



House of Commons  
Scottish Affairs Committee

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# Commission on Scottish Devolution

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**Third Report of Session 2009–10**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by the House of Commons  
to be printed 3 March 2010*

## The Scottish Affairs Committee

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

### Current membership

Mr Mohammad Sarwar MP (*Labour, Glasgow Central*) (Chairman)  
Mr Alistair Carmichael MP (*Liberal Democrat, Orkney and Shetland*)  
Ms Katy Clark MP (*Labour, North Ayrshire & Arran*)  
Mr Ian Davidson MP (*Labour, Glasgow South West*)  
Mr Jim Devine MP (*Independent, Livingston*)  
Mr Jim McGovern MP (*Labour, Dundee West*)  
David Mundell MP (*Conservative, Dumfriesshire, Clydesdale and Tweeddale*)  
Lindsay Roy MP (*Labour, Glenrothes*)  
Mr Charles Walker MP (*Conservative, Broxbourne*)  
Mr Ben Wallace MP (*Conservative, Lancaster & Wyre*)  
Pete Wishart MP (*Scottish National, Perth and North Perthshire*)

The following members were also members of the committee during the Parliament:

Danny Alexander MP (*Liberal Democrat, Inverness, Nairn, Badenoch & Strathspey*)  
Gordon Banks MP (*Labour, Ochil and South Perthshire*)  
Mr David Hamilton MP (*Labour, Midlothian*)  
Mr John MacDougall MP (*Labour, Glenrothes*)  
Mr Angus MacNeil MP (*Scottish National, Na h-Eileanan an Iar*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/scotaffcom](http://www.parliament.uk/scotaffcom).

### Committee staff

The current staff of the Committee are Nerys Welfoot (Clerk), Alison Groves (Second Clerk), Ameet Chudasama (Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant) and Tes Stranger (Committee Support Assistant).

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## Summary

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The Commission on Scottish Devolution's final report, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century*, was published in June 2009. It makes recommendations that affect the Governments and Parliaments of both the UK and Scotland. That there is still debate and discussion over the report some nine months after its publication is a testament to the importance of the work carried out by Sir Kenneth Calman and his team.

Following the publication of the Government's White Paper *Scotland's Future in the United Kingdom* in November 2009, we decided to hold a seminar to look in greater depth at the recommendations particularly affecting the House of Commons and the Scottish Affairs Committee. This Report considers only those recommendations concerning relations between the House of Commons and the Scottish Parliament.

We agree that there are areas where improved co-operation between Governments and Parliaments is a welcome goal. However, we would warn that although the Commission looked at the necessary structures needed to facilitate this co-operation, it is political will that will drive forward real change.

As we move into a new Parliament, we urge our successor Committee to continue our work of scrutinising the devolution settlement and the work of the Scotland Office. We hope that a future Committee will benefit from improved co-operation between the two Governments and the two Parliaments regardless of who is in power.

We commend the Speaker's recent initiatives in taking forward improved communication and recommend that the House's permanent service should regard the facilitation of co-operation and communication with the Scottish Parliament as one of its proper duties.



# 1 Introduction

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## *The Background*

1. Devolution to Scotland was a manifesto commitment of the incoming Labour Government in 1997. In July 1997, the Government published the White Paper *Scotland's Parliament*, outlining the form a possible Scottish Parliament and Executive would take.<sup>1</sup> On 11 September of that year a referendum was held in Scotland in which 74.3% voted in favour of devolution. The passing of the Scotland Act 1998 allowed for the Scottish Parliament to be elected and formally convened on 1 July 1999.

## *The Commission on Scottish Devolution*

2. A debate in the Scottish Parliament on 6 December 2007 led to the Parliament formally resolving to support an independently chaired Commission, tasked with reviewing devolution in Scotland in the context of a continuing union with the rest of the UK. The UK Government signalled its support for the Commission in January 2008 and on 25 March 2008 Sir Kenneth Calman was appointed as Chair of the Commission on Scottish Devolution. The Commission had 15 members and was also supported by a Secretariat of officials seconded from the UK Government and the Scottish Parliament. The Commission on Scottish Devolution's remit was:

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom.<sup>2</sup>

3. The Commission on Scottish Devolution, often referred to as the “Calman Commission”, stated that its primary focus was “the relationships between the United Kingdom Parliament and the Scottish Parliament, and between the United Kingdom Government and the Scottish Government.”<sup>3</sup>

4. The Commission's first meeting was held in the Scottish Parliament on 28 April 2008 and it published a First Report on 2 December 2008, giving an overview of progress to date and setting out a range of issues on which further evidence and engagement was to be sought.<sup>4</sup> An unanimous Final Report, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century*, was published on 15 June 2009.

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1 Scottish Office, *Scotland's Parliament*, Cm 3658, July 1997

2 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century*, June 2009, p 3

3 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century*, June 2009, p 117

4 Commission on Scottish Devolution, *The Future of Scottish Devolution within the Union: A First Report*, December 2008

5. We have followed the work of the Commission as it unfolded, and took evidence three times from Sir Kenneth Calman and officials from the Commission; on 11 June 2008,<sup>5</sup> then on 11 February 2009, after the publication of the First Report, and on 6 July 2009, after the publication of the Final Report.

### **Findings of the Commission**

6. The first area of interest that the Commission's work focused upon was that of strengthening the accountability of the Scottish Executive with regard to finance. The report analysed various elements of funding for the Scottish Executive including the block grant paid from the UK Government to the Scottish Parliament, presently calculated through the Barnett formula: it also examined income tax; national insurance contributions; corporation tax; and other various smaller taxes and duties. The Commission recommended that the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, that certain taxes should be devolved to the Scottish Parliament and that the Scottish Parliament should be given power to legislate, with the agreement of the UK Parliament, to introduce specified new taxes that apply across Scotland.<sup>6</sup>

7. The second area that the Commission investigated was that of co-operation between the Scottish and UK Governments and Parliaments. It is this area that we will look at in Part 2 of this Report.

8. The third area looked at by the Commission was strengthening the devolution settlement. The Commission looked at a range of issues where there might be a case for changing the allocation of legislative or executive responsibility within the devolution settlement, and recommended that powers relating to the administration of elections to the Scottish Parliament, the regulation of airguns, regulation-making powers relating to drink-driving limits and the power to determine the level of the national speed limit should be devolved.<sup>7</sup>

9. The final area looked at by the Commission related to the operation of the Scottish Parliament, and is principally a matter for that body, though the recommendations might involve changes to the Scotland Act.<sup>8</sup>

### **The Government Response**

10. On 15 June 2009, the Secretary of State for Scotland Rt Hon Jim Murphy MP made a statement on the floor of the House welcoming the publication of the Calman Commission's report. He also stated that:

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5 Oral evidence taken before the Scottish Affairs Committee on 11 June 2008, HC (2007–08), 704-i

6 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, p 69

7 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, p 157

8 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, p 215



[...] a steering group comprising parties involved in the Calman Commission process, chaired by myself, will help the UK Government and the Scottish Parliament plan how to take forward the Calman recommendations and deliver stronger devolution within a stronger United Kingdom.<sup>9</sup>

11. The Government's response to the Calman Commission Report, a White Paper entitled *Scotland's Future in the United Kingdom*, was published on 25 November 2009.<sup>10</sup> It outlined the Government's plans in response to the Commission's report, including which recommendations it accepted and a timetable for the implementation of those proposals. We held an oral evidence session on 13 January 2010 with Rt Hon Jim Murphy MP and Mr Robin Haynes, Head of Financial Services, Scotland Office, on the Government's White Paper.

12. The Speaker of the House of Commons wrote to the Chairmen of the Procedure Committee and the Scottish Affairs Committee to ask for their views on how the recommendations in Part 4 of the Calman Commission's report, relating to relations between the two Parliaments, might be taken forward.<sup>11</sup>

### **Our response**

13. Several of the recommendations of the Calman Commission relate directly to the Scottish Affairs Committee or to the House of Commons as a whole. Following the receipt of Mr Speaker's letter asking for our views on these recommendations, we held a seminar on 9 February 2010, to which all Scottish MPs, members of the Procedure Committee and members of the Scottish Affairs Committee were invited. During the seminar guest speakers were invited to share their views on the recommendations, and we heard from Sir Kenneth Calman; Professor Jim Gallagher, Director General of Devolution at the Ministry of Justice; Mr Paul Evans, Principal Clerk of Select Committees at the House of Commons; Mr Lee Bridges, from the Scottish Parliament; Professor James Mitchell from Strathclyde University and David Porter, BBC Scotland's Westminster correspondent.

14. It is from that seminar that this Report comes. Part 4 of the Commission's report was subtitled *Strengthening Cooperation between Governments and Parliaments* and made recommendations which would affect the UK Parliament and Scottish Affairs Committee. In Part 2 of this Report we set out and give our view on each recommendation.

15. We are most grateful to all those who gave evidence to us and to the guest speakers and those Members who participated in our seminar.

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9 HC Deb, 15 June 2009, col 7WS

10 Scotland Office, *Scotland's Future in the United Kingdom*, Cm 7738, November 2009

11 Ev 47

## 2 Relations between the Parliaments

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16. In this section we consider in turn the recommendations of the Commission on Scottish Devolution relating to strengthening co-operation and communication between the House of Commons and the Scottish Parliament. Several of the recommendations made by the Committee are also of relevance to the House of Lords, but we make no comment on these. We hope that in the next Parliament the Lords may find an opportunity to consider these matters.

### Legislative Consent Motions (“Sewel Motions”)

17. The “Sewel Convention” is the process whereby the Scottish Parliament is asked to give its consent to a Westminster Bill that includes provisions which would change the law on a devolved matter or alter the powers devolved to Holyrood or to the Scottish Executive.<sup>12</sup> The Scottish Parliament is invited to signify its consent by agreeing to a “legislative consent motion”.

18. We examined the operation of the convention in a report of June 2006,<sup>13</sup> and recommended:

- the introduction of a formal process whereby the Scottish Parliament notifies Westminster when a Sewel motion had been passed;
- that any communication from the Scottish Parliament that it had passed a Sewel motion is, at the appropriate time, “tagged” on the Order Paper, and the text of the resolution made available in the Vote Office; and
- that all Explanatory Notes to Bills are explicit about which part or parts of the United Kingdom a Bill will affect, and could, therefore, trigger the Sewel Convention.

The latter two recommendations were accepted by the Government in its response to our report and implemented without an explicit Resolution of the House.<sup>14</sup> The Government takes responsibility for compliance. The Commission’s recommendation 4.2 invites the two Houses to strengthen the convention by entrenching it in the standing orders of each House. The Commission’s recommendation 4.3 is that the UK Parliament and Scottish Parliament should have mechanisms to communicate with each other, and that in particular there should be detailed communication about legislative consent motions, and in particular if a Bill subject to a legislative consent motion is amended such that it is outside the scope of the motion. The Commission’s recommendation follows our recommendation which recognised that the Sewel Convention is about relations between two legislatures as much as about inter-governmental relations.

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12 Legislative consent motions (LCMs) are also known as Sewel Motions after Lord Sewel, the Scottish Office Lords Minister who saw through the Scotland Act 1998 which established the legislative consent motion.

13 Scottish Affairs Committee, Fourth Report of Session 2005–06, *The Sewel Convention: the Westminster perspective*, HC 983

14 Scottish Affairs Committee, Second Special Report of Session 2005–06, *The Sewel Convention: the Westminster perspective: Government Response to the Committee’s Fourth Report of Session 2005–06*, HC 1634

19. In paragraph 4.143 of its report the Commission recommends that the responsibility for communicating the passing of a legislative consent motion should lie with the Presiding Officers and Clerks of the House of Commons, House of Lords and Scottish Parliament rather than with Ministers. This is also in line with our 2006 recommendation for:

... the introduction of a formal process whereby the Scottish Parliament notifies Westminster when a Sewel motion has been passed ... our view [is] that the better way of letting the House of Commons and the House of Lords know that Holyrood had passed a Sewel motion would be for the Clerk of the Scottish Parliament to advise the Clerk of the House and the Clerk of the Parliaments that such a motion had been passed, rather than for the Presiding Officer to contact the Speaker and the Lord Chancellor.<sup>15</sup>

This proposal never came before the House for consideration. The Speaker has indicated in his letter to us that he sees no problem with this recommendation.<sup>16</sup>

20. The suggestion that the Scottish Parliament should be informed if a bill is amended to take it outside the scope of an legislative consent motion is much less straightforward. Ultimately, it seems to us that it would have to be the responsibility of the Chairman of a public bill committee or the Chairman of Ways and Means or the Speaker to make a judgment about scope in these cases. It would often be a fine and difficult judgment, and potentially controversial. We do not consider that the Commission has clearly identified any obvious beneficial outcome of this recommendation which would justify the risks involved in making such judgments about scope on behalf of the House.

