairman: We are going to come back to some aspects of this in a moment, but I want to ask you, since you make the point, do you now feel that the creation of a regional tier of administration so that certain policies are dealt with on a regional basis, which happened, of course, under the Government of which you were a member, was unnecessary or mistaken?

Mr Clarke: We had some regional offices, and I used to agitate for a regional office for the Government, and Michael Heseltine did, but it was in the very narrow context of urban regeneration, inner city policy, all that kind of thing, which, you remember, was in its embryonic and controversial days in the late 1980s and whilst we were in office in the early 1990s as well. That was because we found there were little local offices of departments who tended to compete with each other even more ferociously than the headquarters of different departments competed

with each other. Michael Heseltine and I, I think you would agree, had a somewhat naive view that we should just have one office to help co-ordinate policy and look rather more—an awful phrase I never use—holistically, as it were, at the relationship between the government and the region. In fact, the present government, when it was in its phase of driving towards regional government, made these regional offices of government far too powerful and you found there were officials regarding themselves as in an executive role in delivering lots of government policies in their region. That is why I would now give more power to the local authorities we have got and argue about what tier it should be rather than go for any more regional government.

Lord Tyler: Chairman, I do not think we should let Kenneth Clarke get away with just simple naivety.

Q122 Chairman: He is not as naive as he looks!

Lord Tyler: No. I never thought of him as being naive, but, clearly, there is a distinct difference between the way in which Britain has developed regional administration, governance, without any real accountability over the last 40 years—it goes back at least as long as that—at the very same time where comparable countries in other parts of the world, notably in Europe, have moved away from that degree of centralisation and colonisation, sending colonial government out to the different parts of the United Kingdom; and all the great command economies of Europe have decentralised very effectively with local accountability, some of them, of course, under the influence of British constitutional lawyers, while we have not taken our own medicine. I think that the trend of recent years, of which, of course, devolution to Scotland and Wales where there is significant divergence, has not been applied in the rest of the United Kingdom.

Professor Bogdanor: Can I get back to the point about London, Chairman, because I think it is very important. The new arrangements in London have meant that people now identify more with London than they do with England. There is an IPSOS-MORI poll from 2004 which shows that 65% of Londoners identify with London, and 57% with England. I take this to mean that the feeling of not being noticed, the sense of alienation, has lessened when you have a powerful figure such as the Mayor to speak up for you in London. Therefore, I believe that one practical answer to the English Question is to establish directly elected mayors in other conurbations in England so that there is someone who speaks, not just for London, but for Manchester, Leicester, Nottingham and all the other major cities of the country. I think this lies at the root of the English problem. It is not primarily a constitutional worry—that is a matter that concerns only academics like me—it is a political one.

Chairman: Mr Kawczynski, do you want to ask at this point about the select committee?

Q123 Daniel Kawczynski: Actually it was a supplementary. Mr Clarke, you mention the East Midlands. Could I tell you that in the West Midlands, if you represent a seat like mine,

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Shrewsbury, which is right on the border with Wales, this issue of the difference between Wales and England is magnified to a huge degree. I have to tell you that I am constantly fighting for my constituents to get the same type of treatment at my local hospital that people get from coming across the border from Wales, and also you can get certain operations coming from Wales which my constituents cannot get. Also, the hospital loses nearly three million pounds a year because of the different rates that the Welsh authorities pay to the English authorities. How would you deal with the border areas such as mine, which really are facing significant financial difficulties as a result of devolution?

Mr Clarke: I think the biggest hostility to the idea of devolution tended to come from the border areas. Devolution had been debated almost forever in this House before it finally happened, and in my experience, certainly so far as the Labour Party was concerned because they had more people up there, they had more trouble with the North East and northern Members of Parliament than they had with anybody else in trying to make progress with Scottish devolution, and the same is true of Wales, and you are bound have border problems. It is a magnified version of what I say is the difficulty. Even on lesser matters, you give more discretion to the local government, which everybody says in principle they are in favour of. The moment you give it, people talk about the postcode lotteries and start arguing about deviations which they see taking place across the border next-door. They go rushing off to the Secretary of State, or, if they cannot get to him directly, their Member of Parliament to insist to the Secretary of State that uniformity should be imposed. I am now totally reconciled to Welsh devolution, I do not think it would be totally remotely sensible to try to reverse it, and I think these border strains are bound to continue, and so I sound a bit like Professor Bogdanor saying that some of this is just the inevitable. If one should have a slightly different system on two sides of a border, you are going to find that on one side of the border, and it may not always be the same side, people are going to get irked by comparisons that they make with what is happening on the other. I do not think your constituents will be cheered up by anyone saying that the solution is to make you much more under the control of a regional government based in Birmingham. I suspect they would prefer London, by and large, to being under the governance of Birmingham.

Q124 Daniel Kawczynski: I think you are right here.

Mr Clarke: In my case it would be Nottingham where the headquarters would be, but I do not think the inhabitants of Derby, Leicester and Northampton or rural Lincolnshire would be remotely happy with having to put up with a regional government in Nottingham.

Chairman: Do you want an opportunity to deal with the Committee point, Michael?

Alun Michael: Yes. Can I mention for the interests of the Committee, the Welsh Affairs Select Committee, on which two of us sit, is looking at cross-border

issues at the moment and there might be some interesting resonance between the work of that select committee and this one.

Q125 Daniel Kawczynski: Thank you. I just wanted to follow up with a question on the Select Committees. Mr Clarke mentioned the West Midlands Select Committee. We would not necessarily like to be run from Birmingham, he is absolutely correct in that, but could I just say that nothing has happened over the last six months. The Government said that we would have Regional Select Committees. Nothing has happened. They have not been created. The Regional Minister for our area from Hodge Hill, Liam Byrne, has never been to Shropshire, and it took a debate I had to have in Parliament to get him to agree to come down. He is very focused, in my estimation, on Birmingham, which is the area he represents, and rural counties such as mine feel very neglected if we have this regionalisation. My question is really, if the Government says it is going to have Regional Select Committees, surely the Regional Ministers, which in our case is Liam Byrne, should be given proper offices to run this job properly and be accountable to all the areas rather than just having it in theory and then not having anything done?

Mr Clarke: I regard it as a gimmick and public relations to have appointed a minister for each of the regions. It was the time of "the big tent", the new harmony, the father of the nation and the acknowledgement that people need to feel government more in touch with them. We have had two regional ministers in the East Midlands so far. I have only just discovered what the name was of the first one and I cannot remember the name of the one we have got now, but the previous minister did no harm and, as far as I am aware, she has moved on to a different department and has a sensible job. The last thing I would do is start giving them money and officials and an office to do their regional bit. That is probably because I have problems with regional government, and I feel sorry for these parliamentary secretaries. We did get ministers attached to cities when we were in, but they were attached to the taskforces in inner city areas, and I used to bully my colleagues who had drawn the short straw and had volunteered to do this to go in once every six months. There were some very good and marvellous projects but it was a particular little aspect of policy we asked them to devote their time to in addition to their ministerial roles. The Regional Ministers that we have got now all already have what should be full-time jobs in departments which they combine with their constituencies and they have got executive tasks to carry out, they have got legislation to take through this House. They have other real full time jobs, and I think the additional roles of regional ministers were invented jobs with no facilities, no clear idea of what they were meant to do. I think what they are supposed to do is get their name in the local newspaper, particularly near the more marginal seats from time to time, but I would like to see it all gently fade away as an experiment.

Q126 Chairman: Could I ask Lord Tyler if he thinks the Select Committees have any importance or are, indeed, manageable within the parliamentary system?

Lord Tyler: As an ex MP rather than a present one, I am rather hesitant to talk about the way in which your House deals with these matters, but the fact is that it has not been possible to set these up for six months because it has been so difficult to find members to serve on them who are not going to be, frankly, government members in many cases way beyond the natural representative proportions of that particular region. For example, in the South West it would be very difficult to have enough backbench Labour members sufficient to man that committee. This is one of the reasons why I think this has not happened. I think the major point is, surely, from the point of view of the House of Commons and devolution more generally, this is no substitute for holding to account the government office for that region and the development agency for that region. Having a minister or a select committee occasionally looking over the books, as it were, is not a sufficient degree of accountability and, therefore, I do not necessarily subscribe to the gimmick description, but it certainly has proved to be an inadequate answer to a very real question of real devolution, real decentralisation within England.

Q127 Julie Morgan: I wanted to ask you what you thought of the idea of an English Parliament and what would be the strengths and weaknesses? This is to all of you really.

Professor Bogdanor: I think an English Parliament would be an absurd solution, and I do not think it would reduce the sense of alienation. If an English Parliament were to be sitting in Luton or Bradford, that would not make people feel that they were better represented than they are now. There is no federation in the world, to my knowledge, where one of the units contains 85% of the population. Many years ago the Royal Commission on the Constitution, which reported in 1973, looked at this question and said it was simply not a practicable proposition. Nothing has changed since that time to alter that verdict.

Mr Clarke: I am against an English Parliament. I think it would rapidly lead to demand for an English Executive on devolved matters, which is what the Scots have got and the Welsh have got. I actually think it would be a threat to the union steadily, because it would start giving 85% of the population now their distinctive, separate institutions. I think there is no wide English demand for a separate Parliament at all. There is a little group that would like one, but the average Englishman thinks that they have got a Parliament, which is the Westminster Parliament. I think resentment could certainly well be sorted out so long as you could tackle what I regard as this niggle that sometimes English matters are settled against the majority votes of the English MPs. An English Parliament, I think, would be quite a dangerous remnant of that because it would take a little step further this sense of separate identity. I have to say, the Nationalist MPs in the other parts

of the United Kingdom, particularly in Scotland, to whom I defer in their political skill—I think our old colleague Alex Salmond is an extremely skilful politician—lose no opportunity to accentuate on both sides of the border any sense of separate identity between the Scots and the English, any twinge of resentment that the English feel against the Scots, just as much as any twinge of resentment that the Scots feel against the English, and an English Parliament within a separate English executive would be going down a path which I suspect the Scottish Nationalists would approve of much more than me.

Lord Tyler: I agree with both my colleagues here. I think we must recognise that the English Parliament would automatically need a separate English administration and a separate English Executive. I do not think there is any public demand for that, and the complexity that would be caused by interrelationship not just with the United Kingdom Parliament but with the United Kingdom Government would be so wasteful in terms of resources and energy that I think it would very soon be decided that we should dispose of it again, and of course it would be absurd. I do not think that there is a public demand for that. There is, however, as I have already suggested, a very considerable concern in various areas of England that they are not well served by the present levels of responsibility within our hierarchy of governance. I support, and I think many people do, the general principle of subsidiarity that decisions should be taken as close as possible to the people they are going to affect, and having a separate English Parliament in London or on Runnymede Island, or wherever, is not going to answer that question.

Q128 Julie Morgan: Could I ask Kenneth Clarke if you agree with Sir Malcolm Rifkind's proposals for "English votes for English laws"?

Mr Clarke: No, I do not, but our taskforce has not quite finished its report yet.

Q129 Julie Morgan: Are you considering that in your taskforce?

Mr Clarke: Malcolm and I, as you may gather from my opening statement, are broadly agreed that the question should be asked and should be answered. I do not agree with the remedy that one should stop asking the West Lothian question, which has been said by various people, and Malcolm has come up with one answer. I do not think our taskforce would come up with exactly the same answer as his but in principle we are heading in the same direction. When Malcolm recently made the news with his solution, I was familiar with it as, he had put it forward on several occasions—it is one way of tackling it. All my taskforce is doing is giving advice to David Cameron and the Shadow Cabinet—I am not spokesman for the Conservative Party, it is for David Cameron and the Shadow Cabinet to decide what the policy is. They have got Malcolm's proposal before them as well, so they can compare it themselves when they receive ours.

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Q130 Julie Morgan: Do you think that the next Conservative manifesto will address the English Question?

Mr Clarke: I do not know. I would not want any responsibility for the next Conservative manifesto, but my guess, however, is, yes, it will. As a Conservative Member of Parliament, I would be very surprised if we put a manifesto forward at the next election which did not address the West Lothian question. Just to make it clear that our position on devolution, is, I trust, on balance, to accept devolution—there is no question of reversing devolution. With hindsight, we made a mistake in being so reluctant so long in allowing devolution to take place.

Lord Tyler: I think the Rifkind proposal is absolutely absurd. It would be a constitutional minefield. Just to take a couple of examples, suppose legislation is going to be sent to a Grand Committee, an English Grand Committee, but it is then discovered, as a result of some amendments during that process, whether it is in committee or at some other stage, that there are elements which affect Scotland and Wales, what do you then suddenly do? Do you take it out of that committee and create a new committee? What do you do when it comes to the Lords? Nobody seems to have addressed this question. I understand there is reference in the note which I understand members of your Committee, Chairman, have seen. Are we to have a unicameral system for England, or bicameral? If it is to be bicameral, do Scottish peers get excluded from all the debates on that issue? What happens if there are amendments in the Lords which seem to impinge on Wales? Quite a lot of English law impinges on Wales in a way that it does not on Scotland. Away you go. What if there is some reference to transport which does not really seem to fall within the purview of that committee as far as London is concerned, because London has specific transport? It is a minefield and, in particular, it seems to me it would draw the Speaker into some invidious decision-making which would be completely outwith the present role of the Speaker. It would make him intensely political, particularly, of course, as it might well be the case that English members of Parliament had a majority for one party which was different to the majority for the United Kingdom party as a whole. Given that there is already, of course, a curious anomaly in the first past the post system that one party gets more votes than another in England and yet gets less seats in the House of Commons, the opportunities for real political conflict and gridlock will be greatly increased by the Rifkind proposals, and I am amazed that any such experienced parliamentarian should put it forward.

Professor Bogdanor: I believe that Lord Tyler has understated the difficulties. I think it would be actually profoundly dangerous to the future of the United Kingdom, because if you have one party with a majority in the United Kingdom but another party with a majority in England, the government with the majority in the United Kingdom could not say it had a policy on health or education because that would depend on what the English MPs thought. Sir

Malcolm Rifkind tries to get round that by saying the Grand Committee will just consider the committee stage of bills, but that would mean on almost every occasion on a matter of education or health, when a bill was reported out the majority of Parliament would disagree with the Committee's report and so you would get gridlock—the sort of thing that has existed in the United States you have had in America since 2006 with a Democratic Congress and a Republican President. It would bring government to a halt. I think it is significant that the only other party that is championing English votes for English laws is the SNP, because it wants to separate Scotland and England, and, I must say, I profoundly hope that the Conservatives, who are a unionist party, do not go down that road. There is one further point to make, which Lord Tyler hinted at, that this problem arises primarily from a political imbalance in Scotland. If the Conservatives and Labour Party had roughly equal seats in Scotland, this problem would not arise, and perhaps it is worth thinking back to 1955 when the Conservatives had not only a majority of seats but a majority of the votes in Scotland in that general election. If we could get back to a more equal position for the Conservatives, if this could gain more support in Scotland, or, alternatively, as Lord Tyler has hinted, if the electoral system were to be changed so as to reflect opinion more accurately in Scotland, this problem would not arise. I think it would be wrong to have a complete upheaval of the British constitution to meet that particular political problem. As I said a moment ago, I profoundly hope that the Conservatives, who are a unionist party, do not go down that road.

Mr Clarke: Can I briefly come back, Chairman. I answered the narrow point. I do not agree that the English Grand Committee is the way of going forward. That is what I took to be Malcolm Rifkind's proposal. My two colleagues have actually put it much broader and have pronounced by answering the West Lothian question in general, giving their objections to it. I do not agree with either of them. I do not believe this argument that it is not possible to identify a comparatively small amount of legislation which is totally English in its consequences and content. In fact, a select committee of this House in 1999 recommended that we should start more clearly identifying the territorial application of legislation, which is now being done. If you look at, nowadays, the Queen's Speech, it usually identifies which country's legislation it applies to. I have seen bills produced where individual clauses tell you which they identify to. We do not pass legislation where subsequent high court proceedings begin with submissions from both sides as to whether this bill actually applies to the jurisdiction of Scotland or the jurisdiction of England and Wales; it is plain and obvious; and you will not get the Speaker into invidious arguments, in my opinion. That is my first point. The second one I have already made, so I will not repeat it greatly. I really do not see the whole thing as a great challenge to the union. In fact the challenge to the union is not yet a challenge but the point of view of unionists, as

I am. The irritating thing is the mounting English resentment of this residual opportunity for governments to pass things against the English majority. I think, if we can, we should look at the party politics. I realise there are party sensitivities. I am not a great partisan in my old age, so I try to rise above it, but I understand why the Labour Party is more concerned than we are. At the present time, for the foreseeable future, you are not going to get a Conservative government in the United Kingdom which does not have an overall majority in England. It is impossible. It is conceivable, though it has not happened very often, that you might get a Labour government that does not have an overall majority in England. The chances of getting a Labour government in the UK but a Conservative overall majority in England is actually quite slight in modern politics, but the idea of a Labour government in the UK with no overall control in England could happen—probably will happen. There are two things we have to tackle, unless you are just a partisan that wants to stop such a UK Government being able to do anything in England. You have got to stop the deadlock, as described, you got have to stop the English MPs being able to wrest control from UK government altogether. You have got to give the Government the power, the Parliamentary ability to veto the English MPs running wild, but you must give the English MPs to opportunity to stop detailed English measures being passed that they do not approve of either. The English Grand Committee is one way of approaching it. But what should happen is the two will negotiate, as they do in America—they are used to that—the executive of one party and congress of another. It is not deadlock in the United states—they negotiate, they compromise: it is called politics. We are used to the tyranny of the majority party here, but compromise politics might be quite good for the English from time to time.

Chairman: I have to remind the Committee and the witnesses that we have other witnesses to come who have different points of view from theirs. We will be questioning this very eloquent group of witnesses in about 10 minutes or so.

Q131 David Howarth: Can I come back to this point about the electoral system. It seems to me that the electoral system lies at the heart of the problem, both in terms of the constitutional problem and the likelihood of there arising these differing majorities and in terms of alienation. Let us just take Ken Clarke's example of the student fees first. If the United Kingdom Parliament had been elected on PR, not any PR system, then there would be no fees, the majority would have had its way, and so, on the whole, these anomalies might arise under a PR system but they would be less likely to arise. On the second part of the question, as defined by Professor Bogdanor, the question of alienation, is not part of the problem that because of first past the post we inevitably elect unpopular government, but the Government is unpopular not because of what it does, it is unpopular on day one because only a third of the people voting have voted for them.

Lord Tyler: Very briefly, I think there is a specific English dimension to this, which is, of course, that the first-past-the-post has given majorities to one party in recent years when the votes have gone in different directions, putting it mildly, and so I think there is a situation, and in a sense Ken Clarke has put his finger on it, that some of the frustration—I do not think it is widespread public frustration, but there is a political (small P) frustration that it would seem that the English Members of Parliament are not representative of views in England and, therefore, there is both a mood towards trying to be more decentralist in the way in which I suggested, but there is also a concern that we might end up with a situation where there was a considerable body of policy being developed for England that was extremely unpopular even in sheer party terms. In a sense the reaction to the English Question to those that feel strongly about this, whether it is for the Rifkind proposal or for an English Parliament, is let us have a separate executive because we think that might be more representative than the present UK-wide Executive. It is not about just having a debating chamber, a Grand Committee, because you cannot have a Grand Committee which takes decisions and nobody acts on those decisions; you have got to have some sort of administrative executive arm. It is a frustration about the disconnect between people's opinions in England and what is then served up by governments, and, clearly, whatever system of electoral reform was developed could improve that, but I do not think it is the whole answer because I think also there is the issue about decentralisation which is, I think, equally important.

Professor Bogdanor: Mr Howarth is right to the extent that if you had a proportional system, the West Lothian question would not be as acute as it is, to put it mildly.

Mr Clarke: No party would have an overall majority either. I am against PR. I think it is a very good discipline for the public. They are given two broad coalitions, three probably—

Q132 Chairman: I do not think we have time to put the arguments for and against PR.

Mr Clarke: —and they have to choose one or the other.

Q133 Chairman: It was raised as a question because there were specific implications for what we are discussing here.

Mr Clarke: I am not going to give you my view on PR. Belgium and Italy is good enough for me!

Chairman: Even I will resist the temptation to demonstrate the fallacy of that argument by asking Dr Whitehead to move on to another topic.

Q134 Dr Whitehead: In the context of the apparent rejection of some of the proposals—English Parliament, regional assemblies, regional select committees—Professor Jeffery suggested to us the one potential solution to the English Question would be simply to demarcate more closely the difference between England, Scotland and Wales and the rest of the United Kingdom by essentially

giving devolved bodies more powers, further fiscal autonomy, and therefore, by default, as it were, the UK Parliament would become more an English Parliament. Is that a suggestion that has any merits, in your view?

Professor Bogdanor: You would have to devolve legislative powers from Parliament, and I do not think even those who favour regional devolution favour the devolution of legislative powers to the North East and North West, and so on.

Q135 Chairman: I do not think that is the basis of the question. I think the basis of the question is that if fiscal autonomy, for example, is given to Scotland, then there is a much clearer differentiation between Scotland and England.

Professor Bogdanor: I am sorry, I misunderstood your question. I completely agree. One of the arguments against English votes for English laws is that the block grant that Scotland receives is decided at Westminster by decisions based primarily on English programmes; and you are absolutely right that if Scotland had fiscal autonomy, then the arguments against English votes for English laws would be weaker. I believe that it would be better for Scotland to have responsibility to raise the money that it has spent. It would probably mean better value for money: one tends to be more careful about spending money that one has raised oneself. It seems to me sound, canny and good government that a body that spends money should also be the body that raises it. I apologise for misinterpreting your question.

Mr Clarke: The Scottish Government does have power to raise its own income tax, I think, but, very wisely, has chosen never to exercise it. I personally am not in favour of more fiscal autonomy. You would merely have the problem of the council tax writ large, I think, but in a country of this size fiscal autonomy is quite difficult to manage. Of course, I approve of local authorities having their present ability to raise their own revenue by council tax. The moment you go into any form of taxation of that kind you have got to find a base for it, and we always end up with a property tax as a separate base, and then, because of the different income and economic prosperity of different parts of the country, you have to have a national system of compensating grants to make it fair, and that is fatal to the local autonomy. It is true of every part of the United Kingdom that they believe they live in a county which is uniquely discriminated against by the central government grant system, and that feeling destroys all sense of accountability in the local authority. I know of no local authority that has got into trouble over spending, of whatever political complexion, which has ever said, "It is our responsibility." They always say, "It is the fault of central government for not giving us enough grant." Until you solve that problem at present local government level, I would not start wading into a fresh new tax to give autonomy to any regional body.

Lord Tyler: According to the BBC, the Prime Minister said yesterday there is an issue about the financial responsibility of an executive or an

administration that has £30 billion to spend but does not have any responsibility for raising that. In any other devolved administration in the world, there is usually financial responsibility that requires not only the spending of money by the administration but also its responsibility to take seriously how it raises money. This, I think, is a very interesting development. It goes a great deal further than anything he has said previously. This is in reportage, so I cannot confirm whether it is exactly what he said, but he is also reported as saying, "Mr Brown also said the review was not a one-way street and some powers could be returned to Westminster." I think that is a novel suggestion which would surprise some people. I agree very much with Professor Jeffery's analysis that some degree, not fiscal autonomy, as Ken Clarke says, but some degree of fiscal decentralisation is absolutely critical, because I think we are all aware of how frustrated are members of local authorities throughout the United Kingdom, I think, by feeling that they are simply agents of spending departments rather than that they actually have any room for manoeuvre. I think it answers to some extent, if you like, the Shrewsbury problem. It is not just that the spending on either side of the border is different but in England nobody feels that they have any direct role in deciding the priorities for that spending. I think that is a very important issue.

Q136 Dr Whitehead: I was going to reflect briefly on Ken Clarke's point. We do, as a result, I think, have the most ferociously stringent financial equalisation system of any country in the world or state in the world except for New South Wales, I understand. Would an alternative route, and I wanted to offer Paul Tyler a moment to reflect on his written submission, as indeed you have said in your submission, be to radically decentralise power to English regions, possibly not with ferocious equalisation? What do you mean by radically decentralising power to English regions? Would you see it as a solution to a number of the issues that have been raised this afternoon?

Lord Tyler: I touched on it earlier when I said I thought the accountability of two very important services as far as the public are concerned would be outwith any sort of public accountability. I see no reason why sub-regions rather than necessarily the regions that the Conservative Government set up, some of which are much more easily identified than those rather amorphous and indiscriminate boundaries, should not have responsibility for health, for police services, for planning, for development, and some of those may indeed be relatively small sub-regions. We should look to international examples, and I know Dr Whitehead has looked at them in the past. In Canada, in the United States there are a number of states that have very considerable areas of responsibility which are much smaller in resources and population terms than some of our counties. Again I quote the case of Cornwall, which has a very considerable sense of self-identification and is now to have a unitary authority. There seems to be no reason whatsoever

why they should not have more devolved powers and more responsibility in the terms that the Prime Minister is now hinting at for raising a greater percentage of their income.

Professor Bogdanor: I accept that both the health and Police Services need to be made more accountable; that is something that we in England ought to look at. I am not sure I agree that this is best done at regional level, for the sort of reason that Mr Kawczynski gave earlier—that people in Shrewsbury do not feel much sense of identity with those in Birmingham. For many people in England the regions are simply ghosts, they do not exist, and, therefore, I think the solution would have to be to strengthen local authorities. But, as has been said, the consequence of that must be some sort of postcode lottery, because the greater the degree of decentralisation you have, the more it is the case that the benefits which people receive and the burdens they bear will depend on geography and not only on their needs. That is the price that has to be paid and the people and their elected representatives have to work out whether it is a price they want to pay. Decentralisation is not a costless good.

Chairman: I am afraid I am going to have to rather strict because there is one important question I want to get asked before we end this part of the session at 5.30. I am going to ask Mr Sharma to ask it.

Q137 Mr Sharma: It has been suggested that a lot of the negative feeling associated with the English Question could be addressed by reviewing the Barnett Formula and modernising arrangements for the distribution of public funds in the UK. What are your views on this?

Mr Clarke: Everybody agrees that the Barnett Formula should be reviewed. They have for the last 20 years. Lord Barnett himself would very much like to bury the formula. I am glad to say that this is a matter for George Osborne as far as my party is concerned. Nobody seems to have been able to come up with an acceptable alternative to the Barnett Formula. It will have to be addressed at some stage. At the moment it does play quite a disproportionate role, because it has few friends. Hardly anybody understands it. I think I do. I would have a go if had more time, I have had 18 years messing around with this stuff, and it is used as a source of resentment on both sides of the border. People have the most exaggerated sense of its impact. More and more English people do believe that their money is being used to pay for things in Scotland that they cannot get in England.

Q138 Chairman: Particularly in my constituency.

Mr Clarke: Particularly on the border, like yours and Mr Kawczynski's. But more and more Scots believe this is an unfair English attack upon them and is an English threat to start cutting back on what is spent in Scotland, and so I look forward to the genius who is going to be able to disentangle this and modernise the Barnett Formula. It has been used to fan resentments, but, I agree, this feeling of

unfairness about how the money is distributed is there, so I hope that either this government or an incoming one can put that to rest. If we can tackle the political problems I talked about earlier, it might take a bit of the sting out of Barnett, which tends actually to be the biggest single cause, I think, of resentment.

Q139 Chairman: Professor Bogdanor, are you he? Are you the genius who is going to resolve this problem?

Professor Bogdanor: No, certainly not. I think there is a lot of misunderstanding about the Barnett Formula. Many people do believe that Scotland has gained extra money as a result of devolution, which of course it has not. It is true that the Barnett Formula has, for reasons which were unforeseen at the time at the time, benefited Scotland, although I do not think that it has benefited Wales. I believe that Wales has done rather badly out of it. I think the basic problem of the system, as Kenneth Clarke has implied, is that it is very difficult to get an objective standard of need, of how much each area needs. It is very difficult to weigh up, for example, rural deprivation against inner city deprivation. I believe that is a problem with the distribution of grant to local authorities as well. Any revision of the Barnett Formula would have to confront that problem. There is also a political danger: it might appear as if we were trying to punish the Scots for having chosen devolution by cutting the amount of money they received, which I think would undermine the whole purpose of devolution. I think it is worth stressing that Scotland does not do better as a result of devolution and that any social benefits which the Scots receive, such as free University tuition, or free residential care for the elderly, have to be paid for somehow within the Scottish budget.

Mr Clarke: I agree with those last two sentences, in case anyone asks.

Q140 Chairman: Lord Tyler?

Lord Tyler: I think Professor Curtis in his evidence to the committee suggested this was not quite such a huge issue in the public mind as it is amongst the chattering classes. I think the Barnett Formula is likely to remain for some time yet because it is a very convenient place on which people hang all their problems of feeling aggrieved. Lord Barnett has quite rightly identified that, whatever else it has done, it has given a focus to people's feeling of grievance, which I suppose has a temporary value anyway, but it does not, of course, relate to need, and I entirely endorse what Professor Bogdanor says, but evaluating the actual requirements of different forms of need, which is attempted, of course, within England, rather ineffectually but it is attempted, is going to have to be extended to Scotland and Wales eventually, though I think it is not going to come very quickly.

Chairman: At that point, to the three witnesses, who could have talked to us for the rest of the evening, much to our enjoyment, thank you.

Witnesses: **Michael Knowles**, Campaign for an English Parliament, and **Peter Facey**, Unlock Democracy, gave evidence.

Q141 Chairman: Peter Facey and Michael Knowles, we are very grateful to you for coming. You have heard, of course, the previous witnesses, which helpfully gives you, as it were, a flying start in exploring the arguments. Michael Knowles has a particular point which has not been represented in the evidence from witnesses so far and Peter Facey's evidence may overlap into more with evidence that we have heard already. Just to start off, two distinct aspects to the English Question have been identified: England's place and status within the United Kingdom and whether there needs to be decentralisation within England. Do you agree and which of these is more significant?

Michael Knowles: Both are significant, Chairman, and both are equally the English question. I have never been on one of these things before so I will have to look at my notes. You do not mind?

Q142 Chairman: No, not at all.

Michael Knowles: And the one should not be set against the other. The English Question is most definitely about the role and status of England within the Union. I do not know how many of you MPs understand this. I am saying that, listening to the discussion. England constitutionally and politically does not exist but Scotland and Wales now politically and constitutionally exist, and that is a grievance, which was not mentioned by any of these three establishment speakers. There was no English Question before the 1998 devolution legislation. The legislation brought in the English Question, so, yes, we want England to have the same constitutional and political recognition as Wales and Scotland have. The two Welsh MPs here I am sure are pleased that their country has now got separate political recognition. We want the same. I hope you appreciate that, and that only the English Parliament can do that, just as only the Welsh Assembly has done it for you. At the same time we are democratic in another respect. We want decentralisation within England as well because we have this democratically grotesque situation in England now, that almost every detail of government is here in Westminster. That does not apply to Scotland and that does not apply to Wales, so that therefore is as big an English question as the one I have just mentioned. We want an English Parliament which is physically and directly separate. That is the first bit of decentralisation, the most important one, that we have an English Parliament which is elected separately and exists separately, whether it is in Manchester, Derby, Stoke.

Q143 Chairman: We are going to return to that particular question.

Michael Knowles: But you understand that it is both?

Q144 Chairman: Oh, yes. I want to give Peter Facey an opportunity to comment on this question but do not worry; we will return to the point you were making.

Peter Facey: There is an extra element which has not been mentioned. There are both the national question and the question of decentralisation. There is also a density question, which is about the confusion between Englishness and Britishness. The example I always give is that if you watch the English rugby team play Wales you listen to the Welsh anthem being sung. The anthem on the other side is *God Save the Queen*.

Michael Knowles: Yes, exactly.

Peter Facey: The peculiarity of singing the UK anthem at fellow citizens in a sporting event for me sums up some of the questions of the English cultural question. It is also when you hear the questions about being proud to be Welsh and proud to be Scottish. At the moment in the Britishness debate you are not hearing in England the same "proud to be English and proud to be British as well", and so I would say there are three elements and I think they are equally important: the centralisation of power in England, not just within the United Kingdom, the national question itself, but also this soft question, which may not be a question of legislation but for many people in England strikes a chord.

Mr Turner: I will not read the whole thing that Professor Bogdanor said, but he emphasised the role of electoral disparities, as the Union has always done. How would you respond to Professor Bogdanor's statement and what are your views on the potential risks involved in attempting to address the English Question?

Q145 Chairman: You may recall this was a statement he made, and we quoted it at him earlier, in which he said that the English do not need to beat the drum or blow the bugle and if they do they will strain the settlement because they are in such a strong position anyway.

Michael Knowles: But that was a very strange thing, I thought, for the Professor to say. I just thought to myself, "What does he know about the reality of politics in this country?". All the English MPs are not here to represent England and the British Welsh MPs are not here to represent Wales or represent England. You represent political parties. You do not unite across the national boundaries. You divide on political grounds. In England in addition we have never had an English party, different from Scotland and Wales. We have never had it. We do not look at it in that way. English politics are on economic lines. Scottish and Welsh politics are also, of course, but they are also on national lines. Our politics have always been on economic lines and so I just do not think he is in touch with the parliamentary system, besides which, of the so-called English MPs, 40 or 50 of them are not English anyway, so there is a lot of confusion in what he has to say. I just felt, listening to Professor Bogdanor and previously reading some of his stuff, that he is a kind of King Canute. He has not recognised the reality of what has happened since 1998, that the three countries have now been separated because of the legislation, and he is hankering after a past that is not going to return. We

have a Union now of three distinct countries. One, England, has got no political existence but the other two have and they have got home rule. That is the English Question. England has no political existence and England has no home rule. The other ones do.

Q146 Chairman: Peter Facey?

Peter Facey: Theoretically, Professor Bogdanor is right, that there are 528 English MPs and they can outvote MPs from other parts of the United Kingdom, including the fourth bit, Northern Ireland, but the reality is that this place splits on party lines, on policy lines. The example which was given in the earlier session was that if at the next election a government is returned with a majority based effectively on MPs from Scotland and Wales and, because of the present political make-up of the United Kingdom, this is going to be the Labour party, in those circumstances it will depend on MPs from Scotland voting through legislation in England. That, I think, is the fundamental difficulty with Professor Bogdanor's position, even though, yes, he is right: there are more English MPs than there are Scottish or Welsh MPs. The problem when it comes down to it is that, if there are more Conservative and Liberal Democrat English MPs than there are Labour MPs but Labour has a majority in Westminster, that is when it becomes a real political issue. On the question of risk, which was the second part of the question, yes, there are risks in dealing with the English Question (or questions) and we should not pretend that there are not, but the bigger risk for me personally is the group which says, "Do not ask the question", because I think we have now got to a point where doing nothing is probably worse than doing something, that if we simply stay where we are and we let circumstances develop and we get into that crisis point it is very difficult then to do something, so now, when the issue is not as burning, is the time to deal with it. If it becomes a constitutional crisis because you effectively have England being governed by a party which is perceived, by the media at least, or elements of the media, as being not English but foisting policies on from elsewhere, then it becomes very difficult in a core, logical way to deal with the issue, and therefore we need to deal with it now, even though there are risks.

Q147 Mr Turner: Is it necessary for the Members to be separate from Westminster here? Can Members here perform both functions or is it necessary, as I think Michael Knowles suggested, that they should be separate in performing that role?

Peter Facey: I am not in favour of an English Parliament. I think part of the solution has to be a Westminster part of the solution. I happen to think there is also a bigger part which is to do with the decentralisation of power within England, which we may come on to later, but I do not think you can say that there should not be a national element, and how that is done we can discuss but there needs to be a national element, not just another element. If you created an English Parliament separately from that my fear is that you would have decentralisation from

60 million to 50 million and, in the case of the decentralisation I want to see, you would not get to that bit. History has shown that once you are given power you spend time wrestling down more power and you do not tend to give it away, whereas if you look at Scotland, the Scottish Government (as I suppose they now call themselves so I will call them that) have not yet decentralised power to Scottish local government. In fact, you could argue with the questions around the council tax that they are actually taking power away, and therefore, as someone whose agenda is to decentralise power a lot further, for me the worry is that you create an English Parliament and I will spend 20 years trying to get power out of it, so I would rather have that power first before an English Parliament. That is my concern.

Chairman: Michael Knowles I think will have a good opportunity to deploy his argument against that in answering Alun Michael.

Q148 Alun Michael: Indeed, I think this question, in view of that, should be posed to Michael Knowles in the first instance. Given that we have got a London Assembly, given that more people in London identify with London than with England, and, given that considerable powers have been devolved to London, including police and transport, is it not clear that the English Question is a misnomer; it is the England-outside-London question, so why is the idea of an English Parliament the right answer to the question?

Michael Knowles: I sometimes wonder what people in North Wales might say about Cardiff.

Q149 Alun Michael: As a North Walean I can tell you if we can have extended time for me to explain it to you.

Michael Knowles: But, you see, there are a lot of statements you have made which you have not backed up with any particular evidence, for instance, they feel that they are Londoners more than English. You have not produced any statistics on that.

Q150 Chairman: Professor Bogdanor produced some evidence.

Michael Knowles: Facts, facts, facts. This is why, as I see it, there are too many questions and issues in what you ask in a sense, but this is what I want to put to you, that an England which is elected separately and physically separate is so important. Just consider if an English Parliament was in Derby or Stoke or Manchester or Leeds or wherever and you were not just concentrating on London and the north east of England. If that happened you would witness in this country the biggest and most radical transfer of economic power, cultural power, employment development and media development out of London and the south east into the rest of England. If the British Parliament were just here and the English Parliament was in another part of England the transfer of power, the decentralisation of power, would be radical and would be second to none. That is the point I would like to make to you.

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Q151 Alun Michael: Sorry, are you saying that if we had an Assembly for London that would be a Parliament for England without London?

Michael Knowles: No. London is the capital of England at present. London feeds on the rest of England. London does not have devolution by any stretch of the imagination. It has not got legislative powers. It is just another form of local government, just the same way as the Assembly for the north east, which Prescott and Co wanted to impose, had no legislative powers. In fact, Professor Bogdanor made that point: it would be impossible to run any state with nine different legislative assemblies with the powers of the English Parliament. No; let us just get it straight: London has not got devolution; it has got another form of local government. As people have said to me time and time again, when they voted for a London Mayor they thought that was all they were doing, voting for a London Mayor, a new form of local government in London.

Q152 Alun Michael: Can I ask both of you, in the event of the creation of an English Parliament what would you see as the role of the House of Lords?

Peter Facey: The problem is you are putting to me something which I do not advocate. I think having a unitary English Parliament within the bicameral system would be difficult. I would like to come back to your point about London though. The reality is that London is a mess in the sense that the legislation talks about the Government but all the infrastructure of the GLA and the Mayor are regional. It has an electoral system which is unlike any other electoral system in English government. It has councillors, the GLA members, who have five times the constituents of Members of this House. I accept it is a very weak form of regional government. I call London “the region that got away”. We had two regional referendums. London voted yes, the north east voted no. The people of London have said that they want a form of city government, and the City is larger than a lot of Member States in the European Union, and it should be given more powers, and one of the things which the Government could do is come back to the governance of London and, in terms of the powers that the Home Secretary has over policing and education, transfer those to the Mayor. It is not about breaking England up but about giving London self-government over the things which concern Londoners. I have lived in London; I now live outside, and the concerns in London are very different from the concerns where I live in Cambridgeshire. It should be given that power and it has already voted for it so why not, in the same way that the Welsh Assembly is now going through a debate about future powers, have the same process in London and then have a referendum in London later to say whether that settlement is acceptable to Londoners? The idea that because London voted yes and the north east voted no London has to stop I do not think is appropriate. In terms of the role of the House of Lords, I think that is a question for those people who advocate an

English Parliament, not for somebody like me who thinks that your powers should be decentralised first.

Q153 Chairman: Michael Knowles, what do you think?

Michael Knowles: There is, of course, misrepresentation here. When Peter mentions that there were two votes, one in the north east and one in London, the one in the north east was definitely formally for a regional assembly, but at the time the one in London happened there was no talk of a regional assembly. It was just for another form of local government, for the Mayor. There was no discussion of it being a region. On the issue of the House of Lords, the House of Lords—

Peter Facey: Your organisation has campaigned for it.

Q154 Chairman: I would like to hear what Michael Knowles thinks about the House of Lords issue because it is quite important to judging the English Parliament issue.

Michael Knowles: The House of Lords is a very ancient English institution, is it not, and I think what it represents should be retained whether it is an English Parliament or we still have it with the British Parliament. The Scottish and the Welsh do not have it. There has to be a check upon legislation. There has to be that longstop. That principle should exist. It is an English principle; at least, it is not a Scottish one because the new Scottish system of government, which was brought in really through the thinking of the Scottish Constitutional Assembly, does not have it. The second chamber, whichever way we do it, should be retained because you need that longstop.

Q155 Chairman: But it is currently a United Kingdom body. It does not have any power over the legislation in the Scottish Parliament, but on your proposal it would have.

Michael Knowles: No, we have not given any thought, quite frankly, to that. It is no good making it up. We have given no thought whatsoever to the relationship of the House of Lords to the Scottish Parliament. That I thought would be something for the Scots to make up their own minds about. We are concerned about what happens in England, that England is recognised both politically and constitutionally and has the same status within the Union as Scotland and Wales.

Q156 Chairman: Just to get this clear, on matters that concern England alone is your proposal that the House of Lords would retain a role like the role it has now, in which case England would be different from Scotland, or would it confine itself to United Kingdom matters and not deal with any of the English Parliament legislation?

Michael Knowles: It is proceeding along the road in which there might just be a very strong argument for a separate set-up. This Committee should give consideration to setting up an English constitutional convention in which these matters should be worked out. They are very complicated. We are just thinking

of what should be with an English Parliament and we are saying that with an English Parliament on the English principle, the historic principle, that there should be a second chamber. How that would impact upon Wales and Scotland with the present House of Lords, which is a British institution, I think is beyond our brief but it is not beyond the brief of the British Parliament, so you should give consideration, if anything comes out of this meeting, to setting up an English constitutional convention or a British constitutional convention because you rushed—and when I say “you” there were some members on the other side—that 1998 devolution legislation through, in my opinion. The West Lothian question would never have arisen if you had given it sufficient thought. You never gave any thought to the impact upon England. That is the point I tried to make in my submission to you, which I presume everybody read very carefully. No thought was given to that and so you get Lord Irvine and others, and Lord Falconer saying only two weeks ago in the House of Commons in a *Hansard* meeting, that the best thing to do with the West Lothian question—he repeated what Lord Irvine said—was just to ignore it and it cannot be ignored. As I said, the resentment is building up. It is there.

Peter Facey: I think if you had an English Parliament the House of Lords or the second chamber would effectively become a UK second chamber. I do not see how you could have the House of Lords functioning as the second chamber for a devolved parliament at the same time as functioning as the second chamber for the United Kingdom as a whole. If you devolve power I do not think you could have a body in this place having two functions.

Q157 Alun Michael: It is an interesting issue, which is the question of scrutiny, because the House of Lords provides that element of scrutiny in the legislation. I think with the unicameral Assembly of Wales we are now with the legislative powers actually seeing some issues of scrutiny coming to the fore, which the Welsh Affairs Select Committee members are wrestling with, so it is an issue that needs to be addressed.

Peter Facey: It is why in lots of cases which have devolved assemblies they have two chambers, such as in the United States lots of states have two chambers. I think there is a strong argument for having a second chamber elsewhere for scrutiny. I do not think you could use the same chamber for the UK and for England or for Wales or for Scotland or for Northern Ireland.

Q158 Chairman: Or for England alone.

Peter Facey: Or for England alone. If you devolved power to an English Parliament, which is not what we are arguing, you could do it as a bicameral model or you could do it as a single model, but there would be a new bicameral chamber, not the existing one.

Q159 Julie Morgan: Michael Knowles, some critics have argued that the creation of an English Parliament would be the fatal blow to the “United Kingdom”. What is your view on that?

Michael Knowles: Who is arguing that, did you say?

Q160 Julie Morgan: I think quite a lot of people.

Michael Knowles: Oh, I am sorry. I thought you said I was arguing that.

Q161 Julie Morgan: No, not you. Others have said it would be a fatal blow. I thought this was something you could be asked for your view on.

Michael Knowles: I think quite the opposite, actually. I think an English Parliament would be the salvation of the Union if you want to stop this resentment which is building up, and there is resentment. I do not know to what extent the ordinary MP speaks for the ordinary person in a conversational way.

Q162 Chairman: We are normal people, you know.

Michael Knowles: You might do. I have met a lot of MPs in my time but what I mean to say is that when you hear the person sitting opposite you on a train coming down here the day before yesterday saying, “The first thing I would do is get rid of that Scottish Prime Minister. Boot him back to Scotland, that Scottish Prime Minister, and boot that Scottish Chancellor of the Exchequer and we will look after our own affairs”. That is building up. That is being said because of what is going on with prescription charges and all the rest of it. I think I will read this; it is very short: “It will indeed be the establishment of an English Parliament, its powers constitutionally restricted to domestic English matters, which will reduce even further the possibility of any English dominance within the Union. England will not be able to interfere in the internal affairs of Scotland and Wales. Their internal affairs will be constitutionally reserved solely to the jurisdiction of their own Parliament without fear of interference, not just by the English but by the Union Parliament itself.” That outcome will be a very balanced, stable and harmonious union if the people of Wales after all these centuries know that the people of England cannot interfere in their internal affairs, if the people of Scotland after all these centuries know that the people of England cannot interfere in their internal affairs, and if we know that the people of Scotland, as we have experienced with the West Lothian question, cannot interfere in ours. At the same time we are always in one Union because we are just one little country. We are only a little island and we are joined at the hip, but if we have that recognition of our separate nationality but we are all British, and we know there are restrictions on what each can do, the relationship is exactly the same to each other and to the Union, I think we are looking at a balanced, stable and harmonious Union.

Q163 Julie Morgan: There are not very high profile politicians coming out in support of an English Parliament. Why do you think that is?

Michael Knowles: They are not doing it?

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Q164 Julie Morgan: No, not that I know of.

Michael Knowles: In many ways, to be quite frank, as we say within ourselves, you are on a good thing here. It would be like turkeys voting for Christmas. You could get away with a Scottish Parliament for the most part easily because it is only 16% of the population. If you have an English Parliament you are talking about 80% of the population. That would be a most radical change. People do not want more MPs. They do not want more money spent on Members of Parliament. In fact, they would have much less if they could get away with it. What there will have to be is a much reduced British Parliament restricted to reserved matters and no more MPs dealing with English matters than are at present in the House of Commons. That is a very radical change but it has got to come about because if you do not do something like that we, the English, are not going to put up with this for ever, you know. We are not going to put up with the prescription charges when a person in his constituency a yard on the other side of the boundary can have free prescriptions, or if we have a situation where a Scottish student can come to an English university and does not have to pay the fees and an English student goes up to Scotland, to Aberdeen, and has to pay the fees. We are not going to put up with that for much longer and we should not have to put up with it. If you MPs here were to get up in your constituencies and say to your English constituents, "This is the situation we are in", there would be anger. It is just because you are sitting on it and repressing it that they say, as we have heard here,—

Chairman: I do not think we have seen much repression this afternoon.

Daniel Kawczynski: On this point of politicians, you say you do not want any more politicians. I certainly do not want any more politicians. In fact, over the last three years I have said to my constituents, any group that I have gone to see I have said to them—

Chairman: Can we have a brief question please?

Q165 Daniel Kawczynski: Would it not be better to have an English Grand Committee here for English MPs to vote on only English matters, because by creating an English Parliament you are setting up another layer of politicians and already your average constituent is dealing with a huge number of different politicians on a daily basis?

Michael Knowles: An English Grand Committee was brilliantly described by all three people you had before. It is chaos, it is silly, you would make a mockery of Parliament, no two ways about it. The only good thing about English votes on English matters and an English Grand Committee is that it is the first recognition that has been arrived at inside this Parliament that this is an English Question. They are addressing the fact that England is different. It is the first step, you might say, towards recognition of the problem. It is the wrong solution but at least they are addressing the question. On the other one I have just answered, if there is a British Parliament and a Scottish Parliament and a Welsh Parliament they must not have collectively any more MPs than we have at present. That we would have to

be very ruthless about because people do not want any more. Look at the situation. The only reason the Scottish Parliament and the Welsh Assembly were set up, if you gave it any thought in 1998, was that the Scottish Members of Parliament have had their responsibilities reduced by about 50–70%. They were transferred to the Members of the Scottish Parliament. If their salaries had been reduced accordingly they would never have got that through Parliament. What did they do? They created another 129 Members of Parliament for Scotland and they kept the Scottish Members on full salary. You would never get away with that in England.

Q166 Chairman: Peter Facey on this point?

Peter Facey: On the question of?

Q167 Chairman: The Grand Committee.

Peter Facey: I think we need to recognise that there would need to be something done at Westminster. On the face of it English votes for English matters is appealing. I think it is very difficult to do in practice. Certainly an English Grand Committee, in the same way there used to be a Welsh Grand Committee and a Scottish Grand Committee, would at least be a first step as a way of recognising England's place in the Union. I have never advocated that the north east or London are the same as Scotland because there is a difference between English regions and the other parts of the United Kingdom in the sense that the north east is not a nation; Wales is a nation, and therefore treating them exactly the same way you get this idea that there is a plot to destroy England. I do not think there is a plot to destroy England. I simply would not be involved in any plot to destroy England and I am proud to call myself an Englishman, but I think having a parliamentary vehicle which deals with English concerns is a sensible way forward. I would hope that most of the powers for the things that we deal with would be decentralised further than that and not sit there because my problem fundamentally is that if you simply replaced the two, having the powers of this place transferred to an English Parliament does not deal with the concerns of your constituents or where I live; it simply replaces them with another centralised body. Even if England became independent and the rest of the Union ended I would still be sitting here calling for decentralisation of power because from the point of view of England where I live I do not want power centralised; I want power driven down.

Q168 David Howarth: I just want to follow up what Michael Knowles said about prescription charges. One of the problems for me in what he is saying is this. How, Michael Knowles, can you be sure that if there were an English Parliament it would have a different policy on prescription charges from the present one? Surely the change of policy on things like prescription charges in Wales came about because a different electoral system in Wales led to a different composition of government, whereas if the

English Parliament were to be elected on a first-past-the-post basis, it would be likely to have a different policy on that issue from the one that we have now.

Michael Knowles: I used the issue of prescription charges and tuition fees as an example of the difference, but if we have an English Parliament it is up to the English MPs in that Parliament to make their own decisions. They might decide, given it is 80 million people, that it cannot afford it.

Q169 Chairman: They might decide something else was a higher priority. The difference is endemic in either system, is it not?

Michael Knowles: There might be just different priorities, as you say, but at present the situation is that the evidence is building up the other way. It is cancer drugs and all the rest of it. Everything that is happening now is building up in the opposite direction and England has got no voice. That is the thing—England has got no voice. None of you sits in this Parliament representing England. If we have an English Parliament, like the Scots have a Scottish Parliament, they represent their country. Look at the legislation. The words are, “This Assembly will be the forum for the concerns of the Welsh nation”. Nobody objected to that notion. We found that was quite okay for Wales. Why can the English not have, “This Assembly”, or “This Parliament”, or whatever you want to call it, “will be the forum for discussion of the concerns of the English nation”?

Q170 Dr Whitehead: Peter Facey, in your evidence you suggested that devolution in England should take the role of directly elected regional government but not necessarily on the existing regional boundaries. Do you think that sort of radical devolution, and you have suggested in several of your responses this afternoon that that is the way you are looking at the English Question, would in itself be a solution to the English Question or not?

Peter Facey: It is part of a solution. I think you cannot address the governance of England without dealing with decentralisation. We have to find a way to bring governance closer to people to give people more control over the services they have and a way of dealing with the fact that in the parts of England I have lived in in my lifetime, whether it be Devon, Stoke-on-Trent, London or Cambridge, their concerns are very different. The concerns of Stoke-on-Trent are very different from the concerns in my village in Cambridgeshire. To have a situation where everything runs from a central point, whether that be an English Parliament or a UK Parliament, I think is part of the fundamental problem, and therefore finding a way forward on devolution which fits within the nature of England is essential. I think one of the problems with the route we have gone down for decentralisation is that we have created government regions where even the one I used to live in in the south west has no recognition on the ground. Devon does not necessarily feel in the same region as the northern parts around Bristol. We also get this idea that you have to break England up into large units which can be given the same powers as Scotland and Wales. Kent has 1.3 million people.

That is 300,000 people less than Northern Ireland, but Northern Ireland already is regarded as big enough to have those powers. Kent has more people in it than 10 US states and those states, the smallest one being Wyoming, have more powers than the Scottish Parliament, so the idea in terms of decentralisation is that we have to somehow create these large units. I am not against it if the people in the north east want to have it on a regional basis but we must find a way forward which is flexible enough to allow those units to be choosing, whether those are government regions, collections of existing local government units or in some cases individual councils at the moment. Where you live, the county of Hampshire, again is a very similar size to Northern Ireland and if you include in it the unitary authorities it is larger than Northern Ireland, so we need to start thinking about some of our counties and local units as the vehicles for devolution and then look at bringing government below that down as well, not simply to have the idea that to do devolution in England we have to always create new units. Where that is appropriate, yes, but we also have to say that where there is demand that can be to existing units.

Q171 Dr Whitehead: Except you might say, of course, that the English county system was designed by the Plantagenets—

Peter Facey: Or King Alfred or whoever.

Q172 Dr Whitehead:— and does not necessarily in itself reflect what people think of this regionalism, for example, in the question of South Hampshire/ North Hampshire. The purport of the question would be that if you had regional devolution in the way that you have described, as you said in your submission, there is nothing that you could see an English Parliament do that could not be done by that sort of radical devolution?

Peter Facey: Yes, unless you are talking about separation of the Union.

Q173 Dr Whitehead: And if you then decided that that devolution would not be based on the existing government regions, and I agree there would be a difference in identity between Lands End and Tewkesbury and Bournemouth and the south west, for example, how would those regions then emerge? Would it be by affirmation? What would happen if you got left out of all the regions? Would you be a bit upset about that?

Peter Facey: What we are toying with the idea of is having an English devolution enabling act, which says, “These are the powers which have already been devolved elsewhere in the United Kingdom”, and if powers are then devolved later it could be added to it, where they could be called down. They could either be asked for by existing local authorities, and if they met certain criteria they could be given to them, subject to a referendum endorsing it, or central government could say, “We would like you to have this, subject to a referendum”, or, the third option, the people themselves could call for those powers. We have

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already had a situation in Cornwall where, at the time when there were attempts to have a south west regional government you actually had 50,000 people, approximately 10% of the Cornish population, sign a petition for a Cornish regional assembly. If they had been calling for a Cornish mayor they could have had it because it was more than the 5% threshold for a Cornish mayor, but because it was for a Cornish regional assembly they could not have it. If we changed that and used that mechanism and said, “The powers are there for you if you want them, and if you want them you call for them”, then we can answer that question. One of the problems is that the Scots and the Welsh have something which we do not or cannot have. If Michael is correct and he can get 5% of the English population to sign a petition demanding a referendum for an English Parliament, I am not opposed to having a referendum on the English Parliament. I happen to think though that if other places call for the power to be below that, in the principle of subsidiarity, they should not be able to take it back without the express approval of the people of Stoke-on-Trent or London or wherever. It would be a flexible approach to devolution which deals with the history of our country of England in terms of its different respects but also gets away from this victimhood idea and says, “The powers are there for you. They come with responsibilities. If you take on these powers there are consequences, but they are there for you if you want them”, and if the people of Hampshire or the county council decide that they want them and they can win a

referendum, all good to them. The same would apply to London, *et cetera*. I accept there may be places left over.

Q174 Dr Whitehead: Which is what has happened in California.

Peter Facey: The option would have to be that they could either join in with another area if they want to or they would continue with being governed by the United Kingdom Parliament. It is a messy way of doing devolution but I happen to think it goes with the grain of the governance of England.

Q175 Chairman: Michael Knowles is under time constraints, and so are we. Do you have another couple of minutes? We do not want to make you miss your train. I will shorten it by asking a question which Mr Sharma would otherwise have asked. Have you got anything special you want to say on the Barnett Formula?

Peter Facey: I think it needs to be addressed but I do not think it is a solution in itself.

Michael Knowles: I think it should just be scrapped. I think there is no other way round it than to scrap it and treat every person in the United Kingdom equally. That is what I think. It was brought in to enable, as I understand it, under Wilson, some very wily Glaswegian MPs who wanted to hold—right; I will leave it. I think it should be scrapped.

Chairman: We must let Michael Knowles catch his train and my colleagues who have further supplementaries will have to be disappointed on this occasion. Thank you to both of you very much for your clear exposition of your views.

Tuesday 26 February 2008

Members present

Mr Alan Beith, in the Chair

Mrs Siân C James
Alun Michael

Julie Morgan
Mr Andrew Turner

Witnesses: **Alex Fergusson**, Member of the Scottish Parliament, Presiding Officer, and **Ken Hughes**, Acting Director of Clerking and Reporting, Scottish Parliament, gave evidence.

Q176 Chairman: This is a sitting of the Justice Committee of the House of Commons, at which we are very pleased to be able to welcome the Presiding Officer of the Scottish Parliament, Alex Fergusson MSP, and the Acting Director of Clerking and Reporting, Mr Ken Hughes, who are going to assist us with our inquiries into devolution 10 years on. The emphasis of our inquiries is on how the system works as a whole rather than in the individual countries in which devolved powers exist, and questions around England, where obviously devolved powers do not exist except to a limited extent in London. I thought we might just start by looking at what might appear a relatively technical question but I think is quite an important one, which is around the Sewel Convention and the way in which the Scottish Parliament deals with legislation where it chooses to follow Westminster, or allow Westminster legislation to have an impact in Scotland within a devolved area. Has there been any change either in the attitude to the Sewel procedures or, indeed, in the way they have been operating since the beginning of devolution?

Alex Fergusson: Firstly, thank you for your welcome, it is a great pleasure to be here, if I could say so, and welcome to Edinburgh. On questions of attitude to Sewel, the whole process of Sewel motions, I would have to say that the attitude to them is probably rather coloured by the political climate within a parliament at the time and, therefore, I would not be very happy commenting on that because that is not for me to do. The one thing I could possibly say is that since the last election evidence would suggest that the number of Sewel motions or Legislative Consent Motions, whatever you want to call them, that are being dealt with look to be roughly the same as was previously the case but, other than that, I do not think I would want to comment on the actual attitudes taken to them. There has been no huge desire or nobody has greatly come up with a demand that the whole thing should be revisited, so I leave that perhaps for you to ask later witnesses.

Q177 Chairman: Mr Hughes, did you want to add anything?

Ken Hughes: In terms of how procedures have developed, prior to 2005 the Parliament actually did not have any explicit or specific LCM or Sewel procedure and the Procedures Committee of the second session of the Parliament decided that they wanted to codify in some way the process as it

applied to the Scottish Parliament. It launched quite a major inquiry that looked into the procedures and what we ended up with was the Parliament agreeing to a new set of Standing Orders applied to the process of Scottish parliamentary scrutiny of Legislative Consent Motions. That did a number of things. The Committee introduced rules in relation to the expectations of the timescales of when LCMs would be introduced to the Parliament, and they future-proofed it in a certain way in terms of looking forward to a situation whereby governments would be different north and south of the border and put in procedures that would cope with that eventuality as well. We have ended up with procedures now that we did not have formerly and they still seem to be working well.

Q178 Chairman: One thing I do not quite understand about the procedures is whose job is it to be certain that a piece of Westminster legislation requires a Sewel motion, and can a situation arise in which the Scottish Parliament either thinks that it should have been a Sewel motion matter or discovers later to its cost that it should have been treated in that way but is actually now on the statute book?

Ken Hughes: That side of the process is almost purely intergovernmental. It is up to the governments north and south of the border to agree what provisions in UK bills could be affecting devolved matters. It is the relationship between the two governments that decides whether the Scottish Government then comes to the Scottish Parliament to ask for consent or provisions to be included in a UK bill. One can probably never rule out the possibility of something hitting the statute where it has just fallen through the net but, without wishing to pass the buck, in the first instance that would be a matter for the governments.

Q179 Chairman: Which government?

Ken Hughes: Both. Again, post-2005 what we have tried to do is have an early warning system in as much as when the Queen's Speech is made I believe there is contact at that point between the two governments and the Scottish Government comes to the Parliament to say, "Here is a list of bills in the Queen's Speech. Here are the bills that we would expect an LCM or Sewel procedure to apply to".

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Q180 Alun Michael: Forgive me. I can understand that at a political level, and it is obvious that at both ends of the equation people will be looking to see what is the trigger, but at the end of the day, for instance it might be that it is a small part of a piece of legislation that has that requirement which is not obvious at the level of the Queen's Speech or even the Queen's Speech debate, so who is responsible for looking out for that at the Westminster end? Is it the parliamentary draftsman, is it parliamentary counsel that is meant to look out for that? At the Scottish Parliament end is there somebody who keeps an eye on legislation that is bubbling up in the House of Commons or the House of Lords in order to trigger off a dialogue?

Ken Hughes: Again, I cannot speak for how that works in reality because that is a matter for Whitehall departments and the Scottish Executive officials up here, that is where the role lies. Having said that, I have had previous experience of working in the Civil Service and in theory I do not think the issue has changed much pre and post-devolution because even if UK bills were being drafted in Westminster previously they would have had to come to the Scottish Office and Welsh Office, for example, to say, "Look, there are provisions in here that are going to affect your jurisdiction". I would have thought the first contact was in the drafting of legislation and I would have thought it would be official to official, but at what level and exactly who the officials are I cannot say.

Q181 Chairman: There is a very interesting case coming up, which is the provision in the Counter-Terrorism Bill which would allow cases to be transferred from Scotland to England for trial. Have you established so far whether that requires a Sewel motion or, indeed, whether a Sewel motion would be sufficient to allow such a provision to be passed? Who makes that assessment?

Alex Fergusson: Good question, but I want to think about it while Ken answers it.

Ken Hughes: To the best of my knowledge we do not know officially about that one yet. The other thing I would probably throw in the pot is when things may well contain controversial provisions there may be interested members in all parties of the Parliament keeping a watching eye on those things. There is absolutely nothing to stop them and probably good reason for some to take such an interest. That is another way of saying there is maybe less likelihood of things slipping through the net.

Alex Fergusson: Can I come in on that, Chairman. I think it might be worth pointing out that part of the new rules since 2005 allows any member of the Parliament to lodge a Sewel motion or Legislative Consent Motion. There are several beady-eyed Members of Parliament who would not want anything to slip through, or their attention might be drawn to it from other quarters. There are procedures in place since 2005 to try to ensure that does not happen.

Q182 Chairman: Is that something which re-engages in the Scottish Parliament, not like, say, an Early Day Motion in the Westminster Parliament which simply sits on the Order Paper? If I were a member and I felt there was a Sewel motion justified, can I secure debate on such a motion?

Alex Fergusson: The Parliament cannot refuse a motion that has been tabled on a Legislative Consent Motion, it has to hear it and, therefore, it has to go through the processes, which does allow parliamentary input and debate on that motion. It cannot be refused.

Q183 Mr Turner: Are the procedural processes at both the UK and Scottish Parliaments the most effective and appropriate means of passing legislation for Scotland in both devolved and reserved matters?

Ken Hughes: Can I just clarify that by asking whether you are referring to legislation in general or Sewel motions?

Q184 Mr Turner: General.

Alex Fergusson: General legislation. Obviously I could not possibly speak for Westminster procedures and practices. Would it be helpful if I just very briefly took the Committee through what our legislative processes are? It is probably of particular interest as we are, obviously, a unicameral chamber and, therefore, the question of scrutiny is important. Any legislation that comes to the Parliament will begin at the Parliamentary Bureau, each party that has five members or more is entitled to a place on the Parliamentary Bureau. The Bureau meets once a week to determine the business of Parliament, and that is how we order our business. The Bill will come before the Bureau, which will allocate it to a relevant subject committee. That committee will then investigate the Bill that has been put up to it and draw up a report which will then be debated within the full Parliament at the stage one of debate, which is on the general principles of the Bill, no amending will have taken place at that stage. Assuming that the Bill passes it will go back to the same committee for stage two scrutiny, and this involves line-by-line scrutiny with amendments according to how much people feel it needs to be amended. It can be an exhaustive process. It will then come back to the Parliament at stage three, as amended, allowing a further process of amendment, followed as part of the same stage three process by a debate on the motion that the bill be passed. That is the process that we undertake with any legislation. It has had very little tinkering around the edges, mostly in terms of timetabling and as Presiding Officer I now have the right to extend stage three debate if more time is required. Very small timetabling tinkering, if you like, has been done around the edges, which would indicate, given that we have handled quite a number of bills now, that there is nothing to suggest this is not a perfectly efficient and sensible process within the context of this Parliament.

Q185 Mr Turner: That deals with (c), which was further down, but could you just help me a little on exhaustive examination by this committee. Is it genuinely exhaustive or does there come a point where it goes back to the House?

Alex Fergusson: I think it is exhaustive. Having been a convener of a committee in the first Parliament which was dealing with a lot of contentious legislation at the time, it is certainly exhaustive in terms of wringing everything out of every relevant witness that can be wrung, if I can put it that way. The process of taking evidence at stage one and considering amendments at stage two is exhaustive, yes. Certainly it was in some of the legislation I was handling where we amended the original proposals quite considerably and considerable amendments then came back in at stage three from those that did not agree with the amendments that had been made at committee, so the whole Parliament then got the opportunity to debate not just the amendments that the Committee had made but also the counterproposals from other people who had chosen to make those amendments. I think by the time you have got to the end of stage three and you actually enter the debate process, the final part of the legislation, you have had a pretty exhaustive process.

Q186 Mr Turner: You have had an exhaustive process rather akin to the UK Government up until, say, 2000 and 2001 or 2002?

Alex Fergusson: I guess that would be right, yes.

Chairman: I think it is a better process, but that is a matter of opinion.

Q187 Julie Morgan: I just wondered if I could ask, you started off by saying you were a unicameral body. Do you think there is any case for a second chamber?

Alex Fergusson: There are always cases for all sides of any argument.

Q188 Julie Morgan: Do you think the scrutiny could be improved?

Alex Fergusson: To be honest, we are heading into devolution settlement territory here which is not for me to answer.

Q189 Mr Turner: What you have said in your responses so far is you feel that the scrutiny is adequate?

Alex Fergusson: I have no reason to suggest, and nobody else involved in the Scottish parliamentary process has suggested, that it is not.

Q190 Alun Michael: In describing the scrutiny process there are different elements, and you have referred to them in passing. Do you think the balance is right between, for instance, evidence taking, which is clearly part of stage one, did I get that right?

Alex Fergusson: Stage one and stage two to a lesser degree.

Q191 Alun Michael: So at one, and to some extent two, you take evidence from witnesses who will be outside and then you will have line-by-line scrutiny in the committee stage and in the second stage when it is recommitted to the committee, is that right?

Alex Fergusson: You have line-by-line scrutiny in stage two once it has gone back to committee having agreed the general principles. Most of the evidence taking will take part in stage one. The Committee may choose to hear again from either the same witnesses or others at stage two, they are perfectly entitled to do so, in order to allow the exhaustive process that you were referring to to be fully exhaustive.

Q192 Alun Michael: Are you finding that any conventions or rules have built up in terms of what sort of amendments can be brought at different stages or is it open season?

Alex Fergusson: I think it was effectively open season in some of the more contentious legislation that we had, particularly in the first Parliament when we were talking about things like what became known as the Hunting Bill, although it was officially known as the Protection of Wild Mammals Bill, and some of the land reform legislation. Forgive me, that is the stuff I know best because that was the committee I was chairing at the time. It was in the very early days of the Parliament. We needed an enormous amount of time to deal with everything that we had to deal with in those two bills in particular. We had that time, although the committee always felt under some pressure. We are now living in the days where perhaps one of the effects of the last election and the change of governing party—it is not the effect of that but the fact we have a minority government now—is we have probably a bit less legislation to deal with. The upside of that is it allows much more time for scrutiny by committee. I am not saying that the previous committees were unable to scrutinise properly, that would not be true to say at all, but there were some bills, certainly in the early days when we were passing a great deal of legislation, where there were time pressures felt, if I can put it that way. I do not think anybody has suggested anything other than the possibility of perhaps extending the length of time at stage three which can sometimes come under a little time pressure, but which we have now tinkered with to allow that time to be extended. I think most members would feel the process is adequate certainly to deal with the legislation we now have and are likely to have in front of us.

Q193 Alun Michael: There are two other splits which any legislature has, one is the split between legislation and non-legislative debate, scrutiny of performance and delivery and so on, and the other is the split between plenary and committee activity, with obviously committee activity tending to be more detailed. In those quartiles of activity, if you like, where do you feel that it is settled and is it the right balance? Partly the question is because

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legislatures and governments have a tendency to legislate as the answer to anything, and it is not the answer to everything.

Alex Fergusson: I think the balance is probably about right. Our Committees meet on Tuesdays and Wednesday mornings and the full Parliament meets Wednesday afternoons and Thursdays, that is the three day parliamentary week that we undertake. To be honest, whether we have got the balance right or not depends on the amount of legislation that is being considered, I think it is almost as simple as that, because the more legislation, the harder the pressure on the committees. I do remember at the end of the land reform legislation my Committee as it then was, the Rural Development Committee, were having to meet three days and nights a week on top of all our normal programmes for about the last couple of weeks in order to meet the tight legislative timetable that we had in front of us, but that was an extraordinarily complex and controversial piece of legislation so nobody objected to that but, I have to say, as convener at the time I felt under some pressure just to make sure that we were getting this absolutely right.

Q194 Alun Michael: It is often the case, is it not, that if something is in the news, the non-legislative debates or pressures on a particular subject area will be very often at the same time as legislative pressures?

Alex Fergusson: Yes, that is probably absolutely right. What I would say though, just going back to my previous answer, is that I think we have learned a lot of lessons from those days. These were the early days of this Parliament and there was an understandable desire to process a lot of legislation in the very early days. We have learned a lot of those lessons, timetabling is now much more sensible and, although there will always be a lead committee on any piece of legislation, that committee can spread some of the scrutiny load out to other committees to bring forward their own reports, so that allows for a much more wide-ranging and time efficient use of committee time. As I say, I think we have learned the lessons on a sort of rolling basis that the early pressures put on us until we now have what I think most Members would consider to be a fairly satisfactory process.

Q195 Mrs James: You mentioned earlier when you answered the questions on the Sewel Convention about some aspects of inter-parliamentary relationships. What formal and informal mechanisms do you have to create that relationship, not only with Westminster but with Belfast and Cardiff as well?

Ken Hughes: If I deal with the official level and the Presiding Officer can do the political level. At official level there are annual gatherings at least, in fact more than one annual gathering, of clerks of the various parliaments and assemblies, which is a useful way to keep up contacts. Specific clerks do have contacts. The Justice Committee clerks will no doubt know your Justice Committee clerks to some extent. There are bilateral relations that go on. In

terms of the Sewel Convention, I had contact very early on in the first session of the Parliament with one Mr Frank Cranmer. It was between us in the first instance and we wrote up an understanding whereby each of us would keep ourselves informed of Sewel motions going through the UK Parliament at the time. When the Scottish Parliament formalised things in 2005, that extended to a formal exchange of letters between the Clerk of the Scottish Parliament and the Clerk of the House of Commons confirming that the Scottish Parliament had indeed just passed a Legislative Consent Motion. That does not detract from the official intergovernmental communications, but we thought it would do no harm to set up a parliamentary process to that as well.

Q196 Chairman: Could I just clarify that. Did that fully satisfy the Scottish Affairs Committee's recommendation about there needing to be a formal process from the Clerk to the Assembly to Westminster and *vice versa*?

Ken Hughes: I think it satisfied that. What I think is still an outstanding issue, and I do not know because, again, that is for Westminster, is the suggestion of tagging bills at Westminster once they had received consent, and I do not know if that happens or not.

Q197 Mrs James: What about Belfast and Cardiff? You talked about the relationship with Westminster, do you have formal relationships with Belfast and Cardiff?

Ken Hughes: Yes, exactly on the same lines as I explained. When these gatherings take place Belfast and Cardiff will be there as well and, again, there are direct links between appropriate clerks of the committees, *et cetera*.

Alex Fergusson: The Committee might also be interested to know there are a number of staff exchanges, particularly between the devolved parliaments and assemblies, which obviously strengthens all of these links, and I believe we are about to start doing staff exchanges with Westminster staff as well, which I would encourage from my own perspective. From the parliamentary point of view, we have a number of linkages. Probably the strongest with Westminster is through the BIIPB, the British-Irish Inter-parliamentary Body. We have the Commonwealth Parliamentary Association, and our branch in Scotland is very strong, and we have strong links with other devolved assemblies through that. From my own personal viewpoint as Presiding Officer, or Speaker, my counterparts in Wales and Ireland have agreed that we should meet two or maybe three times a year just to discuss items of mutual interest and plot how we can make life difficult for our members! I was very pleased to meet with the Speaker of the House of Commons and, indeed, with the Lords' Speaker. I was pleased to meet both at Westminster and to have welcomed them to the Scottish Parliament. There are a number of annual links and I have heard nothing to suggest that our relationships are not perfectly healthy, as you would expect them to be.

Q198 Mrs James: So maybe the next stage would be to formalise them in some way. At the moment you think what you are doing is enough?

Alex Fergusson: I do not see a great need to formalise them at the moment. Certainly from my fellow Speakers' points of view we now all know each well enough that if there was a need to get together that could be processed and put together fairly quickly. I do not know that it would be necessarily helped by a formal three times a year meeting or whatever, but if in the future there was a need to do that, I do not think that would be a problem at all.

Q199 Chairman: Would I be wrong to suggest that outside the pool of Scottish Members of Parliament to Westminster, Westminster MPs do not actually meet MSPs very much?

Alex Fergusson: I am sure they will do from an individual basis constituency-wise.

Q200 Chairman: I am not talking about those who share constituencies. I am talking about English MPs and, indeed, Welsh MPs as against MSPs in Scotland and there are actually very few occasions when they come into contact with each other.

Alex Fergusson: I think that is probably true on the whole, yes. There will obviously be gatherings and events and meetings put together by third parties whereby MPs and MSPs come together but I think from a more organised, procedural point of view that is probably the case, yes.

Q201 Chairman: Thank you very much to you both, we have much appreciated your help. I think we have all got a better understanding of how your system is working, so many thanks.

Alex Fergusson: Not at all, thank you very much indeed. I wish you well with your investigations.

Chairman: Thank you.

Witness: Sir John Elvidge KCB, Permanent Secretary, Scottish Government, gave evidence.

Q202 Chairman: Sir John, welcome. We are delighted to have you with us to give us the benefit of your experience. I cannot remember whether you were here at the beginning when I explained the scope of what we are trying to do.

Sir John Elvidge: I was indeed.

Chairman: Since you heard that, I can invite Ms Morgan to start.

stages of the government process, so not simply consulting around the delivery phase of government policy but working closely with our external partners at the policy formation phase. If that is the approach you seek to achieve then bringing people from outside into the organisation on secondment helps get that wider expertise embedded right at the beginning of the policy-making process.

Q203 Julie Morgan: Good morning. Could you tell us how the Scottish Civil Service has changed since devolution started in 1999?

Sir John Elvidge: I will do my best. Perhaps one starting point is to say that in a very literal sense the Civil Service has changed substantially in that around 40% of the people who work for us now did not work for us before devolution, so as a body of people a substantial number of them have not carried over from a pre-devolution existence to a post-devolution existence. Along with that has come an effort to bring a wider variety of skills and backgrounds into the Civil Service. We were the first part of the Civil Service, for example, to recruit generically into the Senior Civil Service from outside the Civil Service. We take people in cohorts rather than taking them to individual posts. That has enabled us to accelerate the diversification of skills and backgrounds. Like other parts of the Civil Service we have become more diverse in other ways, particularly at senior levels.

Q205 Julie Morgan: Who would be the main partners?

Sir John Elvidge: Local authorities are a substantial partner. We have a lot of NHS secondees inside the organisation. The Third Sector also provides a reasonable number of secondees. The private sector probably makes up the smallest proportion of our inward secondees.

Q204 Julie Morgan: Just going back to the previous point, do you have many secondments?

Sir John Elvidge: We have a large number of secondments. I think I am right in saying that we are currently at the highest level of inward secondments that we have ever had. Inward secondments have proved a great deal easier than outward secondments. That is directly related to a core part of our working principles, which is the importance of working closely with our external partners at all

Q206 Julie Morgan: This has moved ahead very quickly since devolution, has it?

Sir John Elvidge: Yes. I would say there has been a step change in our use of secondments since devolution.

Q207 Julie Morgan: Has that been a deliberate policy?

Sir John Elvidge: Yes, for the reasons I outlined, because we believe it is important to bring that experience inside the organisation rather than simply engaging with that expertise still embedded in its various organisations. It is not an either/or, of course, but it is an attempt to deepen our understanding of the stakeholder perspective.

Q208 Julie Morgan: This has happened in England and Wales as well but you think it has happened more rapidly in Scotland, is that what you are saying?

Sir John Elvidge: I would not like to make a comparative observation about that. It has happened rapidly in Scotland compared to our own

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past practice. The approach in Wales, of course, is slightly different with bringing substantial parts of the public sector into the structure of government. The sheer numbers of people transferring their expertise into the heart of government in Wales must be greater than the sheer numbers here. I do not have an overview of what happens in Whitehall that would enable me to make that comparison.

Q209 Julie Morgan: Are there any other ways in which the Civil Service has changed since 1999?

Sir John Elvidge: We have changed structurally, although I never think that structural change is the most important part of changes. We went through one phase of moulding our structure more closely around the portfolios of individual Cabinet ministers. That phase one would probably be placed in time from 2001 through to 2007. We have recently been through another phase of change where we have made structural changes to emphasise the need for people to work together across the organisation. We have moved away from having a structure of departments that mirrors the way in which Whitehall is organised to moving our more self-contained units of business one level down to our 42 directorates and redefining the roles of those whose role was previously as a head of department so that their individual roles run right across the organisation and they are each responsible for driving one of the strategic themes of the new government.

Q210 Julie Morgan: That is a change that has been brought in by the SNP Government?

Sir John Elvidge: It is a change which evolved naturally from our thinking about the organisation and which aligned very well with the SNP's own thinking about the way in which they wanted to conduct their government. We had a very early discussion about whether they would support a radical change in the organisation of that nature and they were happy to do that.

Q211 Julie Morgan: This was something you had been thinking of within the Civil Service before the new government came in?

Sir John Elvidge: Yes, indeed. We had an external peer review, like the Capability Reviews in Whitehall, in the autumn of 2006 which had strengthened the case for moving in that direction. The way I normally express this when I am talking to people inside and outside the organisation is that in the previous four years, 2003–07, the coalition government had made 460-odd specific commitments to the people of Scotland and in our audit in January 2007 of performance against those we were able to demonstrate that we had delivered approximately 97% of those 460-odd commitments. That told me that we were hitting diminishing returns from doing the things that fitted neatly into a departmental structure. We had demonstrated that if you set the organisation tasks of that kind the organisation would deliver them. Nevertheless, there was a view, I think both internally and externally, that there were more complex issues

facing Scotland that perhaps we were not being as successful at dealing with and I and a number of others thought that we would need a different way of operating as an organisation if, without sacrificing that ability to do things that fit into the boxes, we were to become equally good at doing the complex things. That seemed to me to require a fairly radical upheaval to the way the organisation thought about itself.

Julie Morgan: I am sure that will be picked up later.

Q212 Alun Michael: One of the things you have said is key to that is the development of the Strategic Board. How does that change things in terms of reflecting government's strategic objectives? You referred to the organisation, but what is the Board's role in that? Is it likely to be any more effective and accountable than boards in Whitehall departments, which you will gather from the question I am not terribly impressed with?

Sir John Elvidge: I certainly hope so would be the answer. The Board's role is very explicit, that is to focus on the totality of the organisation, not on the bits of the organisation. My explicit expectation of members of the Strategic Board is that they are there to think about the whole performance of the organisation, not to represent bits of the organisation. That was an important part of the journey that we were travelling on and I can talk for quite a long time about the way in which the top structure of this organisation has evolved from its pre-devolution period through various steps until we reached this stage that suggested that we needed to be smaller, because I think the number of people around the table is a factor.

Q213 Alun Michael: The number is?

Sir John Elvidge: The number of members of the Strategic Board at the moment is six executive members, me and five directors-general, and I have two non-executives at the moment although I would normally have three.

Q214 Alun Michael: So the non-execs are meant to bring some outside expertise into the Board. What is the relationship between the Board, including its non-exec members, and ministers?

Sir John Elvidge: The role of the Board is to support ministers collectively, to support Cabinet, and to focus on that rather than a one-to-one relationship between members of the Board and individual ministers. That is a very significant transition from our past history and I would not claim that you would find a perfect transition there, but we have a Cabinet who place very considerable emphasis themselves, as I am sure ministers will tell you later, on collective working at Cabinet level, therefore it must be right that the organisation seeks to support that collective working through the responsibilities of the Board.

Q215 Alun Michael: How do you ensure that improves the ability of ministers to deliver rather than, if I can be cheeky, increasing the power of the Permanent Secretary?

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Sir John Elvidge: Personally, I think the power of permanent secretaries is often overrated. That has to be a proof of the pudding question, does it not. If you look at the budget document that is the product of the Strategic Spending Review, if you look at the Government's economic strategy explaining how its single core purpose will be articulated through the organisation, and if you look at the radical new relationship with local government and the way in which that has been articulated you would see the fruits of the way in which the Board is concentrating on these collective products that support collective government.

Q216 Alun Michael: You referred a moments ago in response to my colleague about secondment in and out of the Civil Service in Scotland and I got the impression that was largely secondments in and out with other organisations in Scotland, is that the case?

Sir John Elvidge: Mostly, yes. Let me just think if there are examples that do not fit that pattern. Off the top of my head I cannot think of secondments either with the UK Government or the other two devolved administrations. I think there is a bit of a practical reason for that. It is quite domestically disruptive, obviously, to shift workplace across those distances. Particularly with Wales and Northern Ireland we concentrate on other mechanisms for sharing learning.

Q217 Alun Michael: That interdepartmental activity, as we have seen across Whitehall departments, can be very, very fruitful in getting people to think differently or more imaginatively, to look at different ways of working.

Sir John Elvidge: Yes.

Q218 Alun Michael: Is there a need to promote that in the interests of developing civil servants?

Sir John Elvidge: Yes. I did not mean to imply that there was not cross-fertilisation. A substantial number of those people who did not work for us before devolution have come to us from the Civil Service in Whitehall.

Q219 Alun Michael: So traffic is important and continues then?

Sir John Elvidge: Yes. There is more of a northward flow than there is a southward flow, I think it would be fair to say. For example, a senior member of the Crown Office team has recently moved to Wales to be the most senior official of the Crown Prosecution Service in Wales. We are seeing, and perhaps beginning to see more of, that cross-fertilisation but it is more in the nature of, if not permanent moves, quite long-term moves for people than secondments which typically are of shorter duration.

Q220 Alun Michael: I see the point that you are making. How do you see this developing in the future? Do you see the development of a separate Scottish Civil Service or do you think that cross-fertilisation is likely to continue to be part of the pattern?

Sir John Elvidge: Well, it is the current Scottish Government's policy that there should be the development of a separate Scottish Civil Service and it is clearly my duty to seek to deliver that but, of course, the Civil Service is a reserved matter and that could only happen by agreement with the UK Government. Whatever happens, I think we will continue to see strong channels of mutual learning between the different administrations. My own view is that the UK has been a little slow to realise that it has such a potentially positive real-time experiment in comparative approaches to reasonably similar challenges for government in hand and that we have not always been as good at sharing the learning as we might have been. I think we are getting much better at that between the three devolved administrations. Getting that shared learning working between the devolved administrations and the UK Government is a slightly slower process, although I hasten to say that Sir Gus O'Donnell and my permanent secretary colleagues in Whitehall are as committed in principle to making that happen as I am.

Q221 Alun Michael: Does that not argue for a stronger relationship and strong links between the Civil Service in the devolved administrations and in Whitehall in order to make sure that all the institutions, including Whitehall, get the benefit of cross-fertilisation and mutual challenge, as it were?

Sir John Elvidge: I absolutely agree that it argues for strong links. You are tempting me onto ice I do not want to be on if you ask me to relate that to the question of whether there should be a separate Scottish Civil Service or not.

Alun Michael: I understand the political point.

Q222 Chairman: Can I move on to how the practical arrangements work, how the wiring operates. How often do you talk to your counterparts in Westminster? How often do your Strategic Board members talk to permanent secretaries? Is the wiring at the lower level and is it there?

Sir John Elvidge: The wiring is certainly there. I will try to tease that apart a bit. Since early in 2007 I have adopted a practice of going to London most weeks to meet with my Permanent Secretary colleagues through their regular Wednesday morning meeting. That was not possible before then because the Scottish Cabinet met on a Wednesday and that was not a very difficult conflict of priorities to resolve, was it. Now that the Scottish Cabinet meets on a Tuesday it is possible for me to be in London on a Wednesday and it is clearly a very effective way to concentrate my engagement at permanent secretary level into that on a Wednesday morning and I often do related business on the back of that. The degree of contact that my director-general colleagues have will vary significantly from subject area to subject area. Our education and health systems are essentially self-contained and although there is a structured dialogue about exchanging experience, particularly around education where the permanent secretaries from Whitehall and the relevant senior officials in the three devolved administrations do meet on a regular basis, there is a structure of

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periodic exchange of experience. I would not suggest that in those areas it is anything like week-to-week, it might not even be month-to-month.

Q223 Chairman: If you take those areas for a moment, there are some things where although they are separate systems and devolved, the GPs' contract was negotiated on a UK basis. How does the wiring deal with something like that?

Sir John Elvidge: At a lower level, that is the third level.

Q224 Chairman: Or maybe not very satisfactorily?

Sir John Elvidge: I would not say that. To take the doctors' contract as an example, colleagues here would be fully present during the processes around that, they would function not quite as part of the team, because we have to remember they are always accountable to ministers with a different mandate but, nevertheless, fully embedded in the process. That is an extreme example. Yes, sometimes the degree of involvement that colleagues here who are engaging with single issues have with processes in Whitehall is a bit less fully integrated and less satisfactory than that, but there are very strong links on an issue-by-issue basis where there are clearly cross-border interests at stake. Whatever happens at the more senior levels rests on a bedrock of very frequent and close involvement at working level.

Q225 Chairman: Do you find you have to bang on the door? It reminds me of my childhood when I used to listen to radio programmes in which they said, "Scottish listeners now have their own programme". Sometimes the atmosphere in London seems to be one in which the Scots can go and do something different from time to time but there is not very much awareness of this fact. Do you have to bang on the door and say, "This is going to affect Scotland differently. We need a proper engagement between officials in both sets of departments"?

Sir John Elvidge: Yes. I think I would argue it has always been so pre and post-devolution. The risk that the different circumstances of Scotland, Wales or Northern Ireland will be overlooked is ever-present and it is part of my responsibility to try to make sure that does not happen. Yes, I am frequently the boy at the back of the class putting up my hand and saying, "Please, sir, there is another dimension to this".

Q226 Chairman: Is it by accident that you have not mentioned the Scotland Office?

Sir John Elvidge: No, it is not by accident. As the strength of bilateral contacts has grown, and I think to some extent as I have been able to re-establish the strength and frequency of contact at permanent secretary level, gradually the role of the Scotland Office has moved to different territory. I do not think of them as the key interlocutors in making contact work. They do play a part, I think, in helping avoid that problem of oversight by Whitehall colleagues. One of the advantages they have is that they see the internal flow of UK Government correspondence in a way that we do not. We can point out the Scottish dimension of something we are aware of, they will sometimes see things which we do not have sight of and they play their part in tapping their colleagues on the shoulder and saying, "I think you have missed a Scottish dimension here".

Q227 Chairman: The bilateral Concordats, of which I think there are 26, have they worked? Has the way in which they work changed with the change in Government?

Sir John Elvidge: It depends what you mean by "worked" really. One measure of them having worked in a sense is that almost no-one, I think, refers to them as documents. They set a climate of expectation about what the working arrangements are, but by and large are a rulebook that people go to and say, "You have broken the rules". They have worked in the sense that they have set the right set of expectations about the standards that the relationships should reach. They do not stop things going wrong sometimes but that would be an unrealistic expectation of them. I suppose now we also have to reflect on the fact that they were written and tested in one era of political relationships and it is an open question whether they will prove as robust in a changing era of political relationships. There has to be an element of suck it and see about that.

Q228 Chairman: I imagine you would not want to endorse Professor Jeffrey's claim that current structures for intergovernmental relations within the UK are not "fit for purpose"?

Sir John Elvidge: Well, it is an observable fact that there are cobwebs on some of them. The JMC machinery, apart from JMC Europe, has fallen into disuse. There was a purpose behind the JMC mechanism to allow sharing of thinking at the most senior ministerial levels and to allow for some preliminary exploration at least of intractable disagreements, which is not obviously being fulfilled by any other piece of machinery at the moment.

Chairman: Thank you very much indeed, Sir John. We are very grateful for your evidence. We are going to take a break and the Committee will resume at 11.15 sharp. Thank you.

Witness: Bruce Crawford, Member of the Scottish Parliament, Minister for Parliamentary Business, Scottish Government, gave evidence.

Q229 Chairman: We are a few minutes early but it seems a good idea to start as Mr Crawford is with us. We are very grateful to him for coming to give evidence to this sitting of the Justice Committee of the House of Commons. I thought I would start by asking you, Mr Crawford, whether you think that the processes which the Westminster and Holyrood Parliaments have in place for dealing with legislation where there is an overlap between the two systems are actually effective.

Bruce Crawford: Thank you. Thank you very much for inviting me along this morning, it is very kind of you to do that. I know you are only here in Edinburgh for a short time but I hope you enjoy your visit. In terms of the process that you have explained, Chairman, in regard to the differences, I guess you are talking about the Legislative Consent Motion process and how we resolve issues around that. Helpfully, before the Queen's Speech was made to the House of Commons last year, we had a reasonable heads-up from the UK Government about what legislation would be coming forward and what material in that regard might have an impact on a Legislative Consent Motion. So we were pretty well prepared for any areas where the UK Parliament might want to legislate in areas which were of competence in the Scottish Parliament. Obviously, as time rolls on other material will come out of the woodwork in terms of other legislation that is being formulated at Westminster and we get information in due course and as time goes by in that regard. I think I have got a pretty reasonable relationship with the Scotland Office, particularly the Minister, David Cairns, in terms of managing the process of LCMs. We are almost a decade on from devolution and inevitably we feel that things could be done in a different way and a more appropriate way in terms of the Scotland Office, but in terms of the relationship that is there just now, in terms of the structure that is there just now, I think that works pretty well.

Q230 Chairman: Has it been tested by your refusing a Legislative Consent Motion yet or saying that you would do if one was brought forward?

Bruce Crawford: It has been tested as such in that there is always discussion that goes on between officials bilaterally and between ministers bilaterally in regard to an LCM as it progresses and the need for it and discussion around it progresses. There is a recognition, I think, by the UK Government that if we do not intend to pass an LCM in a particular area then they will not necessarily prosecute that to the level that you might expect. There is an acceptance that Scotland sometimes might have a different perspective. It has not been tested yet because we have not had an LCM which we have had to put before the Parliament where the Government would not have supported it. Of course, it is always possible in the Scottish Parliament for the opposition to put forward an LCM, and they could choose to do that at some stage, although that has not happened yet. In fact, the only point of conflict that I am aware of came about as a result of a gentleman we were

talking about earlier in the shape of Jeremy Purvis, a Liberal who put forward an amendment to the dormant bank accounts Legislative Consent Motion that caused a bit of a ripple but, nevertheless, at the end of the day we had a conjoined position with the Labour Party on that occasion and the Tories to make sure the LCM was passed in the way we thought was fit.

Q231 Chairman: In an earlier session this morning I referred to an example which had come up, partly to establish where the red lights flash in this system. It was an example of what is not covered by the Queen's Speech discussions. It was the Westminster Government's publicly announced intention in its Counter-Terrorism Bill to include provisions which enable cases involving terrorism to be taken out of the Scottish judicial system and tried in England, not necessarily with the consent of the Lord Advocate. Presumably there is some system where red lights flash and you say, "If we are going to do this we would have to agree to an LCM".

Bruce Crawford: Yes. That system is about a process of continual dialogue from the minute we know about a bill that exists from the UK perspective. That dialogue happens between officials on an ongoing basis and then between ministers and between departments in a bilateral way. Every second week I have a discussion with David Cairns at the Scotland Office about where the pinch points are, about where the issues are, and to date these have been resolved amicably. I do think, however, the need for that particular office to sit in the Scotland Office is not as strong as it was in 1999 and there could be better co-ordinated and strengthened arrangements bilaterally between ministers and, indeed, a role for a government minister much more at the centre of government to help with the troubleshooting that is currently done between myself and David Cairns. I am effectively saying that probably time has run out for the Scotland Office as far as that is concerned.

Q232 Chairman: If that did not exist you would be talking to the leader of the House at Westminster and the Minister in the particular example I quoted, the Justice Minister, would be talking to the Justice Minister and the relevant officials on the same lines?

Bruce Crawford: Correct. On the issue you raised, that discussion is already going on between the Justice Minister and the relevant counterpart at UK level. I think the Leader of the House still chairs the L Committee and that would be an appropriate place in terms of the legislative process for me to be engaged and a lot more effectively in terms of discharging business. Actually, it would remove a bit of the communication line that exists and allow a lot more discussion directly to the heart of Government. That is no disrespect to David Cairns, who has to work within the current system, and that works as well as it can for where we are.

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Q233 Alun Michael: I am tempted to think there is a comparison with communication between government departments in Whitehall here. I remember inheriting one bit of a government department that came over which was able to do away with the bit that spent all its time working out what the other department was doing. Is there not a stage before legislation which very often comes at the end of an internal process which can be driven by an election commitment or it can be driven by a ministerial leadership, or it can be delivered by departmental ownership, if you know what I mean, so that there is a need for contact much earlier down the line? You referred to yourself and David, for instance, trouble-shooting and that is where something has reached the stage of development where it needs that last minute intervention to almost rescue a situation.

Bruce Crawford: There has not been much that has needed to be rescued yet but that relationship allows for that rescue job to be done if required. There is earlier discussion between officials on an ongoing, day-to-day basis and between ministers in a bilateral sense and an ongoing day-to-day basis. You would hope, and it normally does, that process would allow for the issues to be aired long before we get to the process of legislation being brought to the floor of the House of Commons but inevitably, because that is what government is like, it does not always work as smoothly as you would like and, therefore, there is always a bit of turbulence and bumpiness around as far as that is concerned.

Q234 Alun Michael: Do you feel that it is developing in a positive direction in terms of, if you like, rescues being less frequently needed at the last minute?

Bruce Crawford: I think it is because of the attitude we take to Legislative Consent Motions. We are not predisposed to being against Legislative Consent Motions because we have got the settlement we have got. We might like to see Scotland as an independent country but we have got a system that has got to work within the confines of the current constitutional settlement and, therefore, inevitably people who have got the best will of the Scottish people or, indeed, the UK at heart will do their best to make the system work and that is what goes on on a general basis.

Q235 Alun Michael: You said in a recent article for *BBC News Online* that: "This is a new Scotland and it's a new politics". What did you mean by that? What is new about the politics?

Bruce Crawford: Part of my role is not only being, in effect, the equivalent of Leader of the House as far as Westminster is concerned, but I also happen to be Chief Whip for the Government in Scotland. Certainly one thing that has changed is that you can no longer rely on the number of votes that you have to secure your majority. Managing a minority government on a day-to-day basis is an interesting challenge.

Q236 Alun Michael: Tell me about it!

Bruce Crawford: It means since you can no longer rely on the number of votes that you have got, you have got to rely on the quality of the argument that you can put forward to build an alliance on a coalition with different partners on the issue on a day-to-day basis depending on the merits. That has been good for Scotland. Perhaps by default we have got to the position that the Scottish people wanted in 1999 in terms of the Scottish Parliament election result by delivering something that is a lot more open and accountable because it has to be by the nature of it. For instance, on the budget, which I am sure some of you certainly, if not all of you, are aware of, the Conservatives voted for a budget in the Scottish Parliament and others abstained. That was three weeks ago now. Last week we had a debate on the future of the Scottish water utility where Labour and ourselves conjoined to have a majority in opposition to the Conservatives. On that same day we had a position jointly with the Liberals and the Greens on penal policy and how effectively we can use prisons. It is a lot more mixed up here than you might imagine in terms of finding the right solutions, but that is because things are being argued through on their merits. I guess the most important thing of the lot is the issue of how we engage with wider Scotland, particularly in the longer term. Obviously when you come into government you have got your manifesto to put into place and you have got to try to deliver as much of that as you humanly can, but there will be a requirement upon any government in the minority position we find ourselves in, and it is already beginning, to build alliances across civic Scotland in a way that other governments have not been required to do. That is a good thing, not just because it happens to be the arithmetic of the Scottish Parliament but it is what we should be doing anyway. If you look at some of the experiences of other minority governments, Denmark, for instance, and they have had a minority similar to what is happening in Scotland there for a number of decades, they have had a process inbuilt for a longer period in terms of consulting with the stakeholders in their communities probably going past consultation into participation, which is really what we have to be about, how we involve people in the future. It is interesting that they get an 85% turnout in their electorate and there are 65,000 members of the largest party in Denmark with a population the same size of Scotland. There are probably some lessons for us all to learn there.

Q237 Alun Michael: It is very interesting that you are talking about participation but you started on the point of communication. Does the new politics that you have described require new journalism as well? In other words, how does the type of approach that you have described as having to take get communicated by the media?

Bruce Crawford: I think the media found the advent of a Scottish Parliament/Government being in the SNP an exciting, new refreshing process for them because there is lots to report, as you might imagine, in the circumstances I have just described in terms of

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the way we have got to build majorities. I guess it is equally true of the media as it is of the politicians that it has taken a wee while for people to get to grips with the new reality of where we are. Some parties have been quicker at getting to grips with the new politics of Scotland than others and I guess that is the same for the media and understanding the processes. We have got a pretty forensic bunch up here in terms of the way they examine Scottish politics and the way they get into the detail and the majority are beginning to get there in terms of understanding the subtleties that are required to build majorities and keep a minority government on track. It has certainly given them lots to write about.

Q238 Julie Morgan: I wanted to go back to the relationship with the Scottish Office and to ask you do you think Scotland does need a voice at the Cabinet level in the UK Government?

Bruce Crawford: It certainly needs a voice at the centre of government in terms of the way it discharges business. This is one of the areas that the JMC, for instance, could be having a good look at, the JMC which obviously involves all governments from Wales, Ireland, Scotland the UK. There is a different view from Wales and Ireland in terms of where they see the future. Certainly the JMC mechanism, all of that mechanism, has to be looked at in the whole, whether it is the JMC, the Concordats, the Memorandums of Understanding or the issue of what standing an individual representing Scotland would have at a UK level.

Q239 Chairman: It has not met since 2002, has it?

Bruce Crawford: The JMC has not met since 2002. There was an expectation from the Memorandums of Understanding that it would meet on a yearly basis. I certainly think it could have met following the terrorist attack on Glasgow Airport. It could have usefully met to have discussed financial and Treasury matters. I think it could usefully have met to discuss issues around the foot and mouth disease outbreak that happened and some of the conflicts that existed between the UK and Scottish Government at that time. I think there is a real role for the JMC. The First Minister did write to the Prime Minister in August and to date we have had no response, but we have also had the recent appointment of Paul Murphy to be not only the Secretary of State for Wales but he also has got some responsibilities around the British-Irish Council and the JMC. There is other work that I think the JMC could usefully review at this stage. It could undertake a review of the Memorandums of Understanding and the Concordats. We think that there is an opportunity for a JMC Domestic to develop, for instance, where there would be an opportunity for wide-ranging issues to be discussed before any plenary session. I am aware that the Cabinet Secretary for Education and Lifelong Learning has suggested that there needs to be a JMC for families, benefits and employment. There is an opportunity for the JMC in a plenary organisation to review that sort of activity. There is also the UK Statistics Bill, which is a bit deep here, folks, forgive

me, which I understand will have an impact on the Concordat that is being drawn up for the JMC Europe and, therefore, that will need to be reviewed anyway. So there is a bit of work that could be done by the JMC in that regard as well as looking at the general issue of overarching agreements of the Memorandums of Understanding and the Concordats after almost a decade of devolution. It can only be right that after that length of time we begin to look at them and review them. The whole thing needs to be done as a package to look at everything properly.

Q240 Julie Morgan: You would see that as replacing and developing the position played by the Secretary of State for Scotland?

Bruce Crawford: As I said earlier on, the Office of the Secretary of State for Scotland, indeed the Scotland Office, we are now almost 10 years on and if we can strengthen the bilateral arrangements we will have a much better co-ordinated and strengthened role at the centre and the need for the Scotland Office is fast disappearing over the horizon.

Q241 Julie Morgan: At the moment do the ministers in your Government have much contact with the Secretary of State for Scotland?

Bruce Crawford: The First Minister has the odd contact with the Secretary of State for Scotland.

Q242 Julie Morgan: Sorry, what did you say?

Bruce Crawford: The First Minister does have contact with the Secretary of State for Scotland.

Q243 Julie Morgan: Is that on a regular basis?

Bruce Crawford: The most recent thing they discussed, and I will talk about when I get the chance as well, if you do not mind, was the Gould Report into the Scottish Parliament elections. We have been arguing, indeed the Scottish Parliament has argued, that executive and legislative competence over the handling of the elections, and it is the unanimous position of the Scottish Parliament, should come to the Scottish Parliament and the Scottish Government to deal with. Why have we been arguing for that? Because right now there are about 18 different pieces of legislation affecting Scottish electoral law and there is a plethora of steering groups and other material below that. The Scotland Office is responsible for the Scottish Parliament elections currently, the Scottish Government is responsible for local government elections and, rightly, Ron Gould said there is an incredibly fragmented position and it needs to be resolved and recommended the Scottish Parliament should have responsibility for that. I know that the First Minister and Secretary of State for Scotland discussed that issue. That has not really been taken forward. This is part of my own bag as a Minister, so I have got an interest in it. I think it should have been in terms of the response from the UK Government and it just seems to me so much commonsense, pragmatic positioning. Forgetting all the politics around this, and I know you cannot do that because we are politicians, just to try to resolve that fragmented

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picture and make sure that the ridiculous situation that arose in Scotland in terms of the management and delivery of the election does not happen again, we need to get on with that work and get it done.

Q244 Julie Morgan: So you are saying there is deadlock over this issue, or there is no progress?