21. We recommend that:

- a) **the House should agree a resolution endorsing the principle that the consent of the Scottish Parliament should be sought where it is intended to bring in a government bill which includes provisions touching on devolved matters; and**
- b) **a Standing Order should be made providing for the Speaker to lay before the House any communication received from the Presiding Officer of the Scottish Parliament relating to legislative consent motions or related matters.**

## Other recommendations relating to the legislative process

22. The Commission's recommendation 4.9 proposes that for any UK Parliament Bill which engages the Sewel Convention on a matter of substance, consideration should be given to including one or more Scottish MPs on the Public Bill Committee, who should then be invited, as appropriate, to meet the Scottish Parliament committee scrutinising the legislative consent memorandum. In its White Paper, the Government stated that it would endeavour to secure the inclusion of Scottish MPs on public bill committees for bills subject to the Sewel convention. We welcome this move, but add that a concerted effort should be made to ensure that a wide range of political views from across Scotland are represented on such committees.

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15 Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective*, para 17

16 Ev 47

**23. We conclude that the recommendation that one or more Scottish MPs should be included on a Public Bill Committee examining a bill that engages the Sewel Convention is welcome, and recommend that the Committee of Selection endeavour to ensure that a representative range of political views be covered by such appointments.**

24. Connected to this is the Commission's recommendation 4.15, which proposes that a new legislative procedure should be established to allow the Scottish Parliament to seek the consent of the UK Parliament to legislate in reserved areas where there is an interaction with the exercise of devolved powers. In fact a statutory power to give consent already exists in the form of "Scotland Act Orders", which can be made under the provisions of s.30/Sch.7 of the Scotland Act. That power is exercised by delegated legislation made by Ministers, subject to the consent of the two Parliaments. We do not think that it is practical to extend this to primary legislative consent given by Westminster, and so recommend that this proposal is not further pursued.

25. The Commission's recommendation 4.9b proposes that a Scottish Minister should be asked to give evidence to the UK Parliament committee examining Orders made under s.30 of the Scotland Act. This would require a change to the powers of a delegated legislation committee considering a Scotland Act Order. **We recommend that the Procedure Committee give positive consideration to the possibility of extending evidence-taking powers, along the lines of those given to public bill committees, to delegated legislation committees in defined circumstances. An alternative would be for the Secretary of State for Scotland to invite this Committee to undertake some form of pre-legislative scrutiny of such orders, as the Welsh Affairs Committee does with proposals for legislative competence orders relating to the powers of the National Assembly.**

### The "self-denying ordinance"

26. The Commission's recommendation 4.4 was that the UK Parliament should end its self-denying ordinance not to debate devolved matters as they affect Scotland, and the House of Commons should establish a regular "state of Scotland" debate. The Government's White Paper noted that there was a case for backbenchers to be able to propose debates on devolved matters, but considered that Ministers should not be questioned about devolved matters. The White Paper also stated that the Secretary of State would participate in a State of Scotland debate if the House requests. In evidence to us on 13 January 2010, Rt Hon Jim Murphy MP said that "I think there needs to be that space for Scottish MPs to be able to have that state of Scotland debate [...] I would be happy to respond to whatever the debates backbench Members of Parliament instigate if that is what the House agrees."<sup>17</sup>

27. During our seminar, there was much discussion of this proposal. Some participants felt it important to be able to discuss devolved matters, and that such an opportunity would recognise the maturing of the relationship between the UK and Scottish Parliaments and Governments. Others felt the impact of debating devolved matters could be wider than expected. However, on balance we were persuaded that it would benefit the House of

Commons to enable its Members to lift the self-denying ordinance where appropriate to do so. **We recommend that the Government should provide time for a regular “State of Scotland” debate which would extend to devolved matters. The resolution of the House of 25 October 1999, relating to questions to Ministers, and the wider application of the “self-denying ordinance” are matters which we hope will be considered by the Procedure Committee at an early date.**

### Co-operation between committees

28. The Commission’s recommendation 4.6 is that committees of the UK and Scottish Parliaments should be able to work together and any barriers should be removed. It proposes that:

- Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed,
- Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed, and
- Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

29. In response to these recommendations the Government reiterated “ its agreement with the House of Commons Procedure Committee’s 1999 report [...] that there should be as few procedural barriers as possible where cooperation is desired.”<sup>18</sup> In fact, committees are already able to share evidence (under Standing Order No. 137A(1)(a)). The Welsh Affairs Committee already has the power under Standing Order No. 137A(3) to hold evidence sessions in which members of a committee of the National Assembly can participate, and the standing orders of the National Assembly provide for reciprocal arrangements.

**30. We recommend that the necessary changes be made to standing orders to allow the Scottish Affairs Committee to invite members of committees of the Scottish Parliament to attend its committee meetings in a non-voting capacity. We invite the Scottish Parliament to consider reciprocal provisions in its standing orders.**

### A forum for joint debate

31. Select committees investigate, deliberate and make reports. There may also be a need for a forum in which matters of mutual concern could be debated. The Commission’s recommendation 4.5 proposes a “standing joint liaison committee” of the UK and Scottish Parliaments to oversee relations and to consider the establishment of subject specific ad hoc joint committees. We are not persuaded that the challenge involved in overcoming the necessary complexities in establishing a formal joint committee would be justified by the likely level of demand for the creation of joint subject-specific committees. However, we feel there is greater merit in our recommendation of our 2006 Report that the House establish a “Super” Scottish Grand Committee, composed of Scottish MPs, MSPs and

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18 Scotland Office, *Scotland’s Future in the United Kingdom*, Cm 7738, November 2009, p 23

Scottish MEPs that could meet to consider matters of mutual interest.<sup>19</sup> This option would not only be more practical in procedural terms but would include Scottish MEPs, providing a broader political canvas to debate Scotland's future.

32. Our 2006 recommendation was not considered on the floor of the House and was treated unenthusiastically in the Government's response.<sup>20</sup> As a consequence it has never been considered by the Procedure Committee. **We invite the Procedure Committee to revisit the idea of a "Scottish Super Grand Committee".**

**33. We conclude, however, that removing procedural barriers is only one part of improving communication and co-operation between committees. The structures should be put in place to facilitate co-operation, but that co-operation will only result if there is the political will for committees to work together.**

### Access arrangements

34. The Commission's recommendation 4.11 was that there should be a greater degree of practical recognition between the Parliaments, that it is a proper function of Members of either Parliament to visit and attend meetings of relevance at the other and that their administrative arrangements should reflect this. At our seminar, considerable frustration was expressed that Members of the two Parliaments found it so tiresome to negotiate access to each other's place of work. It seems to us that this is an entirely unnecessary barrier to co-operation. We cannot see that a practical recognition of the mutual interests of members of both institutions would be likely to lead to an unmanageable flood of visitors to either place. Nor do we believe that access rights should imply unrestricted unaccompanied access to all areas and all facilities in either building.

**35. We recommend that the House of Commons Administration Committee examine the access arrangements for MSPs visiting Westminster and we suggest that its equivalent committee at the Scottish Parliament examine the arrangements for MPs visiting Holyrood so that unnecessary barriers to working together can be removed.**

### Ministerial co-operation with the Parliaments

36. The Commission's recommendation 4.7 was that to champion and recognise the importance of interaction between the Parliaments and Governments:

- UK and Scottish Government Ministers should commit to respond positively to requests to appear before committees of the others' Parliaments, and
- The UK Government Cabinet Minister with responsibility for Scotland should be invited to appear annually before a Scottish Parliament Committee comprised of all committee convenors, and the First Minister should be invited to appear annually before the House of Commons Scottish Affairs Committee.

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19 Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective*, para 43

20 Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective: Government Response to the Committee's Fourth Report of Session 2005–06*, para 11

37. The Commission's recommendation 4.8 was that shortly after the Queen's Speech the Secretary of State for Scotland should be invited to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly after the Scottish Government's legislative programme is announced, the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters. The Government White Paper stated that it "would welcome further such invitations as a practical way of demonstrating mutual respect" and it "would welcome such a move."<sup>21</sup> In evidence to us the Rt Hon Jim Murphy MP said he "would be delighted to do it."<sup>22</sup>

38. During the seminar held by us in February 2010, it was acknowledged that the opportunity for UK and Scottish Government Ministers to appear before committees of the others' Parliaments was an important one. Indeed, First Minister Alex Salmond and Justice Minister Kenny MacAskill appeared before the Scottish Affairs Committee in January 2010 as part of our inquiry into *Scotland and the UK: communication and co-operation between Governments*, so in a sense this recommendation is one that is already in practice. We asked the First Minister if he would be happy to give evidence if invited on this basis. He told us "of course, I will give evidence wherever possible [...] I see absolutely no reason why, time permitting, I should not make myself available to committees of this parliament"<sup>23</sup>. However, concern was expressed at our seminar that to entrench these recommendations could prove detrimental to co-operation and act as more of a media exercise than valuable evidence session.

**39. Both the UK Government and Scottish Executive have indicated that they would be willing to respond positively to requests to appear before committees of either Parliament. However, we conclude that invitations should be at the discretion of the committee or Parliament and reflect the workload and timetable of both UK and Scottish Government Ministers.**

### Scrutiny of the devolution settlement

40. The Commission's recommendation 4.20 urges that Scottish MPs should actively demonstrate appropriate oversight and stewardship of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement. In its White Paper, the Government stated that it would support such a position.

**41. We agree with the recommendation that Scottish MPs should regularly scrutinise the shape and operation of the devolution settlement. We, as a Committee, engage in this scrutiny on a regular basis and encourage our successors to continue in a similar fashion.**

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21 Scotland Office, *Scotland's Future in the United Kingdom*, Cm 7738, November 2009, p 24

22 Q 257

23 Uncorrected transcript of oral evidence taken before the Scottish Affairs Committee on 12 January 2010, HC (2009–10) 256-i, Qq 53-54

## Official level co-operation between the Parliaments

42. The Calman Commission noted in its report that there is no single channel of communication between the Scottish Parliament and the House of Commons. We would not want to be over-directive about the range of informal contacts that already exist, and we heard in our seminar about a number of such initiatives at official level (mostly multilateral ones between legislatures in the UK). We consider, however, that it is important that, in the spirit of mutual respect between the two institutions, staff of the House of Commons should feel that it is a proper part of their duties to work at official level to enhance communication and co-operation between the institutions.

43. The Speaker has already shown a readiness to engage with the Scottish Parliament in his letter to us. **We invite Mr Speaker to encourage the permanent service of the House to recognise as one of its tasks the enhancement of communication and co-operation between the House and the Scottish Parliament, and to apply appropriate resources to this duty.**

44. We have heard that some exchange of staff has taken place between the House and the Scottish Parliament, but on an *ad hoc* and limited basis. We believe that such secondments and exchanges are a valuable means of enhancing co-operation and communication. **We recommend that the House authorities encourage and fund a planned programme of exchanges and secondments with the Scottish Parliament, in co-operation with the permanent service of that Parliament, with the aim of having at least one such arrangement running at any time.** Some modest additional funding may be required to enable staff to manage the dislocation costs that may be involved in such arrangements.



## 3 Conclusion

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45. We warmly commend Sir Kenneth Calman and his team on the Commission on Scottish Devolution for compiling what has proved to be a thorough and important report.

46. The first principle that the Commission proposed was that in all circumstances there should be mutual respect between the Governments and Parliaments of the United Kingdom and Scotland, and that this should be the guiding principle in all their relations. We concur, and we believe the changes we have recommended and endorsed in this Report will encourage mutual respect. But these recommendations are designed to remove barriers to closer co-operation between the House and the Scottish Parliament. However, once those barriers are removed, it is political will that will ultimately make co-operation a reality.

47. As we go into a new Parliament, we urge the future Scottish Affairs Committee to continue our work in scrutinising the devolution settlement and the changes made in response to Calman's recommendations to enable Westminster and Holyrood to work together in order to serve the people of Scotland better.