Bruce Crawford: The report that came out from the UK Government and its reference to this issue was the central core of a lot of the argument put forward by Ron Gould and it was paid scant attention to and was poorly addressed. I raise that particular point because if the Scotland Office is no longer doing that, and I am saying to you I think there is a strengthened way we can do it in terms of the relationship between the UK and the Scottish Government, that is another reason why the Scotland Office is no longer required. Whether that is part of their argument for not progressing it you would need to ask them, but you might suspect that if you were in my seat.

Q245 Julie Morgan: You said you have a very good working relationship with David Cairns. How often does the First Minister meet the Secretary of State for Scotland? How many times have they met since you formed a government?

Bruce Crawford: I am aware of at least a couple of occasions but I would need to make sure of my facts on that.

Q246 Julie Morgan: Fairly rarely they meet?

Bruce Crawford: It is not a regular occurrence, but I will make sure you get that information as a follow-up.

Julie Morgan: Thank you.

Q247 Chairman: On that particular issue, is there anything to stop you simply having a discussion with the Justice Minister about it? It is your ministerial responsibility and he has a ministerial responsibility for elections. Can you bypass the Secretary of State for Scotland or is there something that stops you from doing so?

Bruce Crawford: I am glad you raise that point because it makes my point for me in terms of how arcane the process is. The Justice Minister is responsible for elections at the UK level and the European Parliament, the Scotland Office is responsible for elections to the Scottish Parliament and the Scottish Government is responsible for elections to local government. You can see we have a pretty patchwork approach here and it is pretty clouded in terms of who is doing what. It needs a lot more clarity, certainly in Scotland in terms of the elections to the Scottish Parliament and elections to local government, so that there is one body responsible for this able to deliver an effective election on the night.

Q248 Chairman: Are you saying that the UK Justice Minister would say, "Sorry, I can't talk to you about this, this is the Secretary of State for Scotland's job"?

Bruce Crawford: Correct.

Q249 Chairman: Even though, of course, for some purposes the Scotland Office is part of the Ministry of Justice.

Bruce Crawford: I will let them justify that area. It looks like a bit of a morass to me.

Q250 Mr Turner: For the most part, ie England, there is one person responsible, so what are you complaining about?

Bruce Crawford: Sorry?

Q251 Mr Turner: There is one minister responsible in England for the whole lot.

Bruce Crawford: I am complaining that in Scotland there is no one person responsible. There are different bodies of government responsible.

Q252 Mr Turner: How can it be lower down the line because obviously something has to be at the top for the UK, does it not?

Bruce Crawford: The Scottish Parliament elections recently, the Scottish Parliament itself?

Q253 Mr Turner: Yes, but I mean in UK elections.

Bruce Crawford: Understandably that will have to be done by the Justice Department. I am talking specifically about the Scottish Parliament elections, I am sorry if I was not clear.

Q254 Mr Turner: Yes. Okay, I understand that. Your submission argued that the "residual functions" of the Scotland Office should be devolved to the Scottish Parliament. Is that all of these functions?

Bruce Crawford: In terms of the functions of the Scotland Office there is not a lot left there. Certainly removing the functions of Scottish Parliament, the Elections Executive and legislative competence over them from the Scotland Office and transferring them to the Scottish Government would mean there is not a lot left for the Scotland Office to do. That is what I am arguing. I am not going to put their argument for them, I will let them do that themselves.

Q255 Mr Turner: What is your view on changes to allow devolution to take place in England?

Bruce Crawford: There is an interesting debate that is going on in terms of that whole area, is there not, in terms of some of the tensions that are around as reported in the media, but how real they are I sometimes wonder. As far as the process for England is concerned, it is not up to me and the Scottish Government to provide a view about how the people in England decide that they want to have themselves governed, I think that needs to come from the processes that are available through politics and discussion and through Westminster itself about how to deal with the question of how England is governed in the future. I think it would be a bit cheeky of me, actually, to say how I think that could be done.

Q256 Mrs James: I want to go to intergovernmental relations now. Professor Michael Keating, and I have got quite a long quote here so I apologise for that, said: “devolution is about allowing policy divergence and a healthy competition among governments to innovate and respond to challenges”. How accurately do you think this describes the culture of intergovernmental relations between Scottish and UK Governments?

Bruce Crawford: I think that is a reasonable reflection of where we are. The whole idea of devolution was to allow that divergence, and it might be that the people in Berwick are now demanding that they become part of Scotland because they see such a wonderful government in Scotland providing such goods for them.

Q257 Chairman: I do not think we will go down that route, at least not on the basis of a dodgy poll!

Bruce Crawford: As I said to you earlier, I am sure you would make a fantastic member of the Scottish Parliament, Chairman. Sorry, with that divergence in my head could you repeat the last bit of your question?

Q258 Mrs James: How accurately do you think it reflects what is happening?

Bruce Crawford: I think it is reflecting reasonably well what is happening. I do have some concerns, I have to say, in terms of some of the more recent soundings coming out, and, again, this is through the media and I cannot say how accurate it is, but no doubt there is some basis for where it starts. This week in the Scottish media we have had comment upon the issue of whether Scotland should have control over planning issues concerning nuclear power stations, for instance, and is it still germane in terms of the Scotland Act that it should be the Scottish Parliament and the Scottish Government that have that say. Obviously I would say yes, I think it is. If the argument is beginning to move to a direction that says, “In areas where we have got a

disagreement with the current Scottish Government then we need to look at where the powers lie”, then I have got concerns about the future. I watched a discussion which Gordon Brown had on one of the Scottish political shows a couple of weeks ago when he mentioned animal health being one of the areas where there might be a consideration where that might become an area that could be looked at in terms of a two-way street of powers. It just so happens that this is one of the areas where we did have a bit of a falling out with the UK Government. It would be a pity if every time there was a divergence that ended up as perhaps you should take these ideas back. Whilst I accept the general premise of the gentleman you quote, I think there are danger signs out there, if you understand where I am coming from.

Q259 Mrs James: We have already heard about Professor Jeffrey’s statement that the current framework for intergovernmental relations are not “fit for purpose”. How would you respond to that?

Bruce Crawford: I think the structures can be improved. It has been said that we could strengthen the role, we could share much more bilateral discussion between ministers in Scotland and ministers at the UK level, that could be strengthened, and a stronger co-ordinated role at the centre of Government, whether that is through the Leader of the House for my purpose or otherwise. Obviously being a member of the Scottish National Party in a Scottish Government, we are of the view that independence is a way to sort a lot of these issues out and probably would sort a lot of them out and we would have a much healthier relationship in the future.

Q260 Chairman: Mr Crawford, thank you very much indeed. It has been most helpful evidence and we are very glad that you have spent the time with us today.

Bruce Crawford: A pleasure, thank you.

Chairman: Thank you.

Witness: **Professor James Mitchell**, Head of the Department of Government, University of Strathclyde, gave evidence.

Q261 Chairman: Professor Mitchell, thank you for joining us this morning. In view of your academic credentials we thought we would treat you in a more seminar mode than our previous witnesses and invite you to say a few things by way of opening and we will throw questions at you as the spirit moves.

Professor Mitchell: Okay. I thought I would start by talking about the achievements of devolution as I see them, because when politicians are asked about what does devolution achieve they normally list legislation and policy and such like. From my perspective, I think the key achievement of devolution is that the problem of legitimacy in Scottish politics has been removed. In the 1980s and 1990s I think there was a growing problem in Scotland, and it was also true in Wales but I will restrict my comments to Scotland here, that people

perceived the government of Scotland by Conservatives through the Scottish Office as lacking legitimacy. That is not to suggest that people saw it as unlawful but there were questions as to fairness of policy, the sense of policy being imposed on Scotland against its will, and I think that was what fuelled the demand for a Scottish Parliament. There had always been support for a Scottish Parliament going back to the earliest polls in the late 1940s right through to devolution but what changed in the 1980s and 1990s was that this became a much more salient issue and it coalesced around particular issues. The Poll Tax is the one that is most obviously spoken about but, in fact, it was many, many other issues from the early 1980s onwards. What I think devolution has done is to remove the issue of legitimacy. There are clearly differences across the

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parties in Scotland as to how Scotland should be governed, and we have just heard Bruce Crawford who obviously advocates independence and there are others who would extend devolution, others who would leave devolution, but no-one, I think, certainly none of the mainstream parties, and I cannot think of anyone even on the fringe of politics, who today believes there is a lack of legitimacy in the system of government. That is the thing that has been a clear achievement of devolution. It is one that we rarely talk about, we do not even acknowledge, but it is one that I think is very important. The other achievement that relates to that is the fact we have now tackled to some extent a kind of debilitating politics of grievance that Scotland suffered from over many, many decades in truth. There has always been that tendency in Scotland and it is often associated with one party but, in truth, all parties have tended to blame London for this kind of debilitating politics that took place. Peter Hennessy in the election here last year in Edinburgh remarked that there were three great institutions in the UK which were persistently successful in getting money out of the Treasury: the military, doctors and the Scottish Office. In a sense, I always thought that was a good thing from Scotland's point of view but, ultimately, it is a very debilitating form of politics. We have injected a degree of responsibility into our politics, not as much as we perhaps should, but I would say that is the other achievement. However, and I will finish on this point, resolving one problem of legitimacy has created a series of others, the so-called English Question, the West Lothian Question, the question of Barnett and finance. That is one of the great problems that we have today, that in a sense we have simply shifted the problem around within the UK and, whatever is proposed into the future, we should try and ensure if there are to be further reforms that we do not simply carry on shifting the problem around and particularly we should try to avoid encouraging the politics of grievance.

Q262 Chairman: It was you who produced the pass the parcel analogy, was it not?

Professor Mitchell: Yes, indeed, it was.

Q263 Chairman: You have passed the parcel to England because the legitimacy of government in England is seen as being undermined once it is possible for Scotland to decide to do other things while Scottish Members of Parliament decide different things for England.

Professor Mitchell: I would stress the potential for a growing problem of grievance in England, a problem of legitimacy is there. We do not have it yet, the issues around the West Lothian Question and, of course, Barnett, are not so salient as the politics of grievance in Scotland in the 1980s and 1990s, but one should remember the potential for grievances that we had in Scotland in the 1980s and 1990s had always existed and it is the context of politics that will determine whether those grievances will arise. The fact that Labour is in power in London has ensured that this kind of politics has not emerged

very strongly. That said, I would take Barnett, for example, and my own research has shown if you go back to the early 1980s there was a tiny handful of us, anoraks you might call us, who were interested in the Barnett Formula which was restricted really to civil servants and the academic community but now, of course, the elites in sections of England are interested in it. It is not yet a popular matter, it is not a great problem, I do not think, but it could become one. I guess the issue that I would suggest has to be addressed is whether, if this is likely to arise, it is something that ought to be addressed now in the relatively quiet time of devolution or should we wait until it really does explode. My suggestion is that it is always best to meet a problem before it becomes particularly difficult.

Q264 Alun Michael: I think what you have said is very interesting because is it not the case that part of the problem is that the politics of grievance, as you have described, is fed by the journalism of grievance and the continual feeding of bad news and there is very rarely very accurate analysis on which that grievance is based? For instance, the English Question quite clearly ought to be described as the "England outside London Question" in order to be anywhere near accurate as identifying something. How do you see the way that coverage of politics in Scotland has developed, both in terms of coverage of Scottish politics within Scotland and the coverage of Scottish politics in the wider UK in terms of the way that people understand the changes to which you have referred?

Professor Mitchell: There has been a big change in the media coverage of Scottish politics post-devolution. In the early years a section of the media, and it was a small section of the media, continued to campaign almost as if the referendum was still going on. The anti-devolution element was in the media. That seems to have long since gone now and certainly I think the media is more focused on the everyday issues, the bread and butter issues of devolution. There are occasions when there are bits in papers and we shake our heads and think, "Good God, what kind of coverage is this", but that is always going to happen. I think we have got very good media coverage of the Scottish Parliament and devolution. If I have one complaint about the media in Scotland it is that perhaps there is too much focus on the Scottish Parliament and I think there is so much more going on in Scotland beyond the Parliament and we are in danger, and it is not just the media, the academic community is probably more guilty of this frankly, of ignoring local government, for example, and politics beyond the Holyrood village. In a sense we are in danger, and I think we already have done this, of recreating the Westminster bubble, the media bubble that takes place down south, here in Scotland around Holyrood. That said, when one speaks to journalists there is an effort to move away from that. Saying that, I am certainly in no position to criticise journalists because there is at least some journalistic coverage of Scottish politics beyond Holyrood and I

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cannot think of very much, if any, academic research beyond Holyrood and Scottish politics. On the wider issue,—

Q265 Chairman: Just before you leave that, was there not also in the early days following the first elections to the Scottish Parliament a media approach which said that coalition was impossible whenever any kind of dispute arose and it took quite some time for the media to settle down?

Professor Mitchell: I do not think that was a media problem. I think there was a public perception and an academic perception, which is a very British perception, that coalition is alien. Similarly, I think we have been afflicted by a sense that a minority government is alien and unworkable. That is a very British view of politics. One of the interesting things we have had with minority and coalition government in Scotland and in Wales is that we are learning a great deal about how this can operate. In a sense, we ought to look beyond the UK because there are examples, and Bruce Crawford when he raised the Danish one was interesting, where minority government is seen as normal. This is one of the consequences of the electoral system rather than devolution and that is certainly the case. I do not think the media can be blamed for that in any way, that is part of our political culture and we are all guilty of buying into that. The change has forced us to look at these things again. Certainly from an academic point of view, for people like myself who have been brought up very much within the British school of political science and are having to look again at the coalition theory, minority government and such like, it has been a very exciting and interesting thing to do. I really would not blame the media at all in that respect, it is part of our culture and we have to change our culture.

Q266 Alun Michael: The second part of the question was the coverage of Scottish politics in the rest of the UK which perhaps has a contribution to the way the England outside London grievance culture starts to develop.

Professor Mitchell: There is a lot less media coverage of Scotland in the UK. In truth, those who follow Scottish politics, all commentators, and in this I include academics, will know all the names and faces of the MSPs but in many cases we do struggle to know who the MPs are representing Scottish constituencies. Obviously we know the Prime Minister, but for the most part we do not and part of that is because there has been a turnover post-devolution. Nonetheless, I think there has been a greater focus on the Parliament, so less interest in what is happening at Westminster. I think it is fair to say, and I am sure I could be corrected, that the media has focused their attention more on what goes on in the Parliament. That is hardly surprising, it is a very important institution. That has happened and it has had the consequence that we are probably less informed as to what is going on at Westminster. One thing that is covered frequently, of course, is the clashes, the divisions, the differences, and perhaps we are less aware of what actually happens

underneath the surface. My understanding is intergovernmental relations work very well in the UK between Scotland and London. Some of the expectations that there would be these great bust-ups with the SNP in power and so on just have not happened and the everyday workings are very, very good. Of course, the theatre of politics, the huffing and puffing of politicians, will invite media coverage, and rightly so, and perhaps the public at large have a flawed view of what really is happening on a day-by-day basis as a consequence, but that is always going to be true in politics. Clashes and so on, I suppose, will be the stuff of media coverage and people are not going to want to read or hear about the fact that civil servants speak to one another and so on. I am quite relaxed about that in as much as I know it works very well under the surface. I am also pretty sure that many of the public clashes are for public consumption, for media consumption, and it seems to work.

Q267 Julie Morgan: I was interested in the point you were making about the change in culture and the fact we are going to live in Scotland with coalitions and minority government. How widely do you think that is accepted now by political parties and by the public?

Professor Mitchell: The public seem to accept it. As part of our research study on the Scottish elections 2007, we did a survey at the end of last year, a third wave of this, and people seem to have accepted minority government and there is no question as to its legitimacy or anything like that. Some of the parties have struggled to come to terms with it, they have all struggled to come to terms with it in different ways, and that is inevitable. You can change institutions but cultures do not change overnight. There was some naivety in the expectations of some supporters of devolution in the years leading up to the establishment of the Scottish Parliament in the sense that we would have this new politics and everyone would be consensual and such like. It was always very naïve, it was never going to be like that. Also, it takes time for things to bed down and for people to change. One of the interesting things about the Scottish Parliament is that most of the politicians in the Parliament are new to full-time politics so they have not brought with them perhaps the experiences, the socialisation of having been MPs, and that may make a difference. If the Parliament consisted largely of MPs I suspect the approach to politics of MPs in a much more confrontational arena would have made for a very different type of Scottish parliamentary politics. That has been very important. One of the interesting things will be whether over time, as I suspect will happen, as the number of politicians change as politicians who were socialised under pre-devolution politics give way to a new generation of politicians, then I think we will come to accept many of the inevitable consequences of devolution, the fact that there is difference and there is diversity. Baggio made that point on the English Constitution, that you can change the institutions of the state but

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unless you change the politicians who worked the old system you will not feel the full benefits of institutional change.

Q268 Julie Morgan: So you think the MPs' views are different, for example, from the MSPs' views about this culture change?

Professor Mitchell: Yes. Take those MPs who were elected post-devolution, their whole socialisation is within the Westminster model of politics which is quite different from the Scottish Parliament and I guess that leads to some interesting tensions. I do not think tension is a bad thing, it is a creative thing, a good thing. God help us if we all had the same experience of politics. It means that we can learn from one another and I think that has to be a very healthy thing.

Q269 Julie Morgan: What do you think is the future of Scottish MPs representing seats in Scotland when you look at the English Question and the wider issues?

Professor Mitchell: I think there are problems for Scottish MPs in trying to cut a distinct role. Research was done back in the 1970s on the role of the Scottish MP, it was Michael Keating's thesis in fact, and Michael showed very clearly that Scottish MPs then were very Scottish, focused on Scottish issues, much more so than English MPs on English issues. That is obviously going to have to change because many of the matters which were then the focus of attention of Scottish MPs have been devolved. I think MPs are going to have to come to terms with that, and they are. The obvious role for an MP from Scotland would be to focus on the retained matters. Some of them have difficulty with this, not least because their constituents expect them to have a view on health and so on and so forth. Some of my constitutionalist colleagues think it is wrong, for example, that the Speaker should dare to speak out on a health matter concerning his constituency. I have to say, I think it would be absurd for any MP not to speak out on such a matter whether or not the Parliament to which he is elected has responsibility. One of the roles of an MP is as an advocate and I think that will always be the case. I am probably a bit more relaxed than some of my colleagues on this matter.

Q270 Mr Turner: On the English Question, I must say my view is that in parts of the UK it is a very serious issue. Would you agree?

Professor Mitchell: I think it is a serious issue. Whether or not the public think it is an issue, I think it is a serious issue because it has the potential to create a politics of grievance, which I have to say from a Scottish angle is very worrying. It is a problem from an English perspective but it is also a problem from a Scottish perspective. If there is to be a backlash then Scotland could suffer, so I do think there is a problem. It is certainly the case that in certain parts of England it is more of an issue than in other parts. We tend to find that border areas provoke backlashes more than other areas, so it is no great surprise that the north of England has

witnessed a great deal of coverage on this. In fact, it goes way back to the 1970s. *The Journal* in Newcastle was arguing against devolution then and played a very significant part in encouraging Labour MPs in the north of England to oppose devolution. There are issues there and it comes down to the West Lothian Question but also Barnett and the perception, and it is important that it is a perception, whether right or wrong, that Scotland gets more resources than is justified. That is likely to be a major problem. Over the last few years it has not become as salient as it is likely to become for two reasons. First of all, Labour has been in power in London, Wales and Scotland. Secondly, it has been a period when money has been freely available, we have had rising expenditure, and the question arises what happens when money is tight. I think that will be a more problematic area to work with than simply different parties in power. The financial dimension will create more tensions than anything else, and we are now moving into that period. That is why I think it is very important that we address this question now before it really takes off and becomes difficult. Having said that, I am not entirely sure how to resolve it, that is a difficult one. The only thing I would argue very strongly for is that any resolution has to be consensual, it has to involve all parts of the UK agreeing to any change and has to involve cross-party support. If anything is done which is perceived to benefit either a party or a part of the UK at the expense of another it will simply pass the parcel around. In a sense, what I think is important is what I call losers' consent has to be found. In other words, those who are perceived to be the losers under any change have to recognise that they may be losing but they are losing because justice is being done, and we are nowhere near that position at the moment.

Q271 Mr Turner: You are saying the fact that Labour is in power in London makes it less likely, but presumably the change to a different government would make it more likely still?

Professor Mitchell: It would, but the financial regime is the key thing. If, for example, a Conservative Government was to come to power in London and if that government was to decide that it would throw money at Scotland, I think Scotland would be quite happy, there would not be the tensions. The problem is that the likelihood is that these two would go together, that if we moved into a period when a Conservative Government came to power, and that may happen because there are financial difficulties in the country and the Conservatives win for that reason, then we have a potentially explosive situation depending on what the Conservative Government does, of course. I do think it would be very important, whichever party was in power in London, to operate in a consensual way rather than simply pass the parcel. That is where I think English votes for English laws have the potential to simply pass the parcel around, although at this stage it is not quite clear what English votes for English laws would actually entail.

Q272 Mrs James: You said a little earlier that you had done a lot of work in the 1970s and 1980s on the Barnett Formula. I think the Barnett Formula has come as a great revelation for lots of people in different parts of Britain, whereas in Wales and Scotland we have been very *au fait* with it and the question is of people in the south-east of Britain realising this. What do you think are the pros and cons of the Barnett Formula? There is a review being undertaken currently in the Welsh Assembly on the Barnett Formula.

Professor Mitchell: The key attraction of the Barnett Formula is that it exists, it has worked, it is relatively easy to work and, in terms of changing it, bringing back some other thing is very difficult. Finding an alternative is the great difficulty. That is the key attraction of the Barnett Formula. The problems with the Barnett Formula go back to its origins. It was a quick-fix really. Contrary to much of the mythology around the Barnett Formula, it was not invented by Joel Barnett, it was not even invented when he was Chief Secretary to the Treasury, this is a great myth. When I wrote to Joel Barnett in 1985 and I was doing research on this subject to ask him about the Barnett Formula he responded by asking me, "What are you talking about, I don't even know what this is". I explained the formula, he recognised the formula, but he did not even know that we were calling it that, it was the academic community that called it the Barnett Formula. He said then that it was a civil servant, as far as he was aware, who had invented it, and he was right, it was a civil servant.

Q273 Alun Michael: Yes, but it was nailed down at that time as part of the proposition of the then devolution settlement going forward.

Professor Mitchell: It was and it was not. It came about before then, in fact. Even before February 1974 I came across a reference in Treasury files which showed that the 10/5/85 formula was used in certain circumstances.

Q274 Alun Michael: With respect, that is not my point. I suspect you are creating a new mythology that it was not—

Professor Mitchell: I was going to come on to explain how it evolved from its origins when it was used as a quick-fix.

Q275 Alun Michael: The reason the Barnett name is there is that was the point when it became an accepted part of the—

Professor Mitchell: Not quite.

Q276 Alun Michael: —process towards devolution.

Professor Mitchell: It was originally used for bits of public expenditure and then in the 1970s it got wrapped up in some of the debates on what might happen post-devolution and then it was named the Barnett Formula in 1980 in an article by David Heald. In fact, its evolution is quite murky and in essence it was a fix. It was not anything other than a fix. Currently it is not based on need and it is something which I think provokes hostility in Scotland and in England. It is one of these odd

policies which seems to have very little support. Having said that, the reason it continues to exist is because it is very difficult to find an alternative and if it continues at all I think that will be the reason for it continuing to exist. The very fact that it has become a symbol of the politics of devolution is important. The key change that came about with devolution was simply that this issue became more salient. The Formula had existed throughout the 1980s and 1990s, it really only took off as an issue because we started talking about devolution and that focused attention on territorial public finance in a way that it had not previously.

Q277 Chairman: Did it not become an issue in this sense, that devolution created a situation, which I personally would argue for, where the Government in Scotland had a totality of resource which you could then move about according to different policy priorities?

Professor Mitchell: Yes.

Q278 Chairman: Rather than simply having public expenditure which amounted to that amount mediated by different departments according to their own London decided policies. It is that ability to do different things with that set amount of money which has brought it into focus.

Professor Mitchell: Absolutely. That always existed as well. You can go back to the 1960s and the Scottish Secretary was able to reallocate within his budget. George Younger used to boast frequently when he was Secretary of State for Scotland that he did that and would give examples. He would put more money into education and law and order at the expense of housing. That certainly was happening. With devolution, of course, the public focus on this and the media attention given to this issue has grown. It is not as if there has been any great change in the policy, it is the perception of the issue that has changed and it has become very much wrapped up in the politics of devolution throughout the UK.

Q279 Chairman: You have not got a bright idea for what could be put in its place?

Professor Mitchell: Ultimately, I think that there has to be a needs assessment of some sort. That is a highly political thing and, of course, we will all disagree on needs, but at the end of the day at least there will be a transparent formula in existence about which we can argue. After all, this is what happens in terms of local government crown distribution, it is not as if we do not do this. It is the way that territorial finance operates almost everywhere else. I cannot think of another example of a formula such as Barnett operating anywhere in the world like this. A needs based formula would be a good thing. I have to say the probability is, of course, that Scotland would lose out and that makes me kind of unusual in Scotland. I do think it would be a good thing for our politics. There is something debilitating in politics which allows Scotland to have more generous public policies but not have to pay for them. That will encourage a politics of grievance south of the border and we are seeing it in the North

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of England, it is understandable, who could really complain about this. Frankly, if I was living in the north of England I would be complaining about it. There is no problem with a part of the UK having more public finances if it is in response to greater need but I do not think that applies in Scotland, so I do think that needs to be addressed. The way I would square that circle is to give the Scottish Parliament powers to raise its own revenue in some measure. We would have to operate alongside a reform formula, I am not suggesting Scotland should only have its own revenues, I think there has to be a grant mechanism. All I am suggesting is the kinds of mechanisms that exist elsewhere in the world. This is not something radical or novel, whatever. Coming back to my point about the change in political culture and gaining the experience of a minority and coalition, perhaps we need to look beyond the UK because the kinds of things I am talking about here are common in intergovernmental systems of public finance.

Q280 Chairman: That prompts a question in my mind that Scottish governments and Scottish parties in every case have so far excluded the use of their limited existing tax raising powers. Are you envisaging a situation in which the Barnett Formula starts to work in reverse, and if you do not know anything about it that is to say if UK public expenditure starts to be reduced because of economic circumstances, then the expenditure of the Scottish Government at that point has to be reduced, not because the Scottish Government has decided to do it but because it is working to a formula. At that point is any Scottish Government going to have the courage to use its limited tax raising powers?

Professor Mitchell: It may have no choice given the commitments that were made in the early days of devolution. As was predicted by civil servants in the 1970s, in the first few years of devolution there would be all sorts of great policies invented and such like and it would be costly, and I think that is what we did in Scotland with tuition fees and care for the elderly. At some stage I think we are going to have to pay for these and unless we reduce our spending then we will need to find ways of paying for them. As I say, in a sense that is likely to happen anyway at some stage in the future and it will encourage a politics of responsibility which, though devolution has addressed to some extent, I do not think has been addressed sufficiently.

Q281 Mr Turner: Could I just remind you in a way that you are talking about concerns in the south as well as in the north, in the Isle of Wight, in Devon, in Dorset and so on.

Professor Mitchell: I do not think it has taken off to quite the same extent there yet. The other part of the UK where it has become a big issue is London. In each of the elections for the London Mayor the Barnett Formula has been raised. That is not to say it has been raised in an intelligent way or with full understanding of it, but that is part of the problem, Barnett is one of these things that is misunderstood

and sections of the media misunderstand and so on and so forth, and the *Daily Mail* will play it up in a particular way. It is something we cannot stop but it does need to be addressed. While some of the media coverage has grossly exaggerated and distorted the operation of Barnett, there is a grain of truth in what they say.

Q282 Julie Morgan: I just wanted to go on to the issue of public opinion and independence. What evidence do you see for any greater appetite for independence since the new SNP Government has come into place?

Professor Mitchell: I do not think there is any at all that I am aware of. At the moment the evidence would appear to point to support the greater powers but not independence. I have not seen any evidence that shows support for independence has increased; indeed, there is evidence that it has reduced over the last few months. That is no great surprise, the SNP has hardly been making a great deal of its commitment to independence since it came to office or, indeed, during the election. The SNP has transformed itself. Although it has independence as its long-term objective, and I am sure that others and if Nicola Sturgeon is around will challenge this, but in a sense I think the SNP has put it on to the backburner for the moment and have adopted a more pragmatic approach, a gradualist approach. One of the reasons they have done so is because that was the only way they had any hope of succeeding in becoming Scotland's first party. That has transformed politics. We often say that politics corrupt but, in fact, electoral politics tends to moderate politicians and mature politicians, and I think that is exactly what we have seen. It is the pursuit of the median voter, as it were, that has forced the SNP to moderate its position on that without entirely abandoning support for independence, but even when the SNP talks about independence it is not the independence that the SNP talked about in the 1970s, for example. As often as you hear a senior SNP politician talking about independence, he or she will talk about interdependence and different meanings of independence and so on, and that is all part of the changed nature of Scottish politics.

Q283 Julie Morgan: If the SNP has moderated its view on this sort of key defining issue, do you see there being less dividing lines between some of the parties in Scotland?

Professor Mitchell: Yes, I think so. I am not convinced these days that nationalist, unionist terms are terribly helpful, frankly. Look at the non-SNP main parties, they are nationalist with a small "n", almost all of them now, and even SNP politicians. One member of the Government produced a book at the end of last year in which he talked about the need for a new union. A new union used to be the language that was used by people who were hostile to devolution, far less independence. Things are beginning to change. We do need a new language in

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Scotland in order to understand our politics and certainly the divisions between the parties are less. It is very difficult for the politicians to articulate that, they have to keep their party members happy and so on, but that is beginning to happen. One of the most interesting politicians around, or former politicians, is Henry McLeish. He has articulated some of the points I am making much more cogently than I can and he is in the luxurious position now of being a retired politician and Mr McLeish has probably seen the way Scottish politics is going better than most.

Q284 Chairman: Is there any emerging clarity about what greater powers might constitute that middle option which is much talked about but I do not have a clear picture of what the additional powers might be?

Professor Mitchell: There is no consensus on that. Talking about the public first, I do not think the public can be expected to have a very clear view on that and within the parties there are different views. At this stage I do not think we are anywhere near identifying clearly those matters which might be devolved. I do think the issue of finance and some measure of fiscal autonomy, not full fiscal autonomy, may be emerging as a runner and there are certain people in each of the parties who now advocate something like that but they do not all agree. That debate is just beginning, frankly. There is certainly no agreement on a range of other possible matters that could be devolved.

Chairman: Professor Mitchell, thank you very much indeed. It has been extremely helpful to have your evidence.

Witness: **Nicola Sturgeon**, Member of the Scottish Parliament, Deputy First Minister, Scottish Government, gave evidence.

Q285 Chairman: Deputy First Minister, welcome. We are very glad that you have given some time to this sitting of the House of Commons Justice Committee. We very much look forward to hearing your evidence. One of our witnesses, Professor Keating, said that: “devolution is about allowing policy divergence and a healthy competition among governments to innovate and respond to challenges”. Is that how the process is able to work?

Nicola Sturgeon: I certainly agree with Michael Keating that devolution and the new constitutional arrangements we have allow for policy divergence where that is appropriate and in the interests of, in our case, Scotland. What I would not want to leave Members with the impression of though is that the Scottish Government is out to be different for the sake of being different. We will judge every issue against a measurement of what is in the Scottish interests, what is best for the people of Scotland, and if that requires a different policy response then we will certainly not hesitate to give that response and there have been numerous examples of that over the years. Yes, that is what the devolution settlement allows. Because of the limitations of the devolution settlement there are other areas where policy divergence may be in the interests of the Scottish people but because of the particular constitutional settlement we do not have that freedom as yet. Most people would recognise that is a positive of the settlement, that we are able to do things in our own interests, and that is as it should be.

Q286 Chairman: If we have a look at the mechanisms for dealing with those cases where there are either differences or some engagement between the Scottish Government and the UK Government is necessary, one of the main mechanisms that was first put in place, the Joint Ministerial Committee, has actually not met in plenary format since 2002. I understand the First Minister wanted to see it operating. How do you see that process working?

Nicola Sturgeon: The fact that the Joint Ministerial Committee set-up does not really function and, as you say, the JMC in plenary session has not met since, I think, 2002 and, with one exception, none of the sub-committees have met since at least that time either, that is a huge missed opportunity. The working relationship between the Scottish Government and the Government at Westminster would be strengthened on a day-to-day basis if that machinery worked better than it does. That said, there are very good bilateral relationships at official level and increasingly at ministerial level on a range of issues and they work well most of the time on a day-to-day basis. I would hope very much we see progress on re-establishing the JMC structure sooner rather than later. The Secretary of State for Wales has now been given the responsibility of overseeing the JMC and the British-Irish Council, so that is probably the strongest sign we have had to date that that machinery may be reactivated, and we certainly hope to hear confirmation of that very soon.

Q287 Chairman: Do you see any dangers if it is not reactivated?

Nicola Sturgeon: First, to be positive, there are now signs that it will be. You mentioned the First Minister’s approach to the Prime Minister in August last year, to which there has not yet been any official response, we do take the additional responsibilities given to Paul Murphy as a good sign and, therefore, we are very positive about the prospects. I think it is important that the JMC does become active again because it would provide a real opportunity to discuss reserved issues that impact on devolved areas or, vice versa, to discuss issues where there is difference to perhaps avoid disputes escalating more than they have to. I would rather see it as the positives we can get from the JMC being reactivated than dwell on the negatives. There is no doubt in my mind that there would be an enormous missed

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opportunity not to have the JMC working properly. We would like to have seen that being the case before now but let us hope it happens before too long.

Q288 Chairman: Under devolved government, does Scotland need a voice in the UK Cabinet in the form of a Secretary of State?

Nicola Sturgeon: You have just heard from Bruce Crawford. I did not hear Mr Crawford's evidence, but no doubt he will have told you of the day-to-day working relationships that he principally has with David Cairns. I think the Secretary of State for Scotland and, indeed, the Scotland Office is of a past era. Perhaps in 1999 the role was more obvious and more necessary. Although some of the functions of the Scotland Office would continue to be carried out, it is important that a reserved government knows what devolved government is doing and *vice versa*. It is important that there is co-ordination, but I think that co-ordination could be carried out in different ways through the co-ordination role of the UK Government, through the Cabinet Office perhaps, and through the JMC working more effectively than it does at the moment. I do not think there is a case for retaining the Scotland Office and the Secretary of State for Scotland as separate entities. On policy areas, while sometimes the Scotland Office appears as if it is presenting itself as Scotland's reserved government, in fact in policy areas it has next to no direct responsibility and the policy areas and relationships that count are the bilateral direct relationships between Scottish ministers or officials and UK ministers or officials. Almost 10 years on, I think it is time to look again at the role of the Scotland Office and the Secretary of State. A critical examination would probably lead everybody to the view that its time has been and gone.

Q289 Chairman: Are you confident that you are not cutting off your nose to spite your face, you are not getting rid of something which, although it does not reflect your long-term aspirations, is thought by some people to benefit Scotland because of the presence of that voice in the Cabinet?

Nicola Sturgeon: Obviously it is no secret that the Scottish Government thinks that Scotland should be independent and that is the best constitutional settlement for Scotland, but while we remain within a devolved set-up there is a real need to have good, constructive working relationships on a day-to-day. We have good day-to-day working relationships, but the question is does the Scotland Office add any value to that. On policy issues, Scotland's voice is the Scottish Government working directly in devolved areas on reserved areas, particularly where there is a crossover and an impact one on the other, and then the real voice of Scotland is the Scottish Government working with the UK Government directly. In terms of the day-to-day machinery I just question whether we need to have a Scotland Office and a Secretary of State for Scotland with all of the expense and bureaucracy that surrounds that or whether those co-ordination arrangements could just as easily and effectively be carried out elsewhere. Increasingly, I think they could be carried out just as

effectively in other ways. I have mentioned the Cabinet Office and the Joint Ministerial Committees which if they were working properly, which they are not at the moment, could do a lot of that work.

Q290 Alun Michael: Could we have a look at one of those areas where obviously there is a need for good liaison, which is on European issues, European negotiations and so on. Is that working well in terms of Scottish interests being taken into account?

Nicola Sturgeon: I think you are absolutely right to say it is one of the areas that have to work well. One of the frustrations the Scottish Government has is that the UK Government tend to see European affairs as being a branch of international relations when in reality the decisions taken by the various arms of the European Union impact directly on areas of devolved responsibility. We have some good relationships, if I can run through the different aspects of the European dimension. We have got good relationships with the European Commission at official level and Scottish Government ministers have had a range of very constructive meetings and ongoing dialogue with individual Commissioners. We have got a good relationship with our Members of the European Parliament and as the European Parliament takes more of a role in European policy-making that becomes increasingly important. I suppose where I think there is most room for improvement and where the frustration of the Scottish Government would be greatest is in terms of our dealings via the UK Government with the Council of Ministers because the constitutional arrangement dictates that we have to operate through the UK Government. Scottish ministers do on occasion attend Council meetings, participate directly in Council meetings, and there have been occasions when Scottish ministers have led for the UK in Council meetings. There are areas of policy, if we take fisheries, which is probably the best example, where I would be very confident that the expertise that we have in the Scottish Government on fisheries is far greater than anything that exists within the UK Government. Clearly our interest is much greater and I think we should be able to work an arrangement where on areas like that it is the Scottish Government minister who leads routinely for the UK Government. Another area where we do think there is real room for improvement, and it may be a bit unfair to say this since it is the only arm of the Joint Ministerial Committee that is functioning, is the European Sub-Committee. While it is good that it has continued to meet regularly, I think there is a real sense that it is not working as effectively as it should be. The Minister for Europe, Linda Fabiani, in the Scottish Government has raised this directly with the Foreign Secretary. It is very often a forum at which different departments of Whitehall sort out their differences rather than a forum at which the UK Government can properly consult the devolved administrations, and the European Scrutiny Committee of the House of Commons, I believe, has raised real concerns about the lack of involvement of the devolved administrations in policy formulation.

Q291 Alun Michael: Forgive me, there are two elements. You have made clear the policy position of the Scottish Government but in terms of practicalities—I am a little out of date but I have seen the way that works between the UK Government departments and Scottish Government representatives and the other devolved administrations—what would you see as the areas where it is working well in terms of delivering on Scottish needs at the present time?

Nicola Sturgeon: There are some examples. In the recent Treaty negotiations I think there was a good relationship between the Scottish Government and the UK Government on some aspects of it, the Justice and Home Affairs aspects for example. In other areas of that there was a real frustration that our concerns over fisheries provisions were simply not listened to by the UK Government and, therefore, were not reflected in the UK's negotiating position. My view is while there will be cases where things work better than in others, in answering the generality of your question there is a real need, and it is not just the Scottish Government that thinks this, as I mentioned earlier on the European Scrutiny Committee has made similar points, where the UK Government does not work hard enough to make sure that the devolved administrations are involved in policy formulation. You know my view and you know the Scottish Government's view that we would be better being directly represented in Europe. While we have the situation we have where so much of Europe directly impacts on our devolved responsibilities it is not good enough for us to be constantly knocking on the door and not always getting an answer when we should be integrally involved in these discussions at every stage, and in some cases we should routinely lead at the Council for the UK Government because it makes sense.

Q292 Mrs James: I want to turn now to *Choosing Scotland's Future*. We are aware that there is a national conversation going on based on the document *Choosing Scotland's Future*. How is that different from the Constitutional Commission that Wendy Alexander has announced?

Nicola Sturgeon: The working party, or review as it is now called by the Prime Minister, I believe, the national conversation, is a wide-ranging inclusive process. It was kicked off last August by the First Minister with the publication of the White Paper, *Choosing Scotland's Future*. In that White Paper, and I have no doubt you have looked at it, we, as the Scottish Government, very clearly set out our preferred option of independence for Scotland but we recognise that others have a different view; others want more powers for the Scottish Parliament short of independence; others want financial independence for the Scottish Parliament but not full independence. We have very deliberately set out to have a conversation that allows all of these views to be expressed. That is going very well, it has generated a lot of interest, and I think the conversation is alive and kicking and generating a lot of enthusiasm in Scotland. It is interesting that when we started off just after the election we had

parties like the Labour Party, for example, being implacably opposed to any more powers for the Scottish Parliament and now we have all parties arguing for some form of further constitutional change, and perhaps that is the biggest sign of the success of the national conversation so far. How it differs from the Commission/review/working party, whatever we want to call it, is very clear. I should say first of all that I do not think anybody in Scotland is particularly clear yet, not least some of the participants in the Commission, what form exactly it is going to take or what exactly its remit is going to be, how exactly it is going to go about its business. I have seen in the papers this morning some emerging signs of disquiet within the Commission about its future direction. I suppose the key difference is that whereas the national conversation is inclusive and invites all strands of opinion, the Commission expressly excludes consideration of one of the key options for Scotland, and that is independence. The Commission is not a substitute for the national conversation. At some point it may be able to formulate an independent view to independence that it can then feed into the national conversation but it remains to be seen whether or not it will ever get quite that far.

Q293 Mrs James: You have already mentioned the Prime Minister's comments on this. How do you respond to his comment that the review was not a "one-way street" and that some powers could be returned to Westminster?

Nicola Sturgeon: I suppose to be charitable, constructive and positive, first of all, it was good to hear the Prime Minister at long last acknowledge the fact that the debate about the Constitution is ongoing, alive and dynamic in Scotland. Sometimes over the past few months it has been reminiscent of the dark days of the 1980s when the UK Government appeared to want to just stick its head in the sand and pretend there was no debate about constitutional change. That was not sustainable then and it is not sustainable now. That was the positive. It is certainly regrettable that the Prime Minister's first serious contribution to this debate seemed to focus more on taking powers away from Scotland than on doing what the vast majority of people in Scotland want to see done and that is have more powers devolved to the Scottish Parliament. I would suggest that demonstrates either that the Prime Minister is slightly more out of touch with public opinion in Scotland than even I would have said he was, or there is that, I suppose, I was going to say Westminster but that would include this Committee which is unfair given you are here showing this interest, old Whitehall tendency to try and get control of a process so that you can try and contain it. I suspect that is what the Prime Minister was trying to do by downgrading Wendy Alexander's Scottish Commission to a Westminster review. I do not think that is sustainable and I do not think that is what people want to see this debate taking the shape of.

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Q294 Mrs James: It is interesting that the debate is going on, but clearly what is coming through in many of the pieces of evidence we have taken is that people are interested in powers and want to proceed but they are not interested in independence.

Nicola Sturgeon: I do not think I am grabbing any front pages by saying this, but I do not agree with you on that. I think there is very strong support for independence in Scotland. I am not saying there is not very strong support for other constitutional options as well. That is the interesting feature of the debate just now and it is what makes the national conversation so dynamic and inclusive because we want all of these strands of opinion to be openly discussed. We can trade any two politicians of any two parties, and we do this a lot in Scotland, we can trade opinion polls and say one option is more favoured than another but, ultimately, one of the big questions we have to face up to in Scotland is how do we ultimately settle the question of whether we favour independence or more powers short of independence. The view of the Scottish Government is very clear, we think there should be a referendum that allows the Scottish people to settle that question. I am more than happy to take my chances in a referendum, I am pretty confident the people of Scotland would choose independence. For parties who do not support a referendum, the real question is how else do we settle the question because I believe passionately that this should not be a debate that is confined to politicians and the odd academic, since I suspect there is still one or two sitting behind me here, or to parliaments even. This is a debate that should involve the Scottish people and be ultimately settled and decided on by the Scottish people.

Q295 Julie Morgan: Our previous witness, an academic, said that the SNP Government had to put independence on the backburner. What is your view on that?

Nicola Sturgeon: I will have a chat with him later, once I find out who it was! I do not think that bears scrutiny. All along, what the SNP said before we were elected into Government is we believe in independence, we campaigned for independence and we seek at every opportunity to advance the case for independence. Ultimately, it will not be the SNP that decides the question, it will be the people of Scotland in a referendum. Of course, we have also always said that we wanted to get elected to government in the Scottish Parliament so we could show what we were capable of by using the powers of the Scottish Parliament as they are better than they have been before, build confidence in the ability of Scotland and the Scottish people to govern ourselves and do things better when we have our own interests up front and centre. I think we are doing an extremely good job around that just now. I would say that, but I think that is a view reflected across the country. As we have seen through the national conversation and the White Paper, we continue to make the case for independence and use the success of the Government using the powers that we have now as a further argument for independence. As people see

what can be achieved with limited powers, the appetite for greater powers and more autonomy up to and including independence becomes very strong.

Q296 Julie Morgan: As a party, have you moderated your views as a result of the reality of government?

Nicola Sturgeon: On what particular topic?

Q297 Julie Morgan: Independence.

Nicola Sturgeon: No, we continue to believe that independence is the best constitutional settlement for Scotland. I noticed one of the questions you posed in your remit was whether the asymmetric nature of devolution within the UK is appropriate and sustainable. I think emphatically not. Although we are keen to debate some of the other options, federalism, fiscal autonomy, they all throw up their own anomalies. All of the rational arguments point to independence as being the best outcome for Scotland. I should stress that independence is about giving Scotland political and economic power over the whole range of issues that other normal independent countries have. I also think it would strengthen the relationship we have with the rest of the UK as well because it would be a relationship of equals. We will continue to make that case as passionately and as powerfully as we have always done before and all of the evidence is it is a case that is gaining ground and winning converts by the day.

Q298 Julie Morgan: In the present situation that we are in, what is your view about the English Question?

Nicola Sturgeon: First of all, it is not for me or any member of the Scottish Government to try and answer the English Question. Just like the future constitutional shape of Scotland should be determined by the Scottish people, the future constitutional arrangements of England should be determined by the English Question. It is of course too tempting for me not to say that independence at a stroke would solve the English Question. I see Andrew Turner shaking his head and to some extent he is right to shake his head, it would get rid of the English Question at a top level but clearly there are issues in terms of the governance of England as well which are for the people of England to determine. What it would get rid of is this rather bizarre and anomalous situation where you have the Westminster Parliament operating simultaneously as a Parliament for the UK and also a Parliament for England which I think does throw up a great deal of frustration in England and is a situation that is unsustainable.

Q299 Mr Turner: I would like to pursue this matter of asymmetric devolution. So far we have been giving your views the benefit, but let us give ourselves an alternative where people are enthusiastic about the current level of devolution but not terribly enthusiastic about the last jump, and that is equally likely. Do you not think then it will be necessary to have a pause and for England to get the opportunity to come up-to-date?

Nicola Sturgeon: What I do not think is that Scotland determining the best constitutional settlement for Scotland cannot somehow be put on hold for matters elsewhere in the UK to—to use your terminology—catch up. I think there is an opportunity already for people in England to determine what arrangements they want that best suit their interests. That is a process that is not constrained by anything that is happening in Scotland. It is a process that is ongoing, at least in terms of growing public debate in England. I hesitate to say too much about what I think the outcome of that should be because fundamentally it is for people in England to determine the best outcome for them.

Q300 Mr Turner: If we have got the level of devolution approximately right, which I realise you disagree with but is equally possible and, for instance, Wales does not have as much, Northern Ireland does not have as much, England has none, you would accept, I think, that people are prepared to bring those up-to-date or would you say, “It’s completely irrelevant to me?”

Nicola Sturgeon: I take a very keen interest in developments south of the border. Scotland and England share an island, that is not going to change, and there will always be a very keen interest in what each other is doing. The point I am making is I think if there is an appetite in England to change the governance arrangements to have more devolution within England, and there have been some attempts at that in recent years that have not in every case come to fruition, then that should happen on its own terms regardless of what further devolution or what further debate there is about the constitutional arrangements in Scotland. It is perhaps simply underlining the point on asymmetric devolution that I made earlier on. It is inconceivable and unsustainable to argue that one part of the UK should almost put its own aspirations and advancing its own interests on hold while another part catches up. We all have to decide what arrangements best fit our own interests. Of course, there will always be a need to ensure, whatever our constitutional settlements are, that we work well together with whatever relationships we will have.

Q301 Chairman: If the Barnett Formula starts to work in reverse, as I would put it, that is to say if we enter a period in which public expenditure in the UK is being reduced and, therefore, Scotland’s defined share of it is being reduced, will the reluctance you have shown so far, shared by all the other parties in Scotland, to use the limited tax raising powers you have, have to cease? Will you not have to use those powers at that point?

Nicola Sturgeon: We do have a Barnett squeeze and anybody who doubts that only has to look at the budget settlements this year which in Scotland’s case was an extremely tight settlement, much tighter than south of the border. The Government has made a very good fist of the resources we have available but it was a very, very tight settlement. That process you talk about is already in operation. As you know, as well as I do, the Barnett Formula is in itself designed

to bring about convergence. My position is that Scotland would be better served not in trying to respond through existing tax raising powers, which are pretty blunt instruments to that process, but by financial independence so that we are responsible for raising all of our own taxes and making the spending decisions that flow from that. I think that is the best arrangement for Scotland. I note that we are not the only party now which believes that and that is far more in our interests than trying to find imperfect responses to imperfect systems.

Q302 Chairman: Why are the existing tax raising powers a blunt instrument? They are a very limited instrument obviously in the amount of money they can raise but they flow from the existing tax system.

Nicola Sturgeon: They are blunt in two senses. One, because, as you say, they raise very small amounts of money but, secondly, because three pence on the basic rate of income tax is one tax power out of a whole panoply of possible tax powers that a normal parliament would have, so by definition it is a blunt instrument because most parliaments anywhere else in the world would have a whole range of tax options to use not just to raise expenditure but to grow their economy as well. Ireland is an example with their Corporation Tax and what it was able to do to boost economic growth. To have one very narrow tax power is a blunt instrument in both of those senses.

Q303 Chairman: So those powers are really a dead letter which you might as well not have?

Nicola Sturgeon: It is up to parties at every election to take a decision at that time depending on prevailing circumstances at that time as to whether or not they propose to use the tax varying power or not. It will not have escaped your notice, Chairman, that in the first election to the Scottish Parliament my party proposed using the tax varying power and we chose for very good reasons on both occasions not to do so in the subsequent two elections. Since we are talking about the Barnett Formula, although I have made clear what my preferred option would be, the current operation of the Barnett Formula is perhaps one of these issues that would benefit greatly from reactivated Joint Ministerial Committees. There is an issue just now, for example, around funding of the London Olympics where if we leave aside core funding for the Olympics, on the funding associated with the Olympics on regeneration, for example, a completely arbitrary decision has been taken by the UK Government to exclude that funding from the Barnett Formula where any other regeneration spending in England would be included. That has caused great consternation on the part of all the devolved administrations but it is the kind of issue that a Joint Ministerial Committee would be able to discuss and hopefully resolve.

Q304 Chairman: In the context of the constructive way you have addressed how you manage devolved government, notwithstanding your aspiration for independence, is there are a greater degree of financial autonomy which could be accommodated within the devolution settlement?

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Nicola Sturgeon: Of course, anything is possible. You know what my preferred option is, but one of the reasons we have cast the national conversation as inclusively as we can is to make sure that all of these different options, and there are a variety of possible different options, some of them of more merit than others, have the opportunity to be discussed and people who put them forward are able to do so. I think it is for people who advocate one of these many other options to put forward what they are and what the benefits are. It is for me and my party to argue the case that we believe in and it is for others to do likewise.

Q305 Chairman: Do I understand from that that the Scottish Government does not actively seek greater fiscal autonomy within the existing devolution settlement but only as part of independence?

Nicola Sturgeon: If there is an opportunity for financial greater financial autonomy, of course the Scottish Government would welcome that. We welcome any new powers for the Scottish Parliament. The SNP campaigned enthusiastically for a Scottish Parliament. It was not quite the Scottish Parliament we aspire to, and on the basis that we will warmly welcome and campaign for any more powers for the Scottish Parliament then we would warmly welcome greater financial autonomy but that does not change the fact that we think the best outcome is financial and full independence for Scotland.

Q306 Alun Michael: Can I put that question another way round. If there were any greater financial autonomy for the Scottish Parliament, how would you want to use it?

Nicola Sturgeon: I am not trying to dodge the question but it is a huge question because obviously it depends exactly what would be on offer. For

example, the power that would be of greatest advantage fiscally to Scotland just now is the kind of powers I spoke about earlier on, the power to vary Corporate Tax, because we have made growing our economy our top priority.

Q307 Alun Michael: Does “vary” mean cut or increase?

Nicola Sturgeon: From the policy perspective of my party in the Scottish Government that would mean cut. I cannot speak for other parties and other policy perspectives. There is real evidence from not just Ireland but a range of other European countries that cutting Corporate Tax actually grows your tax base because of the boost it gives to your economy. That would be one power that we would want. We have announced proposals that were in our manifesto to cut and in some cases abolish business rates for small businesses. That is a good move and I think it will make a big difference to a lot of small businesses.

Q308 Chairman: You would be happy to have the tax raising powers elsewhere to pay for that, would you?

Nicola Sturgeon: Like any government, regardless of what our arrangements are, we have to balance our budget, we have to make sure that our all of our commitments are affordable. The one I was talking about there is fully funded within our budget. What I was going on to say was while that is an important measure I would not for a minute suggest that is as powerful as what Ireland was able to do by cutting Corporate Tax, attracting investment, growing the economy and growing the tax base and tax take as well.

Chairman: Deputy First Minister, thank you very much for your evidence today, we have found it extremely helpful and we much appreciate it. Thank you very much.

Thursday 13 March 2008

Members present

Mr Alan Beith, in the Chair

Mrs Siân C James
Alun Michael
Julie Morgan

Bob Neill
Dr Alan Whitehead

Witnesses: **Councillor David Faulkner**, Newcastle City Council, **Councillor Peter Mole**, Gateshead City Council, and **Councillor Paul Watson**, Sunderland City Council, gave evidence.

Q309 Chairman: Councillor Mole, Councillor Faulkner, Councillor Watson, welcome. This is a meeting of the Justice Committee of the House of Commons. I welcome my Committee colleagues to Newcastle and to the building that once was Northumberland's County Hall. They have all got here with enormous difficulty, as you will know. We are very grateful to our witnesses this morning for helping us with the work we are doing on devolution, 10 years on. I thought I would start by asking three deputy council leaders from important councils in the region—I think at least two of their leaders being abroad promoting Newcastle/Gateshead this very day—how the Government's regional and sub-regional policy changed, if it did change, after the referendum, after it became clear that we were not going to get a regional assembly? A view from the local authority perspective, what happened then?

Councillor Faulkner: I think it did change and it had to change because certainly amongst politicians when the result came in there was (a) disappointment and (b) a sense of unfinished business still which had to be addressed in a different way. We did not think we would be able to reopen the formal referendum type issue on regional government for another 10 or 15 years, but I think both central and local governments realised that there was a need to move the agenda on and there was an appetite and we are living in a state which is one of the most centralised in the Western world, and that it was beginning to affect performance, it was affecting confidence in local government and all sorts of issues. I think the sub-regional agenda, the sub-national review which has emerged is a response to that, and although the proof of the pudding will be in the eating, it is a positive response and there are elements in that where I think local and national government can build a new relationship which has to be based on the redistribution of powers and has to be based on the redistribution of funding. I think the agenda has moved on and has moved on in the right direction. There is a recognition that city regions are relevant and important. All of our structures are based around artificial units, the region itself is an artificial unit. It is a convenient unit for government to organise its affairs, but it is artificial. Even local authority boundaries can be artificial. The really natural units are the city regions when it comes to economic development, when it comes to transport

and so on and the neighbourhood. I think the focus has shifted to city regions and the neighbourhood and that is a step in the right direction.

Councillor Mole: I would make one thing very clear, I am not the Deputy Leader of Gateshead, just in case it gets reported across to Newcastle that I am up to no good. I have been around a long time, 30 odd years in local government, and when this particular referendum came about—and I think the referendum came at the right time, unfortunately it was not at the right time for the people who were doing the voting—we looked at working together, at best practice, then things became a little bit clearer to us when this happened, that we had to do something. Obviously we were working very closely with our colleagues in the North East of England but, also, when we looked a little bit further up than that and started to look at best practice, that did not wake us up but we had to do something, Chairman. David has just spoken about the issues which have come on since then, a progression of deep thought and where we had to go for that and making sure that the region, as you well know, needed to sit down and concentrate on the region and the bits and pieces around it as well. I am more than content about what has happened since then, but we have to carry on and do enough. The assembly would have been probably one of the best things that could have happened to us but did not happen.

Q310 Chairman: Is it a bit different from Sunderland?

Councillor Watson: Not really, I would concur with what my two colleagues have said. Obviously the Government did listen to the voice of the people, even though it might not have been the voice they wanted to hear with a "No" vote but, nonetheless, obviously we ended up in a bit of a state of flux because the plan had to be changed quickly and they were large plans but the day job had to continue. There are some issues which can really only sensibly be addressed on a regional basis, as David has pointed out, and that is how we have managed to make it happen and with government. I would concur with Peter, we are happy with what has been happening and we are progressing what we would perceive as pretty well, but we need to find a way to formalise it and get the structures around it put right somehow or another more formally.

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Chairman: We are going to work through some of the details of the structure and I am going to ask Mr Michael to take it on from there.

Q311 Alun Michael: Just as a reflection when you referred to unfinished business, having being involved in the campaign for Welsh devolution in the run-up to 1979, I did not expect to be part of Neil Kinnock's team bringing it back on to the agenda only 11 years later, so good luck! Looking at the outcome of the Comprehensive Spending Review, clearly there is a restriction on the funds of regional development agencies, it goes down about 6%, whereas the funding for local authorities goes up 1%. Do you think that implies a greater role for local government in economic development in the region? If so, is that something which is separate or something that you are looking at together across the different local authority boundaries?

Councillor Faulkner: I think we want a greater role in economic development and we welcome the idea that we will have a duty to promote economic development and that we can do assessments and hopefully we can then develop the strategies, agree the interventions, agree the boundary lines between local, regional and national government and then get on with it, but I do not agree with your analysis of the settlement for local government, I am afraid. In all of the local authorities in the North East we have got the floor settlement of 2%. The argument was partly that you have all improved a bit in the deprivation rankings, therefore you do not quite need the same amount of money and, of course, that is taking a rather short-term view of it. We all have the floor settlement. Colleagues will speak for themselves, but in Newcastle we have a grievance about population increase not being reflected in the settlement. For the coming year we have all lost the Local Business Growth Initiative money and we thought there was an agreement that the money which came through, whatever we and businesses themselves did to promote a more satisfactory and prosperous environment would flow back to local government. For the last three years we have been waiting for the final amounts which we were due. You might have read, some went to Newcastle-under-Lyme instead of Newcastle upon Tyne, so we got that bit back but we were still short-changed.

Q312 Chairman: You have got that back, have you?

Councillor Faulkner: We have got that back, but we were still short-changed for those three years and we get nothing next year. If I may say so, if you take the non-school settlement and the schools budget is reoccurring at best anyway, we get less money in cash terms, not even in real terms, next year in Newcastle and that is a real problem. We have got all sorts of pressures—I am not going to moan, you will know about them—social care, waste management, single status, we are all covering that, all the councils are covering that. I am very disappointed with the way in which it has come out for local government. I think we can work well with the money we are given. For the third year in a row the North East has had the highest rating of performance by the Audit

Commission on efficiency. We are all three or four star authorities, we have all over-delivered on Gershon and you just feel that at a point at which there might be take off and we can really push this economic development agenda forward, we get a poor settlement and I think that is highly disappointing.

Q313 Alun Michael: Understanding that point, and I have been on the other side of the table on that sort of issue, we are trying to look at the regional issues, and in terms of economic development, a couple of years ago I came with David Miliband when we had a presentation for local authorities and it was incredibly effective because it was clear that the local authorities in this region had got their act together for the day, there was very good communication. To what extent is that playing through into the future in terms of economic development and the local authority role in it?

Councillor Watson: There is an absolute understanding that we can only achieve what we really need to achieve by working together and we absolutely signed up for that agenda but, again, we need structures and infrastructure in place to let us achieve that. Then it needs to be recognised that it has obviously got to be resourced properly. Notwithstanding what David has said from a local point of view, we would always say a bit more and we could have had so much more. Given that we wish there was more, I have got to say, I have been on the radio this morning announcing £30 million worth of spending in Sunderland, so we are not exactly unhappy but, as I say, we would like more, please. Definitely from a regional basis, we know that economic development is one of the strands that we are actively working on together, transport, worklessness, so we recognise that, we want to do it and we need to be able to do it.

Councillor Mole: I would have thought the £30 million was going on players for Sunderland but I did not realise it was for that! Just on economic development, as a region we have looked at it and I am quite sure that Alan and other people know that the airport has been a big factor in getting the region sorted out in terms of economic development. I think we have spread our wings a bit.

Q314 Chairman: Do you mean the airport as a feature or do you mean the fact that money was released from the airport deal?

Councillor Mole: As well as. I have been a director of the airport for about 28 years and from there to getting finances into the region because of the expansion of the airport, how they managed economic development has been a big major player in people coming into the area. You and I know that if you can get to somewhere in 10 minutes from the airport or half an hour, which you can with the Metro system, it is a big player. It is the reason I brought the airport in, but I do think we have looked at economic development very, very seriously. We have had some disasters but we have had some really good forward steps in economic development. We looked at it as local authorities simply and solely

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because we had to and we played a major part in it in the years gone by but the point that you are making, Alan, is we are going to have to get more and more involved together and stretch ourselves out a little bit further than we were before. We were not blinkered but it was a bit of a competition to get stuff into Gateshead, Newcastle, Sunderland and other places. We have worked together for a long time but we need to look at this. The funding as well is very, very important. I understand what my colleague said on the left, but I will get to point that out in another meeting. I do think the economic development funding is helping a great deal to drag people in to the area itself.

Councillor Faulkner: Sub-national review creates an opportunity because it talks about redefining the role of the RDAs, so it is more focused on strategy and that local authorities, either acting on their own or through multi-area agreements, which we would welcome, would be much more involved in the delivery. That is fine, that is great, but there needs to be a flow-through saying, "Where are the resources?" because we are talking about major infrastructure developments. We are talking about connectivity for our transport systems, we are talking about metro reinvigoration, we are talking about things that are going to cost a lot more than business improvement districts or the supplementary business rate will deliver, so there really needs to be some fresh thinking about the flow-through of resources to match the change in responsibility.

Q315 Dr Whitehead: Subsequent to the failure of the referendum, I am interested in how the relationships between local governments and the various boards, the assembly, the regional development agencies, Government Offices then worked, bearing in mind that there was, one might say, almost an assumed vision that everything would be subsumed to the regional assembly and then, as you say, business as usual had to take place with the different agencies in the region and local government. How did that work, or does it work now would you say?

Councillor Faulkner: It works in part. Our problem working with Government Office is that Government Office has to reflect the demands of the different departments of government and we do not see the joining-up at Government Office level which we would like to see, not that efforts are not being made but it just does not happen. With the regional assembly I think the problem was lack of clarity in terms of its role, lack of democratic accountability and so on. Most of us would not mourn the passing in 2010, I can only speak for myself but I feel that is the case. I think local government in the region organises itself well through ANEC, the Association of North East Councils. I think it has credibility, it has good relationships with the existing institutions and it has good relationships with the evolving institutions, so the ministers in the North and so on. I think there is a commitment there to try and make it all work, but I do not think it is particularly fit for purpose. The RDA suffers from our inability to scrutinise it properly and it has its accountability

issues. As part of this exercise, if we can redefine where the different bits that are going to be left will fit together, what their roles and responsibilities are and make the funding flow from that, then I think we will be in a good position. The answer is we make the best of the institutions that we have got, but none of them is perfect, and if we started with a clean sheet of paper we would not have what we have got now.

Councillor Watson: I think that is probably true, but obviously I really believe that structures are only a small part of anything, unless they are totally dysfunctional. It is the hearts and minds of the people who populate them and work in them that make things happen and make things work. That is what all the local authorities have done since then. With an imperfect structure in the system I think we have worked together and made it happen. If you look outside the windows you will see how much we have moved on and that is it. Obviously, exactly as David said, we would design something completely different now and be much more complementary to the work we do but, nonetheless, we will not let that get in the way and we are determined to make things happen in the North East.

Councillor Mole: I have worked very closely with One North East on the European dimension and that has been very helpful in bringing it back as well, but with the organisations we have got, we have worked the best we can, but I do think we need to have a bit more clarity in what we are going to do in the future and who is going to fund what. There are a lot of initials out there and lots of people say, "What do they do and what do these do?" and what we need to do is make sure that if we are going to work closely with central Government we need to have an organisation that does that. Local authorities are working really well together, the best we can with what we have got, but there needs to be some clarity in where we are going to in the future. I do not think anybody would complain about an organisation. AMEC probably shines a little bit more because it is all the local authorities, it is the thoughts of the politicians working together in a region which has got no doubt that we think we are doing the best we can and I am sure we are.

Q316 Dr Whitehead: Bearing that in mind and you have all said that in practice local authorities work well together and although you would not have designed the system as it is, you consider you have made it work relatively well, is the question of democratic accountability subsequently a peripheral issue or would you say in terms of the future structures a future way forward is a central issue? Is it just something that people go on about because they think it ought to be designed more perfectly?

Councillor Faulkner: It is not on the lips of the public all day long, of course, they are concerned about services being well managed and effectively delivered and, frankly, I do not think they care too much. They ought to, but they do not. It is an issue about credibility and ownership, ownership in particular. If I can use an example of the local government relationship with other public agencies. We are all working very hard with our local area agreements

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and all the rest of it, pooling and aligning, setting common priorities, and we are doing that at a sub-regional level now because we work on the multi-area agreements, however, the problem is that all of the key agencies we work with, the police, health, the HE and FE sectors, are all really vertically driven, not horizontally driven, so their freedom of flexibility to commit resource and priority and so on is really not there. One of the changes which has to happen in this constitutional review is that democratically elected local government, through its leaderships, have to have an involvement in signing off regional strategies of all of these major public agencies. If they do not, it really does not make any sense at all. You cannot just say it as an after the events scrutiny type role, important though that is, I think we have got to have an involvement in being part of the development of the regional strategies. I will use an example and I am certain it will get minuted, but the Chief Constable in Newcastle, who is a very nice man, makes policy on the hoof and announces it through the press and we are supposed to be running Safe Newcastle partnerships, you know the point I am making though, that we are trying to run all the partners together and policy is being made on the hoof. We cannot have it that way, it just cannot work like that. I am not sure that answers the question fully but it is an illustration of the relationship point about the centre and local.

Q317 Dr Whitehead: With the sub-national review, the prospect is set out in there of a changed relationship particularly between local authorities and the Regional Development Agency, or a part-changed relationship, and elsewhere there are suggestions of further scrutiny for local government as far as the health and the police are concerned and you have mentioned that things need to be signed off. What do you consider “signed off” actually means? Is there a distinction between scrutiny of Regional Development Agencies which could simply be, “Could you please give an account of what you have done”, and signing off, which appears to have some suggestion of holding to account and some involvement in the process in that phrase? How do you see that in terms of the enhanced role which appears to be offered by the sub-national review, how do you see that working out in practice?

Councillor Faulkner: One of the key elements of it is the integrated regional strategy and if it is truly integrated I think most of us would say that is great, if we can have one strategy instead of a separate regional spatial strategy and a separate housing strategy and a separate economics strategy, that would be good, but we must not be scrutinising it after the event. My point really is we ought to be in with the agencies who are charged with the responsibility for preparing it at the very beginning and we have not been particularly in the past. They might have a sort of “We are setting off on this journey now, what do you think are the key issues?”, but ultimately you just get a draft out and have to comment on the draft. It is not really reflecting the priorities, I think, that local government see and I am giving you my particular perspective. If I say

signing off, I do not mean just signing off, seeing it at the end of the day, I mean truly being involved from the very beginning. When it comes to scrutiny, there are two levels of this. Parliamentary scrutiny has to concentrate perhaps better than it has done on scrutinising the work of those departments of government which have an impact in the region so that there is a greater sensitivity of regional needs and issues as those policies are developed, but then the new scrutiny, whether it is a select committee with MPs and council leaders working together, which I hope it might be, scrutinising the RDA and so on at a local level would be good.

Q318 Chairman: In this context, are you aware of and have a view about the emerging thinking—I do not know whether it applies to all the regional ministers but I think it does apply to the one in this region—that there should be some slightly formalised grouping together of council leaders, Members of Parliament, maybe one or two other stakeholders for this sort of purpose?

Councillor Mole: In the very near future we are going to have 12 unitary authorities with leaders who need to be working together with Members of Parliament. When you are talking about the re-organisation of Durham and Northumberland we are going to have 12 unitary authorities, which is something I was preaching 25, 30 years ago. What we are going to get now, and probably my colleagues in Durham and Northumberland at the present time are not going to like what I am saying, is at the end of the day the end product is going to be 12 strong leaders working with the Members of Parliament, but the point you made about scrutiny, I do not want to be involved just in what is going on within the North East of England, I want to say it in whatever body it is and I think that is why we are elected. How that is worked out is a different kettle of fish altogether, but I do think we need to have a say on all things. We have got Police Committees, we have got Health Authorities, we have got all that, we need to make sure that we do not scrutinise after the event. We use scrutiny well in Gateshead. We make sure that any decision we are going to make or decisions we have are scrutinised prior to the final decision, so we have got an input. That is where we are all coming from as local elected members.

Councillor Watson: If the legislation and what comes through says we sign off things, then we will sign them off and we know that is the hierarchy of things, but if you want us to sign up to things then we need to be part of that decision-making process and we need to be part of making things happen. It would be difficult to sit down there and rubberstamp things at the end and then really take them to our hearts and make them work.

Chairman: Mr Neill has got an interest to declare.

Q319 Bob Neill: Indeed I should. Until 1 May at any rate I can claim to have an interest as a Member of the London Assembly at a regional level until I stand down from that. I was interested in what you were saying, gentlemen, because I think the London boroughs, for example, would have exactly the same

thing to say in terms of their being involved in the development of regional policy at the London-wide level as I think you are saying. The other bit which interested me was this: I think it was you, Councillor Faulkner, who made the point about the artificial nature of the Government Office regions and the RDA regions. I take it from what has been said that is a key distinction between the city regions if they develop in the way that one hopes. The document talks in terms of the geography of everyday life (a) is that really the case and (b) how do you avoid the potential conflict between one fairly realistic and natural grouping and something which is fairly artificial? How do the two sit together if we develop the city regions in the way that perhaps you hope we do?

Councillor Faulkner: In an ideal world the structure would follow the realities of life, but it will not, we will not have that. In the North East we will not have two RDAs, one covering the southern city region and one covering the northern city region. It is recognition of what your building blocks are. I think there is an emerging consensus that within this region there is a north and a south city region and we have to make sure that the rural areas are adequately represented and it is not just trickled down. That apart, it would be possible to do it and that could feed through into the regional strategy, but clarity about who does what and who is funded to do what is absolutely essential. My emerging view is that the city region is about economic development, transport and skills. Fundamentally that is what we chose to feature in our multi-area agreement and if the local authorities have greater responsibility within their place-shaping role in local area agreements working with partner agencies on education, social care and so on and have the funding appropriate to do it, that would be about right and we could all make that work. We would still have to do that kind of tie-in of one regional strategy and one RDA, but at least you would understand what the building blocks were better than we do now.

Q320 Bob Neill: What do you think the RDAs and the Government Offices should be doing to help and support you guys in the creation of these multi-area agreements? Are they doing enough, are they getting in the way or is it about right at the moment?

Councillor Watson: We need to get that sorted out as to who is the driver and who is the passenger in the situation. Going back and alluding to the democratic accountability, that needs sorting out, but obviously we would quite clearly say that the elected members through the local authorities should have a major voice in that. We accept through the structures that there should be input from different areas, that business and the community voluntary sector should inform the routes that we take in whichever way through consultation and possibly partaking in whatever structure is there but, as David said, we need to have clarity so that we can work with it.

Councillor Mole: What we need to do is take the people we represent with us. The problem we have got is that people do not understand what all these groups are, they do not understand what is happening every day in the press. Something happens in Westminster and they say, "Well, obviously it was a Scottish Member of Parliament or somebody else who did it" and "Why did they do that?". We need to be able to come back and say, "Look, we've got our locus, we've got an organisation set up that is doing work for the North East of England". We need to get this clear and publicised because until we get the people we represent to come with us and understand what is going on, nothing is going to work because we are not going to get that kind of support. What I really think we need to do to help out with this particular grouping is to say, "This is what we need to do. This is how we're doing it" and let the public know. Obviously there is the support. I keep saying, "We're going to do this" and they look at me as though I have got something wrong with me because they have not got a clue what I am talking about.

Q321 Bob Neill: Does the fact that some housing and planning functions are going to sit with the RDA help the argument there or does that cause concerns as far as the public are saying about ownership, for example?

Councillor Watson: Absolutely. People are always suspicious of change in moving things to a different basis and quite a lot of people who are involved now probably get a little bit precious about their roles, but it needs to be explained. The point Peter made is an absolutely valid one about taking the people with us, and I think we have got to recognise that we, as leaders locally, have the job to do there in putting the case to people of the advantages of working in this way and in a modern world there really is not another option.

Councillor Mole: I would welcome the housing part of it because over the last few years we went through legislation to sell council properties which has devastated areas across the country because we cannot let houses to people if we have not got them. We have got to build them, we have got to make sure there is the affordability and the housing is going to be built, so I welcome somebody outside looking at what we are doing and working with them to do it. I am not quite sure about every housing authority at arms' length, but I will not go into that either. If it is done we have got to address the situation.

Q322 Bob Neill: Can you get the accountability issues addressed in it?

Councillor Mole: Yes, they need to address the situation.

Councillor Faulkner: I think it is possible to do it. The local authority still retains its statutory planning responsibility and when it comes to our relationship with something like the Highways Agency—it is about the only relationship we have—that is a good example of part of a government agency which local government needs more influence on, on plans, investment and so on. When it comes to housing,

none of these issues is going to be easy because basically you have got three options with housing, you either have a single regional strategy where everybody says, "That's how many you can build", or you have a free-for-all and each local authority decides for itself, or you let the market decide and obviously none of those answers is correct, there has got to be a very intelligent working between all of those. I think it is possible—you both used the word "clarity"—if there can be greater clarity into the roles and responsibilities and, as I said earlier, let the funding flow from that.

Q323 Bob Neill: Councillor Faulkner, you indicated the key areas you thought the multi-area agreements needed to cover earlier on, is that a general view amongst you?

Councillor Watson: There is a consensual approach to that with what we have already said. The point I would like to make is we are not strangers to this in looking at the conurbations which we represent, a conglomerate of different villages and little areas which have grown up together through different historical reasons. When we go back to our bases we will have different people from different areas saying, "We don't get anything off this council, it does nothing for us", so we are quite used to that sort of disparate view and we can live with it and work with it, but we understand the difficulties and that there are difficulties.

Councillor Faulkner: We also have a record of working together because of all the legacy arrangements which flow from the old Tyne and Wear County Council, we worked together on the fire brigade, the police and issues of transport as well, so there is no reason why we cannot make the multi-area agreement work in those more cross-cutting areas.

Q324 Bob Neill: To some degree it is true of London as well.

Councillor Mole: I think we have got to accept the fact that we are not all of the same political party, but we are all of one voice in the North East of England. The point you are making is that we agree on a great deal of things and one of those which David said, which I would agree with is we do politically as well.

Q325 Julie Morgan: Good morning. We have talked about the different ways that you work together, what other mechanisms are there for you to pursue the common goals that you have told us about?

Councillor Watson: We work informally and we see each other at different things like this and obviously we have an officer relationship across the authority. We do meet in different ways at different times.

Q326 Julie Morgan: It is mainly informal, there are not any other mechanisms which bring you all together.

Councillor Mole: Believe it or not, I am going to get told off for this, but it is the Gateshead/Newcastle Partnership, is it not, David!

Councillor Faulkner: It was the only way we could get you on board!

Councillor Mole: Formalising that as a conurbation from the Gateshead Newcastle is one of the things we are doing officially and working together we have got the Tyne and Wear leaders' meetings.

Q327 Chairman: Is that the development company or is the development company an offshoot of that?

Councillor Faulkner: The development company will be part of it and has given us an opportunity to strengthen the relationship. The interesting thing about that Gateshead/Newcastle relationship is that it has survived the change of political control, which could have been really quite difficult for us, to be blunt, and it has got three important strands to it: one is about tourism, culture and promoting conferences, marketing and so on; the second is the Housing Market Renewal Pathfinder, which covers both boroughs; and the third now is the City Development Company, which will take the two city centres and oversee the dragging in of inward investment to help us achieve our ambitions. If we get assistance with central funding as well we can use our own assets, and we are talking about the asset-backed vehicles as a route for drawing in private sector funding, so we have private sector funding, our own assets and help on the infrastructure side of government and I think that would be quite a powerful cocktail right across the region. Certainly for Newcastle and Gateshead and the relationship with Sunderland too, it is a pragmatic and mature relationship. We understand that at times there are bits of tension between us, but I think there are more times when we are working together than working in opposite directions.

Councillor Mole: Just think of the five local authorities that were Tyne and Wear but when they were exempted it was only going to come to 12 local unitary authorities. There is a will to work together and formalise it. The problem was prior to the Tyne and Wears that went and then we got the other county councillors. We are very, very keen to work together. It is the only way you are ever going to survive politically, regionally and nationally as well and if you do not work together you fall on your backside.

Councillor Faulkner: I would not underestimate the informal in the region that is as small as ours. The informal networking is quite extraordinary and that is across sectors, it is not just politicians, it is the informal networking with the business community. We meet each other quite a lot.

Q328 Julie Morgan: It is like Wales.

Councillor Faulkner: I guess it must be.

Q329 Julie Morgan: What you are talking about there is you all put a bit of money in but you need more money from central Government to take this forward, is that what you are saying?

Councillor Faulkner: I think for the major infrastructure developments we either need greater opportunity to do things for ourselves, like they do in America with local bonds or whatever, or we need

more central money hypothecated for us to make the decisions as to what the strategic investments are. Yes, one of the two, either will do, both preferably.

Councillor Mole: I am not a great believer in going and saying, "We need money for this", I think we need to say, "We need money because of this and because of that" and we need to identify it and as a region we are quite capable of doing that, but that is what we do need to do instead of asking for X.

Councillor Faulkner: If you looked at the front page of the *Newcastle Journal* this morning it kind of reflects exactly how we all look at these things because it lists all the things which the Chancellor announced in terms of major infrastructure and says, where is the North East in this, where is the North East in transporting investment et cetera, et cetera?

Q330 Julie Morgan: I have not had a chance to see that yet.

Councillor Faulkner: It is interesting because every major sector in the region would say exactly the same thing. They would not say, "Stop whinging" or whatever, some of them might! There is a common view emerging and, indeed, even amongst the non-political chattering classes, I think three, four years on from where we started with a failed referendum a lot of people are thinking that was a lost opportunity, maybe we got it wrong, maybe we should have shown greater leadership and really got a hold of the debate. There will come a time when people will want to do it again. In the meantime, what is on offer through sub-national review and all of those give us more of a chance than we have had for decades.

Q331 Mrs James: I want to go back a little bit to the original introduction when you talked about the "No" vote in the referendum in 2004. Have you any views on the reason why the region turned that down at that time? Do you think this has put paid to any future aspirations for a regional assembly?

Councillor Mole: I have got a theory. The theory is that the people who put crosses on pieces of paper are of a generation and that is nationally. We had re-organisation in 1974, we had the demise of Tyne and Wear in whatever date that was, we have had boundary changes, we have had this, we have had that, and I think people thought, well, we have got another structure coming along on top of us now, and when we were knocking on doors, not because we were three councillors, quite a lot of people said, "Look, we're quite satisfied with what's happening in our area, why do we need this?" and I think people were very suspicious of what was happening and they thought they were going to lose what they had. Over the years, and since lots of things have happened, we have come up in the world and people

saw that and did not want to stop it or lose it. I am not quite sure that people wanted another change without really understanding why that change was going to be there. There was the point we made earlier on about titles of groups of people, like one North East and all the rest of it, and we did not really know where the headquarters was going to be, it did not come about and people were not sure. To finish your question, of course I think we would be more aware if it happened again and would do things quite differently to make sure we knew where headquarters was going to be, we knew what was going to happen and we knew the answers to the questions. A lot of people asked questions that we did not know the answers to and that was the whole problem.

Q332 Mrs James: You do not think it has gone for a generation now?

Councillor Mole: No, not at all. The people in the North East would like to see something like that, but they want to make sure they understand what is going on. In another life I work in Wales, Northern Ireland and Scotland and have seen the re-organisation of that. I have just spent a few days in Wales with the Remuneration Committee of Welsh Councillors and there has been a big change there in mentality. I think we need to understand what the problems were and we have all got the same feedback, but we need to make sure the thing is done properly, but I do not think it is for another generation, if we started to head towards it in the very near future we would get it through.

Councillor Faulkner: There was not enough on offer (a) for people to feel it would make a difference and they could not see how it was going to add much value to where we were with the institutions or powers or whatever and (b) there was not enough on offer, sadly, to motivate the "Yes" people or give them ammunition to make a campaign out of it. It was poor leadership in my view. The "No" campaign very cleverly captured this sort of anti-politician, "It's a waste of money" sentiment. They had this inflated white elephant that they took around the region, very clever, I am afraid, but the fundamental problem was there was not enough on offer and, ironically, there was less on offer then for a major constitutional settlement than there is now through the sub-national review. We could have made more of what is on offer now in the campaign if we had had it.

Chairman: On that happy note, I think we need to move on to our next set of witnesses. I am very grateful to the three of you. I thought my colleagues ought to see the headline in the paper which was referred to earlier.

Bob Neill: The *Evening Standard* has got a very similar article, a similar headline!

Chairman: Thank you very much.

Witnesses: **Graham Pearce**, Aston University and **Sarah Ayres**, University of Bristol, gave evidence.

Chairman: Ms Ayres, Mr Pearce, we are very glad to have your help in trying to understand how the wiring works. We have heard from practitioners at the local government end of the spectrum and we have got quite a few questions for you about how the system works, I am going to ask Ms James to start.

Q333 Mrs James: Is it possible to identify the key features of the Government's regional policy since the referendum in 2004 and how it has affected you?

Graham Pearce: Since the referendum in the North East there has been a certain amount of drift in terms of policy at Central Government level. The reasons for that are to do with lack of political pressure from the local level. There have not been any significant bottom-up pressures in terms of Departments to reform, so it really has not been very high on the ministerial radar. That has enabled Whitehall and Westminster to have a fair amount of manoeuvre in terms of deciding what it would do. In our report we have suggested that certainly there has been an impression of a rather piecemeal approach to regional government issues until the sub-national review last July. I think there has been lack of political pressures from the bottom and, also, there is increasing recognition that there needs to be a degree of co-ordination, a technocratic solution in terms of the approach to regional policy. One other point I would add is that whilst there is a good deal of rhetoric amongst ministers about dealing with economic disparities in Great Britain, when you look at what is happening on the ground, again, that has been an issue which has possibly been lost.

Q334 Mrs James: What about the move to city regions?

Graham Pearce: One gets the impression that after the referendum some local authorities, particularly in the North of England, saw the opportunity to reassert urban dominance. There has been a certain amount of fair wind behind some of these arrangements around city regions and to some extent the Government's support of multi-area agreements. I think even those people who are supporters of a city region notion have recognised that this is not a substitute for regional government and regional policy-making. The other point, and this is an impression, is there has been a good deal of government support for city regions, certainly two or three years ago, and there was a lot of political support from the local authorities, but ministers seem to have blown rather hot and cold on the city regional agenda over the last couple of years. It is not about a choice between the city regions and regional government. It is quite interesting, what is probably going to happen, and this is reflecting what you have just heard about the North East, is you may see different sorts of regimes emerging in different regions, so there may be more flexibility than there is at the moment.

Q335 Chairman: There was a change in this region, was there not, from the initial perception of a city region as being a wholly urban area to one which reflected much more the travel to work and the major

shopping travel patterns and, therefore, embraced many other areas beyond the immediate urban area. Was that a definite act of policy on the part of Government or did it just evolve?

Sarah Ayres: I think there was lots of academic literature which then began to talk about the functional boundaries of what city regions should look like, patterns of inward investment and travel to work areas and about targeting investment where it makes the best economic sense and that was digested differently across different regions. This idea that city regions then move to a broader aspect than just Newcastle or Birmingham came on to the platform but there were still some real reservations in rural areas that they were being marginalised on the boundaries of that. There were still some real concerns that peripheral areas would be left out.

Graham Pearce: There is also a suggestion from the South East that this is something which has been led in the northern regions and is not necessarily appropriate for the South East or East Anglia, so there are different sorts of solutions coming through in different regions.

Mrs James: There has been a recent focus on the English question, do you think this has affected thinking on regional governance?

Alun Michael: That would be the England, outside London question!

Q336 Mrs James: Could the Regional Government be a potential solution to this question?

Sarah Ayres: Yes, I think the English question is about improving the governance of England and addressing the constitutional imbalances post devolution and there are two potential positions on that. One is that until you answer the English question devolution will not be fully formed or a done deal and the second is that you can potentially leave the English question unanswered indefinitely. The only problem with answering the English question is having some viable solutions and that is where we have got a problem. Post the North East referendum elected regional assemblies are off the political radar for the foreseeable future but not necessarily forever. My understanding is that there are some quite significant constitutional, political and technical barriers to implementing a "votes on English laws system" or an English parliament. You have already heard the details on that in previous evidence given to the Committee by Professors Charlie Geoffrey and Robert Hazell, so I have got nothing more to add to those details, other than to say that they do not look particularly like viable options in the immediate future. That just leaves the Government to tackle the English question under administrative decentralisation and I think that is what they are trying to do, putting down more functions and powers to the existing administrative tier. I think they are trying to do that through the recently published sub-national review and also the Governance of Britain Green Paper. There are two strands at work, two debates going on. One is the kind of regional accountability and democratic deficits debate and agenda, which is about giving regions more voice and more power. The other one is about how to make the

system work better, the technocratic argument, which is about efficiency, effectiveness and economic productivity, which perhaps is the sub-national review remit. That is perhaps how the English question is being dealt with immediately.

Q337 Dr Whitehead: When you say how the English question is being dealt with, one of the striking phrases in your written evidence is your “but” phrase, which is on page three of your evidence, “. . . devolution has not altered the fundamental nature of Whitehall . . .”. Do you mean by that Whitehall as in a bureau building by civil servants attempting to maintain their particular influence or politicians unable to grasp that devolution entails differential changes in how the centre then organises and operates itself within itself? Which of those two do you favour?

Sarah Ayres: I think it is both, there is an issue around both of those. If you look at regional policies and regional strategies, Central Government sets the remit, it sets the objectives and regional policies still need to be signed off by secretaries of states, so there has been no real challenge to the centre. The Government has tried to introduce things like regional priority documents, which was getting the regions to identify priority areas of spend. These messages were then sent up to Whitehall departments and then they were asked to reflect on these in departmental spending plans, but our research seems to say that there is very little evidence of regions influencing the centre. Also, our research has identified big differentiation across departments in their response to decentralisation to the English regions. You have departments at the forefront, perhaps the Treasury, DBERR, DCLG, but even in these kinds of region-friendly departments, regional teams might only be two, three, four people and the work only affects certain strands of the departments. There are huge areas of DBERR that are completely un-region touched or focused. Then, also, you get departments which are being resistant or perhaps even hostile to the regional agenda, perhaps the big delivery departments like Health or DWP who have no real interest in engaging with the regional tier at all. It is a case of the bureaucracy of the organisation perhaps not having the mechanisms to take on board regional views, but I do not think there is a political drive from ministers to grab it either. It is a two-strand barrier, if you like.

Q338 Dr Whitehead: Your description there suggests that a number of departments are actively opposed and continue to be opposed to the idea of genuine regional devolution or, secondly, where there are dips of the toe in the water of regionalism they still relate to vertical responsibility upwards towards the central department.

Sarah Ayres: Yes.

Q339 Dr Whitehead: What are the implications of that for regional governments in the future for England if that is the case?

Sarah Ayres: I think the immediate problems are that it is difficult for regional bodies to develop policies for territorial distinction and joined-up policies when

Whitehall itself is not joined-up and has no mechanisms available for digesting regional views in a sense, so that is an immediate problem. Also, it is problematic for regional bodies to engage with departments with very different levels of enthusiasm for regional working that can lead to some complexities. In the future there is perhaps a more pressing problem in that if the Government wants to revisit the elected regional assembly route it needs to learn from its mistakes and I think they were touched upon in the previous session where there was not enough on the table. If elected assemblies are to come back on the agenda, I think there is an acknowledgment that it will need to be repackaged and there will be a much stronger assembly which might convince a sceptical public. That will require more consistent and comprehensive commitment across Whitehall. If the public and regional bodies see that Whitehall is reluctant, as it appears to be at the moment in lots of areas, then I do not think they are going to persuade the public to say yes in a referendum. Those are the kinds of implications of a reluctant Whitehall.

Q340 Dr Whitehead: Your description of the Government’s piecemeal approach to English regions, in your view is that the determining factor in that piecemeal approach or are there other issues at work there?

Graham Pearce: That is absolutely right. Going back to the point which we made earlier, you do get the impression that Labour’s commitment to constitutional change was pretty clear in the first term, but that was really a concern about the Celtic regions and tackling the London issue. There was some support within the Labour Party and elsewhere for regional government in England but it was fairly limited, so there was no real pressure as there was elsewhere in the UK for changes within the centre. Because England is so large, it is 85% of the population, as you probably realise, in a sense Whitehall and Westminster have been allowed a lot of flexibility just to carry on as they have done in the past but, as we all know, it is very difficult for Whitehall departments to join up, interconnect and tackle what we call “wicked issues” and they are not really designed for territorial management in any case. There is also a sense that individual departments, as Sarah said, have shown varying levels of commitment to the regional tier and they are also often responsible for taking particular initiatives themselves and those are not joined-up, that may be something you will want to come back to. Although the sub-national review is not explicit, it recognises those weaknesses. Of course it does not say that because it is a Treasury led document.

Q341 Dr Whitehead: Can I touch on the Government Offices of the regions. You mentioned that they are struggling to integrate separate Government initiatives, but do you think there is a particular series of factors relating to the very structure of Government Offices? I could take you down the route of the role of General Franco’s regions in Spain post-devolution, but we will not perhaps go down that

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route. Are there particular fundamental differences between Government Offices which go from the centre outwards and the idea of regional devolution which goes from the bottom upwards or outwards which cause that problem of delivering policies or are there other issues?

Graham Pearce: I think the issues in terms of the Government Offices reflect our response to the previous question in a sense, the notion of functionism within Whitehall. Integrated regional offices, as they were called, were established under the Major Government in the mid-1990s because it was recognised that the Government was not really connected at the regional tier, and at that point there were three government departments brought on board. What has happened in recent years is an increasing number of domestic departments have become co-located, I think is the term, within the regional offices but, again, the funding for Government Offices, although it is the funding they are responsible for, for inputting, is dominated by three different government departments—DCLG, DfT and DBERR—and although it looks as if the Government Offices have control, much of that funding is allocated. We did some work a couple of years ago looking at funding of Government Offices and we found that some of them included the funding for the RDAs in their budgets, their chunks of money, but then others did not because, in fact, the money is almost a sort of postbox for funding, the money just goes from the Government Office to the RDAs or it did in those days. Similarly, local authority transport funding is directed through the Government Offices and then it is sent off to local authorities. The extent to which the Government Offices are able, as they are intended to do, to bend government resources in order to meet the particular needs of the region, they have relatively limited flexibility. The way in which accountabilities work in Whitehall, in fact it would be quite difficult for Government Offices to have extended flexibilities.

Q342 Chairman: Put it this way, they cannot make the kinds of choices that the Scottish Government can make in deciding to move things across.

Graham Pearce: No, they are creatures of Central Government.

Q343 Chairman: And Central Government does not choose to say, as it sometimes did pre-devolution in Scotland, “Well the Scottish Office can decide if it wants to make some significant moves”.

Graham Pearce: That is right. It is a debatable issue. The Scottish Office and the Welsh Office existed a long time ago, a long time apart, and that legacy does not exist to the same extent in the English regions. It is perhaps a little bit better than it was but it is still not present.

Q344 Bob Neill: Can I come in on the Government Office point while we are on it because, wearing my other hat as an Assembly Member, I was interested in some evidence that Tony Travis from LSE gave. His argument was—although he put it in a London context, he was suggesting it was applicable

generally—that Government Offices suffer because they are set up on a fundamentally contradictory premise. On the one hand, they are the voice of the regions to government and, on the other hand, they are the Government’s representative to the regions, and the two are contradictory.

Graham Pearce: Sorry, I should have come back and responded to that immediately in that, as you say, they are the eyes and ears of Whitehall but they are also there to represent the regional community and that is a very, very difficult issue to deal with.

Q345 Bob Neill: How do you get around it? Can you get around it?

Sarah Ayres: Again, when we were doing our research and we were talking to Whitehall departments engaged in regional working, people who were wearing the regional hat in different departments were absolutely clear about what the role of the Government Offices was. It was to champion central Government policies in the regions and make sure that was delivered and they were absolutely clear on that. You are right, it does place Government Offices in a potentially tricky situation and it makes it difficult for them to engage in effective partnership working with their regional partners. I can think of a quote which came out of a report that Graham and I did where an RDA chief executive said, “The Government Office always comes with a non-negotiable position”, which makes partnership working redundant from the start. Whitehall is clear about the GOS role and remit but that leads to frustrations in the regions to do with partnership working.

Q346 Dr Whitehead: Bearing that point in mind, to return to the Spanish example, even though *autonomía* were written into the Spanish constitution, the Spanish Government was absolutely reluctant to remove its grip on its original regional organisation precisely because the government whip could then move into the regions. Is it then an irresolvable problem in terms of the machinery of government or is it something that should shift in terms of how devolution works?

Sarah Ayres: I think there is almost a bit of a Catch 22 going on in the English regions since 1997 which is about the regions saying, “Can we have more control over certain functions and decisions?”, Whitehall saying, “Well, no you can’t because you haven’t demonstrated that you can do it” and the regions saying, “We know, that’s because you haven’t given us the chance”. There is that kind of stalemate going on about the degree to which Whitehall is reluctant to let go of certain functions. If the regional tier is going to do the job that it is designed to do, which is about developing territorially distinct policy initiatives, then it is going to have to have some more control over the decisions that it is charged with. Until it does, then it is going to be really difficult for it to secure any real added-value.

Graham Pearce: We did have a look at the French model and the *prefectures* which involved Central Government representatives within the regions, and this is applicable in other European countries as well.

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From what I can gather, they have a very high profile at the regional level. They are not political appointed, they are civil servants, as far as I am aware, but they do have a fairly high profile in the French public's eyes, which is not something that the director of the Government Offices has because no one really knows about the Government Offices in the general public. Perhaps the regional ministers will rectify that matter, but I somehow doubt it.

Chairman: I have known directors of Government Offices who thought a high profile was appropriate for them.

Q347 Alun Michael: Having had some engagement in regional policy in relation to the Government Office, I have to say I think there is a lot of oversimplification going on here. My question comes, to be frank, from some frustration on reading your paper because it puzzled me and it reminded me of F.E. Smith's comment, "This pudding has no theme". You refer to the English question, which is the England outside London question, you say at 5.2: "... in England the tentative decentralisation of territorial management has resulted in diverse institutional approaches in different regions", well, why not? You say that RDAs are judged on national rather than regional targets, I am not sure that is true actually, but you also say particularly that a number of factors hinder the effective running of the RDAs. Taking that as your headline critique, where does it take you? What are you getting at? What are you proposing? Where is the sense of direction? I did not feel anything from the paper that showed me where you were going on your analysis.

Sarah Ayres: We spoke about this last night and we were saying what is the answer to this. In a sense, both of us were thinking if you want to really address the English question and some of the deficiencies we are talking about, elected regional assemblies seem the only option, but where that is not going to happen in the immediate future, because there is no political or public will, you have got to work with what you have got. I come back to the argument which Professor Charlie Jeffery gave you in previous evidence, which is about moving down mechanisms, functions, maybe controlling the funding streams, more accountabilities and strengthening the regional tier under administrative decentralisation.

Q348 Alun Michael: With what mechanism?

Sarah Ayres: Things like regional funding allocations which have just been introduced where the regions now have greater control over ring-fenced pots of money for transport, economic development and housing policy.

Q349 Alun Michael: Into the Government Office?

Sarah Ayres: Yes, those pots of money go through the Government Offices.

Q350 Chairman: The Regional Transport Board.

Sarah Ayres: Yes.

Q351 Chairman: To illustrate an example of that, when the Regional Transport Board in this region looked at it, it discovered that if it wanted, for example, to dual the A1, a major strategic project, it would have to abandon all the second order projects throughout the region, so the capacity has to be sufficient to make strategic decisions.

Sarah Ayres: I think that is right. That was one of the things which the first round of funding allocations was criticised for, that there was not enough money so, like you said, if you have got a big project then all the other smaller projects fall aside. There is a second round of funding allocations starting later this year and the guidance is out in the summer and maybe the Government has listened to some of the criticisms of the first round and might increase that pot of money to avoid some of those problems which were identified in the first.

Graham Pearce: Going back to your particular question about RDAs, they have a budget of just over £2 billion a year, but in terms of their objectives which is to assist in reducing economic disparities in England, that seems to be a relatively limited amount of resources and, therefore, they are dependent upon some of the other public bodies located within the regions, the Learning and Skills Councils for example, for a substantial amount of money which relates to economic development. They are not entirely in control of their own destiny.

Q352 Alun Michael: You seem to be arguing for a fairly Stalinist approach to economic development then.

Graham Pearce: If you try and measure RDAs on the basis of whether they have achieved their objectives in terms of contributing to the development of regional economies, even the RDAs in rather trenchant criticism suggest that it is very difficult to demonstrate that they have had the significant effect that they sometimes claimed to have had.

Q353 Alun Michael: Again, that is more critique but no answer.

Graham Pearce: I suppose I am raising the question about the distribution of resources.

Q354 Alun Michael: I suppose I am saying that we are quite good at questions, it is answers we are looking for.

Graham Pearce: It is a political question and it is about the distribution of resources within the UK. I suspect that as we are in the North East that might be an issue which would be interesting here and I guess in Wales as well.

Chairman: Are there not two issues, there is the inter-regional distribution and there is also the extent to which money spent within a region is determined by the regional structure, which is much higher in Wales, for example, than it is in any of the regions in England?

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Q355 Alun Michael: Chairman, there is, but the allocation of resources in the North East, for instance, reflects the greater economic problems of the region. You have had criticism from Alan's region, for instance, and that is why I come back to the question—and the tasking of RDAs reflects the different natures of the region—what is this paper driving at? Where are you taking us? Where are the answers?

Sarah Ayres: I think the sub-national review begins to address some of the problems in terms of giving the RDAs a much clearer tasking framework. We have a central PSA target now—just one, I know there are some other shoot-offs from that—which is about economic development, a slightly different structure than they have had from 1997, which was based on regional administrative boundaries, now we have got multi-area agreements, investment where it makes best economic sense, driven by local authorities a bit more and that begins to answer some of those problems. Some of the answers lie in the sub-national review, but we have not got the guidance, it is just about to come out and we do not really know how it is going to unfold. There are lots of concerns that local authorities have been given a remit to engage in an economic development dialogue, but there are some concerns, perhaps, that the RDAs have to consult the local authorities but the local authorities have not got a veto. I think local authorities face a really challenging role because, on the one hand, they have got to shout for their corner, if they did not they would not be doing their own job but, on the other hand, as a region of local authorities they have got to present a coherent united voice to the RDAs so the RDAs can draw some sensible conclusions from that. I think there are going to be some real tensions between local authorities, on the one hand, shouting their corner and, on the other hand, coming to a consensus view about where investment should go. My recent discussions with Whitehall officials indicate, from the Treasury perspective at least, that they do not want jam spreading, they do not want winners across the region. So investment is not necessarily about Equity or social justice, it is about making investment where it makes best economic sense. There are going to be winners and losers and there are going to be turf wars, but that could potentially give the RDAs an excuse to ignore local authorities, RDAs will say “they cannot come up with a coherent voice, so we will place investment where we want it.” I think the sub-national review raises some answers to the question, which I think is what you are probing for, but there are also some potential downsides there which could be dangerous.

Q356 Bob Neill: I was interested that you would be leaving that job for the RDAs in a sense now because you are quite critical, I think, of the assemblies: fragile institutions, lack of legitimacy, confusion as to what they do, there is a lack of accountability, all of which most of us would probably agree with, strategic overload. Under the new dispensation from 2010 what is the difference going to be? Some of these

things are going to be passed on to the RDA. Is the RDA going to be any more robust as an institution than the regional assembly has proved to be?

Graham Pearce: You are right, the assemblies are very small bodies, they have a total annual budget of less than £30 million a year and I suppose they are fairly easy targets. They have a limited voice in Whitehall, lack of democratic legitimacy and so on. On the other hand, they have provided quite an effective forum for local politicians to work at the regional level. I am not sure about the South East, but there were certainly Local Government Associations in all the other regions. They were useful in providing a forum for that and also providing a forum for social and economic actors the business community and environmental and social groups to come together.

Chairman: But they are going.

Alun Michael: Exactly, they are off.

Q357 Chairman: The assemblies are on the way out.

Graham Pearce: Yes, that is right. I thought the point you were asking was what difference is it going to make if they go.

Q358 Alun Michael: The point I am making is you identify a number of criticisms of the regional assemblies and as from 2010 some of the key functions go to the RDAs, but do those criticisms not still apply effectively?

Graham Pearce: That is right.

Q359 Alun Michael: If anything, what can you do, for example, to improve the accountability of the new style post-2010 RDAs? How do you make that fit with the development of multi-area agreements? What input should local authorities have, those sorts of issues interest me.

Graham Pearce: I do not think it resolves the problem of the tensions between the economic, the environmental and the social, which has been alluded to in terms of the tensions between the assemblies and the RDAs, it does not resolve that. The danger is that if local authorities do not have sufficient confidence in the RDAs they may lose confidence in the process of the RDAs. There is a suggestion in the South East that there should be some kind of dual key approach in terms of signing off the single regional strategies. There is also a question mark about the abilities of the RDAs, given they have a particular culture, they are business led bodies, their relationship with some local authorities has not always been comfortable but they are going to have to become increasingly reliant upon the local authorities in terms of delivering their strategies.