## Conclusions and recommendations

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1. The House should agree a resolution endorsing the principle that the consent of the Scottish Parliament should be sought where it is intended to bring in a government bill which includes provisions touching on devolved matters (Paragraph 21.a)
2. A Standing Order should be made providing for the Speaker to lay before the House any communication received from the Presiding Officer of the Scottish Parliament relating to legislative consent motions or related matters. (Paragraph 21.b)
3. We conclude that the recommendation that one or more Scottish MPs should be included on a Public Bill Committee examining a bill that engages the Sewel Convention is welcome, and recommend that the Committee of Selection endeavour to ensure that a representative range of political views be covered by such appointments. (Paragraph 23)
4. We recommend that the Procedure Committee give positive consideration to the possibility of extending evidence-taking powers, along the lines of those given to public bill committees, to delegated legislation committees in defined circumstances. An alternative would be for the Secretary of State for Scotland to invite this Committee to undertake some form of pre-legislative scrutiny of such orders, as the Welsh Affairs Committee does with proposals for legislative competence orders relating to the powers of the National Assembly (Paragraph 25)
5. We recommend that the Government should provide time for a regular “State of Scotland” debate which would extend to devolved matters. The resolution of the House of 25 October 1999, relating to questions to Ministers, and the wider application of the “self-denying ordinance” are matters which we hope will be considered by the Procedure Committee at an early date. (Paragraph 27)
6. We recommend that the necessary changes be made to standing orders to allow the Scottish Affairs Committee to invite members of committees of the Scottish Parliament to attend its committee meetings in a non-voting capacity. We invite the Scottish Parliament to consider reciprocal provisions in its standing orders. (Paragraph 30)
7. We invite the Procedure Committee to revisit the idea of a “Scottish Super Grand Committee”. (Paragraph 32)
8. We conclude, however, that removing procedural barriers is only one part of improving communication and co-operation between committees. The structures should be put in place to facilitate co-operation, but that co-operation will only result if there is the political will for committees to work together. (Paragraph 33)
9. We recommend that the House of Commons Administration Committee examine the access arrangements for MSPs visiting Westminster and we suggest that its equivalent committee at the Scottish Parliament examine the arrangements for MPs visiting Holyrood so that unnecessary barriers to working together can be removed. (Paragraph 35)

10. Both the UK Government and Scottish Executive have indicated that they would be willing to respond positively to requests to appear before committees of either Parliament. However, we conclude that invitations should be at the discretion of the committee or Parliament and reflect the workload and timetable of both UK and Scottish Government Ministers and the Secretary of State for Scotland. (Paragraph 39)
11. We agree with the recommendation that Scottish MPs should regularly scrutinise the shape and operation of the devolution settlement. We, as a Committee, engage in this scrutiny on a regular basis and encourage our successors to continue in a similar fashion. (Paragraph 41)
12. We invite Mr Speaker to encourage the permanent service of the House to recognise as one of its tasks the enhancement of communication and co-operation between the House and the Scottish Parliament, and to apply appropriate resources to this duty. (Paragraph 43)
13. We recommend that the House authorities encourage and fund a planned programme of exchanges and secondments with the Scottish Parliament, in co-operation with the permanent service of that Parliament, with the aim of having at least one such arrangement running at any time. (Paragraph 44)

## 4

# Formal Minutes

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**Wednesday 3 March 2010**

Members present:

Mr Mohammad Sarwar, in the Chair

Ms Katy Clark  
Mr Ian Davidson

Lindsay Roy  
Pete Wishart

Draft Report (*Commission on Scottish Devolution*) proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 47 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned until Wednesday 10 March at 2.00 p.m.]

## Witnesses

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### Wednesday 11 February 2009

**Sir Kenneth Calman KCB**, Chairman, **Professor Jim Gallagher CB**, Secretary, and **Mr Paul Kett**, Head of Secretariat, Commission on Scottish Devolution Ev 1

### Monday 6 July 2009

**Sir Kenneth Calman KCB**, Chairman, and **Professor Jim Gallagher CB**, Secretary, Commission on Scottish Devolution Ev 18

### Wednesday 13 January 2010

**Rt Hon Jim Murphy MP**, Secretary of State for Scotland and **Mr Robin Haynes**, Head of Financial Services, Scotland Office Ev 35

## List of written evidence

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- |   |                                     |       |
|---|-------------------------------------|-------|
| 1 | Letter from Mr Speaker              | Ev 47 |
| 2 | Memorandum from the Scotland Office | Ev 48 |

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2009–10

First Report	Work of the Committee in 2008–09	HC 71
Second Report	Banking in Scotland	HC 70

## Session 2008–09

First Report	Work of the Committee in 2007–08	HC 55
Second Report	Credit Unions in Scotland	HC 218 (HC 982)
Third Report	Work of the Equality and Human Rights Commission, Scotland	HC 176 (HC 140 09-10)
Fourth Report	Crisis in the Scottish Press Industry	HC 401 (HC 981)
Fifth Report	Dunfermline Building Society	HC 548 (HC 979)
Sixth Report	Enforcement of the National Minimum Wage in Scotland	HC 380 (HC 318 09-10)

## Session 2007–08

First Report	Effects of tax increases on the oil industry	HC 35 (HC 376)
Second Report	Poverty in Scotland	HC 128 (HC 525)
Third Report	Child Poverty in Scotland	HC 277 (HC 525)
Fourth Report	Work of the Committee in 2007	HC 278
Fifth Report	Experience of the Scottish Elections	HC 78 (HC 1098)
Sixth Report	Employment and Skills for the Defence Industry in Scotland	HC 305 (HC 830)

## Session 2006–07

First Report	Work of the Committee in 2006	HC 308
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## Session 2005–06

First Report	Work of the Committee in 2005	HC 836
Second Report	Meeting Scotland's Future Energy Needs: the Westfield Development Centre	HC 1010 (HC 579)
Third Report	<i>Putting Citizens First</i> : the Report from the Commission on Boundary Differences and Voting Systems	HC 924
Fourth Report	The Sewel Convention: the Westminster perspective	HC 983 (HC 1634)

# Oral evidence

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## Taken before the Scottish Affairs Committee on Wednesday 11 February 2009

Members present

Mr Mohammad Sarwar, in the Chair

Mr Alistair Carmichael  
Ms Katy Clark  
Mr Ian Davidson  
Mr Jim Devine  
Mr Jim McGovern

Lindsay Roy  
Mr Charles Walker  
Mr Ben Wallace  
Pete Wishart

*Witnesses:* **Sir Kenneth Calman KCB**, Chairman, **Professor Jim Gallagher CB**, Secretary, and **Mr Paul Kett**, Head of Secretariat, Commission on Scottish Devolution, gave evidence.

**Q1 Chairman:** Good afternoon. It is nice to see you here again and I welcome you to our session. Perhaps you could introduce yourselves for the record.

**Sir Kenneth Calman:** My name is Kenneth Calman, Chairman of the Commission on Scottish Devolution.

**Professor Gallagher:** My name is Jim Gallagher. I am the Secretary of the Commission.

**Mr Kett:** My name is Paul Kett. I am the Head of the Secretariat to the Commission.

**Q2 Chairman:** Before we start on detailed questions, would you like to say anything in your opening remarks?

**Sir Kenneth Calman:** Very briefly. Since we met last—indeed our first meeting was one of the first meetings that we had had—we have completed our first report, which set the scene, the landscape, and we are now in the process of finalising that report, probably some time in 2009, to complete it; but taking further evidence from across Scotland and from specific groups. I think that is all I would want to say at the beginning, Chairman.

**Q3 Chairman:** What is the most important message that we should take from your interim report?

**Sir Kenneth Calman:** I think that the most important message is set in the remit. The remit asks us to consider what is best for the people of Scotland, and that is what we will continue to try to do. That is at the heart of the work of the report. If you look at it in more detail, there are other messages that come out. The solution to the financing of Scotland, for example, depends very much on what the constitutional arrangements are. However, right at the heart of it is how can we improve the quality of life of the people of Scotland? That is what it is all about.

**Q4 Chairman:** In the interim report there are a number of questions that still need to be answered. Are you confident of answering them?

**Sir Kenneth Calman:** I hope I am. We know what the questions are now, which was quite an important part of the first report; but we will have to continue

to work hard on these. There will be some questions which are clearly more difficult than others, but we will do our best to answer the questions, yes.

**Q5 Chairman:** When you say you are hopeful, that is not very assuring, is it?

**Sir Kenneth Calman:** There are four big parts to the report. Part one is how is the Scottish Parliament working and are there ways in which it could be changed or improved? I think that, through the evidence we have, we have a number of things that we might suggest. It is clearly up to the Scottish Parliament to decide what it wishes to do, but we have received evidence in relation to that. The second issue that has come up has been the inter-government relations: the relationship between the Scottish Parliament and the Westminster Parliament, how these interactions occur. Again, we have had a number of suggestions as to how that might be built on, changed, improved; and I am sure that we will be able to complete that bit. The third part is the functions: what is reserved; what is devolved. You will have seen from the first report that we have identified a number of areas where we still need some further evidence and support for any changes to be made. Again, I am pretty confident that we will come up with the answers to that. The last bit is the financial bit: how should the Scottish Parliament be funded? That is a very difficult issue. We have an independent expert group who have already reported on that. We will be meeting them again shortly. I think that we will come up with one, two, three options. I do not quite know at this stage because we do not have an answer to that, but clearly one of the things that we will wish to do is to answer that question.

**Q6 Chairman:** Are you planning in this process to take evidence from the civil servants in Scotland?

**Sir Kenneth Calman:** I am hoping that we will. They have already been helpful in giving us information about certain things. We have been in touch with the First Minister in the past and the Civil Service have been very helpful in giving us the information we required.

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**Q7 Chairman:** So you have no problems in getting access to evidence from the civil servants in Scotland?

**Sir Kenneth Calman:** I do not think so.

**Mr Kett:** So far we have asked for factual information from them regarding how existing functions operate, for example. The only other, more recent, development was the debate in the Scottish Parliament on the Budget Bill, where there was an indication that we would seek some evidence on borrowing powers in particular. We have not as yet received that, but that was only last week.

**Q8 Pete Wishart:** We have met before, Sir Kenneth, and it is nice to have all of you here this afternoon. I note in your interim report you say a lot of nice things about devolution; how, in your view, it is working well—which I think we are all in a position to welcome. You also rule out several things in your interim report: the things that you will not consider further. What would you describe as the most headline-grabbing part of your interim report—the thing that would get most people excited?

**Sir Kenneth Calman:** I am not sure if the report was meant to excite people in that sense!

**Q9 Pete Wishart:** It certainly achieved that.

**Sir Kenneth Calman:** I am not disappointed with that. If that occurs with the second part of the report, I think that I will be slightly more disappointed; because the second part, the final report, will give some fairly clear indications. The report was a scene-setting, “What is the landscape? Where are the big areas?” It was not really meant to say, “This is a very exciting area”. We concluded that the Scottish Parliament generally worked quite well; that people quite liked it; that the ways in which people interacted with the Scottish Parliament was very positive and quite helpful; but there were a number of areas—the ones I have just discussed with the Chairman—where we needed to take that forward. We have had a lot of interaction from the public in public meetings and in documents coming in. That has really been very helpful. It has shifted our views on a number of things. It has illustrated areas which perhaps we had not thought quite so much about. We continue to welcome that, therefore. I know that in the next few months we will be doing further visits around Scotland.

**Q10 Pete Wishart:** I am just trying to get to where you go from here about the sorts of areas you will be looking at. You ruled out a number of things in your interim report and we might get to some of those things in the course of this evidence session. It is just where you are going with this. What are the big areas you are going to look at? Which are the things that you consider to be worthwhile examining and perhaps transferring powers between the parliaments? You never really gave a sense or an indication in your interim report of what these were. Could you talk a little more about what those areas are?

**Sir Kenneth Calman:** Part of the reason for not doing that was that there are a number of these in which we still need to get some evidence. If I pick one at random, one was whether the research councils should be UK-wide or Scottish, broken up in one form or another. The evidence coming in was fairly clear that people wanted it to remain UK-wide research councils. We can conclude that; not finally, in case we get more evidence coming in, but that would be quite a strong one. Whereas on many of the others—and they are listed in the report—we still want to have further information before we come to these conclusions. The report was deliberately designed not to come to conclusions at this stage.

**Q11 Pete Wishart:** A member of the public might scurrilously suggest that, after almost a year and half a million pounds, your interim report really did not amount to a great hill of beans. How would you reply to these scurrilous rumours and remarks that this member of the public may make?

**Sir Kenneth Calman:** Far be it for me to call it scurrilous, but actually it is not quite a year, if I may say so. We had our first meeting on 28 April and we completed it in five months. We have set out the agenda much more clearly. We have said that, as we look at it, the reserved functions by and large will stay as they are. There may be little bits at the margins. There are bits of the devolved functions that we need to look at. Please help us. We have written to everybody in this Committee. All of you have had the little leaflet that we put out with questions, and we await your evidence coming in. We want to have some more evidence. This is not a committee—if I put it in a slightly different way—that has already made up its mind on all of these issues. We remain to be convinced, if there are changes to be made, what these changes are and how they would be best implemented—with the best interests of the people of Scotland at heart. I am personally not disappointed that we have not answered all the questions. It seems to me that was an entirely appropriate thing to do.