Sarah Ayres: I think there is a concern about the capacity of RDAs to take on some of the functions of the assemblies. There are already capacity concerns about the RDAs being willing to let go of the pots of money they have got. They have always been strategic bodies as of 1997, but I think Whitehall and DTI and now DBERR have criticised them along the line for being really reluctant to let go, they want to get involved in delivery and they are reluctant to stand back as strategic bodies, that could still apply and that is a problem. There is also a problem in terms of

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taking on the functions in terms of planning and transport which the assemblies have had. I am sure some people with expertise will move straight across from the assemblies to the RDAs, but it is not going to be their primary concern. RDAs have a clear strategic framework now which is about this PSA Target 1, about reducing economic disparities, so it does beg the question about whether that is going to be their sole focus and certain issues, perhaps towards sustainable development and social issues, might fall to the wayside and that is another problem. The final point I would like to make is about the role of social and economic partners, business groups, voluntary groups, trade unions, and our research has identified that they made a really valuable contribution to regional debates and executives in what we call the Troika, the RDA, GO and assembly have really praised social and economic partners for being less parochial, more innovatory and really committed to the regional agenda. The sub-national review offers them no protection in terms of their continued regional stage and that is a real problem.

Q360 Bob Neill: That is a very interesting thought. We have raised a few European analogies, I am interested in your point about the way that does seem to happen in France with the *communittaires urbain*, the greater Toulouse, the greater Bordeaux, which are not dissimilar to the way multi-area agreements work but which do have a significant input from the social partners.

Sarah Ayres: Can I come back on a very small point, which is quite important to make. The Government has got to make its commitment to the social and economic partners quite quickly because there is a danger that they might become disenfranchised. For

a long time these organisations worked at a local level, then when the regional agenda kicked off in 1997 there was some Home Office money, "Build your capacity at the regional level because that's where the action is", they have spent the last 10 years doing that and really making some full effort to engage. Now all of a sudden the action is potentially not there anymore, it is at multi-area agreements and, of course, these organisations have not got the slack resources to be at meetings in Birmingham, then another one in Hereford and another one all over the place. Unless there are some funds and commitment you could lose a really valuable resource because people could become pretty cheesed off.

Graham Pearce: I would add to that in terms of local authorities becoming potentially disengaged from the process. In order for them to maintain an effective regional voice, they have got to be prepared to put some resources into it and unless they feel they have some potential impact in terms of RDAs, over what will become the RDA functions, they are going to become dreadfully unhappy about it. There is the question of resources and, also, there is the political commitment to getting involved. At the moment I think there is funding, for example, for regional scrutiny by assemblies, but we do not know yet what is going to happen to that, whether that will be transferred to local authorities or whatever. One final point, whilst the SNR indicates the focus of local authority scrutiny is on the regional and economic development function of the RDAs, there is no reference beyond that to outstanding and wider issues. That is still to be sorted out.

Chairman: Thank you very much. You have left us with some more questions that we will have to deal with but we need to move on. Thank you. We are very grateful for your help.

Witnesses: Professor John Mawson, Warwick Business School, and Phil Davis, George Morran and Mary Southcott, Campaign for the English Regions, gave evidence.

Chairman: Professor Mawson, Mr Davis, Mr Morran, Ms Southcott, welcome. We are very glad to have you with us representing a particular point of view. You have brought in reinforcements, but we have not got any additional time, so if you can share your time out very economically.

Q361 Julie Morgan: We have heard some views this morning about the reasons for the "No Vote" in the referendum, could you tell us what you think were the reasons for the overwhelming "No" vote?

Phil Davis: Can I say, I do not think we disagree with the reasons previously put forward. The important thing is to move on and look at the agenda as it is now being set out, particularly on the basis of issues raised in the Governance of Britain White Paper, but also the many issues you have already raised. Can I say, Professor John Mawson submitted our paper, which is the main document you have got, I understand, my colleague George Morran is the secretary of CFER, ex-local Government Office, and Mary Southcott is from the South West Constitutional Convention.

Three of us are from the West Midlands, so I wanted to indicate we are not purely from one region and, of course, we have colleagues from this region.

Julie Morgan: I know you have been coming forward with proposals but I still want to know why you think it failed.

Q362 Chairman: Put it another way, if we had it again now what would have to happen for the result to be different?

Phil Davis: I think the offer has to be stronger, that is certainly true, we said that at the time. Essentially it may be a mistake to move down the referendum track in that we have suggested, we have implied, and it is referred to in the paper, that one way of resolving this question of moving to elected regional assemblies, which, of course, is our baseline position, is that the reform of the House of Lords would offer that prospect. If you move to election of the Second Chamber based on regional election, rather like the MEP elections, you could then have 25 people from each English region, you could then designate them with a dual mandate sitting in the Lords and both as a

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regional board and you could vest them with the powers still in statute, as I understand it, in the elected Regional Assembly's Act or better powers, which would be our preference. That is the important issue to look at potentially, although we appreciate that is not necessarily on the political agenda at the moment, but it is an idea worth considering.

Q363 Julie Morgan: Obviously people may have to vote for that or there may be the situation where it has got to be supported, how do you see that happening?

Phil Davis: It is up to the Government to make a case for effective devolution to deal with the asymmetry which we currently have in the UK. Again, the issues have been well canvassed by previous people in evidence to you. The problem we face is moving from the negative vote in the North East to raising the issue back on to the wider political agenda. That is perfectly do-able, it is do-able because it needs to be done because the problems you have just been talking to people about have not gone away, the English question is still there and the West Lothian question. In our view, it will only be resolved by creating an accountable structure which allows the tough decisions to be taken by elected people who are removable in each of the English regions. Without that, then anything else is a do and mend process. It may be welcome, it may be possible to improve the present process and there are aspects of the sub-national review which could do that, but it is not an answer to the fundamental constitutional question of balancing the new UK devolved constitution. A trigger for that, of course, were the positive votes in Scotland and Wales. In a sense, that is what has begun the process, it is an organic process.

Q364 Alun Michael: And London.

Phil Davis: Yes, and London, of course. We need to finish it off in the rest of the English regions.

Professor Mawson: Could I add, albeit there are some arguments for and against the sub-national review, we have taken the view that the present situation is not a long-term solution, it has basic fundamental weaknesses. If I might pose to you how it looks to a politician or, in fact, increasingly to the general public. In a region like the West Midlands with five million people, Scotland has five million people, they look north and think, "Well the economic, social and environmental problems are not that different . . ." although conceding the geography is different, "There is a Secretary of State in the Cabinet and primary legislation. There is a devolved block budget which has virement capabilities thereby enabling Scottish solutions to Scottish problems. They have a unified civil service. From an English regional point of view they have a representative to take their case to the European Union . . .", and let us remember, a lot of the Structural Fund European issues are regionally spatially based and allocated, and that individual English regions are disenfranchised through the processes in Brussels. I think in other respects we have heard the questions around the Barnett Formula. There are therefore a whole range of decision making mechanisms available to the devolved nations which

in population terms are of a relative size similar to most of the English regions. I do not believe that is sustainable.

Q365 Julie Morgan: Are you saying that is what people want, that is what a lot of people feel in the North?

Professor Mawson: I think the issue is most people were not told all of these issues in that referendum campaign. In my view, there was little commitment inside the Labour Party, apart from one or two key politicians, to pursuing the agenda with vigour. I seem to remember a lot more money was spent on the original referendums for the Scottish and Welsh Parliaments, than was the case in the North East. We had senior ministers coming up here in the week of the referendum and appearing on the television who had clearly not been briefed on the issues.

Q366 Julie Morgan: Obviously that was how you saw it then. Are you saying that now people in the North East are wishing they had the—

Professor Mawson: No, because, as Phil has said, unless there is political leadership from the centre we are never going to get very far down this road. Until the Government believes in it, then we are not going to achieve elected regional assemblies. That is where I am positioned. On the point of the European situation, there is an UKRep secretariat and the devolved nations are more formally present and represented than they are for the English regions, which are represented by one official and one minister covering all eight regions.

Q367 Julie Morgan: Can I just be clear, your long-term aim is for an elected regional assembly?

Professor Mawson: Yes.

Phil Davis: Absolutely.

Q368 Julie Morgan: That still remains your long-term aim, but you have got a practical shorter-term view?

George Morran: We have got to deal with the here and now. What is important, and it has not been touched on today, is what the public, not people involved in the institutions, the political elite are saying, but the public.

Q369 Julie Morgan: Yes, that is what I am trying to get at.

George Morran: The public do not have a view about, "We want an elected regional tier", but I think there is a lot of evidence that the public in England feel very detached from their government, their politicians, very, very detached and there have been a number of inquiries which have addressed that. What is a very serious issue which requires leadership from this Committee, and it does need a really good lead, is to offer the public, not just the existing institutions but essentially the voters, a real way forward where they will feel they are getting a fair deal. Our view is at the moment in England there is a substantive view that they are not getting a fair deal in terms of their ability to influence their lives.

Q370 Chairman: We are going to move on to some of that in a moment.

George Morran: That is where we are coming from and we see elected regional government ultimately as the real way of doing that in a UK context.

Q371 Chairman: I am going to ask you, because you are entitled to give a view about it, to respond to what some people in this region do say, which is “We voted against this regional assembly but we still seem to have it with all these regional bodies which exist. Why were they not all swept away and all the powers given to local councils?”. That was quite a common reaction amongst those who originally opposed the assemblies.

Phil Davis: It is a bit like good engineering, is it not, good sewers and so on, it is all hidden, and good planning. People assume it is the natural way, it all works out, nobody looks at the work that goes on and it is the same with the hard work of regional planning and regional partnership. As an organisation we are committed to regional partnership. It is an argument which is difficult to convey, much like the work that politicians do behind the scenes about the value that provides to the community or the national community. It is a difficult argument to deal with. In the end, of course, people judge institutional arrangements by whether they produce a better outcome for them, it seems to me, and that is the difficulty of engaging people in these technical debates around structures. When I was leader of a local authority I was interested in regional government because I thought it might produce a better rail service or bus service for people in my patch and that is the fundamental judgment about whether regions are worth supporting and whether elected regions are worth supporting. Our view is to clear up a lot of the problems which you have identified in the evidence coming to you today elected regions are the only fundamental long-term answers, just as elected government in London has not been the absolute answer but the only way of managing a city region like that.

Q372 Alun Michael: You referred there to London and that is one of the things which I was puzzled about, Professor Mawson’s comment, because I think we are all frustrated about the coverage of the disparities across the United Kingdom. You are saying you see regional government as an answer, I am prejudice in agreeing with you, but it seems to me that not referring to London with its bigger population and without direct representation within UKRep, probably having more say in Europe than Wales or Scotland, actually ignores a bit of the existing disparity which is within England.

Professor Mawson: I think we have made reference in the first part of our paper to whether or not the model, as you are describing it, is relevant to the other English regions. The point we made was, first of all, that it is a continuous urban area, whereas the eight other regions have got complex urban rural relations.

Q373 Alun Michael: I would accept that and you made your point well in the paper, I am simply making the point that it exists as an element of devolution which is within England.

Professor Mawson: What we would say to that is we are happy with a diverse arrangement of devolution and, therefore, we are very happy with Scotland, Wales and Northern Ireland and I think we should also have a similar approach to give the English regions the maximum amount of flexibility to shape the structures of government to the context within each of the regions.

Q374 Dr Whitehead: You have mentioned in your written evidence that a number of business leaders, community leaders, et cetera are beginning to appreciate the advantage of regions and how those may produce benefits. Is that not just—as we have heard in previous discussions—a marginal expansion of the elite arguments for regionalism and is it not, perhaps, the case that the public as a whole is never going to appreciate the planning, the trains and the regional economic development and, therefore, you just do it and all this business of having regional referenda is an impediment rather than a democratic mandate? Indeed, if you look at the position elsewhere in Europe, I think not a single country which has engaged in serious devolution has done it via the referendum process, including the British Army imposing it in West Germany.

Phil Davis: Yes, clearly you want to make a case, but it should be made through the normal parliamentary process. That is absolutely right, the referendum process is a dead end. Why should one result in the North East, significant as the North East is obviously, block progress in terms of resolving the logical constitutional growth of the United Kingdom set in train by significant changes in Scotland, Wales and London. That is the beginning of the process. Let us finish the process on the basis of clear principles of democratic accountability, that is what we are saying, so we would agree with you on that.

Dr Whitehead: I was not necessarily agreeing with myself.

Q375 Alun Michael: You rarely do, Alan!

Phil Davis: I think that is a strong point.

Q376 Dr Whitehead: I was putting that forward as a proposition. Is there not a fundamental problem then of bringing about something which is claiming to greatly enhance accountability and regional democracy by a completely non-democratic process? Is that not the fundamental problem which is being faced at the moment?

George Morran: The analogy at the moment is the Government is offering unitary local government in areas and I do not think there have been referendums for those.

Q377 Chairman: Well there has and they have done the opposite.

Professor Mawson: Can I respond to Alan. What has emerged over the past decade, and I have been doing some work on this, is that all the business

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communities in all the regions of England have recognised that economic issues are moving upwards in terms of geography and scale. The days of focusing solely at the Local Chamber of Commerce level are over. Business support organisations are giving increasing attention to regional development and investment decisions of government are looking to wider horizons at European and global scales. That has been reflected in the work of the regional assemblies having stakeholder groups which have formally included the business community. These stakeholder groups have worked successfully, in all eight regions over the past few years in addressing regional issues. In a number of cases the voluntary and business sectors have worked well together and often shifted the ground of the local authorities who have a two thirds majority on the Assemblies. What we would go on to argue is that in the absence of elected regional government we would advocate the creation of much greater enhanced partnership and scrutiny roles in this new sub-national review framework than which is on offer at the moment.

Q378 Dr Whitehead: Again, that is an interesting take on what has bubbled up subsequent to the failure of the referendum in as much as you could say, well, maybe the trigger points are agreement of various institutions in regions that this is a way forward, but if one did that, then there is still a question, again the question we were previously discussing, of how machinery of government in the regions outside London actually works and whether that would then fit in subsequent to those changes.

Professor Mawson: We have some proposals.

Phil Davis: We would like to submit a further paper around some of the issues concerning the role of regional ministers and regional scrutiny processes because there are many unresolved questions there. The introduction of the regional minister is a very interesting and positive idea, but it is unclear how it alters the relationship between the centre and region and whether it is a regional agenda which is being addressed or a centralist agenda and where is the transparency and accountability process, particularly in terms of a scrutiny process in the regions. Obviously we know about the discussions around Select Committees and so on, but those are issues which do need some resolution in the context of any further review. As we understand, there is going to be another review around the omission of the social and economic partners from the sub-national review proposals, then perhaps there will be an opportunity to pick up some of those questions there.

Professor Mawson: Can I expand that by saying I think there is a danger here that we have replaced one indirectly nominated approach, which is placing elected members from councils in position to oversee regional policy and expenditure, with an indirectly nominated minister who happens to be from one parliamentary constituency out of 58 in the case say of the West Midlands region. I am not sure that this is any greater move on devolution unless the function, role and accountability of the minister is properly tied up and I do not think we are going down that road at the moment. I have looked at all eight regions in terms

of the proposals at the moment to develop leadership boards and other management arrangements in putting in place the SNR arrangements and it is not for me, because I am not a politician from the region concerned, to criticise but in the case of the North East, for example, a regional board is being set up to provide the leadership for implementation of the single national review and all related regional policy issues which will be chaired by a regional minister. The same situation is emerging in the East of England and North West where we have a regional board with local authorities, private sector, stakeholders but, frankly, and I have worked for many years at the regional level in local government and inter-agency organisations, if you have a minister sat around a table with councillors, et cetera, et cetera, I do not regard this as a genuine partnership in terms of enabling the region to develop a single regional strategy without felling inhibited by the presence of the centre driving the process.

Phil Davis: There are many unresolved questions raised by the sub-national review and that is one of the fundamental ones.

Q379 Alun Michael: In your submission you make the point that significant areas of public expenditure at a regional level reside outside the ambit of the Government Office and the Regional Development Agencies. As a statement of fact that is fine. It is inevitable, is it not, even desirable in relation to some funding strands, albeit it creates a tension? I wonder if you can illustrate that in order for us to understand the point you are making by making that statement.

George Morran: If I could give you a few facts. This is related to some work that CFER commissioned. It was in relation to the West Midlands, in fact our colleagues behind did a lot of the technical work. In 2001–02 we estimated there was about £22 billion of public expenditure in the West Midlands and about £16 of that was Central Government. If you take out social security, which was about £7 billion, that leaves £6 or £7 billion largely being delivered through what we would regard as unaccountable regional quangos and executive agencies. While there have since those times been some changes in terms of making some of those expenditure streams more accountable, our view would be, but we have not done any recent work on this, that it is still largely the same.

Q380 Alun Michael: You are referring to it in terms of accountability, can you illustrate it, please, so we understand what you are talking about?

Professor Mawson: If we take the overall regional delivery of public expenditure through regional strategies in each region, as George was discussing a minute ago, a very significant proportion of it we can account for going directly through things like police authorities et cetera. What we are alluding to is the remaining amount, which is in areas like training, LSC, transport, the Highway's Agency, that kind of thing. I have done quite a lot of work on Government Offices and if you go to the 2002 White Paper on Devolution in the Regions, there was a specific chapter on Government Offices where it was stated quite clearly that regional directors were expected to

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deliver regionally relevant expenditure to the table in the development of regional strategies. We move on to 2006 and the Government Office review again makes the same statement. We heard this morning that councillors on the front line clearly do not think that is happening. I certainly do not think it is happening because I have talked to senior civil servants, who have confirmed this to be the case. If you are saying what is the concrete solution here—

Q381 Alun Michael: No, I am trying to get to the problem. You gave one concrete example which was that of training. In relation to training, I cannot see that it is likely that would be merged in other funding streams, you want the skills to be developed.

Professor Mawson: Absolutely.

Q382 Alun Michael: The attempt to bring it together, it may not be a satisfactory solution, is the Regional Skills Strategy to bring together the work of the RDA and the skills work at a regional level so it suits the needs of the region. I am trying to understand the problem that you are facing.

Professor Mawson: Let me give you the problem. I have spent the last three years working for the National Evaluation Neighbourhood Management for DCLG on one neighbourhood, watching how that neighbourhood management partnership seeks to bend the programmes and activities of various agencies.

Q383 Alun Michael: Yes, but you are now down at the local level.

Professor Mawson: I am at the local level but regeneration is part of the SNR. The key element is how does that whole structure deliver public services and this is a key example because the DWP has a very traditional hierarchical top-down model.

Q384 Alun Michael: I recognise that immediately.

Professor Mawson: What happens when the finance gets down to the local DWP manager who sits on the neighbourhood partnership board is that because they have not been delegated any autonomy in decision making they have not been able to contribute to the employment and training objectives of that neighbourhood.

Q385 Alun Michael: I can accept that straightaway, that is a DWP problem which I think many of us would recognise immediately. I was trying to get an illustration of why you are saying that because this is a key point you have made about this money outside. That would be solvable, for instance, by changing DWP's way of working. What are the other sorts of ways?

Phil Davis: Maybe a key illustration is transport. As we know, there are major allocations of transport funding, regional transport allocations, clearly. The Government has improved the situation where there is at least a process now of agreeing regional priorities and consultation effectively, but the Government, of course, determines the ultimate outcome if there is no agreement. Clearly that is in sharp distinction with what happens in Wales and Scotland with the block

grant system where there is local control over the transport resourcing available and for me that is a key distinction around regional empowerment.

Q386 Chairman: You are talking about the ability to move from, for example, for the sake of argument, Health to Transport?

Professor Mawson: Yes.

Phil Davis: Of course. For example, the Government has thankfully agreed to put a large amount of money into New Street Station, a £600 million project, as you know.

Q387 Chairman: Does that trigger a Barnett Formula payment to Scotland?

Phil Davis: That is an interesting question, we will not go there, I hope!

Q388 Alun Michael: It is a good question though!

Phil Davis: For me the grown up solution to funding a big project like that was for the region to be able to say, not through the RDA because that is government money after all, "We will put £200, £300 million on the table, will you match that?". It is about that sort of debate on an equality basis instead of going cap in hand. Of course, that is the key issue about the lack of empowerment currently, much as I welcome what the Government has done to improve allocations.

Alun Michael: I think that helps a lot, but what might be helpful, though, is perhaps you might supplement that point on the table with some further illustrations. That is helpful.

Q389 Bob Neill: I shall be fairly short because I think your offer kindly to supplement some of your thoughts would be useful and time presses on. It is very interesting, Mr Davis, I think you mentioned it once before, but otherwise what struck me in your submission and the comments from your colleagues was the almost complete lack otherwise of reference to funding. If one takes your proposition, there is a feeling that in England governance is too centralised and it is remote from people, is not perhaps the key test to address not who sits on what boards and whether you have directly elected regional bodies or not but where the money is raised—

Phil Davis: I think the two go together.

Q390 Bob Neill: —and the balance between Central Government and local governments in terms of who raises the money and what freedom they have once they have got the money to spend it?

Phil Davis: I agree but, fundamentally, of course, in the end if money is to be raised in the region then it needs to be publicly accountable and the best form of accountability and, indeed, decision-making is for a single elected body.

Q391 Bob Neill: Yes, but I do not see your interim solution as adding anything to accountability.

Phil Davis: I think this is the problem, we are not happy with the interim arrangements. We do not think it is a solution, we think it is a money merry-go-round essentially. There have been some incremental improvements about the way the process is run, so

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there is more consultation, but effectively it is a consultative process in the English regions, it is not a determining process by the region.

Bob Neill: I can see an argument for your point of view for what one might term localism, but I was talking to some friends of mine who live in Essex and their argument is a region called the East of England run from Flempton is as remote from me as a department run from London is.

Alun Michael: You should tell the people in North Wales that!

Q392 Bob Neill: Exactly. How do we address that issue? The North East may be different.

Phil Davis: I have often had that point put to me and our colleague is from the South West so she may have a point on that.

Q393 Bob Neill: Cornwall may have a very different take from Bristol.

Mary Southcott: Exactly, the fact that it is becoming a unitary authority may aid its voice.

Q394 Bob Neill: Exactly. How do we get around that problem?

Mary Southcott: My view is there are diverse arrangements and what we need to see is cultural change. Cultural change in the sense of what we saw in the South West was people not feeling that they belonged to something, coming together, being very parochial at first and then identifying issues which had to have a wider responsibility. When we had the flooding in England it was the regional assemblies that the media turned to, so there has to be some sort of regional leadership which will deal with issues that affect not just one council or another. For the South West, we are different in the fact that we are politically balanced, so it is not one party majority rule over another, there is always a political balance whenever, however it happens. What we saw in the assemblies was something very good for democracy because a discussion was taking place about what is better for the region rather than what is better for our party or what is better for our council and I think that is really important. In terms of power sharing, that was what was going on, and I do not see that the ministers who have been allocated have any structure to relate to in the region. For instance, I think Ben Bradshaw is a great man and he is our regional minister, but where is he going for advice about what he should be saying to Central Government as opposed to when he is talking from Central Government down to region.

Q395 Bob Neill: Yes, but you seem to predicate your proposals on the regions as they are. Is that a good way forward?

Mary Southcott: Well the structures are in the regions.

Q396 Bob Neill: Or are they themselves so artificial, as our earlier witnesses have said, that they are never going to get a sense of identity?

Professor Mawson: Can I say, on the Government Office boundary issue, I think genuinely there are places in the English regions where the geography of administration and cultural and political identity are not synonymous; you can identify three or four places across England where that is a significant problem. From the perspective at the moment we are dealing with territorial public policy management and the issue is where is the money being allocated and is there accountability over the way it is being allocated. Fine, then let us change the boundaries. I also think it is ridiculous that Essex is located in the Eastern Region, I do not see the problem, we can change the boundary.

Phil Davis: Can I make a quick response to your point about your constituents or whoever who said how is this any more local. Well the distinction is that if you have got regional ministers making the decisions, as in Wales or Scotland, it may be that they live in your street or they live up the road, that is the point, it is accessibility, is it not? If I was a local authority leader I would rather go and negotiate with somebody in Birmingham for my region than have to find a minister down in London. It is proximity that regionalism would give you in the same sense, I understand, as in Wales or even in Scotland even with big decisions.

Professor Mawson: And the informal networks which we heard about this morning.

Bob Neill: That comes back to the naturalness of the units, does it not?

Q397 Chairman: I think we are going to have to bring this fascinating discussion to a close. There is one issue I am conscious we have not covered very well and I think I might like to invite you, if you want to and it is entirely up to you, to submit anything further to this question, whether it is significant or it does not matter that English regional devolution cannot be a complete answer to the question of Scottish members voting about things in England which they have no responsibility for in Scotland, because there are a number of issues which nobody would suggest should become wholly separately treated in each of the regions of England. You may think that is unimportant or you may think it is important, so perhaps some clarification about that.

Phil Davis: We would really impress everybody if we could resolve the West Lothian question in a few seconds and we are not going to try, you will be relieved to know!

Q398 Chairman: If you have anything further you want to tell us, please do send it to us in writing.

Phil Davis: We would like to be able to respond.

Chairman: We are very grateful to you for your help this morning.

Tuesday 1 April 2008

Members present

Mr Alan Beith, in the Chair

Mr David Heath
Mrs Siân C. James
Alun Michael
Julie Morgan
Robert Neill
Dr Nick Palmer

Mrs Linda Riordan
Mr Virendra Sharma
Mr Andrew Turner
Mr Andrew Tyrie
Dr Alan Whitehead

Witness: **Rt Hon Lord Barnett**, a Member of the House of Lords, gave evidence.

Q399 Chairman: Lord Barnett, welcome, we are very glad you have agreed to come before us. I at least remember the days when you were a Treasury Minister, and certainly you do. I wonder if you could briefly remind us of the economic and political context in which the Barnett Formula was created.

Lord Barnett: I should say at the outset, Chairman, first of all, thank you very much for inviting me. It was not a formula then. When I devised the system of allocating expenditure, which later became known as a formula, I do not know precisely when, but I left it in 1979 for reasons that some voters decided I should leave it, and it was then carried on, the method of allocating expenditure, by first of all Margaret Thatcher and then John Major for 18 years, and at some point in that time, the word “formula” was added to the system. I do not know exactly when, but I published a book on my life in the Treasury, called “*Inside the Treasury*”, in 1982, and I never even referred to it, so it was not a formula then. As I say, it became one when it was carried on for 18 years by those two Prime Ministers. It did not help very much, I am bound to say, because every seat in Scotland was then lost by the then former Government, for which I claim personal credit, of course. Then it was carried on by Tony Blair when he became Prime Minister, and now by Gordon Brown, who for some strange reason thinks it is based on need, which needless to say it is not.

Q400 Chairman: But he repeated that today in a press conference, we have not been able to get the actual words, but I understand that he said that one of the reasons why the formula was not being reconsidered at the moment was that it was based on need.

Lord Barnett: Well of course it is not based on need, it is based on population, and it has been amended slightly with changes in population, but it is a population-based allocation of expenditure, no question about that. It always was, and it still is. I was shaking my head when he said it in the House, when I was upstairs in the gallery.

Chairman: Mr Michael has a question.

Q401 Alun Michael: I wonder if we can make a distinction between what became known as the formula and the actual expenditure, because I think it is true to say, is it not, that the formula is applied

to the increase, in other words it is a way of deciding how much in proportion to an increase in expenditure from the UK Department goes to the devolved administrations, whether it was at one time the Scottish Office and the Welsh Office, or now the Assembly and the Parliament. Therefore, the bit that was needs-based was the expenditure in the late 70s, when there was a needs-based review, was there not?

Lord Barnett: No, it is not all expenditure, of course, because social security, for example, is still based on need, and benefits are based on need.

Q402 Alun Michael: Understood.

Lord Barnett: It is all the rest, and in those days, the economy may not be in financial terms as bad as it is now, but we were cutting expenditure most years, and as Chief Secretary, it was not pleasant, it was not easy, that was not what I came into politics to do, but it made life a little easier to at least not continue having—cutting out certain Ministers from any debate, and it was left to them, once Cabinet had approved that method of allocating it. Although I am not altogether sure I even took the system to Cabinet. Maybe you could check with Cabinet papers, which must now be available, but Cabinet accepted the system, and Scotland, Wales and Northern Ireland had this allocation based on population, of the non-benefit type of expenditure, and that is how it all began. As I say, the word “formula”, I do not know precisely the date it was added, but somebody added it, and I have been told I should be proud of it.

Q403 Julie Morgan: Good afternoon, Lord Barnett. When you introduced the system of allocation, how long did you expect that to last?

Lord Barnett: I did not expect it to last long at all. If I had stayed there in that job, I would have hoped to have changed it to a policy that is truly based on need.

Q404 Julie Morgan: So the system you would have liked to have seen it replaced with would have been based on need, would it?

Lord Barnett: Indeed, that is what I have been pressing for in the other place, as we are called.

Q405 Julie Morgan: What measures would you use to determine the need?

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Lord Barnett: Well, I am asking for an *ad hoc* Select Committee, I have asked once before and been rejected. I did not press it to a vote on the floor, but I think I would have won it at the time, and I have now narrowed the terms of reference, so that other things cannot be considered, purely considering the Barnett Formula; whether it is fair, whether it should be based on need, in which case, the Select Committee would define the need, which I would not, of course, be a member of; and the Select Committee would then decide how need should be defined and how it should then be allocated. It may well be that Scotland or Wales in particular could well argue that they need the amount they are getting now. Indeed, both would argue they want even more, and certainly so would Scotland, everybody asks for more, that was my life for five years as Chief Secretary, but I do really hope that when we get an *ad hoc* Select Committee, chaired by perhaps a former Cabinet Secretary, we have quite a few in the House of Lords, an All Party Committee would look at the issue fairly, decide whether the existing system should continue, or whether it should be changed to one that is truly based on need.

Q406 Julie Morgan: Is it your view that it is not fair, from your perspective now?

Lord Barnett: What is my view?

Q407 Julie Morgan: Your view of the Barnett Formula as it operates now, is your view that it is not fair?

Lord Barnett: If you look at the broad figures, of course, it shows that the average allocation of the non-benefit type expenditure is £1,500 per person more in Scotland on average than in England. Of course, it varies, I am sure you have seen the figures, some regions of England are even worse, more than £1,500; others, like London, do a little better. So it is purely based on a system which cannot be right.

Chairman: Mrs Riordan, do you want to add anything to that?

Q408 Mrs Riordan: Yes, please. Lord Barnett, you have mentioned that you want an *ad hoc* Committee in the House of Lords and hopefully that will be created, and that you want to look at issues of the Barnett Formula as it is now called. What specific data would you be looking for from that Committee?

Lord Barnett: Well, the Committee, first of all, in my view, and under the terms of reference I have been trying to get for the Committee, would be to look at whether the existing system is fair. People have given all kinds of reasons why the system was chosen, and why it is this, and what it is going to achieve in due course. I think most of them do not know what they are talking about, to be honest, and I hope a truly cross-party independent Select Committee would decide whether the allocation of expenditure, as between England, Scotland, Northern Ireland and Wales, is fair. One of my major worries, and I said this in the brief debate we had in the House of Lords, was that the people of England will begin—and it is

already happening, Berwick-upon-Tweed had a so-called poll, which, as you may know, found in favour of being Scottish; and I said in the House the other day, the people of Manchester, where I live, would like it as well. They have said they would like to be Scottish if they got those kind of benefits.

Q409 Mrs Riordan: And from Yorkshire, where I am from.

Lord Barnett: And in London and anywhere else.

Mr Tyrie: And Chichester.

Q410 Chairman: I think the question they were asked is whether they would be better off in Scotland, to which the answer is very obvious.

Lord Barnett: That is another matter. They have a very shrewd leader in Scotland at the moment.

Q411 Dr Palmer: Yes, thank you. How optimistic are you, if this hypothetical Committee were to be formed and were to reach a conclusion, that it would command widespread consensus that whatever it came up with was a fair solution? Do you not think that in practice, rather like with council tax, any change would attract as much opposition as the current formula?

Lord Barnett: I think there will be widespread support, but not amongst the political parties, and that is not just the Government. I was astonished to find that David Cameron, for example, on his first visit to Scotland, assured the people of Scotland that he would keep the Barnett Formula. I think he must have been raving mad. But there you are, he did, and nobody is willing to accept the conclusions that I have personally come to. When we have a review, maybe it will convince people. Mostly debates, as you will know, Chairman, do not convince anybody.

Q412 Chairman: I must plead innocence, because I belong to a party which does actually say that it wants to review the Barnett Formula and replace it with a needs-based formula. That is my cue for—

Lord Barnett: I am prepared to allow it to be called Lord Barnett Formula Mark II, based on need.

Q413 Alun Michael: I have never regarded that as an approach which could be described as innocent, Chairman. Just before I come on to a specific question, you suggest that this Select Committee could come up with a formula that would be fairer, and you also suggest that it ought to be needs-based. Now being fair and being needs-based are not necessarily identical, at least in the eye of beholders. Secondly, in my experience, in Government and opposition, I have had to deal with local government formula, police grant formula, and the RDA formulas in England, and the one conclusion I came to is that every attempt to make a formula fairer ends up with more complaints than the one before, as the only common factor. So why do you have this confidence that there must be a formula out there which would be fairer and more acceptable?

Lord Barnett: Well, I am confident that a review would find a better way of allocating expenditure. As you will know, governments do not like making

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changes too often, especially if they are ones—like, for example, if it would result in reducing money for Scotland and Wales, Northern Ireland, they would fear losing votes. It is a fear that politicians have, as you may know, and so in terms of whether it will eventually be done will depend on how good a report it is. If it is a good report, it has clearly become self-evident that it is a better method of allocating expenditure than now, then I hope it will be eventually accepted by some government in the future.

Q414 Alun Michael: I am just suggesting that is an expression of faith rather than objective analysis.

Lord Barnett: If you like, yes, but when you say faith, it is not faith that they will come up with a better formula, I think that will happen, because the present formula, based purely and simply on the size of the population in the different regions, manifestly seems to me, the figures on the surface, unfair.

Q415 Alun Michael: Coming to a specific point, can you explain your understanding of the basis on which some things were included in the calculations and others out? I mean, in recent times, the examples that have caused some discussion and controversy are things like the Thames Gateway Project being included within the formula, and the funding associated with the 2012 Olympics being excluded.

Lord Barnett: Well, that is a matter for Government, of course. The Government of the day can say that any particular piece of additional expenditure should or should not be included. If it is a substantial sum that is extraneous to the normal expenditure of that region, then it is not unreasonable that a government or a Chief Secretary would then say, “Well, okay, that is excluded”, and it is additional to the allocation that comes under the formula.

Q416 Alun Michael: Do you think that should still continue to be something that has to be the judgment of Ministers?

Lord Barnett: Well, it depends what happens with the new formula. But if it is a new formula based on need, and there is something like the Olympics or a huge new Parliamentary building, as in Scotland, a government of the day would probably have difficulty not giving the additional money for it.

Q417 Alun Michael: So I am bound to say that in fairness, it works both ways, because the Cardiff Bay Barrage would not have been built if it had not been regarded as outside the formula. But are you therefore envisaging a formula that would take away the need to have judgments made about—

Lord Barnett: I would see a formula that was based on the needs of regions, which includes the regions and counties of England as well as Scotland, Wales and Northern Ireland, would look at everything on a fair basis. It may well need—and it is one of the reasons that upset me, and why I wanted to change it, every year may have to be a new allocation.

Q418 Chairman: Presumably you would not have, with a needs-based system, this particular problem. You would have other problems, but you would not have this particular problem, because expenditure in one would not automatically trigger expenditure in another. If you calculate according to spending in England, then that necessarily involves making decisions about which items then generate more spending in Scotland, and there is a triggering process. If it is a needs-based formula, only assessments of need would presumably trigger variations or changes.

Lord Barnett: That is one of the reasons why I moved to the simple one, which I thought might last at least me out, which it did, of course.

Q419 Mr Sharma: In your view, are there minor amendments that could be made to the formula, to make it fit for purpose, or does it completely need a new approach?

Lord Barnett: I am not quite clear what you mean by a new approach.

Q420 Mr Sharma: If you said that minor amendments will not make it fit for purpose.

Lord Barnett: Well, of course, because the present system, as I say, is a pure population-based system, so just amending it does not really alter it. Indeed, when Alistair Darling was Secretary of State for Scotland, he did adjust slightly, he was asked to do so annually, as the population changed a little, because it has changed a little, in terms of the number of people, for example, in Scotland, over the years. So there was that kind of change, but it did not change the population-based system. You cannot just amend that, the only way you make the major change is, as I say, you have to assess it every year on need.

Q421 Dr Palmer: Yes, on the need point, if you did have frequent re-assessments, would that not have the effect of penalising success; if Scotland, for instance, were able to make progress in reducing poverty and need for benefits, we would congratulate them and give them less money.

Lord Barnett: Well, one of the reasons why governments do not want to do any kind of change, particularly if it resulted in Scotland getting less money, then the net result of that would be that the government of the day would not do it, for fear of upsetting the Scots. So if they did change it to need, they would try to make appropriate adjustments, if I can put it that way, to ensure that they would not upset too many people.

Q422 Dr Palmer: So you are saying your needs-based formula—

Lord Barnett: You get a bit cynical after a while.

Q423 Dr Palmer: Your needs-based formula would work better because the Government would still be able to fudge it, is that your position?

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Lord Barnett: Yes, I am saying that.

Q424 Alun Michael: On the question of transparency, really. Do you think that if new arrangements were brought through, that it still ought to remain a matter of judgment by Ministers, or do you think there ought to be a neutral organisation or an appeals process for the decisions about how allocations are made?

Lord Barnett: When public expenditure is involved, no matter how many independent commissions you have, at the end of the day, it will be a matter for Government. That applies on everything for that matter, it is not just expenditure of this kind. But when you are talking about public expenditure that affects people's lives, and if an independent commission came up with something a government did not like, I would be astonished if they did not seek to do whatever is required to help.

Q425 Chairman: Do you think you could bypass the whole problem by going for full fiscal autonomy, at least for Scotland?

Lord Barnett: Oh, I have no wish to get involved in fiscal autonomy, that is an entirely different matter. If you are going to give total fiscal autonomy, in the sense that you are saying the people of Scotland, Lancashire or wherever should raise their own funds, that is such a big issue that it is quite separate from this.

Q426 Mrs James: Lord Barnett, there is a commission currently taking place in Scotland, chaired by Sir Kenneth Calman which will be looking at the Barnett Formula. If that commission should recommend abandoning the Barnett Formula, maybe adopting another needs-based formula, would it then be credible for the formula to continue in Wales and Northern Ireland?

Lord Barnett: I am bound to say, if I wanted to set up a commission to review the formula, I would not ask a commission based in Scotland, with respect, to be objective and independent. So I would be astonished if it did come up with the kind of revision that I would like to see.

Q427 Mrs James: But you do not see that it would then put pressure—you would rather go with the commission that you have suggested, looking at it on a UK-wide basis and on a needs basis?

Lord Barnett: I do, because it does not just affect Scotland. And I do not want to see a break-up of the United Kingdom, I want the United Kingdom to continue, so when you are talking about giving new powers of raising funds in a big way, which is what it would be, that is quite outside a review of the formula.

Q428 Mr Tyrrie: We have talked about break-up of the United Kingdom. Do you think that the risk of a break-up of the United Kingdom will be greatly increased if we do not address the Barnett Formula soon?

Lord Barnett: Yes, I do. It is very worrying. Indeed, there is an indication of it in the media now, that people all over England are getting very worried. I mean, you saw what happened in that poll in Berwick, as I say.

Q429 Chairman: I would not place too much reliance on it if I were you, but that is another story.

Lord Barnett: But if you ask people anywhere whether they want another £1,500 per head spent on them, they will say yes, so yes, I am worried about it. I think there is a serious problem here. That is why I think there is a need for a review of the formula urgently.

Q430 Mr Tyrrie: If you can see that so clearly, why do you think it is that the Prime Minister is clinging to the argument that we have a needs formula already, and that this will probably mean he can kick this issue further into the long grass? Is it just a misjudgment on his part?

Lord Barnett: You will have to ask him, I cannot tell you why he thinks it is based on need, or why David Cameron assured the people of Scotland that he would keep it. You will have to ask them. Maybe you will, I do not know. I gather David Cameron is thinking, from an interview I saw he gave, that maybe at some point in time there would be a need for review, but not now, not before an election, I do not think.

Q431 Mr Tyrrie: Have you already in your mind, bearing in mind that you have asked for this inquiry in the other place, the type of needs assessment you would want to put in place and the main ingredients and the main headings that would comprise the needs assessment; the weightings, for example?

Lord Barnett: Yes, it can be done, of course it can be done.

Q432 Mr Tyrrie: Have you done any work in that area, or have you been involved in helping others do it?

Lord Barnett: Before I devised the system, before that, I used to have bilateral meetings with all Ministers, including the Scottish Secretary of State, the Welsh and all the rest, all asking me for more money, and giving me very good reasons why they should have more money. I would think about it, and I knew how little I had, and I would say no to most people. That was my job, and I would tell my Private Secretary to arrange a good time for me to give them a gin and tonic at least, but no more money.

Q433 Mr Heath: Thank you. You have mentioned several times the view in Berwick, and I know the Chairman is at pains to perhaps not put so much emphasis on the view in Berwick.

Lord Barnett: I did hear somebody close to him spoke in the same vein.

Q434 Mr Heath: If there is that degree of discomfort in the North East with a less than £500 differential in expenditure with Scotland, I think it is reasonable to suppose that in an area like mine, the West Country,

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where, by my calculations, the expenditure per head in Scotland is £1,946 more, and in Northern Ireland, £2,708, so almost half as much again is spent per head given this formula in one part of the United Kingdom than in our region in the West Country, that does suggest that these regional disparities within England are at least as important as the disparities between nations, and England is, under the formula, seen as a homogenous mass. I think you said this earlier, but I would like you to confirm it: do you feel there should be a needs-based formula which cuts below the level of England as a state, and looks at the regions of England as well, is that correct?

Lord Barnett: Well, obviously, what is happening in England would have to be taken into account by Government. If one changed the formula of allocating funds to Scotland, Wales and Northern Ireland, one would have to look at it in comparison with what is being given in public expenditure terms to the different regions of the country.

Q435 Mr Heath: So you would see a formula which actually identifies needs in each of the regions of England and allocates accordingly, rather than simply treating England as a single unit for this purpose?

Lord Barnett: Well, I would hope that the allocation of funds in England, in the different regions of England, is now being based on, to some extent, need, it is certainly not based on a population basis.

Q436 Mr Heath: Well, is there any evidence that it is based on need?

Lord Barnett: People of the North East and the North West where I come from, Manchester, some parts up there, will say it is not fair, but the figures are very, very interesting. I mean, actually, some of the worst areas in comparison with expenditure, if you look at the figures, is even the South East, where the expenditure is very low, but there may be good reason for that. They may have greater income in those areas than in Scotland or Wales, who therefore deserve extra money, or less money. Just looking at the bald figures, all one can say is they are not right.

Q437 Mr Heath: But if we had a needs-based formula, based on the regions of England as well as the nations, then we would identify that, would we not? We would identify whether the South East was receiving a fair allocation, for instance.

Lord Barnett: Well, to some extent, I would imagine the allocation of funds in the English regions is now being based on need. If it is not, then those regions or the regions that are doing badly have got great cause for complaint, and some of them are complaining very loud and clear.

Q438 Mr Turner: For areas such as the East, the East Midlands, the North West, is money allocated out to them or is it allocated out to smaller units such as Norwich, Manchester and so on?

Lord Barnett: No, it is done on a wider regional basis, the allocation of expenditure, than taking individual cities.

Q439 Mr Turner: So by what means?

Lord Barnett: Well, the Chief Secretary would decide it in negotiations with those regions.

Q440 Chairman: Are you sure that is true? Other than for the expenditure of regional bodies, surely how much money gets spent in different parts of the North West depends on a whole series of government programmes, local government funding allocation?

Lord Barnett: Of course, but that ultimately would be a negotiation that would take account of all that.

Q441 Mr Heath: Negotiation with who though? Because there is no Secretary of State for the South West, in the way that there is a Secretary of State for Wales and Scotland.

Lord Barnett: But the Chief Secretary to the Treasury has to decide how money will be allocated everywhere, whether he is negotiating with a Secretary of State or with some lesser figure.

Q442 Mr Turner: Yes, but the question is: who takes the decision, and at what level is it spent? Because you are asserting that this money is spent to somebody for North West, but how much of that is spent by Macclesfield and how much of it is spent by Manchester?

Lord Barnett: That would be a matter for whoever is in charge of regional expenditure as a whole.

Q443 Mr Turner: But nobody in this place—are we talking about—

Lord Barnett: No, nobody—when you say this place, do you mean the Commons?

Q444 Mr Turner: Yes, or for that matter, the Lords.

Lord Barnett: If you really want to try, you would have to get the Chief Secretary here.

Q445 Chairman: Actually, is it not a compendium of different decisions made by different departments and different bodies?

Lord Barnett: As I say, it may have changed, it is a little while since I finished, nearly 30 years.

Q446 Robert Neill: Actually, that point is interesting, because since we have had this formula, we have had a move, for example, to formula funding of local authority expenditure in a very different way to that which existed perhaps at your time, Lord Barnett, and you have, let us say, health service funding on a different formula with a different department taking that decision. Now you have something called the Sustainable Communities Act, which is going to, for example, permit the publication of all the totals of public expenditure across local authorities, as opposed to regions. Is it possible to maintain the existing Barnett-type arrangements without perhaps

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a greater transparency of the methodology on how these other bits of formulas work out? People say, well, we cannot really work out how a formula grant is arrived at very easily. Is there a conflict there, do you think, or not?

Lord Barnett: If you want a simple formula, you continue with it as it is.

Q447 Robert Neill: If you move to needs, as you have advocated, does that not follow that you have to have a fairly transparent basis for—how would we get the formula?

Lord Barnett: It is now 30 years, and the expenditure has been allocated on a *per capita* basis, and here you are asking me how you can make it transparent. You are in charge. I am an outsider on these matters.

Robert Neill: I think what we are thinking is it has actually become more opaque for other reasons, nothing to do with anything you intended.

Chairman: I will come back later, but Dr Whitehead has been very patient.

Q448 Dr Whitehead: Just two things really. The first thing is the Treasury is, I believe, preparing a factual statement, it claims, of where we now stand on the Barnett Formula. Have you been consulted about the preparation of that factual statement?

Lord Barnett: I am sorry, I am not quite with you on that.

Q449 Dr Whitehead: The Treasury is, it is supposed, and certainly indicated by Parliamentary replies, preparing a factual statement on where the nation now stands as far as the operation of the Barnett Formula is concerned, and it has indicated that it will introduce that statement as part of a process of discussion and debate. Have you been consulted about that factual statement, and if you were consulted, how would you input to it?

Lord Barnett: The Treasury does not want to discuss it, it has been made crystal clear to me, not in an arm-twisting way, because my arms are no longer easily twisted, but it has been crystal clear to me that the Treasury do not want to consider any change at all, because they fear upsetting people in different places. The fact that they are upsetting a lot of people in England now will get home to them at some time soon, I hope.

Q450 Dr Whitehead: So would you conclude, in terms of the frankly extraordinary longevity of the Barnett Formula, in terms of the changes that have taken place over the period, that you could say it is a question of holding onto nurse for fear of finding something worse, that actually, the reluctance of the Treasury, as you suggest, could precisely be explained on the basis that you would then have to change so many other things relative to a revised formula, that you may well find a number of unforeseen consequences in whatever you have changed?

Lord Barnett: Oh yes, I suppose it is possible, if I was 30 years younger and still Chief Secretary, I would not want to change it either, but I know it was done with a view to creating a fair system; it was done, I suppose, in some ways, to make life a little easier for me, but it was thought to be fair at the time, based on population, and now, 30 years later, it is seen not to be fair, at least on the surface. A review may show that it is fair.

Q451 Dr Whitehead: The original logic, so I understand, of the creation of the Barnett Formula, temporary though it was supposed to be, was effectively to place the question of Scotland outwith the various adjustments that would take place that we have described within, say, the English regions, and then presumably adjustments within Scotland based on need would follow from that cutting off of that debate within the context of the UK as a whole. If you then went back to an overall needs-based formula, would that not, as it were, undermine the question of the issue of the devolution of funding that has been effectively achieved so far?

Lord Barnett: Well, that would be difficult, or there would be problems attached to it, and people would be worried, indeed they are now, but how and when and why the formula was devised 30 years ago by me, many reasons have been given that I have never heard of, mostly. I have told you exactly how I came to do it. But people are now putting all kinds of reasons behind it which, as I say, I have not heard of. Well, I have heard of them since, but I did not hear of them at the time. Indeed, my Private Secretary at the time, Sir Michael Scholar, is now in charge of statistics, maybe you should have a word with him.

Alun Michael: I wonder if I can just take you back: as a matter of fact, a lot of money is allocated according to a variety of formulae. For instance, Regional Development Agency spending within England is based on a whole set of objective factors, including levels of unemployment and so on, so that not surprisingly, the level per head comes up higher in the North of England than other places. Police funding is based on an incredibly complex set of factors, which includes everything, including levels of crime and rurality, by the way.

Mr Heath: And terraced houses, which did very well in the Royal Crescent.

Q452 Alun Michael: No, but you pick one out, the one that you do not like, which is a typical approach—it is a very complex formula. It also includes the amount of coast that a police authority will have. Looking at all that complexity, which is very difficult for even those of us who have had to work within it, to understand the nature of the application, is there not actually some virtue in having a simple formula that cuts through all this, and produces a solution which may be roughly fair, rather than precisely incomprehensible, and is that not why people have praised the formula which is associated, however unfairly, with your name?

Lord Barnett: Yes, I am sure you are right. When you think about it, public expenditure in money terms now is in excess of £500 billion; millions are no

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longer used, it is billion, £500 billion. Allocating expenditure of that size is a complex matter, and making major changes are going to upset people. Ministers have enough troubles, they have plenty to do, so they would rather leave it alone, and that is what has happened over 30 years.

Q453 Alun Michael: But to put it the other way, the civil servants love a new plan to develop, whether it be a formula or a scheme for the future, it is what they do, they are very good at it, and would it not be fair for any Minister contemplating a new plan or a new formula to say, “I know what is going to happen here, there are going to be winners and there are going to be losers”, otherwise there is no point in the exercise, and we will hear nothing from the winners and we will hear a great deal from the losers.

Lord Barnett: I am sure you are right. That for the moment is what will happen, but I am hoping a serious review would so expose the situation that somebody is bound to act.

Q454 Dr Palmer: Just on a factual point, I have seen it said that the discrepancy between the Scottish and English spending will diminish gradually on current trends, and probably disappear in about 20 years. Is that your view? I do not pretend to know the formula well enough.

Lord Barnett: I have heard that argument, but it is not based on any serious analysis. It cannot be.

Q455 Dr Palmer: Is it false?

Lord Barnett: I have never seen adequate analysis to explain why people are coming up with such a view. There is no evidence—

Q456 Chairman: The Barnett squeeze, as it is known.

Lord Barnett: Well, 30 years ago, it is said that I devised it in such a way as it would eventually be fair. I wish it were true.

Chairman: On that very frank and honest note, we would like to thank you for your very kind assistance this afternoon, you have entertained us as well as informed us, so thank you very much indeed.

Tuesday 22 April 2008

Members present

Mr Alan Beith, in the Chair

Alun Michael
Julie Morgan
Mrs Linda Riordan

Mr Andrew Turner
Mr Andrew Tyrie
Dr Alan Whitehead

Witness: Rt Hon Lord Steel of Aikwood, a Member of the House of Lords, gave evidence.

Chairman: Lord Steel, welcome. We have some interests to declare first of all.

Julie Morgan: I am married to the First Minister in Wales.

Scotland at the same time. I do not quite know why that did not happen. It would seem to me to have been the logical consequence of creating devolution all round.

Q457 Chairman: We are very glad that you have agreed to come along this afternoon and give us the benefit of your experience presiding over and being a Member of the Scottish Parliament and observing the Scottish Executive, now calling itself the Scottish Government, in action. May I start with a rather specific point which is about Sewel motions? It has been suggested that this whole process needs clarifying and tidying up and that there need to be some clear principles setting out when the British Government will invoke the Convention. Given that a number of issues have come up even at the moment, for example over terrorist trials being moved between Scotland and England, do you think there is a framework that could be created to tidy this up?

Lord Steel of Aikwood: I probably cannot help you very much on that one because in my four years, we did not have any problem with it. It may be that there have been problems more recently, but certainly during the four years that I was presiding over the Parliament, there was general agreement when a Sewel motion was in operation and we did not have any problems. I have not lived through a time when there has been some argument about whether it was or not appropriate to use them.

Q458 Julie Morgan: As part of this inquiry we interviewed the Secretary of State for Scotland and I wondered what your view was about whether Scotland needs a voice at the Cabinet level, post devolution?

Lord Steel of Aikwood: I always thought at the time when we were putting the Scotland Act through that it would have been sensible at that stage to have had a Cabinet minister for the UK with a junior minister under him for each of the entities: Scotland, Wales and Northern Ireland. That would have been a tidy arrangement. Technically that person would have had to have been Secretary of State for Scotland, Secretary of State for Wales, Secretary of State for Northern Ireland because of all the legislation, but it would have been a tidy arrangement and it would have avoided the criticism that there has been several times and is again currently about somebody holding a major Cabinet post and being Secretary of State for

Q459 Julie Morgan: Is this something you anticipated would have happened by now?

Lord Steel of Aikwood: Yes, I thought it would have happened by now. It still should happen.

Q460 Julie Morgan: What is your view of the Scottish Executive's claim that the residual functions of the Scottish Office and, in particular, the responsibility for elections to the Scottish Parliament, should be devolved to the Scottish Parliament?

Lord Steel of Aikwood: I believe that should happen. We were always told there would be a review of the Scotland Act after about 10 years and I suppose effectively your Committee is part of that review and so are the Constitutional Commission and the National Conversation; they are all reviewing it after 10 years. One of the lessons is that what I would call internal housekeeping ought to be devolved. If I can give you a particular example, an issue arose when I was ill with prostate cancer. We found it was very odd that Parliament had no power to appoint a temporary deputy presiding officer, so two of them had to carry the burden of three for a short period of two or three weeks and they found it really very difficult. It seems crazy that we would have to go back to Westminster and ask them to amend the Scotland Act to deal with a matter like that. That is a fairly trivial example, but yes, the whole raft of internal organisation of elections should sensibly be devolved.

Q461 Alun Michael: May I ask a supplementary on your reference to the idea of a Secretary of State for the United Kingdom with junior ministers to deal with the relations with the devolved organisations? Do you think that that Secretary of State should also have responsibility for regions within England as well in some way?

Lord Steel of Aikwood: That is the \$64,000 question. I have always said it is up to the English to decide what they want and not for us Scots or Welsh, with respect, to tell them what they should have. I do not have any views on that. Until the English decide whether they want to have the equivalent of an English parliament it is an open question. I am not saying there should be an

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English parliament as such but an English entity within Parliament, an English grand committee or something like that or regions, which they have shown no appetite for, given the vote in the north east.

Q462 Alun Michael: It is an interesting answer because it seems you had an opinion in relation to Wales and Northern Ireland and perhaps for London.

Lord Steel of Aikwood: No, I do not equate the London Assembly with these other institutions.

Q463 Alun Michael: A pity. The draft Constitutional Renewal Bill was published in March and it requires the Minister for the Civil Service to publish separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly Government. I wonder what your views are about that requirement and how codes of conduct for those two establishments might differ from the UK-wide Civil Service code.

Lord Steel of Aikwood: They need not differ at all, need they? Either we should continue as one entity or else we should learn from what is already happening. I see no case for attempting to re-invent the wheel on codes of conduct.

Q464 Alun Michael: Yes; it was not my suggestion so I was wondering what your view was and what your view is perhaps about the future of the unified Civil Service in the United Kingdom? Are there benefits for Scotland and indeed Wales or is it an obstacle in any way?

Lord Steel of Aikwood: No, it is not an obstacle. We have benefited in the cross-fertilisation of people from different government departments and I have not heard much clamour for a separate Scottish Civil Service.

Q465 Julie Morgan: How would you describe the cultural inter-governmental relationships during the time you were in the Scottish Parliament between the Scottish and the UK Governments in your experience?

Lord Steel of Aikwood: During my time it was very good and obviously Donald Dewar had been a member of the Cabinet before he was First Minister and so got off to a good start. We always said that the test of devolution would come when there were political differences between the Government at Westminster and the Government in Scotland and that, of course, has now happened. I do not have hands-on experience of it because I am retired, but I simply observe that there is a good deal of what I call needless irritation being created, presumably for political purposes, between the two and it comes from both ends. That is not particularly helpful.

Q466 Julie Morgan: Did you feel that the good relationship between Donald Dewar and Westminster was based on the personal mix and the same-party issue?

Lord Steel of Aikwood: That is true. After all, he was closely involved in the drafting of the Scotland Act, the Scotland Bill, and that followed right through to his occupying the post of First Minister, so it was relatively easy. Even under his successor, during my time in the chair, there were no great problems. There is not a real problem now, except that, for party purposes, there is a good deal of froth and what I call irritation being created unnecessarily.

Q467 Chairman: There was a Joint Ministerial Committee which is supposed to facilitate these relationships but it seemed to fall into disuse and the Westminster Government have indicated that it should be and perhaps will be re-convened; now that Paul Murphy has taken on the role of Secretary of State with this overall responsibility for devolution, that he might chair this ministerial committee. Did you have any awareness of its operations in the past?

Lord Steel of Aikwood: No. Sorry to remind you, but of course I was never part of the executive machinery; I was responsible for running the Parliament. I was not involved in that side of it at all.

Q468 Chairman: I asked the question because it suggests that if this machinery functioned at all, it was very well out of the gaze of Parliament.

Lord Steel of Aikwood: Absolutely; yes. I do not recall any reference at any time being made to it in Parliament, either questions about it or anything else. It did not happen.

Q469 Chairman: When there are disputes between the governments, is there any kind of arbitration process that could be put in place, particularly if they are quite technical ones such as how you interpret the Barnett formula or the Olympics or something like that. I am not going into the Barnett formula at the moment, I might come back to that, but where there are disputes of that nature is there any kind of arbitration process you could build in?

Lord Steel of Aikwood: Not really, you just have to rely on commonsense with ministers on both sides of the border.

Q470 Chairman: So it comes down to politics really in the end.

Lord Steel of Aikwood: Yes and sensible cooperation should not be out of the window simply because you have different political parties north and south of the border in charge.

Q471 Chairman: One of the symptoms of there being different parties involved at the moment is that there are two review processes, as you mentioned earlier, which are executive in their origin, the National Conversation and the Calman Commission. Is this a recipe for disaster, or can these processes be made useful?

Lord Steel of Aikwood: It is unfortunate that we have these two separate bodies; it would have been far better if we had had one organisation. However,

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there is a long history to this and I do not want to go back over the creation of the Constitutional Convention which led to the drafting of the Scotland Bill, but even then there were arguments about who was in and who was not in. So the argument has continued basically over the question of whether the Convention is or is not going to consider independence. I frankly have no objection to it considering independence because I think it would be rejected, so I do not know why it is not possible to look at it together in one forum. We now have two and we will have to live with that.

Q472 Mr Turner: Could I ask whether the only devolved institution introduced in England has been the Greater London Authority? Do you agree with that?

Lord Steel of Aikwood: It is a tier of local government; it is not quite the same.

Q473 Mr Turner: Why is that?

Lord Steel of Aikwood: It does not legislate.

Q474 Mr Turner: In your view is there a problem of legitimacy at present in either England or Scotland in terms of the English question?

Lord Steel of Aikwood: No, I do not think so. I go back to the time when, during the latter period of the Conservative Government, we had a very small minority of Conservative MPs from Scotland here and we had the Scottish Grand Committee of all the Scottish Members, of which they were a minority. Although we had the committee stages of Bills in the Committee, in the end the House of Commons determined the law for Scotland. The great majority of members were not affected by the law. Now that the thing is the other way round and a relatively small minority of Scottish Members can determine the law of England it is not nearly such an offensive proposition as what happened before, yet there were not many objections before and it worked.

Q475 Chairman: You have dealt with the first problem and then created a second. You have dealt with the problem of the English making the law of Scotland.

Lord Steel of Aikwood: The problem is a lesser one now than it was before.

Q476 Chairman: Can you explain that?

Lord Steel of Aikwood: Because you had the elected representatives of Scotland in a tiny minority in a chamber which determined the law of Scotland. Here you have the law of England determined by a chamber in which there is a minority of Scots. The outrage was stronger before than it is now. There was not much outrage, people lived with it, and they did in Northern Ireland as well.

Q477 Mr Turner: So it obviously was not that that caused the devolution in Scotland. What was it?

Lord Steel of Aikwood: That was a contributory factor because there came a point finally in the 1997 election when there were no Conservative MPs left

in Scotland, so how could you organise a Scottish Grand Committee with the government side having nobody on it?

Q478 Mr Turner: In much the same way as you organise government in Northern Ireland.

Lord Steel of Aikwood: I am not quite sure how.

Q479 Mr Turner: There are no Conservative or Labour parties.

Lord Steel of Aikwood: The setup of the Scottish Grand Committee was every Member from Scotland met in the Scottish Grand Committee and you had the government side and the opposition side and with each passing election, the government side was dwindling until finally in 1997 it did not exist.

Q480 Mr Turner: Well the Opposition did continue to exist in Scotland as opposed to Liberals, did it not?

Lord Steel of Aikwood: Yes, you are right because the Government changed in 1997, but supposing the Conservatives had been re-elected in 1997, you would have had an impossible situation where the Government would have had nobody to man the Committee. It was a cumulative process.

Q481 Mr Turner: So that justifies devolution.

Lord Steel of Aikwood: No, it does not justify it; it was a contributory factor. You asked me if it contributed and I would say, yes, it contributed. Basically there has been a long campaign to restore the Scottish Parliament and indeed if you go back to the history of the Act of Union in 1707, you will find that the riots in the streets of Edinburgh were not about the Union, they were about the abolition of the Scottish Parliament. It was never really accepted by the Scots throughout history that Parliament should have been abolished when the Union was formed.

Q482 Mr Turner: I think the Irish Government also was supported by very few Irish people, yet it was possible in both 1992 and 1997 to formulate a government which had no representation of the Government. It had members but not members of the Government.

Lord Steel of Aikwood: I cannot comment on Ireland.

Q483 Mr Turner: Professor Mitchell identified five possible responses to the English question: providing symmetry through home rule of all four countries; no Scottish representation at Westminster or a reduction in such representation; parliamentary procedures including limiting the issues on which Scottish MPs can vote at Westminster; the maintenance of the current levels of parliamentary representation with no change. What are the advantages and disadvantages of each system?

Lord Steel of Aikwood: The obvious one to pursue is to create English-only committees. That is what happened under the previous arrangement for

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Scottish Bills, that the committee stage was dealt with purely by Scottish Members. There is no reason why the committee stage could not be dealt with purely by English Members, whether in an English grand committee so called or just standing committees. You have a United Kingdom Parliament and in the end, on report and third reading, the votes would have to come back to the chamber as a whole, but at least that would give a semblance of devolution to England in the legislative process.

Q484 Mr Turner: You say there is an obvious answer but I am not sure it is obvious.

Lord Steel of Aikwood: Simply because it follows the pattern of what we did in Scotland before. That is exactly what happened.

Q485 Mr Turner: But now we do not, so why not go that one step further in England?

Lord Steel of Aikwood: It is up to the English. I keep saying this: it is not for me to say what the English should do.

Q486 Mrs Riordan: Last week we had Lord Barnett at this Committee. Do you agree with him that the Barnett formula needs to be revised and, if so, how would you revise it?

Lord Steel of Aikwood: The formula itself is not the issue. I know he keeps going on about how unfair it is that it is based on population and not on need but if you stop to look at need in Scotland where you have a country with more farmers, more roads, thinner population, more people on benefit, more pensioners, more people on higher education—

Q487 Chairman: You are describing my constituency.

Lord Steel of Aikwood: All I am saying is that, if you base the Barnett formula on need, I suspect the end result would not be very different from being based on population. My own view is that the issue which we ought to be addressing and which I hope the Commission will address is whether any formula is the right way to finance the Scottish Parliament. I have said before, and I happily repeat here, that no self-respecting parliament can exist permanently on the basis of a grant from another parliament and that is why I support the view that we should be searching for ways of devolving revenue-raising powers as well as spending powers. I am not alone in that; I brought along this month's *Holyrood* magazine and Jeremy Peat, the economist, says this on Page 49 "Scotland also exhibits a marked lack again in terms of international comparisons of revenue autonomy" and this is the bit "no other country within the OECD grouping exhibits this combination of highly limited devolution of revenue powers but close to total devolution of expenditure powers" and that contrast is what we ought to be looking at rather than replacing the technicalities of the Barnett formula with a Barnett formula Mark II.

Q488 Mrs Riordan: If the Commission did recommend replacing the Barnett formula for Scotland, would the formula's continued use for Wales and North Ireland be credible?

Lord Steel of Aikwood: Well is the present one credible? It is a source of constant argument. There is a belief that the Scots are getting more than they deserve and this is borne out of people in England seeing, for example, no tuition fees, care for the elderly. What they do not understand is that that all comes out of the block grant. It is not that we are spending more money than we are entitled to, it is a block grant and, whether the block grant is on the existing Barnett formula or on the new formula, once it is passed over to the Scottish Parliament, it is up to them to decide how to spend it and if they decide to spend it a different way from down here, well that is devolution in action.

Q489 Mrs Riordan: I understand what you are saying but do you think any revision of that formula or the creation of a new mechanism should consider the distribution of public funding to the English regions? I know you talked about Scotland.

Lord Steel of Aikwood: I would have thought yes was the answer. If you were having any review of a continuing grant basis then clearly you would have to look at whether it was being fair to the other regions as well. I am looking particularly at the Chairman who represents a patch just over the border.

Q490 Chairman: You mentioned the fact that quite clearly expenditure in Scotland from the block grant involves making choices and choosing to spend more on certain particular things. Am I mistaken or is it the case that up to now we have not heard very loudly in the Scottish Parliament anything which conveys that other things are being squeezed in order to meet these particular commitments, that the level of block grant expenditure up to now seems to have protected Scotland from the intense argument about what it has to give up in order to have free tuition fees and in order to have free personal care for the elderly, or is that a mistaken impression from not reading the Scottish papers every week?

Lord Steel of Aikwood: It is a partly a mistaken version because of course the annual budget is debated hotly in Parliament and there is a finite amount of money and if you spend more on something here then there is less to spend on something else and that has always been the case through each year of the Parliament.

Q491 Mr Tyrrie: You said a moment ago that no parliament should rely on a grant from another parliament, and that at least in the long run you felt that was an unsustainable situation for something that wants to call itself a parliament and behave as a parliament. The logical continuum, to move across the spectrum from full grant payments to no grant payments at all, is full fiscal autonomy, is it not?

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Lord Steel of Aikwood: It is quite difficult to achieve. If you retain the United Kingdom, however much you devolve revenue raising you are in the end always going to have to have some equalising measure or accounting responsibility at a UK level for matters of common interest, foreign affairs, defence, all these budgets.

Q492 Mr Tyrrie: But full fiscal autonomy is a well understood notion in those countries which have high levels of devolution, including fiscal devolution. Is that the way you think we should go?
Lord Steel of Aikwood: I would certainly head in that direction.

Q493 Mr Tyrrie: I was describing a continuum. What I was going to try to explore with you was whether you have in your mind some logical resting place on that spectrum that suits you, for which you find the arguments forceful.
Lord Steel of Aikwood: I did chair a commission which produced a very detailed report and it was helped by a number of people expert in this field, which I make no claim to be. They ended up by suggesting that income tax and corporation tax were the two things that ought to be fully devolved.

Q494 Mr Tyrrie: Do you think if we went down that road that the English question or the lion's share of the English question would in practice go away?
Lord Steel of Aikwood: It is largely a matter of perception. There is this perception that at the moment the Westminster Parliament is paying for things in Scotland, so my answer is yes. If it were seen that the Scots had to raise the money they spend, that would be thought to be reasonable.

Q495 Mr Tyrrie: Do you agree that if we were to go down this road, we would have to re-open Barnett, even if, as you suggested a moment ago, who knows what the outcome might be? You also said a moment ago that if it were re-opened, who knows, one may find that their generosity was not in fact generosity at all but something that was equitable. Do you agree that inevitably, if we go down the road towards full fiscal autonomy to include, for example, income tax and corporation tax, we would have to open up the Barnett formula?
Lord Steel of Aikwood: Absolutely; yes, I do.

Q496 Mr Tyrrie: One last thing. You made another very interesting remark. I hope I wrote it down roughly accurately, but you can correct me if I have not got it quite right. Until the English decide that they want a grand committee for English affairs—the phrase you used, implying that sooner or later the English are bound to say that they want an English grand committee. Do you think that it is also the case that sooner or later, inevitably—you

also mentioned English-only committees to examine Bills that are clearly English only or dealing entirely with English matters—do you think that that is an inevitable direction in which we will now move?

Lord Steel of Aikwood: I would have thought so, but that is a matter for your House.

Q497 Mr Tyrrie: It is a matter for the English or it is a matter for the UK Parliament?
Lord Steel of Aikwood: The UK Parliament obviously. If you think that is a sensible way to proceed, and I personally do, it is a reasonable debate to have in the Commons.

Q498 Mr Tyrrie: Do you think it is possible to find an adequate method of certification of Bills to distinguish between English-only Bills and Scottish Bills? Imagine a government that did not really want Bills to end up in English-only committees tacking on a clause that had some Scottish ramification to what was clearly designed for England.
Lord Steel of Aikwood: We used to have precisely that.

Q499 Mr Tyrrie: It would be relatively straightforward, would it not?
Lord Steel of Aikwood: Already, as you know, the Speaker has to certify certain Bills as being money Bills. I cannot remember what other category he has. It is not an insuperable problem.

Q500 Mr Tyrrie: It has been put to, not this Committee but another committee, the Democracy Task Force I served on with Ken Clarke, that it was an insuperable problem for some and that is why I am asking you.
Lord Steel of Aikwood: People are finding difficulties for every solution.

Q501 Chairman: Do you think the position of the second chamber, whether the House of Lords or a reformed second chamber, is actually or potentially anomalous or, conversely, do you see any merit in the idea that a second chamber should have a specifically United Kingdom role and serve in some way as a second chamber to parliaments in looking after England, Scotland, Wales and Northern Ireland?

Lord Steel of Aikwood: If you are looking ahead to an elected second chamber, replacing the present House of Lords, it would make sense to give it some role, in a way like the *Bundersrat* in Germany has, as a federal institution representing the different regions. Again, it is not for me to comment on English matters, but that might enable the English regions to feel that they have a locus as well in such a chamber.

Chairman: Lord Steel, thank you very much indeed.

Witness: **Rt Hon Jack McConnell MSP**, a Member of the Scottish Parliament, gave evidence.

Q502 Chairman: Mr McConnell welcome. We understand that you have a rather different interview with the Foreign Affairs Committee tomorrow on an entirely different subject and possibly even different in character.

Mr McConnell: An interesting and challenging week.

Q503 Chairman: We wish you well on that occasion, which relates not to England, Scotland, Wales or Northern Ireland but to Malawi; an abiding interest which I know you have. We are going to follow a rather similar structure to that which we followed with Lord Steel so you can predict the direction we are going, but the emphasis will be different because of your experience in government. On the basis of that, what do you think about the Sewel motion issue? Is it easily manageable? Does it need clarifying and tidying up, perhaps along with the concordats as well, into some more codified basis?

Mr McConnell: The process of Sewel motions, as they were originally known—others have other descriptions—was actually a great asset for the Scottish Parliament. I took that view very strongly from the earliest days and I do not believe that there was ever a reasonable case made against that mechanism on any individual occasion on which it was used. The process of Sewel motions is a safeguard for the devolved institution. The principle at stake here is that Westminster cannot legislate for areas which are the responsibility of the devolved Scottish Parliament without the permission of that devolved Scottish Parliament. That seems to me to be an absolutely fundamental democratic principle, having established the Scottish Parliament, and the Sewel motion allowed that control to be exercised. At the same time, it facilitated the opportunity to legislate for the whole of the UK, when a bit of consistency was required and when the legislative programmes in both parliaments meant that it was better done here. I have no problem with the Sewel motion process whatsoever.

Q504 Julie Morgan: Does Scotland need a voice at Cabinet level now post devolution?

Mr McConnell: May I answer that in a slightly different way from the way Lord Steel did, because there are one or two things I would like to say to the Committee that I can perhaps fit into this answer. I always took the view when I was First Minister that it was the responsibility of the UK Prime Minister to determine the makeup of the Cabinet and it was the responsibility of the UK Parliament to determine some of the other issues that were just raised about the voting on solely English matters. There are issues about the makeup of the cabinet and these will ultimately be addressed in some way that will change the current arrangement. The most serious issue for the UK, not just for Scotland, is the response of wider UK institutions, perhaps including government and the Civil Service but much wider than that as well, to the way in which the UK has changed. The UK has changed dramatically and that change has not been reflected in the way in which UK institutions carry out their duties or the

way in which different parts of the UK learn from each other. I give you one example, which is the policy that we had in Scotland on immigration, which was to deal with a particular problem we had in Scotland of a declining population. It was a very big success, it was a bit of flexibility introduced by the then Home Secretary David Blunkett and as an example of the way in which UK government departments have to become a bit more flexible in responding to Scotland, Wales, Northern Ireland and indeed parts of England it was a very good and successful example. It was done by bilateral discussion between me and the Home Secretary and did not involve a Secretary of State for Scotland or any intermediaries. Those bilateral relationships are very, very important but they should also be celebrated by the whole and then used to improve policy at the centre, rather than just seen as something that happens in one part of the kingdom and is not relevant to anybody else.

Q505 Julie Morgan: Are you saying that those bilateral relationships with different government department ministers are as important as the relationship with the Secretary of State or more important?

Mr McConnell: Far, far more important. One of the reasons why the JMC's were effectively, in terms of meetings, abandoned by agreement between myself and the Prime Minister, certainly in relation to Scotland, was because we wanted to create much stronger relationships, bilateral relationships, between the individual departments in devolved Scotland and the individual departments of Whitehall and it was certainly the case between 2003 and 2007 that the relationships between my Justice Minister and the Home Secretary or between our Transport Minister and the Transport Secretary and so on, were significantly stronger and far, far more productive than they would have been if we had continued to have an amorphous discussion through JMC's or deal with everything simply through a Secretary of State for Scotland.

Julie Morgan: What do you see as the role of the Secretary of State for Scotland?

Q506 Chairman: Before you answer that may I just check what you said about the JMC's? Are you saying it is not really worth resurrecting them because they are much more diffuse than the useful bilateral relationships you described?

Mr McConnell: Given the current situation, both in Scotland and to some extent in Wales with the coalition government there and in Northern Ireland with a re-established assembly and government there, I can see there being a purpose in some kind of mechanism that allows discussion between all four and perhaps occasionally also on a bilateral basis in a formal committee-type session. I would not be against the re-establishment of some JMC-type format, but it is important to understand that they did not just wither on the vine; a conscious decision was made to stop the JMC's meeting in order to facilitate and encourage a much stronger bilateral relationship. I think it improved policy. The

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changes, for example, in rail were agreed between transport ministers in a way that was by far the most constructive and positive way to do that. The agreement in Scotland on immigration visas similarly was a bilateral decision. There were other similar decisions although, not every discussion resulted in a positive decision. There is an ongoing discussion about air guns, for example, that continues to this day, but by and large the bilateral discussions were much more successful than the JMC's. However, I do understand that right now we do have a situation in which the UK Government needs to find a forum in which to have discussions with the three devolved governments and some form of JMC probably needs to be re-constituted.

Q507 Chairman: Would it be better to see it as a sort of referee or longstop body if the bilateral structures are not working in any particular case?

Mr McConnell: It would be better if it were seen as a forum for dialogue rather than for dispute resolution. That may be impossible but it would be better if it were that.

Q508 Julie Morgan: What do you see as the role for the Secretary of State for Scotland?

Mr McConnell: The role for the Secretary of State for Scotland in my view is that legal and technical responsibility that is set out in statute. I am not convinced there is a case for an intermediary or a referee.

Q509 Julie Morgan: What did you think of Lord Steel's proposal of one member of the Cabinet with responsibility for all the devolved bodies and the junior ministers in each devolved body?

Mr McConnell: Before last May I would have said, and I did say, that such an arrangement was inevitable. Since last May, and this is not just in relation to Scotland, if you look at things from a UK perspective, you have a decidedly more publicly antagonistic relationship between the UK Government and the Scottish Government. You have a slightly different political administration in Wales and you have a brand new administration in Northern Ireland. Whereas before last May I would have been saying both on the record and privately that such an arrangement was inevitable, given that that change had not been made prior to 2007, at the moment it would probably make sense to continue the discussions that have begun about how best to get the right level of coordination between the administrations before anybody makes dramatic changes to the Cabinet structure.

Q510 Julie Morgan: What about the Scottish Executive's claim that the residual functions of the Scottish Office should be devolved to the Scottish Parliament, in particular the elections to the Scottish Parliament?

Mr McConnell: I take the view on powers—and I take this view on financial powers but in relation to other powers too—that it is absolutely right 10 years on from the Scotland Act being introduced to have a review of powers. I very much welcome this

Committee's inquiry. A UK perspective on that review is essential. I also welcome the Calman Commission that has been established more recently in relation to Scotland and the ongoing debates in Wales are very welcome too. At the same time, any changes in the current arrangements need to be very, very carefully considered. That is particularly true in relation to finance but it is also true in relation to other areas where there could be further devolutionary change as well. Elections are an example. There is an awful lot of immediate commonsense in the idea of one body being responsible for all the decision making in relation to the elections in Scotland. At the same time, however, those decisions have an impact elsewhere in the United Kingdom too and therefore, before a decision is made to devolve any further powers, administrative or legislative powers, in relation to the Scottish elections, there needs to be some kind of agreement between the UK Government and the Scottish Government on the way in which those powers would be exercised to ensure that the cohesiveness of the UK is not damaged as a result and it is that kind of sensible approach which is required here. When we devolved the rail powers back in 2004 when Alistair Darling was Secretary of State for Transport, we did it by discussion; we agreed a budget, we agreed a timetable, it has been a very smooth transition. It has actually improved the railways rather than damaged them, but it was done in a very sensible and constructive manner. If there are going to be any further transfers of powers of any kind, then I would hope that we could move away from the getting-boxed-into-corners approach that seems to be happening and instead have specific discussion on the practicalities and the evidence for a change and then how it could be implemented.

Q511 Alun Michael: It really follows on from that because you have been talking about values and quality, rather than necessarily having to create lines where none are necessary and it relates to another area which is the draft Constitutional Renewal Bill. This has something in it which requires the Minister for the Civil Service to publish separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly Government. I must say that I am a little puzzled by that because it seems to me that one of the options might be to have something in that code about how the different civil servants of different bodies deal with each other, but it requires those separate codes. What is your view of that?

Mr McConnell: I may surprise you with my view on this. If anything has been wrong in that relationship over the last few years, it has been the reduction in interchange between the civil servants working for the Scottish Government and the civil servants working for the UK Government. Most of the best civil servants that I worked with as First Minister in my nearly six years in that position and previously as both Finance Minister and Education Minister too, I would say had experience of working for Whitehall departments as well as working for the old Scottish Office or for the new devolved Scottish Government.

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However, I have detected a very distinct trend over the last eight years that there is less of that interchange taking place. I have expressed my concerns about this on a number of occasions to the last two Cabinet Secretaries in Whitehall as well as to the Civil Service management in Scotland. Young, ambitious, able civil servants should get experience of Whitehall departments, if they want to work in Scotland at a high level, and actually I also think that young, ambitious, able civil servants in Whitehall departments should be made to go to work for one of the devolved administrations for a short time and understand the complexity of the modern United Kingdom. I worry about the creation of an entirely separate Scottish Civil Service. I can say honestly to the Committee that never once in my eight years as a minister in Scotland, nearly six years as First Minister, was the technical membership of the Home Civil Service for Scottish civil servants a problem in terms of ministers in Scotland directing civil servants in the policies that they should pursue. Civil servants in Scotland knew that ultimately I was, as First Minister, their political boss, they did not look over their shoulder to a Whitehall department or to senior management there. They worked to our ministerial team and Cabinet. If anything, the problem is not a need to separate the civil servants more; it is actually to integrate them more because that is a danger, not a political danger to the United Kingdom but a danger to the quality of the civil servants that work for the different governments.

Q512 Alun Michael: That is a very comprehensive and clear reply. It follows from that, does it not, that your view would be that there ought to be a single code, albeit that single code might need to have elements within it that paid regard to the devolution settlements?

Mr McConnell: A consistent set of values and principles on which the Civil Service operates across the whole UK is a good thing. Within that, there need to be specific arrangements for reporting accountability, promotion and so on and it is entirely appropriate that that would be the case.

Q513 Chairman: We have covered a lot of very helpful ground there. Perhaps I should just ask you about these dual processes which are currently going on, the National Conversation and the Calman Commission. Can good come of this?

Mr McConnell: I hope that good can come of reviewing the settlement. I am not convinced, in a political climate where the political parties are in a stand-off situation, particularly in the buildup to a UK general election at some time in the next two years, that there is going to be an awful lot of discussion that is productive for the longer term. I do believe a review is important, but at the same time I want to see such a review look at the evidence of the way powers have been used, the relationships. It is easy in a situation, for example, where the issue of nuclear power is controversial and where the Scottish Parliament takes a different view, not just the Scottish Government but probably the whole

Scottish Parliament, on nuclear power from the UK Parliament and the UK Government: it is easy for that then to become extrapolated into a demand for separate energy powers in Scotland. As there are bigger issues than that at stake in energy policy, it is important to make decisions on powers because this is what was done when the Scotland Act was prepared: the powers were looked at separately from day-to-day issues and in an energy review of powers it is absolutely essential that the long-term implications of devolving more powers are looked at, rather than any short-term gut reactions or spontaneous reaction to it, a political disagreement on one issue and one decision.

Q514 Chairman: But we still have to have these discussions, do we not?

Mr McConnell: Yes.

Q515 Chairman: We were not creating a devolution system on the assumption that all levels of it would always be run by the same party or people of the same views: we were creating a system of devolved government in which people were bound, at some point or other, to elect different administrations in different parts of the United Kingdom.

Mr McConnell: Yes. Even where the same party holds the ministerial positions in different administrations, it should be welcomed that there will be differences in approach.

Q516 Chairman: It was not always sweetness and light, was it?

Mr McConnell: No, it was not at all and there were genuine debates taking place, but also the UK is a complex formulation. There are different needs and demands in different parts of the United Kingdom and one development that is still to happen in the UK is for those Whitehall departments which rightly retain reserve powers to become a bit more flexible in the use of those powers. I, for example, discussed with five different Secretaries of State, under various names, Work and Pensions, Social Security, whatever the department was called at different times, the possibility of using Scotland as an area where different methods could be tried to deal with the issue of incapacity benefit and unemployment and trying to get people back into work. I felt Scotland was a manageable size with a particular problem where the department could try something out and, if it worked in Scotland with our assistance in health and housing and so on, it could then perhaps be implemented elsewhere in the UK. Unfortunately none of those Secretaries was in position long enough ever to implement the idea. The same could be true of Wales, the same could be true in Northern Ireland perhaps and actually perhaps in some parts of England. Different policies could be tried out and then used elsewhere in the country if they are successful. The UK Government or Whitehall departments should not be nervous about that. They should welcome the opportunity. We implemented the Fresh Talent visa in Scotland to deal with a population decline problem, to attract in particular more overseas students who come to

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Scotland to stay in the country to live and work and that has now been copied for the rest of the country by the Prime Minister since he took over last summer and that is an example of something that would probably never have happened in the UK if we had not tried it first. The smoking ban is another example. If we had not gone first, then I do not think that would have been implemented in England ultimately. So trying things out in different parts of the UK can be very positive and maybe there needs to be a slight culture change in Whitehall to welcome that diversity rather than be threatened by it.

Chairman: I do not know how much you want to say about England, but I must give Mr Turner the opportunity to probe you on the subject.

Q517 Mr Turner: What is your view that there is a problem of legitimacy at present in England in terms of the English question?

Mr McConnell: I understand the issue and I can understand English Members of Parliament wanting to search for a solution. I am not absolutely convinced that there is an easy solution. I was just reading, as I was watching Lord Steel's evidence session, the notes about the Committee. This is a Committee that has no Scottish MP's on it, but many of the responsibilities of the Committee do have an impact across the whole of the UK. Although it is primarily concerned, I presume, with the English and Welsh legal systems, many of the Committee's responsibilities cover the whole of the UK. We need to be careful that we do not end up inside the House of Commons losing that common UK identity, British identity, for the mother of parliaments rather than just simply to deal with what is perhaps an immediate political tension.

Q518 Mr Turner: So if there were to be an English Parliament, it should be outside this building.

Mr McConnell: I personally feel that English Members of Parliament might find that hard to justify to the population; it is entirely for you but I think it might be hard to justify. I can see that there could be ways in which the rules of the House of Commons could be adapted to deal with some of these issues and I have to say that I may be of a different generation to Lord Steel, but I take a very similar approach to him on this, that if there is a will to find a solution and to make regular judgments that are commonsensical and can work in practice, then I suspect the House of Commons is able to do that; it has been for hundreds of years and there is no reason why it cannot in the 21st century either.

Q519 Mr Turner: If, as some of us believe, the Barnett formula leads to Scotland having more money per head than England, is it surprising that it appears to have emerged—I do not know what you feel about it—that you are just letting go of one in favour of getting another expenditure?

Mr McConnell: Those of us who believe that it is in the interests of the people of Scotland, Wales, England and, for as long as they want it, Northern

Ireland, to have a United Kingdom and that the sum of these nations is stronger than if we were all separate, need to be careful about making direct comparisons that are simply based on the existence of those national boundaries. If there is an issue about public expenditure in some parts of England, it is at least as much, if not possibly more, about the distribution of public expenditure inside England than it is about the distribution of expenditure between England and Scotland. There are undoubtedly issues that have arisen as a result of decisions of the Scottish Parliament that have given rise to this as a political issue but there are implications of that. The nationalist government have made decisions this winter. Let me give you two examples: one to abolish the graduate endowment, which was the payment that students paid after graduating, effectively a different form of graduate tax but a payment that was made, money that all went to higher education; at the same time our universities and colleges will now receive a smaller increase in their budget than their counterparts south of the border. I voted against the decision but there were implications in that decision. Similarly, we are moving towards an abolition of prescription charges. The Health Service budget in Scotland is rising significantly less quickly than the Health Service budget in England over these next three years, so there are implications to their decisions. Although it looks as though they are making decisions that make things free in Scotland, there will be a price to pay for that in the quality and the quantity of the service that is available in those two cases, in higher education and in the Health Service and it is unfortunate that that then becomes an issue about the distribution of funding across the whole UK. It should actually be a debate primarily inside Scotland about whether they have got it right or not. In my view they have got it wrong.

Q520 Mr Turner: I am sure that is for debate, but the point is surely there is a lump sum for Scotland which is spent by Scotland in the way Scots wish which is a higher proportion, about 15%, than in the whole of England and also for Wales some elements are higher. You have not responded to that particular point.

Mr McConnell: The historical reasons for that have been well laid out and have been justified by both Conservative and Labour Governments here in the past. The debate around the distribution of money between Scotland and England actually distracts from what might be the real debate that needs to take place, which is inside England itself. I say very much as an observer that there are different needs in different parts of England and those debates have not taken place because primarily the politicians have focused more on the national debate.

Q521 Mr Turner: So you might advocate regional instead.

Mr McConnell: There needs to be a far healthier debate inside England about the way public

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expenditure is used in different regions of the country. It is not for me to tell members how to conduct their business, but as long as members who represent constituencies inside England are focused on what Scotland has, or for that matter what Northern Ireland or Wales has, then perhaps they are not contributing to that debate that will basically need to be resolved because there are Whitehall departments spending a lot of money in England and it is being spent in different areas in different ways.

Q522 Mr Tyrie: I was hoping to be exceedingly quick because I thought I was going to be able to ask you whether there is anything on the issue of the Barnett formula and the issue of the English question which Lord Steel said with which you disagreed, but I think there is. At one point in your replies it appeared that there was not anything but there is, is there not? I do not think you are in favour of moving a long way across that spectrum on fiscal autonomy, whereas Lord Steel is quite clear that there is something to be said for devolution on income tax or CGT and once that is done, he feels that the Barnett formula will need looking at again, even if it might result in pretty much the same arrangement as before.

Mr McConnell: On the one hand, there is a need to discuss the financial purpose of the Scottish Parliament and the financial responsibility that it has alongside perhaps the ongoing debate about how much money it has to spend. It is right that the current block grant plus or minus three pence income tax was designed back in the early 1990s at a time when income tax was 30 pence or so in the pound, when there were no differential rates. They are about to change, are they not? It is also right that after 10 years of devolution there is a good hard look at that and international examples to see whether there is a better way of securing financial accountability and responsibility and potential economic benefit in Scotland. On the other hand, I have been involved in this debate now since the late 1980s in terms of detail. I was a member of the Constitutional Convention Executive Committee, I have obviously been both Finance Minister and First Minister and I have yet to see someone produce a workable alternative that would have the consent of enough politicians and across a wider spectrum in Scotland. The business community in Scotland is very nervous about fiscal autonomy, very nervous. They operate as part of a single market across the UK, the idea of differential tax rates in different parts of the UK worries them significantly and I understand that.

Q523 Mr Tyrie: But where are you on this is what I am asking?

Mr McConnell: I am trying to say that there is a case for looking at the current settlement, but the case has not yet been made to move away from that to a new arrangement. If you start from a position of fiscal autonomy, you are starting from a dangerous position because you are starting from a position that effectively creates two different taxation regimes

inside the UK single market and that is difficult economically. If you start from the position of wishing to move incrementally towards more taxation powers, then the Scottish Parliament have to think that through extremely carefully, look at international evidence and try to design a system that is workable. My preference on that would probably be that it is taken away from the politicians, some form of Royal Commission or something of that sort that would look at this in some detail, look at the evidence and come back with a reasoned report that could be considered by all parties, perhaps after the next general election. I would say that was worth looking at.

Q524 Mr Tyrie: Just to be clear, you are making the recommendation that there be a Royal Commission to examine the Barnett formula?

Mr McConnell: I would not put it as strongly as to say I was making a recommendation, but I would suggest that that kind of format for looking at this would be more appropriate than a political debate where people are essentially making political points through the debate on fiscal powers.

Q525 Mr Tyrie: I am sorry to press you, but what are you recommending?

Mr McConnell: I am sorry to be unhelpful, but I hope what I am saying is consistent in that I believe that the current arrangement does require to be reviewed but I also believe that any change in the current arrangement is extremely difficult and needs to be discussed, debated and analysed with great care by everyone involved and all the parties have people with different positions on this.

Q526 Mr Tyrie: So you favour a review of the Barnett formula.

Mr McConnell: I am not yet persuaded that there is a workable alternative.

Q527 Mr Tyrie: You are not yet persuaded there is an alternative; you are not persuaded that it would come out with something different, radically different from the current structure. I do not want to put words in your mouth I just want to clarify what you said. As for how that review should be conducted, you think one possibility would be a royal commission but you have no hard and fast views on exactly how to conduct the review.

Mr McConnell: That is very close to my position.

Q528 Mr Tyrie: Just add or subtract so that we can be clear for the record what your opinion is.

Mr McConnell: I am persuaded of the case for looking at the financial powers. I am not persuaded of the case for any specific alternative yet. I would be concerned about the idea of what is described as full fiscal autonomy. I believe that there is a need for some independent analysis and review of this perhaps by a body like a royal commission. However, the one positive thing that I would say, because that might appear to be very negative, is that I do not believe that it is beyond the intelligence of

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the good people of the United Kingdom, academics, politicians, civil servants and others, to come up with a workable alternative, but nobody has yet.

Q529 Chairman: For six years you had the power to implement a degree of fiscal autonomy, by either raising income tax or lowering income tax to a different level from that in the rest of the UK. Was it political paralysis that you never did so?

Mr McConnell: It was a decision about priorities. First of all, it would have been difficult to justify any money that we would have raised or we would have taken out of the taxation system against the administrative costs of such a change. That is an absolute primary contribution to the judgment that has led to all the parties not using that power or proposing its use over the last eight years. Beyond that I took the view that we had, as a number one priority in Scotland, a need to raise the level of economic growth and that the way in which we did that was to invest in skills and transport infrastructure and promoting Scottish business abroad and that that was more important than to think about the taxation system.

Q530 Mr Tyrie: Did you agree or disagree with Lord Steel's conclusion that there was an inevitability about a move towards English committees in the UK Parliament to deal with English-only legislation certified by the Speaker?

Mr McConnell: Like him, I am hesitant to comment on the work of Members of this House from constituencies in England but I suspect that this is the kind of debate that will rise and fall depending on who is in power and who is in opposition and what the distribution of constituencies is across England rather than necessarily being a point of principle.

Q531 Mr Tyrie: Lord Steel gave us a very clear indication of the direction of change. I am asking you whether you agree with his conclusions about the direction of change.

Mr McConnell: I do not think that change is inevitable. Continuing debate is inevitable but change is not inevitable.

Chairman: We have been able to cover a great deal of ground and we are very grateful to you for your help this afternoon. Thank you very much indeed.

Thursday 8 May 2008

Members present

Mr Alan Beith, in the Chair

Alun Michael
Julie Morgan

Mr Andrew Turner
Dr Alan Whitehead

Witnesses: **Rt Hon Lord Elis-Thomas AM**, Assembly Member, Presiding Officer; **Claire Clancy**, Clerk and Chief Executive, and **Adrian Crompton**, Director of Assembly Business, National Assembly for Wales, gave evidence.

Chairman: *(Through an interpreter)* We welcome you to this meeting, here in your building. We have already visited Edinburgh and Newcastle in addition to holding a number of sessions in London. We are very pleased to be here today to discuss devolution in Wales, particularly the changes to the arrangements appertaining from the Government of Wales Act 2006. We are very grateful to you for appearing before us today, and extend you a warm welcome. Alun Michael wishes to say a few words.

Alun Michael: *(Through an interpreter)* I want to welcome the Committee to the South Cardiff and Penarth Constituency, because it is the first time that this Committee has been able to meet in the constituency, and I am very pleased to be here as a member of the Committee on this historic day.

Q532 Chairman: The Assembly Commission has a series of statutory duties and responsibilities, including the promotion of public awareness of devolved government in Wales. Why is that a problem; why do you have to do that?

Lord Elis-Thomas: *(Through an interpreter)* May I thank you kindly for coming here, before I respond to your question, and make another reference in response to Alun. If it was not for his enthusiasm, then we would not be able to sit here in this building, and we must recognise that. Any new democratic body or even old democratic body must engage with the public. The democratic process must draw on the awareness of it and communicating that process. Democracy must be transparent in order for it to be answerable to the electorate; so we, as a new body, have set out a vision for communication, and especially since 2006, when we have had a more developed constitution; and the Commission, which has come into existence since then, has set out communication with the public and encouragement for the public as a key part of our activity. That is why as well as the three of us here, there is Philippa Watkins, who manages current awareness in the Assembly and is responsible for communicating our activities. I would like to show you the latest piece that we have sent to our website, which is information on progress that is ongoing in proposed orders and measures, because this is how we communicate regularly with the public on changes to the Assembly. You can see behind me on the screen the way that we show how orders and measures

develop, and that is updated every day¹. It is sent out on a weekly basis. Of course, people can subscribe to this, and you can see exactly where any development does occur, and there is a clear statement on individual measures and their journey through our processes to show where we are in the process. In addition, you can see matters that have been added in Schedule 5 of the 2006 Act, which shows where new powers have come in². It is important to emphasise that it shows where the powers come from, whether through parliamentary acts from Westminster or through applications for orders. Those powers mean that we can legislate through measures. Finally, we can link up with a website that is maintained on our behalf by Cardiff University, Welsh Legislation Online³. This has been in existence since the beginning of devolution, and it was originally sponsored by the Research Council but now we sponsor its development. I can quickly show you Senedd TV, which has just been made operational so that people can watch our proceedings online at any time⁴. There, you can see a committee and you can also see that we have an e-petition system⁵. We have already received about 80 petitions in the first year since it became operational. That is how we operate and communicate with the public in our activities.

Q533 Chairman: *(Through an interpreter)* It is excellent for the enthusiast, for the anorak, but what about Mr Jones from Machynlleth who has not voted for years and takes no interest whatsoever in the Welsh Parliament?

Lord Elis-Thomas: *(Through an interpreter)* If Mr Jones goes to Machynlleth town library, he can go online and view all of this, and he could also receive hard copies if he so wished—or if Mr Jones is a member of a society or an association he could invite some of our external outreach workers who promote the work of parliament, in regard to our educational function. That person can be visited by a

¹ *Note by witness:* Websites referred to; <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm>

² http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields/schedule-5.htmhttp://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields.htm

³ <http://www.wales-legislation.org.uk/>

⁴ <http://www.senedd.tv/>

⁵ <http://www.assemblywales.org/gethome/e-petitions.htm>

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representative who would explain exactly how the Assembly works. We have a policy of approaching individuals and organisations in the region.

Chairman: It is necessary for Mrs Morgan to declare an interest.

Q534 Julie Morgan: I am married to Rhodri. One of the principles the Commission must apply in carrying out its functions is equality of opportunity, and obviously that has been very important since the Assembly started. Can you comment on how the Commission is addressing that duty?

Lord Elis-Thomas: We come to you fresh from a Commission meeting, where one of our most important papers was one on equality. I had a presentation from our lead persons on equality yesterday, and we have employed consultants to improve our equality scheme. I will ask the Chief Executive to take on that question, if I may.

Ms Clancy: We have been working towards consulting on a single equality statement, and so we have done a lot of work on all the threads that will feed in to that equality statement, and over the summer we will be consulting publicly. In the autumn we hope that the Commission will be able to sign off that single equality statement. We believe on each of the threads that we will be a model of good practice on equality. The Presiding Officer has mentioned all we are doing on promoting and widening engagement in devolution. I think it is worth mentioning, to set the context, that one of the first things the Commission did was to set out their purposes, making the Assembly an accessible and effective parliamentary body that inspires the confidence of the people of Wales. Relevant to Question 1 of our strategic objectives is that in all our work we will demonstrate respect, probity and good governance, part of which is ensuring that we have good equalities policies. We also have commissioners who have a portfolio of responsibilities, so the Commission has the Presiding Officer as Chair, and four Assembly members on it; and each of them have a portfolio of responsibilities. Lorraine Barrett is the one who has responsibility for equalities, and she takes this very seriously. She comes to workshops with staff and helps us with work with stakeholders on all types of accessibility and equality.

Q535 Julie Morgan: When you say you are going to have a single equality statement, is that a detailed statement?

Ms Clancy: It is a single equality scheme that brings together what would have been in our policies for race discrimination, equal opportunities for gender; so all aspects of equality come together. It is good practice now for all organisations to have this single equality statement that pulls everything together in one place. It is detailed. The Commission this morning looked at quite a mass of work that has gone in to it, so all aspects of accessibility and equality, yes. If you would be interested in seeing it, we could send you the work we have done so far because I think it is leading the way.

Lord Elis-Thomas: It is interesting to note that we have data on age, grade, disability, gender, gender identity, race, ethnicity, religious belief—or not—and sexual orientation. We work closely with Stonewall Cymru for example on that issue because we want to pursue equalities in a proactive way.

Q536 Alun Michael: The question that was raised with the Committee at one stage was the awareness of what has been devolved to Wales thus far is “poor and the methods with which to discover such information are very thin on the ground”. I think you have given a very full answer to how people can be provided with information that is accurate and up-to-date, once they start asking the question; but can you cover the point on the question of awareness of the state of devolution and who is responsible for what?

Lord Elis-Thomas: That is part of the Commission’s communication strategy. This is public knowledge—everything is public knowledge with a transparent institution! We have commissioned the University at Aberystwyth to provide us with a full database, as a baseline, of the state of opinion on those questions you raise, so we will find out exactly what people are thinking on the questions you have raised. Therefore, we can target information in a way that is effective. We are able to promote Part III and Part IV, and clearly, we will be working alongside the convention that has been established by the Government initially, and we will share data with the Government, so that when the public debate is developed and deepened as part of what I understand to be Sir Emyr Jones-Parry’s ambition for the Convention, then we will be able to contribute to that on our side of the fence in relation to the Assembly.

Q537 Alun Michael: It still remains the fact that there is a lot of media that affects and informs people in Wales, which is not purely Welsh and very often is ignorant of, even if it does not ignore, the fact of devolution; so there is still a challenge there in terms of informing the public, is there not? Would you accept that?

Lord Elis-Thomas: Of course there is a challenge, but the media outside of Wales are improving, we find. I have more of a problem with some of the media in Wales. Radio Cymru this very week stated the Assembly Government had passed our measure. Where do you start when you have got journalists that do not understand the constitution?

Q538 Alun Michael: I share the frustration! Can I ask a rather different question about performance? Obviously, one of the questions in terms of developing the status and confidence in the Assembly and its work is the question of what it has done to improve the quality of life for people, whether it be on issues of education or health or bringing jobs to Wales or whatever?

Lord Elis-Thomas: We have to distinguish between what we mainly communicate about, which is the process and the way in which those outcomes are made and scrutinised on our side, as a Commission.

Clearly, it is for the Government—and of course I speak as a supporter of the Government these days, for the first time ever in my life, but not obviously when I am doing this job—it is for the Government to promote its achievements. I think it is for us to promote the structure of devolution itself and particularly the way the Assembly operates allows for people to find out what powers are and to see how powers have been used. Clearly, the way in which a decision is taken through various processes, or the way ministers are called to account by scrutiny is very much our end of the business.

Q539 Alun Michael: I understand that distinction, and it is an important one; but surely it is a concern for everybody, including the Commission, that people should understand not just the nature of what the Assembly does but how it improves the quality of life for people in Wales? Sometimes, it seems that we spend an awful lot of time on the process rather than on the outcomes.

Lord Elis-Thomas: Can I describe it another way? One thing that we do now is use the chamber in which you and I worked those years ago, Siambwr Hywel, as we call it, as the main education and youth chamber; and we have already had a debate in there on environmental policy where young people, in fact primary school people from Ysgol Pencae here in Cardiff, debated for an hour on these issues. We are able to use our processes both as part of a learning experience for school students and we also have a direct link with schools' councils, which are now statutory throughout Wales. We are able to use awareness of democracy in that way, in order to help young people understand how outcomes are brought about by policy process.

Q540 Alun Michael: I suppose my concern is that that is still about process in the sense that if the question is, how do they get involved in the debate about the environment in Wales, that is a very clear answer; if the question is: how has the existence of the Assembly and the sort of debates you are talking about, improved the quality of the environment for people in Wales—that is a question that does not seem to get asked or answered.

Lord Elis-Thomas: I think that is a question for the other politicians.

Q541 Alun Michael: The whole Assembly?

Lord Elis-Thomas: No, I do not think—certainly I would not want to publicly defend or criticise the record of the National Assembly.

Q542 Alun Michael: I am sorry, I am trying to make a distinction between those things that are the responsibilities of the Welsh Assembly Government in terms of actions that have been taken and outcomes, and the contribution that is made by the existence of the Assembly as a whole. People say, "What is it for; what does it do?" What has it done to make life better?

Lord Elis-Thomas: The answer to that since 2006 is very clear: the job of the Assembly is to scrutinise and to legislate and vote in the budget.

Q543 Alun Michael: What has it achieved?

Lord Elis-Thomas: It has achieved already 18 different pieces of legislation going through.

Q544 Alun Michael: That is again back into the process and the legislation rather than—

Lord Elis-Thomas: That is what a legislature does!

Ms Clancy: There is an interesting example still on the screen on the home page of our website, where there is a discussion forum that is about presumed consent on organ donation. There, it is the Assembly encouraging people in Wales to participate in that debate; and then part of our communication strategy will be to make sure that the information about what the results are of that and the difference it makes to the people of Wales—the information is there for people so that they can see exactly that, the reality of what the Assembly has done. They can look at each stage of it and the influence the Assembly has over that.

Alun Michael: I do not want to labour the point, Chairman, but I think that is getting towards the secondary question. I understand the answers that have been given on the process, the development of the institution and so on, but the contribution, what it means to have the institution doing those things; and I wonder whether perhaps there are reflected points that might be contributed to the Committee after the meeting on that type of aspect!

Chairman: That is entirely up to our witnesses, whether they feel they have got anything to add on that aspect of it.

Q545 Dr Whitehead: Can I turn to the Government of Wales Act: obviously that made a substantial difference in terms of how primary legislation is made and in what way it is underwritten, as it were, by the process of Westminster, but do you think the Act provides sufficient clarity in terms of that process, and in particular in terms of what is now primary legislation?

Lord Elis-Thomas: Co-legislating between legislatures, wherever it happens, is complex. The European Union obviously is the clearest example. The co-legislating between the two Houses of Parliament at Westminster is sometimes complicated. The co-legislating processes between the Scottish Parliament and both Houses in Westminster is complicated; but I think we are getting there. I will not presume to comment on the procedures of the House of Commons, but so far as the Government bills are concerned as they emerge, and exploratory memoranda, when we consider them in the House of Lords the content is much clearer. The territorial application is much more specifically stated. There is a bit of unevenness, but we cannot lecture parliamentary drafts-people on how they should produce their bills—or perhaps we could! It has improved. In regard to the process itself, my simple duty is to implement the Government of Wales Act as it was given to me by Parliament. That means that the process of seeking proposed orders and the process of deriving powers from Westminster acts and indeed the process of making measures, which is entirely within our

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control here—all that has to operate as clearly and as cleanly as possible. I do not share the view of some commentators that this is more complicated than most co-legislating situations that I know of world-wide.

Q546 Alun Michael: Do you think steps could be taken to improve how that works? You have mentioned the question of how things are drafted, but are there other things that you think might be done in order to make the process cleaner and clearer?

Lord Elis-Thomas: It is not for me, I think, to propose changes to Part III. After all, the change to Part III is Part IV, is it not, and I am of course a support of Part IV when the time comes. I have clearly discussed this at some length with the Secretary of State, and I know the Secretary of State has given evidence to you, and I know he has indicated that he intends to look at this process in the summer and see if there are ways in which things can be improved. The problem I have is with critics who say that so much of this process is inter-governmental; but of course all legislation is inter-governmental, between departments and ministers; and in this case it is between ministers in Westminster and ministers in Cardiff, and it involves obviously the Wales Office and the Secretary of State as well. When we come to legislation, proposed orders that come out of the ballot for individual Assembly members, it can involve, as it has done already to my knowledge in at least two cases, negotiations between our lawyers here, who assisted in drafting, the member that was taking the measure through, the minister in Cardiff, and then of course the Secretary of State and the minister for the United Kingdom who is dealing with that issue and may lead the implications for English legislation of changes that are taking place here, and in particular the discussion that is going on now about the proposed Mental Health Order. Those are unavoidable and necessary democratic discussions, which happen everywhere. I would challenge anyone who would say this is more complicated because it is happening in between London and Cardiff, between the Assembly and Westminster or between the Welsh ministers and the UK ministers than anything else that goes on around the Whitehall machine anyway. I will ask Adrian Crompton who, as Director of Assembly Business, runs the system with perfect clarity.

Mr Crompton: To reinforce what the Presiding Officer has said, it is early days. In a lot of cases we are doing things for the first time. We have found working with the Act adequately clear, I would say, and we have found our standing orders, as presented to us at the start of the Assembly, to be adequate and to have enough white space between the lines to enable us to change our procedures as we go along. I guess one area where we have had to pick our way quite carefully is on the pre-legislative scrutiny of LCOs, which is an area not covered by the Act at all; but there, too, we have been able to find our way through comfortably.

Q547 Alun Michael: Am I right in thinking one legislative competence order has so far been passed? You have mentioned 18 Assembly measures.

Lord Elis-Thomas: Eighteen pieces of legislation are in the pipeline; they can be either proposed orders or—we are up to 22 now I think.

Mr Crompton: Not quite as many!

Lord Elis-Thomas: I can see 22!

Mr Crompton: The Government has introduced five LCOs and two measures. The Presiding Officer at two-monthly intervals holds private members' ballots for both measures and LCOs, and the proposals that have come from those would be included in that total. We have held five rounds of those to date, and so that is a further 10 proposals that have entered the system, and there are a number of other Government proposals in draft that we know of, and obviously there will be further ballots held in due course.

Q548 Alun Michael: In terms of legislative competence orders that have been passed to date, i.e., one—does that cause any concern in your mind in terms of how the process works through to its four stages, or is that as it were what you might have anticipated at this stage in your proceedings?

Lord Elis-Thomas: What happens to the proposed orders after we have dealt with them is a matter for Westminster and for the Secretary of State. I am not going to comment on what happens in the House of Commons, but the way in which the Constitution Committee of the House of Lords considers these matters is exemplary. I think there might be a case, if I may be so bold, for suggesting your Committee takes an interest in these matters. There is no reason why the arrangement should be that the Secretary of State should send proposed orders to a committee which does not seem to have time to process them and deal with them properly: they might be better directed to a committee that has well-known constitutional expertise and an appetite for justice, if I can put it like that.

Q549 Alun Michael: Can you briefly describe the role in drafting legislative competence orders and Assembly measures? Between the Government and Assembly measures, how does that work out in practice?

Lord Elis-Thomas: Government-proposed orders are drafted by Government lawyers, but clearly there is consultation with ourselves, and our senior legal adviser, our chief lawyer, Keith Bush, clearly plays a key role in terms of advising me on any piece of legislation in terms of its competence and the competence of measures especially in relation to the 2006 Act. When there are changes in the wording of proposed orders—one case has been that a proposed order was discussed and processed by the National Assembly but when it emerged in Westminster it was a little different, shall we say! On the question of changes of that kind we have discussed in the Business Committee whether it would be necessary for such changes to be taken back to the Committee that had considered the proposed order in the first place, and in two cases we have looked at so far the

Business Committee has taken the view that that was not necessary, and indeed the previous committee that did the scrutiny on the proposed order agreed with that. There is always the possibility, if it were required, of further scrutiny; but I am very keen not to duplicate scrutiny, or double-up on scrutiny. That is why I was very keen on joint scrutiny when it happened in the second Assembly, and I regret that, as is my understanding, that the Welsh Affairs Select Committee has declined the opportunity for close scrutiny with members of the Assembly. That is a matter for them and I will not comment on it any further, but I think it might be something you might like to ask them. As regards measures that emerged not from Government but from our ballots, or indeed proposed orders that emerged from our ballots, the drafting there is entirely on the advice of our legal team. They are there to assist the member who is taking the order or the measure through, all the way through the process. I must say that I have been very encouraged by the willingness of the Secretary of State to—not hold the hands of our members but to ensure that there is a full discussion, hosted by his office, between the member taking through our equivalent of a private member's order—that he or she would have the support of the Wales Office and of its officials in any negotiations that might take place with other ministers in the UK Government. That is very helpful to us because I was concerned that the whole potential of taking private member legislation through would be, as it were, trapped in an inter-governmental debate. That is something that is bound to happen anyway because even in the system you have in Westminster, the likelihood of success of a private member's measure or bill very much depends upon the goodwill of the minister and the business managers in both Houses anyway—so you have that issue. As I say, I am very heartened by the strong support we have had from the Secretary of State in ensuring that all aspects of the 2006 Act, all potential avenues, can be explored.

Q550 Alun Michael: Can I just say one thing, because misunderstanding is a terrible thing and it has a tendency to grow? I think Y Llywydd is mistaken in thinking that the Welsh Affairs Select Committee has declined the concept of joint work by the two committees. I am a member of the Welsh Affairs Select Committee, and the distinction has been made between the taking of evidence and the proposition of members of the two committees meeting together to look at LCOs, so it is actually strengthening the process rather than weakening. I am not sure how that misapprehension might have arisen. Second, there is a cause for some satisfaction at the way that the final form of the first LCO that has now passed into law improved during the process and ended up at a high level of quality; and that was certainly the view when we reached the point of the substantive rather than the pre-legislative scrutiny. In his evidence to the Committee we had some comments from Professor Sir Robert Hazell about the need for much greater consistency, as he put it, about the way in which the mechanism of legislative consent orders would be followed. He

also underlined the fact that he was speaking at what are still early days for the whole process. Do you share the view that there is a need for a more consistent approach, and if so how do you think that should be developed?

Lord Elis-Thomas: No, I do not share the view at all. It was always envisaged during the passage of the Government of Wales Bill that powers would be derived from both Welsh clauses in Westminster legislation and orders in council. It makes no difference to us which way the competence is gained; what matters to us is that we have the legislative powers and we are able to make measures. The Constitution Unit of course has made a contribution to the study of the development of the constitution in the UK, and I respect Professor Robert Hazell's work, but in terms of practical law-making, it does not make a difference how the powers come; the important thing is that they are here.

Q551 Alun Michael: So you think he is looking for an over-proscriptive approach to consistency?

Lord Elis-Thomas: In the debate on the Act, and what ministers said in both Houses on the various stages, it was envisaged that both routes would be there. I cannot speak for my colleagues—you will see them later this afternoon—but I know that Welsh ministers are anxious to use both routes. Indeed, individual members, when they ballot for proposed orders, very much see the possibility either of filling in gaps and generating more matters in a narrower field, or perhaps taking a broader view on some other subjects, depending on what kind of measures might be envisaged and on what activity is taking place on the part of Government and other Assembly members in increasing the potential legislative canvass, as it were. I do not think it is an issue for us how that happens. I will say one thing, however: there is perhaps too much mystery surrounding the whole notion of an order in council and proposed orders; these are just one-off pieces of legislation. Once they occur we have the powers, obviously! I do not think we should be looking for a perfect constitutional solution to how we make the laws, because the more perfect solution will come if we win the referendum; and we are only going to win the referendum if we are seen to be able to make laws effectively with the current system, in my view.

Q552 Alun Michael: That is helpful. Obviously, we are in the early stages of developing process, but on the experience so far, what is your view of the way that the roles of the Secretary of State for Wales, to which you have already referred, and the engagement of Parliament in legislating for Wales, are developing?

Lord Elis-Thomas: I would not want to speak for the House of Commons in any assessment of what the House of Commons has done, but I can obviously speak of what we have done here and what the House of Lords has done. The role of the Secretary of State is a delicate one for me to talk about, obviously, because I have a necessary constitutional relationship with the Secretary of State—whoever has been the Secretary of State—and it has been very

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valuable for me in terms of trying to run this institution as far as the process is concerned. I will say that the determination of the current Secretary of State to make the system work is very clear. The recent strengthening and restructuring of his office is a sign of that, and his constant endeavour to communicate with Welsh ministers, and obviously with the First Minister but with myself, and the willingness shown to officials here in the National Assembly and in the Assembly Commission to speak with officials in the Wales Office regularly and the willingness to smooth the path of progress especially in relation to Assembly proposed orders being pursued by individual members I think speaks for itself.

Q553 Julie Morgan: Do you think you have enough members in the Assembly with enough capacity to scrutinise?

Lord Elis-Thomas: Again, we have what we have; this is what Parliament legislated for us. Are we using our members effectively, and are we using our resources, our staff and our time and all the rest of our activity effectively? I think we are on target to improve our effectiveness with our current resources. That is what we have tried to do, and we have tried to manage our resources by bringing the Business committee and the Assembly Commission together at key intervals. We are planning another key meeting now when we look at the budget—and we had this discussion this morning in the Commission—to ensure that there were no capacity issues in relation to use of members' time, committee time and the allocation of resources for committees.

Mr Crompton: It is fair to say that the Assembly is working hard. From memory, we have at the moment just over twenty committees, and probably 45 members generally populating those committees; so members have a lot of work on their plate, generated purely by the committee system. Through careful programming of plenary and committee activities, we make sure that members can cope with that. As the Presiding Officer said, we bring together the direction on the organisation of business from the Business Committee with the Assembly Commission with its resourcing hat on to ensure that from a staffing point of view we are properly geared up to support that activity. That is what we are doing at the moment, from my point of view.

Q554 Julie Morgan: Do you envisage there being more difficulties with capacity, as time moves on?

Lord Elis-Thomas: We are trying to ensure that our committees are timetabled in such a way that they function tightly and effectively, so legislative committees—well, we do not have the capacity for more than three at the same time, obviously, in this building. We try to ensure that at any given time we are maximising the resource, but without placing too much stress on staff. After all, we are talking not just about what you see here, but what goes on in there—the interpretation service, the record of proceedings and the whole work of members' research, the support for committees and all our activity invested in the main tool of our work in our website and our

intranet. In all those areas the Assembly Commission, which has the legal responsibility to provide services for members, has to ensure that we are getting the best value at all times; but we do try to listen very carefully to what members and staff are telling us. There was a feeling six months or so ago that the process was running ahead of itself because there was so much committee activity, but now I think things have stabilised. Is that the view of you all?

Mr Crompton: It is certainly the view of me, and I am sure I speak for everyone!

Q555 Julie Morgan: You say you have what you have, but you wish you had more.

Lord Elis-Thomas: I think my views on this are well known; I would reduce the number of Welsh MPs and increase the number of Assembly members, but those are my personal views, and I would not dare say that as Presiding Officer.

Q556 Julie Morgan: In terms of the process and how things are actually working, you have enough Assembly members to do the work!

Lord Elis-Thomas: Well, we have to make it work, do we not?

Q557 Julie Morgan: Yes. We have touched on pre-legislative scrutiny earlier in the discussion; how do you feel that is working now?

Lord Elis-Thomas: We are engaging very well with our interest groups and those who have a concern about the form of legislation and indeed the policy implications; and I think most of our committees, pre-legislative scrutiny committees, whether that is done in a specially elected committee or by our four big scrutiny committees where they undertake that work for measures in particular—that work is very thorough. The reports are well produced and researched, and the legislative debates we have had have been substantial. I thought the debate on the NHS redress measure, which I chaired this week, showed a very clear benefit from pre-legislative scrutiny and the reports that had been prepared during that process.

Q558 Chairman: Was that pre-legislative scrutiny of a draft bill, or are you talking there about actual scrutiny of a bill on its way to becoming law?

Lord Elis-Thomas: Well, we call bills measures here, which is very confusing. Measures in England are what the Anglican Church does! We also say “mesur” for a bill and—

Q559 Chairman: At Westminster we are developing a very distinct pre-legislative scrutiny stage for draft bills, as opposed to bills that are going through their normal legislative process.

Lord Elis-Thomas: We have exactly the same. Currently there is a big consultation process, managed by the Minister for Skills, John Griffiths, on our learning pathways for education legislation, and the draft measure is now out to consultation, and that obviously will come for scrutiny to an Assembly committee; and then we will take it

through stages 1, 2, 3 and 4, which is our slightly longer—in terms of numbers anyway—way of managing legislation as it goes through. What we did this week was the stage 3, which is the report stage of the measure.

Q560 Mr Turner: Can I ask a question that follows on from what you asked? If you get more coming in from on top, it gives you more to do. If you get taking over from the bottom, it gives you more to do. I assume—I do not know—that the standing amount of work means a standing level of work! Can you say which of those that extra was coming from?

Lord Elis-Thomas: We are working within the current constitution in terms of the Government of Wales Act, and within our standing orders—are you asking about legislative work?

Q561 Mr Turner: Among others, yes. I take it that that has not changed. I was thinking about bringing stuff up from the bottom—in other words, local authorities have less to do.

Lord Elis-Thomas: No, no, that does not happen. We have a very good relationship with the Welsh Local Government Association and Welsh local authorities. We currently have 22 local authorities, and the Government has a policy of seeking partnership working through the study which Sir Jeremy Beecham chaired two or three years ago now, looking at the relationship between local authorities and health service bodies and so on. Our work is not at all derived from local authorities; our work is derived entirely from Westminster. The scrutiny we undertake is scrutiny of Welsh ministers, and the legislation we undertake is derived through the activity I have just described; and that has exponentially increased of course since the Government of Wales Act 2006. There were also some predictions around then as to the amount of legislation that would appear, and they were all wrong except for ours of course.

Mr Crompton: Over time the balance between the effort put in to the scrutiny of LCOs here and measures will alter, and so a lot of focus at the moment is on the extension of legislative competence, and over a period of time, once that is in place, the balance will shift slightly and we will see more measure-making activity.

Lord Elis-Thomas: My ambition has been to get the legislative process here up to speed in such a way that the movement from Part III to Part IV will be seamless, so that when we move on from making measures to making acts, it will be the same process and we will have the capacity and experience to do it.

Q562 Alun Michael: It would also be true, would it not, that there is an element, apart from parliamentary and local government, of things that would be in the previous arrangements in Whitehall, which would have greater scrutiny through the existence of the Assembly than would be the case prior to the Assembly's existence?

Lord Elis-Thomas: Yes. I suppose the best example is what will happen here next week when Michael Grade will be—well, maybe not crucified but he will

certainly be questioned very hard—because we have established a short-term committee on scrutiny in broadcasting. Broadcasting and media and digital issues is non-devolved; but Ofcom in Wales clearly wants to prove itself to be a partner for the devolved institution. The same thing applies to the activity of the police here. There are regular meetings and evidence given by the four chief constables in Wales to Assembly committees and so on. That is covered by the ability both in the 1998 Act, and now in the 2006 Act for Welsh ministers to make representations on any matter affecting Wales. Therefore, the Assembly's committees and its members can make representations to those ministers in order to pursue that so that the level of democratic activity, as Alun quite rightly says, in non-devolved areas has increased. We were encouraged to go down that route by Sir Jeremy Beecham in his report, who emphasised that we should be charged in the three recommendations he made to us as an Assembly as opposed to recommendations for Government—he recommended that we should be active in our scrutiny of non-devolved matters because citizen-centred scrutiny, as he described it, should follow citizen-centred services. The citizen does not care whether the service comes from here or there; the important thing is the quality of the service.

Q563 Mr Turner: Can I give you another example? This is where you have a heavy but intermittent—Commons Act 2006 for example: you had one and a half people for you and there were 12 people nationally, that is England, to look at what happened in that. It seems to me you could not possibly cope with 1.5 people when such a task came through: would you agree with me?

Lord Elis-Thomas: I think this is a question for Government, not for me. We did not scrutinise that piece of legislation.

Q564 Chairman: It was a piece of Westminster legislation in fact; but it has impact on Wales.

Lord Elis-Thomas: Yes, but I do not think it was scrutinised by the National Assembly at any stage.

Mr Crompton: I do not believe so.

Chairman: We will put the same question to the First Minister later.

Q565 Mr Turner: How would any move towards English votes for English laws impact upon Wales in terms of legislation for Wales?

Lord Elis-Thomas: I am sorry, I am not the person to answer that question. My job is to preside over the National Assembly for Wales. The self-government of England is a matter for England, I think.

Q566 Chairman: I suppose it might lead to your Assembly having to have more powers devolved to it in order to, as it were, clear Wales out of a lot of Westminster legislation because Wales crops up as a part of, and sometimes a small part of Westminster legislation, even in areas that are broadly devolved, does it not?

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Lord Elis-Thomas: Yes, the law book, the United Kingdom constitution, especially the devolved parts of it, is the creation of a series of acts of Parliament, and clearly any mention of Wales in any act of Parliament leads to a consequence for England very often because of the way the primary legislation has been written across both countries. I would not envisage that we would go down the route of an attempt to consolidate the constitution or consolidate legislation until we were into Part IV time. I do not see much point in trying to use Assembly measures to consolidate and clarify the constitution; but I can see a strong case for doing that when we have fuller law-making powers.

Q567 Chairman: Is there a process by which staff of the Assembly keep an eye on Westminster legislation in order to spot whether it either incorrectly moves into a devolved area, or simply by its very nature has a legislative impact on a devolved area?

Mr Crompton: We monitor very closely any obvious Welsh clauses, or clauses that have an impact on Wales in Westminster legislation. We also have, as part of our standing orders, obviously something that has not yet been tested, an equivalent of the

Scottish procedures for Sewel motions; so it is incumbent on the Government in that case to table a motion drawing the Assembly's attention to the fact that Westminster legislation might be impacting upon our competence.

Q568 Chairman: You are watching out for that in any case, are you not, rather than relying on them to tell you?

Mr Crompton: Yes.

Q569 Chairman: Do you have a feel for how much Westminster legislation has this kind of impact? I am not thinking about legislation in non-devolved matters, but legislation which picks up incidentally on devolved areas of power.

Mr Crompton: At the moment, relatively little that impacts directly on matters that had been devolved to us; but obviously, as time goes on, and Schedule 5 of the Act evolves, then many more, I would imagine—but at the moment very few.

Chairman: (*Through an interpreter*) I thank all three of you: Presiding Officer, Mr Crompton and Ms Clancy, and I thank the staff for their help with the arrangements. It has been excellent work. Thank you very much.

Witness: **Professor Nicholas Bourne AM**, Assembly Member, Leader of the Opposition, Conservative Party, National Assembly for Wales, gave evidence.

Q570 Chairman: Professor Bourne, welcome. We are very pleased that you are giving evidence to us this afternoon. From day one of the Assembly you have been a member, throughout its existence.

Professor Bourne: Yes.

Q571 Dr Whitehead: I am very interested to ascertain whether the changes that took place following the Government of Wales Act 2006 and the way that legislation is now made and then transmitted to Westminster and finalised are now a clear, crisp and precise process; or do you think that albeit with substantially greater powers in terms of legislative competence for the Welsh Assembly that there are problems of clarity and things that could be done to improve matters?

Professor Bourne: I do not think I would describe it as clear and crisp. It has made a massive difference. I think the third Assembly is very different from the first two, and there is a feeling across parties and across members I think that we are grappling with issues that are much more germane and much more important. I am sure improvements could be made. I do not think that even its biggest fans could call it clear or crisp; I do not think they are adjectives that would spring to mind. I do not think it is a lasting settlement. Without straying into the political, again most people would probably agree with that—but it is not lasting.

Q572 Dr Whitehead: Is it, in your view, not lasting because of process factors such as the capacity of the Assembly to deal with its new role; or do you think

the arrangements for legislative competence orders and the way that then transmits authority to Assembly measures are rather a transitional device?

Professor Bourne: I think there is a capacity issue, but I do not think that is the reason that it is not lasting. I think even if there were not a capacity issue the process is convoluted and not clear-cut; it does not give us the tools to get on with the job—"those are the totality of the powers you have got; now get on with the job"—it is every time, within the secondary areas where we have currently got powers—if you want a transfer of powers we have to make a case for it. That involves an awful lot of time being spent here and in Westminster, from what I can gather, which is not a sensible use of time long-term. It was not something that the Richard Commission recommended, for example, and I think wisely not.

Q573 Dr Whitehead: Do you think the comparative roles therefore of the National Assembly and Westminster, both in making and scrutinising Welsh legislation, is clear—and certainly in terms of the role of scrutiny in both the promotion of legislative competence orders and in measures? Is that something you think has worked successfully so far in Wales, and are you aware of how well or otherwise scrutiny in Westminster reflects that?

Professor Bourne: I suppose I am more aware of it from the Welsh dimension than from the Westminster one—naturally I would see more of what is going on here. I would not necessarily say it was lacking in clarity; I think perhaps people can understand how the system works; but I just think it is unwieldy and convoluted long-term. In fairness, I

am not sure it is anticipated that we go on with it long-term, but I just think the sooner we have closure on the issue the better off we are, because there is a recognition that it is a staging post, and I do not think it is a desirable one long-term.

Q574 Dr Whitehead: I get the implication from what you are saying that there is a great deal of process involved for sixty members, and Government, which you feel duplicates what could be a much more streamlined process: but does that inevitably mean that the streamlined process is, as it were, a fuller form of devolution; or is it a question of how the processes work at present to bring the conclusions that are in the Act?

Professor Bourne: As I say, I think there is a capacity issue, but that is not the prime problem. I would be saying the same thing even if I thought we had eighty or even more members, because I would not think this was a sensible use of time in terms of having to justify every single legislative competence order, rather than having a lasting settlement and saying, “this is where we have primary powers across all these areas akin but not identical to Scotland.” Therefore, I think it is only a staging post, and the sooner we move on, as I believe, to a more effective lasting form of devolution, the better off we would be. I accept that there is a capacity issue, but in my mind that is not the real issue here. We have to address the capacity issue; but even if we had the capacity this would not be a terribly sensible use of the time of Assembly members or officials or anybody else; it seems to me to be too convoluted.

Q575 Alun Michael: On that last point, do you not think the process of scrutiny of what has become the first LCO to go into legislation was actually helped by that process in that the final version of the LCO was far clearer and more to the point and better supported by the papers than, for instance, the original draft had been?

Professor Bourne: I do not have intimate knowledge of that, but that may well be the case. I would accept that on occasion we may end up with a better piece of legislation than we would otherwise have had. That may well be the case. I do not think that is inevitable, Alun, but it may well have been the case with the first one.

Q576 Alun Michael: I think it was on the first one, and that is a reason for some satisfaction, I suggest, for the Assembly and the Department.

Professor Bourne: Yes, I would not disagree with that, but I do not think it is going to be like that with all of them!

Q577 Alun Michael: You may be right. I wanted to ask you about the issue of performance. We have talked about the legislative process but for many people the question will be: “What has the Assembly done for me?” That can be a bit like the Roman question! What would you say is the added value by having the Assembly now for just over 10 years?

What is better in Wales compared to a region of England that has not had the benefit of the Assembly’s work?

Professor Bourne: I think it is nine years—but the best part of a decade certainly. I think the thing that most people would instantly identify with would be the accessibility and immediacy, as you would know, about the way people have access to their elected representatives here—and again, probably inevitably because it is a relatively small nation, we are much more local to people than Westminster is in all regards. I think that has made a difference, and I suppose sometimes the ability to do things that get overlooked at Westminster or not regarded as important. I can think of things that we could probably handle better in devolved terms than would have been dealt with at Westminster—foot and mouth possibly—whether one agrees or disagrees—but certainly the farming community would say the badger cull would be another one that could be added to that. We brought in the smoking ban, which I certainly agreed with, more quickly. A small nation may on occasion do things more effectively. If we have a concentrated settlement of saying “get on with these things”—in the very nature of things—and perhaps also linked with that, given the small nature of the Assembly, if we had another twenty members, an ability across parties sometimes to agree on things which, because of the larger nature of Westminster, would not happen. So often a consensus is looked on as a dirty word, but it need not be. There are issues where actions are sometimes postponed because it is not politically sexy, and we can certainly think of some examples.

Q578 Alun Michael: I put my tongue firmly in my cheek and say that arguing that the proposed badger cull is to the credit of the Assembly may be questioned in many quarters.

Professor Bourne: I knew as I said it that I would not necessarily have universal agreement about it!

Q579 Alun Michael: On the question of immediacy and cross-party engagement, it is easy to see the argument there. However, on direct performance issues like whether education is better; whether the Health Service has improved more than in a region of England that does not have the benefit of the Assembly; the attraction of jobs to Wales and things like that—the concrete things that affect people’s everyday lives—how would you measure the Assembly’s success or otherwise in those terms?

Professor Bourne: Possibly patchy. I think you are right. The Assembly Government has had different priorities from those in England on the Health Service—the free prescriptions,—the waiting-list position has not generally been as good as in England, but, on the other hand, tackling MRSA and *C. Difficile* has been better. It perhaps is patchy. The GVA figures that are just out today I am afraid show another drop, so that does not look good compared to Northern Ireland or the north-east of England or Scotland. Admittedly it is patchy, and I think perhaps coming back to “what did the Romans do for me?”—people do ask that, I suppose,

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and it is fair they should. My own feeling is that it is not asked with quite the same asperity that it was, perhaps after four years or six years. It is not “why on earth have we got an Assembly?”; I think it is now much more: “Why does the Assembly not begin to tackle this?” I get the feeling that perhaps as it has become more established—and in the time frame of parliaments, nine years is not that long—that there is much more of an acceptance now that it is part of the landscape, and people are looking to it to do things rather than saying, “Why on earth does it exist?” It is more: “Why on earth does it not start to tackle this?” That is a good development perhaps.

Q580 Alun Michael: It is an interesting aspect of public acceptance, but as a leader of an opposition party do you run a balance sheet, or do you encourage the Assembly to run a balance sheet on the pros and cons of what is contributed?

Professor Bourne: Not in those bold accounting terms; but again within my own party I have certainly recognised that shift of opinion—and it is possibly true of other parties as well. I would not know that with the same certainty, but within my own party there has certainly been a movement from outright hostility, then through clenched teeth, and now grudging acceptance to, “oh well, it is here now; how on earth do we make it work?” I think we have reached that stage, and people will come up with their own experiences. You do get people who will generally say, “We do not always agree with the Assembly but it has done this for us”—and then you get the free bus travel or the free entry to museums, free swimming or whatever—people will come up with their own examples.

Q581 Chairman: As you conceded, you are leader of a party which was hostile to devolution and hostile to the voting system which created an Assembly in which it had a significant role, and has moved in Wales from a position of opposition to these things through a position of saying, “we had better make it work” to what I divine from what you said is a position of saying, “there are positive advantages in all of this for Wales and we will now continue our political battle about whether the party or parties in charge are doing it right” while at the same time believing that the system has benefits, although it could still be improved, as you say. That suggests to me that the system changes behaviour and perceptions.

Professor Bourne: It has certainly changed mine. That would certainly be true—and many other people as well, I suspect. As a party, we have certainly moved the furthest and the fastest. We had the furthest to move, I suppose. The irony is not lost on me: here I am in an institution that I fought to stop existing, elected by a system I disagree with. Frankly, my views have changed, to be quite honest. I do not think people in Wales would be surprised to hear that. That is on record, and the view of the party has changed significantly here and it has also changed at Westminster. The group here certainly are probably all twelve in favour of extra powers. It has changed. A part of that is the reality. You will not

be totally surprised by that. I can point to other political parties that have changed their views on Europe.

Q582 Chairman: That suggests that you should not judge how a system will work, or how further changes in a system will work on the basis that people carry on behaving in the same old way; that the system may actually change the way they do things.

Professor Bourne: The reality of devolution, in Welsh terms, has certainly been from my perspective very different from how I thought it would be. I am being quite honest on that. Again, I am not saying anything different from what I said previously. It is true for a large part of our party. We had perhaps low expectation of what would happen, but in general terms we are pleased at the way it has worked out. I can see genuine benefits to the system now, and I believe I can see ways it can be improved. I do not think the system we have at the moment is sustainable in the long term and perhaps not even in the medium term. There is a frustration certainly in the Assembly and cross-party at the position we are in, I think.

Q583 Julie Morgan: Can I follow up the comments on your party? You say it has moved in Wales; has that happened throughout the UK? Is there an acceptance of devolution in Wales throughout the party?

Professor Bourne: I think that would certainly be true. I am not quite sure whether you are asking has the attitude to Welsh devolution changed throughout the UK, or devolution in general?

Q584 Julie Morgan: I am asking about Welsh devolution particularly.

Professor Bourne: Certainly at Westminster the position of the leadership has changed. The current leader is sympathetic to devolution, not at all hostile. The position in Scotland—not that I think they give a lot of their time to what is happening in Wales, but we have regular talks with them, and they have moved as well, so I think there is a shift within the party on devolution. There remains an area of great interest, but I am not expert on it, on how you address the English dimension, which is the dog that at the moment is not really barking—or maybe it is barking, but it is not barking in Wales.

Q585 Julie Morgan: Would you think David Cameron would support an Assembly that was like the Scottish Parliament?

Professor Bourne: I think he would. As you know, we have a review at the moment which Wyn Roberts is leading, and he expects to make recommendations towards the end of July, which is the way we are dealing with it at the moment. There is an openness on the part of the leader and he will obviously want to study that review, and I at the moment have no idea what that review is going to say.

Q586 Chairman: Let us move to your perception of how the government relationship works. I realise it is an opposition leader's perception, but you must have one, as to how the Assembly Government in Cardiff relates to its Westminster counterpart. Do you see that as a close working relationship or one that is more detached, maybe even too detached? Do you see it as heavily dependent on the party in power in each of the two places or one which might be broadly similar whoever was in power at either end?

Professor Bourne: Heretofore we do not have experience of a position where it is not Labour at both ends of the M4—at least in part and at least the dominant part. That is an interesting issue. You are right that it is an outsider's view really because I have not got any direct knowledge—it is just sometimes reading the runes. It seems a bit *ad hoc* and sometimes *ex post facto*, and not that close on occasion—but that is an external view. I would have thought that it could sometimes be a little more cohesive, given that it is essentially the same party, but it does not always appear like that.

Q587 Chairman: It ought not, ought it, to be dependent on the same party being in power, because it is a working assumption of creating a devolved system that governments of different views, whether or not of the same party, may well be elected at different levels of the system?

Professor Bourne: You are right. It should operate regardless of who is in power and which end of the M4, but we would be expected to believe, and indeed have been led to believe that it would be a much warmer relationship than has perhaps been the case, given that the parties at each end are the same. I agree that the real test will be when it is a different party dominant at one end of the M4; that will be the real test.

Chairman: To make sure we do not miss it out, I will ask Mr Turner to turn to the English question.

Q588 Mr Turner: You are obviously not as concerned as we are about the English votes for English laws, but could you say whether it is something that is not at all important, is 100% important, is somewhere in the average?

Professor Bourne: I am a strong believer in the union, so I think it is important because if the issue is not addressed I think there will be serious consequences. I would have thought that somewhere down the road that issue is going to be addressed. There are two separate issues, are there not: the number of MPs—which is a slightly different issue—but there is the other one about: is it right that the Member for Neath can vote on education in Northampton when he cannot vote on education in Neath, and the Member for Northampton cannot vote on education in Neath? I think that issue has to be addressed, and I think it is important. It is not important in the daily grind of what we do here, but nevertheless in the broader picture of the union I think it is extremely important. As I say, as someone who fundamentally believes in the union, I think it does need addressing.

Q589 Mr Turner: Given the forty MP's representing Wales against 33 being the appropriate level, would you agree that that is significant?

Professor Bourne: Thirty-three being the appropriate level if we were on a population basis?

Q590 Mr Turner: Compared with England. Yes.

Professor Bourne: Again, just as in the case of Scotland, where full powers were granted to Scotland or conceded—however one phrases it—I think the same should happen to Wales if full powers were gained in Wales. It is difficult to make a separate case. I know that devolution settlement is not entirely the same, but I think it is again an issue that one would expect to be addressed. Wales would, I think, be over represented at that stage. I do not think it is at the moment; I think you can make out a perfectly respectable case for forty at the moment, but I think if full powers came to us it becomes more difficult, with respect to Julie and Alun, to argue that point.

Q591 Mr Turner: Can we get to a point where Scotland and Wales are more or less the same, and possibly England too—but let us leave that possible for the moment?

Professor Bourne: You are assuming that is desirable! I think they have to be similar. I am not sure they necessarily have to be the same. I am not necessarily convinced of the case about devolution of criminal justice for example, but I think we need to be similar to Scotland. I do not say the same because there are different powers devolved in Scotland and I do not think the system here should be identical to Scotland. I think the issue in relation to England is much more difficult, particularly after the vote in the north-east. So when you say the position in England should be the same, I am not quite sure what you have in mind, but I am not convinced that you can deal with England in the same way you can deal with Wales and Scotland.

Q592 Mr Turner: I suppose I was thinking of it being one unity rather than four or five.

Professor Bourne: With an English parliament?

Q593 Mr Turner: No, English votes.

Professor Bourne: Maybe that is right and perhaps we are in agreement, but I do not think it would be precisely the same template across the board. We have got a more symmetrical system than we have at the moment.

Q594 Chairman: Are there arguments from a Welsh point of view against an English parliament or not?

Professor Bourne: Against a separate English parliament?

Q595 Chairman: Yes.

Professor Bourne: I think really that has got to be largely a matter for England, has it not? My only concern would be if it would in any way undermine the union. I think only at that stage because has

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Wales got a direct interest any more than England has in stopping the march, the progress of Welsh devolution if that is what the people of Wales want?

Q596 Julie Morgan: I was going to ask you about the relationships between the parliaments and assemblies in the UK. How do you observe those relationships working, and do you think they could be improved between the different bodies?

Professor Bourne: I am sure they could be improved. Speaking from my own experience over a period of nine years I think there probably has been some progress, as you would expect. There has been more sensitivity between Government departments and the Assembly and perhaps *vice versa*—I am sure it is not all one-way traffic—and certainly from a party perspective I felt my own party has been better at accommodating and dealing with devolution as time has gone on. Periodically there are blips but it has certainly got better. One thing I wondered about was some sort of body to exchange best practice, whether a British/Irish council type model—perhaps we see it at the moment in terms of fire-fighting and saying “this is the way we should deal with disputes”—maybe we should also at some stage say, “no one part of the United Kingdom has a monopoly of good practice and it would be a good idea to have some sort of body where we have an exchange of best practice across the constituent parts of the United Kingdom, and maybe it could be a useful adjunct to what we do.

Q597 Julie Morgan: Does that happen at all now?

Professor Bourne: I do not think it does in any structural, formal sense. I am sure that informally this sort of things happens, but I discussed this with Malcolm Rifkind and he thought it was something that could be enhanced or brought about.

Q598 Julie Morgan: Is there much contact between the Assembly and the Scottish Parliament, for example?

Professor Bourne: There is a fair amount. Again, the Business Committee would go up and different subject committees would go up, and theirs would come down here and so on. That tends to happen. Then there is obviously the linkage between party groups as well. We have regular dialogue with our counterparts in Scotland. Again, I do not think there is anything in a formal sense which may ensure that things happen rather than rely on individuals and the chemistry between different committees and so on.

Q599 Julie Morgan: You do not think we have reaped the benefits of having these different bodies as much as we could?

Professor Bourne: Not as much, certainly. I think it has happened and it has grown, but I think we could certainly do more.

Q600 Chairman: With only a few minutes in hand it is hard to throw at you the Barnett Formula, but I must give you a chance to say whether you think it is a system that is sustainable, and how you view it from a Welsh standpoint.

Professor Bourne: It is a little bit like local government finance, is it not? It is one of those things where you always think that. It is far from ideal, but if you start meddling with it you might find it is better than anything else you could bring in in its place. I have spoken to George Osborne about this recently, because clearly there is a Westminster dimension. He is very happy to look at the findings of the Commission, which will start work this year. The Commission was part of the One Wales Agreement to look at the financing of the Assembly. He is very open to look at that. I do not think we have any great ideological “no-no” to looking at the Barnett Formula. I think the guess we all have is that Scotland probably did rather better out of it than it would on a needs-based formula, and Wales may or may not. It is sensible we look at the evidence. I am very happy to look at the evidence that this Commission looks at when we look at the whole issue. I think that probably is the sensible way forward.

Q601 Alun Michael: There were some implications from what you were saying about consistency across the UK and learning lessons, and that is about the nature of the Civil Service. There have been suggestions that the Civil Service in Wales is perhaps not exchanging, engaging as much in trading experience, information, secondments and all the rest of it as was the case in the Welsh Office. What is your view about the long-term future of the Civil Service and the service that is received by the Assembly?

Professor Bourne: I think that is a very relevant point. I have discussed that with John Shaw(?), and given the size of the Civil Service in Wales I think that is a genuine concern. I do not know how we address that, but I think you are right to raise it. Perhaps it is one of the major concerns that my party does have in terms of the next stage of how we ensure that we have a first-class civil service in Wales and that there is proper exchange and secondments between the Civil Service in Cardiff or Wales now more widely that has devolved around Wales, and Whitehall. I think that is an issue that needs to be cracked. Again, not having had daily experience of dealing with the Civil Service and only a little bit here and there when we have been brought into all-party talks, I am not fully aware of the problem, but I am sure there is one.

Q602 Chairman: There is one other thing we did not record your view on, which is the future of a separate Secretary of State for Wales. What is your view?

Professor Bourne: Well, I will be very careful on that one! I suppose it links in with the Secretary of State—when you say “separate”—it would not necessarily be just a single job because that—

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Q603 Chairman: As opposed to, for example, a constitutional secretary who had responsibilities for relations with all the devolved administrations.

Professor Bourne: I guessed you meant that. It is desirable, certainly from a Welsh perspective that we have somebody around the cabinet table who has the responsibility for standing up for Wales. I do not think that should be the same person who is standing up for other regions of the UK because that then

does not really happen, or becomes more diluted. My own view is that it is desirable certainly that it should continue—in the short time.

Chairman: Thank you very much indeed, Professor Bourne; we are very grateful to you for your evidence.

*(The Committee suspended from
3.35 pm to 4.10 pm)*

Witness: **Michael German AM**, Assembly Member, Leader, Welsh Liberal Democrats, gave evidence.

Chairman: We will resume our session, taking evidence from witnesses in Wales on devolution. We are very glad to welcome, Michael German, Leader—although to finish office later this year, of the Welsh Liberal Democrats. We are very glad to have you with us this afternoon.

Q604 Dr Whitehead: I have been particularly interested in pursuing the question of the effect of the Government of Wales Act on the legislative process in the Welsh Assembly, and particularly in terms of the process of making what is to all intents and purposes now primary legislation. Do you think that the Act and the processes that it has brought about has brought clarity in that process, or do you think it is perhaps a rather more transitional process upon which further steps could be taken?

Mr German: Thank you for the question. It is certainly a very cumbersome approach, and I think it is transitional. I will perhaps give you a view on both of those. If you simply looked at the one and only legislative competence order that has been through the process, it started its life on 11 June 2007 and actually the order was made on 9 April, for what was a relatively easily approached LCO. That was a single activity, to which members of this Assembly and Members of the Parliament and the House of Lords and civil servants were devoted in order to be able to pass powers to this establishment, and before any single measure or any single bill of any sort could be passed. In a sense it was a time-consuming effort to get us to a point where we could make measures of our own. In that sense, I regard it as being a transitional approach to something which in the end will result in powers being passed here eventually. In terms of cumbersome, the number of steps and hoops through which the whole process goes is obviously one which, whilst it may have been relatively painless with regard to this first one, is time consuming. I think the number of steps results in a nine months—or could be more—process before you can start to make use of the powers that have been passed to you. Far less cumbersome of course are the framework powers in primary legislation going through Westminster in other ways.

Q605 Dr Whitehead: Do you think, in terms of passing measures and scrutinising those measures that the procedure is relatively clear and straightforward, or would you distinguish between that process and the legislative competence orders?

Mr German: I think I have to distinguish between the two because the one is about competence. Are these powers within the ambit or remit of what the National Assembly is empowered to do? The second one of course is about the measures and the impact they will have on our people. We use the term “measure” but it essentially means a bill. We have only had one. We have done one, and that has shown and demonstrated that the processes we go through, stages 1 to 3, with full debate, full amendments, has worked well. I think we have carried ourselves and executed that very well; but we are a year down the track since the enactment of the bill that gave us the powers, and we have had one LCO approved and the order made, and one measure. You might have expected some speedier progress on that rolling programme. It may well speed up over years to come, but that two-stage process means you have that length of time, which splits the whole objective of trying to get legislation through in a way that meets the needs of the people of Wales.

Q606 Dr Whitehead: Do you think that that rather cumbersome way that you have described of doing things is an additional problem to the capacity of the Assembly to deal with its new legislative role, or do you think there are any issues concerning what is now required of the Assembly and what it does with its sixty members and pre-legislative scrutiny measures, individual advance of measures and of course the question of government, and I believe forty committees between sixty members altogether? I am surprised you have time to be with us this afternoon!

Mr German: I am not certain whether it is forty—it may be twenty committees plus a sub-committee, so 20 or 21—I may be wrong. If that is the case, it is across effective members who can populate those about 45 Assembly members. Clearly, there is an enormous pressure upon them because the multitude of different committees people are on mean that you cannot devote as much time as you might like to reading all the papers and doing the background work, and receiving the lobbying that goes before it from organisations that are trying to influence what goes on; as well as being able to devote your full time to dealing with measures. We did take the decision here, quite rightly in my view, that we would not have the scrutiny committees of the Assembly doing legislative measures as well, so that they would be separated out, and a committee for the measure

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would be set up separately—and for the LCOs—from the scrutiny committees. The whole pressure in terms of time has meant that the numbers are clearly insufficient to populate the number of committees that you need in order to make the legislation work. That will only get worse: you either hold back the amount of work you want to do in order to match the numbers of people you have got; or you have to increase the numbers eventually. I think that that is bound to happen. There is another side to capacity of course, which is competence, which I have not chosen to address, but I think it would be unfair not to address it, and that is: do you need to build up expertise, knowledge and understanding in order to be able to deal with legislation, as a member? I would think some of the practice we have had in previous years with secondary legislation has given us some of that competence. Undoubtedly, people will have to get used to it, and it is a steep learning curve, but I think the first example we have had of our own measure, the NHS redress measure which we passed yesterday, gave an exemplary pathway through which the members have come; so I think we are learning very quickly how to manage those kinds of matters.

Q607 Dr Whitehead: The advancement by private members of legislation—my understanding of that is, if you compare it with the rather vestigial role of private members legislation in the UK Parliament, that it appears to be occupying a substantially greater role. Is that a capacity issue, in your view?

Mr German: It is bound to lead to the needs for more committees, because each one that goes through has to have its own committee, so there is bound to be a capacity issue in terms of members. Apart from private members and the Government's business, we have not yet started on the process when committees can themselves initiate legislation; and there is already talk of legislation coming from committees as well. I think pressure will build up on membership, and that will result either in the holding back of the work of the Assembly, or it will in the end mean that somewhere we have to address this issue of numbers of members.

Q608 Alun Michael: It is really the balance between legislative process and delivery and performance. I would like to ask you about the contribution of the Assembly to performance. People who ask, "What has the Assembly done for me?"—which tends to sound a little bit like the Roman question—would ask: "What is better; to what extent is the Health Service better; to what extent is education better; are we getting more jobs into Wales, as a result of having the Assembly compared to without the Assembly; or what is the performance of people in Wales compared to regions of England that do not have the same body and competences?" What would your response be to that?

Mr German: First, there is probably a growing attitude in Wales, which we sense from opinions and so forth, that the institution of having a National Assembly for Wales is more and more liked; in other words people want to have it. In terms of what the

Government is delivering for the people of Wales, the issues have been some good, some bad and some patchy. It has been variable.

Q609 Alun Michael: You said, "what the Government is doing", but I was asking about the contribution that the whole institution makes, which is a further question to ask you.

Mr German: Fine. I could easily comment on Government policy.

Q610 Alun Michael: I am sure you would find it difficult to resist, yes.

Mr German: However, it is right that the National Assembly itself has opened new pathways to democracy here. Firstly, I would say that people generally think the access to politicians and policy-makers is much, much greater than it used to be, and when we have visitors who come from organisations with perhaps an English background, or who come to us because they are UK organisations, to present evidence to us, they generally say to us that they find access to members much easier here. That applies to individuals as well. Our recent foray into setting up our new Petitions Committee has meant that we are now receiving vast numbers of petitions from ordinary members of the public, as well as organisations, which are getting a full hearing here, on issues that affect everyday life. The number of visitors to this very building is growing immensely: we are now the second most visited visitor attraction in Wales after St Fagan's.

Q611 Alun Michael: Yes, but, forgive me, that is all about process. It is important and we almost take for granted there have been improvements in those areas, but what about the performance of the services for which the Assembly has responsibility? Has the quality of education developed faster or improved more than, for instance, in the North-West—performance in the Health Service and the attraction of jobs to Wales? What contribution has the Assembly made in the nine years that it has existed to those things?

Mr German: Well, the tools to do the job are there. As I said before, the performance has been both good and bad; we have had patchy performance. In some areas we might say that the Health Service has not served the people of Wales as well. In other areas you might say it has served them better. Certainly in the areas of primary preventative medicine we would have done better, I think, than we have done in England. I think there are things we want to do better, in terms of matching the performance of patient care in secondary healthcare levels. Those are both political and, perhaps, observational from the words that are given to us, and the views given to us by those who present evidence to us and those who talk to us about what happens in this National Assembly. I do not think that people, regardless of their position, would say anything other than, "We are able to influence more the way in which education policy and health policy is shaped and to be able to state what we think about those matters much more freely than we did before".

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Q612 Alun Michael: I think we take that for granted. You are an individual who has been on both sides of the fence: you currently lead an opposition party; and you have been a part of government. In those two roles have you maintained, either mentally or in reality, a balance sheet that says, “these are the areas in which we have improved and added value”?

Mr German: I would certainly think that is something we all ought to be doing in our own heads; we should be carrying through that ambition, to make life better for the people of Wales in all of its aspects in public services. No matter what party you are in, that must be your ambition for your people. I would say that there are clearly areas where we have improved and made life better for people in health, education, transport and so on. There are areas where I would say we are not doing as well as we could have done. I am not going to divide it into time slots, but you would expect that there are going to be things where mistakes have been made, and you would expect that—there are things that have been trailblazers—the free buses that have now been introduced in England; the return of school milk for infant school children; the use of better, more local services for healthcare delivery, the relationship with local government—all those things are improvements. I think that many local government colleagues in England would say that their relationship here in Wales between local government and the National Assembly has improved and that they deliver better services.

Q613 Alun Michael: Has performance improved?

Mr German: Yes.

Q614 Chairman: As Mr Michael said, you have had experience in both government and opposition. What picture has that given you of how the inter-governmental relations work?

Mr German: That is an interesting question because my experience in government was that it was variable, particularly with different departments of government; that you could often expect better results—and I think the civil servants here would often say to you that life was a lot easier in negotiating with certain departments than with others. I do not think that the protocols which exist have been thoroughly tested in these respects, and often it has gone to politicians in government to be able to test and press the case forward. I honestly think that if a minister has to engage with a fellow minister to clear a pathway through Whitehall, then something is wrong in Whitehall, not that something is wrong with the system. I think there are questions that may well be asked about the preparedness of Whitehall civil service to accept the role that Government has to play here and the role that the Assembly plays. In terms of relationships between government ministers here and government ministers here in Whitehall, I always found that that worked very well. I found that people were ready to accept and to listen. I often found myself in meetings which perhaps I was hearing things that were not necessarily—what people would have told me outside of the room if they had realised which party

I belonged to; but I felt that I was part of a team, and I must say that that bit worked extremely well. Whether that has worked well in the last four years or it is continuing to work I cannot possibly judge, because I am only judging from my period in 2004. I think there are questions to be asked about the way in which the civil service recognised what devolution has provided here in Wales for us.

Q615 Chairman: That was particularly in the early years.

Mr German: Yes.

Q616 Chairman: What about the role of the Secretary of State and the Welsh Office? Are they an essential clearing-house and guide into the Whitehall process or not?

Mr German: They are supposed to be the hands, ears and the eyes for what the government here needs to achieve with all Government departments in Whitehall. I am drawing upon my government experience here: they were essentially at that time under resourced in order to be able to stretch into all the areas where there has to be influence and change because of the things that are needed here in Wales. I suspect that all in all the Secretary of State’s role is important when you have to have important business conducted through Whitehall, and that means that you are restricted to doing things here because you have to seek approval from elsewhere. The one thing that I am particularly concerned about is the role of the Secretary of State in determining whether or not he will lay a legislative competence order before both Houses of Parliament. There are no ground rules. The Government of Wales Act does not specify when the Secretary of State should say “yes” and when the Secretary of State should say “no”. I think there is a case for a much clearer protocol on those matters. The previous Secretary of State said: “I will not refuse anything that is in order.” However, that does not give you enough of a reason and a rationale. I point to one of the LCOs that is currently before the Secretary of State, which has not moved, and that is the Environment, Protection and Waste Management LCO, which left here on 29 November and is yet to be referred by the Secretary of State to the Parliament for Scrutiny. We do not know why or how because that is not a matter in the public domain.

Q617 Chairman: Do ministers in the Government here know what is happening, or are they as much in the dark as you are?

Mr German: I am actually chairing the Scrutiny Committee on this matter at the moment, and I am meeting the minister here on this very point within the next seven or eight days because it is certainly not clear to Assembly members, though there are suspicions as to why it has been held up—but there is certainly no clear indication from government here as to why the Secretary of State has held this matter up.

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Q618 Chairman: Particularly dealing with some of these inter-governmental things, the limited numbers available within the Welsh Civil Service—Mr Turner raised the example of the Commons Bill when it was going through Westminster, where there were a dozen or more people in Whitehall examining its detailed provisions, but only one and a half people here, we were told in evidence from Cymru Yfory, in their evidence to us. Do you have concerns about the capacity of the Civil Service here?

Mr German: Yes, I share some of those views. I do not necessarily think it is as dramatic as some people make out but it is certainly the case that prior to devolution here civil servants would largely take the route of the Whitehall civil servant in the same domain, and the Secretary of State here would adjust accordingly. The policy thinking which went behind it came from London and not here. There was never a great swathe of civil servants here with policy formation experience, but I think there is a growth of middle-tier civil servants who are now moving up the tree, as it were, and giving that necessary advice. In terms of skills, that is an area that I worry about greatly. I think the idea of having a greater form of exchange between civil servants from both—other forms of parts of the public service here in Wales and other parts of the public service in London—is one that should be promoted and extended. Eventually of course there is the other question about simple numbers: do we need more civil servants? I prefer to address it the other way round: what skills are we short of and how do we address that skills shortage over the period of time we have got?

Q619 Julie Morgan: Mike, I wanted to ask you about the relationship between the different assemblies and parliaments in the UK and how you have seen that develop and whether that helps the process of devolution.

Mr German: I think there has been a great degree of sharing between this Assembly and the Scottish Parliament. I think it is more one-way traffic going to Scotland, rather than coming in this direction, and I am loath to say it, but it may have been down the parsimonious nature of its first Presiding Officer who did not allow members to travel so easily as members from this National Assembly to Scotland; and that may have been a brake on the whole matter. Certainly committees from here have spent quite a considerable time in Scotland looking at the work of the Scottish Parliament; and individual members equally. In the case of some of our members, we have also done that with the Northern Ireland Assembly, and shared competence in that way. I can only speak from our own party here: we also have a very good relationship with our members in Westminster; but I do not necessarily see that we are getting that level of structural interchange that might be necessary to make a smoother passage. I regret that the pre-legislative scrutiny of LCOs is now not being done jointly. There is the first example—and then it seems to have petered out—and largely that is a matter of regret. It would be useful if we could overcome

timetable problems and do things more jointly on this matter. It might help to build levels of expertise as well in both determinations.

Q620 Julie Morgan: What about sharing best practice? Is any of that done?

Mr German: Yes, I think that is very important, and that is why pre-legislative scrutiny, the idea of joint scrutiny, would be extremely useful to continue in order to allow best practice to occur. It is certainly the case that often we look to Scotland on best practice as they move forward on legislative competence much more swiftly than we have.

Q621 Julie Morgan: Do you have any Scottish committees come down here at all?

Mr German: I am trying to remember. I was trying to remember earlier on today whether we had had a whole Scottish committee coming here. I do not think we have, but I could be wrong.

Q622 Julie Morgan: Nick Bourne suggested it might be a good idea to establish a body where good practice could be shared. Would you think that would be a good idea?

Mr German: Yes. The only body that allows that formally to happen is the British/Irish Inter-Parliamentary Body, which many members from Scotland, Wales and Northern Ireland find very useful, along with Westminster colleagues. Since we all sit in alphabetical order around the table, it means you are often sharing levels of expertise with people who are from the Doyle or from Scotland or from Westminster. I think there is room and scope for that to happen, and I think it would be very useful indeed. There are things we can learn from each other, and rather than us just trying to look at each other and picking off what we think is important, it would be very useful to have a body or organisation which allows that sharing of best practice.

Q623 Alun Michael: This is the second witness that has made reference to it. I think there is a misapprehension in the Assembly about the issue of joint scrutiny. As I am a member of the Welsh Affairs Select Committee, I hate to see that sort of thing happening. There has been a suggestion that some of the slightly *ad hoc* one or two members joining for an evidence session may not be the best way of doing it, but actually the suggestion for the Welsh Affairs Select Committee is a joint meeting of the members of the two committees to exchange views and look at scrutiny together. I think there is a misapprehension around the Assembly about the suggestions there.

Mr German: I am glad to be proved wrong on that if it is the case because it strikes me that there is a temptation from people to say, “What do you want these powers for?” rather than, “Are these powers appropriate?” I think that having joint scrutiny would be very helpful in that matter.

Q624 Alun Michael: I think that will probably become clear. It clearly needs to be clarified. The other question we had to deal with was the views on

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the English question. Whether it is a genuine question or a perceived question is sometimes open to argument, but certainly there are discussions about issues like English votes for English laws, the number of Members of Parliament and things like that. Do you have views on that?

Mr German: I certainly have views, as a party, on what devolution will mean eventually. Can I put a very practical issue about English votes for English laws? It seems to me that if you are going to have votes in Westminster where only English members would be permitted to vote, then you would need to have a very, very clear line indeed about the competence which falls to Wales, to Scotland and to England. The problem is that those boundaries do not exist, and they will not exist even under the regime of moving off to a referendum. Unlike the

Scottish Act, which says, “You can do anything apart from those things which are reserved to Westminster”, which gives you a nice clear line, our Government of Wales Act says, “Even after referendum you can only do the things that are in your bible which have been transmitted to you.” Unfortunately, that means there will still be a large number of grey areas for which a Sewel type convention might work, but we cannot be certain. I suspect that if you went down that route, you would end up with bills that would say: “Lines 1–56: English members only can vote; lines 57 and 58, UK members can vote; lines 59–63 English can vote.” That may be possible to achieve in Westminster, but without an electronic voting system I think that might be very difficult.

Chairman: Mr German, thank you very much indeed for your evidence.

Witnesses: **Rt Hon Rhodri Morgan AM**, Assembly Member, First Minister, **Ieuan Wyn Jones AM**, Assembly Member, Deputy First Minister, and **Dr Hugh Rawlings**, Director, Constitutional Affairs, Equality and Communications, Welsh Assembly Government, gave evidence.

Chairman: *(Through an interpreter)* Welcome, First Minister, Deputy First Minister and Dr Rawlings, and thank you for being prepared to speak to us this afternoon and for the welcome we have received here in Cardiff. *(Continued in English)* We are grateful to have the opportunity of being here, and we are going to try to find out from you how the devolution process is functioning.

Q625 Dr Whitehead: Good afternoon. I am particularly interested in the process following the Government of Wales Act 2006, and the relationship between the legislative competence orders, the passing of measures, and how that then produces clarity in the legislative process. Do you think that there is sufficient clarity, or do you think that the process that has resulted from the Act is rather cumbersome for what is achieved? Do you think there could be further consideration given to how that process works, particularly between the Welsh Assembly and Westminster?

Rhodri Morgan: It is still early days to give a verdict on how easy it is to get the legislative competence order and subsequent measures machinery to work; and it is therefore too early to say it is not going to work very well; and therefore change it almost before it has had a chance to produce anything at all. It is different from what you find in most other devolved settlements around the world. It has been specifically devised for Welsh circumstances. It of course creaks a little bit at the beginning; anything that parties at both ends are not yet used to is going to creak, but I think that with a bit of goodwill and once we have done three or four, I am sure that people will lose their fear and get a bit of custom and practice into it—because the British system almost invariably works by custom and practice rather than by legalistic formulae. On the question of whether you could devise a better system, history will tell whether you can do that, but we can see a lot of

promise in the legislative competence order and measure system. I think what you were getting at in the early part of your question was how people separate out the legislative competence order, namely the box within which competence is transferred from Westminster to the Assembly, and the use to which it will be put. Therefore, do people in Westminster have to approve of possible measures that you might want to use it for at the same time as they are approving or considering the competence order itself? That is the bit where I would happily accept that it creaks at the moment, because that is the newness of it. If you are a Member of Parliament, especially a Welsh Member of Parliament, you are going to say: “Well, yes, but what are they going to do with this?” You have to tell them. You cannot say, “that is none of your business”; on the other hand, you have to say: “Look, it is the principle here we are talking about: is primary legislation and its equivalent in this area better dealt with in Cardiff than it is in the House of Commons in London?” Even, if you do not like the measure, that is what you should agree to release to the Assembly; you should cut the apron strings and release the power to the Assembly.” It is an important issue in establishing how robust the mechanism is to deal with political party asymmetry between Cardiff and Westminster, namely a party in power here that is different from a party that is in power in Westminster. It needs to be robust enough to do that; and in order to do that MPs have to be aware of the difference between what you are going to do with it and the principle of whether it is better that you should be dealing with it here rather than Westminster dealing with it.

Q626 Dr Whitehead: Is there any sense in which you feel—and I accept that it is early days—that there appears to be a reluctance in the UK Government to use legislative competence orders as the framework for legislation and perhaps, it has been suggested, a

feeling of sitting on those orders for some period of time without any clear explanation as to why that delay is taking place, and indeed no mechanism for making sure that they appear?

Rhodri Morgan: These are new animals in the Whitehall/Westminster zoo; and as a result they are bound to poke at them a few times to find out exactly what they do, what they are for—what are the hind legs for; what are those four legs for, *et cetera*! We are bound to have that. That is the area where the creaking is caused by the newness, not by the fact of some defective piece of machinery; it is just simply that it is new.

Q627 Dr Whitehead: Do you think that that is the primary culprit—if that is the right word—for any suggestions of capacity in the Assembly to initiate, undertake and complete legislation scrutiny and indeed bringing forward legislation by committees, laid against the framework of legislative competence orders and all that that entails; or is there an issue of just the work that is entailed and envisaged by the Act and the number of members that there are to undertake that work, both in government and in the Assembly as a whole?

Rhodri Morgan: That is quite a difficult question to answer. I have a feeling that the Whitehall machine as a whole—it could be ministers or officials or MP's, or it could be Welsh backbench MP's, Wales Office ministers—whatever, and we do not know, to be honest—until we have half a dozen of these completed there is bound to be an element of suspicion—“are they trying to slip something in here that we are not aware of; is that the proper use of Parliament's prerogatives; are we going to find three years down the track something we did not anticipate would emerge from a measure if we do not cross all the ‘t’s and dot all the ‘i’s now?” Inevitably, there is a lot of caution in the early stages, just to make sure that this is what they think it is, and that once you are through that channel which you have to pass, of getting the Mother of Parliaments to approve the transfer of power away from Parliament in this particular box, then all of a sudden you find it is being used for a much wider purpose than you thought. People are naturally double-checking. I think that once they have done half a dozen of them, that period will be over.

Q628 Dr Whitehead: That leads to the written question we received about the sheer number of sources of law that relate specifically to Wales. Indeed, the Director of the Institute of Welsh Affairs suggested that there were eleven different ways in which legislation could apply to Wales: from acts of Parliament which have an effect on Wales; Wales-only acts of Parliament; orders in council; measures passed by the Assembly; subordinate legislation from the Assembly itself being subordinate legislation from Whitehall. Do you think there is a need now for a collation of that legislation, a statute book as it were, to among other things be clear in the way you have suggested about the consequences of the Act?

Rhodri Morgan: If you are a legislator—as I suppose you are and we are—then I do not think we are concerned with this question. The users might well be concerned with that question. In other words, as users you might say: “Would this not be handy if this was all packaged together in one text online or in some other way to make it handy for lawyers in Wales, lawyers outside Wales, voluntary bodies or whoever is affected by a law, to be able to access the source of information at one central point?” I do not feel competent to answer that question because we write the things, and we do not use them so much; they are for others to use. That is the nature of being a parliamentary type body: if you are legislating, you do not always concern yourself too much. We would be quite sympathetic to the idea, but there are almost not enough laws in Wales to codify into a big statute book. There are probably too many laws at the England and Wales levels to codify into a statute book—it would probably be about a thousand books. Scotland is probably somewhere in between and could probably do it in a nicely packaged couple of tomes. I do not know that we could fill a couple of tomes at the moment.

Q629 Alun Michael: Can I ask about performance? There is a tendency to talk a lot about process and debate, and those things are very important, as is the legislation; but I suppose one of the questions people would look to answer is: what is the value that the Assembly's existence has added? As we have found already, that can immediately be turned to: “What is the Welsh Assembly Government's performance?” I am asking the rather wider question of the performance and the added value from the fact that for nine years we have had the Assembly. What things are better in Wales compared, perhaps, to a region of England like the North-West that does not have the benefit of the Assembly and its operation and so on in fields like education, health, bringing jobs to Wales and so on? Have you made an assessment of that; have you had a stock-take of the value so far, as it were?

Rhodri Morgan: That is a very broad political question in which Ieuan and I might have quite different views. Ieuan would be interested, on the governmental side, only for the period since July, prior to which he was leader of the opposition; and I have responsibility back to the time when you left, and before then, as a minister, going right back to the origin of devolution almost nine years ago now. Everybody will have a different perspective. The key thing is what the public thinks, not what we think. The public sometimes simplify it into the bus pass, and not very much else. Others would see the initiative—I would say the initiative on early years, although it is a very, very slow-moving initiative because you are breaking with a hundred years of tradition in early years education in certainly England and Wales, perhaps as the long-term legacy that the first decade of devolution will bequeath to the people of Wales—the Welsh Baccalaureate. Again, these are quite big initiatives, although the pay-off from them are going to be very, very long-term.

Q630 Chairman: Are the initiatives dependent on the existence of the Assembly to be feasible?

Rhodri Morgan: Entirely, yes.

Mr Jones: Can I touch on one or two of the points that have been raised, first the issue of what may have been seen by some people as the complexity of the system? You said there are all the various forms in which you can legislate. I think that the two primary sources will still be the measures, the flow from the LCO, rather than the LCO itself in terms of the user, and the framework legislation in terms of the primary. I would see there are those two main sources. Obviously, there are statutory instruments, which are secondary legislation. I do not think it is overly complex. The way I would describe it is that its advantage is to allow the Assembly to legislate for the first time in primary terms, both the framework legislation and in its own measures flowing from the LCO's. The issues arise over the timetables, because it is not entirely in our hands—the length of time the LCO would go through Westminster. Therefore, at the beginning of your parliamentary year you begin to timetable LCO's and measures and you have a proper flow between the two; but it is very difficult to predict because you do not know how long sometimes it might take to go through the system. The timetable is not in your gift. On the other hand, I have been dealing since July with a measure which is called the Learner Travel Measure, which flows from framework legislation. We were able to do that because Westminster allowed us to do it. It was basically improving school transport. Following the scrutiny of that original piece of legislation it has become clear that there is a consensus across the Assembly that we needed extra powers to deal with various aspects of school safety, particularly over the regulation of buses. Under the old system there was no way in which the old Welsh Office would have been able to make any representations about new powers unless they were UK-wide or England and Wales; but because of the existence of the Assembly and the scrutiny of that measure in its early stages, we were able to put in a request for those extra powers. But for the existence of the Assembly, that could not have happened.

Q631 Chairman: I would like to be able to get some sense of how inter-governmental relations work. I will start by asking the First Minister: is it a day-to-day process of constant contact between ministerial level and official level; is it a fire-fighting process where you are occasionally brought in because there is some level of disagreement? I am not talking exclusively about legislation, but all the issues where there is an interaction between the government here and the United Kingdom Government? What is it like in practice?

Rhodri Morgan: When you are talking about the broad achievement of executive decisions being aligned one to the other, because without both being involved you are not going to achieve something, there is a lot of day-to-day contact, and it is just really officials with the ministers being brought in occasionally. If you take Welfare to Work, which is a big UK Government agenda, it is also a big agenda

for us. We can get access to the European money, or we lead on it—although DWP have been major accessories to the fact as well. Sometimes they lead on the abatement of the loss of benefit when you access a job; we lead on the occupational therapy, physiotherapy, mentors and so on and put the programme together and submit it for European funding—so that is a very big area of joint activity. The Westminster Government, by and large, will lead on that. The Defence Training Academy at St Athan, which you will be aware of, is a huge programme. It will not actually bring great economic benefits to Wales until about 2013 and beyond, so it is a terribly slow-burning thing—but we are the landlords because we bought the land from the RAF when they left and we have been leasing it back to the Ministry of Defence, who owned it in the first place; so it is their programme, but we are the landlords. We have worked very, very closely with them on that—pretty well day-to-day. There is a lot of executive decision-making, not legislating, in government; probably government is 10% legislating and 90% is executive decision-making; and in areas where there is a joint interest that will be done by huge programmes of just official-to-official contact, with occasional reference to ministers.

Q632 Chairman: If you are the Deputy First Minister and you belong to a different party and you are part of a coalition, is it different when you are dealing with ministers who are of the First Minister's party but not yours? Although that distinction should not apply to officials, does it colour the process in any way?

Mr Jones: Not that I have noticed. Obviously, as you recognise, I am pretty new to this, so I did not know how to benchmark it in any way. Rhodri has described that the Defence Training Academy is in my department now, so obviously although the First Minister takes a very keen interest in this a lot of discussions are between officials in my department and in the Ministry of Defence. I have to say that the primary contact I have had—because I am responsible for planning and transport, is on the transport side with the Department for Transport in London. I have not found any barriers because we are members of different political parties. I cannot think of any occasion where I felt that that was a major issue. When there are bilaterals, it seems to me to be working at that level reasonably well. To be honest, there have not been what I would describe as major policy differences that might have tested it in the way you describe.

Rhodri Morgan: This is not the first coalition because we had one for two and a half years involving the party you belong to, Chair, between the end of 2001 and the elections in 2003. Mike German probably mentioned when he gave evidence that he would attend joint ministerial committees on Europe with me and Gordon Brown, Jack Straw *et cetera*, in the run-up to the Copenhagen Summit. Before the 2007 elections, ministers in Whitehall were used to the attendance of ministers on what were previously single party preserves, to have

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somebody from another person present—now, of course, since 2007, in spades with the situation in Scotland. There must have been a brief period obviously when the Northern Ireland peace process had worked in the early stages where the Northern Ireland Executive—where the mainstream parties do not even stand—so clearly different parties will go along. That is easier to handle in some ways because obviously they are not competing.

Q633 Chairman: In this process how significant is the role of the Secretary of State and of the Wales Office, leaving aside those areas where it has particular legislative responsibilities that we have talked about? Is the Secretary of State at the Wales Office relevant at all?

Rhodri Morgan: It depends on his definition—it has always been a “him” so far—of his function. He has clearly got a function on the legislative. I understand that he has a clear function on the funding side as well. He is there to battle for an appropriate but also a maximum funding settlement for Wales. That is not to mean that in every contact with the Chief Secretary the Secretary of State for Wales must be brought in. That is not the case, so there will be bilateral meetings with the Chief Secretary or the Chancellor of the Exchequer and the Prime Minister sometimes on the implications of the Barnett Formula or the way in which the funding is provided to us; but there is a constitutional duty on the Secretary of State for Wales to get involved in the funding process as well as the legislative process. Where it is much more open is where it involves the bilateral contacts on, say, Welfare to Work, or the Defence Training Academy, or very big industrial potential products coming to Wales or not coming to Wales, where you might want the assistance of the Prime Minister where you would not go through the Secretary of State for Wales, you would approach the Prime Minister’s office and say: “Will you place a phone call to such and such a world-famous chief executive to help to sell Wales for this or that purpose?”

Q634 Chairman: What about the initiative to revive the Joint Ministerial Committee, which the Secretary of State has himself talked about: do you see real value in this?

Rhodri Morgan: As it happens, Paul Murphy has been given a kind of extra Welsh territorial role across the UK in dealing with the JMC machinery and its rejuvenation, so it had fallen into a state of rustiness apart from JMC (Europe), which has gone on regardless and is a very, very good avenue for sorting things out before summit meetings. That has been unaffected. It is the non-JMC (Europe) bits of the Joint Ministerial Committee machinery that have fallen into disuse, and Paul Murphy has now been told that in addition to his function as Secretary of State for Wales to rejuvenate this bit of machinery—disputes resolution, best practice sharing, generally keeping the United Kingdom together regardless of the fact that different parties now have an involvement in the government everywhere in the Celtic parts of the United

Kingdom. Obviously this is a Labour-led coalition, but on the other hand it is not in Scotland and it obviously cannot be in Northern Ireland; so it is seen as particularly important to revitalise it at this moment. In the summer now the new style JMC (Domestic) will be set up. We have got to give it a full airing and testing. Although Alex Salmond has many doubts about the whole structure of the United Kingdom—shall we say, to tread delicately—nevertheless he is willing to give the new structure a fair wind to see if it works as a disputes resolution mechanism.

Mr Jones: Rhodri has touched on this, but the new political context post 2007 has raised again the issue of having a JMC that goes beyond the European aspect and whether there should be a JMC on domestic issues as well. It does seem to me that there will be those sorts of occasions. I am not sure that the JMC (Domestic) should be seen for something that it is not; it should be, in the final analysis, something to resolve a dispute, but very often issues will be resolved before you get to that stage. That is why it is very important to recognise that there will be issues where there is commonality of ground—not always, and we should not over-stress that either, but on occasions there will be commonality of position between the devolved administrations and there will be attempts informally to resolve those as we go along because there are bilaterals, quadrilaterals or whatever they may be; and for the JMC then to be seen an important part of the process because people need to know that it is there if it is needed.

Q635 Julie Morgan: The Scottish Government has asked for a review of the concordats and to have more formal mechanisms in place to improve inter-government relationships. What are your views on that?

Rhodri Morgan: I do not know whether concordats have had quite the impact that was intended. I do not know whether Hugh Rawlings would like to come in on this and tell us whether that is the view of officials as well. They are not some big shadow which tends to fall over us saying “we cannot do this because of the concordat” or “we could make use of the concordat in order to expedite something”. That is my own personal view.

Dr Rawlings: That is right. I think we very rarely have reference back to the concordat. Here, we have engaged in a process of updating them in the light of the 2006 Act to make it clear that the relations are bilateral, or between ministers and relevant bodies in Whitehall rather than being between the National Assembly and Whitehall as concordats originally had it. Subject to that, I do not think there has been any need for a major re-writing of the concordats, and really they are very rarely referred to—certainly not on a daily basis for the conduct of relations.

Rhodri Morgan: To be honest, the key concordat is not called a concordat; it is the Statement of Funding Policy. That is the one that does create problems, and where we might define the conclusion of the application of the principle of the Statement of Funding Policy in one way, and the Treasury defines it in another way, and the editor’s decision is

final—therefore, that is where we get into difficulties and where occasionally you will have a disagreement. I think the Scots would say exactly the same as us, and as far as I know the Northern Ireland Executive of whatever colour would say exactly the same as well. That is a sort of concordat, but I do not think it falls into the concordat category.

Dr Rawlings: No, it does not, because the concordats are bilaterally agreed whereas, as the First Minister has implied, the statement of funding policy is not.

Q636 Julie Morgan: Is there anything that can be done to improve that, or is that just part of the nature of politics?

Rhodri Morgan: I think the JMC (Domestic) this summer and a potential JMC summit meeting that might follow on from it, I am sure will naturally want to raise some of the areas of major financial dispute over, for instance, a decision of the UK Government to define the expenditure on the Olympics in such a way that the legacy half of it does not have the Barnett Formula applied to it. We have never argued that the expenditure on the running track or the swimming pool should have the Barnett Formula applied to it; but we have said that the legacy expenditure, about which ex-Mayor Ken Livingstone did make great play—how much London would gain in the long-term from the legacy left behind in transport and urban regeneration—to us that is Barnett-isable, and the Treasury says, “No, it is not.” We say, “Yes, it is”; and they say, “No, it is not.” Where do you finish up? We say: “Can we take this to the JMC (Domestic)? Let us give it a whirl there anyway and see where that takes us.”

Q637 Chairman: Do you think the Barnett Formula is sustainable? You have just illustrated one of its many odd features, which is that you are going to argue about whether the Olympics counts to create an addition in Welsh public expenditure.

Rhodri Morgan: Yes. The legacy side of the Olympics, shall we say, not to sound as though we are being greedy here—it is the legacy side.

Q638 Chairman: This whole mechanism, when described in that way, reveals itself as being very odd indeed.

Rhodri Morgan: The Barnett Formula’s great advantage is that it is rough justice but you know where you stand and you can predict it, and the Barnett Formula squeeze will take place, and you can predict that; and if you have less population you know that it is going to produce a further squeeze. All sorts of things are predictable, and it is rough justice. The problem comes over those 50/50 issues round the edge of the Barnett Formula when the Government says, “We are not applying the Barnett Formula to this aspect of expenditure” and you say: “Why are you doing that; surely that is contrary to the Statement of Funding Policy?” We are quite clear that the legacy side of the Olympics is Barnett-isable, and the Government is saying, “No, it is not.” We have to solve that somehow.

Mr Jones: I think it arises, to be honest, more where CSR settlements are tighter than they otherwise were; and those 50/50 calls go against you more than in the past, which I think is the case. What is interesting is that the debate on the Barnett Formula, whilst putting it for so many years now—the question is being asked, and we, as a government, will be setting up an inquiry on the future funding because we believe that is an issue that ought to be looked at—without, obviously, pre-judging what the conclusions would be. It seems to me now that that issue is being looked at not only in the Scottish context but in the English context as well. The issue now is alive in a way that it was not two or three years ago.

Q639 Mr Turner: You are going to face publication of separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly. How do these codes of conduct differ from that of the UK-wide civil service?

Rhodri Morgan: Not UK—British-wide. The Northern Ireland civil service is totally constitutionally separate anyway—I think British rather than UK—I believe I am right. There is a historical nature about this in that when we came into being, our civil service was a bit different; it covered what you would regard as parliamentary clerks, who were separately structured in Westminster and separately structured in Scotland, and were not separately structured in Wales. They were all part of the same civil service. That is the only difference. As of now, the separation between the so-called Assembly Commission, so that our committee clerks are now separate—although they have the same pensions and so forth—from the administrative civil servants and policy-making civil servants and work for the backbenchers and the Presiding Office, as parliamentary clerks do—that is the only difference. Therefore, the differences will be very, very minor. Hugh, you are a civil servant: I cannot see any practical difference now, but there is this bit of history for the intervening period between 1999 and April 1, 2007.

Q640 Chairman: Is that the sole reason why we are now talking about having separate civil service codes for Wales, Scotland and the United Kingdom?

Dr Rawlings: I would not want to comment on Scotland, but my understanding of the UK Government’s policy in the Constitutional Renewal Bill is that it is intended to set out in statutory form that which is already provided for under prerogative powers. The important point to make here is that we already have a separate Welsh code under prerogative powers. I have brought some copies, because I thought this might come up, and I will leave them with the Clerk. The essence of it is that it is something to sit on a civil servant’s desk, and it reminds them that their accountability in the first instance is to ministers of the Welsh Assembly Government and not to the UK Government, because that is whom we serve. In terms of the substance, in terms of civil service values and that sort of thing, they are exactly the same; but this is a

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working document for civil servants to be reminded, as we all know, that we work for the Welsh Assembly Government.

Q641 Alun Michael: I am very interested in this because it is very important for the issue of accountability to be very clear; but of course accountability is different for different civil servants within Whitehall. For instance, the civil servants who are accountable to the Committee for Standards on Public Life, to take one example, will be different to the direct ministerial accountability. It is not really a great difference of principle, is it? The clarity of accountability is clearly important, but it does not seem to be a big difference in terms of the code or how civil servants ought to behave.

Dr Rawlings: There is no difference in substance at all; it is purely to make it clear to Welsh Assembly Government staff that their service is to the Welsh ministers, and that is what the document sets out.

Q642 Chairman: You do not envisage developing for example new and better standards separately from those of the UK civil service?

Dr Rawlings: The Bill as it stands at the moment requires the code to be issued by the Minister for the Civil Service, in other words the UK Government.

Q643 Mr Turner: Tomorrow's Wales identified a resource deficit resulting from a lack of capacity within the Wales civil service that leads to a legislative deficit, and they gave as an example the Commons Act 2006, which twelve people in a team from Defra worked on, but then it came over to Wales where there were only 1.5 people to deal with similar sorts of questions. It does not matter if the exact issue is wrong, but what is the consequence if you simply have not got the civil service to deal with such a complex issue?

Rhodri Morgan: Well, Alun and I both faced this issue in the early days of devolution, in 1999 and 2000. I think it is a very different picture now, to be honest. The change in the last nine years has been pretty massive. Clearly, the history of the old Welsh Office, which was only instituted in December 1964, and was a terribly small department of about 300 staff at that time, had no policy development functions at all. It had a briefing function to ministers and housing and local government branch office/regional office functions. It gradually accreted all the other functions that were eventually devolved, in education, health, agriculture, economic development and so forth. Gradually the numbers and the functions increased, but the policy development function probably not, and the legislative function certainly not. There was no basic reason for it if we only did a bill once every five years; whereas the Scottish Office was doing five bills a year—a massive difference. However, since 1999 there has been a huge increase in the policy-development capability and the preparation of legislation. I would think if there were such a thing as a University Challenge or an Olympics in capacity of the Civil Service to serve the needs of ministers in terms of legislation, I would be quite happy to put

our team in—relative to the size of Whitehall because you have to make an adjustment that way; but I would think we have transformed, without being complacent.

Q644 Mr Turner: I see what you are saying but when you are talking about the business, the business is the same size whether it is Wales or England; and yet you cannot employ twelve people.

Rhodri Morgan: That is a historic problem that all small administrations would have. I am sure you could find examples such as the one you quote. I was not aware of that one. In our civil service you will tend to have in mid-career civil service terms—people who are 35 to 45—they will have probably a wider experience across more departments than the equivalent in Whitehall. A Whitehall department will have a deeper experience of expertise in a particular field. That is just inevitable, and you would find that if you compared Denmark and Germany or Belgium and France, or Slovenia and Italy. That is inevitable, is it not? A small country has got some advantages in terms of taking a holistic view—synoptic vision—all of these words about being able to see the whole thing—but it is inevitable that you are not going to get the same depth.

Mr Jones: I am currently piloting a piece of legislation through the Assembly, and I think the service I have had from the department in making preparations for it, in amending it, in responding to the committee's scrutiny, has been first-class. I have not seen any issue where I have had to question the capacity within my department to deal with a very complex area of school transport, and to identify the way in which the measure, as originally drafted, needed to take into account changes, observations and things that I was prepared to accept. Seeing that measure re-drafted in a very short space of time showed a high level of skill; so I am not sure I would share some of the issues around that. You have given an example, but I can give an example in my own department where I think the contrary is certainly true.

Q645 Julie Morgan: I wanted to ask about the number of Welsh MPs. Professor Hazell told our Committee that at the very least Wales should have the same electoral quota as other parts of the UK. If it were linked to England, he said it would be 33 compared to the forty MPs we have now. Two of us of course have an interest in this! What are your views about the number of Welsh MPs?

Rhodri Morgan: I am not sure if this was in Alun's time here or whether it was afterwards, but we did at one point have to step in to stop the Electoral Commission pushing the number of Welsh MPs up to 42. Undoubtedly, the quota system, on a strict interpretation, should have led to the creation of two additional Welsh MPs, and we all felt this was completely bonkers and unacceptable, likely to cause a breakdown in relationship with at least England, not Scotland. Whether it should go below forty—it is very high at the moment in Wales for two reasons. How do you deal with very remote areas of central Wales? Can you merge Meirionydd

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and Montgomery? Montgomery has about 44,000 electors and Meirionydd as a county has 32,000. You have a seat of 76,000 and huge travelling distances for any one MP, but there are English seats of that size—and the Isle of Wight, because you do not want to split it, has about 100,000 electors. The Valleys is another geographical problem: it is very difficult to merge valley seats when there is no east-west communication from valley to valley. Then you have the preserved counties from the 1974 Act, which are the determining umbrellas within which you can do your re-distribution. Our preserved counties are much smaller than English preserved counties, which is a further difficulty. That is why we have gone from 36 to 38 to 40—and it would have gone to 42 if we had not stopped it on the grounds that it made no common sense. It might have been the strict interpretation of the law, but we said, “Use your common sense; this does not make sense, given the population of Wales and the population of England, and if you divide the number of MPs from one end to the other.” I do not know whether they want to re-write the electoral law completely and get rid of the preserved counties umbrella and have another way of handling the problem of remote rural areas but how you do that, I do not know.

Q646 Chairman: Apart from rural areas most of those problems could be—if you take the view—and it is interesting to know whether you do—that either present powers in Wales or more extensive devolution makes the case for at least having more Welsh MPs overall per population than in England.

Rhodri Morgan: You will recall the Richard Commission four or five years ago recommended 60 to 80 and that they should be elected by the STV, single transferable vote in the electoral system here, but the public would never accept that unless there was a reduction in the number of MPs in Wales and go from 40 to 30, or whatever it was. We took the view that you would never be able to implement an increase in the number of AMs unless you reduced the number of MPs and we did not think that was something we wanted to put, frankly. That was one major area of discussion between me and the administration on it and the Richard Commission recommendations.

Mr Jones: We have had a situation with 60 Assembly members since 1999. The proposal in the Government of Wales Act 2006 where a referendum is to trigger law-making powers does not change the number of AMs. Even if there were to be a referendum on the Government of Wales Act 2006 the number would remain at sixty. That would be at full legislative powers. I cannot see that of itself should affect the number of MPs. Where the question does arise is if sometimes there would be a demand because of pressure for perhaps a rise from sixty.

Q647 Chairman: What about the Secretary of State’s view on a referendum?

Mr Jones: The trigger for the referendum comes initially from the Assembly where there would have to be—it would be a very brave Secretary of State . . .

Chairman: Thank you very much indeed.

Tuesday 13 May 2008

Members present

Mr Alan Beith, in the Chair

Alun Michael
Mr Andrew Turner

Mr Andrew Tyrie
Dr Alan Whitehead

Witnesses: **Rt Hon Jack Straw MP**, Secretary of State for Justice and Lord Chancellor, and **Jim Gallagher**, Director General of Devolution, Ministry of Justice, gave evidence.

Q648 Chairman: Lord Chancellor, Mr Gallagher, welcome to both of you. Let me start by clarifying something. In your memorandum, you state that, whilst responsibility for devolution strategy now sits in the Ministry of Justice, the Cabinet Office has a co-ordinating role. What is this co-ordinating role?

Mr Straw: It does indeed sit within my Department and with me, so, amongst other things, I chair the Constitutional Committee of the Cabinet which handles certain devolution issues, but, as you are aware, there are also the three territorial departments for Northern Ireland, Scotland and Wales, and the Cabinet Office, and I will ask Mr Gallagher to say a further word about this, has a complementary, co-ordinating role.

Mr Gallagher: There are three things that Central Government has to do in relation to the devolved administrations. The first is to manage the individual settlements, each of which is different and, therefore, there are functions to be discharged in relation to the Scottish Settlement, the Welsh Settlement and indeed the Northern Irish Settlement and those are the responsibility of the territorial Secretaries of State and their Departments. Then there is, as the memorandum says, the strategy in relation to devolution which is pretty closely linked into the Government's approach to the Constitution as a whole, for which the Secretary of State is also responsible. Finally, there is the co-ordination of government business and indeed the co-ordination of business in relation to each of the devolved administrations and all of them together and that is what the Cabinet Office does; it both co-ordinates inter-departmental work inside the Government and it is also responsible for servicing the Joint Ministerial Committees with the devolved administrations, so that is the division of work.

Q649 Chairman: Up to now, it has not been a very busy task.

Mr Gallagher: They are working up to it just at the moment, Chairman.

Q650 Chairman: So what do you do, Lord Chancellor, Secretary of State, in all of this?

Mr Straw: A lot, as it happens, just in case you think I am idle! As Jim said, there are issues about overall policy in respect of devolution and I am involved in those and the discussions. There are issues that come before the relevant Cabinet committees which will see the light of day in due course and obviously I am chairing the overarching joint ministerial committee

towards the end of June which is meeting, by the way, on June 26 as well. Because of my constitutional responsibilities, I have a lot to do day by day with the territorial Secretaries of State. I do not look for work in this area any more than I look for work in other areas because I have got quite enough to do.

Q651 Chairman: We got the firm impression from our discussions, particularly in Edinburgh and, to some extent, in Cardiff, that the bilateral relationships had built up quite strongly and effectively, despite, in some cases, partisan differences, but that these were really valued and productive and that that began to make the role of the Scotland Office, in particular, and sometimes the Welsh Office more superfluous. It is an even more confusing picture when we have the Cabinet Office involved, your overarching involvement, but the real work appearing to be done in bilateral discussions. Could we not at least remove a separate Secretary of State for Scotland and a separate Secretary of State for Wales from this now very complex bunch of cooks?

Mr Straw: You will excuse me if I say that decisions about the machinery of government are for the Prime Minister of the day, but there have been suggestions around that that could happen and it may or may not be the case that such an arrangement will be decided on in the future, but, I have to say, having observed the work of the territorial Secretaries of State, I think there is a valuable job for them to do. Government is quite a complicated business, so the Cabinet Office has a role across government of co-ordinating what individual departments do and you have got these separate secretariats and you could say, "Well, what the overseas and defence policy secretariat is doing is duplicating the work of the Defence and Foreign Offices and their Secretaries of State", but it is not the case, they complement that, and it is also the case in the area of devolution. On the bilateral relationships, the first point to say is that, if you live in a democracy, you have to accept the decisions of electors and there will be times when the decisions of electors will be similar in the devolved administrations as they are in Westminster and times when they will not be, and that will be true decade by decade. It is the responsibility of the Westminster administration, the Whitehall administration and the devolved ones, regardless of the Party label attached to those administrations, to

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work co-operatively in the public interest, and I am glad you note that the bilateral relationship has been a good one and certainly there is a good deal of business between the Ministry of Justice and not so much the Welsh administration because they do not have responsibility for justice and criminal law, but the Scottish administration. The co-operation is good and, for example, we co-operate on JHA matters. So on the latest Criminal Justice and Immigration Act, which received Royal Assent last Thursday, there was agreement by the Scottish Executive that the amendment to section 127 of the Criminal Justice and Public Order Act 1994, which relates to industrial action by prison officers, should cover Scotland, but with an order-making power which, in practice, would only be triggered by the Scottish Executive. It suited them, although it is a devolved matter, to have that put into legislation. That was agreed and there was no problem about it.

Q652 Chairman: Is there any danger that the role of the Scotland Office will become one of dampening down, interfering with or undermining bilateral relationships because its purpose might be seen to be different? Does it become the tool of the Party in power at Westminster, making sure that the bilateral relationships do not get too friendly?

Mr Straw: I have seen absolutely no evidence of that and it is certainly also not the instinct, nor the practice, of the current Secretary of State, nor, I believe, of any future Secretary of State; it would be inappropriate and it does not happen.

Mr Gallagher: It is worth realising that of course the Scotland Office and indeed the Wales Office have a task to do in the management of the settlements themselves. They have orders to make and they have constitutional machinery to maintain, so the Scotland Office, for example, since devolution, has started, has made, I think, something like 165 orders under the Scotland Act. That is a function which they have to discharge which cannot, by definition, be discharged in bilateral relationships between departments.

Q653 Alun Michael: I wonder if I could ask about a specific issue that has come up in our hearings, namely the Civil Service Code and the Civil Service itself. We have heard Scottish and Welsh voices speaking about the importance of having a single Civil Service operating at the highest possible standards, irrespective of accountability which might be to a department in Whitehall or indeed an agency or to a devolved administration. If I understand it correctly, the fact that there are three Codes is a bit of a historical accident rather than something that was done by design. In view of your revision of the Code at the moment, would it not be an opportunity to embed those highest principles, which everybody wants to see observed by the Civil Service, in a single Civil Service Code?

Mr Straw: It is a thought for consideration.

Mr Gallagher: There is, I understand, a single Civil Service Code at present which makes clear that those civil servants who work for the devolved administrations owe their loyalty to the ministers of

those administrations and that those civil servants who work for the UK Government owe their loyalty to ministers in the UK Government.

Q654 Alun Michael: The reason I ask the question is that there is a reference to three Codes, I think, in the White Paper, and our questions led to the suggestion that there are at the moment different Codes, but it was not as a matter of principle, it was just something that had happened.

Mr Gallagher: As a matter of fact, the Codes would be the same in content. The Code is single and the same in content at present. The suggestion was that there might be the capacity to make different Codes which made it explicit that their loyalties were owed to different ministers, but that the content of these Codes would be uniform.

Q655 Alun Michael: But it would be possible, would it not, to make clear within such a Code the nature of loyalty to whoever is the individual or organisation that is being served?

Mr Gallagher: As indeed it is at present, yes.

Mr Straw: If I may reply to Mr Michael, I can see the point Mr Michael is raising, but I wonder whether changing the number of Codes to one would be worth the candle, particularly where you would not produce any substantive change and it might arouse sensitivities. But, if you come to a contrary recommendation, I am sure the Prime Minister, in consultation with the senior ministers in these devolved administrations, would wish to consider it.

Q656 Alun Michael: I think probably it is not worth pursuing further than that. I think it was a bit of a puzzle to us as to why we are in the situation we are and the important point is the clarity of the same principles being applied wherever. Could I move on then to another issue which is the Barnett Formula. Again we have heard quite a lot of evidence, most of which seems to confirm, as Joel Barnett did in his evidence to us, that he had not realised that he was establishing something that was going to last for decades rather than a year or two and that, like democracy, the Barnett Formula has all sorts of failings, but seems to be better than all the alternatives. What do you see as the future of the Barnett Formula or of a potential review of it?

Mr Straw: Well, Lord Barnett should be pleased that his formula has worked out as durable as he!

Q657 Chairman: I do not think he is!

Mr Straw: Well, he was always a shrinking violet, but I am pleased for him! First of all, the specific answer to Mr Michael is that the Chancellor of the Exchequer, the Treasury, will publish factual papers about the operation of the Formula, I think, by the summer, and you have got the Calman Commission which is looking at issues of financial accountability and we will take both into account and anything that your Committee, Mr Chairman, says before coming to decisions about whether there are any changes that need to be made. The Barnett Formula is a population-based formula and that is a statement of the obvious, but it has shifted over time. I think that

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there is a myth about that the share of the population between Scotland and England and, in this case obviously, Wales of fixed in aspic in 1978 and has not changed in the Formula in line with the relative changes in the population since then, but it has in fact changed over time. It was quite close to 11% of total spending of Scotland's share and, because the population of England has grown as Scotland's has not, is now down to 10.08. So that is an indication of the fact that it has an automatic adjustment within it to take account of population changes. There is then a much bigger issue, which of course was aired 10 years ago in a report by the Treasury Select Committee and the response by the Government at the time, about the question of a needs assessment as well. It is quite interesting re-reading that report because I am not saying that forever and a day there should not be a needs assessment, but what is brought out there is the way in which needs assessments change each year and those of us who have had experience of dealing with, say, the old rate support grant needs assessments.

Alun Michael: Or police grant even.

Mr Straw: Or police grant, know that they carry with them their own problems and it may be better to have a formula which says, when you are dealing with such large numbers of people, as you are with the Scottish, English and Welsh populations, that it is population-based and then it is left to the administrations within those countries, in this case within their devolved responsibilities, to determine the relative allocation of need as they think best rather than, as it were, to do it twice over.

Q658 Dr Whitehead: Now that we are 10 years on from devolution, perhaps one might say there has been a chance to have a look at a wider overview, and one of those was provided to us by Professor Jeffery who submitted to the Committee a statement where he said, "The challenges posed by the piecemeal approach to devolution by the new patterns of relationship between the governments of the UK and by England's weight *vis-à-vis* the rest of the UK can all be clustered under one overarching problem: the failure at the point of devolution, or since, to restate what the UK as a whole in its new part-devolved format is for; what the role of the centre should be; how the centre should relate to the different nations; and how the parts should combine to make a whole". Do you think that is a fair criticism of the 10 years since devolution?

Mr Straw: No, I think it is almost entirely wrong, and it was not a piecemeal change, first of all. People may or may not have agreed with devolution in 1997-98, but it was something which, after all, had been discussed in public in Scotland, but also, to a significant degree, in England as well.

*The Committee suspended from
4.37pm to 4.51pm for a division in the House*

Q659 Chairman: I hope you have remembered what question it was you were answering and the sentence you were about to utter!

Mr Straw: Dr Whitehead had asked me about the views of Professor Jeffery in his evidence to you and I was invited to say whether I agreed with him and I said I disagreed with him, and I was about to say that devolution had been hotly debated in Scotland for over 30 years. After all, the Labour Government passed the Scotland Act in 1978. There was a referendum there and, but for its failure to reach the referendum threshold required, it would have led to the establishment of a Scottish Assembly and we would have had devolution there now for 30 years rather than for 10. In terms of the Settlement that became encapsulated in the 1998 Act, that itself was the subject, as you know, Mr Chairman, of very great debate in Scotland through the Convention and in former discussion over a period of about six or seven years before that. It was also discussed in the years preceding the General Election in the so-called Cook-Maclennan working party between the Liberal Democrats and the Labour Party, then there was a White Paper, then there was the Act and then there was a referendum. No settlement is perfect, but it was thought through very carefully. It was also, I have to say since I actively participated in all these discussions, the subject of very considerable debate inside government in the relevant Cabinet committee which met intensively as we were putting together the White Paper and then agreeing the legislation. I think it is a settlement that may need to be changed in the future, but it has stood the test of time and that is illustrated by the fact that I do not think there have been any amendments, or certainly no significant amendments, to the Scotland Act since then. The basic architecture has been accepted. On the other point of Professor Jeffrey's where he seemed to be saying, "Well, now you've got devolution, what's the Union for?", I frankly think it is a kind of banal question because there are many, many countries which are coherent entities as countries and members of the United Nations, but have degrees of devolution within them which may be very significantly stronger than that in respect of Scotland, even though that is a reasonably strong level of devolution, and still everybody recognises their common loyalty and identity with the country as a whole as well as within the individual provinces, states or, in this case, nations within that country. I can expand, if you want, on the purpose of the United Kingdom, but the short point is that we have learnt, I think, over the three centuries since the Act of Union that we are much stronger together than we are apart, that we benefit from the differences, but also from the commonalities there. The other thing I would say about Scotland, which was always one of the reasons why I was relatively relaxed about devolution, is that it was fundamental to the Act of Settlement of 1707 that there was built into that administrative, judicial and legal separation from 1707. Then certainly, from the establishment in the 19th Century of the Scottish Office, administrative devolution, so two-thirds of devolution had already taken place in practice. What we were doing was adding the third legislative stage in ensuring that the administration of devolved responsibilities was

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based in the devolved legislature and not at arm's length at Westminster, and people had got used to that and accepted that and accepted that it worked.

Q660 Chairman: The other part of the quotation of Professor Hazell's was about what the centre is for once you have created that system.

Mr Straw: As I say, I also think that is irrelevant. What does he mean by "the centre"? If he means, "What's the Union for?", I have already spelt that out. The British people over many centuries had a choice about whether to go separate ways, and particularly in Scotland there is no indication, notwithstanding the elections for the Scottish Parliament last year, that there is any strong sentiment in favour of independence in Scotland. The British people as a whole believe that you can have multiple identities and that you can, in this case, have profound loyalties to your nation and the culture of your nation as well as to the United Kingdom as a whole. What is the centre for? The centre is to deal with reserve matters and to ensure good governance across the United Kingdom as a whole, if that is what he means by "the centre". I do not quite understand the point of his criticism.

Q661 Dr Whitehead: In your foreword to the recent *The Governance of Britain—Constitutional Renewal* White Paper, you stated, "Over the past decade, a major programme of constitutional reform has diffused power away from the centralised state. Devolution has transferred power away from Westminster to the devolved administrations in Scotland, Wales and Northern Ireland as well as to London's local authorities", and then you said, "but we need to go further". Then, when you actually look at the White Paper, there is nothing whatsoever in it that suggests where we go as far as devolution is concerned.

Mr Straw: Yes, I see what you are saying.

Q662 Dr Whitehead: Do you think that is a missed opportunity or is there more to come?

Mr Straw: No, I think it is poor drafting, for which I take full responsibility. We are talking about the general devolution of power, not only in the sense of devolving power to separate assemblies and parliaments, but devolving power away from Westminster and Whitehall to individual citizens as well, for example, from Whitehall to Parliament there has been a devolution to individual citizens through the great strengthening of their right to take government to court through a developed judicial review and the parallel of rights under the Human Rights Act, so that is what I had in mind, but I accept that the drafting could have been better, and I think it was mine.

Q663 Dr Whitehead: I imagine you do accept, however, that one of the outcomes of 10 years of devolution certainly has been a renewed focus on what is generally called "the English question".

Mr Straw: Yes.

Q664 Dr Whitehead: Indeed you said, I think, on November 7 last year, "The phrase 'English votes for English laws' sounds beguilingly simple, but more than a cursory analysis reveals it has been completely unworkable. More than that, it would fatally undermine the Westminster Parliament and unravel the Union". Could you explain what you meant by that?