**Q12 Lindsay Roy:** I welcome the participation of the hon Member for Perth and North Perthshire, my home territory. We hope that this is an all-embracing inquiry. There have been indications that the Scottish National Party may participate in the next round of consultations. Have you had any formal notification of that?

**Sir Kenneth Calman:** I think that this is an issue that, as Paul Kett raised a moment or two ago, has just occurred, particularly around the budgetary bit. We would certainly welcome participation. I think that the Scottish National Party and the Scottish Government have a great deal to contribute. They have raised, through John Swinney issues of borrowing already, and we would certainly welcome that and look forward to some evidence coming in, some advice and some help—yes.

**Q13 Lindsay Roy:** Have you had any formal notification that they are going to participate in your inquiry? That was the question.



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**Sir Kenneth Calman:** I will look to Paul again. I do not think that we have had a letter yet; but I think that it is early, to be honest.

**Q14 Chairman:** Are you planning to write a letter to the First Minister and the Scottish Government, with a request to them that their participation will be very helpful?

**Sir Kenneth Calman:** I have done that on a couple of occasions.

**Q15 Chairman:** Have you received a response?

**Sir Kenneth Calman:** The response has always been, “My civil servants will help you in any way that we can” and, in terms of the factual side of things, that has happened. What we would like, and what I hope will happen now, is that we are able to get further evidence from them and further information, and indeed further advice, on some quite difficult matters that we have to deal with; so we are looking forward to that.

**Q16 Chairman:** Since you have already said that you are hopeful about gaining the answers to many questions, how hopeful are you that the Scottish Government will participate?

**Sir Kenneth Calman:** Following the budget debate in the Scottish Parliament, I think that they have agreed that they will particularly discuss issues around borrowing powers with us, and that would be very helpful.

**Q17 Mr Davidson:** Probably we should just allow them to do a U-turn or a somersault without drawing attention to it, without making too much of a fuss about it at all; without wishing to rub their noses in it in any way, and we will just allow them quietly to recognise that they made a mistake in not participating.

**Sir Kenneth Calman:** We would not wish to do that in the slightest.

**Q18 Mr Devine:** He is talking about us!

**Sir Kenneth Calman:** We would wish very good co-operation and we would want to encourage that, because I think that it would be helpful to the people of Scotland.

**Q19 Mr McGovern:** I have met you before, Sir Kenneth, most recently at the 125<sup>th</sup> anniversary of the BB, in Lochee in Dundee.

**Sir Kenneth Calman:** Indeed.

**Q20 Mr McGovern:** You have mentioned that the SNP, like the Scottish Executive, have said that they want to discuss finance. Is that the only issue they are prepared to discuss with your Commission—finance?

**Sir Kenneth Calman:** I do not know the answer to that and, again, I take Mr Davidson’s point. We await their comments, post-budget debate. I am hoping that we will be able to discuss a number of issues with the Scottish Government. If it relates to finance—

**Q21 Mr McGovern:** Executive.

**Sir Kenneth Calman:** I look forward to further discussions with them.

**Q22 Ms Clark:** You have already mentioned your remit. Now that the investigation is underway, looking back, do you think the remit that you set yourself at the beginning is appropriate, or are there any changes that you think need to be made in the light of what you have done so far?

**Sir Kenneth Calman:** I think the answer to that is that is the remit we were set. That is quite an important point. This was debated in December 2007 in the Scottish Parliament. There was a motion proposed by the Deputy First Minister that it would include the issue of independence. That was defeated. It is not the Commission’s issue as to whether it is in or out, therefore; that was the will of the Scottish Parliament. I think that the remit is pretty broad and it allows us to consider these four big areas. How is the parliament working? What about inter-government relations? How are the functions—devolved, reserved—broken up? What about financial accountability? I think that it covers all of the areas and I do not think that we have found anything else that could not be put into one or two of these baskets.

**Q23 Ms Clark:** Obviously there is the Scottish Government National Conversation that has been going on at the same time. Have you encountered any difficulties with its work in terms of reference overlap with your own? Has that been an issue that you have had to deal with?

**Sir Kenneth Calman:** No, I do not think it has been an issue. I check the National Conversation pretty regularly for any changes or developments. We have kept them in touch at a secretariat level about what we are doing. There is quite a nice link between the two secretariats that are there; so there has not really been a problem for us at all.

**Q24 Chairman:** You believe that this is a broad remit, but if you had a wish list—“I wish I could have expanded this remit”—what would you desire from the British Government or the Scottish Parliament to strengthen your hand, to come up with a better solution to the problems?

**Sir Kenneth Calman:** I cannot answer that question. I cannot answer that question because I am not sure we are quite there yet. If you asked me back in about three months, I think that we might be getting closer to that kind of decision. I suspect the problem is that, if I look at it from my own perspective, the most interesting area at the beginning was the issue of reserved/devolved powers. That is still a remarkably important issue, but I think the issue of relationships between the two parliaments/governments/MPs/MSPs has become a slightly more interesting area than I thought it was. Similarly, the financial issues have grown in significance. At first, it seemed like an issue of what is devolved and what is reserved. I think that it is much bigger than that now, and I do

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not think I am ready at this stage—and certainly the Commission is not ready—to give you an answer to these. We need just another month or two yet.

**Q25 Chairman:** After your final report, if there are some questions that are unanswered, you will not say that your hands were tied and you could not find the solutions to these problems because you did not have a broad remit?

**Sir Kenneth Calman:** If that is the question, the answer is definitely no. From a UK Government perspective and indeed the other parties that we have talked to, we have met no evidence at all of any particular way to go or anything we should not discuss at all. We have been entirely free to do that, and indeed that has been a very helpful part of the process: to be able to discuss openly a range of issues, some of which may not be helpful to go forward; but we need to test these and we have been able to test these issues very effectively.

**Q26 Mr Devine:** Do you personally monitor the National Conversation website? My office does, and we are always struck by the contributions that seem to arrive between 1 am and 3 am on a Saturday morning and a Sunday morning, which I think my friend described as “paranoid insomniacs”. I wonder how serious a contribution that is to the debate on the future of Scotland. Some of that I find very offensive; some of it is overtly racist. I just wonder if that is a serious way to contribute to how we deliver for the people of Scotland, which is why we are here?

**Sir Kenneth Calman:** Yes, I tend to look at it between 1 and 3 am!

**Q27 Mr Devine:** You are not adding to it, are you?

**Sir Kenneth Calman:** I try not to add to it! There are two parts to this. Is the National Conversation a helpful way of beginning to get discussion? The answer must be yes to that. We must openly discuss the future of Scotland, and so the answer is yes. There is a second, bigger issue about blogs generally, of which this happens to be one part. I think that some of them do not add a great deal to the sum of humankind.

**Q28 Mr Carmichael:** I am interested that you list among those areas that are engaging your interest relations between the two parliaments, because my own experience, as one who has been here since 2001 and not before, is that those who framed the Scotland Act made good provision for communication formally between governments—between London and Edinburgh—but we never seem to have cracked formal links between the two parliaments, and that may be something which might stand some further scrutiny. The element—

**Sir Kenneth Calman:** Can I interrupt you for one second? I have just come from the Secretary of State, the Wales Office, and we had a very useful discussion about how things link in those terms. We will not find answers to some of these issues, sitting on our own in a little room somewhere. We will need some help and input from you as to what you think things

might be. It may be that inter-parliamentary links are not the right way forward. It may be through joint ministerial committees; there may be other ways of doing it. In a sense, what we want to do is to test that with you and for you to say, “This is the way we do it” or “Don’t do it that way. That wouldn’t work”. We seriously want your input into this, but we will have to bring it back to you. If you have given us some help, it would make it a lot easier for us.

**Q29 Mr Carmichael:** That structure is well taken.

**Sir Kenneth Calman:** It was meant to be a positive suggestion.

**Q30 Mr Carmichael:** One man’s positive indication is another man’s stricture. Joint ministerial committees only take you so far, because that is still government talking to government. We have what we used to call Sewel motions, which transfer legislative competence. There is no real scrutiny here of the executive aspects of that which has been transferred, and there is no real scrutiny of what we have done when it goes back to the Scottish Parliament. That is what I mean as the need for formal communication between the two parliaments. I think that it is a missing link that has become more apparent as the Devolution Settlement has matured. The point I really want to get from you, however, is the extent to which you will be considering the overall UK funding situation. If you are looking at the funding of the Scottish Parliament, are you doing that in isolation or are you looking at the way in which the Scottish block comes from the UK Treasury? Are you looking at Barnett?

**Sir Kenneth Calman:** The answer is yes. I thought you were going to make it slightly wider than that, because I think that the implications of any potential funding change in Scotland have implications for Wales and Northern Ireland as well; indeed, potentially the English regions. We have spoken to Gerald Holtham who chairs the appropriate Welsh Commission, and we are meeting him formally this week in Edinburgh as part of a commission-to-commission discussion. That is the first thing. It has to be seen in a broader UK context. Secondly, the issue about how the Scottish Parliament is funded, currently 60% through the Barnett formula and the rest from reserved powers, will be an issue that we have to look at, yes.

**Q31 Mr Wallace:** Moving on to legislative competence, we had a very interesting evidence session with the Lord Advocate—who, as a law officer, always have two sides to their job—and what was very clear in his evidence was that he quite often sees the differences or the overlaps or the conflicts between legislation born out of Whitehall and legislation born out of the Scottish Parliament. Indeed, he is a very important person in the whole process of effectively approving—perhaps passively rather than proactively—bills going forward and making sure that they are within competence. However, when I asked if he gave you any formal evidence he took the defence line of “Well, I’m a government minister and we’ve really done it

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through the secretary of state”—but not in principle. I think that is disappointing because, as a law officer, objectively he has a very interesting experience to give, irrespective of his political party. Have you had any formal evidence from him in a way that can stand up to examination, or have you sought specifically to see all the law officers in Scotland together, to discuss really what is a day-to-day working that they observe? I am sorry, it is the Advocate General.

**Sir Kenneth Calman:** The Advocate General, yes. The answer to the specific question is no. The answer to the second question—should we take such evidence?—the answer is yes. There are quite a lot of ways in which we can do that and will do that. It is these boundary issues that are quite interesting, and how they are resolved and dealt with. I think that we would like to get his advice on that, yes.

**Q32 Mr Wallace:** Given that he is a law officer, there is obviously the accepted principle that their advice is confidential. There have been long battles in Parliament to try to get those things published. Is there any mechanism for him and his colleagues to give you evidence without necessarily that being published? There is an element where lawyers may feel comfortable, because effectively he is the first one to deal with it.

**Sir Kenneth Calman:** Yes is the answer and, for one or two other people whom we have wanted to get evidence from, we have taken that in confidence and had a little note of the meeting at the end of it, so that people knew that we had met. There are ways round that.

**Q33 Pete Wishart:** The crucial difference between your Commission, Sir Kenneth, and the National Conversation is that the National Conversation would consider all options about Scotland’s constitutional future, where yours will not. At the end of the National Conversation it will go to the Scottish people, for them to decide what they want to do. A lot of us have been struggling in Scotland to find a useful role for your Commission and how that could be effectively deployed. I would put forward a suggestion—

**Sir Kenneth Calman:** I think “deployed” is the wrong word. It would be helpful if you withdrew that.

**Q34 Chairman:** The suggestion is beginning to emerge that, in the actual conversation—because we do outline all the future constitutional options for Scotland—the one for more powers might actually be your Commission’s recommendation, as part of the set of questions that would go to the Scottish people. Would that be something that you would be happy about or be attracted to?

**Sir Kenneth Calman:** I think that is up to the Scottish Parliament and others to decide, but if the report goes out as, in a sense, an outline to you, there will be sections in that—particularly in relation to powers and financial powers, for example—which may well be of relevance to that too. When I re-read

the National Conversation, there are quite clear gaps in it, which I think might well be filled; but I am not sure if that is our formal purpose.

**Q35 Pete Wishart:** This is interesting, because it is where the two could actually work in partnership. I think that is a very positive response and, when we look at the National Conversation and the Calman Commission, we could see them working together. When we put these options to the Scottish people—like the Calman Commission being there as the more-powers option—surely that must be a way that the two differing looks at the Scottish constitutional future can work together?

**Sir Kenneth Calman:** In terms of “we”, who is “we”?

**Q36 Pete Wishart:** The Scottish Government.

**Sir Kenneth Calman:** This will be a contribution to that debate and it will be up to the Scottish Parliament and others to decide which bits they wish to look at or not.