Mr Straw: I certainly can. The starting point for this is that devolution is asymmetrical, above all, because of the dominance of England in population and economic terms within the Union. There are very few other countries where you have anything like devolved arrangements or federated arrangements where the different nations or states have such striking imbalances in terms of their population. You could, if you wished, establish an English Parliament, and I happen profoundly to disagree with it, where you could say, "These items are a matter for a Parliament for England and then there is a federal parliament for the United Kingdom to deal with reserve matters". So that is one solution. It certainly does not recommend itself to my Party or to me and I do not think it recommends itself to the major Opposition Party. What all the evidence suggests, including historic evidence, is that, if you go down the route of trying within a single Parliament to have two classes of members and two classes of business, you end up with chaos in terms of the conduct of business and you also end up with chaos in terms of the conduct of the Government. That was a point brought out very tellingly by A J Balfour, Leader of the Conservative Party, when Parliament last looked in detail at this issue during all the interminable debates on the second Irish Reform Bill. Gladstone was under attack by those Members who were not in favour of Irish nationalism who asked him, "These Irish Members will be able to vote on" what were then described as "English issues, and obviously, by extension, Scottish and Welsh issues, GB issues, but we won't be able to vote on our issues", so Gladstone originally proposed this so-called "ins and outs solution" which was exactly the same principle as what is now trailed as "English votes for English laws". Balfour dug in against this and he said on 12 July 1893, "I believe with every single gentleman who has considered this matter that the in and out clause must carry the most serious evils in its train. It must, in the first place, shatter or threaten the ordinary procedure of Parliament with many difficulties, it must, in the second place, lead to constant intrigue with the Irish Members and it must, in the third place, I believe and fear, shatter the "Cabinet system" because how would you run a Cabinet if you never knew whether an issue was going to be identified as English-only or UK as a whole? The reason for that was underlined by Gladstone on the same day who finally said that really this will not run, and he said, "It was impossible or, to use my own old expression, it passed beyond the wit of man to frame any distinctive, thoroughgoing, universal severance

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between one class of subjects and another”, and, the moment you start to look at this, you see the thing unravel. In a way, the best example of this is the higher education fees legislation for England and Wales which was debated rather intensely in, I think, 2004–05, but, around that time, the Scot Nats here had said that they would never vote on English-only issues, but they then said, “Ah, but we are voting on fees for English and Welsh students at English and Welsh universities, notwithstanding the fact that it does not directly affect what goes on in Scottish universities”, and here I paraphrase, but I am accurate, it was Alex Salmond who spoke. They said, “What is behind this scheme is a greater reliance by English and Welsh universities on the private sector. Other things being equal, that will reduce the amount of public spending that is spent on English and Welsh universities and, therefore, it will reduce the totality of public spending and, therefore, under the Barnett Formula, the amount available to Scottish universities”. Now, I can see the logic and, to a degree, he was correct. It was not obvious from the face of the Bill because the Bill said, “This applies to England and Wales”, but that was his case and that was why he broke his own principle, and you would have those arguments at every stage. The other point I would just make, if I may, and I have looked at this with very great care, we do not have to look at the crystal for how this would work, but we can look at it in the book, and I entirely endorse the view of Sir Malcolm Rifkind who said in the *FT* in July of 2006, “This proposal of English votes for English laws is creating two classes of MP. It would be a constitutional abortion”, he said. “Either you are a Member of Parliament or you are not. If we were to go ahead with this, you would have 100 MPs and clearly those from Wales and Northern Ireland for second-class Legislatures”. The other point I would just make, because it is a rather important one, is this: that behind this suggestion is the implicit idea of a huge Party imbalance between the Conservatives, who, it is thought, always dominated England, and the Labour Party who can only form a government because of their disproportionate representation in Scotland and Wales. I am very happy, Mr Chairman, to provide you with this table which goes back to 1945, but, when the Conservatives do gain proportionately more seats in England than they currently do in Scotland and Wales, although it is worth adding parenthetically that in the 1950s the Conservatives won half the seats in Scotland and half the votes and they were the dominant Party and there is no particular reason why that should not happen again—

Q665 Mr Tyrie: We would agree with that, Jack!

Mr Straw: Well, you ought to do something about it rather than finding a dodge around it which smacks of defeat, but anyway that is all in parenthesis!

Q666 Chairman: This is becoming a very long sentence!

Mr Straw: I was going to say that, if you look at the record, when the Labour Government has had a working majority here, it has also had an absolute majority of English MPs and the occasions when we have had a majority of MPs for Great Britain, but not an overall majority of English MPs has been when the majority, in any event, has been very small, like six in 1951, minus in February 1974, three in 1964 and so on, and in those cases, in any event, the prospects of getting controversial legislation or legislation in your face, for example, to an English constituency are, in practice, very limited and no sensible government tries.

Q667 Dr Whitehead: Could I be clear that what you appear to be leading us towards is a suggestion that either one might envisage an entirely separate English Parliament with then a UK federal Parliament sat above it or no change in the present asymmetrically devolved arrangements with one Parliament dealing one way or another with a combination of UK-wide laws, England-only laws and what one might call “hybrid laws”?

Mr Straw: Dr Whitehead, I am wholly opposed to an English Parliament and I happen to believe that, if you went down that route, because England is so dominant, there would be little advantage seen by those in Scotland, Wales and Northern Ireland for maintaining the Union.

Q668 Chairman: Why does that follow?

Mr Straw: Well, because I think the argument would be, “Well, what exactly is in it for us?” I may be wrong about that, but all I would say is that, although I am opposed to it, it is coherent, it has a logic to it, a symmetry to it and you could do that, and I think the Liberal Democrats have from time to time proposed it.

Q669 Chairman: Not in my lifetime!

Mr Straw: Well, that is fine in that case because I sometimes hear that they talk about a federal system for the United Kingdom.

Q670 Chairman: Yes.

Mr Straw: Well, I do not know how it would work otherwise, maybe through elected assemblies. We have tried that one. As I say, I recognise its logical coherence even if, as I say, I am opposed to it in principle and it would have indirect consequences.

Q671 Mr Tyrie: So, just to clarify, you are opposed to it in principle because you think that the Welsh and Scottish communities would conclude that there is nothing in it for them? Is that correct?

Mr Straw: No, I am opposed to it in principle, full stop, because I happen to think that the current arrangements are better for everybody.

Q672 Mr Tyrie: Surely, the principle is based on some idea or thought.

Mr Straw: Because I think the current arrangements are to the advantage of every section of the United Kingdom. That is my view.

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Q673 Chairman: None of our witnesses from Scotland and Wales has suggested to us what you are now suggesting to us, that they would see an English Parliament as a threat to the Union. On the contrary, almost all the witnesses from Scotland, when asked this kind of question, from whatever Party they come, have said, "It doesn't matter how from England they operate it".

Mr Straw: Well, that may be their view, but I take a different view.

Q674 Mr Tyrrie: Since we are trying to establish what your view is, Jack, because you appear to be alone on this point—

Mr Straw: Not for the first time!

Q675 Mr Tyrrie:—is it because you think there would be nothing in it for the Scots and the Welsh if we had an English Parliament and also a federal United Kingdom?

Mr Straw: I think, over time, what it would lead to, is not my principal reason for opposing it, let me say, but I just happen to think it would be a consequence.

Q676 Chairman: So what is your principal reason?

Mr Straw: My principal reason is that I see no good case for having a separate Parliament for England. I think the current arrangements work satisfactorily for England. I think the bigger issue within England is to see a degree of further devolution, as we have achieved in London, to local government units which does not in any sense undermine the integrity of the English nation or of the United Kingdom. I thought personally that there would be general support, for example, in the North East and the North West for elected assemblies, but it turns out not to be the case, so we have to go down other routes to the idea of elected mayors and so on, but I think that is the way that you deal with that. I am as in touch with my English voters as, I dare say, those who represent English voters here are and there is no serious sentiment for an English Parliament and I think people are content overall with the current arrangements. There is a separate issue which, I certainly concede, is raised from time to time about relative spending in Scotland and Wales, but that is a separate matter.

Q677 Chairman: But London involved significant devolution of previously centrally held powers—

Mr Straw: It did, yes.

Q678 Chairman:—in both policing and transport, presumably based on the assumption that the area of London covered by the Mayor was a sufficient one for these powers to work coherently over that area, so are you arguing that that is an approach we ought to be looking further at, whether we should identify local government units which are of a sufficient area or coherence to have further powers devolved to?

Mr Straw: Mr Chairman, I used to argue that because I thought there would be a public welcome for regional assemblies in the North East and North West and Yorkshire.

Q679 Chairman: You said "local government".

Mr Straw: Yes, but regional assemblies would not be taking over legislative functions. They would have taken over local government functions, including over time over the police. But anyway, it became clear from the vote in the referendum in the North East, and you know the area, where we had always judged there was the greatest appetite for this, that people did not want it. So we have to move on and see what people do want. In terms of greater democratic involvement in the police, you can do that both within the current police service boundaries and indeed at a more local level of the basic command units, and there are suggestions around for that.

Q680 Alun Michael: If I can just ask a supplementary question on the point you made about the regional issues in England, you referred, I think, three times to the vote in the North East having suggested that there was no enthusiasm, but, in the case of Wales of course, the referendum in 1979 was pretty comprehensively lost to the chagrin of those of us who had wanted to see that proceed, but it turned out to be much less than a generation before the issue was back on the agenda, indeed it was within a decade. Why do you think that the vote in the North East is so conclusive that this issue is closed for ever and a day?

Mr Straw: Nothing is closed for ever and a day, but I think that, judging particularly by what I know about sentiment in the North West, people have moved on from there and they are more interested in ideas of strengthening the existing local government units and the development of what have been called "city regions" based round, in our case, Manchester and Liverpool and then sub-regions or city regions in part of Lancashire. It is partly to do with identity, and the big difference, Mr Michael, between Scotland and Wales and parts of England is that there is this very, very powerful historic and cultural identity in Wales and with Scotland which does not have a direct parallel within parts of England. For sure, people are Geordies or they are Lancastrians and so on, but it is not as powerful a loyalty.

Q681 Alun Michael: So the comparison would be in the case of London, which of course is much larger in terms of population than either Wales or Scotland, that it is the identity which makes the difference, is it?

Mr Straw: Also, do not forget that there was a big democratic deficit in London because from the 1880s there had been county councils as well as borough councils in London, the LCC and Middlesex County Council until 1964 and then the Greater London Council. Then, post the 1986 abolition of the Greater London Council, you had a great many functions in London which could not be operated at a borough level, a great overlay of inter-borough arrangements or, to pick up the Chairman's point, central government standing in the shoes of what should have been a tier of local government, and it plainly was not working. When I became Home Secretary, you were my Minister of State, so you will

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recall this, I was continuing a role which had been going on since 1829 that I, as Home Secretary, was the police authority for London. It was a job which no Home Secretary could do effectively, though I did it to the best of my ability. That was why I was very keen on the police arrangements in the London Government Act which did not lead to the total devolution of policing, but essentially to a partnership.

Q682 Dr Whitehead: The picture that you are setting out for us as far as 10 years on from devolution is, as it were, the continuation of an asymmetric Parliament with the West Lothian question, I guess, parked in the car park for perpetually unanswered questions and a suggestion that local government may well, as it were, suck up some of the democratic deficit which, by your own statement a moment ago, applied in London, but also could equally be regarded as applying in English regions. Is that the formula or are there further plans which you think may tidy that up?

Mr Straw: The prior point about the so-called “West Lothian question” is whether or not you accept that the United Kingdom’s makeup in terms of its component parts is asymmetrical because of the huge dominance of England in terms of resources and of population and actually the resilience of its economy as well. If you do as I do and accept that, in the end, English Members can determine anything in the Union and, if we got together, we could completely dominate the Union if we wished, if we had a common purpose, as it were, against Scotland, Wales and Northern Ireland. Certain consequences go with that, I am perfectly comfortable with those consequences because ultimately, whether a particular constitutional settlement is acceptable to all the peoples within it is not a matter of arithmetic, it is a matter of sentiment. I happen to think that this arrangement of the United Kingdom has served all parts of the United Kingdom very well for three centuries and can endure, provided each part of it accepts, as it were, a degree of self-restraint.

Dr Whitehead: Is not part of the consequence of an asymmetric settlement that parts of the asymmetry may decide they may quite like to be independent from time to time, and do you think maybe a referendum on that might be appropriate?

Q683 Chairman: Or was Wendy right?

Mr Straw: You asked me about the official position on a referendum. Well, I am unpersuaded that now is the time for a referendum in Scotland.

Q684 Mr Turner: What about England?

Mr Straw: What about England? Well, Mr Turner, independence from what—from Scotland?

Q685 Mr Turner: From the United Kingdom.

Mr Straw: Well, I am against that. As I say, my constituents are very much in favour of the United Kingdom. I get many, many questions about all subjects under the sun in the town centre of

Blackburn, but having a referendum to declare independence from Scotland and Wales is not one of them.

Q686 Mr Tyrrie: But, just to be clear, you disagree with Wendy Alexander that there should be a referendum?

Mr Straw: I have stated my position and the Government’s; we are unpersuaded about a referendum.

Q687 Mr Tyrrie: So you disagree with Wendy Alexander’s view?

Mr Straw: Mr Tyrrie, I have stated the Government’s position. If you want to compare and contrast my remarks with somebody else’s outside this room, please do.

Q688 Mr Tyrrie: So I think we can take it that you do not agree with Wendy Alexander’s view.

Mr Straw: Take whatever you want away from this, Mr Tyrrie!

Q689 Mr Tyrrie: I think we have made some progress there. Could I go back to the Barnett Formula. Actually, what Lord Barnett said was that the system that he introduced “cannot be right”. Do you agree with that?

Mr Straw: No, I do not. It is a system, and I happen to have his words in front of me or I had his words in front of me—

Q690 Mr Tyrrie: Well, let me read it to you.

Mr Straw: No, I have got it here. None of these systems is perfect, but, let me say, nor are the alternatives, as those of us will recall the effects of needs- and resources-based formulae, and all of them produce problems as well as potential solutions. For all its imperfections, it is worth putting on the record that the Barnett Formula was regarded as good enough, not only for the Labour Government when Joel Barnett was an important part of it, but throughout the period of the Conservative Government for 18 years. I know the points that are made about it say that it is not the case that it is set in concrete, the relative shares of public spending shift as the population shifts, and it is also the case, and I had these figures earlier, that, for example, the growth of spending for health in England is significantly above the growth in spending in Scotland just at the moment because the Scots have decided to do different things.

Q691 Chairman: They get the money and it is up to them what they decide to do.

Mr Straw: Sure, but, when my constituents say, “Well, they are spending money on” whatever they are spending it on, I say, “Yes, and it takes less time to wait for a hospital bed in England than it does in Scotland, and NHS spending in England is rising at 4% in real terms each year for the next three years compared to 1.5% in Scotland”.

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Q692 Chairman: We are quite familiar with this. I think Mr Tyrie is trying to establish your views on the Barnett point.

Mr Straw: Well, my views are that, if your Committee comes forward with a formula, well, obviously it would be considered, I am simply saying that the history of local government spending in England, Mr Tyrie, going back to the endless reviews that took place in the 1970s and on and, famously, the ones that the Conservative Party followed in the 1986 White Paper on local government spending which led to the poll tax, there are no easy solutions to this problem of the allocation of resources, which is also associated with the 1986 solution, and how you raise the money.

Q693 Mr Tyrie: I am not asking you whether the system has survived the trials and tribulations of 30 years of politics under different governments; there are lots of things that have done that which we would think could be improved upon. I am asking you whether you think that the Barnett Formula is right. Do you agree with Lord Barnett that it is not right?

Mr Straw: No, I do not agree with Lord Barnett that it is not right. It is right and there is no point dismissing, Mr Tyrie, 30 years' experience because, if it was as wrong as I think you are implying, then there is quite a large question about why the devil the Conservative Government over 18 years chose to follow it. These issues, these formulae, it is not really a question of right or wrong—

Q694 Mr Tyrie: I am not trying to make a party-political point, I am just trying to elicit from you what the Government think about Lord Barnett's conclusion that this current system is not right and needs to be fundamentally reformed.

Mr Straw: I both regard Lord Barnett as a friend and have very great respect for him, but it does not mean necessarily that I would agree with him on every issue. The issue of these formulae, it is not a matter of right and wrong, it is a matter of balance. There is no right or wrong to the needs and resources formula in the 1980s, the 1990s or now, it is a matter

of where the balance of advantage and pain lies. Until a better formula can be proposed which has the advantage of transparency, which Barnett also has, and it also has this self-regulating element within it in terms of shifts in the population, then it is appropriate to follow it.

Q695 Mr Tyrie: Is the Government engaged in looking for such a formula?

Mr Straw: I answered that question, I think, -I am not making a point here-, before you came in to say that the Treasury is going to publish factual papers about Barnett in the next few months and Calman is looking at issues of financial accountability and then we will consider the matter further.

Q696 Chairman: So is the Treasury paper intended to enable a discussion to take place with government about whether there is or is not a better basis, or is it intended to, as it were, close the matter down by telling us incontrovertible facts that will please us?

Mr Straw: Mr Chairman, it does not lie in the Government's hands to close issues down if people want to talk about them.

Chairman: It does as to whether to participate in discussions.

Q697 Mr Tyrie: Are you opening up a public debate as so often the Government appears to want to do, but does not want to do just yet?

Mr Straw: Mr Tyrie, the Government does not need to open up a public debate about this—

Q698 Chairman: You often do.

Mr Straw:—because there is one. There is a public debate about this, so we do not need to open one up. It is not one of these things where, you know, we worry about stimulating discussion about them; we have just had an hour-plus about it. The paper itself, Mr Chairman, is intended to be a factual analysis of the system as is, but I am quite sure that they will stimulate further the debate.

Chairman: Can I thank Mr Gallagher for his help and we now move on to the other side of your responsibilities.

Tuesday 8 July 2008

Members present

Sir Alan Beith, in the Chair

Mr David Heath
Mrs Siân C James
Alun Michael
Jessica Morden
Julie Morgan

Dr Nick Palmer
Mrs Linda Riordan
Mr Virendra Sharma
Mr Andrew Turner
Mr Andrew Tyrrie

Witness: **Ken Livingstone**, former Mayor of London, gave evidence.

Q700 Chairman: Welcome, Mr Livingstone. This could be one of those occasions where I just get my question out and then we get called to vote, giving you a quarter of an hour to think of the answer.

Ken Livingstone: More evasive than normal then!

Q701 Chairman: I am sure you will not be evasive in front of us, especially when I ask you to give us some kind of thumbnail sketch of how your relationships with ministers in the UK Government actually operated during your time as Mayor?

Ken Livingstone: I must have met a government minister about once a week for eight years, and it was a regular round of I wanted more money and I wanted more powers, and what I found was that, even when broadly the minister agreed with what I was doing, it was difficult to get a decision in under two or three years. If there was any point of disagreement, nothing ever got resolved. Even on relatively small issues, like whether or not we should require utility companies to put down a duct so that any duct burrowed out once could then be used indefinitely, where the minister agreed. This rumbled on as a debate for years and did not get resolved, and still we wait for such things to happen. There was a moment when Jackie Smith had just become Home Secretary, and I was at my second meeting with her when I realised most of the items on the agenda had been at my first meeting, seven years previously, with Jack Straw. You got something that got you through for another year but never really getting resolved; and I thought there was an unbelievable inability to get a decision out of Government, even when it was not controversial. I think, because as a local government councillor I had been involved in deputations to ministers going right back to Peter Walker's time under Edward Heath, it was the worst government of my lifetime to get a decision out of, and I suspected that was because so much power had been sucked to the centre in Downing Street and within Downing Street there was a conflict between Number Ten and 11, so even when it got to Downing Street you could not resolve the issue unless the Chancellor and the Prime Minister broadly agreed.

Q702 Chairman: Does that mean that these problems relate to a particular government, or would that be a bit unrealistic? Are they not going to happen in some form or other under most

governments where the powers that you are talking about require a government decision as well as your own decision?

Ken Livingstone: I think this Government is worse than others, because so much was centralised. Relatively minor decisions, which Mrs Thatcher and other Prime Ministers would have left to their Cabinet ministers, still had to be agreed at the centre. No, I think there is that institutional problem that the Civil Service really does not want to let anything go. Even when you could get a minister to agree with you, they would often come back and try and block it. I think there was an institutional problem that they knew any power they gave up was a bit less of their empire. I can think of the one that is still running on and Boris Johnson has to resolve, which is the question of who lets the franchises for the suburban services serving London. Most of them go a few stations over the boundary, which always gave Civil Servants the ability to point out dozens of reasons why the Mayor could not possibly let the franchise. We eventually persuaded Tony Blair's Government to give the Mayor the power to let the franchise for Silverlink and we were still negotiating with Ruth Kelly about whether or not we could take over the southern franchise, almost wholly contained within London, and that was still rumbling on when I left. It had gone on for about two years, the Silverlink decision, about two or three years. If I think back, I cannot remember if it was the northern or western ticket hall at Kings Cross, but the Treasury suddenly got in a panic—it was costing too much—and put a stop on it. We then had two years of meetings discussing it, eventually recognising you had to build it. It is the interchange: it is a box under ground where people coming in on the Thameslink could interchange. They came back and decided, after two or three years had been wasted, yes, it would have to go ahead. I cannot remember, but I think it most probably ended up costing more than when they stopped it. I should imagine the biggest single item of my job was not dealing with the Assembly, it was just trying to coax ministers, working my way all the way up to the Prime Minister and the Chancellor, to take relatively minor decisions which in almost any other city in Europe or America would be, at most, an issue between the Mayor and the Governor or the Mayor and the Länder but certainly would not have involved the Central Government.

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Q703 Chairman: Do you think, and did you ever compare notes to find out, that you were in a weaker position than, let us say, Scottish and Welsh ministers trying to get decisions out of government at Westminster?

Ken Livingstone: We are in a much weaker position, because there was a real devolution of powers both to Scotland and to Wales. The Government was much more nervous about London and much more inclined—

Q704 Chairman: Because it is London.

Ken Livingstone: Because it is London, and also the worry that you might have someone there that would not do what you wanted, and there were huge numbers of reserve powers in the Act setting up the GLA that allowed ministers to step in and overturn the Mayor, plus 55% of the income to the Greater London Authority was direct or indirect grant from the Chancellor. So you always were in a position that, if you ever really upset the Government, they could make your life very difficult. It has left me totally committed to a federal structured government, like, say, West Germany or the United States of America, so these powers get really devolved to people who are much more directly accountable.

Q705 Chairman: What were relations like further down between officials?

Ken Livingstone: The difference between the devolution to London and Scotland and Wales: Scotland and Wales were the traditional relationship between politicians and Civil Servants. Basically, the officials at the GLA were my officials. I was able to sack them and get rid of them indirectly because it was done through the Assembly, and, therefore, I did not inherit something like the Scottish or Welsh Office with its deeply ingrained traditions, we created it from scratch, and that is why now Boris Johnson is making substantial changes amongst the layer of Civil Servants, as he is entitled to do, because the Mayor is the elected executive. It is my signature on the lease for the building, it is my signature on the photocopier contract. You are not working through somebody, and had we been, we would never have got the congestion charge or the expansion of the buses. The Mayor is responsible. There is no-one else to blame when it goes wrong.

Q706 Chairman: If there had been some kind of English structure you were dealing with, as opposed to a UK structure, would it have made any difference?

Ken Livingstone: I do not know. I think such a head of steam built up over decades for Scottish and Welsh devolution that there really was not much Civil Servants could do about it. It was what John Smith called “the settled will”. In the GLA it was really starting from scratch and, I have to say, many Civil Servants, particularly in GOL, at that stage were arguing for a real aim.

Q707 Chairman: Government Office for London.

Ken Livingstone: Government office for London. There was a strong rear-guard action from the Home Office against any real mayoral power over the Commissioner of Police or even over the Metropolitan Police Authority. So the only power the Mayor has, which is a big one, is to set the budget. I remember Jack Straw saying to me, “I would like to have gone further, but you could not let London be too out of line with the rest of England.” They did not think London might be an experiment that would lead the rest of England. Of course, I now find myself in agreement with the Conservative Party and Boris Johnson in that I do believe it is right that the Mayor should appoint the Commissioner of Police and should be answerable to someone who is answerable to London.

Q708 Chairman: How significant was Government Office for London? You have spoken about having endless meetings of ministers to resolve difficulties. Is Government Office for London an irrelevance?

Ken Livingstone: In the times before it was thought that—, if you think back, in the run-up to the first mayoral election, for a long period the presumption was that I would not be allowed to stand, and I would not think of leaving the Labour Party, so they structured it on the assumption that I would not be there, and even then they built in very strong constraints. When I did turn up there, suddenly the Government Office, which had been quite keen to devolve and try this experiment, was under real pressure to watch everything I was doing and for about three years the mantra was there could be no reopening of this settlement for years to come, “We want to see several terms”, and so on. Certainly, once I came back into the Labour Party, that became more relaxed and we got a second round of legislation. The Government Office for London at that point started to fade a bit into the background, but they were quite active as a presence between the period between my first election and my second; much less so in the second term.

Q709 Mrs James: You have talked a little bit about how the role changed, *et cetera*. Would you say that the powers of the Greater London Authority have changed since 1999, and how do you perceive they have changed?

Ken Livingstone: I remember during the debates, because I was on the committee passing the legislation, Nick Raynsford repeatedly said that the prestige of the post will allow the Mayor to do more, and I was deeply cynical about that, but it did turn out that, simply because you were the directly elected Mayor, you had access to business and to foreign governments and to international institutions in a way that, I think, would not be the case if you simply had the leader of a council. American politicians clearly understood the nature and role of the mayoralty. Immediately after my election we were facing the closure of Ford. I was able to pick up the phone and get straight through to the boss of Ford in America, meetings were set up and I do not think that would have been the

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case if I had been the leader of a council. I think they thought the Mayor of London was most probably as powerful as the Mayor of New York—sadly, this was not the case—and I got a very good response, and once the Government settled down and it was not so nervous about me, we started lobbying for more powers. I was quite careful in this. I only lobbied to takeover from central government the things that central government was doing badly—housing policy in London, skills, and so on, and waste. I did not waste my time trying to persuade them to give me things that were not a problem, just to focus on the ones that were not working well.

Q710 Mrs James: Do you think that impacted in a way upon your successor and that he is going to possibly have a better time of it or a more defined role?

Ken Livingstone: I think Boris will have quite a good two years, because a whole series of financial commitments have been given to the Mayor and, if the Labour Government was seen to renege on any of those, it would be catastrophic for their public standing to be seen to be punishing Londoners for having elected someone they did not like. I think Boris may have more of a problem if there was a change of government and it was looking for major cuts in public spending. I think these might be the best two years of Boris Johnson's mayoralty and he should make the most of it.

Q711 Mrs James: And for the Assembly in general?

Ken Livingstone: I think that the weakness of the GLA system was that it is a purely American system, so the executive power rests with the mayor. If you look at many of the American cities, there the City Council has real powers over planning and has the power to have minor legislation, like the writing of by-laws and so on, so I do not think they were really given enough to do. Also, I think the Assembly would tend to come into its own much more if you had a mayor that was personally corrupt or following a very extreme ideological agenda. We have broadly created a consensus about where London was going. Therefore, there was not much for them to get dug into, and I think as well that they would have been more effective looking at things, not specifically GLA powers. Often when they did, when they looked at the state of football clubs, they tended to get more attention with their advice on things like that, or the state of borough parks and so on.

Q712 Alun Michael: You have already referred to comparisons with the Scottish Parliament and the Welsh Assembly. Your role as mayor was an executive role. In the case of Scotland you have got the Executive and in Wales they have moved in that direction from originally a single body to a split between the Executive and the Assembly. How would you compare the role of the executives in those two cases and your role and that of your team, as it were?

Ken Livingstone: The job is so demanding. I had occasional contact with the Welsh and Scottish bodies, but they were very limited. It is a 24/7 job, and you just got on with what you had and made the best of what you had got. Whenever I bumped into people from the Scottish and Welsh authorities I was always rather envious of their wide-ranging powers, certainly Scotland's taxation power.

Q713 Alun Michael: You would have used that, would you?

Ken Livingstone: I would have used it. I would have preferred it if it could have been more progressive than just two pence up or two pence down. That is the reason the Labour Government seems to have so many problems today. It tied itself into not redistributing tax through a progressive system.

Q714 Alun Michael: That model of the Mayor and the Assembly, what are the advantages and disadvantages of it?

Ken Livingstone: I remember for five years as the leader of the GLC my focus was wholly internal to the Council and managing the Labour caucus and making sure we won all the votes. As Mayor, my focus was completely outside of the Assembly to a coalition of business interests, to lobbying for Crossrail, with the Greens, and so on, so I think I went from being the manager of the party caucus, which is really what every council leader is—even in hugely safe majorities often you have to manage it more than where you have got a narrow one—and I do not believe that we would have been able to get the congestion charge or the consistent expansion of the buses. We had a seven-year expansion of buses and policing. If I had had to win votes from the Assembly, there would have been those who would have said, "We cannot afford it. The boroughs are too pressed", or whatever. I think as well the ability to get so much done so quickly, having been totally hostile to the idea of a directly elected executive, I am now completely besotted with the idea. Tony Blair was the only person in the Labour Party who had this idea. The others were all broadly unsympathetic. I think he saw it as a substitute. He actually could not be a directly elected Prime Minister with executive powers. This at least gave him an idea of experimenting at a lower level, and I have to say, I think most probably recruiting a government from Parliament is not the best place to look. I think the executive model of government might very well be a better place to look, as the Israelis have done. They have kept a Prime Minister but directly elected somebody whose job is the role of government and the legislator should be the role of oversight and legislation, the actual day-to-day executive managing. If you come to look at people as talented as, say, Charles Clarke or Alan Milburn, managing huge bureaucracies like the Home Office or the Health Service, I do not believe you can manage stuff from Westminster, not direct services.

Chairman: The Committee will be suspended for 15 minutes. I expect it only to be one vote.

*The Committee suspended from
4.34 pm to 4.48 pm for a division in the House*

Q715 Alun Michael: You did quite a good job, Ken, of telling us the pros of the system that is there in place. What about the cons?

Ken Livingstone: I actually have to say that I have just been through an election where I was constantly asked: “What has been your biggest mistake?” and I think on all the major issues we took the right decision. It may not be perceived that way nationally, but it was there to make the case for London.

Q716 Alun Michael: I am sorry, this is about the Mayor and Assembly model.

Ken Livingstone: It is quite interesting. When this was first going through Parliament the original idea was that the assembly would not be a paid job. Then we had a change of heart, it was going to be a paid job, and I remember Nick Raynsford talked about it being an almost permanent session, discussing all the things that mattered to London, and we envisaged—

Q717 Chairman: You are talking about the Assembly.

Ken Livingstone: The Assembly, yes. It was set up and part of the problem was that a lot of the members still had local government interests—some were in the House of Lords, others were standing for Parliament. I think the weakness is that they never set out to give it the—. It was not the first call on people’s time.

Q718 Alun Michael: So it is the role of the Assembly rather than the role of the Mayor?

Ken Livingstone: If you ever get a mayor that takes an extreme ideological and divisive role or was a bit dubious financially, the Assembly really come into their own and that is when they grind the mayor down and bring them down. It is very difficult when you have got a broad consensus that covers 90% of political policy, most of green policy and quite a chunk of Liberal and Tory policy tacked on to the Labour Party. Also, looking at legislation, I would go back to saying it should be your primary job, not one you tack on to something else you are doing. I think that is part of the reason it has never got into the public consciousness. I was on the GLC, where you were paid just your attendance allowance, about £2,000 a year. I was in there all the hours God sent because I loved it and I was stirring up trouble all over London. Assembly members: a lot get incorporated into the Mayor’s administration, and that may be wrong actually, being part of the administration and supposedly having a scrutiny role, but it is very difficult to see people not having other major outside interests until they are given more to do, which is why it seems to me absolutely ridiculous that the by-law on pigeons in London ended up being determined by the Government of the day. All those sorts of things do seem to me should be devolved.

Q719 Alun Michael: That is helpful. One of the questions is the relationship to the boroughs. You have seen this in two contexts, because, obviously, you saw it in the old GLA situation and you have seen it now as Mayor of London. What is the relationship to the boroughs like?

Ken Livingstone: In the public domain it looks very hostile. I have to say, behind the scenes there is much closer collaboration. There are things we are not going to agree on and we will denounce each other, but, say, in 2006, when the Conservatives gained many London boroughs, some of those borough leaders were in my door so quick saying, “How can we work together?”, and even, “Can we build more affordable housing?”, and this was not a party issue. I found there was a Labour borough, as difficult to work with, as the most extreme of the Tories. It is not really a Labour, Tory or Liberal issue—those people who think the whole world should go away and allow them to manage that borough all on its own, it would be like a nirvana within one borough, and there are others that recognise—. If I take Westminster Council where Simon Milton is the leader, he knew Westminster could not do its best if it was not working closely with the Mayor, because the Mayor’s powers were most concentrated in central London. If I take another extreme, the Labour Council of Greenwich, it broadly had a view that they were sufficiently far from the centre and if everyone else could go away they could create socialism in one borough. At the other extreme is Hillingdon. I never met the leader of Hillingdon Council in eight years and I thought this was a terrible snub, and then I discovered most of the Tory leaders had not met him either! So there is a sort of insularity in some of the boroughs. I think there are really messy areas where Londoners are not aware who is running things. You have got 32 boroughs with different parking policies, residential zone times, different policies relating to bus lanes. The only roads the Mayor runs are 5%, the red routes, and that is why you have a wonderful cycle lane going through one borough and it stops at the borough boundary.

Q720 Jessica Morden: Can I ask you what you think of the new Local Government Network idea that the Mayor be scrutinised by the 32 leaders of the London boroughs rather than by the Assembly?

Ken Livingstone: I was actually in favour of that, because I think the cost of the Assembly, which I think is the best part of six or eight million pounds a year, the borough leaders would have done it for virtually nothing, and because the borough leaders represent a degree of executive power in their own right, there are the deals that politicians are always going to do at that level. At one point, when the Government was reviewing the powers of the GLA, I was quite keen and said perhaps one saving we could make would be to get rid of the Assembly and just have a committee of the 32 borough leaders. It might have given the Mayor more problems but it would have represented a real balance of the power in London.

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Q721 Julie Morgan: What do you think would be the advantages and disadvantages for having City mayors throughout England, throughout the country?

Ken Livingstone: Whether you have mayors or whatever, for me it is about devolution. All my life politically I have been in favour of a proper federal structure like you have in Germany or in the United States of America, and Spain is moving in that direction, where the bulk of the spending of the state is done at a regional and local level. I have watched every government of my lifetime fail to get control of the Home Office. Prisoners are always escaping, whoever is in power. The Ministry of Defence budget is always grossly overrun. There is so much being managed from Whitehall, and not very well, and I think it is better to break it down into manageable chunks where the lines of accountability are much clearer. Whether you call them mayors, I broadly would just say, whether it was the German constitution or the American, impose it, because I think Whitehall is getting worse at delivering, not better.

Q722 Julie Morgan: Do you think if you had city mayors throughout England that this would in some way address the problems of devolution?

Ken Livingstone: If Government gives some real powers and financial independence. When I met the Mayor of Moscow the first time round, when he told me that he would not dare introduce the congestion charge in Moscow and doubted whether I would survive if we did it here, we were discussing his requisite powers and the range of taxes he can use, which is more extensive than the Mayor of New York. When I pointed out to him that in Britain 97% of all tax is raised and collected by the Chancellor of the Exchequer, he simply said, "That is worse than Russia under Stalin", and this is true. Where else in the Western world is all the money funnelled into one pot with the result that council leaders and everyone else is constantly on a pilgrimage to Whitehall to ask for a bit of this and a bit of that. When I was Housing Chairman in Lambeth in the early 1970s, I would come up to the DoE to discuss with Peter Walker, or whoever his housing minister was at the time, the cost of modernising six terrace properties in Vauxhall. This is bizarre. I sometimes think Civil Servants like this because it keeps ministers busy, too busy to actually take real charge of their departments.

Q723 Julie Morgan: We have now got devolution to Scotland and Wales. Do you think greater powers and city mayors would make that a more satisfactory system all round?

Ken Livingstone: It is. If you go to somewhere like Newcastle or Birmingham, there are huge cultural differences with London. If you go to the south-west or the north-west of Britain, because of the concentration of power in Whitehall and media power here, there has been a suffocation of the regional diversity and the strong distinctive differences within England, and I think that is regrettable and I would like to see it flourish. You

hear ministers and shadow ministers on the radio talking about a postcode lottery. If you want devolution and decentralisation, things will happen differently. It may be nobody else in Britain ever does a congestion charge, but why is that a problem? People should be able to get what they want locally. If we were to break up the NHS and make it accountable to regional government in the first instance, we would take different decisions about how to spend the money and what the priorities are. There is a real disease in British politics: the idea that everything must be absolutely uniform. If we were to impose that economically, it would be very deadening. We accept that different parts of the economy grow differently, regions rise and fall, and yet to decide to have an absolutely universal code that is absolutely identical wherever you are in the country, I think, damages all the dynamism that comes from strong regional and city identities.

Q724 Mr Turner: Can I just slip in 8A before I go on to nine. City mayors are fine, but what about the areas without cities, like the Isle of Wight, like Somerset, like Devon? Are you ruling them in the same way, or do you have ideas as to how else they might be ruled?

Ken Livingstone: I have always been in favour of regional government because, clearly, in the way that organised crime now is, there is a regional dimension. If there had been a regional government of Yorkshire over the last 40 years as its traditional industries declined, the primary role of the people leading it—I suppose it would be David Blunkett—would have been to modernise and rebuild their economy locally, but too much of that got stymied in Whitehall. In actual fact, if you go back to the Maud Report on local government, there was a minority report by Derek Senior, which I still have, where he talks about having unitary local authorities, the city with its rural surroundings and also regions, and I think that is the best structure. People come from around the region to get the services of what is their major local city. I think there was a reluctance to go down that route from the Labour Party side because they saw those cities perhaps being controlled by the Tory surrounding hinterland. I think if you are going to go down this route, it requires proportional representation so that everyone feels they have a stake in what emerges.

Q725 Mr Turner: What are your views on the English question and how it should be resolved?

Ken Livingstone: If the Labour Government had gone for full regional devolution, it would not be a problem. As we have not, I think—. I know I felt real anger when I watched a Labour Government using the votes of Scottish MP's to drive through policies in areas where they had opted out, such as student grants and foundation hospitals. I thought it was outrageous and, I should imagine, had I still been an MP, I would have had really unpleasant rows watching Scottish MP's, who have been spared these horrors in their own areas, being dragooned to override their English colleagues. I think it is

completely unacceptable, and the failure to resolve that leaves the Labour Party vulnerable to a real Tory onslaught in this area.

Q726 Mr Turner: But your problem is actually that regional schemes are not terribly popular, it would appear anyway.

Ken Livingstone: Yes, but then there are the people who campaign for an English Parliament. It should be as large and bureaucratic and unmanageable as our present structure of government. If you look at the Spanish post Franco, there were the strong Catalan and Basque identities and they had really good, strong devolved government, and there was the rest of Spain, pretty much like our south-east, it was never quite clear where it was or which region they were in, but when they saw what the Catalans and Basques had got, they started—. Different parts of Spain have moved at different speeds towards devolution, but all of them, having started off on the journey, want more, and that might be the way here. There are several ways you could redraw south-east England, but there are very strong and distinct identities for everything north of Birmingham. That is not so difficult.

Q727 Mr Sharma: What lessons can be learnt from the process of devolving power to London which could be applied to a scheme of devolution within England?

Ken Livingstone: It was easy to do this in London because Mrs Thatcher had abolished the GLC. If there had been something there, all the vested interests of the politicians and the Civil Servants would have been hostile to it. Everyone recognised, after 14 years, there was a real gap. We were underperforming, we were not getting investment, there was no-one speaking for London, and even in Bromley at the referendum there was a majority, I think, of 54% in favour. Everybody recognised, after they had nothing, that this was not working and, therefore, there was a real problem. If I was a councillor, if I was the leader of a Labour group on a city somewhere outside London, unless I could be fairly certain I was going to be the new mayor, I would personally be very hostile to the idea. There is no way of doing this without offending a lot of colleagues in your own party. Mind you, this is the best possible chance for Labour to do it. They have almost got nobody left to offend in our party's on this. This must be the ideal time for a Labour Government to impose directly elected mayors.

Q728 Dr Palmer: It is probably true to say that there are only two politicians, in principle, who are instantly recognisable by their first name, and they are the current and former Mayor of London. Is that not a general feature of direct election and does it not worry you that, despite the advantages that you have described, as a paid up member of the amalgamated union of grey politicians, I do have concerns that the effect of direct election is to focus attention on the personalities of the candidates rather than on what they are going to do? It depoliticises politics in a way that we have

seen much more developed in the United States. Should we not pause for thought before we start generalising it to cities all over Britain?

Ken Livingstone: But we have drifted into exactly that problem in our national politics as well. It is all personality driven. I think this is the absence of the Cold War. During the Cold War, if it went wrong we were going to be dead: the question of who got elected was a life and death matter. We had been through a long period of time when it did not seem to matter and when you did change governments not very much changed. It might be, with climate change, we will be moving into a situation where politics is much more important about what people really stand for. I agree with you: I abhor the fact that people voted for Boris Johnson because they think he was nice rather than what the policies were. I do not think that is the fault of the devolved structure, I think that is the fault of our media's obsession on trivia.

Q729 Mr Tyrrie: Coming back to the England/Scotland relationship again for a moment, you have stood up for the London taxpayer on many occasions, pointing out that London taxpayers provide a disproportionate share to the Exchequer, and, of course, Scotland collects a disproportionate share. Do you have a view about how to reform that?

Ken Livingstone: I think transparency would be a good start, because I have no idea what the real figure is. At the beginning of my mayoral period, the general presumption was that the subsidy London gave to the rest of the country was somewhere between 10 billion and 20. As we hit the downturn in the economy, those figures moved down to somewhere between two and 10. I suspect they are back up somewhere between 10 and 20, but when you are having an argument where the range of figures is somewhere between 10 and 20 billion, we are not seriously in a position where—. There are so many ways of cutting this cake up. Clearly, the dynamism of London's economy and the fact we are still one nation means there has to be some element of redistribution from the richest part of Britain to the poorer parts. The weakness of the mayoral system in London was I had no power to redistribute wealth from the richest parts of London to the poorer parts, I had to come back to Government and argue for that. That is the weakness. I always said I thought London put a bit too much in, and I think in terms of what we have done in getting the Government to pick up the tab for the Olympics and making a big contribution to Crossrail we have done a lot to redress that, but I am much more concerned that Government should be putting investment in rather than revenue support, getting that long-term investment going in. I have always honestly said to London it is right that we make some contribution to the rest of the country, we will always argue about how much, but our real problem is we are all talking about figures that are so imprecise.

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Q730 Mr Tyrie: The Barnett Formula and Scotland?

Ken Livingstone: I seem to recall being told the Barnett Formula was set up to slowly reduce that subsidy. Unfortunately, it then hit Mrs Thatcher, who was cutting back everything so dramatically I do not think the effect worked. I am saying I think there is a real danger of demagoguery in English politics, that you have a really nasty anti-Scottish campaign, but I honestly do not know what the real figures are and I am not certain anybody does. Tony Travers may have a more objective view on this when he follows me here, but I honestly cannot tell you whether it is 10 billion or 20, but I know it is something big.

Q731 Chairman: Did you feel, by the way, that you had any real capacity to divert resources within the budget available to you or had a greater ability to do that than, let us say, a local council leader would have had?

Ken Livingstone: No. One of the reasons that the Greater London Council was abolished was because the business rate meant that 60% of the GLC's expenditure came from Westminster, Kensington and the businesses in the City of London, overwhelmingly. They must have put up about half the business rate between them, if not more. Therefore, for a socialist like me, the Greater London Council was a marvellous mechanism of

redistribution of wealth because you had the business rate, this really expensive core at the centre. Therefore, when you cut the fares, you could actually see a real benefit for individual Londoners: even though their domestic rates went up, their fares came down dramatically more. With the removal of the commercial business rate, there is really nothing. I abolished fares for under-eighteens on the buses, and given that 40% of London's children live below the poverty line, that was some small help (about £300 per child) for parents, but it was a very crude redistribution of wealth. I would be much happier to be in the position of, say, the Mayor of New York or Moscow. The Mayor of Moscow has a supplement on the national state pension for Muscovite pensioners because in Moscow is the most expensive place in Russia. If I had that power, I would have done the same in London. We have a London living wage. We calculate that you need to earn £7.20 an hour in London not to be in poverty. That is two pounds difference from the national minimum wage. Given the differences between London and the rest of the national economy, I am sure the national minimum wage may provide a decent standard of living in Newcastle, but it does not in London, and the Mayor needs to be able to reflect this.

Chairman: Mr Livingstone, thank you very much indeed. I think Mr Travers will want to take up your invitation to follow you, or, indeed, our invitation.

Witness: **Tony Travers**, London School of Economics, gave evidence.

Q732 Chairman: Mr Travers, I think perhaps the easiest way to start would be to say whether, having listened (as I know you were) to Ken Livingstone's presentation, you differ from him at all in your perception of the advantages and disadvantages of the structure of London government which has created the Mayor/GLA structure?

Tony Travers: I did not hear the very beginning, so I may comment only on part of it. First, I should say thank you for inviting me to give evidence. I agree significantly with what Ken Livingstone said, particularly about the weakness of the Assembly part of this Greater London Authority structure.

Q733 Chairman: I was not quite clear whether, listening to him earlier, that was a virtue or a fault.

Tony Travers: I should imagine, as a powerful mayor, he saw it arguably as a virtue. Whether democratically it is a virtue to have a very powerful executive not fully checked by what in an American system—which is what we are talking about here—would be a legislative arm of Government, I think, is a wide issue, possibly beyond the remit of this inquiry. The Assembly was given only the single annual power to stop the Mayor's budget, and then only with a two-thirds majority for an alternative proposition, an alternative budget, but that power is nuclear and it is actually very difficult, given the proportional representation method of electing the Assembly, to imagine any one party in London, as in Scotland and Wales, getting an overall majority very

frequently, if ever. So getting a two-thirds majority for an alternative proposition to the Mayor's budget, I think, will always prove extremely difficult and, therefore, even that check is limited, but beyond that the Assembly has no capacity to stop the Mayor's policy-making in a way that would be more normal in a fully American system of government.

Q734 Chairman: But in an American system, if you are making a comparison, what is the analogous power that you would be looking for? Clearly, legislative power would reside with the Assembly, it could pass by-laws and so forth, but otherwise are you talking about appropriation power, this kind of thing, or what is the comparison?

Tony Travers: There are two things, I think, that one might do. I think it would be well worth considering giving the Assembly something akin to legislative powers and certainly a power to vote on mayoral policy and, indeed, perhaps to lower the bar on the budget. These would be ways of strengthening the Assembly without stopping the strong mayor model working, because I think that is what we are looking for here. It is a balance between the executive power of the Mayor and the legislative power of the Assembly.

Q735 Julie Morgan: Mr Travers, what are your views on city mayors and city regions throughout England? Do you feel that would tackle the devolution issue?

8 July 2008 Tony Travers

Tony Travers: I should declare, I was always a supporter of the idea of directly elected executive mayors and, having seen both the London Mayor and other mayors operate in England—as I think they are all in England so far—I am still broadly enthusiastic and I do think that the London model, although it could not be moved precisely to any other part of the country, would offer the potential for city regional government if other Metropolitan areas wanted this to happen. So I do think it would be transferable, though probably not in every single aspect. London is not like everywhere else and everywhere else is not like London, but, yes.

Q736 Julie Morgan: Do you think that would help address the English question?

Tony Travers: It could do, though I think it would risk not quite answering Mr Turner's question about the non-urban parts of England, to which I could return, but I think there is no question that larger cities, potentially, could be made significantly more powerful and, indeed, I would argue in the late nineteenth century they were: not with a mayoral system of government, but when the Imperial Parliament was focused on the dominions and the Empire, then city government, local government, shire government, was much of what governed England, Scotland, Wales and Northern Ireland.

Q737 Alun Michael: Could I ask a supplementary question about this relationship between a directly elected mayor and the Assembly. In the mayoral model, the directly elected mayor, there is a similar situation to the London model of what is the Council or what is the Assembly there for, and if you tinker at the edges, you address today's problems. So if you gave more powers to the Assembly to intervene on the budget, that is fine unless the numbers change, in which case you have a situation, not of challenge, but of instability. How do you resolve that, because it is not an easy one to resolve, is it?

Tony Travers: No, and those of us who watch American politics indirectly and as a recreation are aware of the risk of gridlock; and I am not talking getting to a point where gridlock occurred, but, in fact, with something such as the budget, local authorities are required by law to pass budgets by a certain date, so my suspicion is that that would stop gridlock occurring for and of itself, so I think we could be spared that.

Q738 Alun Michael: But that is more a hope than a necessary consequence?

Tony Travers: I honestly think that the requirement that precepts and council tax are set by a certain date—a consequence of earlier battles between central and local government—would ensure that gridlock did not result, at least insofar as the budget is concerned. When it came to the possibility of a greater set of powers over policy, I can see that there is a risk, but as there is in this institution and with the House of Lords, a bit of a check and an argument and the capacity to negotiate is an essential element in the way in which democratic institutions resolve their differences. I do not want to weaken the

directly elected mayor or the strong mayor model, but I think that if we are going to have it, it would be better to consider developing the other parts of that model to ensure that they have sufficient power for me to check this strong and powerful office.

Q739 Mr Turner: I would like to hear his other half of the answer on the non-rural areas.

Tony Travers: Certainly. Personally, I am very strongly pro-localist, and I would not want to force shire areas to do things that shire areas did not want to do. So, if a county is a recognised unit of government, as it is in many places, and districts may be as well, then that structure may be the best one in rural areas. I would not, however, personally rule out the idea of taking the directly elected official model to the county level in the form of something that could have a different name. It might not be mayor, but governor, sheriff—we are creative about these things. So the Sheriff or the Governor of Somerset, I think, would be something that it would be perfectly reasonable to offer, but I would not want to impose it.

Q740 Dr Palmer: What do you see as the key differences between the revenue and funding base for local government and for the GOL and do you reckon that one ought to be adjusted to match the other?

Tony Travers: I share many of Ken Livingstone's previously expressed views about weakness of local government finance in England but separately in Scotland and Wales. I think that, in fact, the Mayor of London, in a classic UK asymmetry, was arguably given somewhat greater financial powers than either the Welsh or Scottish Governments, and by that I mean the Mayor does have access to the precept but also has access to a very large income from fees and charges, particularly the very buoyant yield of London Transport fares. This gives the Mayor of London significantly greater freedom to act in terms of changing his spending than arguably is true for either the Scottish or Welsh institutions, and that is an asymmetry, an oddity, given that those institutions have significantly greater power. That is not the answer quite to the question of whether it would be better if this institution had greater fiscal autonomy, to which my answer would be, yes, but I also think that would be true for local government as a whole.

Q741 Dr Palmer: Actually you favour something like the Scottish option where they could raise a lower tax at county level?

Tony Travers: The Scottish Government does, indeed, have the power to raise income tax and also to reduce it by three pence in the basic rate of income tax. Yes, I do. I would accept that, and I think it would lead to beneficial effects on turn-out in elections. I think if that was at stake, if income tax rates were at stake, it would make elections even more contested.

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Q742 Mr Sharma: How could provision be made for local government to have similar powers to the GLA to determine the allocation of resources?

Tony Travers: I think that the rest of local government, although it is a different model, within its cabinet, as they mostly now are, does have pretty significant freedom. It does not have much freedom in the setting of its council tax, but they have freedom within the resources that they collect from council tax and government grant, and they have been given slightly greater freedoms in the last year or two to use the total of the resources that they have. I am not sure that the Mayor of London is that much less constrained or has that much more freedom, to put it the other way round, than most local authorities. My personal view is that it would be better for devolved government in Britain if both the GLA and local authorities were to be given

greater freedom to raise and lower their own taxes, but also greater freedom then to decide how they dealt with their budgets. So I think it is all of them taken together, and in many ways the Mayor of London, other than the fact that he does have access to this huge set of fees and charges from public transport fares and, indeed, the congestion charge, is not in such a significantly different position from local government as a whole.

Q743 Chairman: Thank you very much indeed. We are very grateful to you. It has been a brief session because we were interrupted earlier.

Tony Travers: I understand. Thank you very much for inviting me.

Chairman: Thank you very much, Mr Travers. We have work to do in private session.

Written evidence

Memorandum submitted by the Cabinet Office

ADAPTING THE MACHINERY OF GOVERNMENT TO DEVOLUTION

1. The Justice Committee has invited evidence on how government has adapted in order to deal with devolution, and how it might need to adapt in the future,

2. The establishment of devolution in 1999 was inevitably accompanied by the creation of a certain amount of new machinery, both within the UK government system, and between the administrations. Unsurprisingly also, the machinery has in various ways evolved in the light of experience of devolution in practice, and the process of development is continuing.

Arrangements in 1999

3. *Secretaries of State.* A key element of the devolution settlement was the retention of a Secretary of State for each part of the United Kingdom with devolved government. The Secretary of State's functions would include representing the interests of that area in the Cabinet, and representing the Government in their area; in particular monitoring and coordinating UK government responsibilities to ensure that they reflect those interests; and ensuring the smooth operation of the devolution settlement concerned.

4. *Territorial offices.* Hence once power passed from the old Scottish and Welsh offices to the devolved executives, a Scotland Office and a Wales Office were a key feature of the landscape, established as independent Departments of State, each headed by a full-time Secretary of State. In Northern Ireland, the Government machinery dealing with economic and social issues, which was already administratively separate, passed from the control of the Secretary of State for Northern Ireland to the Executive there. The Northern Ireland Office however retained, in addition to the functions of the other two territorial offices, significant functional responsibilities, including policing and justice, as well as security matters and the pursuit of further political progress.

5. *Central departmental responsibility.* Overall responsibility for devolution strategy, and for coordination of business relating to it, initially rested within the Cabinet Office.

6. *Inter-administration relations.* Machinery was also set up in 1999 for the conduct of relations between Whitehall and the three devolved administrations, essentially seeking to maintain as far as possible the open and constructive relationships that existed while they had been part of a single government. These arrangements were set out in a *Memorandum of Understanding* ("the MoU": an extra-legal document, making clear that it was a statement of political intent, not a binding agreement). It laid emphasis on the principles of good communication, consultation and co-operation. Concordats between the Government and the devolved administrations recognised the interest of the latter in aspects of international and EU relations, matters which remained the responsibility of Whitehall, and set out working arrangements to deal with them. A large number of further concordats were agreed between UK departments and the devolved administrations. Further provision was made about working practices in *Devolution Guidance Notes* for officials, some of them agreed with the devolved administrations.

7. It was always understood that most contact between administrations would be on a bilateral or multilateral basis, but a need was also foreseen for central coordination of the overall relationship. Hence the Joint Ministerial Committee was established by the *Memorandum of Understanding*. Its terms of reference covered issues straddling the devolved/non-devolved boundaries; by agreement, the treatment of devolved matters in different parts of the UK; reviewing liaison arrangements between the Government and the devolved administrations; and considering disputes between administrations. It was made clear JMC was a consultative, rather than an executive body.

8. The JMC was envisaged as meeting in a range of formats, including plenary meetings at least once a year, chaired by the Prime Minister or his representative. There might also be functional formats, covering subject areas, with ministerial attendance at a lower level; special formats to resolve differences between administrations; and official level meetings to "shadow" proceedings.

9. The devolved administrations in Scotland and Wales continued to be served by members of the Home Civil Service. These arrangements have worked well, bringing the benefits of the wider structure—innovation and reform, established arrangements for safeguarding independence—whilst also offering to devolved administrations of whatever political identity wholly loyal and committed support. Separate versions of the Civil Service Code (2006) for the Scottish and Welsh administrations make clear that civil servants in those administrations are accountable to the Ministers in those administrations, rather than the UK Government.

Evolution of the arrangements

10. These arrangements have evolved,

11. *Changes in responsibility and organisation.* Responsibility for devolution strategy moved to the Office of the Deputy Prime Minister and then in 2003 to the Department of Constitutional Affairs, which itself last year was subsumed within the Ministry of Justice. The Cabinet Office retained its responsibilities for co-ordination of Government business, including co-ordination in respect of devolution. After June 2003, the Scotland and Wales Offices remained independent Offices, politically accountable to their own Secretaries of State, and separately financed from the respective grants to the Devolved Administrations. But for a range of administrative purposes they were brought within the DCA, and so on to the MoJ. At times since 2003, the holders of all three Secretary of State posts have borne other Ministerial responsibilities.

12. In Wales, the Government of Wales Act 2006, which made substantial changes to the structure of devolution in Wales and opened the way to incremental devolution of primary legislative powers to the Welsh Assembly brought significant changes to the functions of the Welsh Secretary and of the Wales Office. The Act provides for law making powers to be conferred on the National Assembly in specified matters, which may be by Order in Council, or by framework clause in an England and Wales Bill. An Order may be made only if approved in draft by the National Assembly and both Houses of Parliament. Proposals for Orders are subject to pre-legislative scrutiny, by Committees of these three bodies. The Secretary of State for Wales and his Office lead preliminary discussions between UK and Welsh Assembly Governments on possible Orders, and on possible framework clauses in Bills, and present proposed and draft Orders to Parliament, for scrutiny or approval respectively.

13. Devolved government in Northern Ireland gave way to renewed direct rule in 2002, with the formerly devolved administration reporting to the Secretary of State.

14. *Inter-administration relations.* These also saw significant evolution. Plenary meetings of the Joint Ministerial Committee were held annually from 1999 to 2002 in different parts of the UK, and functional strands were established to deal with Health, Poverty, the Knowledge Economy and EU matters. But in most of these cases Ministers concluded that, against the pattern of close bilateral working and ready ministerial contact that had been established, formal meetings of the Committee added insufficient value to justify the heavy burden of work that (especially because of the need to travel) they created.

15. Hence much JMC activity ceased after a few years. The exception was the functional format on European issues, JMC (Europe): this has continued to meet consistently, at roughly quarterly intervals, with the Foreign Secretary in the chair, to discuss business with a devolved angle arising in the European institutions.

16. Despite the reduction in JMC activity, Ministers of the four administrations often continued to meet in formal structures. Multilateral meetings have been held in particular fields, for example the Finance Ministers' quadrilateral which meets from time to time with the Chief Secretary to the Treasury in the chair and devolved finance ministers in attendance, along with Ministers from the territorial offices. There have also been regular meetings of Ministers in the Agriculture field, and elsewhere; in some areas there are regular meetings of senior officials.

Recent developments

17. The elections last year to devolved legislatures brought a greater degree of political divergence to relations, and 2007 also saw the resumption of devolved government in Northern Ireland. These developments were, inevitably, likely to affect the operation of the institutions.

18. *Joint Ministerial Committee.* The clearest instance of this has been in respect of the Joint Ministerial Committee, where it has been clear that more formal arrangements for Ministerial contact between the administrations might have a greater contribution to make. The devolved administrations themselves have favoured such arrangements.

19. The Prime Minister accordingly asked the Rt Hon Paul Murphy MP, in addition to his responsibilities as Welsh Secretary, to take on responsibility for the JMC. In cooperation between the administrations (involving visits by Mr Murphy to the First Ministers in Scotland and Wales, and the First Minister and deputy First Minister in Northern Ireland) plans were developed for resuming JMC activity.

20. A plenary meeting, the first since 2002, was held in London on 25 June, chaired by the Justice Secretary representing the Prime Minister. The Joint Statement issued afterwards is at <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3676>. It considered issues related to renewable energy (where agreement was reached on collaborative work to achieve the UK's target for use, of such energy by 2020) and the Marine Bill shortly to go before Parliament (where a measure of agreement was reached, to be followed up in work between officials).

21. The meeting also took stock of the state of relations between the administrations and agreed that, though there was much contact already, good government across the UK could be improved by still closer working. They agreed to a meeting later in the year which might be in a new format, JMC (Domestic), to be chaired by Paul Murphy, with other ministers participating as appropriate. Such a format would parallel JMC (Europe), which would continue as before.

22. The Committee also reaffirmed that it should have a role, as set out in the MoU, in helping resolve differences between administrations. It asked officials to investigate ways in which, consistently with the principles in the MoU, it could best do this—the provisions in the MoU about this have never so far been invoked. It also asked officials to look at the updating of the MoU, which has not been done since 2001. The resulting work will be considered at the forthcoming JMC meeting. A number of individual issues relating to finance were also raised.

23. *Whitehall changes.* At the same time as these developments, there has been some strengthening of capacity in parts of Whitehall dealing with devolution: the Scotland and Wales Offices, the part of the Ministry of Justice dealing with devolution, and the Cabinet Office (which leads the joint Secretariat of the Joint Ministerial Committee).

24. New emphasis has also been given to the efforts that have continued over the years to remind civil servants of the implications of devolution for their work, and the sensitivities associated with it. This effort has, for example, given rise to “road shows” touring departments to increase awareness and capability, and intensification of committee structures within Whitehall to address devolution issues.

25. There has also been renewed emphasis on the dissemination of key messages to civil servants in Whitehall about the need, despite political differences, to maintain the fullest contact and co-operation between administrations in the interests of good government, whilst respecting the sensitivities arising from the fact that they are distinct organisations.

The future

26. The effort to adapt will continue, reflecting changing circumstances. Ensuring that happens sensitively and promptly will be a key challenge for the Cabinet Office and all in central government.

27. Further development of the JMC may work to the benefit of relations between administrations—but how far and in what configurations needs to be established in the light of experience. It will need sustained efforts to ensure that devolution issues continue to get the priority they need in the policy-making process.

28. The further devolution that the Government hopes for in Northern Ireland will bring about changes in machinery. The Northern Ireland Office, having passed on to the devolved administration its responsibilities for policing and justice, is likely to move for administrative purposes within the Ministry of Justice, alongside the other two territorial offices.

29. Meanwhile in Wales the legislative competence of the Assembly continues to grow, which will have consequences for the Wales Office. In Scotland, the Calman Commission on the operation of the Scotland Act 1998 may have recommendations that bear on Whitehall organisation and inter-administration relations.

Sir Gus O'Donnell KCB

Secretary of the Cabinet and Head of the Home Civil Service

November 2008

Memorandum submitted by K S Bates

I understand you are considering “Devolution-a decade on”. As a result I am writing to express my concerns regarding this extremely serious issue.

The current policy of “some being more equal than others” in terms of national representation and democratic rights is a racist, kick in the teeth for the English. The Barnett Formula has become anachronism and I believe, is now being used as a cynical measure to buy Scottish votes at the expense of the English; why should we suffer National Health cut backs but give our hard earned money to the Scottish so that they can enjoy superior benefits? Why should Scottish MPs vote on English matters when they have not been elected by the English people and therefore do not represent the English people?

Devolution a decade on has clearly failed. It has traded on the good nature and tolerance of the English people and the English are becoming increasingly aware of this abuse. Experiments such as this, in cultural re-engineering by stealth, are at best intellectually naïve and at worst, a time bomb for civil disorder. They go against the values of democracy, fairness and tolerance that the English have always held dear and history shows that cultural strength is enduring and prevails against all sorts of adversity.

Such disaster, I believe, can be avoided. The only solution that I have come across that is:

- Enduring,
- Would give the English the same devolved powers as the other parts of the UK,
- Would recognise England as a nation amongst equals,
- Would not cost anymore in number of MPs, building etc,
- Would preserve the union, if that is still desirable, and

— Would make it easy to distinguish English from non English matters in government,

Is the establishment of an English parliament. A council of the isles could be created in the House of Lords if there is still a desire to maintain political union with Scotland, Wales and Northern Ireland. Anything short of an English parliament can only be described as a blatant racist attack on the English. I would be most grateful if you would take my views into account in your deliberations.

February 2008

Memorandum submitted by Mrs Diana Benn

Writing as a citizen of England, what do I see, as a result of Devolution?

Firstly, members of Parliament, elected to represent non-English constituencies taking part and voting on matters affecting English constituencies. This is plainly illogical and undemocratic.

Secondly, ministers have been appointed to represent eight regions of England. On the only occasion when the electorate was invited to vote on the question of regional government, which took place in the North-East in 2004, the vote was 78% against, compared to 225 for. Nevertheless, ministers were appointed, committees set up and funding made available. Again, this action could definitely be described as undemocratic.

The only truly equitable solution to the present situation is the establishment of an English Parliament, not eight regional assemblies, or any so-called Grand Committee.

Finally, I see that the citizens of Berwick-upon-Tweed wish once again to be re-united with Scotland in order to benefit from the additional perks of free university education and care for the elderly etc voted through the Scottish Parliament. This demand will undoubtedly raise the “West Lothian Question” yet again. However, Lord Barnett has long since disowned his formula as being outdated as stated to the Commons Treasury Select Committee in 2000.

February 2008

Memorandum submitted by Campaign for an English Parliament

I am the head of the media unit of the campaign and a member of its national council. I submit this statement on the understanding, as we have been given by the Committee Clerk, that you and your colleagues will accept submissions as up to 7 January 2008. I read from your Call for Evidence that you “have decided to undertake an inquiry into the impact of devolution at the UK level and its consequences for the United Kingdom’s constitution”. That is what I will address.

I wish to express the hope that on receipt of this submission you will summon a member of the Campaign to give oral evidence. We have been working on these issues assiduously since our foundation in June 1998 when the Devolution legislation was passed and enacted. We have published detailed analyses of that legislation. We have carefully followed it through throughout the decade. You and your fellow committee members have each been sent both of our two latest publications. No organisation other than the UCL Constitution Unit has published on it so copiously and analytically as this campaign. Its director, Professor Hazell, attended on your Committee at your request in November. I appreciate that the establishment of an English Parliament is not an outcome of your Inquiry that you anticipate recommending. However, as Professor Hazell informed you “the closest to a complete answer to the West Lothian Question is a separate English Parliament”. It is our arguments put in constant dialogue with the Constitution Unit that have brought him to that conclusion. I think, therefore, it would be beneficial to the Inquiry if you summoned oral evidence from us. Our evidence as in this written submission is of its nature incomplete without the cross-examination it merits.

The foremost and the most serious impact of devolution is identical with the consequences of devolution for the United Kingdom constitution. The very nature, indeed explicit purpose, of the devolution legislation 1997–98 was to change the UK constitution as decided by the Act of Union 1707. The “impact” is the legislation. That first and foremost is what has to be understood. The “consequences” of the legislation were its explicit intent.

The 1707 Act of Union abolished both the English and Scottish parliaments. Wales had never had one. For those two parliaments the Act substituted one British Parliament. By its own decision, however, as per the devolution legislation of 1997–98, the same British Parliament revoked its own power, not absolutely but *de facto*, to legislate for Scotland, and to a lesser extent for Wales, in major areas of governance.

Furthermore, the 1997–98 legislation re-established the Scottish Parliament, as its members explicitly, expressly—and rapturously—stated at its first meeting. It created a Welsh Assembly. Never before in its long history had Wales had one governing body for its territory. The legislative establishment of the Scottish Parliament gave a distinct and separate constitutional and political existence to Scotland within in the Union which along with England it had ceased to have as from 1707. The legislative establishment of the Welsh

Assembly gave a distinct and separate constitutional and political existence to Wales within the Union which it had never previously had throughout its history. What is more, as is explicit in the legislation itself, both the Scottish Parliament and the Welsh Assembly were designated the parliament and the assembly as of distinct nations within the Union. That is also stated expressly in the prefaces to the devolution white papers by Blair, Dewar and Davies. There is no evidence in what I have seen as yet from the minutes of your Committee that this fundamental aspect of the legislation has been noticed and understood. The Devolution legislation in other words essentially changed the terms of the Act of Union 1707. In a word, its impact is itself. Unless the British Parliament members understand what was enacted in 1997–98, no inquiry it holds will be meaningful. As it reads, your wording in the Call for Evidence does not indicate that that understanding has been reached.

England's Parliament however, in cold contrast, was not re-established. England was not given the distinct and separate constitutional and political existence within the Union accorded to Scotland and Wales. England alone of the three nations of this island has no political and constitutional existence. Its distinct nationhood has had no political and constitutional recognition. Therefore the Act of Union of 1707, with one very significant exception, *de facto* applies in its fullness in terms of who rules it only to England. I say "*de facto*" because the 1997–98 legislation conceded only "permissive autonomy" (Trench 2005), it did not set up a federation. Theoretically the UK Parliament can abolish the Scottish Parliament and the Welsh and NI Assemblies. *De facto*, it will not. The significant exception mentioned in how the Act of Union applies to England is the legislative decision of the 1997–98 (NB. not "consequence" but "decision") legislation that the 1707 power of England's MPs to legislate for Scotland and Wales was widely restricted whereas the 1707 power of Scotland's and Wales's MPs to legislate for England was not.

This is now known as the West Lothian Question. If it were called what it actually is, namely English MPs' legislative powers over Scotland and Wales widely restricted, those of Scottish and Welsh MPs over England fully maintained (a mouthful but a fact), the inequality would be more popularly appreciated.

The WL issue contradicts the most fundamental principle of representative democracy on which the English Parliament (in its 500 year old history prior to 1707) and then the British Parliament since 1707 was based and by which it operated. The 1997–98 legislation formally abolished representative democracy as the inviolable and untouchable first principle of government. The UK parliament showed itself willing to abolish the very basis on which first the English Parliament and then itself were constituted. Representative democracy however, still applies in the Scottish Parliament and in the Welsh Assembly even though it did not originate in either. Not however in England and in the UK Parliament. By virtue of what is understood by the WL issue Scottish MPs can be both ministers and legislators, even Prime Minister, Chancellor of the Exchequer and Home Secretary, in English matters without being answerable in elections for their actions in those matters to any electorate, either in Scotland or in England.

This is democratically a disgraceful and shameful situation. I stress, however, that it is not a "consequence" of the 1997–98 legislation but is the legislation. Tragically there would appear to have been a total absence of understanding and intelligent reflection on the part of MPs of all parties during the passage of that legislation with the exception of the member whose constituency was made memorable by the disgrace and shame the matter constitutes. What is noticeable is that still the vast majority of MPs and all three parties exhibit no obviously genuine concern about it at all except where it affects their constituents. The principle at stake does not appear to be one that causes them much concern. The WL issue is another of the ways in which the ancient principles and liberties on which we believed governance in this country was founded are being abolished.

What compounds the injustice to England is that the UK Parliament excluded the people of England from any say in what devolution would consist in as well as in whether it would happen. The Scots living in Scotland and the Welsh living in Wales had their referenda. Of course, with both the referenda were organised to do their best to get the vote the Government wanted. Scots living outside of Scotland and Welsh living outside of Wales were excluded for the reason that the Government knew the votes of either could have, in the case of Scotland, dented the majority and in the case of Wales denied a majority. The experience of living in England might have proved unsupportive. Most likely, given the extremely narrow outcome, it would have stopped Welsh devolution in its tracks. And the Welsh referendum was purposely arranged to follow upon the Scottish by a whole week. The Scottish outcome was assured, not least because only a majority vote of any amount was needed. But the Government knew that the feeling in Wales was very lukewarm. It looked to an assured Scottish outcome to provide a momentum. The deeper purpose for the week's delay however was something else. The Scottish proponents of Scottish devolution: Gordon Brown who was the main engine driving it, Alistair Darling, Donald Dewar, Des Browne, Robin Cook, Helen Liddell and so on knew all too well that a Yes vote in Wales was essential for their venture. Scotland would have looked very isolated, if it alone had got devolution. A No vote in Wales would have placed Scotland out on a very lonely limb indeed within the Union if it alone was going to get not just the huge degree of Home Rule it had voted itself with its referendum but all the immense benefits which it is now bestowing on itself and which are denied to the people of England. Scotland needed the Welsh to vote for devolution to justify the very new status it had now obtained by itself and for itself within the Union. All in all, the above mentioned Scottish leaders of New Labour played an absolute blinder. They had their English parliamentary colleagues paralysed, supine and docile by a sense of guilt for being the dominant force since 1707, which they exploited to the full in the light of the Thatcher years. One has to hand it to Brown and

his men in a way. They got Home Rule for Scotland in some 70% plus of governance while continuing to be eager recipients not just of English subsidies but also of the Barnett Formula and still able to be ministers in every department for England and vote on every single English issue. They even had it agreed that Scottish Westminster MPs, 70% of whose constituency duties had been taken of their hands and handed to MSPs, continued to get a full MP's salary. Of course, without that measure Scottish devolution would never have got through. Salaries matters. There can be no denying it, Brown and co pulled off the smartest coup in the whole 300 years of the Union. Little wonder he is now the ardent evangelist of Britain and Britishness. Britain as it stands serves Scotland very well indeed. In 1989 Brown with Darling and many other Scottish MPs and MEPs in 1989 signed the Scottish claim of right pledging themselves to "put the interests of Scotland first and foremost in everything they did". It is a pledge they have faithfully and effectively carried out ever since. It was a totally unconstitutional pledge for any British MP to take.

The 1997–98 legislation excluded the people of England from any say in these fundamental political and constitutional changes of the Union to which their country belonged. It excluded them from any say in allowing the Scots and the Welsh to have Home Rule, in different degrees, from which at the same time their English MPs were allowed any input. It excluded them from any say in the new situation where MPs from Scotland, and to a lesser degree from Wales, can be ministers for their internal English affairs and can vote on those internal affairs without reciprocation. It would not be wise for any member of the Justice Committee to argue that the people of England vested their MPs with this say on their behalf because such an argument would have denied the relevant referenda to the peoples of Scotland and Wales.

The "impact of devolution at the UK level" (Call for Evidence) was therefore, first and foremost, and by deliberate design, to alter the relationship of "the constituent parts of the UK" (ditto) both to the UK Parliament itself and to each other. That is not some "consequence for the United Kingdom's constitution" (ditto) of devolution but its intent and achievement. Home Rule was accorded to Scotland to a very large measure and in major matters. Likewise to Wales and NI but less so. None at all to England. England is the only part of the UK still ruled in its entirety and in every detail by the UK government. Furthermore, by virtue of their national institutions, Scotland, Wales and NI now have a distinct and separate political and constitutional existence. Their distinct nationhoods have been given political and constitutional recognition. England however, alone of the three nations of this island, does not constitutionally exist. The Union therefore is essentially, per se, unbalanced. As a consequence the centre cannot and will not hold. The legislative, and thereby institutional, discrimination of the 1997–98 devolution settlement against England and the English nation is the canker within the Union which will dissolve it. There can be no other outcome—unless the appropriate action is taken in time. Discrimination against a nation, institutionalised in the 1997–98 legislation, is wrong. The legislation of 1997–98 was an instance of unmitigated selfishness on the part of its proponents, the main ones whom I have mentioned above, in that it put the advantage of their country Scotland first and foremost at the expense of the British Union. They sowed the wind, the Union now reaps the whirlwind.

There are a number of very important consequences of the 1997–98 Devolution Settlement which have had a very considerable impact upon the UK. Some of them both further and flow from the institutional discrimination of the Settlement legislation itself. Such as issues over prescriptions, university fees, personal care for the elderly, the community charge, the different administrations of the NHS, nurses' and police pay. You know them. They are the visible and outwards signs of the institutional discrimination which the legislation itself is. They are the issues which are *de facto* causing the bulk of the resentment among the English people about the Union. Other consequences are equally normal. Once the distinct and separate nationhoods of the Scots and the Welsh were given institutional and political recognition, in an act of departure from the Act of Union, it is only to be expected that the political parties representing the Scottish and Welsh nations found themselves with a platform on which to insist on power and for that power to be extended. The belief expressed by the 1997 government leaders that devolution would put an end to the desire for more power, especially independence, was shown to be what it actually was, a dismal failure to understand. Similarly it is only to be expected that the other UK parties in Scotland and Wales, feeling the cold air of nationalism blowing in their faces, move towards alignment with it. The first rule of political parties is to exist and survive. The other rule, indistinguishable from the first, is for their politicians to take whatever steps as are necessary to keep their positions, their careers and their salaries. As we know from evolution, adaptation is the only way to ensure survival.

I have directed your attention to the essential nature of the devolution legislation, namely it revoked the Act of Union, it revoked the concept of one British nation with one legislative body and one government, it revoked the principle of representative democracy, it unbalanced the Union by placing England, Scotland and Wales each in a different relationship to the Union and to each other, and it institutionalised discrimination against the people of England, indeed in part against Wales too but essentially far less so of course. The essence of the legislation was predicated on advantage to Scotland. It did right, it behaved progressively, in giving home rule to Scotland and Wales and in giving formal constitutional recognition to the distinct nationhood of the Welsh and the Scottish. It did a grave wrong in institutionally and legislatively treating Wales as subsidiary to Scotland; a much greater wrong of course in its treatment of England.

England is not just some employment park of huge proportions or trading estate or car park or shopping mall providing the platform for politicians to be of international notice and the Treasury on which to draw. England is itself. It is not Britain. It is not Scotland, it is not Wales. It is the oldest unified state and nation

in Europe. It has its own deeply loved people, landscape, countryside and coastline with their own profound cultural, spiritual, economic, scientific, industrial and political history and contribution. Certain politicians and certain institutions prefer to deny it its separate identity and lose it somehow in the notion of “Britain” while proclaiming the distinctiveness of Scotland and Wales at every turn. That was the very nature of the 1997–98 legislation; it is now the motivation behind the present drive of government to insist on Britishness. It is gravely wrong, it is gravely discriminatory, it will not succeed, it will in fact destroy the Union. We will not put up with a “Britishness” and a “Union” which discriminates against us and works to suppress our identity. It is not fair. Each of the three historic nations of this island must stand in the same relationship to the Union and to each other if the Union is to survive.

What I have described we know as the West Lothian Question and the English Question. The latter is the fact that unlike Scotland and Wales the 1997–98 legislation gave no home rule to England, no English Executive, no separate parliament formed by English MPs (EMPs) elected in a separate election. On 13 or 14 November 2007 you took oral evidence from Professor Robert Hazell, director of the Constitution Unit. I have not been able to find the minute of that evidence, it exists of course but as of yesterday and today 7 January I cannot find it on the internet. However, Professor Hazell has been reported as stating to you: “the closest to a complete answer to the West Lothian Question is a separate English Parliament”.

I am fortunate to have the acquaintance of Professor Hazell. Together he and my colleagues in the campaign have debated the issue of an English Parliament and the way forward for devolution for England ever since he set up, with generous grants from UK institutions, The Constitution Unit located in Tavistock Square as part of UCL, in the politics department of which he holds a chair. In the year 2000 he gave the State of the Union Speech to the first general meeting of the Unit, its council and its advisory board, peopled by the great and the good of politics and academia. That lecture should be read by all your committee members, as indeed should the 2005 book edited by his colleague Professor Trench and his own 2006 collection of statements titled *The English Question*. To a degree the lecture is a fair presentation of both the WLQ and the EQ but it suffers the drawback of being representative of the founding principle of the Constitution Unit that it would not support any solution to either the WLQ and EQ based on England as a distinct political unit and nation with its own separate political institution, above all an English Parliament. We met up with Hazell and his academic colleagues on many interesting occasions such as Jefferies, Curtice, McLean, Trench, Russell and Lodge.

However, for all its acceptance of the political and constitutional case for an English Parliament, the Constitution Unit does not support it. It still is where it started (*cf* its 2000 State of the Union lecture), namely hankering after the division of England into regions, still hoping against hope that somehow, sometime, maybe “in 20 years”, the four to one rejection of them by the people of England’s North East cities and counties in 2004 will be revoked. A lot could be said about this attitude but just two statements might serve best. Will Hutton, economist and head of the Industrial Unit, writing in the *Observer* well described what the policy of the regionalisation of England actually implied: “A veritable witches’ brew of internecine rivalries”. My own statement is that England like Scotland and Wales, is one nation, indeed the oldest unified nation in Europe. It should not be balkanised. Its nationhood should be respected. That does not seem a lot to ask for. When devolution is accorded to it, as in due course it will, it should be as to a nation, precisely as devolution was accorded to Scotland and Wales. The Scottish MPs who were the backbone of the Scottish Constitutional Convention which demanded a Scottish Parliament, such as the present British Prime Minister and Chancellor of the Exchequer, did not propose the balkanisation of Scotland into regions even though culturally and linguistically there could well be a case. The Islands and Highlands is linguistically and culturally very distinct, the Orkneys and Shetlands have their own Nordic (historically non-Scottish) history and culture, the Lowlands linguistically and genetically are Anglian, the Central Belt is different from all the rest. One can find reasons for anything. That is the way we are. It is interesting however how the break-up of England into regions has become so attractive in recent years, i.e. since 1997–98, to specific sections of the UK political establishment.

Professor Hazell, in the same breath as when he acknowledged that a separate English Parliament was the only complete answer to the West Lothian Question, gave as his reason for not supporting it that it lacked public support. It was somewhat unacademic of him to make that assertion. Three opinion polls conducted by the best of organisations contradict it flatly. The July Mori Ipsos Poll registered 41% for an English parliament, the January 2007 BBC poll registered a 61% support for it in England with 51% in Scotland and 48% in Wales, and the ICM poll conducted for the *Observer* November 2006 registered 68% in support. I have myself in the recent past brought those polling figures to Professor Hazell’s attention.

You will find our arguments fully presented in two CEP booklets, both of which have been sent to all members of your Committee: *Devolution for England. A Critique of the Conservative Party Policy of English Votes on English Matters* and *the English Question*. Chapter 3 of the latter I am including as an appendix. From the former I quote a summary of our arguments:

The Union has changed and changed for good. Devolution within the Union on the basis of distinct nations is a fact of life. The tide of history cannot be reversed. The clock cannot be turned back. Devolution cannot be abolished. The two principles on which it is founded constitute a very sound and sensible way in which to run a state which is a union of nations, which both factually and legalistically is precisely what the

United Kingdom is. Those two principles, the genuine distribution of real power from the centre to constituent parts and that distribution being based on nationhood, now require application to the English nation.

The advantages for the Union will be immense. If English matters were the business of a separate English Parliament as in Scotland and Wales, the British Parliament would then have more time to concentrate on the important national and international matters that are genuinely British matters because they concern the whole of the UK, namely the issues that are reserved to it. Every Union MP would have total equality with each other and would have an undivided interest in the subjects under consideration. Ministers would have greater time to devote to issues affecting the destiny of the United Kingdom and preserving its interests internationally. It would be quite strange of any political party to think that the Parliament of a Union of 60 million people dealing with such huge issues as defence, foreign affairs, international trade, taxation, internal defence against terrorism and immigration can be part time. The new Union Parliament would require a smaller but much more focussed and dedicated membership with the devolved affairs of the constituent nations being dealt separately by the legislative institutions of those nations. Courage, common sense and vision are now required. No political party should fossilise itself through an attachment to a bygone age. All must be open to change within a changed Union.

The resolution of all these issues lies with a two tier United Kingdom legislative system. The Union Parliament will be one tier. The other will be the parliaments of each of the three historic nations of the island of Britain and an assembly for the province of those six of the eight counties of the Irish province of Ulster which are part of the UK. The relationship of the three national parliaments and the six counties assembly to the Union Parliament can take two forms. It can be the same as presently enjoyed by the Scottish Parliament and the Welsh Assembly, namely a relationship of "permissive autonomy" (Alan Trench. *The Dynamics of Devolution. The State of the Nations 2000* page 138). In this relationship, which is our tradition, the UK Parliament is legally empowered not just to strike out any act of legislation of a devolved body but also to abolish the devolved body itself. Our tradition is that Parliament is supreme. The 1998 devolution legislation has not changed that in any way. It might be said to be a uniquely British system of democratic government. The alternative is the federal relationship which would involve a written constitution for the United Kingdom that would legally enshrine the powers of the nations and the province that form the United Kingdom. Either constitutes genuine devolution.

There can be no question that devolution to England on the same principles as devolution to Scotland and Wales, namely its own parliament, will require vision and commitment. However, the devolution legislation of 1998 contained the germ of a very new and very democratic vision of what Britain can be. Historically Britain has been a very centralised state. Power has been excessively centralised for many centuries in London, so much so that since the Act of Union none of the three historic nations of this island effectively had any degree of self-government at all. For 300 years not one of them even had any political and constitutional existence whatsoever. It has been a very unnatural state of affairs. It has been a version of a Union which brooked no challenges to centralised power, when decentralisation could have been a vibrant catalyst for political and cultural innovation. It might have seemed all right in an age of Empire expansion and recurring wars. It is now out of date. There is now a political and cultural vibrancy in this island that demands change. There is a throbbing awareness of distinct national identities rooted in our history which is irresistibly insisting on their own political expression. It is a new form of Unionism we are encountering. It should not be opposed or suppressed. It is no threat. It should be embraced.

Its enactment should be achieved with commonsense. No one wants more government. No one wants more politicians. No one wants to spend any more money on either. Unfortunately the devolution programme of 1998 took a form which carefully avoided anything that disturbed, even threatened to disturb, the existing salaries and ministerial prospects of UK MPs in any way whatsoever. Otherwise it is likely it wouldn't have got through so smoothly, if at all. The parliamentary payroll paid for by the taxpayer was added to by 129 Members of the Scottish Parliament and 60 Members of the Welsh Assembly in the form of salaries, expenses and paid assistants. Yet, even though the MSPs took over the responsibilities of the Secretaries of State for both Scotland and Wales, both Offices were retained as were their place in the Cabinet, and with them their salaries. Likewise the range of Government portfolios available to MPs was retained in full. The devolution proposals made by the Scottish Constitutional Convention and implemented in 1998 were designed to preserve the career prospects of its country's MPs at Westminster and Scotland's ability to legislate in English matters. They were designed both to transfer as much power over Scotland back to Scotland as was feasible with remaining within the Union and to maintain its power and influence within the Union to the maximum. The Members of the Scottish Parliament took over the majority percentage of the constituency duties of the Scottish Members of the UK Parliament, yet the salaries of the latter were likewise retained in full. As the responsibilities of the Members of the Welsh Assembly are not as extensive, the issue for Welsh MPs is not as serious, but it is there.

There is no way this can be repeated when England gets its own parliament. Probably Scotland and Wales got away with it because they make up only 13.5% of the UK population, but with England being 84% it simply will not be tolerated. Neither is it at all necessary. Devolution does not increase the size of the population. The collective number of MPs, Union and English Parliament, must not be increased unless there is a clear and defensible benefit in it for the paying electorate. The cost of government must not be determined by the pockets of the people who govern us. There therefore should be no need to increase the

amount of parliamentary representation, the number of politicians or cost of government. That should be the iron law of all devolution, or at the very least the aspiration and the ideal. The public which foots the bill will not put up with anything else.

There is one standard objection made by those who oppose devolution to England. It is that of the size of England's population. The Constitution Unit expresses it as follows:

An English Parliament would appear to be a neat solution to the fundamental asymmetry in the devolution arrangements. It would create a federation of the four historic nations of the UK. The fundamental difficulty is the sheer size of England in comparison with the rest of the UK. England with four fifths of the population will be hugely dominant. On most domestic matters the English Parliament will be more important than the Westminster parliament. No federation has operated successfully where one of the units is dominant". (The English Question 2006 chapter 11 R Hazell p224).

The objection is two-fold, that within a devolved UK England with its own parliament would be dominant, and on domestic matters, an English Parliament would be more important than the Union Parliament.

The reply to both objections is straightforward. Ever since the start of the Union 300 years ago England for the very reason the objectors provide has always been "hugely dominant". That demographically, economically and geographically is what England is within the Union, yet the Union has been very successful. One can only wonder why it should become a problem now. As for an English Parliament being more important than Westminster on most domestic matters, well that is precisely what devolution intends. That is what devolution is about. It is called the principle of subsidiarity. It is precisely the situation in the devolved Scotland. Mr Blair and Mr Dewar spelt all that out very clearly in their preambles to the devolution white papers. Curiously, the Constitution Unit does not appear to have grasped what is after all the very point of devolution, namely self-government where domestic matters are concerned.

There are two other errors in this Constitution Unit statement which are relevant to the issue before us. It refers to "four historic nations". However, there are only three in the UK: England, Scotland and Wales. The six counties of Northern Ireland which are within the UK do not constitute a nation. They are not even a province. The Irish province of Ulster consists of eight counties, two of which are in the Republic. And the 45% of the six counties who are Catholic consider themselves to be part of the Irish nation. Secondly, English devolution need not necessitate a federal system. As has already been pointed out, an English Parliament would just as easily exist within the devolution system of "permissive autonomy" as do the Scottish Parliament and the Welsh Assembly at present. Permissive autonomy in fact is our tradition (*cf* A Trench. *Op cit.*) An English Parliament established on the same principles of the Scottish Parliament will constitutionally and legally have powers and responsibilities as decided by the Union Parliament, restricted to matters internal to England precisely as those of the Scottish Parliament are restricted to matters internal to Scotland. The supremacy of the Union Parliament over its constituent parts remains, established in law and unchallengeable in law; and its remit will be precisely as it itself has already been decided for Scotland, namely those matters which affect the welfare and security of the population of the Union as a whole.

England is what England is. It is the size it was at the Act of Union. England has always been dominant in the Union. It cannot be anything else. The Union of 1707 was then what it is now, a union of nations, one of which was then and is now four fifths of the Union population; and therefore England has always been "hugely dominant"; and that fact has not stopped the Union being a success for the past 300 years. England is over 60% of the landmass and 84% of the population whichever way anyone twists, turns, interprets and spins the Union. England's dominance in terms of population has never before been put up as a constitutional problem. It is difficult not to conclude that it is now being made an issue of in order to oppose devolution being granted to England.

The Scottish people are in the Union by choice. In their judgement union with their more populous partner has been well worth it. The English people run a very open society. They have made their politics, their media, their financial institutions, their public services and every single one of their commercial institutions available to all-comers on the basis of talent. England has always opened all its doors to people seeking work and opportunities from Scotland, Wales and Ireland, and in recent years from plenty of other countries too. England's wealth, institutions and achievements have always been open to all citizens of the Union. England's size is historically and constitutionally of the very nature of the Union Parliament at Westminster. That is what the Union is.

However, there is another aspect to this objection it which needs to be considered. There is the possible implication that England with its own parliament will be able to exercise more power either over or than the other constituent nations of the Union. However, the reality will be that the very opposite will be the outcome. It will indeed be the establishment of an English Parliament, its powers constitutionally restricted to domestic English matters, which will reduce even further any possibility of English dominance within the Union. England will not be able to interfere in the internal affairs of Scotland and Wales. Their internal affairs will be constitutionally reserved solely to the jurisdiction of their own parliaments without fear of interference not just by England but also by the Union Parliament itself. The outcome will be a very balanced, stable and harmonious Union.

The time has finally come for the distinct voice of the people of England to be heard. The voice of the people of Scotland resounded in its Scottish Constitutional Convention and it was listened to. Its voice now rings out clearly and independently through the instrument of its own Parliament. The voice of Wales is now heard loud and clear in the instrument of its Assembly. It has made the declaration that its Assembly is the Forum for all the concerns of the Welsh nation. Yet England has no such voice, it knows no such existence, its distinct historic identity has been submerged within that of Britishness; and large sections of the British political and academic Establishment are united in their antagonism to England being recognised for what it historically is, the oldest unified nation in Europe, intellectually and culturally among its most vibrant and successful, and being given the political recognition they have been willing, indeed eager, to give to Scotland and Wales.

An English Parliament definitively resolves both the West Lothian Question and the English Question while at the same time it will not only maintain the Union but in fact will renew it, strengthen it and make it relevant in our post 1998 devolution era. It will secure a harmonious and equal relationship of the Union's nations and province to each other and to its Parliament. It will satisfy the requirement that all members of the British Parliament maintain full equality with each other. It provides in other words a sensible and workable form for the policy of English-votes-on-English-matters to take. England will have the same degree of self government as Scotland. We are on the very cusp of a new Union, different from the old as our times now require; but equally strong and vibrant.

However, such an achievement requires general consent. The present government and a large section of the cultural and academic UK Establishment are strongly opposed to any form of devolution for England as a nation despite granting devolution to both Scotland and Wales on the basis of their distinct nationhood. There is a deep-rooted mindset of hostility to England in many quarters.

England is just at the beginning of the process of working out the devolution it wants to have. There is the question of: the location of an English Parliament, its Executive and its Civil Service, possibly even its Judiciary; the size both of an English Parliament and of the Union Parliament; what form elections should take such as PR as in the case of the Scottish Parliament and the Welsh Assembly; what form local government in England will take, be it the counties, or regional assemblies or unitary local councils; how much power can be devolved to them in the interests of a revival of local democracy and local identities, cultures and traditions. With open-mindedness and commitment, learning from what has been experienced and achieved by our fellow citizens in Scotland and Wales, cooperating fully with all UK ministries, the democratic prospects and possibilities are exciting and immense.

The great English mystic, artist, poet and writer William Blake etched a line into one of his engravings: "Liberty shall stand upon the cliffs of Albion". That must be our goal.

Michael Knowles
Campaign for an English Parliament
 January 2008

APPENDIX

FROM THE CEP BOOKLET: *THE ENGLISH QUESTION*

CHAPTER 3

Is the answer to the English Question an English Parliament?

As the previous chapters have shown, proposals such as Regional Assemblies, an English Grand Committee and "English Votes on English Matters" have provided, at best, partial solutions to the English Question. The previous chapter also concluded that an English Parliament similar to that of Scotland's could provide an answer to the English Question. However, the idea of an English Parliament has never been properly investigated or given adequate scrutiny by the leading devolution academics. Academic accounts have tended to dismiss the idea without discussing it, often giving the reason that the idea remains too far from the political mainstream.⁵¹ This chapter will give the idea of English Parliament the scrutiny it has so far not been given.

There are many issues and questions surrounding the idea of an English Parliament, some of which relate to each other and therefore it can be difficult to deal with the issues separately. However, the issues can be put into two broad categories: external and internal. The external issues concern how an English Parliament would affect other institutions, such as the House of Commons, the House of Lords, English local government (including Regional Assemblies), the Scottish Parliament and Welsh Assembly, as well as the European Union. Internal issues are those concerning an English Parliament as an institution in itself—what powers it should have, how it should be funded, what electoral system should be used, and where it should be located. These questions intertwine with each other, but mostly the issues will be dealt with separately.

An unbalanced, federal UK?

The creation of an English Parliament would see the near completion of a “devolution all round” situation in the UK. It is generally accepted that, were such a situation to occur, the UK will have become a federal state.⁵² It is with this fact in mind that one of the main arguments against the creation of an English Parliament is made, that “there is no successful federation in the world where one of the parts is greater than around one-third of the whole. England, with four-fifths of the population would be hugely dominant . . . it would be grotesquely over-balanced, with the English Parliament as important as the Westminster Parliament”.⁵³ This was echoed recently by the Lord Chancellor, Lord Falconer, when he responded to calls for an English Parliament in a speech on devolution. Lord Falconer argued that “[t]he English Parliament would control the greater part of the economic power of the UK. It would be the dominant political force”, and that such a situation would see the break up of the UK.⁵⁴ Similar arguments that devolution would lead to the break up of the UK were made in the process of creating the Scottish Parliament. The Scottish National Party supported devolution to Scotland as a stepping stone towards full Scottish independence, while the Labour Party introduced the plans in an attempt to quell Scottish Nationalism. The Conservatives opposed the plans fearing it would break up the Union. None of the parties could claim to have the definitive answer of how the future would play out, and the same could be said today. While the Lord Chancellor believes an English Parliament would see the end of the Union, the Campaign for an English Parliament (CEP) believes its creation is vital to saving the Union.⁵⁵ With regard to the specific point that there is no example of a successful federation where one part is larger than around one-third of the whole, it must be stressed that Britain’s situation is somewhat unique. It has been in existence for nearly 300 years, the vast majority of this time as a unitary state. England has been hugely dominant throughout Britain’s history because of its relative size and wealth, so England dominating the Union would be nothing new. Indeed, Hazell recognizes that in the United Kingdom today, “England dominates”.⁵⁶ Devolving power to England would not increase England’s ability to dominate the Union. In fact, with many areas of policy such as Health and Education devolved to Scotland and Wales, England’s ability to dominate the other nations of the Union has been reduced. There is also the argument that a situation in which England did not dominate the Union would be ignoring England’s population size (83% of the UK) and would therefore be undemocratic.

Hazell also argues that an English Parliament would be more important than Westminster, but with powers clearly divided between them, it is difficult to envisage how an English Parliament would be more important except in relation to those areas of policy devolved to it. Even where powers are not clearly divided, the English Executive would undoubtedly become a part of the existing *Memorandum of Understanding* and four main Concordats⁵⁷ between the UK Government and the devolved institutions, which help ensure the smooth conduct of intergovernmental relations. A further help to this is that it would be a rare (but not impossible) occurrence for there to be different political parties in power at Westminster and the English Parliament, given England’s majority of MPs at Westminster. On top of all of this, as is the case with the Scottish Parliament, Westminster would remain sovereign and would retain the right to legislate for England in any way it saw fit, although an agreement similar to a Sewel motion would be appropriate.

The effects on Westminster

Another criticism of the idea of an English Parliament is that it will be another layer of government resulting in yet more politicians. The distaste for the idea of more politicians was clear in the rejection of a North East Regional Assembly in 2004. Any plans for an English Parliament would have to make clear that it would not mean more politicians.

Of course, the creation of an English Parliament would see the role of English MPs at Westminster considerably reduced. With the devolution of significant powers away from Westminster, the present number of MPs would not be necessary to carry out the functions of a Parliament that only dealt with specific reserved matters. To be clear on just how significant the reduction in number of Westminster MPs should be, it must first be made clear what powers an English Parliament should have. The answer to this is quite simple: it should have the same powers as were granted to the Scottish Parliament under the Scotland Act in 1999. This would mean that the UK Constitution, Foreign Policy, Defence, Employment legislation, Social Security Policy and Transport safety would remain as matters reserved to Westminster. With Westminster only dealing with these reserved matters, the number of MPs would have to be significantly reduced. The exact number would be difficult to define without research into how much Parliamentary time is usually taken up with matters that would be devolved, but an interesting comparison is with that of other legislatures across the world. The House of Commons, with 646 members, has one MP for every 91,000 people. If Welsh constituencies were brought into line with Scottish and English constituency sizes (one MP for every 70,000 voters), then Wales would have 34 MPs and the House of Commons would have 640 members, one for every 92,000 people. This appears quite a lot compared with, for example, the French *Assemblée nationale* (577 members, one for every 103,200), the Spanish *Congreso de los Diputados* (350 members, one per 114,000) and the US House of Representatives (435 members, one for every 647,000 people).⁵⁸ It is clear that, even without devolution all-round, the House of Commons is a large House. Full devolution to England (and Wales) would highlight the situation further. It would not be inconceivable for the House of Commons, following devolution, to reduce its numbers by at least one-third (to around 426

members,⁵⁹ one for every 138,500 people), half (321 members,⁶⁰ one for every 184,000 people) or perhaps even two-thirds (213 members,⁶¹ one for every 277,000 people). All options would produce a lower MP-constituent ratio than France and Spain, but even the most extreme reduction would not bring the MP-constituent ratio anywhere near the levels of the US.

As well as the House of Commons having a much-reduced role, the House of Lords would also be affected in the same way. Currently, legislation passed by the Scottish Parliament is not subject to scrutiny from the House of Lords, and so it can also be presumed that the same situation would occur with the creation of an English Parliament; legislation passed by an English Parliament would not go to the Lords. There is already an on-going debate about whether the House of Lords should be an (indirectly or directly) elected House, or stay unelected. This debate would not necessarily be affected by the creation of an English Parliament, but it would be certain that the House of Lords would have to be reduced in terms of numbers from the current 693 members.

Local Government and the European Union

Another area that would undergo significant change would be the regional level of government that has evolved rather slowly from the 1960s onwards but rapidly gathered pace after 1997, only to be effectively killed off after the 2004 North East referendum.⁶² The creation of an English Parliament would be an opportunity to disband this tier of undemocratic government, transferring powers either to the new Parliament or back to the tier of local government they were originally taken from. The effect that the creation of an English Parliament would have on local government is therefore an important one, as it would see the local decision-making process brought back closer to the people. As for Regional representation, there is no reason why an English Parliament could not have Committees for each of the English regions to act in the same way as the Scottish, Welsh and Northern Ireland Committees worked in the UK Parliament prior to devolution. There could even be Ministers for each of the Regions within the Parliament.

Leading on from this, an English Parliament would be able to take over the work performed by Regional Assemblies in the European Union, providing the English regions with a stronger, unified voice not only within the EU but also within UK Rep. The lack of democratic legitimacy has hampered English regional efforts to influence the process of the formulation of EU policy both in the EU and within the UK (see chapter 1), but an elected English Parliament would not be constrained so. An English Parliament would also be a much stronger force than individual regions in applying for EU structural funds. Currently, the English regions apply separately for funds and are therefore in direct competition with each other. With London and the South East undoubtedly able to shout loudest, there is a danger for poorer regions such as the North East to lose out. An English Parliament would therefore not only be a stronger lobbying force, but also better placed to distribute the funds more evenly across England. However, if EU structural funds were to decrease, the way the English Parliament was funded would be crucial.

Funding

The issue of how to fund the Scottish Parliament was a contentious issue at the time of creating the institution and continues to be a difficult issue.⁶³ Whoever has to decide how an English Parliament should be funded will have to decide which is more important: UK macroeconomic priorities or fiscal autonomy for the devolved institutions. If the former is perceived as more important, then an English Parliament will be funded in a similar way to the Scottish Parliament by a block grant from the Treasury with the option of varying income tax by up to 3p. If the latter, then the devolution of tax policies would have to occur.

There are arguments both for and against the devolution of power over taxes.⁶⁴ The current situation leans towards the arguments for maintaining UK macroeconomic policy as the top priority, but a federal UK would have to find a more evenly balanced agreement. Central to this would be two things. First, a review of the Barnett Formula to find a fairer means of distributing resources between the nations of the UK, preferably a system based on the needs of each nation rather than the population figures. A change in the Barnett Formula could have a significant impact on the annual resources available to England. If spending per head had been equal across the UK in 2004–05, England would have received an extra £12 billion.⁶⁵ It is clear that, if an English Executive were to be successful in securing a fairer deal for England, the financial cost of an English Parliament would certainly be worth it, even if only a fraction of the £12 billion were to be retrieved. Second, the creation of a formal arbitration mechanism to resolve differences between devolved and central Government, as presently the devolved institutions have no legal right to challenge Treasury decisions. Recent problems have been resolved amicably mostly because the same political party has been in power at Westminster and in Scotland and Wales,⁶⁶ but this will not always be the case.

Location

The location of an English Parliament is an important issue for those who fear that one based in the capital would be “like another form of London dominance”.⁶⁷ There is no reason why an English Parliament would have to be based in London. The CEP does not have a formal policy on where an English Parliament should be located, arguing that it should be for the elected members of that Parliament to decide.⁶⁸ However, the

CEP does argue that an English Parliament could be located in the Midlands or the North of England. If this were to be the case, it “could bring about the biggest transfer of employment, cultural and media power and activity, and political power in all England’s history”.⁶⁹ Such a decision would not harm the capital, as “such an event would save London and the South East from the self destruction its success is threatening it with”.⁷⁰ At worst, London would still not be a loser, as it would retain its position as the seat of the UK Government, “in which ultimate and effective power would remain”.⁷¹ Of course, an English Parliament could be based in London and the UK Parliament be moved to a more central location within the UK.

REFERENCES

- ⁵¹ Sandford and Hetherington, (2005), p 103.
- ⁵² For an excellent explanation of the UK as a federal state, see Darren Foster, *England Disadvantaged: Time for the Secret People to Speak* (Greenwich: University of Greenwich, 2005) pp 29–36.
- ⁵³ Robert Hazell, *An Unstable Union: Devolution and the English Question* (State of the Union Annual Lecture, London: The Constitution Unit, 2000) p 8.
- ⁵⁴ Speech by the Lord Chancellor, Lord Falconer of Thoroton, at the ESRC Devolution and Constitutional Change Programme Final Conference, (London, 10 March 2006).
- ⁵⁵ <http://www.thecep.org.uk/questions.shtml> (see answer to question 16), 26 April 2006.
- ⁵⁶ Robert Hazell, (2006b), p 37.
- ⁵⁷ *Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, Cm 5240 (London: The Stationery Office, 2001). The Concordats are: the Concordat on Co-ordination of European Union Policy Issues; Concordat on Financial Assistance to Industry; Concordat on International Relations; Concordat on Statistics.
- ⁵⁸ See Rogers and Walters, (2004), p 19.
- ⁵⁹ A UK Parliament of approximately 352 English, 39 Scottish, 23 Welsh and 12 Northern Irish seats.
- ⁶⁰ A UK Parliament of approximately 265 English, 30 Scottish, 17 Welsh and 9 Northern Irish seats.
- ⁶¹ A UK Parliament of approximately 176 English, 20 Scottish, 11 Welsh and 6 Northern Irish seats.
- ⁶² For a brief history of the development of regional government up until 2004, see John Tomaney and Peter Hetherington, *English Regions: The Quiet Regional Revolution?* in Alan Trench (Ed), *Has Devolution Made a Difference? The State of the Nations 2004* (Exeter: Imprint Academic, 2004).
- ⁶³ See James Mitchell *et al*, *Scotland: Maturing Devolution*, in Alan Trench (Ed), *The State of the Nations 2001: The Second Year of Devolution in the United Kingdom* (Exeter: Imprint Academic, 2001) pp 65–68.
- ⁶⁴ See Bell and Christie, (2001), p 149.
- ⁶⁵ Based on figures from HM Treasury (2005), p 113 and compared with population figures on p 134.
- ⁶⁶ See Bell and Christie, (2001), pp 147–151.
- ⁶⁷ Robert Hazell, (2000), p 8.
- ⁶⁸ Campaign for an English Parliament, Critique and Proposals: *Contribution of the Campaign for an English Parliament to the Liberal Democratic Party’s Consultation Paper on Devolution and Local Government (paper No 75)*, (2005) p 15.
- ⁶⁹ *Ibid* p 15.
- ⁷⁰ *Ibid* p 15.
- ⁷¹ *Ibid* p 15.

Supplementary memorandum submitted by Campaign for an English Parliament

The Campaign for an English Parliament requests the opportunity for its Chairman Scilla Cullen and Head of the Media Unit Mike Knowles to attend and present oral evidence before the Justice Committee on the matter of *Devolution. A Decade on*.

The Campaign for an English Parliament was established in 1998 in response to the devolution of powers to Wales and Scotland and its aim is to gain parity with Scotland and therefore obtain for England the same degree of devolution enjoyed by Scotland. The Campaign for an English Parliament has argued against regionalisation and has been closely engaged with the Constitution Unit in debate on the form devolution in England should take. In August 2004 the CEP jointly set up the English Constitutional Convention.

We understand that Professor Robert Hazell has submitted evidence to the Justice Committee that recommends an English Parliament as the only complete solution to the West Lothian Question but suggests there is no public enthusiasm for it. May we draw your attention to opinion polls that indicate that this

statement is not in fact up to date for example the BBC poll in January 2007 which found 61% in favour of an English Parliament and an ICM poll in April 2007 which found support for an English Parliament at 67%.

Enclosed are copies of *The Constitutional Case for an English Parliament, Answering the English Question and Devolution for England*—a critique of the Conservative Party Policy “*English Votes on English Matters [not printed]*”.

Victoria Newman

November 2008

Further supplementary memorandum submitted by the Campaign for an English Parliament

I am a member of the CEP and they have asked their members to write to you on the subject of an English Parliament. As the Chairman of the Justice Committee, your brief, I assume, will be to consider the fairness of the existing situation, i.e. that England is the only one of the four countries of the United Kingdom not to have an assembly or a Parliament and must, apparently, simply consider the overall UK Parliament sufficient even though English only issues are not debated.

I believe that it is absolutely necessary in the interests of fair play that the English have some kind of individual assembly or Parliament. It is not enough to say, oh well, England is represented enough, it is the chief country in the Union and the richest of the four nations and it doesn't matter if we are not separately represented or have anywhere to discuss English only issues. It does matter.

The arguments dismissing England's case are long overdue for revision. Devolution in Scotland and Wales is proceeding apace and the English position is invidious, particularly when Scottish MPs can vote on matters affecting England and it has become unjust. The other three countries are being allowed free rein to discuss and improve the quality of life of their populations and we are dropping back. Why is this freedom to improve our lot being curtailed? Presumably, the question is what to do about the stable door now the horse has bolted.

The situation is so obviously unjust that I am surprised that MPs can live with it and let it go by the board month after month. It is absolutely necessary for this situation to be debated by Parliament and a decision made to balance the books. What other solutions are there? The problem appears to be that there is no will to do this and this is another question which needs to be answered. Why is there no will to do this or to have a debate in Parliament especially when the polls would indicate that 60% plus of the population want an English Parliament?

I believe that this situation has come about inadvertently in the sense that the Government did not expect a campaign for a English Parliament to arise and it has arisen because of a deliberate advantage given to Scotland by Tony Blair in the early days of New Labour in order to win votes. It is very apparent that the possible effects of Scottish devolution were not adequately thought out at the time and we have the horror story approaching of the possible break up of the Union. What happens when this catastrophic point is reached? What need will we have of a UK constitution then?

History will not thank New Labour for breaking up the Union. Presumably, judging by the lack of action going on, most MPs who do not want to see Scotland lost in Europe think that it may just be a matter of letting sleeping dogs lie long enough for the whole problem to resolve itself but it may not work out that way and the Union needs protecting now.

The solution to the silliness which has prevailed and produced this devolutionary mess is to have an English Parliament in order to rectify the situation. As things currently stand, the English are beginning to wonder about the fact that they seem to be doing most of the funding of devolution whilst losing their own place in the scheme of things. They could be forgiven for feeling rather used. There is a constant downgrading of Englishness and the question of why this is happening is also beginning to press for an answer.

English history is heroic and its achievements something to be proud of but we now have the situation where the next battle for, English freedom, justice, democracy and sheer decency is being ignored by the UK Parliament itself. Why is it so many people are unable to countenance an English Parliament? They haven't read their history and it's time some of them did.

An English Parliament is the only way to put matters right. Scottish devolution cannot now be taken away even if it is felt to have gone too far. This would now be a political impossibility. However, the situation cannot just be left to drift. Justice must be seen to be done and, hopefully, this will strengthen the Union and its future evolution. Let us hope no political party ever makes such a mess again.

Mrs A C Smith

January 2008

Further supplementary memorandum submitted by the Campaign for an English Parliament

We are members of the Campaign for an English Parliament, and have been informed of an inquiry undertaken by the Justice Committee of the House of Commons, under the above title.

As registered English voters, we are extremely concerned at the unfairness of *The English Question*, whereby Scottish MPs can vote on all English matters, but English MPs cannot vote on most Scottish matters. This entirely undemocratic and totally unacceptable. The proper solution to the “West Lothian” question is to have an English Parliament, with the same devolved powers as the Scottish Parliament.

We are also outraged at the unjustifiable benefits and privileges enjoyed by the people living in Scotland, Wales and Northern Ireland, which are heavily subsidised by English taxpayers.

We have enclosed a list of examples of this shocking unbalance within the UK, and feel the English people must have their own Parliament, to safeguard their standard of living, which seems to be rapidly plunging below that of the rest of the UK, and also to safeguard their national identity, which is in danger of being eroded with the threat of Regional assemblies still hovering in the background.

From a personal point of view, life seems to be much harder, more worrying, financially, for the elderly, if you reside in England. This is a disgrace, and having an English Parliament would redress the imbalance.

Jean and Eric Wood

January 2008

APPENDIX 1

DID YOU KNOW... WHY ENGLAND NEEDS A BETTER DEAL

- English pensioners needing long term nursing home care invariably have to sell their homes to pay for it—in Scotland such care is free.
- The better public services enjoyed by the people of Scotland and Wales are paid for by a big subsidy from England’s taxpayers.
- English NHS patients have paid increased prescription charges since 1 April 2007—whilst in Wales such charges were abolished.
- English university students have to pay top-up fees of £3,000 pa. Scottish students do not pay such fees even if they go to an English university.
- English pensioners only get “free” local off-peak bus travel—Scottish and Welsh pensioners get “free” national bus travel any time of the day.
- An ICM poll for the *Sunday Telegraph* in November 2006 found that support for an English Parliament was 68%.
- The United Kingdom Government spends £1,503 more on every man, woman and child in Scotland than it does on the people of England. It spends £904 more on everyone in Wales and £2,322 more on everyone in Northern Ireland. No wonder they get better public services than the people of England.
- In March 2007 even Tony Blair pointed out that Scotland was getting an annual subsidy of: £11,000,000,000 + . That is more than Labour have spent on new hospitals in 10 years.
- England needs its own parliament to fight to ensure its people are treated fairly and equitably. It is the only way to redress the current imbalance within the United Kingdom.
- English schools are required to teach “Britishness”—those in Scotland, Wales and Northern Ireland are free to teach about their own national identity.
- English NHS patients do not get equal treatment with the rest of the UK patients in Scotland and Wales have access to better and more expensive drugs paid for by the taxpayers.
- The ICM poll for the *Sunday Telegraph* found that 60% of those polled in England said the higher public spending per head in Scotland was “unjustified”.

Memorandum submitted by The Campaign for the English Regions

THE CAMPAIGN FOR THE ENGLISH REGIONS (CFER)

CFER was established as a campaigning organisation with a firm belief that the English regions would not realise their full potential without some form of devolved government. We believe that the present centralised nature of London based government limits effective policy development, implementation and civic engagement in a wide range of circumstances across the regions.

Such limitations could be addressed by transferring powers from the centre to regional and local government as well as securing democratic oversight and enhanced accountability over central government institutions operating within the regions. In arguing this case CFER remains strongly supportive of Devolution to Scotland, Wales, Northern Ireland and London.

We recognise that the distinctive features of regional governance arrangements in the English regions and prevailing political realities will necessitate a different and evolutionary approach in order to close the huge democratic deficit that currently exists in England.

TACKLING THE ENGLISH QUESTION

The present political context presents an opportunity to resolve the unfinished business of the devolution project as a whole specifically the outstanding “English Question”. There is an urgent need to address the constitutional and political imbalance that currently exists between England and the rest of the UK. In particular action is needed to clarify the relationship of England to the rest of the UK and to address the democratic deficit and institutional weaknesses of individual regions.

The English Question needs a solution, which recognises England’s complexity and economic, demographic and geographical significance within the UK, which avoids the potentially divisive and centralising proposal for an English “national” parliament.

An English Parliament would create an unbalanced constitutional settlement—a problem first recognised by William Gladstone when considering the implications of Irish Home Rule in the 1880s. We see present governance arrangements for the English regions as being overwhelmingly dominated by the nexus of power and decision making based in the Capital. This centralisation means it is difficult for Whitehall to devise and implement policies tailored to local needs and for the regions and the local to influence the centre. We believe an English Parliament would not resolve but merely replicate this problem in a different form. In our view devolution in England should be based upon the building blocks of the regions.

CFER believes that the solution to the English Question lies in empowering the English Regions and their local communities by making existing administrative decentralisation more directly accountable and understandable to the citizens it serves and within regions more local. Decisions about devolution should be taken in the round as part of a wider move to modernise the political system. The piecemeal approach to parliamentary reform, devolution, regionalisation and local government has resulted in a patchwork of arrangements, which is neither equitable, understandable, effective or sustainable.

In adopting this solution there would need to be machinery in place to periodically give a collective English view(s). Where there are cross cutting UK or England-wide matters these could be resolved by bringing the nine regions together (including London) to operate as an English partnership expressing a single voice where appropriate. In relation to UK matters they could meet together in a “Council of the Isles” type structure, which would include the Devolved Nations and the English regions. It could establish memorandums of agreement between the devolved nations and regions and monitor and review cross border UK-wide policy. This might include for example strategic aspects of planning, transport, economic development, inward investment, international trade and environmental concerns.

We are not advocating a Federal structure, rather a Unitary State model in which macro economic policy, defence, international relations, social security etc. remained the responsibility of central government whilst domestic affairs would be delivered, to varying degrees, by devolved arrangements to the Nations and regions based upon the specific political and economic realities of each part of the UK.

In setting out our approach we recognise that other alternatives have been promoted to address the “English Question”. For example, some have advocated the adoption of city or other sub regions as the building blocks for devolved government working alongside local government. We do not see these approaches as mutually exclusive but rather both are integral parts of an emerging multi-level form of governance.

From a Whitehall managerial and logistical perspective it is difficult to deal with more than eight or nine points of contact with the centre. The base for such contacts is now firmly established through Government Offices for the Regions, which currently incorporate around 10 Government departments. There are certain strategic issues which geographically and in terms of economies of scale and expertise demand a regional approach. In many policy areas however, such strategies are best delivered at a sub-regional and/or local level with the regional tier addressing strategic cross cutting issues and providing an overall framework and priorities within which regional strategies can nest.

Devolution as a whole has evolved across the UK in an asymmetric fashion, reflecting national identities and political realities at the time of change. We would argue in relation to the position of the English regions that the present arrangements are unbalanced across the UK as a whole and if this is not addressed, then, in the long run the situation is likely to prove politically unstable.

One key problem in explaining this dilemma has been the sheer diversity of England and the absence of a strong English identity and consensus that was reflected in political pressures of a kind which re-ignited the demand for devolution and separation in Scotland and Wales in the 1960s.

In England political and geographical identity is expressed more powerfully at multiple levels in terms of localities, rural communities, towns, cities and regions. There is no consistent pattern of identity(s) across England rather there are overlapping levels of individual and collective awareness. Some regions have stronger regional identities than others (Yorkshire and Humber and the North East) but there are also strong identities at other levels.

Some in central Government have cited the experience of London government as the way forward with an elected Mayor and Assembly and a unitary tier of local government. However we are not sanguine about the transferability of this sort of regional or city region model of elected government to elsewhere in England. It is important to recognise that London is a contiguous urban area without having to deal with complex urban-rural relationships. Moreover, London is almost unique across England in having two clear and distinctive sets of identity with a shared commitment as Londoners and equally strong identities associated with London Boroughs and neighbourhood communities. Across many of the proposed city regions, such a duality is not present making it difficult for local politicians to forge a political community which would recognise common interests and geographical identity. Moreover some commentators have failed to recognise the unique political position of the London Mayor representing six million people, the largest political constituency in Western Europe, located at the heart of an international city, geographically proximate to the corridors of power and with substantial infrastructure and investment opportunities. It is difficult to envisage how this successful, high profile, Mayoral role could be easily replicated elsewhere in England. Rather we take the view that to achieve the same level of political clout and ability to mobilise investment opportunities on a similar scale would require operating at the higher geographical scale of the region. Even then it would be difficult to match the performance of the London Mayoral system given its unique position.

The arguments for devolution however, are not based solely on whether or not there is a sense of national, regional or civic identity. There are also important questions surrounding the geographical scale at which the strategic policy formulation and implementation should take place. In recent decades, for example, there have been powerful forces of decentralisation at play in both the public and private realms. Increasingly, government departments and their agencies have decentralised activities and management responsibilities to the regions either through the Government Offices for the Regions or via non-departmental public bodies and other agencies. Central government has also experimented with restoring some limited powers and freedoms and flexibilities to local government and the Lyons Review has raised the possibilities at some stage of enhancing local taxation.

The regional governance arrangements established and developed since 1997 (Government Offices, Regional Development Agencies and Regional Assemblies) have seen a strengthening and expansion of their roles largely based on the decentralisation of powers and responsibilities from the centre not sucked up from local government. However, while local authorities and stakeholders have been given a seat at the table on some of these structures it remains the case that central government is still in the driving seat and that indirectly nominated bodies are not the most transparent and accountable. Moreover, significant areas of public expenditure at regional level reside outside the ambit of the Government Office and RDA in policy areas such as Health and via non-departmental public bodies.

Further, political, business and community leaders in the English regions are becoming increasingly aware of the relative advantages available to the devolved nations in terms of their ability to pass primary and secondary legislation, the existence of annual block budgets, access to a single unified civil service, Secretaries of State in the Cabinet, Regional Development Agency budgets of two to three times the size of their English equivalents, higher levels of *per capita* public expenditure and a diluted English voice in EU negotiations particularly surrounding regional matters. These comparisons are increasingly being made against the recognition that the populations of typical English regions such as the West Midlands and Yorkshire and Humber, are of a similar size to that of Scotland (5 million) and larger than that of Wales (3.5 million).

We recognise of course, that there are major and distinctive economic, social, and environmental problems, which necessitate a devolved approach and additional public expenditure and further that there exists a sense of nationhood not present to the same extent in England. Yet it could be argued that the present balance of powers, responsibilities and financial benefits in Scotland and Wales are disproportionate in comparison with the position of the English regions representing in total some 85% of the UK's population.

CFER supports Devolution and therefore would not wish to see any retreat from the present arrangements in order to secure greater equity for the English regions even if this were politically possible. Rather it is our contention steps should be taken to enhance the political voice and democratic accountability of the English regions, which would serve to strengthen their relative position and the Devolution project as a whole. We believe our suggested approach would achieve these objectives without the necessity of fundamental changes in current political or administrative arrangements.

In the following sections we set out what we believe to be a pragmatic and politically robust model for the development of the English Regions and which we believe could be adapted over the course of time in response to a greater demand for Devolution. In assuming the potential of this model as a vehicle to address the "English Question" we have devised a number of criteria, which are set out below. The application of these criteria to our proposal is set out in the conclusion.

DEVOLUTIONARY CRITERIA

Genuine devolution must demonstrate that it is across the board and not simply where it is politically expedient to do so. CFER suggests that a number of essential criteria must be applied to determine the basis of genuine devolution. In response to recent developments, including the 2006 White Paper and the Sustainable Communities agenda, we pose a number of questions designed to shape and test the basis of a devolution settlement for England:

1. *How is accountability built into any new forms of Governance?*
2. *Is there greater co-ordination and capacity to devise policy and secure its implementation?*
3. *Does any specific proposal bring government closer to the people?*
4. *Will there be a reduction in the quango state and enhanced accountability and control?*
5. *Will it enhance opportunities for economic regeneration, civic renewal and more active political engagement?*

RESEARCH BACKGROUND AND THE WAY FORWARD

The present regional governance arrangements in England have evolved gradually over the past decade reinforced by various central government measures. There have been question marks over the complexity, transparency, accountability and effectiveness of regional governance arrangements, which has been the subject of a number of official reviews and consultancy studies.

The following section summarises some of the main conclusions of the various regional reviews, considers outstanding issues which need to be addressed and summarises one emerging model of effective policy making and implementation which at the same time offers a potential vehicle for more democratic regional governance.

In addressing the questions we can draw on the findings of various recent studies and enquiries.

RECENT FINDINGS ON REGIONAL GOVERNANCE

- The House of Commons Communities and Local Government Committee (2007) emphasises the continuing importance of the regional level in public policy together with the importance of working alongside activities at sub-regional and local levels.
The regional dimension is seen as particularly significant “*in relation to issues such as environment, resilience and strategic planning for housing, industry and transport*”.
- In seeking to achieve improved effectiveness and credibility of the regional governance framework (GO, RDA, RA) the House of Commons report argues that there needs to be greater local accountability and more dialogue with the centre.
- *The Ove Arup Evaluation of the Role and Impact of Regional Assemblies for CLG* (2006) concludes: “*In general, the recent round of regional plan making can be seen as a success. In particular the extent of the evidence base is much better . . . It is also clear that regional planning and transport is now a much more central policy function . . . The new round of RSS takes a pragmatic and functional approach to sub-regional planning breaking away from the old county based sub-regions to functional sub-areas and city regions. These sub areas respond better to the concept of city regions as economic drivers and allow the RSS to include more responsive spatial drivers.*”
- In terms of the co-ordination, integration and alignment of other regional strategies (for which there are over 20) the Regional Assemblies and their partners have made considerable progress in recent years in establishing strategic priorities for their regions which have provided a framework within which strategies can be prepared, aligned, co-ordinated and implemented. The Warwick University study for the English Regions Network: *Integration of Regional Strategies* (2005) found that this involved use of Sustainable Development Frameworks or more frequently Integrated Regional Strategies or Frameworks. This has entailed a variety of approaches.
- Apart from a smaller number of core strategies (eg RES, RSS RTS), which have been integrated through the Treasury mechanisms, the majority of regional strategies have been dealt with by central government on an individual case-by-case departmental basis. They have not been viewed in Whitehall as part of a group of co-ordinated strategies brought together at regional level despite the activities of Regional Assemblies in this regard.
- In relation to the core strategies it is generally acknowledged that considerable progress has been made in securing more effective co-ordination and integration in recent years with further encouragement provided by the Regional Funding Allocation Process.

- The National Audit Office Independent Performance Assessment of Advantage West Midlands 2007, for example, comments that: “*AWM has worked proactively with both the Government Office West Midlands and the West Midlands Regional Assembly on the West Midlands RSS . . . The RSS and current RES are very strongly aligned . . . there is a clear understanding of the priorities flowing from both documents . . .*”
- Across all regions Ove Arup come to similar conclusions. “*The RFA task set was a challenging one for the regions. It tested the resolve of regional partners to work together . . . the process also resulted in greater understanding of the importance of a robust evidence base to underpin investment strategies. In most regions a productive dialogue, joint working and a greater consensus was forged between senior decision makers in the region on shared regional investment priorities. The RFA process enhanced integrated working between senior housing, transport, economic development and spatial planning professionals with evidence in most regions of a more integrated strategy for main regional investment priorities . . .*”

So much done. So much left to do

A number of regions are currently considering building on what’s gone before by bringing together in a more formal partnership the key regional players. This will extend the strategic planning and implementation agenda beyond the present RFA boundaries (housing, economic development and planning) to encompass a wider range of strategies and policy areas. In the case of the East of England and East Midlands, Policy Boards involving leading politicians and Chairs of key organisations have been established to oversee determination of strategic priorities and co-ordination and alignment of strategies. This has been paralleled by Delivery Boards involving Chief Executives addressing the planning programming and co-ordination of funding regimes and implementation through the relevant agencies at regional, sub-regional and local levels.

In all of this less attention has been paid to the pivotal role of Government Offices. Through their links to the Centre, their own regional activities and their remit following the recent Government Office Review. They are the key to Government Department activities in the regions as well as bringing to the table the non departmental public bodies and agencies which have a significant regional impact. The success of the English regions in the future depends on a more co-ordinated and transparent role for them with other key regional agencies.

REMAINING CHALLENGES FOR THE REGIONS

While the above discussion suggests considerable progress has been made in developing more effective regional working, much remains to be done. There needs to be, for example:

- A regional institution/partnership structure which is capable of more effectively representing the voices of the region in their many and diverse forms whilst at the same time working with democratic representatives and their institutions.
- Further development of regional working across a wider range of partners, strategies and programmes (including central government) in a way, which provides for a greater degree of democratic accountability without creating additional layers of bureaucracy, delays and expense. In particular further engagement of economic, social and environmental partners in the process of regional working and decision-making.
- A clear vision for the future development of the region which incorporates the relevant strategies, funding regimes and partners and sets clear priorities; seeks their co-ordination and alignment; maximises public/private sector investment and leverage.
- The achievement of “value for money” in regional activities by setting clear strategic outcomes for the region involving all the key institutions with the aim of contributing to both central government and regional objectives.
- The facilitation of cross cutting regional themes such as Localisation, Sustainable Development and Climate Change.
- Work towards an agreed regional performance management framework covering all the relevant strategies and linked where appropriate to sub-regional strategies, LSPs etc.
- Development of shared research, intelligence and data to provide a consistent evidence base including performance indicators for application across strategies and funding regimes.
- Utilisation of statutory RSS and other implementation plans to co-ordinate investment phasing, timing and roles and responsibilities of key agencies; development of implementation “task” groups including use of implementation delivery chains.
- Certainty that through regular dialogues implementation plans developed by sub-regional partnerships (including city regions) and LSPs/LAAs are consistent with those being developed at the regional level.

There also still remains a related set of questions that need to be addressed about the gap that exists between the electorate and machinery of Government in the Regions and what devolved Government is doing for other parts of the Union.

For most people in England there is little understanding or ownership of the plethora of unaccountable quangos, executive agencies and non-departmental public bodies, which now constitute Regional Government in England.

WHERE NEXT?

Over the past decade the government has consistently taken the view that within the parameters set by the three key regional institutions that regions should be allowed to develop their own regional governance arrangements. The evidence reviewed earlier suggests that in many respects the regions are gradually addressing the “Remaining Challenges” listed above.

Drawing on existing experiences and debates taking place in the regions it is possible to sketch out an approach, which addresses many of the current policy concerns about regional governance and which is also sufficiently robust to accommodate various forms of enhanced democratic accountability.

A REGIONAL PARTNERSHIP BOARD

CFER still believes that the ultimate solution to the governance issue (and the issue of evening out growth) is directly elected regional government able to take a strong, strategic steer in matter pertinent to their region. In the interim CFER would welcome moves to establishment of a Regional Policy or Partnership Board to address the challenges identified.

Its purpose would be to provide strategic leadership providing a framework for public and private investment and addressing the key economic, social and environmental challenges. Such a body would include the leaders of the key regional institutions alongside democratically elected representatives. It could be an adjunct to an existing Regional Assembly or be an independent regional partnership made up of the key regional institutions.

Both models could accommodate additional democratic representatives from the EU, House of Commons and/or House of Lords, and local authorities. Key stakeholders groups such as business and the voluntary sector would also be part of the decision-making framework reflecting the continuing important contribution they have made to the work of Regional Assemblies.

Such a Board would establish a clear vision for the region and provide a framework within which all the strategies and funding regimes would nest. It would set the strategic framework for the Region ensuring alignment of RSS, RES but also broadening to cover a wider range of strategies. It would prioritise investment and resource allocation to achieve the shared vision utilising a single strategic performance management framework.

The Partnership Board (Appendix) would comprise, by way of example, Assembly Chair/Vice Chairs and the Chair/Chief Executive of the key regional agencies such as the RDA, Strategic Health Authority and the Learning and Skills Council. It would also include representatives of the private and voluntary sectors.

Finally, and perhaps most crucially, in order to deliver mutually supportive regional and sub-regional plans, the geographical dimension of place would be secured through appropriate representation drawn from each city region and LAA “locality”.

There would also be a Delivery Board of Chief Executives of relevant agencies and local authorities. Specific policy themes would be developed and delivered via Task Groups or Policy Partnerships (eg Planning, Transport, Housing, Climate Change, Community Cohesion and Health) with direct representation from all relevant strategic partners,

Delivery Board members would be expected to represent the collective issues and interests of the members of their respective partnerships/agencies but also operating within the context of the Regional Partnership Board’s vision and priorities. The Government Office would play a key-facilitating role in this regard and in monitoring the contribution of Government Departments and agencies in the implementation phase.

To maximise effectiveness, the GO Regional Director would attend meetings of the Regional Partnership Board in order to strengthen the regional/national lines of transmission and ensure the necessary input of Departments and agencies to regional priorities. The GO itself would discuss its own Business Plan and priorities alongside the other key institutions on the Partnership Board. In this way the GO could most effectively deliver the targets set for it in the Government Office Review.

DRAWING THE CENTRE INTO REGIONAL ISSUES

To further strengthen scrutiny and accountability in the English Regions it is suggested that steps are taken to increase the engagement of Parliament in English regional affairs.

Concern is expressed in many quarters about the lack of clout of the English Regions which is linked to a lack of understanding and interest regional issues by Whitehall and Westminster. In the case of MPs they understandably focus on local constituency matters and invariably national issues with little attention to regional matters. From a Parliamentary perspective what happens at a regional level, and the decisions that are taken there, receive relatively little attention or scrutiny. When, infrequently, MPs do get involved in a regional issue it tends to be after a decision has been made and they are leading or participating in a local reaction to it.

Government recognises that at it is at the Regional level that some of the most crucial issues need to be addressed—whether it be transport, environment, productivity or skills. To this CFER would add decisions about the future of sub regional working and local government, which need to be taken on a coordinated rather than ad hoc basis.

Historically an English Grand Committee has addressed regional issues in Parliament. However, it has not had the necessary status and clout and focus to provide an effective scrutiny of the government's activities in the regions. Meeting only periodically, it has never provided regular and systematic assessments of regional affairs between and within the regions. So, in addition to what we have proposed there needs to be a more formal level of parliamentary scrutiny and involvement in regional affairs. This could be provided through a new House of Commons Select Committee for the Regions and/or Regional members of a reformed Second Chamber having dual Parliamentary and Regional leadership roles.

SELECT COMMITTEE FOR THE REGIONS

A HOC Select Committee for the English Regions with a remit to oversee their relationship to other parts of the Union, the preparation, content and implementation of regional strategies and funding programmes, alongside monitoring relationships between Government departments (and their agencies) and the regions. It would have the power to call to account Government departments, regional (GO, RDA, RA) and local institutions in relation to the co-ordination and delivery of regional, sub-regional, city region and related local strategies (*viz* LSPs). Attention would focus as much on joined up approaches within Whitehall as in the regions. There would be a concern with “value for money” and the three “Es” in the development and implementation of regional policies and programmes.

The Committee would call evidence from across Whitehall but also involve those at regional and local levels concerned with delivery. It would consider the work of individual regions but also cross cutting themes. Under our proposals, MPs would have the opportunity to participate in the proposed Regional Policy Boards and also in the work of the Select Committee thereby providing a clear role for Parliament in scrutinising the executive.

SECOND CHAMBER REGIONAL BOARDS/COUNCILS

Directly elected Regional members of a Reformed House of Lords could be constituted as a Regional Board or Council to oversee all Regional Working and thereby provide a directly accountable executive with similar powers and responsibilities to a Select Committee. This approach would provide each region with real direct democratic accountability, members who had a genuine regional remit and identity.

CONCLUSION

This paper set out a number of essential criteria which we argue need to be applied to determine the basis of genuine devolution. CFER's preferred solution to the dilemma of the “democratic deficit” in the English regions would be through the establishment of powerful directly elected regional assemblies. However, in the light of the North East Referendum result and present political realities, we are proposing a pragmatic and robust model. The approach is capable of being adapted to the particular circumstances of each region and would not involve any legislative changes or entail major restructuring of regional and local institutions and administrative arrangements. The approach would build on what has or is being put in place. From a democratic perspective it would provide a stepping-stone to further changes strengthening regional democratic accountability.

Based on our Devolutionary criteria we would assess the model as follows:

1. *Accountability built into new forms of government*

The model would bring to the table all the key public institutions responsible for regionally relevant public expenditure either directly through membership of the Policy Board or indirectly via the Government Office.

Through the participation of local government via the Regional Assembly and the representation of MPs and MEPs there would be strong democratic participation. If a regional element were introduced into the reform of the House of Lords, a directly elected element would be possible.

Signing up to, and participating in, the preparation of a regional vision and its implementation would tie all parties into a common commitment to delivery of the region's agenda. Government departments and agencies would be engaged and monitored via the direct involvement of the Government Office and the Scrutiny Role of the Treasury Select Committee for the Regions. Public, private and voluntary sector stakeholders would participate in the processes via the Regional Assembly.

2. *Greater co-ordination and capacity to devise policy and secure its implementation*

The participation of all the key public sector institutions would make possible the co-ordination and alignment of all relevant regional strategies (we estimate there are around 20) and funding regimes through the Regional Delivery Board and would make possible the preparation of regional/sub-regional delivery plans. This would include as important building blocks the Regional Economic Strategy and the Regional Spatial Strategy Implementation Plan—a statutory document. These programmes could either be delivered directly by the agencies concerned or via commissioning.

Such a structure would facilitate the planning of research data collection and its pooling, and the development of a shared regional performance management system. In many policy areas it would be possible for the first time to bring together programmes and delivery bodies in devising and implementing specific policy themes and plans. Financial and project management would be enhanced by a shared agenda and collaborative working through Task Groups. The involvement of elected representatives (directly and via a Select Committee) would strengthen public scrutiny and the attainment of value for money.

3. *Bringing government closer to the people*

By definition it is difficult to engage citizens in strategic decision making at this level. However, the active participation of elected politicians from the region at both local and national levels would serve to enhance democratic engagement. The introduction of a regional element in a revised House of Lords would provide a means of introducing politicians with a direct electoral mandate. Members of the European Parliament could also potentially fill such a role.

By bringing all key regionally relevant public expenditure decisions together under the Regional Policy Board, the present hidden and complex decision making apparatus would become clearer, simpler to understand, easier to explain to the general public and attract greater attention from the media.

The Policy Board could adopt a proactive stance by, for example, establishing or working with existing Citizens' Panels involving the Youth Parliament and other similar participative bodies across the region. It could establish concordats or partnerships with key institutions such as the voluntary sector etc. establishing *modus operandi* surrounding policy development and consultation. With enhanced powers at regional level, politicians would be more willing to engage in regional affairs, generate debate and involve the media who in turn would have a greater incentive to provide coverage.

4. *Reduction in the Quango State and Enhanced accountability and control*

Following the recent Review of the role of Government Offices, the GOs are now charged with the responsibility of engaging NDPBs and other government agencies in actively contributing to the delivery of regional priorities. In the past, Quangos have not always regarded their engagement in the preparation and delivery of regional strategies as of the highest priority and it has proved difficult for Regional Directors to exercise influence on this matter via the relevant Government Departments and/or NDPB Boards.

If such Government agencies were formally part of the processes of the Regional Policy and Delivery Boards it would prove much more difficult to avoid participation in the determination of regional priorities and to renege on publicly made commitments given as part of a shared regional vision and delivery plan(s) process.

Moreover by engaging the Government Office directly in the Regional Policy Board processes the GO could engage in an annual consultation exercise about the content of its own business and delivery plans. While the ultimate decisions on individual programmes would rest with Government departments, the regional aspects of their activities including their regional strategies could be planned alongside those of other regional partners.

5. Enhanced opportunities for sustainable development regeneration, civic renewal and more active political engagement

By considering sustainable development issues (economic, social and environmental) under a single agreed regional vision and set of objectives, there would be an opportunity to develop a common understanding of regional problems and opportunities and to mobilise resources, maximising public/private investment and derive economies of scale and scope. Emerging policy issues such as climate change could be tackled in a cross cutting manner. Closer collaborative working could enhance the leadership role of the RDAs through their Regional Economic Strategies across a wider range of policy areas and by influencing expenditure decisions and delivery plans of a greater number of agencies. More comprehensive co-ordination of public expenditure allied with publicly agreed implementation plans would provide greater certainty for the private sector.

By providing a single political and executive focus for addressing regional strategic issues, it would be much easier to communicate and engage with the general public on the regional agenda. Specific forums could be established to secure the views of citizens and their active participation in tackling key issues such as urban renewal, climate change, social exclusion, etc. A regional body with the necessary expertise and resources could foster a greater emphasis on localisation and new forms of collective action, for example, promotion of networks of social enterprises, addressing region-wide economic, social, environmental or rural issues, the establishment of regional unit trusts or bonds to raise local capital to bridge funding gaps in the development of strategic regional infrastructure.

In conclusion we believe much progress has been made in the past 10 years through partnership working to ensure that regional governance arrangements are working successfully in the English regions. The research evidence reviewed in this paper suggests much progress has been made whilst there remain questions surrounding transparency, accountability, co-ordination and democratic engagement.

Given present political realities, we believe the time is right to move forward building on existing structures but strengthening democratic accountability and policy co-ordination and delivery. In our view the suggested model meets current political and technical requirements with minimum disruption or the need for legislative changes. It provides a route for further strengthening of democratic engagement.

Evidence Produce on behalf of CFER by

Professor John Mawson, Director of the Local Government Centre, University of Warwick Business School

Phil Davis, Chair

Jane Thomas, Vice Chair

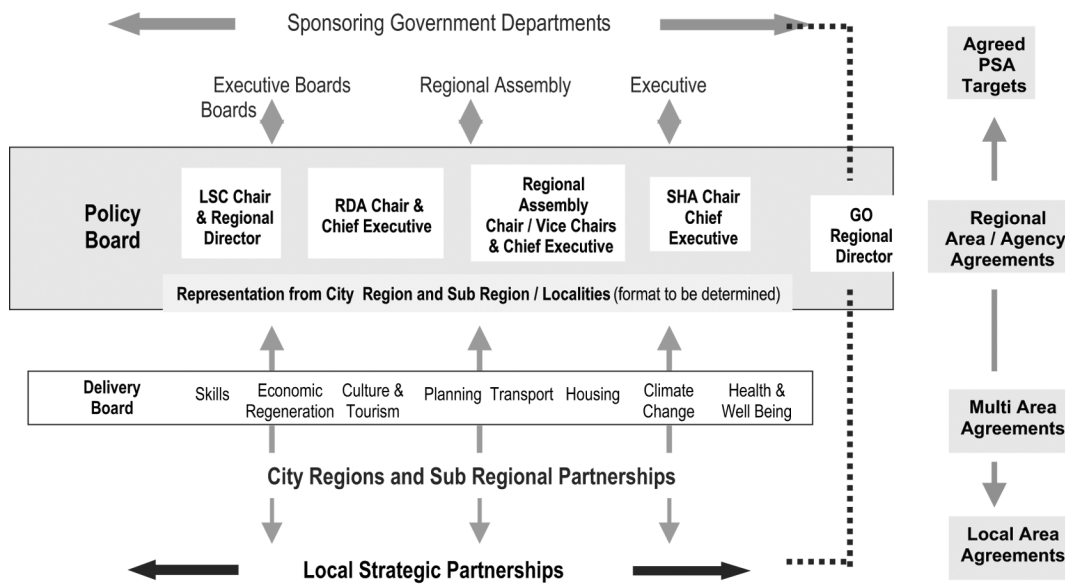
Mary Southcott, Vice Chair

George Morran, Secretary

May 2007

APPENDIX 1

Enhancing Partnership Working – Delivering a ‘Single Vision’ for the Region



Supplementary memorandum submitted by the Campaign for the English Regions

INTRODUCTION

As we have indicated in our previous evidence to the Committee, it is the view of the Campaign for the English Regions that the only long term solution to the dilemmas posed by the English Question lies in the introduction of elected regional government across England as part of a comprehensive constitutional settlement for the United Kingdom as a whole. In our previous evidence we suggested that an English Parliament would be a far too powerful devolved political institution which would not resolve the present asymmetric problem but rather, would add a new and more serious problem to an already flawed devolution project. The issue of the West Lothian Question cannot be resolved in isolation from this wider range of issues.

Turning to the more immediate regional context, our previous submission to the Committee sought to address some of the shortcomings of the existing regional arrangements. We set out in our evidence a “regional partnership” model which built on the strengths of the prevailing tripartite (Government Office, Regional Development Agency, Regional Assembly) system and also proposed changes which addressed the concerns set out in the Audit Commission (2006) and Department of Communities and Local Government Select Committee (2007) reviews of these regional governance arrangements. Our proposal would have avoided the costs of wholesale reorganisation of the kind now taking place arising from the SNR and the loss of organisational capacity within and between regional institutions which has built up over the past ten years. It would also have avoided the weakening of regional stakeholder participation in regional decision making as well as a process of centralisation which has enhanced the control of Whitehall over English regional affairs.

To strengthen the democratic element of the existing tripartite system we suggested to this Committee the establishment of a Regional Board which in addition to including Chief Executives and Chairmen of key regional bodies (eg relevant quangos, Local Government Association, Regional Development Agency) also involved regional stakeholders and some combination of elected representatives *viz* MPs, MEPs and regional members of a revised House of Lords. An executive body would have been appointed by the Regional Board to oversee the preparation and implementation of an Integrated Regional Strategy. Our evidence to the Committee was submitted before the Sub National Review (SNR)¹ was published. Against the background of the proposals contained within the SNR and the subsequent consultation document *Prosperous Places*² we set out our views about the direction these proposals are taking regional decision making. In particular we are concerned about the loss of regional stakeholder representation (eg private, voluntary, environmental, faith communities) arising from the removal of Regional Assemblies.

¹ HM Treasury, Communities and Local Government and Business Enterprise and Regulatory Reform (2007) *Review of Sub-National Economic Development and Regeneration*. HM Treasury website.

² *Prosperous Places: Taking Forward the Review of Sub National Economic Development and Regeneration* (2008). DCLG and BERR.

We are disappointed about the way in which the evidence from some of the reviews of regional governance (eg Audit Commission [2006],³ and Communities and Local Government Select Committee [2007])⁴ were interpreted in regard to the work of Regional Assemblies, and which in turn influenced the conclusions set out in the Sub National Review. Unfortunately more comprehensive and detailed evidence concerning the activities of Regional Assemblies, undertaken by Warwick University in partnership with the English Regions Network and funded by DCLG was barely drawn upon. (ERN-Warwick 2002–05.)⁵

In the following sections we focus on the immediate future and in particular issues surrounding the introduction of the SNR proposals as elaborated in the consultation document *Prosperous Places*.

INTER-REGIONAL IMBALANCES AND THE NEED FOR A UK WIDE REGIONAL DEVELOPMENT AND POLITICAL PROCESS

The Ministerial Foreword to *Prosperous Places* does not espouse any form of national regional policy. At a broad level we do not believe that the increasing imbalance between London and the South East and the less prosperous regions of the UK can be tackled solely by “within region” measures such as Regional Development Agencies or an enabling environment for business at a national level. We acknowledge it is important to address areas of economic and social difficulty within the southern regions of the country (eg parts of inner London and the Medway towns) but the need for such intra regional targeted measures does not preclude national inter regional policy designed to address geographical imbalances between the Nations and Regions of the UK. It is our view that such a policy designed to refocus some growth away from the congested South would serve to reduce inflationary pressures at a national level by addressing shortages of labour and housing, alongside transport congestion and other pressures on infrastructure. (Massey *et al* 2003)⁶ In taking forward this approach, there would be an opportunity to give greater emphasis to regional self sufficiency and the development of more sustainable communities. These issues have been highlighted in the draft Spatial Strategy documents particularly in respect of accommodating revised housing targets and making available adequate public investment for new growth areas. In this context there has also been some recognition of the need to address new regional challenges surrounding climate change, energy and food insecurity. A “revised” regional agenda of the kind we are proposing would present the opportunity to develop more sustainable low carbon energy economies and greater regional self sufficiency in the production and consumption of energy and food emphasising the interdependence of the urban and the rural. (CPRE, Friends of the Earth *et al* 2008.)⁷

We are aware that the perspective of the present government is that in a world of global investment, an explicit inter regional approach, would be both impractical and counterproductive. However, the UK has one of the most prosperous economies in the world, offers major market opportunities and a stable business climate for geographically mobile international business. An added attraction is the opportunity to work with World Class Universities, the associated R and D, technology transfer and a highly skilled and educated workforce. The UK’s technological capability also presents the opportunity of developing new forms of energy efficient products, processes and services not just in the over heated South, but also in other part of the UK which are equally endowed with World Class higher education and advanced technology.

Unfortunately, present government attitudes towards a UK wide regional policy are inhibiting the growth potential of the regions (Gilbert, 2008.)⁸ By way of illustration, the recent decision by the Science and Technology Facilities Council (STFC) to cancel a major research project at the Daresbury Science Campus in Cheshire, involving the Universities of Liverpool and Manchester (the second time in seven years) has reignited concerns about the concentration of public funds in the South of England. Figures from the Office of National Statistics show that around 50% of government research spending and 45% of funding for R & D in Universities is focused in London and the South East. In April 2008, a report from the Universities Science and Skills Select Committee suggested the SRFC should take into account the regional dimension as one important consideration when allocating research funding. It stated, “*This factor could justifiably be considered in decisions on where large scale science facilities are sited, rather than automatically awarding new projects to locations within the ‘Golden Triangle’.*” The Committee argued that the government should address a regional science policy as a matter of urgency.

We do not take the view that a more proactive approach to regional development, would serve as a disincentive to the attraction of high quality business or service industry jobs nor would necessarily fall foul of European legislation. The government’s commitment to the development of city regions, enhanced research and development, and skills led policies by RDAs needs to be paralleled by an approach which addresses the imbalance in the economic geography of the UK as a whole. This would entail central

³ Audit Commission (2006) Research on Regional Governance. Audit Commission website.

⁴ Communities and Local Government Select Committee (2007) *Is there a Future for Regional Government?* The Stationery Office.

⁵ English Regions Network. University of Warwick (2002-2005) 10 volumes, “*Harnessing Diversity. Strengthening the Regions*” research programme. Funded by DCLG.

⁶ Massey D *et al* (2003). *Decentralisation of the UK*. Unpublished paper.

⁷ CPRE, Friends of the Earth *et al* (2008). *Power shifts, promises and policy gaps: Will the Sub-National Review of England’s regions ensure sustainable development in practice?*

⁸ Gilbert N “*Should the golden triangle get all the research cash?*” *The Guardian*, 20 May 2008.

government shifting the balance of public and private sector investment to less developed parts of the UK, taking advantage of the geographical flexibility offered by telecommunications and information technology, and the continuing pressures for decentralisation in both public and private sectors.

While the RDAs are engaged in attracting mobile companies this form of competitive regional policy is not always successfully co-ordinated within and between the Nations and Regions of the UK as is also the case with cross border planning of major public infrastructure. To develop inter regional policies in a devolved UK, we believe there needs to be a forum bringing together the leaders of the Nations and Regions. The forum would prepare and oversee a concordat addressing regional development issues and national spatial priorities for the economy, sustainable development, and land use planning. It would be responsible for cross border issues such as migration, transport, major investment opportunities, telecommunications developments and links with the EU's Spatial Planning Framework

LEADERSHIP IN THE DELIVERY OF THE SNR

Turning to the implementation of the SNR proposals, we welcome the recognition that the balance of skills and background of RDA Board Members and staff will need to change in the light of the new responsibilities. We would argue that the dominance of private sector Board members has in some respects been a weakness of the system to date. The private sector perspective is very important in key areas of the work of RDAs, however, private sector management is distinctively different in certain critical aspects from that in the public realm particularly at regional level. These distinctive management characteristics include understanding how to balance complex, multi-faceted and sometimes “wicked” issues (the bread and butter of regional working) whilst at the same time recognising the importance of a consensual style of policy making in a multi agency context. Such management challenges have to take place against the background of the expectation of a high level of transparency and public accountability. This is a form of decision making which is unfamiliar to many businessmen and invariably by the time they have gained the necessary background and experience, their three year RDA Board tenure is over. (Robinson 2004.)⁹ Given the significant changes in the role of the RDAs under the SNR, we take the view that there should be a change in the balance of Board representation with more elected members and those with direct experience of regional development, the voluntary, community, not for profit sectors, planning, transport and the environment.

The decision to transfer the strategic planning process to the RDA raises the spectre of a clash between a growth led philosophy on the one hand, and one which gives greater focus to sustainable development. This tension was previously mediated in inter agency working but has now been subsumed into a single organisation. There are many within local government and amongst other stakeholders who fear that a narrow business led philosophy will continue to dominate the RDA, notwithstanding changes in Board membership. There is a clear challenge for the Regional Leaders Forum to ensure socio economic, environmental, cultural and community dimensions of regional development do not take second place to a narrowly defined conception of regional development.

In preparing and implementing the Single Regional Strategy (SRS), the consultation document acknowledges its scope will need to range beyond economic, planning, housing and transport considerations. The experience of Regional Assemblies when preparing their Integrated Regional Strategies was that most areas of public policy had a regional impact (Mawson and Snape 2005).¹⁰ However, it is one thing producing regional strategies which encompass a broad perspective, it is quite another matter to get all parts of Whitehall to sign up to such documents and make their Departmental contribution. It remains to be seen how far the “regionally relevant” expenditure and activities of key government departments (eg DEFRA, DfES, DofT, DWP, DH) and their associated non-departmental public bodies and agencies can be mobilised by the new system. Chapter 3 of the 2002 Elected Regional Assemblies White Paper (DETR 2002)¹¹ committed Government Offices to the task of securing the participation of non departmental public bodies and agencies where appropriate in regional strategy preparation and implementation—a role strongly reaffirmed in the Government Office Review (2006).¹² However, research undertaken for the English Regions Network (Mawson 2005)¹³ and the ESRC (Pearce and Mawson 2005)¹⁴ confirmed that civil servants leading on the regional issue across Government Departments as well as senior officials in local government, were sceptical about the degree of influence which Government Offices could exercise in this regard. One issue here is the semi-autonomous characteristic of arms length agencies whose Boards invariably do not prioritise the regional dimension in their work. We suggest that there should be some Board members of quangos with a specific regional remit and that nomination to fill such places should come from the regions. These matters will need to be addressed if the SRS is to deliver its regional priorities.

A key difference under the new SNR system will be the presence of a Regional Minister whose role includes joining up relevant aspects of public policy. However, there are questions as to whether Regional Ministers holding a number of ministerial portfolios have sufficient time to properly fulfil their regional

⁹ Robinson E (2004) *Living with Regions. Making multi-level governance work*. New Local Government Network.

¹⁰ Mawson J and Snape S (2005) *The Integration of Regional Strategies*. ERN-Warwick University.

¹¹ DETR (2002) *Your Region Your Choice: Revitalising the English Regions*. CM 511.

¹² HM Treasury, Office of Deputy Prime Minister (2006). Review of Government Offices.

¹³ Mawson J, (2005) *The Chapter 2 Agenda and Regional Assemblies: The Whitehall View*. ERN-Warwick University.

¹⁴ Pearce G, Mawson J and Ayres S (2002–05) *Emerging Patterns of Governance in the English Regions*. End of Award Report Economic and Social Research Council.

work—a number of Regional Ministers are currently in this position.(Walker and Brady 2008)¹⁵ Further unless Whitehall makes organisational changes to take on board their regional input into policy making at the centre, it has to be questioned whether Regional Ministers will be able to exercise real clout on behalf of their regions. One West Midlands MP, John Hemming, a member of the Modernisation Select Committee recently commented in the *Birmingham Post* (Hemming 2008)¹⁶ “*No one in Parliament has managed to find any executive powers exercisable by Regional Ministers in fact we believe there are none. It has been said that they have the task of joining things up, however, I haven’t noticed anything more joined up since the appointment of the Regional Minister.*”

There are mechanisms in place for the RDA Chairs network and Government Office Regional Directors to meet on a regular basis with senior officials and Ministers from different departments. It will be important to ensure that these central-regional relationships are connected to the work of the Regional Minister in respect of the SRS. To drive home regional priorities, the voice of Regional Ministers as a collective group as well as operating on an individual region basis will be required to engage the Whitehall machine.

PREPARING THE SINGLE REGIONAL STRATEGY

Turning to the process of preparing the Single Regional Strategy (SRS), the consultation document states:

“... *local authorities will work with the RDA to develop and agree the draft strategy and its delivery. To facilitate the process the SNR recommended the establishment of a Leaders Forum representative of key sub-regions and upper lower tier authorities.*”

We strongly support the full engagement of democratically elected local government at all stages in the process of preparing the strategy. Further, in many key policy and delivery aspects of the SRS, it is the case that the RDAs do not possess the necessary staff expertise or organisational capacity and will therefore have to rely heavily on local government to fulfil their responsibility. Equally in the case of some local authorities there is little experience of regional working at senior officer or member levels. Council leaders have a wide range of commitments within their own authorities and localities and therefore the calls on their time may present a problem for the Regional Leaders Forum. Energetic, committed and experienced leadership will be needed if this new form of regional governance is to prove successful. There is a tendency amongst some local authority Chief Executives to deny the existence of a distinctive form of decision making or management competence at the regional level which flies against the reality of the situation. (Robinson 2004,¹⁷ Rhodes 1997,¹⁸ Sandford 2005)¹⁹ The consultation paper is correct in recommending a “management of change programme” in each region to address the challenges arising from the SNR. Such a programme should start with the role and capacity of local government politicians and Chief Executives to play an effective role in the regional arena. A further challenge concerns the dissemination of regional information to back bench Councillors and local communities in a digestible form. This issue has presented a significant problem in the work of Regional Assemblies. Local authorities (not to mention Government Offices and RDAs) have also not been particularly successful in linking sub-regional and local policy processes and documents with the policy area at the regional level eg the Community Strategies of Local Strategic Partnerships. A great deal of work will need to be done in this regard if the Regional Leaders Forum and the regional local government community is to have any real impact on the new SNR system.

There has been some concern within local government about the proposed process of signing off the draft SRS (*Local Government Chronicle* 2008)²⁰ where it is felt in the event of disagreement, local government should be able to exercise a veto. Under the new SNR system the RDA is not only charged with leading the development of the strategy but also agreeing a draft with the Regional Leaders’ Forum. If there is a failure to agree on the draft then the RDA submits the document to Whitehall noting the points of difference. An alternative perspective however, is that if the SRS is to be a genuinely regional document, then local government should be able to exercise a greater degree of influence at the final stage, perhaps via a veto for a specified period to facilitate further negotiation.

As the Regional Minister will inevitably exercise a strong influence over the content of the SRS, there is a danger that the new system will be viewed as a move towards centralisation when seen alongside the strengthening of the responsibilities particularly of the RDA, a government appointed quango. Furthermore, it should be noted that the existing Regional Assembly structure is far more representative of the region as a whole and there is no central government presence in Assembly decision making arrangements. The majority of Regional Assemblies have executive Boards of a similar size if not smaller than the proposed Regional Leaders Forum but also include regional stakeholders. The evidence is that the latter group have made an effective contribution to regional activities working alongside senior councillors. (Snape and Mawson, 2005.)²¹

¹⁵ Walker J and Brady E “*Byrne is slated by critics for taking third ministerial job.*” *Birmingham Post* 26 January 2008.

¹⁶ Hemming J “*Widening the search for democracy and accountability.*” *Birmingham Post* 4 March 2008.

¹⁷ Robinson E (2004) *Living with Regions. Making multi-level governance work.* New Local Government Network.

¹⁸ Rhodes RAW (1997) *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability.* OUP.

¹⁹ Sandford M (2005) *The New Governance of the English Regions.* Palgrave.

²⁰ Day K “*Sub-national review is a serious business.*” *Leader, Local Government Chronicle* 3 April 2008.

²¹ Snape S and Mawson J (2005) *Policy and Decision Making in Regional Assemblies.* ERN-Warwick University.

 THE ROLE OF REGIONAL STAKEHOLDERS IN THE SRS PROCESS

We have made the point earlier in this submission that detailed research on the work of regional stakeholders was not drawn upon to any great extent, if at all, by the Audit Commission and the Local Government Communities and Select Committee in the critique of the present tripartite model of regional governance. This evidence suggests that private, voluntary and other regional stakeholders were often actively engaged in policy and strategy development and in scrutiny activities, including taking the lead on scrutiny panels. There were some tensions within the local government community about the legitimacy of non-elected stakeholder participation in the work of Assemblies. There was further criticism that the non-elected members made no contribution to the running of Assemblies. Equally, however, stakeholders were invariably frustrated by the adoption of traditional local government committee procedures when the regional arena was seen as presenting an opportunity to introduce more efficient and streamlined forms of decision making (Snape and Mawson 2005).²² Over the course of eight years, these tensions were increasingly being addressed and there was a growing appreciation of the positive contribution which all partners could bring to the table.

A further advantage of Regional Assembly arrangements was that the stakeholder group provided the opportunity to present, on occasions, alternative, non parochial and party political views from across the region. The private and voluntary sectors learned to work together on agreed positions, sometimes challenging the views of elected local government. Those involved in Assembly decision making invariably saw this as a considerable strength.

Under the new regional interface with central government, the Regional Leaders Forum, there is no place for regional stakeholders. Our view is that this change has weakened the representative nature of regional decision making and thereby removed an important counterbalance to a single powerful institutional voice, albeit one that is based on local democracy. Local government does not have the monopoly of truth about the regional dimension, indeed, it was not designed to operate at that level. The electoral process inevitably leads to a local focus in policy and service delivery terms and this makes it difficult for local government leaders to always look at the bigger strategic picture. In the case of Regional Assemblies, when this happens, regional stakeholders from the private, voluntary, community, faith, and environmental sectors are in a position to challenge municipal parochialism and encourage the development of a broader vision.

Having removed the stakeholders group from the key regional decision making body, the consultation paper is keen to stress the importance of this input but provides little guidance as to how it is reasserted. The consultation document explains there is no single blueprint for what changes are required. Para 4.32 goes on to state “*Various regions have already found innovative ways of engaging with a wide range of stakeholders including local communities in regional strategy making. Stakeholder engagement needs to be meaningful and to contribute to building consensus around the regional strategy.*” However, there is a danger that in some regions this vague stance presents a further opportunity to dilute the contribution of stakeholders in the SRS process. The statement in para 4.20 that “*the new system would give regions flexibility to determine the detailed working arrangements for preparing the strategy and implementation plan*”—gives local government and the RDAs scope to minimise the effective input of stakeholders unless stronger guidelines are set out. By way of illustration of the ambiguity of the current position, a diagram within the text of the consultation document p 35, states “*RDAs and local authority leaders forum with stakeholders scope the issues and appraise options involving examination.*”

We wholly endorse this statement. However, in the main text there is no reference to stakeholders involvement at the initial stage of strategy preparation.

Turning to the final stage of strategy preparation, the document states “*The government envisages that under these proposals an independent work panel would be appointed early in the process. Once the RDA, working with the Leaders Forum . . . had identified the issues to be tested and possible options, the panel would facilitate sessions . . . These discussions would engage stakeholders in appraising the options, test the evidence and narrow down the contentious issues. On the basis of the information gathered, the RDA and Leaders Forum would identify a preferred set of priorities and actions.*” Para 4.23.

Under present Regional Assembly practices, since stakeholders are a constitutional entity within Assembly decision making, they are invariably engaged in every stage of strategy development. The above statement implies that they will not be a party to the initial stages of strategy development identifying issues and opportunities, nor will they be part of the final stage determining strategy direction. Being consulted about somebody else’s options is not true engagement. Nor is it genuine engagement to be consulted about options and then other partners go away to take the decisions.

There is a danger of tokenism here. It needs to be emphasised that the SRN proposals have removed and or emasculated a key representative bloc from regional decision making. Under the Regional Assembly procedures the range and richness of experience of stakeholders is recognised (Snape and Mawson 2004)²³ whilst at the same time the importance of local democracy is acknowledged with a two thirds/one third majority in favour of local government.

²² Snape S and Mawson J (2005) *The Role of Regional Assembly Members*. ERN-Warwick University.

²³ Snape S and Mawson J (2004) *An Analysis of the Membership of Regional Assemblies*. ERN-Warwick University.

 SECURING THE ENGAGEMENT OF REGIONAL STAKEHOLDERS

It needs to be recognised that with the exception of the private sector, most regional stakeholders in the non-local government bloc could not afford to resource their engagement in the work of Regional Assemblies. They have relied on what limited support has been made available by Assembly secretariats.

We note that in the case of Scotland, Wales, Northern Ireland and Greater London, arrangements are in place to facilitate structured engagement of stakeholder and civic society participation in the work of the Assemblies and Scottish Parliament. The Scottish Civic Forum, for example, is a non-statutory membership body with a wide cross section of civic society. Amongst other roles it has an on-going dialogue with the Scottish Executive and Parliament surrounding policy issues. The London Civic forum is also a non-statutory body which participates in the governance of London through debate and consultation with the Mayor and Greater London Assembly. It is also involved in the scrutiny of the London Mayor, encourages cross sectoral partnerships and acts as a catalyst for civic engagement. The Government of Wales Act requires the National Assembly for Wales to have regard to the interests of local government, the voluntary sector and business in Wales. This is achieved through the work of the Welsh Partnership Councils. They seek to influence forthcoming policy, provide advice and make representations to the Assembly about relevant matters.

It is our view that the workings of the SNR processes will be flawed without a strong engagement of regional stakeholders and the English regions would be at a disadvantage in comparison with devolved arrangements elsewhere in the UK. The collective stakeholder voice made possible by the Regional Assembly should be maintained. With the exception of the business community (which in some regions might choose to operate independently) the majority of stakeholders do not have the resources to maintain a support structure. In our view, central government should provide the finance to run a stakeholder office with some technical support whose purpose would be to foster a strong and effective participation in the work of the new SNR arrangements. This could be resourced from some of the savings arising from the run down of the Regional Assemblies' budget.

An independent "Regional Foundation" could be established with trustees overseeing the application of Government funding and other contributions. Amongst other things the regional stakeholders group would:

- participate at every stage as an equal partner in preparing and "signing off" the SRS;
- actively engage in the scrutiny of the work of the Regional Minister through whatever select committee or other procedure is finally agreed;
- secure participation of the region's citizens and communities in the regional agenda with the aim of securing awareness, ownership and engagement in the priorities of the SRS; and
- participate directly in the Regional Scrutiny process with local government.

REGIONAL SCRUTINY

In relation to the issue of scrutiny it should be noted that regional stakeholders have played a very active and successful role in the scrutiny process, reflecting the wide range of expertise they are able to bring to the table. There is a concern that this "added value" will be lost in the new SNR process. (Snape *et al* 2004.)²⁴

Para 3.20 states "*local authorities . . . have existing scrutiny powers which can be applied to RDAs and other government agencies as well as their own executive. With the abolition of Regional Assemblies local authorities should develop new arrangements for exercising their scrutiny powers at regional level (through the Leaders Forum)*". Given the language of the consultation document, it would appear there is no guarantee that the role of regional stakeholders would be fully engaged in the regional scrutiny process as they are currently in the work of the Regional Assemblies. We question whether scrutiny processes designed for local government are appropriate at regional level in the context of multi-agency decision making. Further, given the key role of local government in preparing the SRS with the RDA, there is a danger that local government will act out a role of "judge and jury" without an independent input from regional stakeholders. Comparisons with local government scrutiny are inappropriate at this complex geographical scale of public policy.

The Green Paper on the Governance of Britain proposed that enhanced parliamentary scrutiny of the regional level could be achieved through the establishment of nine Regional Parliamentary Committees. In the event, it appears this proposal has proved problematic with concerns expressed by senior civil servants, MPs and the Speaker of the House of Commons about various aspects of the implementation of this model.

In our view the model is flawed, but for other reasons than senior civil servants do not wish to appear at the committee, there is insufficient Parliamentary time or that many MPs have little, if any interest in regional matters (Leslie 2008).²⁵ We take the view that if scrutiny is to have regional ownership, then the process should take place within the region concerned. The Regional Minister, Whitehall, Government

²⁴ Snape S *et al* (2004). *Scrutiny Processes in Regional Assemblies*. ERN-Warwick University.

²⁵ Leslie C "Leaders' watchdog role opposed" *Local Government Chronicle* 21 February 2008.

Office and quango officials should be available to answer questions in the regions and, where necessary, attend regional scrutiny meetings. The Regional Ministers would remain accountable to the House of Commons through Parliamentary questions.

In terms of representation, we believe a regional committee should not only include some MPs and local government politicians but also representatives of the stakeholders in the region—otherwise the voice of the region would be based on a far too narrow basis. The regional body should have the kind of powers envisaged for a Regional Parliamentary Committee.

We note at the recent final session of the House of Commons Modernisation Committee, the Secretary of State for Communities and Local Government argued that the Regional Parliamentary committees should meet in the region concerned and suggested a body combining MPs and local councillors (Drillsma-Milgrom 2008).²⁶ We feel it is essential to move one step further by including regional stakeholders and ensuring that the committee sessions are held in different localities so that proceedings are accessible to citizens across the region.

CONCLUSIONS

We believe that the SNR proposals do not adequately address the need for enhanced accountability, transparency and engagement with the region's key regional stakeholders and civic society. More attention needs to be given to how citizens and local communities can be made aware of and, where appropriate, participate in regional governance affairs. We take the view that a properly resourced Civic and Regional Stakeholders Forum as suggested above would be an important first step in this direction.

RECOMMENDATIONS

- Given the establishment of devolved political and administrative institutions across the UK with their own regional development priorities, there is a need to establish a more co-ordinated approach to UK-wide strategic issues by establishing a forum of the Nations and Regions.
- Such a body should have responsibility for developing a national inter regional policy seeking to address major imbalances in the economic geography of the UK and associated social and environmental challenges. It would oversee a national land use and infrastructure strategy in line with the EU Spatial Planning Framework. The UK government would chair and oversee the work of this forum, as well as ensuring the implementation of agreed policies and strategies through protocols, concordats and funding agreements.
- In order to accommodate the expanded role of RDAs, there needs to be a review of the kind of leadership capabilities and experience required of Board members, particularly in the light of the present imbalance between private sector Board members and those from other backgrounds.
- Given the challenges and question marks surrounding the organisational capacity of the Regional Leaders Forum to deliver its regional role, there needs to be some independent monitoring as to whether the model is “fit for purpose”.
- If the SRS is truly to address a broad spectrum of policy areas and deliver accordingly it will be necessary to ensure that there is Departmental commitment in Whitehall. Moreover, devolved delivery mechanisms and the contribution of arms length agencies will need to be put in place. Further, the role of Regional Ministers will need to be formally recognised in Whitehall decision making with perhaps a Regional Committee comprising all the Ministers to progress chase the strategies, and ensure that their collective contribution is not lost amongst silo driven Departmental agendas.
- It will be necessary to ensure Regional Ministers are given adequate time for their regional responsibilities. Currently this is a matter of concern in several regions.
- In signing off the Single Regional Strategy, we believe that local government should be given a strengthened position in resolving its final content with the RDA.
- The omission of regional stakeholders from the SRS process and other regional activities is a serious weakness of the new SNR system. Under the Regional Assembly, model stakeholders are able to operate as a single political bloc in challenging the position held by local government, the RDA or other central government agencies. They also bring a wide range of experience from across the region which adds considerably to the quality of regional decision making. The present consultation document is too ambiguous surrounding the design of new structures for stakeholder involvement which leaves the door open for other powerful players to minimise their contribution. The vagueness of the consultation document does not help in this regard. In our view a revised stakeholder group should participate at all stages of strategy preparation and indeed be an equal partner round the table with the RDA and Regional Leaders Forum. Anything less than this will seriously weaken the new SNR system.

²⁶ Drillsma-Milgrom D “Bleas supports hybrid option” *Local Government Chronicle* 13 March 2008.

- To facilitate the work of the regional stakeholders group we recommend the provision of technical support funded by central government given that most stakeholders do not have the resources to put in place the necessary level of professional and administrative back up to service their role.
- In relation to regional scrutiny we are not convinced that the local government scrutiny model is necessarily the most appropriate for a multi-agency decision making context taking place at a higher administrative level than that of local government. The local government community is by definition politically focused on its own geographical space and there is a danger that a scrutiny process managed by local government will be seen as an arrangement in which it plays “judge and jury” in its own domain. Under the SRS process, local government is seen to play a major role in the preparation of the strategy as well as in determining the final content. Under the Regional Assembly arrangement, regional stakeholders have played a very active role in scrutiny, bringing to bear a wider range of experience than that possessed in local government. We do not believe that the leadership of regional scrutiny should be left solely to local government, picking and choosing who should be engaged in the process. Rather, regional stakeholders should jointly oversee, with local government, the design of such a process, recognising the need to adapt it to the regional context. Regional stakeholders and local government should have joint responsibility for managing the regional scrutiny process. Under the current proposals the SRS will be produced by two powerful institutions, local government and the RDA, one of whom will be responsible for scrutiny of the other. The danger is that the RDA and the local government community could develop a relatively “closed” working relationship, in relation to the preparation of the SRS which would then not be adequately challenged by a potentially flawed scrutiny process.
- We are concerned, given the track record of local government at regional level that it will fail to adequately communicate regional issues from the Leaders Forum down to its own elected members, let alone local communities and citizens. It is for this reason that we would wish to see a Civic and Stakeholder Forum being established to resource various regional activities as described above, but particularly to focus on communication and engagement of citizens in the work of the new regional governance system.

Professor John Mawson

May 2008

Supplementary memorandum submitted by the Campaign for the English Regions

As you know, I accompanied other members of the Campaign for English Regions, who gave evidence to your committee in Newcastle earlier this year. I agree with the further evidence they have submitted and the general statement that the only long term solution to the dilemmas posed by the “English Question” resides in the introduction of elected regional government within a new UK constitutional settlement.

However when we met, there was some discussion of the “West Lothian Question” and I wondered if it would be helpful just to reiterate some points. The idea of an asymmetrical state is not a problem and until last year’s elections, with the exception of Northern Ireland, the Party which formed the Government of the UK, also formed the major or major coalition partnership in the Government of Scotland and Wales. However the principle of devolution will be tried and tested by the minority SNP Administration in Scotland and the Welsh Labour-Plaid coalition and subsequent developments to strengthen both assemblies.

One thing that would mitigate clashes within this devolution settlement is a fairer representation of not only the differences between member countries of the United Kingdom but the similarities. Cohesion is built on recognising communality as well as conflict.

The voting systems to be used in the English regions would have been, in order to pass the test of a referendum, more pluralistic. The precedent had already been set in the Greater London Assembly, which although judged to be local government by some is actually an English region with its elected governance, Wales and Scotland. However Westminster elected in the House of Commons and non elected in the House of Lords fails to represent the voting strength of the political parties in the UK.

The House of Commons depends on an electoral college where each constituency contributes all its vote for government and on legislation to one MP whether or not they have a majority mandate and neglecting large minorities within each constituency. So we have results which give a false snapshot of the country in question. There were always Conservative Voters in Scotland and Wales but they were not represented among the parliamentary representatives and continue to have a very small voice. The PR system in Scotland has allowed the actual strength of the Conservatives to be represented in the Scottish Parliament and similarly in Wales.

It was the late Robin Cook, a Scottish MP representing a Scottish constituency, who identified the difficulty of having a Scottish MP become a Minister dealing with devolved matters such as Education and Health. He also just before he died identified the fact that there were more Conservative voters than Labour voters in England as a whole although the picture painted by the first past the post system was over 90 MPs majority for Labour over Conservative.

We cannot solve what is also called “the English Question” by artificially exaggerating the difference between the nations of the UK state. The Parties need to come together and there should be input from citizens as well as politicians, perhaps in the form of an elected UK constitutional convention, such as Australia used to decide whether to establish a Republic. A more proportional system would for the first time allow Surrey Labour voters, urban Conservatives and Liberal Democrats wherever they exist to be represented in a more representative UK parliament. It would dilute the differences between party representation in urban and rural areas, and help to soften the distinctions rather than aggravating them between the nations of the UK.

On the replacement of the House of Lords, elections, on a proportional basis from the English Regions, Scotland, Wales and Northern Ireland, are likely to produce a better picture than the current unrepresentative gearing towards London and the South East discovered in research undertaken by the Campaign for the English Regions. Such an Upper House or Second Chamber may help to dilute the problem but risks casting light on the remaining dilemma in the House of Commons. Ministers representing constituencies where their remit is dealt with in a devolved assembly can be justified and this problem will not entirely be eliminated. There is a possibility, however, that any governing Party will under a new voting system be able to draw on MPs, to become Ministers, from a greater geographical spread.

Mary Southcott

May 2008

Memorandum²⁷ submitted by Professor Charlie Jeffery, University of Edinburgh

1. This inquiry focuses on the impact of devolution at the UK level and its consequences for the UK constitution.
2. There are four features of the devolution reforms that have particular, and problematic consequences at the UK level:
 - (a) the piecemeal approach taken in introducing devolution;
 - (b) an absence of forethought about managing relationships between different governments within the UK;
 - (c) the part of the UK left undeveloped since devolution, that is England; and
 - (d) the understated conception of UK union since devolution.

PIECEMEAL DEVOLUTION

3. There has always been a piecemeal approach to territorial politics on these islands. Wales, Scotland and Ireland were joined with England in a series of unions made and remade over centuries. These unions had different (or, in present terminology, asymmetric) institutional configurations. They continued to evolve with varying degrees of asymmetry as frameworks for accommodating distinctive Irish (later Northern Irish), Scottish and Welsh nations alongside the numerically and economically dominant English in a single state structure. Unlike unitary states like France the UK state did not attempt to introduce administrative standardisation across its territory.

4. By 1997 the UK’s territorial tradition of administrative differentiation was embodied in UK central government offices for Scotland, Wales and Northern Ireland, cabinet-level departments with responsibilities for policy implementation in their respective nations. There was no equivalent territorial department for England.

5. The devolution reforms introduced after 1997 transferred the various, and different sets of territorial responsibilities formerly exercised by the territorial departments to separate devolved legislatures established by new electoral processes. The rejection of the proposed Elected Regional Assembly in North East England in 2004 removed the prospect of regional devolution in England for the foreseeable future. UK central government retains responsibility for a residual, post-devolution mix of UK-wide and English functions.

6. The devolution reforms were not approached as a comprehensive, integrated reform of the UK state, but as a piecemeal series of responses to changing, and different, demands about how the unions of Scotland and Wales with England, and Northern Ireland with Great Britain should be renewed. Devolution has been a project of the parts, not the whole, with reforms drawn up by different departments, reflecting different territorial circumstances, using different institutional templates, and with scant coordination between them.

²⁷ This Memorandum distils the findings of the 150+ researchers at universities across the UK who worked on projects funded by the Economic and Social Research Council in its research programme on Devolution and Constitutional Change from 2000–06.

7. There are two implications. First, the trajectories of territorial politics in each of the four nations of the UK have been highly self-contained. There has been little attempt by UK or devolved governments to understand and manage the combination of extensive devolution outside England and continued centralisation within England as an integrated system of government.

8. Second, because the devolution reforms were introduced in self-contained ways to address conditions in one part of the UK, they were blind to the possibility of spillover effects on other parts of the UK. For example, devolution was introduced in Scotland in particular to restore for Scots the legitimacy of UK government. It has largely done so—but what we have seen in the last year or so is a growing sense in some parts of political, media and public opinion in England that Scottish devolution is unfair to the English, whether through patterns of representation at Westminster, the distribution of public spending, or other matters. Piecemeal devolution may solve one problem, but end up creating another.

9. We can anticipate that attempts to address these consequential English concerns in isolation rather than as part of a systematic reform of the UK state will also create spillover effects and consequential demands for further reform. The absence of systematic reform runs the risk of continued instability.

RELATIONSHIPS BETWEEN THE GOVERNMENTS OF THE UK

10. The devolution of responsibilities from UK central government to new devolved institutions with their own electoral mandates transformed the territorial politics of the UK from a set of relationships between departments of a single UK government into a set of relationships between different governments. Arrangements for expressing and reconciling different territorial interests were largely projected forward from the pre-devolution era: collegial problem-solving by civil servants (though these are now responsible to different governments) supplemented where necessary by brokerage by ministers (though these are now members of different governments).

11. The implications of this new set of inter-governmental relationships were disguised for the period between 1999 and 2007 in which the Labour Party led governments at the UK level and in Scotland and Wales (and in which devolution in Northern Ireland was suspended or unstable). Since the round of devolved elections in spring 2007 these implications have become clear, especially in a number of public disputes between the UK and the Scottish governments.

12. Such disputes are a normal condition of politics when there are two levels of government with significant and overlapping responsibilities. In other states with multi-level government there are routinised techniques for dialogue and coordination between governments which act as shock absorbers in managing and resolving disputes. The UK's arrangements for reconciling different territorial interests, inherited from the pre-devolution era and attuned to coordination within a single central government, appear unfit for purpose now that they connect governments led by different political parties.

THE ENGLISH PROBLEM

13. Recent debate has suggested that devolution outside of England is a problem for England. There is a reverse argument: that England, by its size and structure of government has problematic consequences for the operation of devolution outside of England.

14. England has around 85% of the UK's population and gross domestic product. It is governed as a unitary territory by central government in Westminster and Whitehall. Those institutions combine and at times confuse their England-only with their UK-wide roles. Because of the weakness of the UK's structures of inter-governmental coordination the devolved governments have little grip on these fused, "Anglo-UK" institutions.

15. Within the framework of a UK single economic market, a single welfare state and a single internal security area, decisions taken by UK central government for England may have spillover effects which neglect, ignore or confound devolved interests. At times this has happened with wilful intent, but rather more often because the devolved nations lie very low on the radar of central government. Similarly the effects of decisions of UK government with a UK-wide reach at times do not take full account of their effects in devolved settings.

16. Spillover effects of decisions made in one jurisdiction into another are not unusual. They are typically managed in other states with multi-level government by processes in which central government acts as an arbiter. Yet because it is simultaneously the government of England, the UK's government appears ill-suited to the role of arbiter of competing territorial interests. There is a risk that the UK-wide roles of UK government can become captured—because of its size and economic weight—by England's territorial interests.

What is the Union For?

17. The challenges posed by the piecemeal approach to devolution, by the new patterns of relationship between the governments of the UK, and by England's weight *vis-à-vis* the rest of the UK can all be clustered under one overarching problem: the failure at the point of devolution or since to re-state what the UK as a whole, in its new, part-devolved format is for, what the role of the centre should be, how the centre should relate to the different nations, how the parts combine to make a whole.

18. There has been no general articulation of the balance of a UK-wide (and within that an English) collective interest and the collective interests that exist within the UK outside of England. As a result devolution lacks commonly understood, commonly accepted rules of the game which might offer a general rather than a piecemeal framework for accommodating distinctive nations in a single state, establish a framework of intergovernmental relations capable of identifying statewide objectives and balancing them against devolved autonomy, and conceptualise the government of England and connect it to government outside of England.

19. There would appear to be three broad directions in which further changes might unfold. A first would be to embed expressions of union more explicitly in the operation of the devolved state, for example in guarantees of minimum standards of public services across jurisdictions, commitments to solidarity across jurisdictions through territorial financial allocations by need, a more conscious distinction of English from UK roles in central government, and a system of inter-governmental coordination that gave the devolved governments real grip at the centre (for example in co-defining minimum standards or obligations of solidarity).

20. A second direction of travel would be to enhance the autonomy of the devolved nations through greater legislative powers and/or greater fiscal autonomy together with a scaling down of the UK-wide responsibilities of the UK government. In this scenario—which could, of course, be extended from special status within the UK to full independence for one or more of the nations outside England—it would need to be borne in mind that England's size and economic weight would still cause significant spillover effects on the other nations.

21. A third possibility would be to introduce incremental adaptations of the current arrangements on a case-by-case basis, in other words “muddle through” and avoid any systematic review of the spillovers and imbalances of the post-devolution UK state. That possibility does not appear the most promising basis on which best to address the question of how—and whether—the UK can continue to accommodate its multinational heritage within a shared state.

November 2007

**Memorandum submitted by Alan Trench, Hon Senior Research Fellow, The Constitution Unit,
University College London**

1. I am an academic researcher at The Constitution Unit, part of the School of Public Policy at University College London. In this role I have been responsible for undertaking research on various aspects of intergovernmental relations in the devolved United Kingdom since 2001, mostly funded by either the Leverhulme Trust or the Economic and Social Research Council. I have edited several volumes in the Constitution Unit's series of devolution yearbooks *The State of the Nations* (and am in the process of editing the 2007 volume, expected to be published in November 2007), as well as a volume entitled *Devolution and Power in the United Kingdom*, which is due to appear from Manchester University Press in July 2007 and which is concerned with how intergovernmental relations have worked since 1999. I was also specialist adviser to the House of Lords Select Committee on the Constitution for its inquiry into *Devolution: Inter-Institutional Relations in the United Kingdom* in 2002–03.²⁸

2. In this submission, I will draw upon my own academic work and that of colleagues, to address a number of the issues that the Committee have raised. Underlying this is a large number of interviews with those involved in devolution (mainly officials, and also politicians), carried out since 2001 and still ongoing. I also draw upon experience of interviewing those involved in intergovernmental relations in a number of other decentralised and federal systems (notably Germany, Spain, Australia and Canada). In particular, I will address questions 3–7 as set out in the Call for Evidence.

3. There are two general points to make about devolution in the UK, the importance of which is not always fully appreciated. First, the working of devolution to date is that it has been underpinned by the dominance of the Labour party in all three British governments. (Even in Northern Ireland, the fact that the British parties do not contest elections means that there has been no competition from the parties there.) Labour's dominance of the three governments has had important and far-reaching implications, and not all aspects of that are always appreciated. One is that there has been substantial consensus on political

²⁸ See House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations in the United Kingdom: Minutes of Evidence*, HL 147 (London: The Stationery Office, 2002); House of Lords Select Committee on the Constitution, Session 2002–03 2nd Report, *Devolution: Inter-Institutional Relations in the United Kingdom*, HL 28 (London: The Stationery Office, 2003).

objectives and values, which have limited the scope for governments to disagree with each other. However, perhaps more important than this is the shared electoral interest of all parts of the Labour party, and how this affects intergovernmental relations. Labour has a strong interest in making devolution appear to be a success, and it has treated the absence of overt disputes between governments as an indicator of that success. There has therefore been the opportunity and incentive, as well as the means, to resolve any differences that do arise between governments quietly and behind the scenes, rather than to do so openly in public. If (or when) the Labour party loses an election, and different parties hold office in London and Edinburgh or Cardiff, the goodwill that has underpinned relations since 1999 will be significantly weakened, and this shared interest in avoiding open disputes is likely to vanish.²⁹

4. One might add that this sort of behaviour by the Labour party is understandable in UK terms, but is not normal in other regionalised systems let alone federal ones. In such systems parties are conscious of the need to put the interests of territory ahead of party, and be seen by the electorate as a strong voice for Victoria, Baden-Württemberg (or wherever) in dealing with the federal or central government, and if necessary standing up to the central government.

5. What devolution involves in the UK is highly unusual in another comparative respect. The UK has a developed, industrial (or post-industrial) economy and an advanced welfare state, both established in the context of the UK as a single state. Devolution has involved transferring a number of functions related to the welfare state and to a lesser degree the economy to the devolved administrations in Scotland and Wales (these were always separately administered in Northern Ireland, because of devolution to Stormont between 1922 and 1972). This has meant a sort of “spinning out” of functions, and a disentanglement of functions previously exercised by one government. This is a complicated process that has left many overlaps of competence, even for Scotland, where the settlement is clearest in both constitutional and administrative terms. The effect of this is that it is almost impossible for any government (whether the UK Government or a devolved administration) to make any policy that does not have some sort of spill-over effect for other governments. The high level of formal legal autonomy that Scotland has (and that Wales may develop under the Government of Wales Act 2006) is not mirrored by the practicalities of governing. Many policy actions create some sort of implication for other matters, which have to be identified and resolved if the policy is to be successfully brought into effect.

6. Most other decentralised or federal systems have built their economy and welfare state around those institutions (even Spain, which may have only established its asymmetric decentralised structure in 1981 but which had very limited welfare provision and a generally backward economy until the fall of Franco). The only other developed country state to attempt a similar sort of decentralisation is Belgium, which resembles the UK in having similarly complex intergovernmental relations, and a peculiar if not asymmetric constitutional structure.

DEVOLUTION AND WHITEHALL

7. Whitehall’s response to devolution has been a limited and low-key one. It has two aspects—what happens in ordinary or line departments, with policy functions, and what happens at the centre of government. The latter is discussed in more detail below. As regards line departments, around 1998–99 arrangements were put in place in most departments to manage devolution matters, including setting up devolution or constitution desks or teams. These sought to co-ordinate the department’s actions regarding devolution, help prepare bilateral or departmental concordats, and generally to provide internal advice. These were generally dismantled after 2001 (they survive in the Foreign and Commonwealth Office and Ministry of Defence, however). A network of departmental “devolution contacts” still exists, but is a far cry from the sort of detailed attention to devolution matters that there used to be.

8. In principle, devolution is considered to have “mainstreamed” across departments. It is one of the many areas in which officials are expected to have expertise, as one of the basic elements of civil service training. In practice, there is good reason to question how effective mainstreaming has been. Awareness of devolution and its practical implications has improved since 2001, but remains somewhat patchy and inconsistent. Some officials and teams are sensitive to devolution issues, spot them early and resolve them effectively. Others are not and do not. (Effective resolution very often means getting in contact with the territorial offices, which are the UK Government’s main source of technical expertise about the devolution arrangements, as well as having a broader view of overall UK Government policy.) Some departments (and their ministers) are inclined to be helpful to the devolved administrations, and others are not. This is made more acute by the fact that practically all Whitehall departments are responsible for a mixture of England-only and UK- or Great Britain-wide functions (and none have a organisational map explaining the territorial impact of their responsibilities).³⁰ Both looked at from the inside and judging by outcomes, the overall pattern remains highly variable and inconsistent.³¹ Two particular cases have drawn the attention and ire of the Welsh Affairs Committee: the Children’s Commissioner for England (who has functions in

²⁹ The heavy reliance on “goodwill” was a major concern of the Lords Constitution Committee in its 2003 report.

³⁰ FCO and MoD are among the few exceptions; they are both keen to manage their relations with the devolved administrations with care, even though there is no overlap in their functions.

³¹ For more detail, see A Trench *Whitehall and the Process of Legislation after Devolution*, in R Hazell and R Rawlings (eds), *Devolution, Law-making and the Constitution* (Exeter: Imprint Academic, 2005).

Wales as well, for non-devolved matters relating to criminal justice), and policing and police re-organisation.³² Similar problems for Scotland have not attracted public or Parliamentary attention to the same degree, but nonetheless appear to have arisen (the transfer of responsibility for railways and the Scotrail franchise is an example).

9. I should emphasise that the problem here is not that the Government's procedures are not the right ones. By and large they are. It is that those procedures are not always followed in a systematic way, and that there are no authorities at the centre of government to enforce them. This is partly a consequence of bureaucratic organisation, and partly of the working of the present Government. In particular, the tendency for 10 Downing Street, on behalf of the Prime Minister, to take control of a particular policy issue, can result in the devolution rules being overlooked.

10. Regarding concordats, these must be among the least-used documents in government. The *Memorandum of Understanding*³³ mostly sets out high-level principles for intergovernmental relations, largely designed to preserve ways of working that had grown up before devolution. Bilateral concordats between particular Whitehall departments and devolved administrations largely repeat those principles. Neither is regularly consulted, partly because they do not address most tricky situations that have arisen and partly because there are no meaningful consequences for breach. (Most notably, the *Memorandum of Understanding* contains a commitment for the Joint Ministerial Committee in its plenary form to meet every 12 months—but it has not done so since November 2002.) Preparing bilateral concordats, in particular, was clearly a useful exercise in 1998–2000, for making Whitehall departments think about how devolution would work and what it would mean for them. Since then, however, they have largely gathered dust. It is hard to resist the conclusion that the *Memorandum of Understanding* is no longer fit for purpose, and that neither it nor the existing bilateral concordats will be effective instruments when real differences between governments emerge.

THE ROLES OF THE TERRITORIAL OFFICES AND THE TERRITORIAL SECRETARIES OF STATE

11. My remarks in this section are addressed to the situation concerning Scotland and Wales, not in general toward Northern Ireland. The special circumstances of Northern Ireland mean that it will still be some time before any incorporation of arrangements for Northern Ireland into those for Great Britain can be considered.

12. The territorial offices seem, at present, to work well. They serve as general sources of expertise and advice on the devolution arrangements for Scotland and Wales, as well as playing important parts in identifying and resolving differences between administrations that in other circumstances might turn into open disputes, and dealing with particular matters concerning each country (the Government of Wales Act 2006 is an obvious example). A problem of disparity of size and role that existed in 2002–03 (when the Scottish Office had 85 staff but relatively little business, while the Wales Office had only 41 but a great deal of work to do) no longer exists, as the Wales Office has grown in size while the Scottish Office has shrunk.³⁴ The two offices appear to work well together, and to spot issues affecting one set of devolution arrangements that have implications for the other (a so-called “read across”). In fact, the offices prove to be a vital part of the glue of devolution at the UK end, as they identify and resolve many of the large number of difficult technical issues that the entangled nature of the devolution arrangements (discussed in para 5 above) throw up.

13. The position of the territorial offices within the Department of Constitutional Affairs has created some lurid press speculation, but appears to work well. The principal problem that arises is that there is a missed opportunity for ensuring better overall co-ordination within the UK Government. Such co-ordination has not existed since 2001 or thereabouts, when the Cabinet Office lost its role in relation to devolution and its Constitution Secretariat was formally wound up. Some of the officials involved in the Constitution Secretariat continued to provide overall co-ordination (and acted as secretariat for the Joint Ministerial Committee), first within the Office of the Deputy Prime Minister and later within the Department for Constitutional Affairs, but that role has shrunk so it now takes relatively little time and gets relatively little official or ministerial attention. (In May 2006, the Ministerial Committee on Devolution Policy was wound up, and its functions subsumed within the broader Constitutional Affairs Committee.)

14. The roles of the territorial Secretaries of State are more complex. Again, the fact that the present holders of the posts of Secretary of State for Scotland and Wales only spend part of their time on those territories has attracted a good deal of press comment. In practice, it appears that each Secretary of State spends about 10–20% of his time on Scottish or Welsh matters, the amount depending on the flow of business (and the demands of their other ministerial post). This has included keeping in regular contact with the devolved administration generally, and the devolved First Minister in particular. (Peter Hain and Rhodri

³² House of Commons Welsh Affairs Committee, Session 2003–04 Fifth Report, *The Powers of the Children's Commissioner for Wales*, HC 538 (London: The Stationery Office, 2004). House of Commons Welsh Affairs Committee, Session 2004–05 Fourth Report, *Police Service, Crime and Anti-Social Behaviour in Wales*, HC 46-I (London: The Stationery Office, 2005).

³³ *Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, Cm 5240 (London: The Stationery Office, 2001).

³⁴ See House of Lords Select Committee on the Constitution, *Devolution: Inter-Institutional Relations*, HL 28, para 67.

Morgan used to meet every week, but that appears to have been reduced in the last few months. Personal contact between the Scottish Secretary and First Minister was never so frequent.) This seems to be pretty much sufficient; it has meant that there is a senior minister able to intervene when necessary, without having to spend time on activities that are not otherwise necessary in order to justify their office or salary.

15. In effect, there is a “hollow centre” at the heart of government when it comes to devolution. At ministerial level, responsibility is shared between five ministers (Secretaries of State for Scotland and Wales, the Lord Chancellor, the Secretary of State for Communities and Local Government, who leads on English regions, and the Deputy Prime Minister). With the exception of the Deputy Prime Minister, each has other, more time-consuming matters in their portfolio as well. This is likely to become slightly worse with the establishment of the Ministry of Justice and transfer of offender-management functions to DCA from the Home Office.

16. However, this situation creates problems. First, it assumes that there is a generally benign climate of relations between the UK Government and the devolved administration involved, and that the Secretary of State and his counterparts in the devolved administration have substantially similar views. They are also predicated on the Secretary of State being able to speak for their party in that territory—on an understanding of its political needs and conditions, and the interests of the UK Government there. If different parties hold office in London and Cardiff or Edinburgh, that is unlikely to be the case, as UK Secretaries of State may be concerned with the position of their own party in Scotland or Wales, rather than developing or maintaining good relations between governments. If the party in office in London has little or no electoral support in Scotland or Wales and little prospect of improving it, the standing of the Secretary of State in the UK Government is likely to suffer and consequently they will be a less effective advocate for the territory.

17. Second, it limits the portfolios a minister can hold. The issues that affect Scotland and Wales mainly come out of the Government’s domestic policy agenda. To be an effective (and time-efficient) Secretary of State, a minister needs to be involved in that business as a result of their other portfolio. Combining the post of Scottish or Welsh Secretary with a post like Defence or International Development would dramatically increase the number of issues of which the minister has to be aware, the papers they have to read and the committees they have to attend. Yet this domestic portfolio must be one that includes a substantial amount of UK-wide business; there would be conflicts of interest and other difficulties if Wales or Scotland were combined with a portfolio like Health, or Education and Skills which is mainly concerned with England. The number of posts which can be combined with being Secretary of State for Scotland or Wales is rather low, and that has an implication for the freedom of the Prime Minister in forming a cabinet if the post of Secretary of State for Scotland or Wales has to be combined with a domestic portfolio.

18. A further consequence of the present way of doing things, at both ministerial level and in terms of bureaucratic organisation, is that no-one is able to take a view of the territorial make-up of the UK as a whole and of the constitutional and policy issues that affect it. Instead, territorial issues are approached in a fragmented way that focuses on bilateral concerns and issues (Scotland-UK, Wales-UK, Northern Ireland-UK), not UK-wide matters. This fits with a more general approach to devolution as a set of ad hoc pragmatic responses, lacking any broader focus on territorial management. As matters stand, this system is only just able to cope with the demands placed on it. It will come under very serious pressure if or when these conditions change. For this reason, the Lords Constitution Committee recommended a “department of the nations and regions” to embrace relations with Scotland and Wales, the English regional agenda, and perhaps eventually Northern Ireland matters too.³⁵ That recommendation still appears to confer significant advantages, and will provide the capacity for greater co-ordination if territorial relations become more difficult constitutionally and politically.

DISPUTE RESOLUTION AND THE COURTS

19. As is well known, the courts have played a very minor part in the practice of devolution. A small number of cases raising “devolution issues” have been considered by the courts, but almost all have related to issues of Scottish criminal law or practice and human rights; there has been no intergovernmental litigation, and no cases before the Judicial Committee of the Privy Council where third parties have challenged the validity of devolved legislation or executive action. (Ironically, cases about Scottish criminal law and human rights have made their way to the Judicial Committee as devolution issues, but could not have reached the House of Lords as direct appeals before the Human Rights Act 1998.) This has been contrary to the expectations of many before 1999, and has been due to three factors which are not always fully acknowledged.

20. The first is the general climate of seeking to avoid disputes, discussed in paragraphs 3–4 above.

21. The second is the flexibility built into all three sets of devolution legislation, to enable issues that in other systems might be referred to the courts to be resolved without litigation if the governments involved can agree about the solution. There is a wide-range of order making powers under the Scotland Act 1998 and for orders to be made or the Secretary of State’s consent to be given under the Northern Ireland Act 1998, to enable legislation that touches on reserved or non-devolved matters to be passed by the devolved

³⁵ HL 28 *ibid*, para 68.

institutions. Similarly, the Government of Wales Act 1998 enables further matters to be devolved by order. These powers also relate to a number of European Union functions. (This is quite separate from issues such as Westminster legislation on devolved matters made under the Sewel convention, or legislative competence orders under the Government of Wales Act 2006.) These mechanisms are used surprisingly often to adjust the boundaries of devolved competence, and resolve some of the technical difficulties that devolution creates. Similar issues have often led to litigation in other decentralised countries, because with a written constitution it is hard to avoid taking such a formal approach to resolving them. Measures for Scotland seem to crop up at Westminster three or four times a year, usually producing several instruments made under different provisions of the Scotland Act 1998. The effectiveness of this depends heavily on there being an underlying agreement about what should be done, and if it should become harder to reach that agreement the mechanism will become less useful or usable. In that circumstance, it is likely that devolution litigation, including inter-governmental litigation, will become more common.

22. There remain a number of legal issues that cannot be resolved by making appropriate orders. The nature of things means that these relate principally to Scotland or Northern Ireland (where there is legislative and executive devolution), not Wales (where devolution has hitherto been executive only). In such cases, government has needed a significant degree of legal certainty—but has not wished to bring the matter before the courts. The solution adopted has been to seek the opinion of the Law Officers in each administration. In the early days of devolution this went so far as to produce joint opinions of devolved and UK law officers; more recently, these have been law officers of only one administration, and they are not normally shared between governments. But the impact of an opinion of the Attorney General or Advocate General for Scotland (the UK Government’s law officer specialising in Scots law) within the UK Government is very powerful, being binding in the absence of a contrary court judgment. This is a further case of a pragmatic response to a problem which may store up problems for the future. One problem is that the advice of the Law Officers is becoming central to the practice of government, but remains essentially untested. If the courts should at some future date take a contrary view to that taken by the Law Officers, large areas of government activity will need to be changed. The second problem is one of transparency. Law Officers’ opinions (and indeed matters that are the subject of such opinions) are confidential. It is impossible for those outside government to know what has been decided by these opinions. The influence of the opinions is nonetheless far-reaching. The result is that we are governed by what is, in effect, a form of private public law. This seems at odds with the principles of government closer to the people that are supposed to underlie devolution.

INTERGOVERNMENTAL RELATIONS, AND THE RELATIONSHIP BETWEEN DEVOLVED AND RESERVED/NON-DEVOLVED MATTERS

23. The formal mechanisms of intergovernmental relations have played only a modest part to date. The British-Irish Council (BIC) has continued to meet regularly, despite suspension of devolution in Northern Ireland, in both its “plenary” and specialist formats. However, it appears to be little more than a talking shop, albeit a useful one. Ministerial attendance (from the Republic of Ireland and UK as well as devolved administrations) tends to be at a relatively low level, and unless the BIC had some actual rather than symbolic role to play it is hard to see how it could work otherwise. For the present, it belongs more to the ornamental than the functional part of the constitutional arrangements of the British Isles.

24. More interesting, and potentially more serious, is what has happened to the Joint Ministerial Committee (JMC). As noted above, this has not met in its plenary form since October 2002 despite a formal obligation that it meet annually. Its “functional” formats have largely ceased to meet too, except for its Europe format which met frequently while the EU constitution was under consideration by the Giscard Convention and Intergovernmental Conference, and which continues to meet regularly but less frequently. Meanwhile, two other sets of ministerial meetings—of agricultural ministers, meeting more or less monthly, and of finance ministers, meeting twice a year, take place outside the JMC framework. The official attitude (manifested, for example, in responses by the Lord Chancellor when questioned by the Lord Constitution Committee in November 2004) is that there is no need for the JMC to meet in the absence of any disputes to resolve.³⁶ Certainly the meetings that took place in 1999–2002 served little practical purpose, with the agenda padded out with “information-sharing” items of the sort that scarcely need ministerial attention, and certainly do not merit that of the Prime Minister or First Ministers. But this approach disregards the valuable symbolic role the plenary JMC plays (not one which the BIC can fulfil), the signals such a meeting sends to other parts of the UK and devolved governments and to the wider world, or its representative function for dealing with reserved/non-devolved matters (discussed further below).

25. Otherwise, intergovernmental relations proceed in a low-key, informal, bilateral way. They are largely *ad hoc*, driven by items of particular business on one or other government’s agenda at the time rather than by any attempt to manage relations in a more systematic way. Most links are at working level. There are relatively few bilateral meetings of UK and devolved ministers, and few ones of senior officials. These only take place to resolve specific questions, not to co-ordinate policy generally or maintain contact over a wider agenda.

³⁶ See House of Lords Select Committee on the Constitution, Session 2003–04, *Meeting with the Lord Chancellor*, 16th Report of Session 2003–04, HL Paper 193 (London: The Stationery Office, 2004), Q 91.

26. What is important is less the format of relations than that they can serve the function of managing the differences between governments that arise. So far, that has been the case—although this would appear to be due more to a combination of particularly favourable circumstances rather than because a robust and effective structure is already in place.

27. This becomes especially important when it comes to issues where the devolved territories, and devolved administrations, have particular interests in reserved or non-devolved matters. Examples include immigration and Scotland (both in relation to the treatment of asylum-seekers in Scotland, and Scotland's attempts to attract more highly-skilled immigrants to address its demographic problems), and broadcasting in both territories (in Wales, there are obvious links to language and cultural matters for which the National Assembly is responsible). The plenary JMC was supposed to be a setting for raising and dealing with such issues, but its failure to meet means that such a forum is lacking. The sort of bilateral arrangements that exist are not suitable for dealing with such matters, so they go un-aired. An attitude can be found among many in Whitehall that devolved responsibilities and interests are limited to devolved matters, and that it is inappropriate or improper for the devolved administrations to interest themselves in such matters. This is clearly contrary to the way devolution is in fact structured, and what the Memorandum of Understanding provides.

28. These issues take their sharpest form when it comes to relations with the European Union. The devolved administrations are closely involved in many aspects of the UK's relations with the European Union, through the Council of Ministers, the UK Permanent Representation to the EU, and a variety of bureaucratic methods. Until recently, the general view (expressed by both devolved and UK Government sources) was that this arrangement worked well overall. The recent leaking to the press of a report prepared for Michael Aron, EU Director in the Scottish Executive, which suggested that the sort of problems identified above in relation to domestic UK matters also occur in relation to EU-related ones. The EU presents few distinctive issues, but plenty of opportunity for problems also apparent elsewhere in the system to manifest themselves.

29. This supports the view that the problem with the present system in the UK is that the system permits an undesirable degree of variation and inconsistency in the way it deals with devolution issues. Underlying this is the fact that the UK is still largely able to do what it wishes, while the devolved institutions often require the co-operation of the UK, tacitly (by not obstructing them) if not actively. For this reason, I have dubbed the extensive freedom of the devolved administrations in practice a form of "conditional" or "permissive autonomy", as it would be possible for the UK Government to undermine it easily, even inadvertently, with very serious constitutional and political consequences.³⁷

30. A further consequence of the non-meeting of the plenary JMC is that it sends a signal across UK Government that devolution is not a high priority for the Government, and that a failure to deal satisfactorily with devolution matters will not result in serious consequences. This is in keeping with the more general Whitehall view that devolution is an event, not a process, and not something that requires ongoing attention. This approach is also dangerous, as the lightly-institutionalised framework for dealing with devolution matters means that such ongoing attention is precisely what is needed.

ASYMMETRIC DEVOLUTION, AND RECOMMENDATIONS FOR THE FUTURE

31. Asymmetric devolution as such would appear to be a workable and sustainable model for maintaining a United Kingdom, and is likely to be the only way of doing so. However, it will only work if that is acknowledged to be its objective, and action is taken at all levels to ensure that this framework is maintained in good order. Allowing the present state of affairs to continue is unlikely to achieve that.

32. The first step that needs taking is to ensure that political management of the system is in hand, and not left to bureaucratic interactions or *ad hoc* responses to particular crises. That means that the UK Government must be fully engaged, at all levels, and that leadership must come from the very top. It is not for the UK to dictate, or try to dictate, to the devolved institutions. That would be contrary to the spirit and letter of the present arrangements, and present grave constitutional and political hazards. But it can seek to lead the United Kingdom as a whole, actively rather than inadvertently.

33. This in turn leads to a need for:

- (a) More use of formal mechanisms in intergovernmental relations—for example and most notably, of the plenary Joint Ministerial Committee, which should certainly resume the practice of annual meetings.
- (b) Greater transparency in relation to devolution matters—for example, more reporting to the UK Parliament about what happens in intergovernmental meetings, and more publication of relevant documents.
- (c) A more useful form for the *Memorandum of Understanding*, which sets out a number of the existing understandings and agreements recorded elsewhere, and guidelines for dealing with other issues, in a way that avoids the present high level of generality.

³⁷ See A Trench, *Devolution and Power in the United Kingdom* (Manchester University Press; Manchester, 2007 forthcoming), chapters 1 and 12.

- (d) Possibly a restructuring of the UK Government, to give greater coherence to the management of devolution matters and the UK's territorial constitution. That implies a "ministry for devolution", along the lines suggested in the Lords Constitution Committee report in 2003.