**Q37 Mr Davidson:** The way in which it was phrased by Pete implies that Calman is a more-powers option. I thought from our last discussions that you did not actually enter into this on the assumption that you were going to be the more-powers option. I would be grateful if you could clarify whether or not you are merrily slotting into the framework that Mr Wishart has outlined for you.

**Sir Kenneth Calman:** The answer is we are not merrily . . . . But I can see that there is a complementarity. The specific question you raised is whether we are going to give more powers or fewer powers or whatever. The answer is that we have not come to that conclusion yet but, as we discussed at our last meeting, we go into this with an open mind and we look at what is best for the people of Scotland and maybe things that could be changed in one way or another; but they are all set out in the first report and it is up to you to help us decide which of these is relevant or not. However, I can see a complementarity between the National Conversation and the Commission’s work, which is one of the reasons why it would be quite helpful to have discussions with the Scottish Government. It seems to me that there are lots of areas where it would be worthwhile discussing things.

**Mr Davidson:** I think they are coming round to that; but they just want to do it quietly, without anybody drawing attention to the U-turn or the reversal of policy.

**Chairman:** It might be that Pete could have some influence. I can see a change of heart there.

**Q38 Mr Walker:** I am sorry I was late and if this question has been asked, please stop me from asking it again. Your interim report says that you looked at what sort of union is desirable between Scotland and the rest of the UK, and you took evidence from a number of quarters. Did you take evidence from other regions besides Scotland, bearing in mind that the UK comprises a number of countries? Did you take evidence from them as well?

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**Sir Kenneth Calman:** We have had very helpful conversations from our colleagues in Wales, for example. We did some of that today. We went to Newcastle and that was very useful; but I was expecting, after our last meeting, to have an invitation from Broxbourne—if I remember rightly.

**Q39 Mr Walker:** Yes, you were.

**Sir Kenneth Calman:** I have not had it yet. It is in my list of things to do, but I had assumed that you might drop me a note.

**Q40 Mr Walker:** I am sorry, I am very rude. The difference is that I am not leading the consultation: you are. The fact of the matter is that the question you ask yourselves is what sort of union is desirable between Scotland and the rest of the UK? Bearing in mind, whether we like it or not, England comprises, in population terms, perhaps 80 to 85% of the UK's population, maybe more, it would seem obvious to me that you would want to be out there, talking to bodies within England as to what type of union they want as well.

**Sir Kenneth Calman:** Yes.

**Q41 Mr Walker:** Have you?

**Sir Kenneth Calman:** Yes.

**Q42 Mr Walker:** Which ones?

**Sir Kenneth Calman:** There are quite a few UK-wide institutions and bodies which we have talked to. For example, we have had a very useful conversation with the Health Protection Agency, which covers England. We have had a very useful conversation with Ofcom, and a number of other agencies which are English and/or UK-wide. Farming, for example, is another good example of that. We have visited Newcastle. I have been expecting an invitation from Broxbourne. I have not had it yet, and I look forward to it.

**Mr Walker:** I still need to be convinced that your investigation is not solely focusing on Scotland's needs and wants, and perhaps you are still not spending enough time convincing me and others by your actions that you are taking into consideration the views of other regions in a serious and wholehearted fashion. You do not need to answer that.

**Mr Wallace:** We have heard about the Big Conversation. If I am not mistaken, the Big Conversation is not democratically backed up or endorsed by the Scottish Parliament; it is an initiative by the Scottish Government. It would be misleading to try to say that the Big Conversation is something other than effectively a single-party initiative. You are funded by both the authority of Westminster and the authority of the Scottish Parliament. I think that has been voted on in the Scottish Parliament. It is slightly misleading to make it side by side, because I do not think it is. It does not have the same constraints, remits and quality, if I may say, Sir Kenneth, as you.

**Q43 Lindsay Roy:** Sir Kenneth, the interim report states that consideration of devolution in Scotland and its funding mechanism and functions must be undertaken in the context of our understanding of the nature of devolution within the Union. Do you believe that a satisfactory understanding of the Union is achievable, given the identity and opinion expressed by its citizens?

**Sir Kenneth Calman:** That is quite a big question and it is one that, not surprisingly, has exercised us quite a bit in terms of how do you define that and how do you measure that? What we have tried to do is to get as much of public opinion in to us as we can about the Union, how it works and how it might work better for the benefit of the people of Scotland. All of the evidence that we have suggests that the Union is a positive thing, not a negative thing, but people could see that it could work more effectively—which is part of the remit of the Commission. I think that we have done our best to get that evidence from around the country, as we have met people. There are areas in England that we would like to get that evidence from and we await that.

**Q44 Lindsay Roy:** I notice that you talk about bonds of sympathy and single social citizenship. Is it not the case, though, that although there are distinctive cultural differences, we have much more in common than we have of difference?

**Sir Kenneth Calman:** We use the phrase “bonds of sympathy” because that was written by Bryce, a great Scottish jurist, and it is quite a nice phrase. The social union we thought was very important. The figures, which are pretty obvious, are that 2% of the Scottish population had relatives in England at the beginning of the 20<sup>th</sup> century. In the middle of the 20<sup>th</sup> century it is about 20%. Now, 50% of Scots have relatives in England. We have strong links; we continue to have strong links. We have a National Health Service. That social union is actually a very important part of the Union itself, which is why we stressed it in that first report.

**Q45 Lindsay Roy:** And there is a strong economic element.

**Sir Kenneth Calman:** Indeed.

**Mr Davidson:** If the Child Support Agency is to be believed, then the figures are possibly even higher.

**Q46 Mr Walker:** Sir Kenneth, I just cannot leave this alone.

**Sir Kenneth Calman:** I know!

**Q47 Mr Walker:** You have provided too many targets. I have the membership of the Commission here. There are 15 members of the Commission. Can you identify how many of these people primarily live in England and are English? There may be some people like Murdoch MacLennan, Chief Executive of the Telegraph Media Group, but I imagine that with a name like Murdoch MacLennan there is a strong hint of having Scottish roots there. Your membership of the Commission is almost entirely made up of people living in Scotland or representing Scottish organisations. How can you say that this

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committee is reflective of the United Kingdom? I do not think there is a Welshman on here. There is no one from Northern Ireland. I do not think there is an Englishman on here. Do you not see that you are just creating areas of weakness in your own Commission by not having some reflection of the regions of the UK on it?

**Sir Kenneth Calman:** Do you need an answer to that question?

**Q48 Mr Walker:** I do. I have the membership of your Commission here. I gave you due warning when you were here a year ago, or whenever it was, that this was going to be the line of questioning that I would continue to pursue. In a year, you have done absolutely nothing about it. Would you like me to be co-opted on to it? Would you like me to be co-opted on to your Commission? I am not going to invite you to Broxbourne, because it is a long way for you to travel.

**Sir Kenneth Calman:** It is very easy to get to.

**Q49 Mr Walker:** I am more than happy, if you would like to invite me to be co-opted on to your Commission to provide it with some balance, that is an invitation to you and I look forward to hearing from you.

**Sir Kenneth Calman:** First of all, we would be delighted if you would come and give us evidence.

**Mr Walker:** No. I am not asking about that. You co-opt me on to this Commission. I will become a member of your Commission to put England's point of view.

**Mr Davidson:** And you could co-opt me and co-opt Jim—and Katy would quite like to be co-opted as well!

**Q50 Chairman:** I think that it is a very difficult question you are asking, Charles.

**Sir Kenneth Calman:** The Commission was appointed by the Scottish Parliament and the UK Government. I had no hand in that. The only thing I can do is assure you, I think quite strongly, that the majority of people on that Commission have worked and lived in England for significant periods of time, and they are very aware of what has happened and what is happening in England now; but we would be very happy to get your evidence.

**Chairman:** I hope this is helpful for you, Charles.

**Q51 Mr Walker:** Very cathartic for both of us!

**Sir Kenneth Calman:** Yes. I hope you feel better!

**Q52 Mr Devine:** On a personal basis, I am certainly not unsympathetic to your Commission recommending additional powers to the Scottish Government. Do you think, depending on what you recommend, there may be a need for a referendum?

**Sir Kenneth Calman:** I do not think that is a matter for us at all. That would be a matter for the Scottish Parliament. If we submit it, then they might wish to use that; but I do not think it is within our competence to recommend it.

**Q53 Mr Devine:** Where is your balance at the moment? You have been meeting for nearly a year. You have not been set any perimeters; you have obviously had discussions with the group that Charles has so eloquently attempted to destroy. There must be a feeling that “We’re either going to recommend more powers or we’re going to take more powers away” or “We’re going to set the status quo”. Where is the balance of the committee at the moment, you being the Chair?

**Sir Kenneth Calman:** If you were to look at the list in the first report, what it does is identify areas where we think things need to be looked at again. There are some odd things that have come up, which I had not expected. Charity law, for example. There are two Charity Commissioners: one in Scotland; one in England. If you are a Scottish charity and you have to be recognised in England, it costs you money; there are different systems. You have to ask yourself is that the right thing or is it not? There are other issues where it is quite clear that some further devolution might be helpful. The only test is would this be helpful to the people of Scotland? That is the only test. At the moment, we continue to take evidence in these areas and we will continue to do that. We have not been meeting for a year. Can I remind you that it is five months? We are now about into our six months and we will do our best to finish as soon as we can.

**Q54 Mr Devine:** That is a very diplomatic answer but it does not deal with the question. In your five or six months of meeting you will have a feel for this committee; you will have a feel for the thinking; you will have a feel for the evidence. You have given us a very good example. We took evidence from the equal opportunities group a couple of weeks ago, which was a very interesting debate about us funding them and their basically running a very different agenda in Scotland from what the national agenda was. I just want to get a sense of the feeling. Is it going to be more powers? As I say, on a personal basis I am not unsympathetic to that. Is it the status quo, or will it be fewer powers? You will have a feel for your group. Your professor is smiling by your side—your secretarial staff.

**Sir Kenneth Calman:** I will answer in the same diplomatic way. This is the process and this is your opportunity, with the list that you have seen in the first report and the consultation document I sent round, to give us your views on any of these issues. I am not going to come to any conclusions until I have the views of Mr Devine. I wait for that. That will be the endpoint of the whole process. When I get your views in, then I will be able to use these views.

**Q55 Chairman:** Would you then be able to give your views to this Committee?

**Sir Kenneth Calman:** At this stage we have said, and I think quite clearly said it, that this will be in 2009. Exactly when, I could not say at this stage. It depends how quickly Mr Devine writes to me.

**Mr Devine:** And you visit Broxbourne.

**Q56 Mr Walker:** There is a long list!

**Sir Kenneth Calman:** I could pick it up when I visit Broxbourne!

**Q57 Mr Davidson:** You mention that you have been running for six months, and I am sure that at times it must have seemed longer. If it is accurate that you have not decided for or against more powers, as it were, can I be clear about whether or not there are areas where you have identified that something needs to be done, where there is clearly a clash of powers? You mentioned the one about charity. I can see that needs to be done for tidying-up purposes, but where there are powers which overlap—and one of them that I can think of is nuclear power, for example, versus planning, as it were. I actually do not have a view on nuclear power at the moment either way, but I can see there that potentially you could have a clash between the two powers; similarly with nuclear weapons. Have you identified a whole string of items where there are overlaps of powers, where something needs to be done as distinct from just muddling through?

**Sir Kenneth Calman:** One of the more interesting ones has been marine powers. That was resolved a month or so ago. That was one that was on our list to do. Another interesting one that has come up is issues around Crown estates, lands to be used, particularly in terms of the sea. We need to look at that. It may be that there is nothing requiring to be done, but there may well be things that need to be done. That is a good example of issues. Issues around firearms have come up: whether Scotland should have its own powers in terms of airguns in particular.

**Q58 Mr Davidson:** The point I was making, though, was slightly more specific than that—where those powers clash. I understand on firearms that the Scottish Parliament, or some people there, have said that they want to have those powers. I understand that. There is then the decision about whether or not that is meretricious, and so on. The other issue is where there are two mutually incompatible set of powers and both establishments want to act within their powers and, as it were, they are blocking each other. Do you have a list of those? Are you making any progress on resolving that particular area?

**Professor Gallagher:** There is not a list of them, but I think that Mr Davidson raises quite an interesting and difficult question. One of the striking things that we have seen about the Devolution Settlement is the relatively small number of areas where these problems do arise. That suggests that, whether by luck or judgment in 1997-99, the devolved/reserved boundary was quite skilfully drawn. However, one of the things that has become clear in the Commission's discussion is that the answer to the fact that there will be some overlaps may not be simply to redraw the boundary, because wherever you draw the boundary you might find that there continue to be overlaps. That is why, as Sir Kenneth said earlier on, some of the internal discussion of the

Commission has focused as much on relationships and how you manage overlaps, rather than simply trying to make the overlaps go away.