34. A further factor that needs to be borne in mind is the financial structure that underpins asymmetric devolution. This is not an issue addressed in the Call for Evidence and perhaps is beyond the scope of the present inquiry, but it remains a key question. The present arrangements, relying heavily on the Barnett formula, give a high level of spending autonomy to the devolved administrations, but tie the overall package of funds available to them to that allocated by the UK Government for spending on "comparable functions" in England. Devolved finance is therefore tied into the UK system, creating a form of dependence for the devolved administrations on the UK Government and its actions. This is important in itself, but also has significant implications for other matters notably the so-called West Lothian Question and participation by MPs from Scotland (and perhaps in due course Wales and Northern Ireland) in Parliamentary business apparently relating only to England. The financial arrangements have the further impact of making the devolved administrations responsible for spending decisions, but not revenue-raising ones. They have little incentive to reduce their spending, and this also limits their accountability to their electorates. If the present system delivered a form of equity in the allocation of public spending that might be more understandable, but we do not know whether it does (if the data to show this exist, they are not in the public domain), and many academic estimates are that it does not. At some point, possibly soon, these financial issues will need to be addressed; and they cannot be looked at in isolation, as they have implications for other aspects of devolution as well. Any successor to the present arrangements will need to ensure that it delivers adequate financial resources to the devolved administrations, is financially sustainable and is also politically legitimate (which will mean that it is perceived as addressing devolved spending needs), as well as ensuring that the devolved administrations retain their political and policy-making autonomy. This is a tall order.

April 2007

Memorandum submitted by Cymru Yfory—Tomorrow's Wales

1. This submission is made on behalf of Cymru Yfory—Tomorrow's Wales, an all-party and non-partisan group established following publication of the Richard Commission's report in 2004 and chaired by the Archbishop of Wales.

2. July 2006 saw Royal Assent granted to the second Government of Wales Act in Westminster, nearly a decade on since the Devolution Referenda in Wales and Scotland. The evolution of this second Act reflects the weaknesses inherent in the first, and attempts to address difficulties encountered by both the National Assembly for Wales and Westminster in the Assembly's First and Second Terms. In light of the recent commencement of certain provisions included in the Act, and the imminent commencement of the remaining provisions following the Assembly Election in May 2007, the timing of this inquiry falls at a crossroads in Welsh devolution. As such, many of the points made below are made acknowledging that we are currently in a period of flux with regard to the Welsh settlement.

3. Cymru Yfory is greatly concerned by the growing resource deficit between Whitehall and Cathays Park. Wales's civil service remains very small and is often unable to pick up the level of policy development on a complex issue. This is particularly true of late, with examples of research on an issue and stakeholder engagement primarily focusing on England and the legislation simply having enabling clauses for Wales. There is no capacity in Wales for the detailed research or discussion that has taken place for England and the timetables for implementation are increasingly behind in Wales. An example of this is the Commons Act 2006, on which a Defra team of 12 plus worked. In contrast, Wales had a team of only 1.5. A similar issue is likely to emerge on the planned Marine Bill as there is so little resource in Wales. The likely outcome will be a Westminster Act containing enabling clauses for Wales; due to resource deficit however, the Welsh civil service is unlikely to be in a position to pick up on the Act and ensure its implementation. An issue of growing concern over the last two terms of the Assembly, Cymru Yfory does not anticipate that this situation will improve with the advent of the Government of Wales Act 2006. Rather, it is anticipated that the situation will likely deteriorate due to the parallel and increased devolution of powers via Acts of Parliament and an increasingly heavy legislative programme at Cardiff Bay.

4. The resource deficit outlined above leads to Cymru Yfory's second concern regarding the way by which Westminster deals with legislating for Wales: Wales' legislative deficit. If Acts appear in Westminster with Welsh enabling clauses yet the capacity does not exist within the Welsh civil service to exercise these devolved powers, previous Acts are repealed without provision already having been made in Wales. Often, this leaves Wales in the unsatisfactory position of providing delayed and hasty legislation at best, or, at worst, providing nothing at all.

5. In relation to the role of Whitehall and the development of effective concordats between Cathays Park and London, Cymru Yfory would emphasise the need for increased cooperation between the UK and Welsh civil service. As noted in points 3 and 4 above, resource and legislative capacity issues yield cooperation between Whitehall and Cardiff absolutely vital—without such cooperation, we risk sub-standard legislation in Wales. As with the relationship between the Assembly and Parliament, communication between the two

civil services is not always open and transparent. More formal mechanisms may need to be considered to ensure public accountability and clarity. Similarly, further development of protocol and concordats will be required between Westminster and Cardiff Bay to:

- inform the Welsh civil service of decisions taken in Westminster to include certain enabling powers and provisions for Wales within Acts of Parliament; and
- set clear guidance as to the specific reasoning behind and circumstances required for Westminster to devolve such powers and enabling clauses.

6. With regard to intergovernmental relations, Cymru Yfory believes that there is considerable scope for improving the clarity and openness of the mechanisms for inter-Parliamentary working and communication. This is particularly apparent over Assembly input into primary legislation that relates to Wales—it seems that the Assembly has found it impossible to time its committees to successfully give scrutiny input into a Westminster Bill. Such difficulty would be compounded should a situation arise where we have two different parties in power in Wales and Westminster. Some of the channels which appear to have been employed so far may not be workable; it is generally agreed that the evolution of devolution has been a largely smooth process thus far due to the complimentary colours of the Westminster and relevant devolved governments. A formal procedure for the Assembly to input into primary legislation relating to Wales should be developed. Cymru Yfory would thus strongly favour the development of more formal, transparent procedures with regard to intergovernmental relations.

7. In light of the role created for the Secretary of State for Wales via the Government of Wales Act 2006, Cymru Yfory believes that this Cabinet position must remain until such a time as the Secretary of State is no longer the gatekeeper between Cardiff Bay and Westminster. Cymru Yfory does believe however that the power granted to the Secretary of State for Wales over a democratically elected body is untenable in the long term if his/her veto power is exercised frequently, as it could potentially be if governments of different colours are elected in Wales and Westminster. While there are matters that remain reserved to Westminster however, Wales must retain representation at the Westminster Cabinet level.

8. In relation to the appropriateness of the arrangements for the Wales and Scotland Offices with the DCA, Cymru Yfory would note the need to consider:

- the representation of the devolved nations under the DCA's recently announced remit as Ministry of Justice; and
- whether devolved bodies are suitably placed under this new department's responsibility.

9. Although legal disputes have not featured in the Welsh context in the past 10 years of devolution, Cymru Yfory believes that such a situation may not prevail in the future. Due to the lack of a consolidated list of legislation relevant to Wales, a situation may develop in which contradictory legislation is developed in Wales under the provisions of the Government of Wales Act 2006. Similarly, amendments made by the National Assembly for Wales to existing Acts of Parliament, now permitted under certain circumstances via the Government of Wales Act 2006, will be bilingual. Legal disputes could thus arise if such amendments are not drafted identically in both Welsh and English.

10. Cymru Yfory does not believe that the Government of Wales Act 2006 is any more sustainable than its predecessor as a devolution settlement for Wales. The settlement's complexity will serve to make navigating the powers of Wales very complex if not impossible for civil society and may lead to even less engagement of the public in the political process. An outstanding issue—basic yet fundamental in nature—is the confusion surrounding what exactly the Welsh settlement in its current form incorporates. Awareness of what has been devolved to Wales thus far via Wales-only Acts and Framework Powers, and what will be devolved in the future via Legislative Competence Orders and Acts of Parliament, is poor, and the methods by which to discover such information are very thin on the ground. Being able to monitor which fields are added to Schedule 5 to the Government of Wales Act 2006 is also a great concern of Cymru Yfory in the Welsh legislative context.

Cymru Yfory Executive Committee

April 2007

Memorandum submitted by Denis Latimer

When candidates for election to the UK Parliament seek support in Scottish constituencies, they do not undertake to represent their voters' interests regarding matters which have been devolved to the Scottish Parliament and when seeking re-election they do not have to answer to their constituents for action they have taken regarding such matters. They therefore have no democratic mandate to deal with such matters and cannot be regarded as representing their constituents when doing so.

Before devolution was introduced, all MPs represented their constituents for the full range of Parliamentary responsibilities but MPs from Scotland ceased to do so subsequently. That they have been allowed to continue participating in all aspects of government outside Scotland was a major, undeclared, undemocratic change in the UK constitution.

The way the “West Lothian question” was raised only served to confuse the real issue. The point is not where these MPs were elected but that they do not fully represent their voters. We claim to be a representative democracy and, as such, we cannot reasonably have MPs taking part in matters for which nobody has chosen them as their representatives.

Surely this is an anomaly which the Constitutional Affairs Committee should seriously consider.

March 2007

Memorandum submitted by the Electoral Reform Society

1. INTRODUCTION

The Electoral Reform Society is a cross-party membership organisation that seeks to promote improvements to the democratic process, in particular through the introduction of fairer voting systems. Since its founding in 1884 it has studied elections and electoral systems and has not yet discovered or devised a voting system that provides both broad proportionality and enhances voter choice to the extent of the Single Transferable Vote.

2. PUBLIC SUPPORT FOR DEVOLVED INSTITUTIONS

The Scottish Parliament and Welsh Assembly both enjoy widespread support. In Scotland, support for the Parliament, which was created after many years of campaigning by the Scottish Constitutional Convention, has been strong since the Parliament establishment in 1999. While the Welsh Assembly had a more difficult birth with only half of those voting in the 1997 referendum supporting it, support has grown over the years—see table below.

<i>Constitutional preference in Wales</i>	1997	1999	2001	2003
Independence	14.1	9.6	12.3	13.9
Parliament	19.6	29.9	38.8	37.8
Assembly	26.8	35.3	25.5	27.1
No elected body	39.5	25.3	24.0	21.2

(Table from John Osmond *Nation Building and the Assembly*, in Trench (ed), *Has devolution made a difference*, Constitution Unit/Imprint Academic, 2004.)

3. SUPPORT A CONSEQUENCE OF REPRESENTATIVE INSTITUTIONS

We believe that public support for the devolved institutions is, at least in part, a consequence of them providing forums in which all significant opinions in Scotland and Wales have a voice, making them truly representative of the Scottish and Welsh electorates. If they had not been elected by broadly proportional voting systems, we do not believe they would have enjoyed the same support and respect.

4. STABILITY OF GOVERNMENT UNDER PROPORTIONAL REPRESENTATION

The use of broadly proportional voting systems has led to stable, effective administrations.

4.1 Although elections have led to coalition government in Scotland, this has not hindered the Parliament’s ability to pass legislation. Government has been strong, both in that it has been decisive and in that it has enjoyed the support of a majority of voters. Fears that a small party would hold disproportionate power have not been realised: Scottish Labour has been able to implement most of its manifesto, making concessions only where a clear majority in the Parliament has taken a contrary view.

4.2 Wales has seen both coalition and minority administrations. As in Scotland, however, this has not impeded the Welsh Executive’s ability to act, other on issues on which there has been determined opposition by a majority of Assembly Members.

5. PROBLEMS IN THE USE OF AMS AND THEIR POSSIBLE RESOLUTION

Although the Scottish Parliament and Welsh Assembly have benefited from the use of proportional voting systems, that does not mean that the use of the Additional Member System has not been without its problems. In particular, the creation of two categories of elected members has been a source of friction in both bodies. We have therefore welcomed the recommendations of:

- the Arbuthnott Commission which has proposed revisions to AMS and consideration of the use of STV if these revisions do not overcome the problems inherent in the system; and

- the Richard Commission which has proposed that, if the powers of the Assembly are increased, the size of the Assembly should be increased and it should be elected by STV.

6. DEVOLUTION AND CHANGES IN LOCAL GOVERNMENT

The Scottish Parliament has legislated for the introduction of STV for local government in order to make Scottish councils more representative and more accountable. While this change was supported by the Labour leadership in Scotland and a large majority of Labour MSPs, we doubt that this reform would have happened if the Parliament had not been elected on a proportional basis. It also appears possible that, after the 2007 Assembly elections, the Sunderland Commission's recommendation that local councils in Wales are made similarly representative and accountable by the use of STV will be reconsidered.

7. CONCLUSION

In conclusion, we have welcomed devolution, not just because it gives a voice to electors in Scotland and Wales but also because it has allowed the introduction of more modern forms of democracy.

April 2007

Memorandum submitted by The English Democrats Party's

- The people of England constitute 85% of the population of the United Kingdom. The “debates” and deliberations regarding UK devolution undertaken by the Labour government have consistently ignored England, thus, excluding 85% of the population of Britain from any meaningful dialogue on the question of devolution, its ramifications, constitutional effects and any consequent democratic anomalies.

A public dialogue, in which the three main parties made varying accommodations with nationalism and nationalist parties, culminating in a referendum in Scotland and Wales, resulted in the establishment of Scottish and Welsh National devolution. No such publicly funded debate or opportunity for a national referendum has been offered to the people of England. The failure to provide a comparable debate and democratic referendum in England is unacceptable and undemocratic, especially in view of the fact that the different treatment afforded to England can be considered to be discriminatory and flies in the face of the fundamental Act of Union obligation to treat all the member Nations of the Union “equally”.

- The Labour government has proceeded with its preferred solution for English devolution, *viz*: Regionalisation. This model has not been debated publicly (except in the North East—see below), but has been applied stealthily by the government by reorganising or attempting to reorganise health services, ambulance services and police authorities and the quango state, etc into a Regional format.
- It is clear that without public support for Regional government the Labour administration will run a huge risk of wasting millions of pounds of taxpayers money, to establish institutions which are not wanted by the English people.
- We have not seen any significant polling evidence to see any demonstrative case for establishing Regional Government. The typical level of support hovers around 10%. Support for an English Parliament is between 60–68% (without a wide-scale public debate and campaign in its favour, as occurred in Scotland and Wales). Indeed the one referendum offered to determine whether or not a representative regional body should be established in the North East, was rejected by 79% of voters. This devastating rejection by the voters of the North East should have been a sufficient warning that Regional government was a non starter, but instead the Labour government withdrew all future referendums and carried on with the Regional agenda regardless. We believe that when the English public understand that removing our traditional counties will be a consequence of enforced Regionalisation, without either consent or public debate there will be significant unrest within the country.
- The Scottish Constitutional Convention made a compelling case for a Scottish Parliament. The essence of the case hinged on the fact that Scotland was a sovereign nation in its own right and as such deserved a Parliament to make democratic decisions on devolved matters on behalf of its citizens. The protracted public debates and the final agreement, that a Scottish Parliament was the right solution for Scottish democracy, applies in equal measure to the people of England. If it is right for the people of Scotland, it is also right for the people of England.
- The failure of the Labour Government to have properly and carefully considered the implications of the now famous West Lothian Question has been a glaring misjudgement and needs to be urgently rectified. The people of England have been treated in an inferior manner and

discriminated against compared to those living in Wales and Scotland; their wishes have not only been ignored they have been dismissed, all of which is completely unacceptable. It is also unacceptable to be subject to the following:

- 50 Million people in England are denied an English First Minister. The Prime Minister (Gordon Brown) is the *de facto* English First Minister but no one in England will have voted for him;
- 50 million people are denied a dedicated Political Executive, however five million Scots and three million Welsh citizens do have such an executive;
- English MPs are unable to vote on Scottish/Welsh matters;
- however, MPs with no electoral mandate from the people of England are able to vote on legislation which affects only England;
- the use of non English MPs to drive through legislation that is detrimental to the people of England yet beneficial to themselves (student top up fees being a case in point);
- glaring differences in the provision of life saving drugs, elderly care, public sector pay settlements, cultural investment etc. The Barnett Formula which contributes to Welsh and Scottish expenditure was not fairly reassessed as a result of devolution and leaves the people of England as majority tax contributors with amongst some of the poorest services in comparison to the rest of the UK. This situation is grossly unfair and unacceptable;
- a Parliament for Scotland is deemed to be right for the people of Scotland but the equivalent is considered unacceptable for the people of England—no adequate explanation is forthcoming and no political party is willing to allow the people of England to decide their own future.
- The English Democrats along with the Campaign for an English Parliament established the English Constitutional Convention to debate this issue and to encourage a public forum where the various ideas for devolution could be put to the people. No political party has taken up the offer to have a sensible open debate and to many this is regarded as bad faith and an evident wish to stifle democracy, again something that is unacceptable.

The English Democrats were largely created because of the manifest unfairness and mishandling of UK devolution. We consider it to be necessary to create a new political force to have the basic democratic rights of the people of England properly respected.

It has been a shock to many of us to see how easy it is for basic democratic rights of a proud nation state like England to be side-lined by an unrepresentative Labour administration, using the very anomalies to which we object, to justify their undemocratic behaviour.

This Labour Government had less than 23% of the popular vote in the UK, and with this tiny vote they are intent on breaking England into Regions and denying 50 million people the right to speak and the right to vote on the subject.

The Committee is asked to carefully consider our submission and help to galvanise the debate to ensure that the people of England are not discriminated against and to ensure national referendum on devolution that has already been given to Wales and Scotland—anything less will be a travesty of democracy!

February 2008

Memorandum submitted by Graham Pearce, Aston University and Sarah Ayres, Bristol University

1. SUMMARY

1.1 This memorandum draws upon the findings of a recent ESRC study into English regional governance. Since 1997 constitutional arrangements in parts of the UK have been transformed by political devolution. Nonetheless, they have evolved incrementally, leading to an asymmetric set of territorial structures and processes and limited attention has been given to assessing either their effectiveness or their wider impacts for UK government.

1.2 Consideration about how the government of England, which comprises 85% of the UK's population, should be accommodated within a post-devolution UK is notable by its absence. Labour's early enthusiasm for regional government was conceived as a way of giving England a more influential voice in a devolved UK and decentralising government from Whitehall. The 2004 North East referendum, however, halted plans for elected regional government beyond Greater London. The outcome is that England is now the most centralised of all the large countries in Western Europe and forms the preponderant part of a "lopsided" United Kingdom (Jeffery and Wincott, 2006).

1.3 The White Paper, *Your Region, Your Choice: Revitalising the English Regions* asserted that administrative decentralisation "will make the delivery of programmes and policies more efficient and ultimately lead to better outcomes in all regions" (Cabinet Office and DTLR, 2002: 3.14). However, this

remains largely untested. The Government's approach to English regionalism has been piecemeal and is characterised by a plethora of region based, government bodies in which no single body has responsibility. Our central argument is that too little attention has been given to the government of England in the process of UK devolution and that current regional institutional structures are both unstable and lack sufficient capacity to secure a coordinated national and regional approach to strategy making and implementation.

2. THE NATIONAL CONTEXT

2.1 Combining central control with decentralised decision-making at the regional tier is not new to the UK. It was practiced for many years through the separate territorial departments of UK government for Northern Ireland, Scotland and Wales. There was no equivalent tradition of administrative devolution or territorial working in the English regions. Prior to 1997, central government was represented in the regions through its network of Government Offices (GOs) that brought together regional officials from the Departments of Employment, Environment, Transport and Trade and Industry. An extensive and bewildering patchwork of government executive bodies, appointed and accountable to ministers was also present, although not all operated on the basis of standard regional boundaries.

2.2 During its first term Labour's regional reforms were targeted in three key areas. First, as a step towards regional democracy, voluntary Regional Chambers (subsequently restyled "Assemblies") comprising local authority leaders and representatives of other regional economic and social interests were established to perform strategic co-ordination and democratic oversight. Second, Regional Development Agencies (RDAs) were appointed to coordinate regional economic development and regeneration initiatives and improve the regions' competitiveness. Third, the GOs' roles were extended to provide central government with a more coherent presence in the regions. In addition to extending democracy, therefore, Labour's reforms were motivated by a desire for gains in efficiency and policy effectiveness.

2.3 The English Regions White Paper introduced proposals to further enhance the powers of GOs, RDAs and Assemblies. It also endorsed the creation of Elected Regional Assemblies but electors in the North East referendum rejected this proposition. Despite this setback Whitehall continues to decentralise powers to regions, where it is judged to add value to service delivery and regions have become the locus of much strategic policy making, including economic development, housing, spatial planning, sustainable development, transport and waste.

2.4 In the absence of regional government it might be expected that attention would be focused on measures to recalibrate the respective roles of central departments and regional institutions to improve the decision-making, strategy co-ordination and delivery capacities of regional governance structures. But devolution has not altered the fundamental nature of Whitehall, England remains formally unorganised as a political institution and there is limited evidence that ministers have fully digested the consequences of increased regionalisation for the machinery of government (Lodge and Mitchell, 2006). Indeed, it is asserted that rather than a measured approach, the pattern of decentralisation in the English regions has had more to do with government departments vying to advance their own separate agendas and the politically driven restructuring of Whitehall departments, prompted by ministerial reshuffles and resignations (Goodwin *et al* 2005). Awareness of the regional impacts of public sector expenditure decisions also remains deficient; regions are viewed as predominantly uniform and, despite improvements in the statistical base, the evidence underpinning much regional policy development and resource allocation is scant (McLean and McMillan, 2003).

2.5 The Government can also be also censured for its unwillingness to embrace measures to narrow the pronounced gaps in regional prosperity within England. As the Town and Country Planning Association (TCPA, 2006) observes, England remains the only nation in Western Europe, including Scotland and Wales, without a national spatial framework setting out a coherent vision for the country as a whole, within which strategies can be coordinated both in and between regions.

3. THE KEY INSTITUTIONS OF ADMINISTRATIVE REGIONALISM

3.1 As the main outposts of central government in the regions the Government Offices represent nine Whitehall departments and jointly manage or influence an annual budget of some £6.5 billion. They are also responsible for influencing the formulation of a wide range of regional strategies prepared by regional partners and negotiating and monitoring Local Area Agreements between central and local government. Despite these extensive resources, expectations about the Offices' delivery capacities vary across Whitehall departments and GO officials continue to struggle to integrate separate government initiatives and combine their dual functions of delivering national targets with responding to regional priorities. As the House of Commons Communities and Local Government Committee recently observed, "Although the GOs themselves are expected to work across boundaries, departments within Whitehall have proved very reluctant to work in a similarly joined-up manner" (2007: 16).

3.2 The Regional Development Agencies are "business-led" organisations and have been accorded special status as the focal point for regional economic development policies. Rather than diverting mobile investment and resources for public infrastructure to less favoured areas RDAs were designated on the premise that prosperity is dependent upon building on the regions' innate competitive capacities.

Significantly, they have attracted the support of the Treasury through their anticipated contribution to improving regional productivity and competitiveness. Since 2002 the RDAs' policy remit and budgets have increased (£2.3 billion annually) and, formally, they have been awarded additional discretion over the use of their funding. Nonetheless, the Agencies face challenges arising from Labour's method of combining decentralised structures with traditional forms of Whitehall working. Despite an apparent commitment to "territorial justice", the scale of resources available to RDAs is not sufficient of itself to make a significant impact on regional economic disparities and there is a lack of agreement about their macroeconomic impacts. Indeed, claims that devolution and decentralisation can confer an "economic dividend" by enabling territorial administrations to tailor policies to local needs have been questioned (Rodriguez-Pose and Gill, 2005). Second, notwithstanding Whitehall's ostensible commitment to pursue a more nuanced approach to meet individual regions' needs, RDAs continue to be largely judged on their ability to meet national targets, a process that has acquired a fresh vigour in advance of the 2007 Comprehensive Spending Review. Third, RDAs are responsible for identifying outcomes in policy areas, for example skills and sustainable development, where they have a limited remit. Fourth, ambiguities have arisen around the status of the RDAs' Regional Economic Strategies in relation to other regional strategies. Finally, there are uncertainties about the Agencies' priorities and constant changes in roles, initiatives and bureaucratic complexity are perceived to have had a disruptive impact, leading to "overstretch".

3.3 Regional Assemblies provide a forum for elected local councillors to come together to discuss regional issues with representatives of the business and the voluntary sectors. They serve average regional populations of 5.2 million, similar to that of Scotland. In addition to scrutinising the RDAs' activities they have acquired responsibilities for drafting Regional Planning and Housing Strategies (formally issued by the DCLG), preparing Regional Sustainable Development Strategies, developing Integrated Regional Strategies which are designed to reduce duplication and promote sustainable development and orchestrating regional inputs to the public expenditure decision-making process. Nonetheless, Assemblies are fragile institutions; they lack political legitimacy, are largely invisible to the general public and have struggled to establish a voice in Whitehall. They also have limited resources (jointly less than £30 million annually) and, given the accumulation of additional tasks, there is a strong impression that they face strategic overload. There also remains confusion about their roles, which can be attributed to the Government's failure to set out a clear plan for the Assemblies following the North-East referendum. Finally, because they lack executive powers, Assemblies must rely upon influence through convoluted linkages with fragmented regional agencies and central government departments to achieve their objectives.

3.4 Since the 2004 referendum the Government has published a series of reviews commissioned by HM Treasury on land-use planning (Barker), transport (Eddington) and skills (Leitch), which "can be seen as mapping out the terrain on which future approaches to policy and governance between the national and local scales in England will be decided" (Burch *et al*, 2007: 6). These reviews will lead to the further entrenchment of the "technocratic" approach to English regionalism.

3.5 The North-East referendum result also prompted a growing interest in "city-regions", as an alternative scale of government through which devolution might be managed. The recent Local Government White Paper (DCLG, 2006) confirmed that city-regional spatial planning is needed to make further progress on sustainable economic development in English cities. However, reflecting the unsettled state of government arrangements in England, the White Paper adopted a permissive approach and made no recommendation about how city-regions might be governed or how they should relate to the broader regions. Rather than being drawn into a choice between cities and regions, "we need both to strengthen the role of regional coordination in policy-making and encourage flexibility to allow all forms of sub-regional partnerships to thrive" (Balls *et al*, 2006, 6).

4. THE CAPACITY TO "JOIN UP" POLICIES IN THE REGIONS

4.1 National objectives continue to overshadow "bottom-up" appeals to adopt a more consistent approach to policy-making and integration in the regions. Indeed, the form of decentralisation is judged too limited to have much impact and measures to enable regional actors to work across organisational boundaries have been incremental. Joining up policies and public expenditure within regions remains problematic and efforts to establish a clear mission and identify critical tasks are frustrated by the abundance of often unrelated priorities and actions identified in regional strategies.

4.2 Powers and resources are also distributed unevenly between a multiplicity of organisations, which have different cultures, objectives, structures and reporting mechanisms. Current accountability arrangements are judged complex and often opaque. Reliance on partnerships can be seen as undemocratic, adding a further level of complexity, as well as leading to compromise, even blandness, and masking the presence of different and conflicting interests between and within multiple scales of governance.

4.3 A variety of tools, including Integrated Regional Strategies and Concordats between key regional stakeholders, have assisted in easing inter-organisational tensions and smoothing the most glaring policy inconsistencies and, alongside Treasury motivated "Regional Funding Allocations", offer a potential way forward in linking policies, funding streams and outcomes. However, questions remain about the robustness of regional decision-making processes and their influence on priority setting in Whitehall.

4.4 National policies lack a spatial dimension, inter-regional economic disparities remain deep-rooted, traditional accountability mechanisms emphasise individual contributions rather than joint outcomes and national targets and funding streams discourage regional discretion and the ownership of strategies. Moreover, despite widespread acceptance of the need to address the cross-cutting themes associated with the “sustainability agenda”, decision-making continues to focus upon “trading off”, rather than integrating policies.

4.5 The government of England continues to be arranged predominantly functionally and regional institutions still lack real bite over the use of funding streams. Although New Labour may pay lip-service to the notion of “joined-up” regional working, the harsh reality is that “coordination” is used mainly to provide a plausible justification for business as usual and sub-national partners are left to negotiate with a patchwork of public bodies with very different levels of commitment to the regional tier (Sandford, 2005).

5. FUTURE PROSPECTS FOR THE ENGLISH REGIONS

5.1 For the present the regional agenda is not high on the list of priorities of either national or regional elites and the “safe bet” is that, given Whitehall inertia, central government will continue to pursue its relationships with the regions on a piecemeal, functional basis.

5.2 Nonetheless, as the last decade has illustrated, devolution is a dynamic process with unpredictable outcomes. Even in England the tentative decentralisation of territorial management has resulted in diverse institutional approaches in different regions. It is conceivable that an accumulation of structures and initiatives could lead the key regional institutions to acquire a tighter community of interests, extend their joint capacities, develop a more integrated approach to managing funding and reach a point where political regionalism replaces functional regionalism. The Assemblies’ roles in respect of housing, transport, sustainable development and waste remain underplayed and their scrutiny function could be extended to other public bodies, including the GOs. As part of the Government’s pledge to decentralise government functions outside London, GOs could also acquire additional responsibilities including greater freedom over the coordination of resources for cross-cutting policies.

5.3 Alongside regional stakeholders and local authorities, Whitehall might also be persuaded to adopt a set of shared objectives and targets designed to meet individual regional needs. There are already signs that the ongoing Treasury review of the management of public expenditure to deliver the Government’s regional economic performance PSA target could lead to measures to improve the efficiency and effectiveness of existing sub-national structures in England, including greater consistency between strategies and funding streams and increased regional and local flexibility (HM Treasury, 2006).

5.4 So far, the full effects of devolution have been eased by Labour’s dominance and rapid increases in public expenditure that have benefited all parts of the UK. These conditions will not last and, over time, the political and financial impacts of devolution will become more pronounced. The disjointed process of regionalism in England, the limitations of a form of regional governance based upon voluntary partnerships and the failure to provide a regional counterweight to the economic dominance of London and the South East will also become more evident. As Hazell (2006) observes, while by no means inevitable, in the long run there is strong possibility that regional government will return to the political agenda as a potential solution to the unsettled “English question”.

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April 2007

Memorandum submitted by Grayling Political Strategy

1. DESCRIPTION OF GRAYLING

Grayling is an international public relations, public affairs and event management group. The organisation has been operating for over 25 years, and is now part of Huntsworth plc.

Grayling's public affairs arm started life as Westminster Strategy in 1986; the Brussels office opened in 1990 and then, ahead of devolution, offices were opened in Edinburgh in 1996 and Cardiff in 1998. The four public affairs offices are known as Grayling Political Strategy (GPS). We also work in association with an independent company in Northern Ireland

GPS is the only organisation of its kind with directly managed teams, working in an integrated way across the four "political capitals" of London, Brussels, Edinburgh and Cardiff. We are founder members of the Association of Professional Political Consultants.

2. OUR APPROACH TO THE COMMITTEE'S QUESTIONS

As an organisation we are politically neutral and have no collective view on questions of whether more devolution or less is to be preferred, or whether a new constitutional arrangements between the nations of the United Kingdom is a good thing or not.

Where we feel we can legitimately comment and be helpful to the Committee is in addressing questions from a practical point of view, relating our comments to the experience of working with many organisations, often with more than one political institution.

We have specifically concentrated on Scotland and Wales, as the two areas in which devolution in the UK has been in place the longest, and where we have had our own two teams working with clients alongside the devolved administrations since they were established.

3. RESPONSE TO THE COMMITTEE'S SPECIFIC QUESTIONS

Question 1: Westminster: *How does Parliament deal with devolution issues, eg legislating for Scotland and Wales?*

Scotland

There have been numerous conflicts between the Westminster Government and the Scottish Executive and Parliament. Some of these have emerged as a result of genuine differences in view on policies such as free personal care, foundation hospitals and higher education funding.

However, there have also been examples of an apparent lack of communication in relation to policy making; for example over the Serious Organised Crime Agency where British and Scottish Ministers had different perceptions about roles and responsibilities; or the new UK Supreme Court where Scottish Ministers were apparently not adequately consulted before the announcement despite obvious implications for the Scottish legal system.

Current mechanisms rely to a large extent on goodwill, a point recognised by the House of Lords Select Committee on the Constitution which said:

"We are concerned by the sheer extent of the reliance on goodwill as the basis for intergovernmental relations within the United Kingdom. We are also concerned that goodwill has been elevated into a principle of intergovernmental relations: it is used to explain the avoidance of disputes and to justify maintaining the present informality of the system." And went on to state that "we have an unresolved concern that these mechanisms may not prove adequate to the challenges arising from a highly-charged political dispute, especially if the parties are accustomed to informal rather than formal dealings with each other".

Another area of concern is the use of Legislative Consent or "Sewel" motions. This was a mechanism initially designed so that the Scottish Parliament could agree to let Westminster legislate for the whole UK on matters which were technically devolved but on which a UK solution was deemed to be preferable.

However, this was supposed to be the exception and not the rule and it was envisaged that only a couple of such motions would be brought forward annually. In the first two sessions of the Scottish Parliament, 76 such motions have been lodged. This suggests that the issue of the respective powers of the two Parliaments has not been definitively answered.

Wales

There has been increasing comment in Wales—amongst the media, politicians, and our clients—on the “West Lothian” question: or the “West Clwyd” question, as it is becoming known in Wales. Under devolution to date, the absence of primary powers has left the National Assembly in the position of hoping that primary legislation bids are included in the Queen’s speech. Inevitably a packed Westminster legislative timetable has meant that only one out of four bids for Welsh legislation is successful. This will change under the new Government of Wales Act. The Assembly will have a more formal process for proposing its own legislation, and this seems likely significantly to change the relationship between the National Assembly and Parliament.

Over the last decade there have been numerous occasions in which policies of the Westminster Government have been in conflict with the National Assembly. Some of these conflicts have in part been due to the lack of a majority held by the—Labour—Assembly Government. An example was the decision not to introduce top up fees in Wales. Divergence in policy on this subject area was down to opposition parties voting together to set a clear difference in policy to that in England: a valid democratic tactic, it could be argued, but one which perhaps was not necessarily envisaged when devolution was initiated. Such outcomes may be more common if and when different political parties run the administrations in the National Assembly and Westminster.

The Assembly Government has managed to take formal positions on issues it could be argued are beyond its devolved remit. For example, although the National Assembly has no power over planning decisions on energy facilities generating more than over 50 megawatts, the Assembly Government has stated its formal opposition to new nuclear power stations being built in Wales. This position may be tested if in the future the Westminster Government decided—as it is currently entitled to do—that there should be new nuclear power stations built in Wales.

Overall

All the evidence, so far, is that the devolution settlement in Scotland and Wales, far from being a fixed position, is in fact a long-term process in which more responsibilities flow to the devolved institutions. Inevitably, this will increasingly highlight concerns about the ability of Scottish and Welsh MPs to influence legislation affecting only England.

Whitehall: What impact has devolution had on Whitehall? Has there been a change in culture? How have they responded to the divergence in policy making? How have the Concordats developed, and are they working?

In our experience, this is very much “work in progress”. The reliance on goodwill has been mentioned. Areas such as public health—where the ability of health systems to join up in the prevention of a disease such as Avian ‘Flu will be critical, may warrant fuller investigation.

The emergence of separate drug regulatory regimes and other divergent services in Scotland, England and Wales rightly attracts considerable attention. Does a “fair” democratic settlement equate to everyone, across the UK, having access to the same treatments or a similar level of social care or education? Tension about these matters is clearly rising. How long before the “Barnett formula” is re-opened for investigation?

Although these and other battles are likely to be fought pretty robustly in coming years, the shifting culture towards a new way of working should be noted. In the public sector, some organisations have created offices in the devolved institutions and work effectively with them. Most are focused on improving their understanding and standards of representation; have begun to develop their own communication programmes; and invest considerable time in creating closer ties with their counterparts in Edinburgh, Cardiff and Northern Ireland.

While such activity creates cost, it should be encouraged and allied to a wider education programme—across the UK—about the new constitutional settlement. Given the generalized lack of UK national media coverage about the new devolved institutions—particularly for Wales—this should be a priority.

This would also help the private sector, where understanding of the new constitutional settlement is patchy. As would be expected, company engagement in the devolved institutions relates directly to two factors—“do we have business interests that are affected by these new bodies”, and, if so, “what powers do they have which affect us?” Probably inevitably, it has taken time for many companies to perceive how their interests are affected but it is also clear that, in the last two or three years, more are waking up to the need to consider their interests. A small but growing percentage of clients commission our services in two or,

sometimes, all three of our UK offices. Clients regularly comment on the strong interest in collaborative working they discover in the devolved institutions. But confusion continues about the precise roles of both institutions, particularly in Wales.

What is the future of the current Secretaries of State for Scotland, Wales and Northern Ireland? Are the current arrangements for the Wales and Scotland offices within the DCA appropriate?

Of paramount importance is the need for clarity in working relationships and protocols between the UK Executive and the devolved institutions.

What are the other outstanding issues around reserved and devolved issues? How could these be best resolved? Is the UK's model of asymmetric devolution sustainable?

At a devolution conference GPS hosted in London in December 2006, an expert panel drawn from academics, politicians and advisers in Scotland, Wales and England lamented the fact that devolution had found no resonance in England. This “asymmetric devolution”, the panel felt, presents a huge challenge. Voter indifference everywhere will become a concern if levels of activity and engagement continue to decline and will in turn rob the devolved institutions of their legitimacy if voters seem less and less willing to turn out. Hopefully the May elections will prompt not just analysis, but consideration by politicians themselves about ways of stimulating local democracy across the UK.

What are the broader consequences of devolution for the future of the UK's constitution?

For the last 10 years, Labour has dominated the politics of the mainland Britain. A different era, one in which other parties or coalitions come to the fore, will test the new devolved structures. We have no view as to whether or not the UK should adopt a federalist structure, but the implications of devolved power should in our view be debated much more widely in society.

It is a particular concern in our view that there is virtually no UK-national media coverage of the Welsh Assembly, and that coverage of the Scottish Executive and Parliament—while strong in Scotland—remains thin in the London-based media. Newspapers of course essentially report what they think will interest their readers and it is therefore pointless to demand greater coverage. It will have to be led by politicians themselves and their willingness to lead an engaging and vivid debate.

Another point worth noting is that the outcome of the May elections is masking an important underlying change. Voters are being asked to use different electoral systems. Thus in both Scotland and Wales, voters now have experience of a constituency plus regional list system as a result of devolution—alongside first past the post which is used at UK level. Moreover, in Scotland a Single Transferable Vote system will now be applied to local government elections. Does this matter? GPS is not itself in a position to draw conclusions, but it is possible that voters may find this confusing. It may also lead some to conclude that they prefer one model to another.

*Viven Hepworth
Chief Executive*

April 2007

Memorandum submitted by the Institute of Welsh Affairs

1. OVERVIEW

1.1 At the end of the first decade of Welsh devolution it is safe to conclude that it is now the settled will of the people of Wales. Recent polling published by the Institute of Welsh Politics, Aberystwyth University, found a substantial fall in opposition to devolution since 1997, from 40% to 17%.³⁸ There is growing evidence of an acceptance that arrangements for Wales should reflect Welsh circumstances and needs. For example, the Aberystwyth survey found large majority support for the National Assembly rather than Westminster to have the “greatest influence over Wales”. On a range of matters, Welsh policies and delivery are now substantively different from those for England. As one illustration, some 56% of the Assembly’s subordinate legislation is either unique to Wales or substantively different from the equivalent legislation applying to England.

1.2 Recent reforms and improvements show a growing confidence, both in Wales and in London, in those responsible for delivering devolved government. So, for example:

- Improved governmental arrangements were speedily enacted and implemented under the Government of Wales Act 2006 with relatively little controversy.

³⁸ The statistics, the result of an ESRC-funded academic survey, were published on 17 September 2007.

- New fields of competence have been conferred, and none taken back.
- Devolved executive powers are now more extensive both in number and scope (though the distinction between those and reserved powers is still not always clear).
- It is much less common for powers to be shared with Whitehall or concurrently or jointly exercised. Rather, greater reliance is placed on consultation and agreement.
- Acts of Parliament more clearly differentiate Wales-related provisions, which increasingly confer powers in terms negotiated by Welsh Ministers.
- Whitehall has a better understanding of the need to accommodate devolution expectations, which is more thoroughly reflected, for example, in the applicable Guidance Notes.
- Parliament and its Committees are giving greater consideration to Welsh devolution issues, and Government is necessarily paying greater heed to the concerns and recommendations made by them.

1.3 Despite these achievements, the Welsh devolution “settlement” remains complex, without precedent and, in our opinion, not well understood. Those who are called upon to operate within the system have been faced from the outset by the need to come to terms with constantly evolving arrangements that have no counterpart in Scottish or Northern Irish devolution.

2. PROGRESS OF DEVOLUTION IN WALES

The Government of Wales Act 1998

2.1 The first two terms were marked by pragmatic changes to the National Assembly’s constitution as originally set out in the Government of Wales Act 1998. Principal among these were the *de facto* separation of its executive functions (carried out by the Assembly Government) from its deliberative and scrutiny role and the gradual emergence of an incipient Parliamentary Service (in the form of the Presiding Office) to support the Assembly in discharge of that role. These arrangements always sat uncomfortably with the Assembly’s corporate structure, both arms of which had to be serviced by officials from the civil service under a single Permanent Secretary.

2.2 Features of the original scheme that were designed to encourage inclusiveness and cross-party consensus, such as the Subject Committees, proved less successful than intended. In part this is attributable to the Committees’ inability to bring sustained depth in their input to policy development and to shortcomings in scrutinising both the Executive’s policy and the performance of Ministers. The presence of Ministers as full committee members was widely seen as contributing to confusion as to lines of responsibility and accountability.

2.3 The original aim underlying the Assembly structure was one of executive devolution. However, this evolved to give the Assembly a fuller role in legislative activity, albeit under secondary legislative powers delegated, often in a piece-meal way, principally by Act of Parliament and Transfer of Functions Orders made under the 1998 Act. But acquisition of the additional powers (both executive and legislative) necessary to enable a coherent policy to be developed on a specific topic was dependent upon the goodwill and cooperation of Whitehall departments and their own priorities. Formal working arrangements between Cardiff and London were put in place, with the Wales Office playing a pivotal role. However, these were never tested in circumstances where different political parties were in government or in unfavourable economic conditions.

2.4 There can be no question that the trend throughout the first two terms was an increase in the capacity of the Assembly to address Welsh issues. Unfortunately, the resulting picture was a complex of specific, often detailed, powers rather than the conferment of the necessary authority to tackle policy issues in a fully integrated and coherent manner.

The Richard Commission

2.5 The Richard Commission on the powers and electoral arrangements of the Assembly, established as a result of the Partnership Agreement between Labour and the Liberal Democrats in the first term, constituted a thorough and well-informed examination up to late 2003. It contained significant and coherent recommendations, many of which, but by no means all, carried weight with the UK Government in the preparation of the Government of Wales Act 2006. Among those recommendations not given current effect in that Act, the following stand out:

- The conferment of primary legislative powers in relation to designated subject areas, on the lines of the Scotland Act 1998, though with a more restricted range of subjects.
- An increase in the membership from 60 to 80 to strengthen the Assembly’s capacity.
- To accommodate such an increase in numbers while continuing the principle of proportionality, the replacement of the AMS system by the introduction of STV as the mode of electing all the Assembly members.

2.6 The case for implementation of these recommendations remains strong. Political developments and working experience during the current Assembly term may strengthen the argument for implementation in time for the next Assembly election. The mechanism for instituting primary legislative powers is in the Government of Wales Act 2006, though it is subject to the support of two-thirds of Assembly Members and approval by a referendum. As mentioned below, the Assembly may well prove to be handicapped by the limitation on its number of Members. This could worsen when primary powers are acquired. At the same time, it is difficult to see how the size of the Assembly can be increased without replacing the present AMS system by a different form of proportional representation. However, both these recommendations require amendment of the 2006 Act.

The Government of Wales Act 2006

2.7 This Act made welcome improvements to the devolution arrangements in Wales, not least by the abolition of the corporate structure and by the formal separation of executive and legislative functions. The former functions are now vested in the Welsh Ministers by law rather than as previously by delegation. The Welsh Assembly Government is made formally accountable to the Assembly. The Assembly's legislative power is now to make Measures, a new form of subordinate legislation, on specific matters set out in Schedule 5 of the Act or as are from time to time added to that Schedule. The Act introduced a new mechanism for conferring such additional legislative competence by Order in Council at the behest of the Assembly. The power to make statutory instruments under delegated powers now rests with the Assembly Government. Improvements have also been made with respect to financial matters that are designed to give the Assembly greater capacity to scrutinise public spending plans and expenditure.

2.8 There can be no question that the Act is an advance on the original scheme. However, it seems very probable that it will prove to be one more intermediate step in the evolution of the Assembly to becoming a full legislative institution. The Act contains provision for the conferment of primary legislative powers on the Assembly with respect to specified subject areas, but only after such a change has been approved by referendum at some unstated future date. In the meantime, Wales continues to be subject to a second phase of constitutional arrangements that are without precedent. It would be a misnomer to describe the past and present schemes as constituting a devolution settlement.

Public Acceptance of Devolution

2.9 Although there is little evidence that the Welsh public is embracing devolution enthusiastically, it appears that there is widespread recognition that it is here to stay. Indeed, the most recent public opinion surveys indicate growing support for greater powers for the Assembly. The Institute of Welsh Politics poll, referred to earlier, found that support for full legislative powers has grown from 20% in 1997 to 43% today.

2.10 Turnout at the 2007 election, at some 43%, may suggest limited public interest, though the trend is upwards. As with many other public institutions in the United Kingdom, dissatisfaction as to the achievements of devolution and the performance and delivery of public services is more frequently articulated than actual successes in giving effect to Welsh needs and priorities. There remains wide-scale ignorance of what devolution entails and how it operates. In part this is attributable to the poor coverage of Assembly and Assembly Government activities in the public media, especially the national press.

2.11 The implications of the Welsh electoral arrangements are not well understood. The past dominance of the Labour Party has inculcated expectations derived from the practice of single party government. That proportional representation makes coalition government more probable than not is only just beginning to be acknowledged, not least in the political parties themselves. Until this is better recognised, it may be expected that public impatience will be registered when faced with inevitable inter-party negotiations.

3. SHORTCOMINGS OF CURRENT DEVOLUTION ARRANGEMENTS

Complexity of Powers

Executive Powers

3.1 The arrangements under which Welsh Ministers currently hold or may acquire executive powers (including secondary legislative powers) are largely influenced by the initial scheme for transferring executive functions to the Assembly. The functions transferred were principally those specified powers that were at the time exercised by the Secretary of State for Wales in the limited range of fields set out in the 1998 Act. In many instances these did not result in the transfer of all the executive powers relating to the particular field, or subject topic within a field, some of which remained wholly or jointly with a UK Secretary of State. The extent to which executive powers created under Acts subsequent to 1998 were conferred on the Assembly has had to be negotiated with respect to each Bill. This contrasts with the Scottish arrangements, which in the main provided Scottish Ministers with the same executive powers as enjoyed by Ministers in England.

3.2 The 2006 Act continues to make provision for the transfer of functions from UK Ministers to Welsh Ministers by Order in Council though in future the usual method for conferring such functions will be by primary legislation. In principle, such provisions could be drawn more broadly, rather than in the specific terms used in the past. The recent undertaking by Government to have less recourse to the creation of powers exercisable jointly or concurrently by a Secretary of State and Welsh Ministers is welcome.

3.3 The elaborate terms in which the powers of the Assembly Government are expressed, and the uncertainties arising from their inevitably jagged edges, are not thought to present significant problems for those called upon to exercise them. Nonetheless, the lack of clarity and certainty gives rise to difficulties for those dealing with the Government or who are required to hold it to account.

Legislative Powers

3.4 The latest *Devolution Guidance Note No 9* spells out the convention that Parliament will not normally legislate with regard to devolved matters except with the agreement of the Assembly.³⁹ The Government of Wales Act 2006 establishes the Assembly's legislative competence to enact Measures in 20 Fields. That competence may be exercised only in relation to such Matters as are specifically designated in Schedule 5. The Act itself specifies only a small number of such Matters, all of which relate to the Assembly's operations. Accordingly, the Assembly's Measure-making power in relation to substantive policy areas is dependent upon the subsequent addition of Matters. This can be done by three distinct processes:

- Conversion by Order in Council of framework powers to make statutory instruments already contained in Acts of Parliament. This transitional device is being used only once, in relation to framework powers under the Education and Inspections Act 2006 and NHS Redress Act 2006.
- Legislative Competence Orders in Council implementing proposals initiated by the Assembly.
- Directly by provision in Acts of Parliament, granting permissive powers to the Assembly to determine the detailed application in Wales of the Westminster Government's legislative policy. This mode has already been adopted in legislation in the 2006–07 Session.

3.5 The steps currently being taken under the first and third processes usefully enabled the Assembly to embark upon legislative activities early in its life and thereby to begin to acquire law-making experience. However, these arrangements perpetuate shortcomings experienced under the 1998 Act as well as bringing additional complexity in the development of the Assembly as an authentic legislature. For example:

- Rather than constituting a clearly understood settlement of devolved authority, the scheme is a constantly rolling and potentially unpredictable process for transferring legislative powers.
- With respect to both devolution clauses in bills and Legislative Competence Orders, outcomes are dependent upon the cooperation and goodwill of Whitehall and Westminster.
- Framework provisions in bills, which are likely to remain a major source of substantive powers, carry forward the UK Government's policy objectives and priorities that may not coincide with those of the Assembly Government.
- Such provisions will be acceptable only if they are appropriate for the scope of the bill and if they do not exceed the executive functions that the Welsh Ministers already have.
- Only a limited number of LCOs annually seems likely (said to be in the order of five), given the time factors to which the elaborate procedures will give rise for the two Governments and for the Assembly and Parliament.
- A firm convention is yet to emerge as to the extent to which Parliament may take notice of the Measures enacted to implement powers conferred by LCOs.

3.6 At the same time, the new LCO process is already being utilised vigorously. The Assembly is seizing the opportunities afforded by the new procedures to enhance its capacity to implement coherent legislative policies. The concern that the instruments might be drafted in the detailed and restrictive format used to express framework powers in bill clauses has not been borne out. However, at the time of writing there was a difference of opinion between Cardiff and London over the level of generality with which the new powers should be expressed. This involved the proposed Legislative Competence Order No 2 relating to environmental protection and including the collection and disposal of waste.

3.7 The procedures to be followed with respect to LCOs put considerable emphasis on pre-legislative scrutiny. Unsurprisingly, concerns were expressed that neither the Assembly nor Parliamentarians had an opportunity to take a position on bill clauses until the bill has been published. It is perhaps unfortunate, as *Devolution Guidance Note No 9*, para 17 confirms, that there is as yet no Sewel convention that the assent of the Assembly must be sought in relation to statutory additions of legislative powers, as is the case for proposals that have a negative impact on Assembly powers.

3.8 However, Government has recently announced the intention to provide explanatory memoranda specifically on these clauses when the bill is introduced and an offer of early informal briefing sessions for both the Assembly and Parliamentarians. These procedures do not include any mechanism for formal

³⁹ Ministry for Justice, *Devolution Guidance Note 9: Post-Devolution Primary Legislation Affecting Wales*, July 2007.

feedback, rather they are intended to better inform those participating in the scrutiny of these bills during their passage through Parliament. It remains the case that the Assembly has no special standing to make its views known to Parliament when draft bill clauses conferring new legislative powers are under consideration. It also remains to be seen whether the Assembly will seek to take advantage of the new powers of Parliamentary public bill committees to take evidence.

Sources of the Law Relating to Wales

3.9 One consequence of the new legislative arrangements is the emergence of a plethora of sources of the law that relates specifically to Wales:

- (i) Acts of Parliament applying to England and Wales as a single jurisdiction.
- (ii) Wales-only Acts of Parliament.
- (iii) Provisions in Acts of Parliament that apply to Wales, including framework powers.
- (iv) Orders in Council approved by Parliament, including Legislative Competence Orders.
- (v) Measures made by the Assembly modifying or supplementing existing legislation (including Acts of Parliament) or making new provision.
- (vi) Subordinate legislation made by Welsh Ministers implementing Community law under Designation Orders made under the European Communities Act 1972, s 2(2).
- (vii) Subordinate legislation made by Whitehall for England and Wales as a single jurisdiction.
- (viii) Subordinate legislation made by Whitehall specifically for Wales.
- (ix) Subordinate legislation made by the Assembly under Acts of Parliament or, exceptionally, under Whitehall subordinate legislation, prior to 2007.
- (x) Subordinate legislation made by the Assembly Government (or jointly with Whitehall) under provisions of Acts of Parliament.
- (xi) Subordinate legislation made by the Assembly Government under powers delegated by Assembly Measures.

3.10 It is by no means clear that the necessary steps are being taken to ensure that Assembly Members, the legal profession and civil society generally are able to have access to an up-to-date collation of these sources of the law, as it affects Wales as distinct from other parts of the United Kingdom. We are strongly of the view that early consideration must be given to the separate publication of a collation of current Welsh legislation, a resource that will become increasingly needed as distinct Welsh law is enacted.

Capacity of the Assembly

3.11 The separation of the Assembly from the Assembly Government necessarily transforms its role into a legislative and scrutiny body. In particular, the Subject Committees that dominated the first two terms have been replaced by Scrutiny Committees. These scrutinise the work of the Welsh Ministers and examine the expenditure, administration and policy of the Assembly Government and associated public bodies. Standing Orders also provide for Assembly Committees to examine proposed Measures, as well as standing Committees concerned with Finance, Subordinate Legislation, Equal Opportunities and European and External Affairs.

3.12 These developments make considerable demands upon Assembly Members. The Richard Commission took the view that their numbers should be increased to 80, a view long advocated by IWA.⁴⁰ Given that committee membership must reflect the distribution of seats between the political parties in the Assembly, its present size inevitably leads to heavy burdens upon those Members, especially from the smaller parties, who must take on membership of a number of committees. The present composition of the Assembly (comprising 41 Members from the two Government coalition parties and 19 Opposition party Members) points up the nature of the task of those responsible for questioning the activities of the Assembly Government.

3.13 In the past Assembly Members have been criticised for the indifferent quality of their contribution to Assembly debates and to the variable quality of their scrutiny activities. A larger pool of talent would be available if the size were to be increased. It is noteworthy that the pre-coalition Labour Cabinet of 2007 comprised the same group of persons as its immediate predecessor, though with changed portfolios, despite the apparently diminished confidence shown by the electorate in that Government. It seems the case that Assembly elections are not yet attracting the calibre of candidates that its enhanced role will require.

3.14 Assembly Members must necessarily rely upon the support services provided by officials if they are to be fully informed and prepared in the performance of their increased functions. Steps have been taken to create an effective Parliamentary Service, which will be required to undertake new and more demanding

⁴⁰ See for example, *Making the Assembly Work*, IWA Constitution Working Party, November 1997.

tasks than its predecessor, notably with respect to LCOs initiated by Members or Assembly Committees and to Measure-making. In particular, it remains to be seen whether the Service can recruit specialist legal support service to assist Members when engaged in law-making activities.

4. RELATIONS BETWEEN CARDIFF AND LONDON

4.1 Co-operation and coordination between the Governments in Cardiff and London and between the Assembly and Parliament continue to be central to the smooth workings of the devolution arrangements. The experience so far is that different Whitehall Ministries have met the need to deal with Wales related matters in variable ways, to some extent dependent on whether their functions are capable of being devolved to Wales or not. So for example, the Department of Education has been relatively relaxed about the transfer of framework powers to the Assembly. On the other hand, the Home Office, before its division, tended not to involve the Assembly readily in Welsh matters that arose in non-devolved fields.

4.2 In principle, past relationships fostered through the pivotal role of the Wales Office should facilitate the development of new organisational procedures governing the acquisition by the Assembly of enhanced legislative powers. However, the picture may change as a result of other possible developments:

- The emergence of coalition government in Wales.
- The restructuring of some Whitehall Ministries (already the case with respect to Home Affairs and Justice).
- Were the Wales Office to be merged with other Territorial Offices into another Ministry, there would be a consequential loss for Wales of direct representation in the UK Cabinet.

4.3 The value of a senior Whitehall Minister and a distinct Office providing the link between the Governments in Cardiff and London has been borne out in the first two terms of the Assembly. There is every reason to believe that such arrangements will continue to be necessary if Welsh interests are to be safeguarded in the Whitehall system. Unlike Scotland and Northern Ireland, dependency of the Welsh institutions on those in London is for the time being built into the devolution scheme.

4.4 In the early years of devolution, relationships with Whitehall were negotiated through the medium of a series of Concordats. It appears that reliance on these in more recent times has diminished and their relevance has lessened as actual working relationships have developed. To an extent their relevance may have diminished with the development of the Devolution Guidance Notes, although these are more concerned with the mechanisms of UK Government law-making than with the relationship between particular departments and the Welsh Ministers. Arguably, there is a case for a renewal of the existing Concordats to reflect changed circumstances and acquired experience. In particular, revitalised Concordats would bring home to Whitehall the altered institutional structure in Wales, as well as the need to accommodate the declared intention of the UK Government to support the enhancement of the Assembly's legislative competence.

4.5 The first terms of the Assembly have seen the evolution of largely effective working relationships at the governmental level. It is noteworthy that differences in the past have been resolved without recourse to formal intergovernmental mechanism or to the courts. It is reasonable to expect that these will continue to provide a firm basis for continued cooperative arrangements, even in the event of political changes in Cardiff or London or both.

4.6 The relationship between the Assembly and Parliament is perhaps less satisfactory, as no formalised procedures exist whereby the Assembly can engage at Westminster. This shortcoming may become more important in the future now that the Assembly is a separate institution exercising powers similar to those of Parliament. Devolution obviously involves the transfer of deliberative and scrutiny functions as well as executive, and therefore a diminution of the matters within the remit of MPs. At the same time, the scheme adopted for Wales leaves important responsibilities with Parliament and with Whitehall, which remains accountable to Parliament, not least in relation to the continuing process of transferring further powers to Wales. Moreover, England and Wales remains a unitary jurisdiction with which the Assembly and Parliament have related responsibilities, not found in relation to Scotland and Northern Ireland.

4.7 The Welsh Affairs Committee and the Welsh Grand Committee provide fora where such matters can be scrutinised and debated. Yet there are no formal links whereby the Assembly is given privileged opportunities to make its position known through these committees to Parliament. The Welsh Affairs Committee has sought evidence through Assembly Members and joint meetings have taken place between that Committee and Assembly Committees, with satisfactory outcomes, though only on an ad hoc basis. The new procedures relating to the formulation and debating of Legislative Competence Orders will provide further opportunities for joint workings, but they will require Assembly and Parliamentary officials to put in place more systematic arrangements to enable the Assembly to bring its position to Parliamentary notice in timely ways. It will be important that proposed Orders that are initiatives of Assembly committees or individual members, rather than of Welsh Ministers, are effectively presented to Parliament.

4.8 In this context, it is of concern that relations between the Assembly and the House of Lords are even less formalised, apparently being dependent upon the interest and industry of individual peers, very few of whom have Welsh connections.

5. DEVOLUTION CONSEQUENCES

5.1 Little discussion has taken place as to the longer implications of Welsh devolution. Yet profound consequences flow from likely future developments, for instance when the National Assembly acquires full legislative powers.

Referendum on Primary Powers

5.2 The emergence of coalition Government has increased the likelihood that the move to a more Scottish-style legislature, envisaged in Part 4 of the Government of Wales Act 2006, will occur sooner rather than later. We support the case for an early referendum and the initiative of the Coalition Government to set up an all-Wales Convention to prepare the way. However, we remain concerned that the Assembly will not be of a size that will be able to cope with the new demands that will be made on it. Accordingly, we take the position that the 2006 Act should be amended to increase the number of AMs to 80 and, necessarily, that the mode of election should be altered to STV. Such steps should be taken before any referendum is held so that the people of Wales are enabled to vote in the full knowledge of the system that will operate in future. At the same time, consideration should be given to whether additional Fields of competence should be added.

A Separate Welsh Jurisdiction

5.3 It is sometimes overlooked that legislation emanating from Cardiff constitutes part of the law of the unitary jurisdiction of England and Wales and is therefore capable of being applied or enforced in courts in both England and Wales. In the past, much of the law made in relation to Wales has affected administration and organisational activity in Wales. In the main, those persons or entities affected have been based, resident or employed in Wales. Accordingly, issues affecting them have been resolved by bodies or courts in Wales. The law applied was to be found in Acts of Parliament and subordinate legislation implementing those Acts. In principle, Acts of Parliament had primacy over any conflicting subordinate legislation made by the Assembly. Though found in differently sourced instruments, the law in Welsh statutory instruments did not differ substantially from that in England in many matters.

5.4 The Government of Wales Act 2006 introduces a significant change. Measures made by the Assembly may amend, add to, repeal, replace or reenact any provisions of Acts of Parliament as they apply in relation to Wales, provided that they meet the terms of the relevant Legislative Competence Orders and relate to a Matter specified in Schedule 5 of the Act. Following a successful referendum, the Assembly will acquire power to make its own Acts, with similar wide-ranging effect, in relation to broad subject areas. The scene is set, therefore, for the emergence of primary legislation from two sources that carry equal legal weight, though one of which can operate only in relation to Wales. This leads to a legally unprecedented situation in which, within a single jurisdiction, there can be two sets of primary law applicable to the same matter or subject. Both sets of law must be given effect by the courts of England and Wales, though if the issue has arisen in connection with a matter or subject on which there is legislation applying in relation to Wales that law must be given effect.

5.5 As the areas on which the Assembly can legislate extend, the divergence between the law in relation to Wales and the law that affects England will increase. In time this could well encompass entire subjects that impact on individuals much more substantially than in the past. Examples include protection and well-being of children including adoption and fostering; protection of consumers with respect to food and drink; and environmental issues. Moreover, the Welsh legislation would have priority for those individuals or bodies from outside Wales who enter into transactions in Wales.

5.6 It seems inevitable that the emergence of a separate body of law will give rise to demands for the separate treatment of Welsh legal matters from that for English legal matters. These would become stronger should the case for devolution of the criminal justice system, soon to be under consideration by the Assembly Government under the terms of the One Wales coalition agreement, be accepted. This implies the creation of a Welsh jurisdiction, entailing, at the minimum, a separate court system, judiciary, legal profession and statute book, alongside a distinct jurisdiction for England and parallel to those in Scotland and Northern Ireland. This possibility has already acknowledged by the Counsel General, Carwyn Jones.⁴¹

5.7 If such a separation took place, it is by no means clear what other institutional arrangements, for example those undertaking regulatory activities in relation to Wales, may have to be put on a separate footing from those for England. Our concern is that the implications of such a development, which seems a probable long-term consequence of legislative devolution, should be recognised and not permitted to emerge, in a disconnected way, by force of circumstance. There is a good case for an examination of the extent to which full or partial separation of Welsh and English legal jurisdictions is feasible, practical, affordable and desirable.

⁴¹ *Western Mail*, 14 September 2007.

Trend Towards Federation

5.8 Devolution may not be the most beneficial constitutional solution or even viable for the United Kingdom in the longer term. The current trend towards a quasi-federal arrangement seems likely to continue, demanding more active and formal constitutional links between the parts of the United Kingdom. In future we can envisage greater autonomy for Scotland, “English laws for England”, a separate jurisdictional status of Wales from England, and closer relationships between Northern Ireland and the Irish Republic. All these may require a formalised constitutional structure in which intergovernmental bodies such as the Joint Ministerial Committee and the British-Irish Council would play much more substantial roles than at present.

5.9 In our view, far-reaching and long-term thought concerning the possible future structure and institutional arrangements of the United Kingdom, and perhaps the wider British Isles, should undertaken well before the evolution of events forces changes that may not be in the best interests of the countries affected. It is hard to see how any future discussions as to the possibility of a written constitution can proceed without a fundamental examination of this issue.

John Osmond
Director

September 2007

Memorandum submitted by Professor James Mitchell

KEY POINTS

- Constitutional policy concerns the “rules of the game” and requires losers’ consent if legitimacy is to be maintained.
- Devolution has successfully addressed a problem of legitimacy in the UK.
- However it has created new anomalies and issues of legitimacy elsewhere.
- Any changes should seek to avoid an endless game of constitutional pass the parcel in which resolving one constitutional anomaly creates a new one.
- Any response will only succeed if losers’ consent is achieved.

LEGITIMACY, LOSERS’ CONSENT AND CONSTITUTIONAL POLICY

Constitutional policy differs from other public policy in that it deals with the “rules of the game” and cross-party agreement and/or public endorsement is necessary for continued constitutional legitimacy. Public endorsement need not require a referendum but simply acceptance and continued participation. Legitimacy is not just about legality but also justifiability and consent.⁴² Indeed, a situation may be legal while lacking legitimacy. Some scholars have referred to the importance of losers’ consent⁴³ when it comes to legitimacy of electoral rules. This applies equally across a range of constitutional affairs. The perception that constitutional rules are biased can lead to a problem of legitimacy.

It is difficult to identify precisely when consent is withdrawn to such an extent that a crisis of legitimacy occurs but in a liberal democracy it would be expected that some remedial action would be taken before a crisis occurs. A relevant illustration may help. In the 1980s and 1990s, a problem of legitimacy occurred in the government of Scotland and, to a lesser extent, Wales. There was nothing illegal in the actions of previous Conservative Governments in Scotland and Wales but the perception grew that policies were being imposed without necessary consent. There was much talk of a “democratic deficit” when, in fact, what was occurring was a legitimacy deficit. It was this that fuelled demands for changes in the “rules of the game”, the constitution of the United Kingdom.

Losers’ consent was withdrawn but, as we might expect in a liberal democracy, this took the form of articulating the case for constitutional change rather than outright opposition or withdrawal from participation in electoral contests. This is not to suggest that a Government lacks legitimacy in places where it does not have a majority only that a problem of legitimacy occurs when growing numbers of people perceive that the rules of the game work against them and believe this to be both unfair and requires remedial action. For the most part, losers’ consent is given and indeed taken for granted.

⁴² David Beetham, *The Legitimation of Power*, Basingstoke, Palgrave Macmillan, 1991.

⁴³ Richard Nadeau and André Blais, “Accepting the Election Outcome: The Effect on Participation on Losers’ Consent”, *British Journal of Political Science*, vol 23, 1983, pp 553–63; Anderson *et al.*

DEVOLUTION AND DISPLACED LEGITIMACY

It would be a gross exaggeration to suggest that devolution was a response to a crisis of legitimacy but it was a response to a growing problem of legitimacy.⁴⁴ Indeed, the main success of devolution has been to remove this legitimacy problem from Scottish politics. There remains much debate on Scotland's constitutional status but this debate is conducted without any suggestion, other perhaps on the fringe of politics, that there is something illegitimate about the UK as constituted at present. Talk of democratic deficits, no mandates and popular sovereignty, common across the non-governing parties, has receded compared with the 1980s and 1990s. All the main parties have accepted devolution. In Wales an even more remarkable change has occurred. The slight majority for devolution there has been transformed into considerable support for devolved government.

However, solving a problem of legitimacy in parts of the United Kingdom has created potential problems elsewhere. Indeed, there is a danger that devolution has simply displaced the problem of legitimacy. Though it has not yet, and perhaps may never, manifest itself, some of the conditions that led to a problem of legitimacy in Wales and especially in Scotland in the 1980s and 1990s might emerge in England. The evidence to date of an emerging problem may be slight at present but that reflect current conditions which compares with the situation that existed in Scotland and Wales when the largest party was in government or the real test will only come when a party other than the largest party in England is elected to government and relies on Scottish and Welsh votes for its programme of government. However, existing quiescence is not the same as full consent or legitimacy.

It cannot be assumed that such a scenario will lead to a problem of legitimacy. The governing party in such a situation might be expected to operate in a territorially sensitive manner. The view may prevail that this is merely one of many anomalies of the UK's constitution.

QUIESCENCE, LEGITIMACY AND THE FUTURE

If we accept that devolution has created anomalies in the constitution, the question that then arises is what, if anything, should be done in response. Throughout the long debates on home rule, dating back to Gladstone's attempts to grapple with the issue, there have been five possible responses:

- (i) no Scottish representation in Westminster;
- (ii) providing symmetry through home rule all round/federalism;
- (iii) a reduction in Scottish representation at Westminster;
- (iv) Parliamentary procedures including limiting the issues on which Scottish MPs can vote at Westminster; and
- (v) maintenance of the current levels of Parliamentary representation with no changes in Parliamentary procedures.

The first could only be justified in the event of Scottish independence. There appears to be little support for the second and unless this involved a symmetrical form of federalism, ie all constituents of the federation had the same powers, then the problem would still exist though become less pronounced. A reduction in the number of Scottish MPs has already been attempted though this was done following the loss of all Conservative MPs in Scotland and Wales and referendum results underpinning support for devolution. This made opposition to the provisions of the devolution legislation difficult at that time. Opposition MPs might feel that they were not properly involved in the process of discussing the consequences of devolution. If consent was given it was limited. "English votes for English laws" (EVEL) has been criticised for the difficulties and anomalies it would create. One difficulty of identifying purely English legislation, especially given the continued existence of the Barnett formula. The Barnett formula would need to be addressed in the event of EVEL to avoid any possibility that budgets of devolved institutions were not determined in large measure by only English votes. The danger that would arise with this response is that it might simply pass on the problem of legitimacy once more. It would also fail to achieve the important condition of gaining losers' consent that we have identified as important in establishing legitimate constitutional rules. It is for this reason that the fifth option retains support.

However, it might be wise at this stage to focus on how rather than what reforms, if any, should be instituted. The main conclusions are to recognise that the existing arrangements are anomalous and that existing quiescence is not the same as full legitimacy. As happened in Scotland and, to a lesser extent, in Wales, different contexts might create conditions in which the legitimacy of policy-making is called into question. Whether it is better to respond before this occurs or wait to see if it occurs is a matter of judgement.

⁴⁴ A variety of evidence exists but perhaps the most notable was the "*Claim of Right for Scotland*" and Scottish Constitutional Convention. The Claim was signed by 58 of Scotland 72 MPs and 59 of Scotland's 65 regional, district and island councils and stated, "We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount.
We further declare and pledge that our actions and deliberations shall be directed to the following ends:
To agree a scheme for an Assembly or Parliament for Scotland;
To mobilise Scottish opinion and ensure the approval of the Scottish people for that scheme; and
To assert the right of the Scottish people to secure implementation of that scheme.

Waiting to see how and whether a backlash occurs means that any response will have to be made in a context less propitious to achieving agreement. However, any effort to address such anomalies should seek to gain losers' consent and avoid simply playing an endless game of constitutional pass the parcel.

February 2008

Memorandum submitted by Law Reform

The Society has received a copy of the Press Notice dated 21 February 2007 announcing the enquiry into Devolution: a decade on.

The Constitutional Affairs Committee is right to acknowledge that 2007 marks the 10th anniversary of the setting of the devolution agenda, however, 2007 is not the anniversary of devolution becoming effective, given that the Scotland Act 1998 and Government of Wales Act 1998 and the Northern Ireland Act 1998 were not implemented until 1999. It is appropriate to note that there have been only two sessions of the Scottish Parliament since 1999 and that this review is taking place at a relatively early stage in the Parliament's history.

The questions which the Committee raises in the terms of reference are important ones.

The Society has the following comments to make on the questions raised in the Terms of Reference.

1. Westminster: *How does Parliament deal with devolution issues, e.g. legislating for Scotland and Wales*

There are a number of ways in which Parliament deals with legislation for Scotland and for Wales. This response will be confined to Scotland.

The phrase "devolution issues" has a specific legal connotation and is defined in the Scotland Act 1998, Sch 6, para 1 as:

- (a) a question where an Act or part of an Act of the Scottish Parliament is within the competence of the Scottish Parliament.
- (b) A question whether any function is a function of the Scottish Ministers, the First Minister or the Lord Advocate.
- (c) A question whether the exercise of a function of the Scottish Executive is in devolved competence.
- (d) A question whether the exercise of a function of the Scottish Executive is incompatible with EU or ECHR law.
- (e) A question whether a failure by a member of the Scottish Executive is incompatible with EU and ECHR law.
- (f) Any other question about whether a function is in the devolved competence and any question about reserved matters.

As a phrase "devolution issues" does not therefore relate to "Legislating for Scotland and Wales".

Legislation for Scotland passed by the UK Parliament can refer to:

- (a) Acts which are on reserved issues in terms of the Scotland Act 1998, Schedule 5 and apply in part to Scotland because they apply to the whole of the United Kingdom, to Great Britain or have particular provisions which extend to Scotland.
- (b) Acts which apply to Scotland, which in other circumstances would be within devolved powers but through the mechanism of a Sewel motion or legislative consent motion, the Scottish Parliament has agreed for the UK Parliament to legislate; and
- (c) Subordinate legislation which applies to Scotland.

In terms of the Scotland Act 1998 Section 28(7), the UK Parliament retains the power to legislate for Scotland but is constrained by the Sewel Convention which ensures that the UK Parliament will normally legislate on devolved matters in Scotland with the consent of the Scottish Parliament.

The UK Parliament is legislating currently a considerable amount of legislation for Scotland. Legislation which applies to Scotland still requires the scrutiny of Scottish MPs and input from Scottish interests bodies such as the Society, are active in drawing to MPs and Peers attention comments on Bills which have been introduced and which apply to Scotland. Sometimes these comments may relate to technical issues concerning Scots Law, concerns about consistency, vagueness or ambiguity or issues of practicality but sometimes there may be more problematic questions which require to be answered in terms of policy direction.

The Society has submitted comments or suggested amendments on a number of Bills in the last four years as set out in appendix 1.

Accordingly, the Committee should be aware that there is a considerable amount of legislation being produced which applies to Scotland and MPs and Peers who have an interest in Scottish issues have a considerable role to play in the scrutiny of that legislation. The Scottish Parliament is also legislating broadly

across the policy and legal landscape with the consequent effect that while Scottish interests may legitimately be focussed on Holyrood there also may be important legislation in Westminster which requires attention. This can have an impact on capacity of organisations and individuals to engage with Westminster.

The Society has always received a good hearing from MPs and Peers in respect of its representations. Furthermore, the Government and Opposition is often persuaded that amendments are necessary as a result of the Society's representations.

2. *What issues remain outstanding, eg "the English question"*

This is essentially a political issue on which the Society has no comment to make.

3. *Whitehall: What impact has devolution had on Whitehall? Has there been a change in culture? How have they responded to the divergence in policy making? How have the Concordats developed, and are they working?*

Whitehall is a large and complex institution, and some departments have greater appreciation of Scottish issues than do others. The Society has found that contact with departments such as the Home Office and the DTI has been relatively good, however, other departments are less attuned to the different legal system which applies in Scotland. There may be some issues about maintaining the Scottish profile in Whitehall departments.

4. *Intergovernmental relations: How are bodies such as the British Irish Council working? What about representation at the EU level?*

The Scottish Executive has two divisions which are within the portfolio of the Minister for Finance and Public Service Reform dedicated to working on Europe and European affairs under the management of the Europe Director. One of the divisions is a Brussels-based EU Office. The office is part of the Scottish Executive, and reports to the Head of the Executive Secretariat. A Scottish Executive Civil Servant heads the office supported by a team of desk officers and locally recruited support staff. The office opened on 1st July 1999.

The purpose of the Office is to assist the Scottish Executive in carrying out its EU-related business by providing support to the Executive, information gathering, influencing EU policies and raising Scotland's profile with the EU Institutions.

The Office works closely with the UK Permanent Representation. There is a concordat which governs relations between the UK Government and the devolved administration on EU issues. Relations with the European Union are the responsibility of the UK Government. However, the Scottish Executive is involved in decision making on EU matters which touch on devolved matters through the over-arching concordat on EU policy issues, which obliges the UK Government to consult the Scottish Executive on EU issues which have a bearing on devolved competencies.

The other division is the Europe Division Edinburgh Office which deals with EU policy and organisations, strategy and co-ordination and European Bilateral links.

Scottish Ministers have also had a direct role in EU Council meetings attending both with the lead UK Minister and, on occasions, attending as the lead UK Minister for particular meetings. Executive officials also attend some EU Council Working Groups.

The Scottish Parliament's European and External Relations Committee has an over-arching role in consideration of EU matters and considers the main EU issues concerning Scotland through a number of Inquiries and Reports.

5. *What is the future of the current Secretaries of State for Scotland, Wales and Northern Ireland? Are the current arrangements for the Wales and Scotland offices within the DCA appropriate?*

The Society responded to the House of Lords Select Committee on the Constitution inquiry entitled *Devolution: Inter-Institutional Relations in the United Kingdom* in 2002 and expressed the view that the role of the Secretary of State for Scotland was to represent Scottish interests in areas that are reserved to the UK Parliament under the Scotland Act.

That role still subsists and it will continue to be important for Scotland to have adequate representation at Cabinet level.

The Society draws the Committee's attention to Devolution Guidance Note 3 in the "*Role of the Secretary of State for Scotland*".

6. Devolution and the Courts: have there been legal disputes in the context of devolved/reserved issues and policy divergence?

The Annual Reports of the Office of the Advocate General for Scotland disclose an increasing number of intimated devolution issues eg:

- (a) During 2005–06, 901 Devolution minutes were intimated; an increase of 37% over the previous year; and
- (b) During 2004–05, 658 Devolution minutes were intimated; an increase of 73% over the previous year.

The number of appeals to the Judicial Committee of the Privy Council is shown in the attached table.

<i>Year</i>	<i>Appeals entered</i>	<i>Dismissed</i>	<i>Allowed</i>
2005	4	–	2
2004	2	4	–
2003	4	–	1
2002	4	–	2
2001	2	4	5
2000	13	2	1
1999	0	0	0
Totals	29	10	12

The Scottish courts have, by and large, dealt very well with the increase in litigation and the Scottish legal professions are conscious that their clients may require such issues to be brought to the attention of the courts.

Annex 2 attached to this letter shows many reported cases since 1999 in the Sheriff Court, High Court of Justiciary, Court of Session and Judicial Committee of the Privy Council. The variety of cases is very broad indicating the way in which the Courts and the Profession have dealt with the Scotland Act 1998 and the incorporation of the ECHR.

Issues about legislative competence may be perceived as ripe for controversy because they may result in a question of interpretation.

Section 29 of the Scotland Act 1998 sets out the legislative competence of the Scottish Parliament and confirms in subsection (1) that in An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament. “When dealing with the relationship between Acts of the Scottish Parliament and reserved matters subsection (3) encapsulates the ‘purpose’ test.” Subsection (3) states “for the purposes of this section, the questions whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard to (among other things) to its effect in all the circumstances”.

This is a statutory version of the common law purpose test enunciated by Lord Atkin in the case of *Gallagher v Lynn* 1937 A.C. 863.

As such it shows that there requires to be a judgement made about the “true nature” and the pith and substance of the legislation.

The subsection ensures that the courts will require to determine whether a provision “relates” to a reserved matter by reference to the “purpose” of the measure. Accordingly, the role of the courts in relation to devolution issues, the competence of the Parliament and the validity of legislation is highly important.

It is however regrettable that the Devolution Guidance note on “court proceedings regarding Devolution Issues” is not yet published.

7. *What are the other outstanding issues around reserved and devolved issues? How could these be best resolved? Is the UK’s model of asymmetric devolution sustainable?*

These are essentially political issues on which the Society has no view.

8. *What are the broader consequences of devolution for the future of the UK’s constitution?*

The broader consequences of devolution include:

- (a) Increasing divergence in law and policy in the devolved areas.
- (b) Potential tension between the devolved administrations and the UK Government especially if different political parties form the respective administrations.

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- (c) Potential changes in the reserved areas by way of transfer of powers from the UK Parliament to the Scottish Parliament.

I hope these comments are helpful to the Committee in conducting its enquiry.

Michael P Clancy
Director

May 2007

APPENDIX 1

ACTS OF THE UK PARLIAMENT

Public Acts 2003

Crime (International Co-operation) Act 2003.
Extradition Act 2003.
Finance Act 2003.
Sexual Offences Act 2003.

Public Acts 2004

Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
Child Trust Funds Act 2004.
Civil Partnership Act 2004.
Energy Act 2004.
Finance Act 2004.
Gender Recognition Act 2004.
Patents Act 2004.
Pensions Act 2004.
Planning and Compulsory Purchase Act 2004.

Public Acts 2005

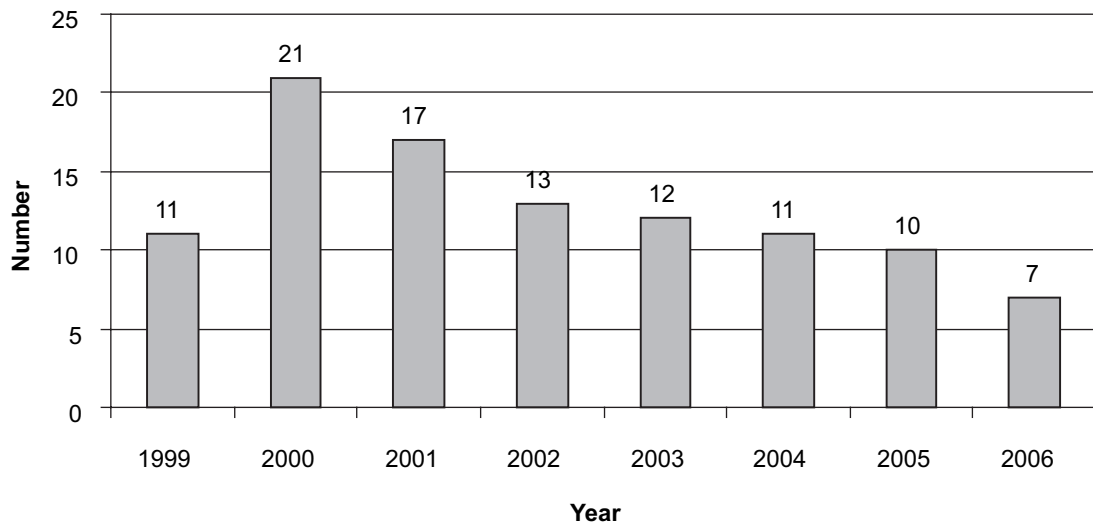
Constitutional Reform Act 2005.
Gambling Act 2005.
Inquiries Act 2005.
Prevention of Terrorism Act 2005.
Serious Organised Crime and Police Act 2005.

Public Acts 2006

Consumer Credit Act 2006.
Equality Act 2006.
Identity Cards Act 2006.
Immigration, Asylum and Nationality Act 2006.
Legislative and Regulatory Reform Act 2006.
Police and Justice Act 2006.
Road Safety Act 2006.
Terrorism Act 2006.

APPENDIX 2

Cases involving devolution issues 1999-2006



Total number of cases: 102 (of which two are continuations).

APPENDIX 3

CASES INVOLVING DEVOLUTION ISSUES 1999–2006

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>Vannet v Hamilton</i> 1999 SCCR 558	Sheriff Court, Glasgow	21 May 1999	s 57(2)	Insufficient custody statement; alleged incompatibility with Article 5(2) of the ECHR
<i>HMA v Scottish Media Newspapers, Scott & Duff</i> 1999 SCCR 599	High Court of Justiciary	8 June 1999	s 57(2)	Risk of prejudice; newspaper article referring to character of accused prior to court case; alleged incompatibility with Article 10 of the ECHR
<i>HMA v Little</i> 1999 SCCR 625	High Court of Justiciary	16 June 1999	s 57(2)	unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>McNab v HMA</i> 1999 SCCR 930	Appeal court, High Court of Justiciary	2 September 1999	s 57(2)	unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>HMA v Dickson</i> 1999 SCCR 859	High Court of Justiciary	10 September 1999	Sch 6, paras 1, 37	Whether Act of Adjournment (Devolution Issues Rules) 1999 is <i>ultra vires</i>
<i>HMA v Robb</i> 1999 SCCR 971	Appeal court, High Court of Justiciary	20 September 1999	s 57(2), Sch 6, para 1(d)	Whether admitting evidence of police interview in absence of solicitor contravenes right to fair trial
<i>HMA v Campbell</i> 1999 SCCR 980	Appeal court, High Court of Justiciary	21 September 1999	s 57(2), Sch 6, para 1(d)	Identification parade held without presence of accused's solicitor; whether this constitutes an act by Lord Advocate that is incompatible with Article 6
<i>Starrs & Chalmers v Ruxton; Ruxton v Starrs & Chalmers</i> 1999 SCCR 1052	Appeal court, High Court of Justiciary	11 November 1999	s 57(2), (3)	Temporary sheriff: alleged incompatibility with article 6(1) of the ECHR; whether competent for Lord Advocate to bring case before temporary sheriff
<i>Paton v Ritchie</i> 2000 SCCR 151	Appeal court, High Court of Justiciary	24 November 1999	s 57(2), Sch 6, para 1(d)	Whether admitting evidence of police interview in absence of solicitor contravenes right to fair trial
<i>McKenna v HMA</i> 2000 SCCR 159	Appeal court, High Court of Justiciary	13 December 1999	s 57(2), Sch 6, para 1	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR
<i>Van Rijs v HMA</i> 2000 SCCR 263	Appeal court, High Court of Justiciary	28 January 2000	s 57(2), Sch 6	Counsel who had formerly advised appellant instructed to appear as advocate-depute in procedural hearing in appeal; whether incompatible with Article 6 of the ECHR
<i>Brown v Stott</i> 2000 SCCR 314	Appeal court, High Court of Justiciary	4 February 2000	s 57(2), (3)	Whether use as evidence against accused of answer given in response to statutory requirement to give information is incompatible with Article 6(1)
<i>HMA v Nulty</i> 2000 SCCR 431	High Court of Justiciary	17 February 2000	s 57(2), Sch 6, para 1	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR
<i>HMA v McGlinchey and Or</i> 2000 SCCR 593	Appeal court, High Court of Justiciary	18 February 2000	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>Robb v HMA</i> 2000 SCCR 354	Appeal court, High Court of Justiciary	18 February 2000	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Van Rijs v HMA</i> SCCR 367	Appeal court, High Court of Justiciary	March 2000	s 57(2)	Article critical of ECHR published by chairman of court shortly after he delivered an opinion of court refusing appeal involving submissions on Convention; whether impartial; whether breach of 6(1)
<i>Crummock (Scotland) Ltd v HMA</i> 2000 SCCR 453	Appeal court, High Court of Justiciary	16 March 2000	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Clancy v Caird</i> 2000 SCLR 526	Court of Session, Inner House (Extra Division)	4 April 2000	s 59, 129(2)	Whether a temporary judge is an "independent and impartial tribunal established by law"; at what point objection should be raised (Article 6(1))
BBC, Petitioners 2000 SCCR 533	Appeal court, High Court of Justiciary	20 April 2000	s 57(2), Sch 6, paras 1, 9, 11	Whether refusal by court to authorise public television transmission of proceedings to victims' families abroad incompatible with Article 10 of the ECHR
<i>Van Rijs v HMA</i> 2000 SCCR 676	Appeal court, High Court of Justiciary	2 June 2000	Sch 6, paras 1(b), 11	Appeal court setting aside earlier decision of appeal court on ground that earlier court not properly constituted; whether later decision raised devolution issue
<i>Buchanan v McLean</i> 2000 SCCR 682	Appeal court, High Court of Justiciary	15 June 2000	s 57(2)	Whether fixed legal aid fees are incompatible with articles 6(1) and 6(3)(b) & (c) of the ECHR
<i>Montgomery v HMA</i> 2000 Scot (D) 4/12	Judicial Committee of the Privy Council	20 July 2000	s 57(2), Sch 6, para 1	Extensive media coverage of events prior to prosecution of accused; whether decision of Lord Advocate to proceed with prosecution incompatible with Article 6(1) of the ECHR
<i>Miller v Dickson; Stewart and Ors v Heywood; Marshall v Ritchie</i> 2000 SCCR 793	Appeal court, High Court of Justiciary	3 August 2000	s 57(2), (3), Sch 6, para 1	Accused subject of criminal proceedings before temporary sheriff; whether failure by accused to object amounts to waiver of right
<i>HMA v Burns</i> 2000 SCCR 884	High Court of Justiciary	4 August 2000	s 57(2), Sch 6	Inclusion of divorced wife's home and property in statement of accused's assets; alleged incompatibility with Article 8 of the ECHR
<i>Clark v Kelly</i> 2000 SCCR 821	High Court of Justiciary	18 August 2000	s 57(2), Sch 6, para 9	Whether prosecution in district court consisting of lay justice is incompatible with Article 6 of the ECHR
<i>Monterroso v HMA</i> 2000 SCCR 974	High Court of Justiciary	29 September 2000	s 57(2), Sch 5	Complaint that prison régime in breach of articles 6(3)(b), 8 and 14
<i>Hoekstra and Ors v HMA</i> 2000 Scot (D) 18/10	Judicial Committee of the Privy Council	2 October 2000	Sch 6, para 13, 33	Appeal to refer devolution matter to the JCPC

Case citation	Court	Judgement Date	Section(s) of Scotland Act referred to	Devolution issue
<i>Robert McIntosh, Petitioner 2000 SCCR 1017</i>	Appeal court, High Court of Justiciary	13 October 2000	s 57(2)	<i>Whether statutory assumptions that property the proceeds of drug trafficking incompatible with article 6(2)</i>
<i>Coulter v HMA 2000 SCCR 1044</i>	Appeal court, High Court of Justiciary Judicial Committee of the Privy Council	19 October 2000	s 57(2), Sch 6, paras 1(d), 13(a)	Public controversy between judge and Lord Advocate as to whether accused should have been tried for murder along with another person who was acquitted; alleged incompatibility with article 6(1) of the ECHR
<i>Van Rijs v HMA 2000 SCCR 1121</i>	Judicial Committee of the Privy Council	26 October 2000	Sch 6, para 13	Referral to JCPC Appeal court set aside earlier decision of appeal court; whether this is competent
<i>Stott v Brown 2001 SCCR 62; 2000 Scot (D) 14/12</i>	Judicial Committee of the Privy Council	5 December 2000	s 57(2), (3)	their use as evidence against accused of answer given in response to statutory requirement to give information is incompatible with Article 6(1)
<i>HMA v McIntosh 2001 SCCR 191</i>	Judicial Committee of the Privy Council	5 February 2001	s 57(2)	<i>Whether statutory assumptions that property the proceeds of drug trafficking incompatible with article 6(2)</i>
<i>Follen v HMA 2001 Scot (D) 12/3</i>	Judicial Committee of the Privy Council	22 February 2001	Sch 6, para 13	Referral to JCPC Accused challenged competency of proceedings before trial judge, raising a devolution issue; Appeal court refused leave to appeal
<i>Follen v HMA 2001 SCCR 255 *continuation</i>	Appeal court, High Court of Justiciary Judicial Committee of the Privy Council	8 March 2001	Sch 6, para 13	Referral to JCPC unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>S v The Principal Report and Or 2001 Scot (D) 40/3</i>	First Division Privy Council	30 March 2001	Sch 6, para 1	Legal aid not available for representation at Children's hearing; whether compatible with Article 6 of the ECHR
<i>HMA v Touati 2001 SCCR 392; 2001 Scot (D) 10/5</i>	Appeal Court, High Court of Justiciary	4 May 2001	Sch 6, para 9	Referral to High Court Diet adjourned for more than two months for preparation of reference to High Court; whether adjournment incompetent
<i>Kane v HMA 2001 Scot (D) 19/5</i>	Appeal Court, High Court of Justiciary	4 May 2001	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Dickson v HMA 2001 SCCR 397; 2001 Scot (D) 14/5</i>	Appeal Court, High Court of Justiciary	10 May 2001	Sch 6, paras 1, 9, 11, 37	Whether failure to give reasons for determining validity until conclusion of trial contravenes right to fair trial; whether admitting evidence of police interview in absence of solicitor contravenes right to fair trial
<i>HMA v Bain 2001 Scot (D) 28/5</i>	High Court of Justiciary	22 May 2001	s 57(2)	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR
<i>Buchanan v McLean 2001 SCCR 475</i>	Judicial Committee of the Privy Council	24 May 2001	s 57(2)	Whether fixed legal aid fees are incompatible with articles 6(1) and 6(3)(b) and (c) of the ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>Valentine and Ors v HMA</i> 2001 Scot (D) 25/7	Appeal Court, High Court of Justiciary	6 July 2001	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>HMA v Mills and Or</i> 2001 Scot (D) 2/10	Appeal Court, High Court of Justiciary	13 July 2001	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Millar v PF, Elgin; Payne and Ors v PF, Dundee</i> 2001 SCCR 741; 2001 Scot (D) 34/7	Judicial Committee of the Privy Council	24 July 2001	s 57(2), (3), Sch 6, para 1	Accused subject of criminal proceedings before temporary sheriff; whether failure by accused to object amounts to waiver of right
<i>Mills and Ors v HMA</i> 2001 SCCR 821	Appeal Court, High Court of Justiciary	1 August 2001	s 57(2), Sch 6, paras 1(d), (e), 5 and 6	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>S v The Principal Reporter and Or</i> 2001 Scot (D) 13/8 *continuation	First Division	7 August 2001	Sch 6, para 1	Legal aid not available for representation at Children's hearing; whether compatible with Article 6 of the ECHR
<i>HMA v R</i> 2001 SCCR 915	High Court of Justiciary	10 October 2001	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>A and Ors v The Scottish Ministers and Ors</i> 2001 Scot (D) 17/10	Judicial Committee of the Privy Council	15 October 2001	s 29(2)(d)	Ground for refusal of discharge that continued detention necessary in order to protect public from serious harm; whether compatible with Article 5 right to liberty where condition not treatable
<i>Stevens v HMA</i> 2001 SCCR 948; 2001 Scot (D) 13/11	High Court of Justiciary	9 November 2001	s 57(2), Sch 6, para 1(d)	Minute seeking declaration of incompatibility of legislation under which minuter prosecuted
<i>Van Rijs v HMA</i> 2002 SCCR 135	Appeal Court, High Court of Justiciary	23 January 2002	s 57(2)	Irregularly obtained evidence; whether incompatible with article 8; Whether admission of evidence incompatible with article 6 of the ECHR
<i>Dyer v Watson and Or; HMA v K</i> 2002 Scot (D) 44/1	Judicial Committee of the Privy Council	29 January 2002	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>HMA v Urquhart</i> 2002 SCCR 300; 2002 Scot (D) 40/2	High Court of Justiciary	7 February 2002	s 57(2)	Accused pled guilty to drug trafficking on one day for not financial gain; Crown seeking confiscation on basis of income over five years. Alleged incompatibility with Article 6 of the ECHR
<i>Connor v HMA</i> 2002 Scot (D) 19/3	Appeal Court, High Court of Justiciary	13 March 2002	s 57(2), Sch 6, para 1	Temporary sheriff: alleged incompatibility with article 6 of the ECHR
<i>Lochridge v Miller</i> 2002 SCCR 628	Appeal Court, High Court of Justiciary	19 March 2002	s 57(2)	Extradition case. Alleged breach of articles 5 & 6 of ECHR
<i>HMA v Vervuren</i> 2002 SCCR 481	High Court of Justiciary	12 April 2002	s 57(2)	Evidence obtained during surveillance; whether incompatible with article 8 of the ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>R v HMA</i> 2002 SCCR 697	Appeal Court, High Court of Justiciary	31 May 2002	s 57(2)	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR; whether actings of Scottish Ministers or Lord Advocate can be subject of devolution issue
<i>Kenny v Howdle</i> 2002 SCCR 814; 2002 Scot (D) 11/7	Appeal Court, High Court of Justiciary	9 July 2002		Whether court presided over by honorary sheriff constitutes an “independent tribunal”; alleged breach of article 6 of the ECHR
<i>Mills v HMA</i> 2002 SCCR 860; 2002 Scot (D) 7/8	Appeal Court, High Court of Justiciary	22 July 2002	s 57(2), Sch 6, para 1	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Adams and Ors, Petitioners</i> 2002 SCLR 881; 2002 Scot (D) 1/8	Court of Session, Outer House	31 July 2002	ss 28, 29, 101, 102	Challenge to Act of Scottish Parliament criminalising mounted foxhunting. Alleged incompatibility with Articles 8 & 14 of the ECHR
<i>HMA v PH</i> 2002 SCCR 927	Appeal Court, High Court of Justiciary	6 September 2002	s 57(2), Sch 6, para 1	Whether court entitled to make decision that rape did not require force; whether it constitutes a change in law, making subsequent prosecutions for rape incompatible with Art 7 of ECHR
<i>HMA v H</i> 2002 Scot (D) 20/9	High Court of Justiciary	19 September 2002	s 98	Whether a change in law relating to rape with retrospective effect violated the accused’s Convention rights (in particular the article 7(1) protection against retroactivity)
<i>R v HMA and Another</i> 2003 SCCR 19; 2002 Scot (D) 4/12	Judicial Committee of the Privy Council	28 November 2002	s 57(2), Sch 6, para 1	Whether bringing person to trial after unreasonable delay an act of Lord Advocate incompatible with Article 6 of the ECHR; definition of “act” in terms of the Lord Advocate
<i>HMA v S</i> 2003 Scot (D) 23/1	High Court of Justiciary	22 January 2003	s 57(2), Sch 6, para 1	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Clark v Kelly</i> 2003 SCCR 194	Judicial Committee of the Privy Council	11 February 2003	s 57(2), Sch 6	Whether prosecution in district court consisting of lay justice is incompatible with Article 6 of the ECHR
<i>Daly v HMA</i> 2003 SCCR 393	Appeal Court, High Court of Justiciary	9 May 2003	s 57(2), Sch 6, para 1	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>McKenna v HMA</i> 2003 SCCR 399	Appeal Court, High Court of Justiciary	9 May 2003	s 57(2), Sch 6, para 1	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR
<i>McMurray v HMA</i> 2003 SCCR 456	Appeal Court, High Court of Justiciary	4 June 2003	s 29(2)(d)	Parole Board put back date appellants would be considered for release due to Convention Rights (Compliance) Act 2001; alleged incompatibility with Art 7 of ECHR
<i>Webster v Dominick</i> 2003 SCCR 525	Appeal Court, High Court of Justiciary	22 July 2003	s 52(2), Sch 6, para 9	Whether charge of shameful indecency too vague to comply with Article 7 of the ECHR
<i>McMurray v PF, Airdrie</i> 2003 Scot (D) 14/9	Appeal Court, High Court of Justiciary	14 September 2003	s 57(2), Sch 6, para 9	Whether provisions fixing period within which summary proceedings under Bankruptcy (Scotland) Act 1985 required to be raised incompatible with right to trial within "reasonable time"
<i>C and another v Miller</i> 2003 Scot (D) 21/10	Extra Division, Inner House, Court of Session	10 October 2003	Sch 6, para 13(b)	Whether decision by a court not to entertain a devolution issue constitutes "determining a devolution issue"
<i>Haston and Ors v HMA</i> 2003 Scot (D) 15/10	Appeal Court, High Court of Justiciary	15 October 2003	s 57(2), Sch 6, para 1	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>Hill v HMA</i> 2003 SCCR 779	Appeal Court, High Court of Justiciary	13 November 2003	s 57(2), Sch 6, para 1	Admission of hearsay evidence: alleged incompatibility with Article 6 of the ECHR
<i>Clark v HMA</i> 2003 Scot (D) 1/12	Appeal Court, High Court of Justiciary	28 November 2003	s 57(2), Sch 6, para 1	Unreasonable delay in court proceedings; alleged incompatibility with article 6 of the ECHR
<i>HMA v Bowie</i> 2004 SCCR 105	High Court of Justiciary	8 December 2003	s 57(2)	Accused pled guilty to drug trafficking on one day only; Crown seeking confiscation of proceeds of drug trafficking over greater period. Alleged incompatibility with Article 6 of the ECHR
<i>Grampian University Hospitals NHS Trust v Frame</i> 2004 SCCR 173; 2004 Scot (D) 20/2	Appeal Court, High Court of Justiciary	13 Feb 2004	ss 57(2), 100(1)(b)	Whether NHS Trust a non-governmental organisation and therefore has right not to incriminate itself. Alleged incompatibility with Article 6 of the ECHR
<i>Corstorphine (aka Smith) v HMA</i> 2004 SCCR 193	Appeal Court, High Court of Justiciary	19 Feb 2004	s 57(2)	Irregularly obtained evidence; whether incompatible with article 8; Whether admission of evidence incompatible with article 6 of the ECHR
<i>Flynn & Ors v HMA</i> 2004 SCCR 281; 2004 Scot (D) 33/3	Privy Council	18 Mar 2004	ss 29(2)(d), 101(2)	Parole Board put back date appellants would be considered for release due to Convention Rights (Compliance) Act 2001; alleged incompatibility with Art 7 of ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>Adam and ors v the Scottish Ministers</i> 2004 Scot (D) 1/6	Second Division, Inner House, Court of Session	28 May 2004	s 29(2)(d)	Act banning mounted fox hunting with dogs: whether ban contrary to petitioners' human rights
<i>Matthew v Aitken</i> 2004 SCCR 515; 2004 Scot (D) 2/7	Appeal Court, High Court of Justiciary	2 Jun 2004	s 57(2)	Breach of condition of fishing licence; condition lacking precision necessary to found criminal offence. Alleged incompatibility with Art 7 of ECHR
<i>Gilchrist and another v HMA</i> 2004 Scot (D) 13/10	Appeal Court, High Court of Justiciary	24 Aug 2004	s 57(2)	Evidence obtained during unauthorised surveillance; whether incompatible with article 8 of the ECHR
<i>MM v HMA</i> 2004 SCCR 658; 2004 Scot (D) 4/10	Appeal Court, High Court of Justiciary	11 Oct 2004	Sch 6, para 9	Statutory restrictions on admissibility of evidence of complainers' character in a sexual offences case: alleged incompatibility with article 6 of the ECHR
<i>Flynn & Ors v HMA Scot</i> (D) 21/10	Appeal Court, High Court of Justiciary	14 Oct 2004	s 29(2)(d)	Parole Board put back date appellants would be considered for release due to Convention Rights (Compliance) Act 2001; alleged incompatibility with Art 7 of ECHR
<i>Moir v HMA</i> 2004 Scot (D) 20/11	Privy Council	17 Nov 2004	Sch 6, para 11 referral to JCPC	Accused seeking to raise devolution issue to challenge legislation before trial; whether issue should be heard before trial
<i>Robbie the Pict v Wylie</i> 2004 Scot (D) 10/12	Appeal Court, High Court of Justiciary	7 Dec 2004	s 57(2), Sch 6	Complainer on trial in district court; Justices continued proceedings to allow complainer to raise devolution issue as to fairness of trial (Article 6(1))
<i>Kearney v HMA</i> 2005 SCCR 79	Appeal Court, High Court of Justiciary	17 Dec 2004	ss 44, 48(5), 57(2), Sch 6, para 1	temporary sheriff: alleged incompatibility with article 6 of the ECHR
<i>Robertson and ors v Frame and Griffiths</i> 2005 SCCR 134	Appeal Court, High Court of Justiciary	18 Jan 2005	s 57(2)	temporary sheriff: alleged incompatibility with article 6 of the ECHR
<i>Hansen v HMA</i> 2005 Scot (D) 29/3	Appeal Court, High Court of Justiciary	4 Mar 2005	Sch 6	Whether insistance by the Lord Advocate in prosecution was incompatible with right to a hearing within a reasonable time under art 6(1) of the ECHR
<i>Quinan, PF, Dumbarton</i> 2005 Scot (D) 14/3	Appeal Court, High Court of Justiciary	16 Mar 2005	Sch 6, para 1	Whether criminal proceedings against the appellant were disproportionate and incompatible with arts 10 and 11 of the ECHR
<i>Marnoch v HMA</i> 2005 SCCR 354	Appeal Court, High Court of Justiciary	14 Apr 2005	s 57(2)	Evidence obtained during unauthorised surveillance; whether incompatible with article 8; Whether admission of evidence incompatible with article 6 of the ECHR
<i>Sinclair v HMA</i> 2005 SCCR 446; 2005 Scot (D) 3/5	Privy Council	11 May 2005	s 57(2), Sch 6, para 1	Failure of Crown to disclose police statements of witnesses/Disclosure not sought by defence before trial: alleged incompatibility with article 6 of the ECHR

<i>Case citation</i>	<i>Court</i>	<i>Judgement Date</i>	<i>Section(s) of Scotland Act referred to</i>	<i>Devolution issue</i>
<i>HMA v D S Accused</i> 2005 SCCR 655	Appeal Court, High Court of Justiciary	3 Aug 2005	Sch 6, para 9	statutory provision requiring prosecutor to place previous convictions before court: alleged incompatibility with article 6 of the ECHR
<i>Headrick, minuter</i> 2005 Scot (D) 10/11	Sheriff Court, Edinburgh	8 Sep 2005	ss 52, 53, 57(2), (3)(b), Sch 6, para 1	unreasonable delay in contravention of article 6 rights; whether actings of Scottish Ministers or Lord Advocate can be subject of devolution issue
<i>PF, Kingissie v Spencer</i> 2005 Scot (D) 8/10	Appeal Court, High Court of Justiciary	12 Oct 2005	Sch 6, para 9	Criminal procedure: whether charge incompatible with article 6 of the ECHR
<i>HMA v Headrick</i> 2005 SCCR 787; 2005 Scot (D) 17/11	Sheriff Court, Lothian and Borders	27 Oct 2005	ss 52, 53, 57(2), (3)(b), Sch 6, para 1	unreasonable delay in contravention of article 6(1) rights; whether actings of Scottish Ministers or Lord Advocate can be subject of devolution issue
<i>HMA v Voudouri</i> 2005 Scot (D) 8/11	High Court of Justiciary	10 Nov 2005	s 98, Sch 6, para 36	Crown failing to lodge proper submissions in outline and list of authorities; whether expenses should be awarded against Crown
<i>Kearney v HMA</i> 2006 SCCR 130	Privy Council	6 Feb 2006	ss 44, 48(5), 57(2), Sch 6, para 1	temporary sheriff: alleged incompatibility with article 6(1) of the ECHR
<i>Ruddy v Griffiths</i> 2006 SCCR 151	Privy Council	6 Feb 2006	s 57(2), Sch 6, para 1	temporary sheriff: alleged incompatibility with article 6(1) of the ECHR
<i>Wylie v Robbie the Pict</i> 2006 SCCR 221	Appeal Court, High Court of Justiciary	15 Feb 2006	s 95; s 57(2), Sch 6, para 1	Validity of judicial appointments; Schedule 6 of the Scotland Act; alleged incompatibility with article 14 of the ECHR
<i>Goatley v HMA</i> 2006 SCCR 463	Appeal Court, High Court of Justiciary	12 July 2006	ss 44, 51(1), 57(2), Sch 6, para 1	extradition proceedings: alleged incompatibility with article 8 of the ECHR
<i>Antonio la Torre v. HMA</i> 2006 SCCR 503	Appeal Court, High Court of Justiciary	14 July 2006	ss 44, 57(2), Sch 6, para 1	extradition proceedings: alleged incompatibility with article 8 of the ECHR
<i>McNaughton v Gilchrist</i> 2006 SCCR 637	Appeal Court, High Court of Justiciary	11 Oct 2006	s 57(2), Sch 6, para 1	temporary sheriff: alleged incompatibility with article 6(1) of the ECHR
<i>Mungo Bovey QC Petitioner</i> 2006 SCLR 498	Court of Session, Outer House	18 Nov 2006	Sch 6, paras 11, 13	Legal Aid fees; whether Auditor of Court of Session had right to tax account

Memorandum submitted by The Law Society, Wales

We write in response to the call for evidence in relation to the above inquiry. The Law Society is the professional body for solicitors in England and Wales. The Society represents the solicitors' profession and has a public interest role in working for reform of the law.