**Sir Kenneth Calman:** You can anticipate that there will continue to be, over the next 10 years, areas which might change in terms of policy or whatever, and there need to be mechanisms in which that might be managed.

**Q59 Mr Davidson:** It is the distinction that I draw between areas where the Scottish Government, say, want to have more powers but it is already clear that they do not have them, and those areas where there are perhaps overlapping powers. If the lines are redrawn and the balance is then changed in one way or another, that does not necessarily mean that you are creating another area of overlap. It might mean that at some time in the future you have a different issue, which then requires to be addressed in a different way. It is this question of overlap. I understand the issues about powers transferring north or south, charities, law and so on. I can understand that. These are political judgments, and so on. However, I am interested to explore how you approach this question of overlap; whether or not you will try to identify some mechanism by which disputes are resolved, or whether or not you will try to identify where the disputes are and then, as it were, make a decision one way or the other.

**Sir Kenneth Calman:** I think that it is likely to be both, to be honest. If you take issues that have changed over the last 10 years; for example, climate change and energy—significant new information—then it becomes much more important in some ways than it might have been. Some of these issues might well be chopping it up a little bit, but others require better integration rather than simply changing the boundary. It is that dialogue which is important. Indeed, in terms of energy, environment, climate change, that debate is a UK-wide debate.

**Q60 Pete Wishart:** I find all this fascinating—how you will consider what should be retained, what should be returned, what should be reserved. I think that it is a really fascinating conversation and I am sure you are thoroughly enjoying every minute of it.

**Sir Kenneth Calman:** Every minute.

**Q61 Pete Wishart:** What I would like to ask is this. In terms of representation of the evidence that you have received so far, where has the bulk of the representations to return powers to Westminster come from? Are there any particular bodies or indeed parties that, more than any other party, have perhaps suggested returning powers to Westminster?

**Sir Kenneth Calman:** There is a slightly technical one on corporate insolvency that has come up, as to whether or not there is the competency within Scotland to do that. That is one bit. There has not been an overwhelming list of things that says, "This must be returned"; nor has there been an overwhelming bit that says, "This must go back". There are marginal issues. Actually, the Act was drawn up very well. That is the point that Jim made.

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**Q62 Pete Wishart:** It is a pity that Alistair has gone but, if I recall the Liberal Democrats' position on your Commission, it is that they are not going to accept any returned powers. I think that is what they have said in several statements, and I discussed this with Alistair the other evening. That is their stated position. Given that exists within the Commission, does that not neuter the whole debate about returning powers to Westminster? How will that be resolved, when one of the key parties of the Commission has stated that? If it goes to a vote in the Scottish Parliament, you might have the situation where there will be a majority against what you are suggesting—a return of powers from the democratically elected Scottish Parliament—in opposition to what you are proposing and suggesting. How is that to be resolved and fixed out?  
**Sir Kenneth Calman:** We have not got to that stage yet.

**Q63 Pete Wishart:** But it is interesting to think about, though, is it not?

**Sir Kenneth Calman:** I think about it while I am reading the National Conversation at two in the morning! These are issues that are on our minds all the time. If we have established nothing else in the Commission, it is a very good working relationship between the members of the Commission. It means that individuals, no matter where they are from—and I do not mean political parties, but with other interests—are able to speak very clearly and very openly. We have dealt with that, in the sense that it is now a very mature conversation and we know the areas that are going to be difficult. We will tackle these once we know what the questions are—but we have not got to that stage yet.

**Q64 Pete Wishart:** An interesting question is if you did—if you do get to the situation where it becomes clear in your evidence that there is to be a return of powers to Westminster—it is what that does within the dynamic of your Commission, where you have one party that is clearly saying that that is unacceptable to them and you may have a majority in the Scottish Parliament who will be saying that is unacceptable to that democratically elected institution. I accept totally that your Commission was set up on a vote of the Scottish Parliament, but it is getting into interesting constitutional issues. How would you look to resolve and fix that?

**Sir Kenneth Calman:** That seems to me to be a hypothetical issue. We have not faced that yet, and we will face that if it is necessary. We have discussed issues about how do we deal with difficulties; and it is not necessarily about the issue of returning powers to Westminster. There are lots of other things. We will discuss that, debate that and manage that through.

**Q65 Lindsay Roy:** I think it is clear, Sir Kenneth, that there is a mature and trusting relationship within the Commission. You have spoken about mechanisms for resolving disputes and how they would be resolved, but is it not the case that the key issue here is relationships and that perhaps we need some

cultural change to rebuild confidence and trust with the parties involved—parties who are potentially in conflict?

**Sir Kenneth Calman:** That is your statement, not mine. All I can speak about is the Commission. Within the Commission we have a range of views, not necessarily political but a range of views. Part of the function of the Commission, the Chairman and the secretariat is to find ways in which we can take that forward.

**Q66 Lindsay Roy:** But underpinning this, if you have a mechanism for resolving disputes and relationships are not good, we are not going to get very far forward.

**Sir Kenneth Calman:** In terms of how that is done at an inter-governmental level, I think that is where we would welcome any comments from you about other mechanisms of doing that. We have a number already that have been suggested to us, but the answer is yes, of course it is.

**Q67 Mr McGovern:** Although my colleague Charles Walker and I are opponents politically, I think that I have to support his earlier argument that the whole of the UK has to be taken into consideration. Going on from what Pete says, because the Liberal Democrats at Holyrood are against any return of powers to Westminster, surely that should not prevent that happening if the rest of the UK decided that is what is best for the country? Would you agree?

**Sir Kenneth Calman:** The issue for us, for the Commission, is what is best in our view for the people of Scotland.

**Q68 Mr McGovern:** Not the UK?

**Sir Kenneth Calman:** That is in the remit. It says “for the people of Scotland”, within the context of the UK. That is what the remit says and that is what we will try and do. I cannot believe that everybody in this country will be entirely happy with the outcome.

**Mr McGovern:** That is a good guess. I would bet on that!

**Q69 Chairman:** The matter of financial accountability features quite substantially in the interim report. Is this going to be equally significant in the final report?

**Sir Kenneth Calman:** Yes, I think it will be. As you know, we have an independent expert group, chaired by Professor Anton Muscatelli. That has given one report to us, which we thought was very helpful. We have had a very useful discussion with our Wales counterpart in the last day or so, and we will follow that up later on this week. We have scheduled a number of quite important meetings on the financial side of things, and at this stage I do not know what the answer will be, but it is an area that we will look at with some interest.

**Q70 Chairman:** You are minded in this regard to give some more powers for taxpayers into the Scottish Parliament?

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**Sir Kenneth Calman:** No, I did not say that at all, Chairman. What I did say was that we were going to look very carefully at the current system, how that current system might or might not be changed, and that will be quite a difficult decision.

**Q71 Chairman:** After four or five months, after you take more evidence from people and have representations from Mr Devine, do you think that you will be able to make up your mind, or will your report again be wishy-washy?

**Sir Kenneth Calman:** I hope that within the next few months we will be able to give you a report. Exactly when, I do not know. It could be later on in 2009, but I hope at that stage we will be able to come and give you a fairly clear recommendation. We may in some areas want to set out a series of options, because these options might well be for you to come to some conclusions on—but we will do our best.

**Q72 Chairman:** Of course we expect recommendations from you. It is then a matter for the Government to implement those recommendations.

**Sir Kenneth Calman:** The answer is yes.

**Q73 Lindsay Roy:** My understanding is that within the Scottish Government there is the opportunity, the flexibility, to increase or decrease tax-raising powers already.

**Sir Kenneth Calman:** Yes.

**Q74 Lindsay Roy:** Is there any indication in the evidence that you have had as to why that has not been invoked?

**Sir Kenneth Calman:** It is quite interesting. We have asked all previous First Ministers essentially that question, and the answer was that there did not seem to be a need at the time. If you go to the maximum and it is 3p, then if it was the full 3p it would generate about a billion pounds.

**Q75 Mr Devine:** A billion pounds a year?

**Sir Kenneth Calman:** Yes. That is the kind of level—or you could cut it. It is plus or minus 3p, so it is minus a billion or plus a billion. It has not been seen to be appropriate to do that, but that power already exists.

**Q76 Chairman:** When you are making these recommendations about more financial powers for the Scottish Parliament, if so, are you taking into consideration that the Barnett formula provides a good deal for the people of Scotland?

**Sir Kenneth Calman:** Yes.

**Q77 Chairman:** Will you be taking advice from the experts on what will be the gap if there are fund-raising powers within Scotland? Would we lose out in this or gain something out of this?

**Sir Kenneth Calman:** The answer is we certainly will take the advice of the experts, both in our independent advisory group that we have set up

ourselves but also from other experts from around the UK who may well wish to give us evidence in relation to that.

**Q78 Mr Walker:** Sir Kenneth, I will use a cricketing analogy. I am not sure if you play cricket in Scotland. You have incredible footwork at the crease—you really do. You can dodge every fast ball coming in your direction with ease. Clearly very skilled. Let me ask you a very simple question. You have had a lot of big jobs throughout your time in public life. On a scale of one to 10—one being the easiest, 10 being the most difficult—how difficult is this one at the moment?

**Sir Kenneth Calman:** It is about 12, I think!

**Q79 Mr Walker:** It is a challenge?

**Sir Kenneth Calman:** It is a huge challenge, which is why at this stage it is quite difficult to give even little leads, because they can raise expectations or not. I think that is unhelpful. What I really want from this Committee is to get your views and your advice. We really mean that—and I include people from Broxbourne.

**Q80 Mr Walker:** I am going to have to have you round!

**Sir Kenneth Calman:** I go to Hemel Hempstead regularly.

**Q81 Mr Walker:** I will come and pick you up personally.

**Sir Kenneth Calman:** I think that it would be very helpful to do that. These issues which Mr Roy raised in terms of the relationships between governments—any advice on that we would welcome. We really would. We had a very good set of discussions with our Welsh colleagues just before we came along here. Lots of interesting ideas there, and there may be other ways that we can do it. We might not need new mechanisms. We might have the mechanisms already. It is up to you to try and help us with that.

**Q82 Pete Wishart:** Do you think that you are going to recommend a significant change to the funding system at all for the Scottish Parliament? At the end of the day do you think that will be recommended?

**Sir Kenneth Calman:** I have difficulty in answering that, because that assumes that I know what the answer is. I do not know the answer at the moment. I am trying to say that in the nicest possible way. We have not come to a conclusion. The Barnett formula is a very simple formula to work. The Barnett formula—now that Mr Walker has left the room—gave Scotland quite a good deal. If you want to change it, you have to be pretty careful about what you do. People who want to change the Barnett formula have to be aware of the consequences of that. From our perspective that is an issue which we have to keep in mind. There is a big Scottish issue, but there is a wider UK issue as well. I do not know the answer. I seriously do not know the answer, but we will find that answer before we come back to you—but we will.



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**Q83 Chairman:** Sir Kenneth, I am pleased. I have listened to your views on this because sometimes it becomes fashionable because people like it for Scotland and for the Scottish Parliament, but we have to analyse what will be the price the people of Scotland have to pay if the Barnett Formula is gone and the benefits which the Barnett Formula applies to Scotland.

**Sir Kenneth Calman:** The one major issue which perhaps I have not mentioned in relation to funding is the quite strong view from a number of places that Scotland has to be accountable. The Scottish Parliament has to be accountable for the money raised. At the moment it is not in the formal sense. It gets that block grant. It is how you get the accountability without losing a lot of the things which are quite important about the Barnett Formula. The fact that it is quite easy to operate is useful but it has considerable down sides, as you all know, in relation to a number of issues. That is where the views of the Scottish Government can be very helpful.

**Q84 Pete Wishart:** The views of the Scottish Government are that they want the Parliament to be a normal Parliament which is responsible for what it spends. We seek that normality in terms of our national Parliament. Can I just pick up on one thing that has happened, and of course last week we were talking about financial powers, and that was a very significant vote in the Scottish Parliament last week on borrowing powers? It was an overwhelming vote in the Scottish Parliament that the borrowing powers should now be given to the Scottish Parliament. In fact, nobody voted against it; not even the Labour Party voted against it. Surely that must have a significant impact when it comes to borrowing powers. In the whole of the Scottish Parliament no political party in Scotland opposed that. That must become irresistible to you now in terms of something you must be thinking about recommending.

**Sir Kenneth Calman:** The simple answer to that is that it was on our agenda well before that debate.

**Q85 Pete Wishart:** So, given that has happened, given that now there does seem to be the almost overwhelming sense that this is the right thing for Scotland, could we take it from your response that this will feature in your final report?