The Law Society's Wales committee terms of reference include monitoring the progress of devolution in Wales and the programme of devolved legislation in Wales; disseminating to the profession in Wales and to solicitors in England information about the activities of the National Assembly for Wales and the Welsh Assembly Government and the impact of Welsh legislation.

Our particular concerns relate to access to Welsh legislation.

The piecemeal transfer of functions and law-making powers is making for a very confused legislative system. The Committee will be aware that following the elections in May the National Assembly for Wales will gain primary law-making powers under the Government of Wales Act 2006 ("the Act"). The Act provides for Assembly Measures and for Orders in Council to extend the Fields.

In addition to the provisions in the Act the Westminster Government is actively "delegat[ing] to the Assembly maximum discretion in making its own provisions, using secondary legislative powers" (*Better Governance for Wales* paragraph 1.24).

In the White Paper it is stated "The Government favours an incremental approach ... which provides the best possible legislative framework for Wales and the UK" (paragraph 3.13). However, this incremental approach will result in legislation made under differing powers and will produce a complicated body of laws.

The Law Society's Wales Committee has been lobbying for a formal system for producing, collating and publishing non general Statutory Instrument legislation to be adopted since no system was implemented by the National Assembly or the Assembly Government. In response, the Presiding Officer prescribed model forms under the Assembly's Standing Orders for Assembly General Subordinate Legislation. This came into effect from 1st January 2006 and a system was established to coordinate and produce all relevant legislation including publishing the legislation on the Welsh Assembly Government's website. This legislation will continue to be made in future by the Welsh Ministers.

We have been pursuing a single register of Welsh legislation as it has been so difficult to access all the subordinate legislation applicable in Wales since powers were first devolved following the 1999 elections. As the Assembly Measures will be primary legislation we have been told that they will be published formally in the same way that Acts of Parliament are published through HMSO. However, it is particularly important that a single register is maintained for all Welsh legislation as the sources and classes of legislation are numerous and complex and there is little evidence that commercial providers will collate legislation for Wales as well as for England in specialist legal publications.

The provision of a register of Welsh legislation will not preclude the publication of Assembly Measures and thereafter Acts of the Assembly through HMSO but there is a very real concern that without a formal system for maintaining a record of current legislation major problems will occur not least with what part of each Act of Parliament subsists following the passing of Assembly Measures to amend them.

The legal system can only operate and solicitors be able to advise clients if the law is accessible. The absence of a central repository clearly setting out the law opens the possibility of actions for negligent advice brought against solicitors who have no means of ascertaining the law when advising clients. If sued, a solicitor may seek to join the Assembly in any action.

We would ask the Committee to consider Westminster's responsibility to ensure that where it devolves powers a simple and accessible body of law evolves, too. We would request that the Committee considers recommending a single Register of Welsh Legislation.

I should be pleased to respond to any requests for further input as necessary.

Kay Powell,
Policy Adviser

17 April 2007

Memorandum submitted by London School of Economics and Political Science

DEVOLUTION—THE LONDON REFORM

The Greater London Authority (consisting of the Mayor of London and the London Assembly) was created a year after the Scottish Parliament and the Welsh Assembly. Although the new London arrangements resulted indirectly from the decision to abolish the Greater London Council in 1986, the reform of London government involved the devolution of power from a number of Whitehall departments to the new authority. While not "constitutional" in the same way as the Scottish and Welsh reforms, there were elements of constitutional reform in the new London settlement.

THE GREATER LONDON AUTHORITY

The GLA, as stated above, consisted of a directly-elected executive mayor and an assembly to provide oversight of the mayor's policies, budgets and services. This kind of mayor was very different to the traditional ceremonial mayor in England & Wales. The Mayor of London was, in reality, an American import which was intended by the government to provide a visible figurehead for the capital's government. Because of London's population (now 7.5 million) and its importance within the United Kingdom the scale of the mandate is significant.

The GLA assumed responsibility for a major part of the capital's transport services, for spatial planning, for part of economic development provision and, in a less direct way, for fire & emergency services and the police. The Mayor of London appoints some or all of the boards of the four 'functional bodies' (Transport for London, the London Development Agency, the London Fire & Emergency Planning Authority and the Metropolitan Police Authority) that come within the GLA's ambit. The Mayor also sets the budget of these institutions.

Funding for the GLA bodies is provided by government grants, charges for services (ie transport fares and the congestion charge) and from a council tax precept. Compared with the Scottish and Welsh governments, the Mayor of London enjoys rather greater access to both a tax source and to charges.

THE GLA'S FIRST EIGHT YEARS

Following the recent election, the first change of mayor has occurred at London's City Hall. Like its predecessor the GLC, the GLA has proved a politically plural institution, in the sense that both the Labour and Conservative parties have been able to win control of it. The London Assembly, which is elected using the same form of proportional representation as is used in Scotland and Wales, has not yet provided one party with a majority of its 25 members. Indeed, it is unlikely ever to do so.

The Greater London Authority, consisting of the Mayor and Assembly has, by the standards of many British government reforms, been a reasonable success. There is no serious lobby to abolish it. London has regained its self-government and, to a significant extent, civic self-esteem. There is more accountability for transport, the police and planning than when such services were embedded within Whitehall. It would, of course, be possible to make improvements to the 2000 arrangements.

The Greater London Authority Act, 2007 extended devolution beyond the powers given to the Mayor in 2000. First, the GLA was given responsibility for the allocation of resources for social and "affordable" housing, previously in the hands of the Housing Corporation. The Mayor was also given increased potential powers to intervene in boroughs' housing plans if these do not conform with his housing strategy. Second, the Mayor's planning responsibilities were extended so as to give City Hall development control powers over larger developments. In future, the Mayor would be able to give planning permission for major schemes even if the local borough rejected them. Third, the Mayor was made chair of a new London Waste and Recycling Board. Fourth, the Mayor was given new powers to direct the policy of the fire authority. Fifth, strategic direction over funding for skills and training was transferred to the GLA, with the Mayor to chair a new London Skills and Employment Board. Finally, the Mayor was also given the right to make additional appointments to the boards of functional bodies and, if he chose to do so, chair the police authority.

POSSIBLE IMPROVEMENTS AND REFORMS

The creation of the Greater London Authority, including a directly-elected executive mayor, was intended by the government to be a radical "presidential" import into the British political system. In the longer term, there would be arguments for legislative change to strengthen the institutions created in 2000 to make it operate more effectively in the way American political institutions are intended to.

When it is next decided to review the GLA legislation, the government will almost certainly be encouraged to consider a number of improvements. For example, the Assembly could be given an enhanced "legislative" role and there could be an end to Assembly members sitting on the boards of functional bodies the Assembly itself is required to scrutinize. The government could reconsider the issue of whether the Mayor needs to be responsible for all staff appointments to deliver his policy programme. The question of term limits could be re-examined, given the extent of the personal power in the hands of the Mayor.

Any future reform of London government could reasonably consider the question of whether more "Whitehall" provision could be transferred to the GLA. The funding and oversight of the NHS, commuter railways within London, full responsibility for the police and an effective system of local taxation would all be candidates for reform. Wales (with a population of 3 million) and Scotland (5 million) each enjoy far greater autonomy than London (7.5 million). Now the Mayor and Assembly are properly embedded and functional, a wider devolution of central government power to London is surely a possibility.

Tony Travers

July 2008

Memorandum submitted by Professor Michael Keating, Head of Department of Political and Social Science, European University Institute Florence; Professor of Scottish Politics, University of Aberdeen

This paper is based on work done between 2000 and 2006 on devolution in the United Kingdom. Fuller details are given in:

Michael Keating, *The Government of Scotland*, Edinburgh University Press, 2005.

Michael Keating (ed.), *Scottish Social Democracy* (Presses interuniversitaires européennes, 2007).

Michael Keating, "Policy Divergence and Convergence in Scotland under Devolution", *Regional Studies* Vol. 39.4 (2005), pp 453–463.

Michael Keating, "Higher Education Policy in Scotland and England after Devolution", *Regional and Federal Studies*, 14.4 (2005), pp 423–35.

Michael Keating and Paul Cairney, "A New Elite? Politicians and Civil Servants in Scotland after Devolution", *Parliamentary Affairs*, 59.1 (2006), pp 1–17.

Michael Keating and Linda Stevenson, "Rural Policy in Scotland after Devolution", *Regional Studies*, 40.3 (2006), pp 397–408.

Paul Cairney and Michael Keating, "Sewel Motions in the Scottish Parliament", *Scottish Affairs*, 47, Spring (2004), pp 115–34.

Michael Keating, "From Functional to Political Regionalism. England in Comparative Perspective" in Robert Hazel (ed.), *The English Question* (Manchester University Press, 2006).

2. THE ENGLISH QUESTION

2.1 There are two English questions:

- (a) the unbalancing of the constitution given devolution in the three other parts of the United Kingdom, including the West Lothian Question. The main problem here is that MPs from devolved territories can vote on English matters but neither they nor English MPs can vote on non-English matters. It is even possible that a government might depend on the votes of non-English MPs but use this majority to legislate for England;
- (b) the internal government of England. This is a matter of the best design for the supralocal level of government and administration given the social and economic needs of the parts of England. Regional government and city-regions have been proposed to address the lack of government at this level.

These cannot share the same solution. Regional government in England, as proposed in 2004 and related proposals since, would not give the parts of England self-government equivalent to that of Scotland, Wales and Northern Ireland, notably legislative powers. It would not therefore solve the West Lothian Question. There is no demand for legislative powers for sub-national territories in England.

The two questions must therefore be treated separately. Issue (b) is a matter of administrative and local government reform. Issue (a) is more properly constitutional.

2.2 The constitution might be rebalanced by establishing an English Parliament and converting the United Kingdom into a federation. There is, however, little demand for an English Parliament and it would leave the UK Parliament with little to do. Westminster would not even be able to operate as a normal federal parliament since such parliaments normally share competences with the constituent units. Already under devolution, the decision has been taken to give Scotland and Northern Ireland almost exclusive control of various competences including health, education and social services. Federalism could thus represent a re-centralization.

2.3 An alternative is an in-and-out system whereby Scottish and Northern Ireland MPs (and Welsh MPs where and when legislative powers are devolved) would not vote on matters in England which are devolved in their own territories. I do not find the arguments against this convincing. These are:

- (a) that it is impossible to define the territorial extent of a bill. This is in fact done already.
- (b) That bills mix devolved and non-devolved matters. This is an example of bad practice and makes the statute book difficult to read. Governments should separate devolved and UK clauses better.
- (c) That votes on English questions matter to Scotland because English expenditures determine the Barnett allocations to devolved governments. This objection makes a matter of principle out of a flawed and much-criticized system of financial allocation, which does not even have a statutory basis. The UK needs to move to a better system of territorial financing in any case, which would remove this objection.
- (d) That governments would not have a guaranteed majority on English matters. This I find the least convincing argument of all. It suggests that it is right that a party should govern England even

when, as at the last election, it has not even gained a plurality of the vote there. This is precisely the sort of anomaly that fuelled support for devolution in Scotland between 1979 and 1997. It also assumes that it is right for governments automatically to get their way on legislation. Constitutional reformers have always found this problematic. With an in-and-out system, governments would have to find majorities among English MPs for their English measures. This would force them to broaden their base, just as parties in the other parts of the UK need to do under proportional representation.

- (e) If the voting system for Westminster elections is reformed, then governments will need to find broader bases of support in any case.

3. INTERGOVERNMENTAL RELATIONS

3.1 It is a commonplace that intergovernmental relations so far have been rather smooth because the same party has dominated at both levels. With different parties in power, it would not be possible to depend on the same informal understandings and it would be necessary to develop more formal arrangements.

3.2 Some critics have commented that the UK system is unduly asymmetrical and fragmented. There is a complex mixture of devolved governments and Whitehall departments, many of which are *de facto* English departments. There is thus a “missing centre”.

3.3 Both these points have substance. This does not, however, imply stronger mechanisms for policy coordination. Nor does it imply building up the “missing centre” or imposing limits to divergence. Given the disparity in size, power and resources between Whitehall and the devolved territories, any such effort could only mean recentralization and Whitehall dominance. The “centre” would in fact be formed by English departments and policy coordination would be on their terms. Devolution is about allowing policy divergence and a healthy competition among governments to innovate and respond to challenges. Experience from other countries shows that coordination mechanisms or framework laws defining the limits of divergence are used as a mechanism for re-centralization. Devolved systems of policy making are still in their infancy and need room to develop freely. Incorporating them back into UK-wide policy systems would undermine the dynamic of devolution. Other federal and devolved systems have recently tended to reform by disentangling responsibilities and encouraging policy autonomy.

3.4 The need, rather, is for two things. First is a system to highlight when decisions taken in one jurisdiction impinge on the responsibilities of another. Examples might be decisions on tuition fees, or the consequences for attendance allowances of the decision on free personal care for the elderly in Scotland. In this case, a forum should exist for resolving the resulting conflicts. Second is a system for diffusing ideas about innovation from one territory to another. This does not need to be constitutionalized and could operate at various levels, the political, the administrative and the academic.

3.5 Representation of the devolved territories in the EU is currently at the discretion of the central government. This is in contrast to arrangements in Germany, Belgium, Austria and now Spain. It is true that there can only be one representation of a state in the EU Council of Ministers and that a single line must be taken. It is not necessary that the representative be the central government. More formal arrangements should be made for representing the devolved territories in EU negotiations. There should be guaranteed membership of the UK delegation when devolved matters are being discussed, and corresponding membership in working parties and preparatory meetings. It is likely that consensus can be reached on most issues. If there is a fundamental disagreement, then the UK government line might have to prevail but the devolved territories would be publicly to signal their dissent. This would provide political incentives for all sides to seek agreement.

4. SECRETARIES OF STATE FOR SCOTLAND, WALES AND NORTHERN IRELAND

There is no need to retain the territorial secretaries of state. They could be replaced by one minister responsible for overall relations with devolved territories.

5. DEVOLUTION AND THE COURTS

The courts have not been used to resolve devolution disputes. Some regard this as healthy and a sign that the devolution settlement is working. It might be argued, on the contrary, that the failure to use the courts has prevented the development of a body of devolution case law. This means that, in the case of serious conflict, the courts would have to invent very quickly. Sewel (legislative consent) motions have been used too often in order to circumvent questions of unclear competence, rather than demarcating the boundaries of devolved and reserved competences more clearly. This, rather than any centralizing effects, is my main criticism of the legislative consent mechanism.

6. OTHER ISSUES

6.1 The most serious outstanding issue concerns fiscal powers for the devolved bodies. In no other system that I know of is such a high degree of freedom on how money is spent combined with such an absence of power over how it is raised. The lack of responsibility for raising money is a debilitating influence on policy debate within Scotland and Wales and is responsible for much of the perception that Westminster remains the most important influence even over devolved matters. Politics is stuck in a pre-devolution mode of lobbying rather than of creative policy-making. Policy-makers have less incentive to focus on economic growth and reduction in welfare dependency when they do not gain the fiscal benefit from it. Within the devolved governments, there has not developed an adequate system of resource planning and budgeting since the main task has been to distribute funds that have, since 1999, been flowing rather generously. Some of the main decisions to be taken by governments is the balance between taxation and spending; or between taxation and charging. As the debates on free personal care and tuition fees have shown, the devolved governments have very limited scope for altering these balances. As transfers from Westminster become more constrained, this difficulty will only increase, inhibiting diversity in models of service provision.

6.2 Some parties, notably Labour, and many academics, have insisted that there is no viable alternative to the present system because any form of devolved taxation would be unworkable or would cause economic distortions. This ignores the example of all other federal and devolved systems in the world. Devolving taxes is feasible; what is lacking is the political will.

6.3 It is likely at some point that the Treasury and English MPs will declare themselves unwilling to take the pain of raising money while the devolved administrations get the credit for spending it. There is now a trend across Europe and North America to devolve fiscal powers to the regions, states and provinces. This has promoted policy innovation and competition.

6.4 Fiscal devolution should be accompanied by a system of fiscal equalization. It is an illusion to pretend that such a system can be purely technical, since definitions of need and resources involve value judgements. This means that fiscal equalization is difficult, not that it is impossible. Adjustments would have to be made incrementally rather than in big steps from one year to the next. Yet the Barnett formula already provides for incremental adjustment. An equalization formula could similarly be brought in and adjusted over time.

20 April 2007

Memorandum submitted by Lord Tyler CBE DL

THE ENGLISH QUESTION

1. Background

Nearly two decades of Conservative government saw electors and politicians in Scotland identify a serious consent-deficit between their electoral choices, and the public policy outcomes which were meted out to them. Though the poll tax (or “community charge”) was emblematic of this disjuncture, it was by no means the sole genesis of a sense that Scotland was being governed by an English administration, which had no democratic mandate north of the border. Opposition parties were united in their censure of that situation, even if members of those parties were divided as to the most appropriate solution. In 1989, the Scottish Constitutional Convention was founded and though Conservatives and Nationalists declined to participate, the other main parties in Scotland came together with significant community and faith groups to produce, in 1995, a report entitled Scotland’s Parliament, Scotland’s Right. Its proposals for a Parliament of 129 members, elected under an additional member system, with a power to vary the basic rate of income tax by up to 3p in the pound; and substantial devolution of legislative and executive functions to an Executive formed from it, were made a reality by the Scotland Act 1998. After a very narrowly-won referendum, on a low turnout, Wales gained a lesser degree of devolution, with only secondary legislative powers devolved to a new National Assembly.

2. Devolution to Scotland and Wales has, however, resulted in a new anomaly. Every MP in the United Kingdom is able to vote on all legislation at Westminster, even though much of it now affects only England. Great Departments of State—health, education, the Home Office—have Ministers who can, and have, represented Scottish constituencies yet whose ministerial remit largely relates to England.

3. Piecemeal changes to the constitutional settlement

Since the creation of Government Office Regions by the Conservative Government in 1994, the UK has had an element of regional administration—implementation of central government policies by regional offices—but without effective democratic scrutiny or accountability. While Britain’s constitution prior to 1997 was certainly defective, it had the advantage—in constitutional, if not in political terms—of being equally unsatisfactory wherever you lived in the United Kingdom. Our centralised state was concentrated in one place, and our unrepresentative electoral system had the capacity to under-represent the political values of any citizen as much as another.

4. The 1997 devolution settlement in Scotland and Wales gave new life to those countries' politics and (for a time, at least) neutered nationalism in both territories; for the first time in some 300 years, big public policy decisions were taken by politicians—and, crucially, by political institutions—which were not just native but politically representative, since both the National Assembly for Wales and the Scottish Parliament are elected by a system of proportional representation. The logic, however, of these changes, is to give that same life and representative capacity to politics in England; after all, it can scarcely be fair or just to grant it to one part of the United Kingdom but not to another. England is the missing piece in new Labour's devolution arrangements.

5. Asymmetrical devolution abroad

The situation in which England finds itself is not peculiar to the British constitution; indeed Canada, Spain, Finland, and Portugal all have forms of asymmetrical decentralisation, with, for example, remote islands having more autonomy than the mainland regions. This is reflected in the present arrangements at Holyrood and Cardiff, where territories with a distinct political identity, and a quite different political culture (the most obvious feature of which is the existence of four-party systems) have greater powers conferred on them.

6. An English Parliament

The English Democrat Party has advocated the idea that an English Parliament should be set up to counterbalance the Scottish and Welsh devolved institutions. The logic of this position is that there would be separate elections for that Parliament, and that a separate Executive would be formed out of it; Westminster would retain power over foreign policy, defence, social security, economic policy and, crucially, taxation, while a separate assembly and Executive would decide how to spend the money it raised. This would reduce Westminster's role significantly and would divorce the aphorism, Expenditure is policy and policy is expenditure, since significant expenditure would, for all parts of the United Kingdom, be decided outwith the institution with the capacity to fund it. This could certainly cause serious tensions between the two administrations.

7. An English Grand Committee

Sir Malcolm Rifkind MP has proposed that a Grand Committee of English MPs be constituted on the floor of the House of Commons to decide on what he terms "purely English business". Yet this solution appears not to acknowledge that its logical conclusion is identical to that of an English Parliament. A separate Grand Committee, which had no executive arm to implement its legislation, would soon become an impotent talking shop.

8. If the parliamentary arithmetic is to be different on different issues, and a majority UK government (whether or not it was composed of a single Party) could well hold only a minority of seats in England, so would be unable to command support for the bulk of its domestic business. The English Grand Committee might repeatedly instruct the Government to take particular policy decisions, which were at odds with the direction in which UK Ministers were heading in that area. Conversely, if the Rifkind plan were to acknowledge the need for a separate executive, it would prove quite unsatisfactory to have it subject to scrutiny by the same legislature as that for the UK Government, since the Speaker would be placed in the unremittingly political and invidious position of determining which business ought to be the responsibility of which Ministers, and which MPs could decide on which issues.

9. Financial arrangements

Both the Rifkind proposal and that of an English Parliament fail to identify how public spending would be managed. Liberal Democrats have long advocated a fundamentally decentralised state, with taxation devolved in commensurate proportion to political power, yet this has never been the basis on which the British devolution arrangements are predicated. Instead, the Barnett formula has persisted as the method by which funds are allocated; the formula allocates public funding per head of population on a proportionate basis (or, more accurately, on a disproportionate basis) according to the public spending settlement for England. If England were—in a body without Scottish and Welsh representation—deciding its own public spending arrangements, these would under present arrangements impact substantially on Scotland and Wales, yielding a further democratic deficit. Moreover, the UK Government would be able substantially to hamper the efforts and scope of any English Executive by reducing the funding available to it.

10. A bicameral Parliament

The Rifkind proposal fails fundamentally to take into account the role of the House of Lords. Would legislative decisions for England be taken by the House of Commons alone, in the English Grand Committee without recourse to the second chamber? Or would England benefit from the checks and balances of a second chamber where Scotland and Wales do not? Would Peers from outside England be able to vote on English legislation? Further, if substantial areas of domestic public policy for England were devolved to a separate English legislature, and the Lords is presently precluded from pronouncing on financial matters, what functions would the UK's second chamber have left? Crucially, the Lords would not be able to take a view on the overall funding settlement, which would otherwise become the key function of the UK Parliament as a whole.

11. Possible solutions

Devolution to Scotland and Wales is a permanent—and welcome—feature of our constitutional arrangements, and as such calls to return to a unitary Parliament are misplaced. However, simplistic attempts just to ‘plug the gap’ in which England clearly lies do not constitute an adequate response to the fundamental problem of centralisation in Britain, and particularly in England. As we have identified, “English” solutions to the English Question are fraught with problems and threaten to undermine the UK Parliament and, by extension, the Union. Instead, Ministers should return to the question of devolution within England, radically decentralising power to English regions.

12. These regions need not necessarily be those agreed as Government Office Regions, and in certain cases we would argue they definitely should not be. The principle of regional devolution is not contingent on the credibility of the present regional boundaries. Nor should the 2004 referendum in the North East region be taken as a signal that real decentralisation is—or was—rejected by the English in principle. There were, of course, manifold weaknesses and flaws in the devolution settlement offered to the North East, chief among which was that the powers offered from Westminster were marginal, while the powers to be arrogated up from County Councils were to be substantial.

13. Not all regions will want the same powers. This is the case in Spain’s autonomous communities, and there is no reason to suggest the same would not apply in Britain. However, we work on the basis that where centralisation is allowed to persist, it should do so by choice, not default. Power over local services; healthcare, education, the police, and so on, should rest with people close to those who use those services and, where practicable, with service users themselves. This can hardly be achieved while key services in Wigan remain accountable only to the Secretary of State in Whitehall. Since the Government has already moved towards the principle of unitary government at local level, these authorities ought properly to be able to take on enhanced responsibilities in their areas, even if more effective regional boundaries take time to agree. If the problem is that Scottish MPs vote on legislation affecting only England, the solution is not to prevent them from voting on it, but to devolve power in those areas of policy away from all MPs to more effective, responsive and accountable government beyond Westminster.

14. Liberal Democrats argued before the present Scottish and Welsh arrangements came into effect that devolution would strengthen the Union. If the present settlement is straining relations between its constituent parts, it is because the process of devolution has stalled at its first stage. That process must now be driven forward to afford all the citizens of the United Kingdom fair representation and accountable governance.

15. To this end, Liberal Democrats are committed to the completion of a comprehensive constitutional settlement, and we recognise that this could only be sustained in the long term if it benefited from popular “ownership”. Hence our proposal for a British constitutional convention to look at Britain’s constitutional arrangements in the round, and to involve people directly in their development. At least half of the members of the convention should be drawn by lot from the general public, putting our present constitutional processes and difficulties (of which the English Question is a key component) on a real “jury trial”. We outlined these proposals in our recent policy paper *For the people, by the people*, which was endorsed by the party’s Autumn Conference in 2007.

February 2008

Lord Tyler was Chair of the Liberal Democrat Better Governance Working Group, 2006–07, which prepared the recent party policy paper.

Memorandum submitted by the Ministry of Justice

INTRODUCTION

1. The Committee has invited written submissions of evidence on its inquiry into devolution. The Government welcomes the chance to contribute to the discussion, after nearly 10 years of successful devolution in Scotland and Wales and following on from the successful restoration earlier in the year of devolution in Northern Ireland.

2. The Government was elected on a platform of constitutional reform and remains committed to delivering a far reaching constitutional reform agenda. The Human Rights Act, the Freedom of Information Act and the Constitutional Reform Act were all introduced by this Government. They were aimed at protecting existing rights, increasing transparency of decision making, and updating, refreshing and safeguarding the relationships between the Executive, Legislature and Judiciary.

3. Devolution sits squarely within this wider constitutional reform agenda, and the devolution legislation in 1998 and 2006 has introduced significant and much needed change to the UK Constitution. The settlements in Scotland, Wales and Northern Ireland catered for specific demands for new democratic institutions in those parts of the UK, while maintaining the sovereignty of the UK Parliament in Westminster.

4. For Scotland, legislative devolution built upon the distinctive Scottish institutions which remained after the Union of 1707, including the legal and educational systems. The extensive administrative devolution, built around the Office of Secretary for Scotland from 1885, provided the basis for the creation of the Scottish Executive and Parliament.

5. Wales has its own history within the Union, and until the early twentieth century Wales and England were administered as one. In 1964 the first Secretary of State for Wales was appointed with his own department—the Welsh Office—and over the ensuing thirty years or so its role was progressively widened. The creation of the Welsh Assembly in 1999 put those domestic Welsh policy matters under the democratic control of the Assembly. The Government of Wales Act 2006 built on the foundations of that settlement and provides for greater devolution in Wales by increasing the legislative competence of the National Assembly. The Act provides the National Assembly, for the first time, with opportunities to seek from Parliament legislative powers to pass Assembly Measures, a new type of legislation specific to Wales, whilst also putting on statute the process by which primary legislative powers could in future be granted to the Assembly.

6. Northern Ireland has for many years been served by a separate civil service, and separate Northern Ireland departments have carried out the functions of their Whitehall counterparts. Since the prorogation of the Stormont Parliament in 1972, it has been the policy of successive Governments to seek to find a way to restore devolution in Northern Ireland. In 1998 the Belfast (Good Friday) Agreement paved the way for devolution in 1999, restoring responsibility for a wide range of social and economic matters to locally elected and locally accountable politicians in the Assembly and power sharing Executive. Following restoration of the devolved institutions in May 2007, work is underway to complete the process of devolution with the transfer of policing and justice powers in line with the St Andrews Agreement.

7. Devolution allows for the democratic representatives of Scotland, Wales and Northern Ireland to give expression to the views of people in those nations, and to deal with issues that are best dealt with at that level, whilst still ensuring that UK issues are delivered by Westminster. The devolution settlement is asymmetric, reflecting the different sizes, historic backgrounds and aspirations of the different parts of the UK. This is true of England too: that is why the Government created the office of Mayor for London, and more recently Regional Ministers as well as well as suggesting better Parliamentary oversight, building on the existing decentralisation to English Regions.

8. Constitutional reform is an evolving process, and the Government's reform programme continues with the recently published Governance of Britain Green Paper. This begins a national discussion on how we should hold power accountable, and how we should uphold and enhance the rights and responsibilities of the citizen throughout the United Kingdom.

THE BENEFITS OF DEVOLUTION

9. Devolution strengthens the Union by allowing a shared culture and a single UK identity to thrive alongside distinctive national identities. Over generations, cross border links between Scotland, Wales, Northern Ireland and England have forged our shared identity. But devolution has enabled individual national identities better to be expressed.

10. At the heart of the Government's devolution policy is the desire to develop flexible arrangements which will accommodate different policy approaches on a wide range of domestic matters in order to meet the specific wishes of people in Scotland, Wales and Northern Ireland. This basic principle is realised by separate constitutional settlements in each of those places. These arrangements have allowed devolution to work successfully in Scotland and Wales for nearly ten years, alongside the sovereign UK Parliament and, going forward, the Government's policy and objectives are clear: the current flexible forms of devolution deliver benefits and it is our wish to maintain them. Restored devolution in Northern Ireland has delivered, for the first time, inclusive power sharing.

11. The Government believes that devolution has delivered real benefits to people across the UK, providing the right balance between responsibility, accountability and representation while freeing the constituent parts of the United Kingdom to provide innovative local solutions to the problems they face.

12. Differences in policy are an intrinsic part of devolution. The Scottish Parliament enacted important legislation in its last Session on a wide range of devolved matters, including family law, fire services, Gaelic language, housing, policing and criminal justice, transport, the smoking ban, health improvement and education which it felt met the aspirations of the people of Scotland. Similarly, the Welsh Assembly has delivered for the people of Wales with policies such as free bus travel for pensioners, free prescription charges for all and the opening up of previously defunct rail lines. The creation of a Children's Commissioner for Wales has been adopted elsewhere in the UK and the new constitutional arrangements brought about by the Government of Wales Act 2006 will allow the National Assembly to build upon these achievements further.

13. In Northern Ireland the process of devolution has delivered inclusive power sharing for the first time ever and the Government is confident the Northern Ireland Assembly will deliver important public service reforms for the people of Northern Ireland. The Government remains committed to completing the process of devolution, and is working to ensure it is ready to transfer responsibility for policing and justice, in line with the St Andrews Agreement, whenever the Assembly is ready to receive it.

THE BENEFITS OF THE UNION

14. The Government believes in devolution and it also believes in the Union. The Union benefits all the people of the UK, reflecting our shared history and heritage. It reinforces our common culture and supports our successful participation in the global economy, our international standing, and strengthens our security.

15. The peoples of the Union have shared a common history over hundreds of years, during which we have developed a common identity and shared values. This is seen in the culture that we share, our common language, and, in practice, in the ties of family and social relationships that bind the people of the UK together.

16. The Union has also helped to deliver a strong economy and the economic stability for all parts of the UK which is essential to improved competitiveness and to meeting the challenges of globalisation. All parts of the UK benefit from being part of a larger economy which allows us to share opportunities, maintain stability and share both risks and resources, to the benefit of all.

17. Devolution delivers flexibility and allows the devolved legislatures and administrations to deliver distinct devolved policies. But it also allows key policies to be delivered on a United Kingdom basis. For example, the macroeconomic policy that supports a stable UK economy, a common social security system, defence and counter terrorism matters, foreign affairs, and immigration and asylum: all of these are best looked after by a single Government taking a view for the entire UK. This is even more important in meeting the challenges of an increasingly globalised and uncertain world. In light of this, our Government defends strongly the role played by Scottish and Welsh and Northern Ireland Members of Parliament in Westminster to ensure the devolved territories' views are represented in UK policy.

18. As we have mentioned devolution in the UK is bound to be asymmetric, since that reflects the vastly different sizes of the constituent nations. England is by far the largest partner in the UK and that is why the idea of an English Parliament, or that only English MPs should deal with English laws, is mistaken. This is not a new question, and Parliament has always rightly resisted change. Gladstone proposed the “in and out” system for Irish MPs during the Parliamentary consideration of the second Irish Home Rule Bill in 1893. In 1964 Harold Wilson toyed with a similar idea, until the Attorney General of the time reported that it was an unworkable proposition.

19. On each time the conclusion was that the “in and out” solution would undermine the Union and our Parliamentary system. Restricting the rights of Scottish, Welsh or Northern Ireland members to vote on English issues leads to constitutional instability. A UK Government elected on a UK mandate might find itself unable to deliver key policies on which it has been elected. United Kingdom Government Ministers might find themselves unable to vote in support of measures for which they have collective responsibility, or even to support measures for which their department is responsible. There would be a fundamental change to the nature of UK democracy.

20. The right place to legislate for England is at Westminster. England has over 80% of the British population, and of seats at Westminster. If they are so minded English MPs can wholly determine English matters, and of course taxation as well as the level of public expenditure in other parts of the UK. Almost all Bills brought before the House of Commons have financial implications or require money orders. Taxation is so fundamental to government and to the economy of all the UK that all MPs must be able to vote equally on all matters.

IMPACT OF DEVOLUTION ON GOVERNMENT

21. There are strong bilateral relationships between the Scottish Executive, the Welsh Assembly Government, the Northern Ireland Executive and Whitehall Departments. The Scotland, Wales and Northern Ireland Offices continue to work closely across Whitehall and with the Devolved Administrations to ensure that good practice is followed and policies and legislation are successfully implemented in a way that is consistent with the respective settlements.

22. Government Departments have adapted well to working in a different and complex political landscape, and the divergence in policy making which is an inevitable, intended by-product of devolution. Ultimately this has led to a more inclusive approach to policy making and to legislative processes.

23. While the capacity for delivering different outcomes is at the heart of Government's drive to devolve power, there are frequently times where the same or similar outcomes are desirable and the United Kingdom's governance arrangements are flexible enough to deliver this without unnecessary duplication or one legislature legislating against another. The fact that differences of approach can coexist demonstrates the robustness of the settlements and of the UK's constitutional arrangements as a whole.

24. The broad principles set out in Departmental concordats and the Memorandum of Understanding between the UK government and the Devolved Administrations have remained consistent, with a strong emphasis on communication and early information sharing. Over the last eight years the concordats and the Memorandum Of Understanding, and the processes behind these agreements, have been shown to work. These documents act as a useful reference tool to guide departmental interactions with the devolved administrations and continue to provide an important expression of the principles which underpin inter-governmental relations.

25. Those inter-governmental relations remain strong. The Government is committed to continuing to work constructively with the devolved administrations to ensure delivery of public services across the United Kingdom that best meets local need. With a new devolution settlement in Wales and restored devolution in Northern Ireland, the Government is keen to ensure that its strategy and co-ordination capabilities are able to respond effectively to the three devolved administrations. Responsibility for devolution strategy now sits in the Ministry of Justice, which works closely with the Scotland, Wales and Northern Ireland Offices and the Cabinet Office, which has a co-ordinating role.

A CONTINUING AGENDA FOR REFORM

26. A decade on, the UK Parliament remains sovereign, but the Union now functions in a more inclusive and consultative way. The UK Constitution has demonstrated its unique flexibility and its capacity to evolve and to accommodate change and the constitutional renewal agenda continues.

27. The Government is committed to continuing devolution and decentralisation for the whole UK. It believes in strong and accountable local Government. It has restored London Government through the creation of the Greater London Authority, and a Bill is currently before the House strengthening the powers of the London Mayor and Assembly. In London boroughs and elsewhere, electors have the right to decide whether a Mayor will lead their local Council.

28. Within England, the Government believes a regional approach is necessary to analyse and address the causes of economic disparity; to ensure planning and investment decisions are properly integrated; and to co-ordinate issues which extend beyond the boundaries of even the largest local authority.

29. The Government does not, however, believe in a prescriptive or “one size fits all” approach. Respecting the outcome of the November 2004 North East referendum, it has no further plans for directly-elected regional bodies. Instead, the July 2007 Review of sub-national economic development and regeneration announced that reformed Regional Development Agencies will work closely with local authorities and other partners to develop a single integrated strategy for housing and economic growth in their region. Regional Development Agencies will be expected to delegate funding to local authorities, who will have new powers and incentives encouraging them to work with other delivery partners through Local Area Agreements and with other Local Authorities through Multi Area Agreements. The Government will consult later this year on how to implement these reforms. The Prime Minister has appointed nine dedicated Regional Ministers, helping strengthen the authority and visibility of Government Offices as facilitators of partnership working in the regions and localities. The Government is also working with Parliament to agree how best to enhance parliamentary scrutiny of the work of regional bodies.

30. *The Governance of Britain* Green Paper published on 3 July sets out the Government’s continued commitment to the principles of devolution within a wider constitutional context. It examines the challenges faced by an advanced democracy in the 21st century and represents the beginning of a national debate aimed at accelerating the process of constitutional reform. Power should not just be devolved: it must also rest with the local communities. Individuals and communities should not be seen as passive recipients of services provided by the state. They have demonstrated that they are willing to take a more active role, which can both help and improve services and create stronger communities.

31. The Government believes that it must find new ways to enable people to become active citizens, empowered and fully engaged in local decision-making. The Government will enhance democracy by devolving more power directly to the people. By rebalancing the way power is exercised, the Government hopes to ensure that individual citizens feel more closely engaged with those representing them, able to have their voice heard, active in their communities and bound together by common ties.

32. The Government will continue to reform the constitution to make it more relevant in a modern society, to enable power to be distributed to the proper level, and to safeguard rights. The devolution settlements in our constitutional arrangements are asymmetrical, reflecting the different individual historic circumstances, aspirations and economic and political ties between the nations of the Union. This is one of the great strengths of our national constitution.

October 2007

Memorandum submitted by Godfrey Nall

I am writing to express my support at the present situation whereby MPs from Scottish Constitutions can vote on all matters affecting England, whilst English MPs have no say on up to 80% of similar decisions for Scotland. This is undemocratic and wholly unacceptable. The only answer is an English parliament with the same number of powers as the Scottish Parliament

February 2008

Memorandum submitted by the Northern Ireland Assembly

During the Meeting of the Assembly and Executive Review Committee on 11 September 2007, the Committee considered the re-issue of a call for evidence from the Constitutional Affairs Committee to the Inquiry into “Devolution: A Decade On”.

Unfortunately, the Assembly and Executive Review Committee is not in a position to provide a submission at this time as its inquiry into the devolution of policing and justice matters is at an early stage, but they nevertheless wish you well in conducting your inquiry.

*Stephen J Graham
Committee Clerk*

September 2007

Memorandum submitted by Norman Slater

I ask you to consider the following points regarding the impact of devolution, and the “English Question”, and the injustice to England that devolution has presented.

The West Lothian Question whereby Scottish MPs can vote and influence decisions about laws in England is wholly undemocratic. It is a problem that the majority of Members of Parliament shy away from even though it is so clearly unfair to the electorate of England. This makes the people of England (and indeed other parts of the UK electorate), totally cynical about the motives of politicians and suspect that the failure to correct this injustice is due to self-interest on their part.

Perhaps the most blatant example of how this present undemocratic set-up has brought in England a hatred of all things Scottish, where now polls show that between 68% and 81 % favour an English Parliament and 48% want total independence for England from the rest of the UK was the way student fees were introduced into England.

This measure was forced through by the Government, with strong support of Scottish MPs. Yet the Scottish Parliament perversely then voted to abolish any such fees in Scotland. They even pay the fees of Scottish students studying in England. This action has brought tremendous resentment among the population of England. While this injustice was imposed on England, English MPs are not even allowed to discuss any matters concerning Scotland. Where is democracy in this situation?

The people of England now see their taxes being sent to Scotland, Northern Ireland and Wales under the Barnett Formula, to subsidise lavish welfare schemes—free prescriptions for all, free nation wide travel for pensioners, etc while they have none of these. They are ruled by a Prime Minister who represents a Scottish constituency and who has no mandate to be in this position. It may be considered out of date nowadays, but the Bill of Rights 1689 is still law, and I would ask you to study it during your deliberations on this matter.

Prime Minister Brown has set up quango ministries for “Regions of England” without approval of the people of England. Once again, we know that this is wholly undemocratic, but we know why. He is determined to accede to EU policies despite the wishes of the electorate. It is also another source of income for extra politicians. He knows that when Mr Prescott held an election for the North-East on this matter, where he expected a vote in favour of regional government, the vote was 85% against. He is therefore imposing his dogma on the people of England without any approval from them.

I beg you please, Members of the Justice Committee, to consider the wishes of the electorate of England before any policies of self-interest of politicians. I myself would dearly love to see an English Parliament formed as do the majority of people living in England. It would give England the identity and government its people want and need.

Contrary to Mr Blair’s assertion that this would “bust” the Union, it would strengthen it. Some kind of federal system could then be formed, bringing both individual and national identity to the four member states. A reduced UK government to deal with matters of overall policy could then be formed. I doubt very much whether this will suit self-interested politicians, but it would be of great benefit to the electorate of the UK, particularly those living in England who are crying out for justice.

January 2008

Memorandum submitted by Paul Catcheside JP

I wish to inform you that I object very strongly to the present democratic deficit in England which is a consequence of the absence of a national assembly democratic forum representing solely the people of England.

The inequitable position of respectively England and Scotland has a present annoying consequences through the continuing “West Lothian Question” where Scottish MPs can vote upon matters pertaining only to England. This has been passed off in correspondence replying to my letter by both my MP, and government ministers, as being inconsequential as Scotland is affected by the actions of England, so there is a need for the UK Parliament as a whole to vote upon English matters. However it is seen as essential that

Scotland has its own national Parliament, despite the fact that Scottish matters also impinge upon the Union—and present applications of the Barnett formula are becoming increasingly seen as unfair and unjust by English people. (As a matter of information I have several times asked what services/activities the Scottish Parliament has curtailed or given up in order to free up the funds to make the advantageous settlements on education, health, public salaries. No-one has yet given me the courtesy of even attempting to quantify this).

What seems to me to be potentially disastrous for England is the possibility of Scotland voting to secede from the Union. In such a case who would represent the interests of England—it certainly could not be left to MPs who have as their remit commitment to the welfare of Scotland. Of course the dissolution of the United Kingdom would be a disaster which we all hope will never occur, but it seems to me that at present the sticking plaster holding the Union together is being provided in the main by English citizens, and this is not a just basis.

December 2007

Memorandum submitted by Public Affairs Cymru

Public Affairs Cymru (PAC) was established in October 2006 to enable networking, organise events and to promote good practice among the many organisations that are involved in public affairs or political lobbying in Wales. We are akin to the Government Affairs Group in London and the Northern Ireland Government Affairs Group in Belfast. We are communication professionals who have regular dealings with government in its widest sense. Our dealings with government are not restricted to lobbying, but embrace all aspects of public affairs.

Members of PAC have made a collective contribution to this submission which aims to represent a holistic voice for all who work in the public affairs industry in Wales.

1. Westminster: How does Parliament deal with devolution issues, eg legislating for Scotland and Wales

For individuals involved in lobbying it is very difficult to establish what exactly is devolved. There needs to be greater clarity as to the extent of devolution on all issues. It is difficult to establish who is responsible for what so therefore difficult to establish who to target and with what information. There seems to be a tendency, especially on partially devolved subject areas for there to be an element of buck passing on more controversial issues. There needs to be a greater understanding amongst politicians, MPs in particular, of the extent of devolution and it may be an option for them to accept that they will also be lobbied by professionals as well as constituents whilst they are spending time in their constituencies.

Prior to the Government of Wales Act 2006, devolution in the Welsh context was markedly more complex than in the Scottish case. The absence of primary powers left the National Assembly in the position of hoping that primary legislation bids were included in the Queens speech. Inevitably the already gridlocked Westminster legislative timetable meant regularly only one out of four bids for Wales's legislation was successful. Once formalised the proposed instruments laid out in the 2006 Act lends itself to a far more amicable way for the National Assembly to propose its new laws.

2. What issues remain outstanding, eg "The English Question"

The "West Lothian" question is one of the most difficult to answer and will be perennially difficult whilst there is a Union as we know it today. The main difficulties arise where part of a Whitehall Department's responsibility is devolved and another not, also where particular issues pass between one department's responsibility and another. A lasting and clear devolution settlement is the only way to settle this. Another suggested way of improving this is closer working between Select Committees in Westminster and Cardiff and some form of clear joint decision making process on partially devolved issues.

The West Lothian Question is not so apparent in the Welsh case. As the absence of primary legislation has meant that a voice is still needed by Welsh MPs in Westminster. With the coming into effect of the 2006 Act this will be even more crucial. One outstanding issue will be the means that the National Assembly is allocated its budget. At present this is decided by the Barnett Formula, although there is opposition party pressure for this to be on a needs based budget allocation.

The West Lothian Question hasn't been such a political hot-potato in Anglo-Welsh relations as it has been in Anglo-Scottish relations. For a start, fewer Welsh Ministers dominate the UK Government, and with fewer powers devolved to Wales than to Scotland, then there are fewer policy areas that Welsh MPs cannot legislate over. As more and more powers are devolved to Cardiff, however, then this may come to change, and calls for "English-only" votes in the Commons on devolved matters may intensify.

The new Government of Wales Act, however, throws a potential spanner into the works. From 2007 onwards non-Welsh (ie English, or possibly Scottish, or even Irish) MPs will be able to scrutinise, comment on and perhaps delay legislative proposals originating from the Welsh Assembly that are on their way to the Welsh Secretary as part of the "Orders in Council" procedure. As this could potentially involve MPs without a mandate in Wales influencing Welsh Assembly Government policy; this would be almost like the

West Lothian Question in reverse the case of Wales. With Welsh MPs then being able to vote on matters in England that have been devolved to Wales, the situation has the potential to become farcical on both sides of the border.

3. Whitehall: *What impact has Devolution had on Whitehall? Has there been a change in culture? How have they responded to the divergence in policy making? How have the Concordats developed, and are they working?*

On issues such as health, which again are partially devolved, there are examples where concordats are not as working as well as they should. An example is the recent Government White Paper *Trust, Assurance and Safety—The Regulation of Health Professionals in the 21st Century*. The paper applies to regulation in all parts of the UK but was written by the Chief Medical Officer for England and it is widely accepted that the way the suggestions for future regulation could be applied in Wales, Northern Ireland and Scotland were very much an afterthought. There needs to be closer working between departments with partially devolved/shared remits on order to ensure that the voices of the Welsh public are heard. Closer working between departments would also help ensure that policy development, developed in Whitehall, applicable to whole UK is fit for purpose in the 3 devolved administrations.

4. Intergovernmental relations: *How are bodies such as the British Irish Council working? What about representation at the EU level?*

We feel that this is outside the remit of Public Affairs Cymru.

5. *What is the future of the current Secretaries of State for Scotland, Wales and Northern Ireland? Are the current arrangements for the Wales and Scotland offices within the DCA appropriate?*

At present, the Secretary of State for Wales is also Secretary of State for Northern Ireland. This impacts adversely on both roles and should be discontinued. The Secretary of State for Wales has an important role within the Cabinet. However, Wales' interests cannot be championed together with the interests of another country of the UK.

It is also vital that a formal mechanism of reporting to the Assembly and scrutiny by an Assembly committee is put in place with regards to the activities that the Secretary of State for Wales undertakes. If in the future there is a different political party in power in Westminster to the Assembly then a formal and binding system of interaction between the Assembly and the Secretary of State will be even more important.

6. Devolution and the Courts: *have there been legal disputes in the context of devolved/reserved issues and policy divergence?*

The new constitutional settlement for Wales has several implications for the current legal system. For example, at present, if a law is repealed in Westminster it could still be valid in Wales but there would be no record. It is therefore essential that adequate funding is allocated to ensure monitoring and recording of Assembly powers (through transfers of function orders or Orders in Council) and the information should be freely available online. There needs to be clarity in all areas of devolution and certainty that the Assembly is not allowed "to pull itself up by its own boot straps" which could lead to legal conflict between Governments in Cardiff and London.

7. *What are the other outstanding issues around reserved and devolved issues? How could these be best resolved? Is the UK's model of asymmetric devolution sustainable?*

Any form of asymmetrical devolution depends on the flexibility of the overarching legislature and government to accommodate autonomy. Whilst a form of devolution for at least some English regions is desirable, more clarity in terms of Welsh Assembly powers and any eventual English regional assembly is needed. Under the new constitutional arrangements, Wales receives primary legislative powers on specific matters without any reference to a timetable or rationale. Both civil society and the Welsh political class require clear knowledge of the powers the Assembly has. Assembly legislators and officials will require time to test the primary legislative powers the Assembly has so far been transferred. The current arrangement of Orders in Council and transfer of function orders is not sustainable, especially outside a time framework. There is an ethical issue relating to different powers being devolved to different geographical parts of the UK.

8. *What are the broader consequences of devolution for the future of the UK's constitution?*

Differences in policies are inevitable and are not necessarily negative. However, there are two issues of fundamental importance:

- (a) the provision of different services seems to be dependent not so much on policy, rather on the financial resources available. Wales is being adversely affected by the Barnett Formula, which needs to be replaced with a form of funding that would guarantee equality.
- (b) there are situations where English citizens in Wales have not the same rights as Welsh citizens in Wales. Such policies are discriminatory and would be illegal if applied to EU citizens. This anomaly needs to be resolved.

It follows that a constitutional charter with fundamental rights would ensure the equality of all citizens of the UK regardless of their "region" residence.

Russell Lawson
Chair

April 2007

Memorandum submitted by B K Read

I am writing to you regarding the Justice Committee's Inquiry into "Devolution: A Decade On".

I find that the majority of people I meet, from all walks of life, passionately hold the same views as myself with regard to the future of England, and the current state of affairs within the UK.

I, and virtually everyone I speak to believe that we must have an English Parliament without further delay.

Northern Ireland has its Parliament, Scotland was granted its own Parliament and Wales its National Assembly. It is surely then, undemocratic and unacceptable for the English people to be discriminated against by not being offered an English Parliament.

Furthermore, Scottish Constituency MPs are able to vote on all business relating to England, but English MPs are not accorded the same power to vote on most decisions affecting Scotland.

The only acceptable answer to the West Lothian question is the establishment of an English Parliament with similar powers as have already been given to the Scottish Parliament.

I have always been totally opposed to the break-up of the UK, but if we English are not offered our own English Parliament, or much more diabolically, if any attempt is made to split England into regions, by imposition of Regional Assemblies or some form of Regional Government (by any name), then I fear that the result would be England withdrawing from the UK, and becoming independent, such is the very strong desire I perceive for the establishment of an English parliament.

In my view however, if England obtained its own Parliament, there would never be a popular valid reason for England leaving the UK.

Would you please advise me whether any other nation within the EU does not have its own Parliament.

March 2008

Memorandum submitted by R G Dawson

I am writing in support of an English Parliament, because as an Englishman, I feel more and more like a second degree citizen to my Scottish neighbours because of the Barnett Formula, the West Lothian Question, and because of all of the Scottish Labour MPs in the Government. The Union is already broken up by the creation of a Scottish Parliament so that cannot be an excuse for granting us our Parliament!

January 2008

Memorandum submitted by the Scottish Government

INTRODUCTION

1. It is well established that sovereignty over the governance of Scotland lies with the people of Scotland.⁴⁵ As a sovereign people, it is for the Scottish people to decide how they are governed.

2. The Scottish Parliamentary election this year demonstrated that the people of Scotland want further progress in the constitutional arrangements under which they manage their affairs. The position of the Scottish Government is that independence offers the best future for Scotland. Others support increased devolution, greater responsibility for taxes and spending, or federalism. The common theme is that the constitutional position of Scotland must move forward. The Scottish Government has therefore launched a wide-ranging national conversation on the future of Scotland. The Scottish Government paper, *Choosing Scotland's Future*, provides the starting point for that conversation and is available at <http://www.scotland.gov.uk/Publications/2007/08/13103747/0>.

3. These constitutional developments in Scotland are mirrored by major developments elsewhere in the United Kingdom. The devolution arrangements of both Wales and Northern Ireland have moved forward significantly this year, and elections have brought different political parties, or coalitions, to power. As a result, the administrations and parties now in office in the United Kingdom represent a broad range of opinion on the best constitutional relationship between the different constituent parts of these islands.

4. It is necessary for both the United Kingdom Government and United Kingdom Parliament to engage closely with this wide-ranging constitutional debate already taking place within the United Kingdom. That engagement will have to include an acknowledgement of the aims of democratically-elected national governments and parliamentary institutions, such as those in Scotland.

5. The Committee's inquiry into devolution is therefore a welcome and timely indication that the importance of these issues is being addressed by the United Kingdom Parliament. The Scottish Government is keen to contribute to the Committee's work.

RESPONSE

6. The Scottish Government response to the specific questions forming the Committee's terms of reference is below.

Westminster: How does Parliament deal with devolution issues, eg legislating for Scotland and Wales

7. The Scottish Government believes the Sewel Convention—that Westminster does not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament—is essential to the current devolution settlement, given the United Kingdom Parliament's continuing claim to unlimited sovereignty to legislate for Scotland. The Convention makes it possible for a devolved Scottish Parliament to operate under this constitutional system, and reduces the potential for dispute and disagreement between the Parliaments, recognising the purpose of devolution in giving legislative responsibility to the Scottish Parliament.

8. In practice Legislative Consent Motions seeking the consent of the Scottish Parliament under the Convention have generally been used for minor provisions in Westminster Bills. Substantive legislation for Scotland in devolved areas has mainly been contained in Acts of the Scottish Parliament itself. Legislative Consent Motions are subject to the express agreement of the whole Scottish Parliament, after detailed scrutiny by the relevant Parliamentary Committee. The process is analogous to the scrutiny by the Scottish Parliament of its own legislation, is regulated by the Scottish Parliament's own Standing Orders, and fully respects the Scottish Parliament's legislative competence in respect of devolved matters.

9. Use of the Convention does not (and cannot) transfer any part of the Scottish Parliament's legislative competence back to the United Kingdom Parliament. The Scottish Parliament retains the right to legislate on the same issue itself on another occasion if it wishes to do so, and to amend or repeal provisions on devolved matters which have been enacted by the United Kingdom Parliament.

10. The Scottish Government believes that the Sewel Convention will remain a key part of the current constitutional arrangements as long as the United Kingdom Parliament retains its claim to its current powers. Continuing respect for the fundamental principle of the Convention by the United Kingdom Government and United Kingdom Parliament is crucial to the proper working of these constitutional arrangements, as well as good relations between the respective Governments and Parliaments of Scotland and the United Kingdom.

⁴⁵ See, for example, the inaugural declaration signed in 1989 by all members of the Scottish Constitutional Convention: "We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount."

What issues remain outstanding, eg “the English question”

11. The outstanding issue in Scotland remains further development of the constitutional settlement, whether to move to independence or further devolution to the Scottish Parliament. There are differing views within Parliament about the precise nature and extent, but it is evident that there is majority support in Scotland for greater devolved responsibilities.

12. Future arrangements for the government and constitution of England are self evidently for the people of England to determine for themselves. It is not for the Scottish Government to propose solutions to “the English question”. However Scottish independence and, to some extent perhaps, full fiscal autonomy could, in practice, address many of the concerns that have been expressed.

13. There is a wider issue surrounding the failure of current constitutional arrangements for the United Kingdom to make distinctive provision for England. The current constitutional framework lacks overarching, co-ordinating structures linking central and devolved interests, and there are no clear modes of working for institutions which are simultaneously the Government and Parliament of England and of the United Kingdom.

14. Hence there is criticism that both the United Kingdom Government and the United Kingdom Parliament fail to reflect satisfactorily the distinction between United Kingdom matters and those which, in practice, represent distinctive interests and policies of England (a similar criticism is made of institutions such as the news media). A particular example of this is in relation to the development of a single United Kingdom line on EU matters (discussed further below). This distinction can be particularly important when there are different political parties in office in Scotland and in the United Kingdom and, effectively, England.

15. The absence of a proper constitutional structure to allow co-ordination of action in areas of joint interest and an effective means of dealing with the consequential effects of decisions taken in the respective jurisdictions is one of the major weaknesses of the current devolution arrangement. Whilst the Scottish Government is of the view that Scotland’s affairs would be best managed in an independent Scotland, it also believes that the deficiencies of the current structure should be addressed while Scotland remains within the United Kingdom. For example, the Joint Ministerial Committee should be developed further (this is discussed further below). The importance of mechanisms of this kind, in coordinating common interests and supporting good relations between governments, was clearly recognised by all signatories of the Memorandum of Understanding.

16. The Scottish Government would encourage the Committee to look closely at the current and potential use of practical mechanisms, such as the Joint Ministerial Committee, for improving the functioning of existing devolution arrangements. In the view of the Scottish Government, it is regrettable that the United Kingdom paper on The Governance of Britain does not extend to examining these important issues.

Whitehall: What impact has devolution had on Whitehall? Has there been a change in culture? How have they responded to the divergence in policy making? How have the Concordats developed, and are they working?

17. The Memorandum of Understanding and its underpinning concordats have not been changed significantly since they were established at the start of devolution. The Scottish Government is prepared to work within the existing formal framework that the Memorandum of Understanding provides, but it believes that the time is right—with new governments now established in Scotland, Northern Ireland and Wales—to review the terms of this framework to ensure they provide a sound footing for formal engagement between the four governments in future. This is a role perhaps most appropriately undertaken under the auspices of the Joint Ministerial Committee.

18. There are also 26 bi-lateral concordats with Departments of the United Kingdom Government. The Scottish Government sees the value of these in supporting formal intergovernmental engagement and made a pre-election manifesto commitment to “strengthen the concordats to maximise the role and influence of Scottish government across the full range of reserved and devolved areas”. It will be important to review each of these concordats in the coming months to ensure they fully reflect Scottish needs and aims.

19. The terms of the concordats—like those of the Memorandum of Understanding—are not enforceable under statute, and are binding only politically (or “in honour”). The Scottish Government sees significant weaknesses in this system, particularly during a period when different political parties are in office in Scotland and the United Kingdom. In particular, the agreements are of a consultative nature and there is no obligation on the United Kingdom Government to accept Scottish concerns, even when the United Kingdom Government is largely acting as, effectively, the Government of England.

20. The Scottish Government will continue to fulfill its obligations and engage constructively and positively with the United Kingdom Government. It expects the United Kingdom Government will do the same. However, it is desirable to have a forum to discuss occasions when an administration considers the obligations of the Memorandum or Concordats have been overlooked. The Joint Ministerial Committee, once reconvened, could, as one of its roles, monitor the implementation of the Memorandum of Understanding and Concordats.

Intergovernmental relations: *How are bodies such as the British Irish Council working?*

21. Scotland is a committed and active member of the British Irish Council. The Scottish Government welcomes the opportunities it provides to build effective working relationships with the Republic of Ireland and the other administrations of the islands of Great Britain across a range of policy areas. The British Irish Council currently brings together two sovereign states, three devolved nations and three crown dependencies within a forum which enables co-operation on issues of mutual concern. This could provide a model for future cooperation across Britain and Ireland following independence for Scotland, with the current Council evolving to encompass three sovereign states, including an independent Scotland and the remainder of the United Kingdom, the devolved nations and island territories. This would provide a formal mechanism for the Governments of Britain and Ireland to work together. That formal structure would complement other continuing relations across the islands in social and cultural fields, as well as a continuing Union of the Crowns between Scotland and the remainder of the United Kingdom.

22. Scotland participates in all of the work sectors of transport, environment, knowledge economy, e-health, tourism, misuse of drugs and minority and lesser used languages. In addition Scotland currently leads the work sector on demography and jointly leads on social inclusion with Wales. At the Belfast Summit in July 2007, the First Minister proposed that Scotland could lead on a new Energy work stream. The supporting Secretariat for the Council has been tasked to review and renew the work of the Council and it is hoped that Energy, led by Scotland, will be agreed as an appropriate new work stream by all member administrations, over the coming months.

23. At the Belfast 2007 Summit, the First Minister remarked on the diversity and variety of political governments represented at the table of the Summit meeting. He spoke specifically of his support of the important work of the Council's various sectors and looked forward to working closely with the member administrations in the future. The Scottish Government has publicly stated its commitment to working with all members to ensure that the British Irish Council is developed as a suitable forum for co-operation across the administrations of Britain and Ireland. Scotland looks forward to hosting a future Summit of the British Irish Council during 2008.

24. The other formal mechanism for inter-governmental relations is the Joint Ministerial Committee although it has not met in plenary format since 2002. As discussed above, the results of elections across the devolved administrations this year have highlighted the need for formal mechanisms for the governments of the United Kingdom to work together. The Joint Ministerial Committee and its range of sub-committees provide a framework for Ministers of devolved administrations to discuss matters of mutual concern with United Kingdom Ministers and each other.

25. The Scottish Government believes there is a strong case to reconvene the Joint Ministerial Committee in 2007 not only to review how inter-governmental relations are conducted, but in the context of specific issues of mutual concern. The First Minister, speaking at Westminster on 25 July 2007 said: Those joint ministerial committees, certainly in plenary session, have not met since 2002. In terms of the sub-committees, which are part of that process, only one strand of four sub-committees has met over the past five years, and that is the sub-committee on Europe. An arrangement that was brought into being-presumably, because it envisaged a situation in which the same party would not be in government in Westminster as was in government in Scotland or Wales-has fallen into total disrepair. It is important that that instrument, or something like it, is brought back into being very quickly.

26. The First Minister has written to the Prime Minister to formally request the reconvening of the Joint Ministerial Committee, and in August has made the same proposal to the Secretary of State for Scotland. There has not yet been any clear indication of the United Kingdom Government's intentions in this respect.

27. The Scottish Government believes that in future the Joint Ministerial Committee could provide a vehicle for the co-ordination of policy work and formal consultation between Ministers and officials, complementing other contacts, as well as considering other specific issues mentioned above. It would propose to work with the other administrations to place the Joint Ministerial Committee on a sound footing. This could include re-establishing the plenary meeting and considering the scope of a range of sub-committees to conduct more detailed work. The Joint Ministerial Committee could also ensure that the Memorandum of Understanding and bi-lateral concordats provide a sound framework for joint working within the United Kingdom.

What about representation at the EU level?

28. The position of the Scottish Government is that Scotland would best be represented in the EU as an independent nation in same way as similar nations, such as Ireland, Denmark or Sweden. Whilst Scotland remains within the United Kingdom, however, there are important deficiencies in current arrangements which require to be addressed. In particular, there is a need to make progress in relation to recognition of a formal role for Scottish Ministers in leading on key issues, through reform of the manner in which United Kingdom negotiating positions are developed, and by building on the potential of the existing Joint Ministerial Committee Europe (JMC(E)).

29. The current devolution settlement reserves to the United Kingdom Parliament responsibility for EU affairs. The Scottish Parliament and devolved assemblies are bound by decisions taken at EU level, many of which are in devolved areas and to which they are not party (although they might have to implement those decisions), which prevents the Scottish Parliament and Scottish Government from exercising fully their devolved responsibilities. The Scottish Government therefore places an emphasis on working effectively with the United Kingdom Government on EU matters to secure legislative outcomes from EU negotiations that reflect Scottish interests.

30. The Scottish Government attaches particular importance to the provisions in the Concordat on Co-ordination of European Union Policy Issues covering the provision of information and formulation of United Kingdom policy. Scottish Government Ministers and officials discuss EU issues with their counterparts regularly to bring Scottish interests to the attention of United Kingdom Ministers during the preparation of United Kingdom negotiating lines. Scottish Ministers also participate actively in JMC(E) and are keen to see the Committee's potential as a forum for discussion of negotiating lines on important EU dossiers of particular interest to the devolved administrations fully realised.

31. Nevertheless, in the absence of any formal obligation on United Kingdom Ministers to take account of Scottish interests, even in devolved areas affected by EU decisions, public confidence in the effectiveness of the Concordat must rest on a belief that United Kingdom Ministers will balance Scottish interests fairly with those of other parts of the United Kingdom. The full involvement of Scottish Ministers is essential to this confidence, and to counter any issues raised by the "double hat" that United Kingdom Ministers and officials often wear in representing mainly English interests during the policy development stage and then the United Kingdom as a whole in EU negotiations.

32. The Scottish Government has its own representative office in Brussels, the Scottish Government EU Office (SGEUO). It enjoys a close and productive working relationship with the United Kingdom Permanent Representation to the EU (UKRep) and formally forms part of UKRep, although its staff report to Scottish Ministers.

33. The Scottish Government places emphasis on building relations with the key EU institutions. Scottish Ministers, in agreement with United Kingdom Ministers, often attend meetings of the Council of Ministers when items of importance to Scotland or within devolved competence are under discussion. On some occasions they have led and spoken on behalf of the United Kingdom delegation. Scottish Government officials attend Council Working groups and Commission management committee meetings on a regular basis, as part of the United Kingdom delegation, in agreement with the lead United Kingdom Department and UK Rep. There are subjects—such as fisheries—where greater expertise is to be found in the Scottish Government than the United Kingdom Government, and where the activity is of greater economic significance and governmental concern in Scotland than other parts of the United Kingdom. Here, it would make sense to organise United Kingdom representation at Council on the basis that the Scottish Cabinet Secretary normally leads at the Council on behalf of the agreed United Kingdom position and has the lead role in developing that position in the way currently undertaken by DEFRA.

34. The Scottish Government works very closely with all seven Scottish Members of the European Parliament (MEPs), ensuring that they are kept updated on issues of importance to Scotland. Scottish Ministers and officials have also visited the European Parliament to discuss EU policies directly with relevant MEPs, rapporteurs and Committee Chairs.

35. Scottish Government officials (Scotland and Brussels-based) have regular and direct contact with officials in the European Commission often presenting specific Scottish circumstances at the early stages of EU policy development. Ministers also have a strong record of engagement with the European Commission and a number of European Commissioners have met with Scottish Government Ministers both in Scotland and Brussels for constructive bilateral discussions on their portfolio areas. The stronger this role, the better for Scotland.

36. The Scottish Government has also contributed to the development of EU policy through participation in representative bodies including the Conference of European Regions with Legislative Powers (REGLEG) and the Conference of Peripheral and Maritime Regions of Europe (CPMR). It maintains close contact with Scottish members of the EU's two advisory bodies, the Committee of the Regions (CoR), and the Economic and Social Committee.

What is the future of the current Secretaries of State for Scotland, Wales and Northern Ireland? Are the current arrangements for the Wales and Scotland Offices within the MoJ appropriate?

37. The Scottish Government believes there is no need for a Secretary of State for Scotland or a Scotland Office. The Government believes the interests of Scotland in reserved and devolved matters are better represented to the United Kingdom Government directly, by Scottish Ministers building relationships with their United Kingdom counterparts. The principal relationship for the First Minister of Scotland, as for the First Ministers of the other devolved administrations, is with the Prime Minister. The Scotland Office has

direct responsibility for very few issues, and the Scottish Government notes that it has recently been heavily criticised for its performance of one of its main functions, the organisation of elections to the Scottish Parliament, by the independent Gould report.⁴⁶

38. There remains an important role within the United Kingdom Government in ensuring that the role and interests of the devolved administrations are properly understood and recognised by United Kingdom Government departments, particularly around issues such as the United Kingdom legislative programme. The Scotland Office carries out this role at the moment, but the Scottish Government believes this would be better delivered by strengthening the co-ordinating machinery of the United Kingdom Government, as discussed above. Any other residual functions of the Scotland Office, such as responsibility for elections to the Scottish Parliament, should be devolved to the Scottish Government (as recommended by the Gould report).

Devolution and the Courts: have there been legal disputes in the context of devolved/reserved issues and policy divergence?

39. No cases have arisen which have invoked the formal dispute resolution arrangements provided for in section 33 (Scrutiny of Bills by the Judicial Committee) of the Scotland Act 1998.

40. As discussed above, in the changed political environment within the United Kingdom, there are attractions in strengthening other institutional structures in a way which enhances and builds upon existing dialogue and co-operation between administrations, perhaps to provide a more formal process for resolving disputes short of action in the courts.

41. However, it was also clearly envisaged in the original design of the current devolution arrangements for Scotland that there may occasionally be disputes between central and devolved institutions which would require resolution through legal processes. In the view of the Scottish Government, recourse to legal action in future should remain very much the exception rather than the rule. The strong preference of the Scottish Government is for matters which might give rise to potential disputes to be addressed and resolved in the course of the conduct of normal relations and dialogue between Ministers, rather than in the courts. Where this cannot be done in the context of bilateral discussions, the existence of a functioning Joint Ministerial Committee structure would provide an appropriate forum in which to seek to resolve potential difficulties.

42. The forthcoming establishment of the United Kingdom Supreme Court will create a new institutional framework for the judicial scrutiny of devolution issues. The Scottish Government will monitor closely the process of transition to the new arrangements and will seek to ensure adequate representation of judges expert in the law of Scotland within the Supreme Court.

What are the other outstanding issues around reserved and devolved issues? How could these be best resolved? Is the United Kingdom's model of asymmetric devolution sustainable?

What are the broader consequences of devolution for the future of the United Kingdom's constitution?

43. Questions 7 and 8 raise issues which are broadly similar to those already addressed. The Scottish Government believes that there are significant difficulties associated with the United Kingdom's model of asymmetric devolution.

44. The Scottish Government's preferred solution to these is to move to a situation in which Scotland becomes fully independent. This does not mean, however, that difficulties with the existing constitutional arrangements can simply be ignored while Scotland remains within the United Kingdom. The need to improve existing structures applies whatever constitutional position is adopted. It is true equally for those who favour greater devolution, fiscal autonomy, a formal federal structure or full independence.

45. The case for each of these options is one which needs to be made by their respective proponents. In *Choosing Scotland's Future*, the Scottish Government has sought to lay out some of the potential arguments for further devolution, whilst making clear that its preferred option is for Scottish independence. The Scottish Government firmly believes that it is legitimate for it to initiate and contribute to a national conversation about Scotland's constitutional future, including detailed consideration of matters that are currently reserved. The structure of the Scotland Act 1998, and the history of the development of the settlement by the devolved Scottish administration and the United Kingdom Government since devolution, clearly shows that the boundaries of current devolved responsibilities are matters which the Scottish Government and Parliament can and should consider. The Scottish Government also believes it is legitimate for it to promote public discussion in Scotland of matters of wider interest to Scotland, such as defence and foreign affairs.

⁴⁶ *Independent review of the Scottish Parliamentary and local government elections*—3 May 2007, published by the Electoral Commission on 23 October 2007.

46. As has been argued above, the minimum which now needs to be done at a United Kingdom level is for all administrations to commit seriously to the task of re-invigorating and further developing existing features of the constitution, such as the Joint Ministerial Committee, and to continue to build on the successful work which has been done in the British Irish Council, while engaging positively with discussions on further constitutional development in the devolved administrations.

47. Given the widespread support for significant constitutional development, the Scottish Government would again highlight the absence of a discussion of this issue from the United Kingdom Government's green paper on The Governance of Britain. An active debate on constitutional matters is already in progress across the whole of the United Kingdom whether that be in relation to "the English question", Scottish independence or the potential transfer or further powers to devolved administrations. Other issues of considerable constitutional, political and social importance have been highlighted by initiatives such as the Power Inquiry, the Arbutnott Commission, and in Scotland by the Steel Commission.

48. Against that background, it is not possible to regard the existing constitutional settlement as fully satisfactory or as an event which has passed and need not be revisited or reviewed. There is no question that developing the governance of the United Kingdom is a process which needs to progress further. The Scottish Government is promoting a full and properly informed debate in Scotland about the form such progress should now take and would be happy to contribute further evidence to the Committee in the course of its deliberations.

October 2007

Memorandum submitted by Sustrans Cymru, BMA Cymru and the NAHT Cymru

"FIND OUT IF WALES IS BEING SHORT-CHANGED", DEMAND INDEPENDENT COALITION

A coalition of leading experts in the transport, health and education fields are calling on whoever forms the next Welsh Assembly Government to set up an independent inquiry into how Wales is funded.

Sustrans, the sustainable transport charity, The British Medical Association (BMA Cymru Wales) and The National Association of Headteachers (NAHT Cymru) are demanding a fresh look at the workings of the Barnett formula: the mechanism used to decide levels of public spending in Wales.

"Too few people understand the way the Barnett formula works. We need to clear the dense funding fog to see if Wales is being well served" said Dr Tony Calland, Chair of BMA Cymru Wales. "Could the Welsh NHS be missing out on millions because the formula is out of date? We need to know".

The organisations have joined forces to urge the next Welsh Assembly Government to set up a high-level inquiry modelled on the independent Richard Commission to examine if the 'Barnett' formula is still fit for purpose.

"Until now the debate over the Barnett formula has been party political. Our call for a transparent examination of the way Wales is funded comes from civil society. This is too important an issue to be left to politicians alone." says Lee Waters, National Director of Sustrans Cymru.

The cross-party body would commission independent research into the way Welsh public services are funded by the Treasury and take evidence from both experts and people in all parts of Wales. The committee would be drawn from civil society and appointed by nomination from the parties and from open advertisement.

"Arguments about the fairness or otherwise of the Barnett formula have been raging for years. It's time for all sides to sit down and examine the facts together and try to form a consensus view" said Anna Brychan, Director of NAHT Cymru. "We think that the establishment of a Richard -style Commission will help us end the claim and counter-claim nature of the debate so far" she added.

NOTES

- *Sustrans* is the UK's leading sustainable transport charity. Its vision is a world in which people choose to travel in ways that benefit their health and the environment. It is achieving this through innovative but practical solutions to the UK's transport challenges.

This year Sustrans celebrates its 30th anniversary, it was founded in Bristol on 7 July 1977. During 2007 there will be a variety of activities to mark the year, including a "Change Your World" campaign to encourage people to switch a car trip to a more sustainable method and a celebratory cycle ride and party.

- *NAHT Cymru—The Association for All School Leaders.*

The NAHT represents more than 28,000 school leaders, including virtually every Special School head, 85% of all Primary School heads, and over 40% of all Secondary School heads in Wales, England and Northern Ireland.

— *BMA Cymru Wales*

The British Medical Association represents doctors from all branches of medicine throughout the UK. It is a voluntary association with about 80% of practising doctors in membership. Its membership of almost 127,000 includes 12,000 medical students and nearly 4,000 members overseas.

ARTICLE PRINTED IN *The Guardian*

The funds are unfair.

Treasury forecasts suggest tough financial times ahead for the Welsh assembly—prompting fresh questions about the way it is funded.

LEE WATERS

27 March 2007 3:59 pm

This afternoon the Welsh first minister, Rhodri Morgan, will get to his feet in Richard Rogers' debating chamber for perhaps the last time. After today's question time assembly members will pack up their offices and head out on the campaign trail.

Elections used to be predictable in Wales. Not any more. With an all-time low turnout expected, Labour's minority administration face an enormous challenge. A coalition of some kind in Cardiff Bay is all but assured. The question is, between who? Will the combined might of Labour and the Liberal Democrats be enough to govern? Or will there be a rainbow coalition, bringing the Conservatives into power with Plaid Cymru and the Lib Dems?

Whoever governs will find tough financial times ahead. Treasury forecasts show that year-on-year increases in the assembly's block grant during its third term will be half the current 3%, leaving very little room for manoeuvre. This will inevitably provoke fresh questions about the way Wales is funded.

The current formula drawn up by Joel Barnett, a treasury minister in the late 1970s, is population based. Wales has roughly 6% of the UK's population and gets an uplift of about 6% when spending increases are announced for England. So an extra £100 million for the NHS, announced by Patrica Hewitt, will feed through to a boost of about £6 million to the assembly's budget for Welsh ministers to spend as they see fit.

But is it fair? The formula doesn't take into account the fact that Welsh income levels are among the lowest in Europe. Nor does it factor in the legacy of ill health left over from heavy industry. In short, the formula takes no account of Welsh social and economic need. Indeed, experts reckon that Wales is losing out on between £300 million and £800 million a year.

But the real point is that nobody knows.

That's why a coalition of leading experts in the transport, health and education fields are calling on whoever forms the next Welsh assembly government to set up an independent inquiry into how Wales is funded.

The sustainable transport charity Sustrans, the British Medical Association (BMA Cymru Wales) and the National Association of Head Teachers (NAHT Cymru) have joined together to show that Welsh civil society is no longer content to allow a conspiracy of silence to dictate the pace of the debate.

Too few people understand the way the Barnett Formula works. Journalists have difficulty explaining it and can't persuade their editors it's "sexy" enough. And much of the political elite don't want to rock the boat. As a result, no one is talking about it.

The last time a "partnership government" was formed in the Welsh national assembly it set up an independent commission on the future of devolution under the former leader of the House of Lords, Ivor Richard. It commissioned research, took evidence from experts and held public meetings. And most importantly, it formed a consensus on the way ahead.

It's time for a similar body to look into the Barnett formula. This is too important an issue to be left to politicians alone.

March 2007

Memorandum submitted by Tom Jones

I submit the following as evidence/opinion for the Select Committee review of Devolution. I do so in a personal capacity but with knowledge gained from taking a lead role on the links between Whitehall Depts and Wales when serving as a member of the Richard Commission.

I am aware of the role of the Secretary of State for Wales in promoting understanding and goodwill where the so-called jagged edges and innocent amnesia exist and of the good intentions of Ministers and senior Civil Servants to ensure that best practice occurs. However, the system is flawed and depends too much on goodwill and interventions, belatedly, from within Wales.

A transparent, accountable operational structure appears to be missing. There is a lack of clarity within Departments on who are the key stakeholders in Wales. Stakeholders in London/England are involved much earlier than those from Wales. Sometimes, there is confusion within civil society organisations in Wales as to whether they should respond directly to Whitehall or via the Assembly or both!

ISSUES

1. *Scrutiny*

Who scrutinises policy and actions of Departments delivering in Wales when there are no Welsh MPs on the relevant Select Committee? Questions to ask would be about—who from Wales was consulted, was the Welsh Language taken into consideration, was the new policy duplicating or in harmony with Assembly policy in overlapping fields, was the timing sensitive to other policy developments in Wales, were Wales-based case studies considered, were other possible funders [European etc] involved? What financial resources were made available to develop the policy in Wales? For the above questions to be properly answered, there has to be a form of Wales proofing similar to the Rural proofing that new Governmental policies are expected to undertake. Ministers should be able to demonstrate that such account has been undertaken.

2. *Transparency*

Is the mediating and informing role of the Secretary of State for Wales's Office published as a plan of activity and reported on an outcome basis? Are Civil Society organisations aware that they can go there for help?

How do non departmental public bodies work in Wales? Do they receive clear instructions in their remit letters or corporate plan approval from Ministers as to how they should work in Wales, are they allowed to vary policy in Wales to coincide better with patterns of working and delivering which may be diverging? Should they report separately on their activities in Wales—a separate summary? To what extent should they engage with the Assembly directly and how should conflict of policy be accommodated or resolved? Some NDPB's have Wales Committees, some are informal, some are advisory and a few are statutory. Again this can be confusing for the public from a scrutiny position. Ideally—they should be on a statutory basis given the process of Devolution, with clear accountability, policy capacity and financial resources to deliver effectively in the Welsh environment. There is also some confusion around the various so called Welsh member. It can be seen as token representation, sometimes referred to as the member for Wales or the member from Wales or a member with some knowledge of Wales but with no direct mandate to report or consult or lobby. Even the appointments process is confusing as it sometimes involves the Assembly and sometimes doesn't. Recruitment agencies rarely rate an application from Wales as being suitable for Chairmanship but rather as being reserved for a member from Wales slot!

Finally, most Departments and public bodies have offices in Wales. Some are seen as National, some described as Country and some treated as simply another and smaller regional office. This is confusing and embarrassing to staff and confusing to external stakeholders who are uncertain at what level to raise an issue.

I hope that these opinions may be of some value in raising questions and pointing to some answers. There is some confusion and lack of clarity in the absence of a promoted code and framework. I welcome this review by the Select Committee and look forward to its conclusions.

April 2007

Memorandum submitted by Unlock Democracy

ABOUT UNLOCK DEMOCRACY

Unlock Democracy is a campaign run by Charter 88 and the New Politics Network to ensure that Britain has a strong voice calling for democratic and constitutional reform. Unlock Democracy is non-affiliated and works with political parties across the political spectrum and a wide range of groups and individuals to provide an independent and innovative debate on the future of politics.

EXECUTIVE SUMMARY

- (i) Unlock Democracy believes that power should be devolved to the lowest possible level. The devolution of power to Scotland, Wales and Northern Ireland has been a significant achievement.
- (ii) However a decade on governance in the UK remains highly centralised. We believe that devolution must be an ongoing dialogue rather than a one off reform. There should be an open and transparent process for citizens or devolved assemblies to request additional powers and if there is popular support for this proposal it should not be able to be blocked by central government. Citizens should also be given the right to petition for further decentralisation of power using the mechanism that is already in place for elected Mayors.
- (iii) While we welcome devolution it is also important to recognise that it has created an underlying instability within the UK constitution that needs to be addressed. If a government was elected that did not have a majority of MPs in England but passed laws that applied only to England, this could potentially lead to a constitutional crisis.
- (iv) Unlock Democracy is in favour of devolution of power to the English regions but we recognise that there may need to be a wider package of measures to address the English questions and that this could include the creation of an English Grand Committee.
- (v) England needs to have the same debates about government, power and identity that have already taken place in Scotland and Wales. We believe there should be a constitutional convention to address the issue of governance in the UK at the earliest opportunity.

What issues remain outstanding?

1. Unlock Democracy believes that devolution to Scotland, Wales and Northern Ireland was a significant achievement of the 1997 Labour Government. However there is a danger in believing that devolution has been achieved and can somehow be ticked off the list of constitutional reforms that need to be addressed.

2. The relationships between the devolved assemblies and Westminster have inevitably evolved over the last decade and will continue to do so. There are calls for further powers to be devolved to both the Welsh Assembly and the Scottish Parliament, although there is not yet a coherent vision of what this means in terms of the Scottish Parliament.

3. Unlock Democracy supports the implementations of the Richards Commission proposals in Wales but we believe the process of constitutional change is as important as the individual proposal.

4. We believe that it should be possible for citizens to petition for additional powers to be devolved. The principle of petitioning for change has already been accepted for directly elected Mayors and local government Executives. Under the government's proposals it was also necessary for there to be demonstrable public support for regional government before a referendum could be held. We believe that this principle should be taken a step further and that the power to initiate change should be given directly to citizens and then put to a referendum.

5. The most pressing outstanding issue regarding the devolution settlement is the English question. There is a growing sense that England is badly served by the devolution settlement. Although it is often phrased in terms of distribution of seats in Westminster the English question is actually a series of questions about identity, the constitution and where power lies.

6. When devolution was first proposed critics claimed it would lead to the break up of the United Kingdom, that a Parliament for Scotland would inevitably lead to independence. Our concern is that that if the current sense of grievance in England is not addressed, then it will be England, not Scotland, that precipitates the end of the Union. The *status quo* is not sustainable. England needs to have the same debates about government, power and identity that have already taken place in Scotland and Wales.

7. If a Government were elected with a majority of seats in the UK but not in England and passed laws that applied only to England, it could cause a constitutional crisis. Traditionally Labour governments have relied on the support of MPs from Scottish and Welsh constituencies, where historically they have had more support, to govern the UK. This was accepted even if the government did not have a majority in England, as in most cases policies applied equally to all areas of the UK. This is no longer the case. The dominance of the Labour Party since 1997 has meant that has not yet become an issue but the devolution settlement has left an underlying instability in the UK constitution that needs to be addressed.

8. There are a number of proposed solutions to the English questions including an English Parliament, territorial voting, and English Grand Committee and regional government. However just as there is not one English question it is likely that there will not be one answer, rather there will need to be a package of measures to address the different issues.

9. An English Parliament would address some of the issues of national identity but would not solve the problem of centralisation within England; power would still need to be devolved to a regional level. A parliament would just be an additional and unnecessary tier of governance.

10. We do not support what has been referred to as English Votes for English matters. While this would solve the issue of representation at a technical parliamentary level it would do nothing to address the broader issues of national identity and an overly centralised state. We recognise that the *status quo* is unsustainable and is creating tensions, but do not believe territorial voting is the solution. England needs power to be decentralised; not a complicated and bureaucratic voting mechanism in Westminster.

11. An English Grand Committee has also been put forward as a possible solution. While this would be a useful mechanism for addressing the technical parliamentary issue of English representatives having a forum to explore English only issues, it does not address the fundamental issue of too much power being held at the centre. Nor does it address the broader cultural and identity issues. However it could be used in conjunction with devolution to the regions as a forum for national discussions.

12. Unlock Democracy believes that power should be devolved to the lowest possible level. If a decision only affects one community the power to make that decision should rest with that community. The question should be not what powers should be devolved but what functions can only be carried out at a national level.

13. Following this principle we believe that devolution in England should take the form of directly elected regional government. It is difficult to see what powers that would only apply to England, which could not be devolved to a regional level. However this would have to involve significant devolution of power from Westminster and not just the regional administration proposed for the North East. Nor would it have to mean devolution to existing governmental regions. There is a strong case for devolving power in some areas down to the local area as some local authorities in southern England are larger than member states of the European union.

14. It is important to recognise that devolution to a region of England is not the same as devolution the nations of Scotland and Wales but also that the size and population of England means that even as an independent country, England would need power to be decentralised.

15. We have an opportunity to address these issues now, while they are a concern rather than a matter of urgency. If power is not devolved within England, we risk a constitutional crisis and the rise of English nationalism. Under these circumstances it becomes more difficult to resolve the English questions within the context of the United Kingdom.

What is the future of the current Secretaries of State for Scotland, Wales and Northern Ireland? Are the current arrangements for the Scotland and Wales offices within the DCA appropriate?

16. There is no doubt that the interests of Scotland, Wales and Northern Ireland should continue to be represented within government and that there needs to be a Minister accountable for the use of reserved powers. However as the relationship with the devolved assemblies evolves and particularly if further powers are devolved it may be that there is no longer a need for separate Secretaries of State. It may be desirable to move towards having a Secretary of State for nations and regions, rather than separate government offices. However this should only be done in close consultation with the devolved assemblies and relevant stakeholders.

17. As the DCA is now incorporated within the much larger Ministry for Justice it may be time to consider moving the offices for Wales and Scotland. Our concern is that that constitutional affairs agenda is going to be submerged beneath the much larger and more controversial criminal justice agenda.

Is the UK's model of asymmetrical devolution sustainable?

18. We recognise that variable devolution is a reality of governance in the UK but the same powers should be available to the different nations if they request them. There should be an open and transparent process for devolved assemblies to request additional powers and if there is popular support for this proposal it should not be able to be blocked by central government. For example if a devolved assembly voted to change the electoral system and this was ratified in a referendum, it should not be possible for this reform to be blocked by the Secretary of State.

19. Citizens must also be able to call for constitutional change and not be dependent on their elected representatives. We believe that citizens should be able to petition for power to be devolved or for independence. This is already an established principle for elected Mayors we recommend that this use of citizens initiative should be extended, particularly in relation to where decisions are taken.

20. Unlock Democracy believes that the outstanding issues from the devolution settlement should be addressed within the broader context of a constitutional convention. Within that there should be the opportunity for the English representatives to meet to debate the English questions but this should be in the context of a broader constitutional settlement. However if for some reason, it was decided not to hold a UK constitutional convention we would support an English constitutional convention to debate these issues.

What are the broader consequences of devolution for the future of the UK's constitution?

21. Charter 88, now working with the New Politics Network as Unlock Democracy, has always campaigned for a written constitution, the primary purpose of which would be to set out the limits of what governments may and may not do in our name. We have argued that a written constitution must contain a Bill of Rights, thereby granting every citizen a legal remedy, should they need it, if their rights are infringed by the State.

22. The constitutional reforms that have taken place since 1997 while welcome, have made the need for a Citizens' Constitution even more urgent, as has the way in which the Labour Party in government has continued the process of centralisation. Most of those things which used to characterise the British constitution have either now been removed or are irreparably damaged:

- we no longer have a unitary state;
- the absolute sovereignty of Parliament has been undermined by the Human Rights Act;
- Cabinet government is no more than a convenient fiction;
- the use of referendums has undermined parliamentary sovereignty—it is difficult to see how the Scottish Parliament could be abolished, for example, without a referendum, even if this is constitutionally possible;
- the move towards politicisation of key sections of the civil service has continued; and
- the monarchy no longer commands immediate respect nor does it play its once unifying role.

23. With the exception of the rule of law, all that is left of the old constitution are its least desirable elements: winner-takes-all elections and Prime Ministerial power—which is, of course, greater than ever.

24. Constitutional reform has taken place in a piecemeal fashion in the UK. Radical change there has been, but with no overall sense of the kind of country that these reforms were designed to help build. Each reform seems to have been enacted in isolation without a real idea of how it would impact on the others.

25. A written Constitution will set out the rules for the way we make and change the rules. It will provide the basic law and fundamental rights that together provide a framework within which our society will live and prosper.

26. We believe that for the citizens to possess a constitution they need to have built it themselves. When the new South Africa wanted to write a constitution following the end of apartheid it embarked on a wide-scale process of public discussion, debate and participation. This is what we want for the UK. This does not need to be in the form of a single document but a new constitutional settlement should include the following. It should:

- be created with maximum public involvement;
- guarantee political equality and help society aspire towards social equality;
- protect democratic representation in and authority over government and public affairs;
- provide a framework for the stable rule of law;
- ensure that individuals can claim and protect their rights;
- empower citizens as individuals, in families and also in communities of place, occupation, choice and lifestyle;
- define being a “good citizen” as exercising the power to say “no”, to hold authority of all kinds to account, and to resist as well as endorse and assist elected authority; and
- describe what citizens share and will protect the differences we enjoy; indeed, it will map and enable differences and help to ensure they are protected as a common, living inheritance.

27. If voters are to become citizens they must have a fundamental Bill of Rights. Without one, they remain powerless to exercise control over those who govern in their name between general elections.

28. Even if there were no other reason, relations between separate territorial parliaments and assemblies within the UK demand rules that everyone can understand. The present situation is a formula for perpetual conflict. We believe that the governance of the UK should be the priority for a constitutional convention.

29. As a member of a European Union, which with the Charter of Fundamental Rights has continued the process of constitutionalising itself, the need for Britain to be clear about its own self-definition is all the greater. The process of creating a written Constitution will help to foster this.

30. Having a written Constitution is like having the vote: in itself it is procedural. It does not guarantee more justice, equality or efficiency or economic growth or any other outcome. People can have the vote and not use it, or feel like voting “none of the above”. Nonetheless, as a matter of principle they must have the vote.

31. So it is with a written Constitution. It cannot magic into being a society in which citizens participate in and exercise control over government. It will not automatically create a country in which everyone is free from discrimination and the indignities of inequality.

32. Our argument is quite simply this: without a new constitutional settlement that has the full consent of the people of these islands none of these other goals will be sustainably achieved.

Alexandra Runswick
Parliamentary and Policy Officer

May 2007

Memorandum submitted by the Wales Council for Voluntary Action

I am writing with reference to the Constitutional Affairs Committee review of Devolution: a Decade on.

Wales Council for Voluntary Action represents, campaigns for, supports and develops third sector organisations, community action, and volunteering in Wales. It represents the sector at a European, UK, and national level, and together with a range of national specialist agencies, county third councils, and volunteer centres, and other development agencies, it provides a support structure for the third sector in Wales. It has over 2,000 members, and is in touch with many more organisations through a wide range of national and local networks.

WCVA has consulted widely and regularly with the sector throughout the process of devolution—from the original proposal to establish the National Assembly for Wales, through the Richard Commission, and up to the imminent enhancement of the Assembly's powers and other changes introduced by the new Government of Wales Act.

Based on this wide-ranging engagement with the sector on the Assembly and issues arising from devolution, I would like to put forward the following comments about issues for the third sector with regard to your current review.

1. Eight years on from the advent of devolution a number of fault lines have become evident in the relationship between Wales and Whitehall. Many of these difficulties were highlighted in the consultations WCVA undertook in preparation for the submission of evidence to the Richard Commission. Whilst the new devolution settlement enshrined in the Government of Wales Act 2006 will potentially diminish some of the problems, others will remain.

2. The devolution settlement made it difficult for the Assembly Government to develop integrated policies in some areas. For example, whilst the Assembly Government is responsible for planning and promoting education and training in Wales, it does not have responsibility for Sector Skills Councils.

3. This is exacerbated where Westminster and the Assembly Government differ on their policy positions and can result in disjointed and even contradictory policies as was the case of the draft Mental Health Bill and the Welsh Assembly Government's Adult Mental Health Strategy.

4. The third sector in Wales has strong relationships with the Welsh Assembly Government through the Voluntary Sector Scheme. In England, the third sector and the Government have signed a Compact setting out similar relationships and agreed ways of working—although the Scheme and the Compact have developed differently.

5. The third sector in Wales has no agreed relationships for working with any Whitehall departments on non-devolved issues. This has proved a considerable problem since devolution and has put the third sector in a considerably weaker position in influencing policy development, service delivery and support for civil society in Wales on non-devolved issues.

6. The sector in Wales has often not been invited to participate in influencing policy development by Whitehall departments at an early and formative stage. For example, as part of the Lottery Review, the Department for Culture, Media and Sport recently invited National Council for Third Organisations (WCVA's sister body in England) and three third sector umbrella groups for England to preliminary discussions about lottery funding policies. When approached by WCVA, the DCMS made it clear that it did not intend to hold parallel discussions with third sector representatives from the other three countries despite the policy having an equally significant impact on the sector in those countries.

7. In other consultations, UK departments have consulted via the Welsh Assembly Government. Whilst organisations reported that they feel these consultations have mostly been inclusive and that their opinions have been reflected in the reports, the lack of influence that the Assembly Government has over Whitehall decision-making means that their voices have not been heard.

8. In some cases it is apparent that officials Whitehall departments simply do not know whether their policies apply to devolved areas or not, causing confusion and wasted time for third sector organisations. Organisations in Wales have spent time and resources responding to consultations by Whitehall departments only to discover later in the process that the policy will not affect Wales. For example, some organisations in Wales participated in a consultation exercise around the 2003 Treasury crosscutting review only to find that the remit of the review was to include England only.

9. There is also lack of clarity about some funding streams. It is relatively clear what the Assembly Government funds, but difficult to determine what Whitehall departments are funding in Wales and why. There is no clarity at time of announcement, or even several months down the line, as discussed later.

10. There are examples where Whitehall departments have not involved their counterparts in the Assembly Government in policy development on issues that will have a major impact in Wales. For example, the Department for Culture, Media and Sport failed to consult with the relevant Assembly Government division about the Licensing Bill. Whilst licensing is a non-devolved issue, provisions in the Bill had significant implications on several key policy areas that are the responsibility of the Assembly Government—including the arts, community sustainability and social inclusion.

11. There is frequently a lack of clarity about the relevance of Whitehall-led consultations and funding streams to Wales. If a consultation is of consequence there is often no mechanism in place for seeking the views of the third sector in Wales. It is also not clear why UK departments undertake England only reviews which cover nondevolved issues, for example the 2003 Treasury review covering irrecoverable VAT for registered charities.

12. The issues described above could be addressed through each Whitehall department with non-devolved functions establishing a statutory committee for Wales. The committee would provide an interface for considering the interaction of non-devolved policies with devolved policy. It could review and advise on consultation arrangements and ensure that the department observes the provisions of the Third Sector Scheme when operating in Wales. Third sector representation on such a committee would be important to ensure the sector's perspective is heard.

13. Another area of concern in Wales is the operation of the Public Appointments system. Welsh candidates for UK appointments appear to be disadvantaged by a lack of equality of esteem for their national (ie all-Wales) experience. As a result, applicants from Wales for an England and Wales public body, for example, be appointed and 'pigeon-holed' as a Wales member, but would be unlikely to be appointed as a chair or vice chair. It implies that national (Wales) experience is deemed to be of less value than national (England) experience.

14. There are therefore a number of recommendations that the committee is invited to consider:

- each non-devolved department should establish a statutory committee for Wales to keep the interface with devolved policies and arrangements under review;
- the statutory committee should include members with knowledge of the third sector in Wales;
- the statutory committee should ensure there is full consultation within Wales of all non-devolved policies affecting Wales;
- non-devolved departments should use the principles set out in the National Assembly Voluntary Sector Scheme to guide their relationships with the third sector in Wales;
- there must be absolute clarity on how (or whether) policies of non-devolved departments impact on Wales at the earliest stage of their development; and
- public appointments procedures should be reviewed to ensure that the experience of candidates on an all-Wales basis is considered to be of equal value to experience on an all-England basis.

I hope these comments are helpful, and I look forward to the outcome of the committee's deliberations.

Graham Benfield OBE
Chief Executive

April 2007

Memorandum submitted by the Welsh Consumer Council

1. The Welsh Consumer Council is the national, generalist consumer advocate for Wales. The Council is an "independent but not autonomous" committee of the London based National Consumer Council which, along with the Welsh and Scottish Consumer Councils, was established in 1975 "to promote action for furthering and safeguarding the interests of consumers, to ensure that those who take decisions which will affect the consumer can have a balanced and authoritative view of the interests of consumers before them, and to insist that the interests of all consumers including the inarticulate and disadvantaged are taken into account."

2. The work of the Welsh Consumer Council is substantially focused on influencing consumer and public policy making in Wales through, for example: membership of the Food Standards Agency Wales nutrition strategy working group; chairing The Welsh Assembly Government Working Group on Community Transport; secondment of a staff member to the Welsh Assembly Government to assist with work on debt policy; membership of the Board and of key working groups to the governments Making the Connections public services reform programme; and extensive engagement with sustainable consumption and development issues through membership of various working groups.

3. As well as influencing policy making directly through participating in working groups and other policy-making fora, the Council has taken forward an extensive research programme to support and underpin its policy-making functions.

4. Based on our long-running experience of working with both the Welsh Assembly Government, National Assembly for Wales and with Government in Whitehall and Westminster, we would like to put forward our comments on the current review—*Devolution: a decade on*.

5. Initially after the devolution settlement in Wales, there was evidence of Whitehall departments failing to appreciate the realities of devolution and the continued need to consult with organisations in Wales over policies that had UK-wide implications.

6. However, we have observed that this situation has definitely improved. Although there are still parts of Whitehall or parts of Whitehall departments who still regularly forget.

7. One of the contributing factors seems to be the high turnover of civil servants and, therefore, there is a need to ensure that all induction packages for new staff fully cover devolution and its implications.

8. The situation is improving, but it is not yet working as well as it could be.

9. As the Welsh Consumer Council has demonstrated over many years, consumer organisations have an important role in ensuring that policy-makers are reminded of the importance of looking at policy and plans and provision from the consumer or users point of view.

10. This is, moreover, not an abstract function for general exhortation, but something that needs to be done on a case-by-case basis, and with an understanding of particular policy frameworks and objectives.

11. For those working in Whitehall departments a clear line of communication with organisations working within the different political landscape of the devolved nations would be of real use in enabling them to formulate the best possible understanding of the implications of policy.

We hope that these comments are useful and look forward to seeing the progress of the inquiry.

Vivienne Sugar
Chair

April 2007