**Sir Kenneth Calman:** We will certainly have a section on borrowing. The question is, what will it say? I think it is pretty important that we get a view from the Scottish Government as to how it would operate. You cannot just borrow. You have to have mechanisms for occasionally paying it back, and the question is, how would all that be done? That is what we need to get into the debate and discussion. There is no question that borrowing is on the agenda. It was on our agenda before that debate. That debate focuses the issue but we do need some views as to how that might operate.

**Q86 Pete Wishart:** But the principle now is that you accept that almost certainly when in terms of your recommendations you will be suggesting that the borrowing powers be something that will be taken forward?

**Sir Kenneth Calman:** I certainly did not say that. What I said was that this is on our agenda and we will look at it very carefully, and I look forward to John Sweeney's evidence to us as to how best to do that. I mean that. Mr Sweeney referred to this quite early on in the Commission's work in a parliamentary response, if I remember, and it would be really nice to meet him and hear from him how it would operate. That is what we want.

**Q87 Mr Davidson:** I very much welcome the fact that the Nationalists are clearly engaging with your Commission and I would not want to draw attention at all to the fact that it is a complete reversal of their previous position. I just leave that for the moment. Could I ask, in terms of the present economic circumstances, which are unprecedented and perhaps getting worse, to what extent are any formula proposals that you bring forward going to be taking account of the various economic scenarios that are possible? Anything you come back with has got to be able to sustain a situation far worse than we have at the moment. We have to make sure that Scotland is going to be economically solvent under whatever formulation you want. I just want to check that the modelling is being done to make sure that anything you come forward with is firm enough.

**Sir Kenneth Calman:** It certainly will be done, is the answer. If I can broaden the questions a little bit further, if you had asked me the question another way, what has happened in the last six months to change what the Commission is interested in, an awful lot of things have happened. We have got the financial situation but other things have been there and, as you watch the political climate, the economic climate, the environmental climate change in the middle of this process, at the end of it we have to have an answer which is flexible enough to deal with other things which will occur. That, I think, is the trick which we have not pulled off yet but it is one which is pretty important for us, indeed for Scotland.

**Q88 Mr Davidson:** Just coming back to the question of money, looking back to your CV, as Mr Walker said, you have had a variety of jobs and roles. Have you ever been in a position where the organisation of which you were a part did not want to have more money and would not have welcomed more cash and would not have welcomed perhaps borrowing powers and would not have welcomed Christmas coming every day? Is it not just inherent in any organisational structure that they want more money, more powers, more this, more that, and ought that not to be weighed in the account when deciding whether or not they should get them?

**Sir Kenneth Calman:** I think that would be universal, but universally, I think, with the organisations that I have been involved with, and indeed am currently involved with, they are all very aware that that is not

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going to happen, that there are significant financial constraints now. I think of both the charitable sector and the broader public sector, and people have to be aware that that is not the way to manage your finances, just to hope that money will come. It might not and under these circumstances you have to think very seriously about what you will do.

**Q89 Mr Davidson:** Can you seriously suggest though that there is a shortage of money in Scotland at the present time when £50 million can be spent on a single painting? I note that a 3p tax increase would enable the Scottish Government, if they wanted, to buy 20 Titian paintings. They are not under all that much financial pressure at the moment, are they?

**Sir Kenneth Calman:** You will not expect me to answer that question.

**Q90 Mr Davidson:** It would have been nice though. One lives in hope.

**Sir Kenneth Calman:** I know it would be nice. I cannot answer that question. That is a political question which, as a completely apolitical person who is interested in the future of Scotland and its links with the UK, I could not answer.

**Q91 Mr Davidson:** Would you have spent £50 million on a Titian?

**Sir Kenneth Calman:** I do not have £50 million, and you will not be surprised that I do not.

**Q92 Mr Davidson:** But would you if you had borrowing powers?

**Sir Kenneth Calman:** In my old-age pension I do not have much in the way of borrowing powers, thank you very much.

**Q93 Mr McGovern:** The Scottish Executive were criticised, and in my view justifiably, for announcing a plan for a new Forth Road Bridge before any funding had been settled. Has the issue of the funding of the new Forth Road Bridge influenced your consideration of the need for a change in funding for Scotland?

**Sir Kenneth Calman:** It is an example of how borrowing powers might or might not be relevant. There are other ways of funding a Forth Road Bridge and that is a political decision but it is a public example of an issue where borrowing powers might or might not be relevant.

**Q94 Mr McGovern:** So did it influence you in any way?

**Sir Kenneth Calman:** Not really, because, as I said to Mr Wishart, the issue of borrowing was on our agenda before that happened and before the vote in the Parliament. It is an issue we needed to consider anyway.

**Q95 Mr McGovern:** When you say it is an issue you needed to consider, do you mean the Forth Bridge?

**Sir Kenneth Calman:** No, not the Forth Bridge, but the issue of borrowing for major capital projects. What it does is give us a specific example of how you might deal with it.

**Q96 Chairman:** It is easy to say that we want to have the borrowing powers but the solution has to come how you are going to pay that back.

**Sir Kenneth Calman:** Yes, and that is what we do not have an answer to at this moment. There are a number of ways in which that might occur but I cannot give you an answer just now.

**Q97 Chairman:** So you do not know yet how that borrowing can be repaid?

**Sir Kenneth Calman:** I think that is an issue we will want to look at.

**Q98 Mr Davidson:** Can I follow up on that, relating to the Forth Road Bridge, and I understand the latest proposal is that big chunks of it should be built in China? In my constituency we have made big efforts to have people employed in the new shopping centre from the local area. The whole question of where work generated by public spending benefits is obviously a particularly important area in the present economic crisis. Are you exploring whether or not there are adequate powers for, say, local authorities or for health boards or for the Scottish Parliament or other organisations in Scotland to be able to direct that spending in ways that they would wish to achieve social objectives and whether or not that is an area that you would be considering?

**Sir Kenneth Calman:** I do not think that is within our remit as it happens, and I think to go as far as that would be beyond what we have been asked to do.

**Q99 Mr McGovern:** The original question I had was do you believe you are successful in engaging the Scottish people in the work of the Commission, but, given what my Conservative colleague said earlier on, Charles Walker, I would rephrase that to, do you believe you have successfully engaged the British people in the work of the Commission?

**Sir Kenneth Calman:** I think the answer to that is that we are trying very hard to do that, but what it requires is for the public to be engaged. We have got a website, Facebook, all sorts of ways people can contact us and that has been helpful. We have written to hundreds of Scottish organisations, UK organisations of various sorts and we have had responses to that. We have been out into the field meeting not large groups of people but important groups of people locally and I think that has been very helpful.

**Q100 Mr McGovern:** When you say “locally” what do you mean?

**Sir Kenneth Calman:** We have been to Ayr. Where else have we been?

**Mr Kett:** Ayr, Glasgow, Dumfries, Inverness, Stornoway, Dundee, Newcastle, Edinburgh. We are planning to go to Aberdeen, Stirling, Orkney and Shetland in the coming months.

**Q101 Mr McGovern:** But all within Scotland?

**Sir Kenneth Calman:** Newcastle is the one outside Scotland.

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**Q102 Pete Wishart:** How many people turned up?

**Sir Kenneth Calman:** We have not had large numbers but we have done that for a specific reason. We have not had a great big hall. What we have done is that we have had usually 30-40, something like that.

**Mr Kett:** The numbers have ranged from about 20 to about 65, depending on the size of the area we have visited.

**Sir Kenneth Calman:** The format of the meeting is important. The person who is organising it—it could be me, for example—very rarely says anything. There is a short DVD at the beginning and then they move directly into discussions on a round-table basis, so there will be six to eight tables.

**Q103 Pete Wishart:** And if somebody mentions independence, for example, are you very quick to say, “That is nothing to do with us”?

**Sir Kenneth Calman:** No; it has come up on several occasions.

**Q104 Pete Wishart:** What would be your response to somebody who would be keen to engage in a discussion on that? “No comment”?

**Sir Kenneth Calman:** It came up, I remember particularly, in Stornoway, and it was quite an interesting conversation that we had. It was at the table. It was not necessarily with me, and it is with other people at the table. That was a helpful discussion. Other quite interesting things came out on that table, as it happens, and it was not a problem.

**Q105 Pete Wishart:** So how do you respond to them? Do you just tell them that that is not part of your considerations, that you are considering all constitutional options for Scotland other than that one, considering it is the one thing that significant numbers of Scottish people believe in and want to pursue?

**Sir Kenneth Calman:** Not really, because I think they know that. Those who have spoken have spoken very eloquently about what they think is important but then we get them to get on to, “What is the next issue you want to discuss?”, and we have had very good discussions on a round-table basis. There is usually a member of the secretariat at each of these tables. We take that all back. It is all on the website if you want to see what has been discussed, so it has been a very helpful way of doing it. There has been a lot of detailed information which I do not think you would get in a 500-seat lecture theatre with people saying things. It has been very intimate and very helpful.

**Q106 Mr Devine:** Do you invite people to the meetings or do they just turn up?

**Sir Kenneth Calman:** Both.

**Q107 Mr Devine:** I am very interested because I once worked for a very clever psychiatrist who told me, “Never listen to what anybody tells you. Watch behaviour”. Behaviourally, if you are only getting 20 people—nobody has ever raised this in my surgery, that the Scottish Parliament needs more power or

this is a really pressing issue, but if you are going places like Ayr and you are getting 20 people turn up?

**Mr Kett:** At Ayr we had 41.

**Q108 Mr Devine:** If I am in Ayr how do I know about your meeting?

**Sir Kenneth Calman:** Two ways. One, it is publicly advertised, and, secondly,—

**Q109 Mr Devine:** And publicly advertised on the basis of open to the public?

**Sir Kenneth Calman:** Yes.

**Q110 Mr Devine:** So do I have to contact somebody beforehand or do I just turn up on the night?

**Sir Kenneth Calman:** A bit of both, actually.

**Mr Kett:** We ask people to register in advance so we know how many tables we need, but people have turned up on the day and we accommodate them within the meetings.

**Sir Kenneth Calman:** Secondly, we have invited organisations or individuals.

**Q111 Mr Devine:** For example, what? Community councils?

**Sir Kenneth Calman:** Yes, and trade unions, health service people, local politicians.

**Q112 Mr Davidson:** How many of the people come with a view that is faith-based, so to speak, in the sense that they believe this irrespective of the evidence and how many are there who are prepared to contribute towards an evidence-based discussion? I would have thought you would get a lot of zealots coming along from all sides?

**Sir Kenneth Calman:** No, they have been absolutely super debates. As I say, those of us who are running the Commission have kept back. They have got questions. There is an introduction about what the Commission is about. There are specific questions, often tailored to the area that we are in. For example, in Aberdeen we will almost certainly think about oil and oil-related industries, and then they have got a series of questions which they then discuss and give us some answer to. It is direct involvement.

**Q113 Mr Davidson:** So the set of people that are on the Nationalists’ websites and sending things in to *The Scotsman* and *The Herald* do not obviously come out during the daylight then? They do not come along to these sorts of things.

**Sir Kenneth Calman:** That is a very unfair comment.

**Q114 Mr Davidson:** But true.

**Sir Kenneth Calman:** No, no. We have had a number of people who clearly are from a Nationalist background who have been extremely helpful, very positive and have helped us in the debates in terms of functions and powers.

**Q115 Mr Davidson:** I draw a distinction there. Clearly some of the Nationalists are very helpful. They are engaging with yourselves. That is a prelude, obviously, to the complete U-turn that the Scottish

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Government will make but I will not mention that. Some of the people who are expressing extremist views, as Jim said, almost racist views and so on on some of these blogs that appear between one and three, they have not been turning up to your sorts of events?

**Sir Kenneth Calman:** No. I know Mr Roy has got a strong educational background, but for those of us who are involved in students and student groups, talking about quite difficult issues, ethics, for example, the way to do it is to engage them and get them talking, and it has been great and we have got a lot out of it.

**Q116 Pete Wishart:** I think that is very useful and I am glad that is the case, that you are having these all-round debates.

**Sir Kenneth Calman:** If I put it another way, it is not me standing in front of 500 people for an hour and a half telling them what I think. It has not been that. It is precisely the opposite.

**Q117 Pete Wishart:** So discussion of independence has not been ruled out of your Commission then? It would be frustrating if somebody who does believe that Scotland should be a normal nation should turn up at your meetings and say, "We have been effectively told that we cannot participate", but I am glad you are saying that that is not the case because if they come on to the national conversation you say, "Anybody who believes in more powers for the Scottish Parliament of course can be accommodated because we are looking at all possibilities"?

**Sir Kenneth Calman:** We have had no difficulty at all. The Stornoway one I particularly remember. There was an early intervention on one of the tables and it was fine and there was no problem about it, and actually we got on to some really interesting debates.

**Q118 Mr Devine:** How much credence are you giving to these meetings? Are you giving any weight to them? In my former life as a trade union organiser, if a health board was organising public meetings, for example, on the establishment of trusts, we could turn out 100 people to every meeting and we would demand a ballot and we would make sure that that ballot was won. In fairness, the Tories totally ignored that but at least we could turn out and organise. I am just a bit concerned that not the Nationalists but somebody could organise to turn up at your meetings, in particular when you have only got 20 people there, and if they come and say, "This is our position", 21 people turn up, an organised group, maybe even the BNP, with a specific line, so how much credence do you give to these meetings?

**Sir Kenneth Calman:** First of all, it would be recorded that that was a view. Let me give you a slightly better example. I am sorry my colleague is not here at this moment. When we went to Newcastle we had several people who were clearly representing the campaign for an English Parliament. That is what they were there for. They

were very helpful, quite interesting. They gave us views which we noted, and it is all recorded. If you go to Stornoway—

**Q119 Mr Devine:** How many people turned up at the one in Newcastle?

**Mr Kett:** Thirty three.

**Q120 Mr Devine:** There are some sad stories there.

**Sir Kenneth Calman:** I happen to know the area quite well and we had some really helpful people there. What has come out of these meetings is first of all a general sense that the Parliament is working quite well, a general sense of some of the areas where they were unhappy. I remember I think it was an SNP contribution on the issue of Crown Estates came up much more strongly than we have heard it before, so that is quite an important signal for us to bring back in and think about again. They have been very helpful.

**Q121 Lindsay Roy:** Can you give us a notion about the age profile of the representation? Have there been quite a number of young people?

**Sir Kenneth Calman:** Yes, there have, and we have deliberately tried to get young people, often school kids, and for some of them we will follow that through into the schools. Indeed, part of this next phase will be a schools debate on this. They are great people, young people, as you know. It has been good to have them there and they have enjoyed being part of something which might affect the future of Scotland. The age profile has generally included young people.

**Mr Kett:** Every single one of the events we have held has included at least a couple of higher students from local schools who we have invited to attend. We have also run a session just with schoolchildren from Dundee.

**Sir Kenneth Calman:** And we are anticipating one in Stirling.

**Mr Kett:** And Aberdeen as well.

**Q122 Mr Devine:** The people that you invite, do you know the percentage of, say, the 33 in Newcastle? How many of them did you invite and how many have turned up on the night? What is the average?

**Mr Kett:** I could not tell you off the top of my head. My guess would be about 50/50, perhaps slightly more invited have turned up.

**Q123 Mr Davidson:** There are also issues about how representative these people are and the extent to which you then place an emphasis on their views. Like Jim, I am very conscious that I have never had anybody come to any of my surgeries about this issue, but I am conscious that if I am in a hall with people and I raise that as a subject they will then have views and it is then an issue to some extent about how strongly these views are held. It is a bit like issues relating to, say, abortion one way or the other. People will have views but it does not necessarily determine their votes because in the great scheme of things it only has a relatively small place. I am just wondering to what extent you are able to

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take account of the strength of views as well as the views being expressed and to what extent that will then be reflected back in your report, because again if you get a disproportionate minority coming along, they feel very strongly that this or that ought to be done, there is a danger of skewing your report. How do you know that that has not happened?

**Sir Kenneth Calman:** Those of us who run small groups in all sorts of other ways know that you get used to that. That is part of the interest. Let me pick again Crown Estates which comes about. I do not know much about it. Is it something that is important, something we should do something about? That is a little signal for us to test that in other places, so you can take it to the next place, "What do you think about X?", or you can go to an expert group and say, "We have heard this. Is this real or is it not?". You use that intelligence to shape the rest of the debate.

**Q124 Mr Davidson:** I understand that but your agenda is then being set by a relatively small group, whereas there will be other issues perhaps which are more important to more people who are less articulate, issues of, say, poverty, which will not necessarily get raised in the same way because those most involved in poverty are not likely to turn up at your meetings.

**Sir Kenneth Calman:** I think that is an inappropriate comment, thank you very much. Some of us are particularly interested in poverty and some of us go out of our way to hear about poverty and what the problems are. You are making some assumptions about the Commission too.

**Q125 Mr Davidson:** No, I am not.

**Sir Kenneth Calman:** Yes, you are.

**Q126 Mr Davidson:** We are discussing just now your public meetings and about who is turning up to them.

**Sir Kenneth Calman:** Many of them will have a social work background.

**Q127 Mr Davidson:** Does that mean they are social workers?

**Sir Kenneth Calman:** They could well be, yes, or have an interest in it.

**Q128 Mr Devine:** That seems to me a false message, that no, it is not 50/50 that is coming up. It seems to be the people that you have invited who have got the skills, who have been to universities, who are in trade unions. You have got the hospitals. Those seem to be the people that are turning up.

**Sir Kenneth Calman:** A lot of them are councillors.

**Q129 Mr Devine:** Local councillors? Well, are they important?

**Sir Kenneth Calman:** No, no.

**Q130 Mr Devine:** The point I want to establish is that you mentioned Ayr with 41 people.

**Mr Kett:** Forty-one, yes.

**Q131 Mr Devine:** So basically only 20 people who were not invited turned up and the one that had 20 people only 10 were not invited.

**Sir Kenneth Calman:** There is a distinction between an opinion poll to test everything and focus groups to get some answers to some things. These are not opinion polls. There are other ways of doing that. In your surgeries on a day in, day out basis you are getting people coming in. In the mass meetings that you organise to talk to your constituents you get views. I hope you are communicating these with me. If you are not you are not doing the task that you should be doing. You should be letting us know what these views are. We are relying on you to do that. What we are having is a series of small groups in which we can debate in depth with them issues which have come up to as part of the Commission's work.

**Q132 Mr Devine:** But surely with the figures you have what we are looking at is devolution is the settled will of the Scottish people? You do not have hundreds of people turning up at these meetings demanding change. We are not getting them.

**Sir Kenneth Calman:** Most people are pretty happy with what is going on. I think that is the point. We have not met huge numbers of people, because the options are open for them to come, who want to change everything.

**Q133 Mr Davidson:** The only time we ever get substantial meetings about education in my constituency is when a school closure is being proposed.

**Sir Kenneth Calman:** We are not proposing any school closures.

**Q134 Mr Davidson:** Not a real one.

**Sir Kenneth Calman:** No. Give us a chance.

**Q135 Mr McGovern:** I just think it would be worthwhile me putting on record as well the same thing as Jim and Ian have said, that I certainly do not have queues of people at my surgeries saying they want to see some sort of constitutional changes in Scotland. I get people coming to the surgeries with things that are absolutely outwith my remit. It might be dog fouling on the pavement, it might be housing issues, nothing to do with a UK parliamentarian, but I can assure you nobody has come to my surgery saying, "I want to see additional powers for Scotland", whether it is borrowing powers or any other powers. What you said there is, I think, and I do not want to misquote you so I might be paraphrasing, that you think people are generally happy with things as they are.

**Sir Kenneth Calman:** That is one of the important conclusions in the first report. People are generally happy with the Scottish Parliament and how it operates. We have found within the functions, the devolved, reserved bit, a number of areas which people have raised with us. They are all listed in that first report. Whether we change them or not is another matter, but that is what has come out.

**Q136 Chairman:** Sir Kenneth, Mr McGovern makes a very important point. I do not have anybody coming to my constituency office saying, “We want more power for Scotland”. It is just the chattering classes talking about these issues. My fear is in case the people who are professional lobbyists might be influencing you on the issues which the vast majority of the people in Scotland—

**Sir Kenneth Calman:** The point is well made but I do not think we have had that with these groups. They have identified themselves, for example, the English Parliament or, “I am a Scottish Nationalist”, or whatever it is, but that has not affected the issues. I have talked to my MSP.

**Q137 Mr Devine:** Name names.

**Sir Kenneth Calman:** And my MP, who is sitting over there, as it happens, about some of these issues, and my MSP on the Island of Arran, and we have had a good discussion. We had an hour and a half.

**Q138 Mr Davidson:** Did you turn up at the surgery?

**Sir Kenneth Calman:** I did. I think it surprised him a little bit, but it was a nice Saturday morning and I thought, “Gosh, I will pop in and say hello to him”.

**Q139 Lindsay Roy:** I have had one issue that has come up on three different occasions in surgeries very recently. It says in the remit about enabling the Scottish people, to serve the people of Scotland, benefiting the people with better financial accountability, but is it not also about the wider accountability? The issue that has been raised with me is a perception that perhaps Scotland is over-governed and issues around the relationship between the UK Parliament, the Scottish Parliament and the number of local authorities. Has that been raised with you in the Commission?

**Sir Kenneth Calman:** Indeed. The local authority issue has been raised quite a lot, as it happens. That whole issue has been raised by a number of different people. Again, if I put the question back to you, if there are solutions to these issues, please let us know. That is quite important. We will find some of our own and we have already had some given to us but there may be others that we need to find and we would welcome that. We know and it is not our remit to change how the Scottish Parliament operates but we know there are some areas there which the parliamentarians have told us about, that previous Scottish ministers have told us about, which I think could be changed and make it much more effective. It is not our remit but we might make some suggestions about how things could be improved and then it will be up to the Parliament to decide.

**Lindsay Roy:** That is helpful and I will forward something to you.

**Q140 Pete Wishart:** I have been very impressed with your evidence, Sir Kenneth and the spirit in which you have given it. I think it has been very useful and helpful, and I think a number of good things have come out of this. You appealed to all of us to give evidence to your Commission and you also said you have been taking quite copious notes at the meetings

that you have been holding throughout Scotland. Could you also make an appeal to ensure that everybody also gives evidence to the National Conversation and that the notes you acquire in public meetings will also be passed to the National Conversation, because I am sure what you want to achieve is not to have these as rival bodies but complementary bodies?

**Sir Kenneth Calman:** There is no problem at all about that. They are all on the web and they are accessible to anybody who wishes to see them.

**Q141 Pete Wishart:** So you will be directly passing on your experience of these meetings to those in the National Conversation?

**Sir Kenneth Calman:** They are on the web so the National Conversation can have them. We have regular discussions through the secretariat with the National Conversation. It is unusual at a meeting not to have a reference to the National Conversation, and I say this truthfully: we read it pretty regularly.

**Q142 Pete Wishart:** We want to have the third option built up in the National Conversation. As you indicated in what you said today, that is important and that can be a possible role.

**Sir Kenneth Calman:** I would have to deny having said that because I did not say that. What I am saying is that we will provide a report and it is up to Parliament to decide what it wishes to do with that report. It would not be for us to be seen as the third option. I do not think that is why we are there.

**Q143 Chairman:** Has any representation been made to your Commission from the black and ethnic minority community organisations or individual and how many of them attend your meetings?

**Mr Kett:** I could not give you any statistics on numbers but certainly we have engaged with a number of BME organisations and we have taken evidence from, for example, the Council of Ethnic Minority Voluntary Organisations and written out to a variety of faith groups and other organisations like that.

**Sir Kenneth Calman:** One of our Commission members, Mona Siddiqui, who you may well know, has got a lot of experience, particularly in the interface areas, and I think we would quite like to plan an inter-faith meeting, not, again, 5,000 people but a smallish group. Five thousand is the wrong number, I suspect, because we could not feed them. The point I think is to try and get smallish groups to discuss some of these issues and see if there are particular problems. Two of our members come from ethnic backgrounds within the Commission and have been extremely helpful.

**Q144 Chairman:** Since you are talking to government ministers and individuals, how would you define the relationship between the two Parliaments and the two Governments—reasonable, good, very good, excellent?

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**Sir Kenneth Calman:** That is a very good question, Chairman. Thank you very much for asking that question.

**Q145 Chairman:** Can you tell us then what mechanisms can be adopted so we can strengthen the relationship between the two Parliaments?

**Sir Kenneth Calman:** First of all, there are already mechanisms available. The question is, are they being used? The second question is, are there other mechanisms that could be made available? We had a very good conversation, as I mentioned, with the Welsh Secretary of State, Paul Murphy, and the Welsh have slightly different mechanisms, some of which are quite interesting in terms of how they operate. I think there are a number of mechanisms but you have the experience of this. Again, I appeal to you to give us some help in this.

**Q146 Mr Devine:** We are not going to pay you all this money out of the public purse to produce a report which says “status quo”. I go back to my earlier question: is it going to be more or is it going to be less?

**Sir Kenneth Calman:** If I may say so, I think that is the wrong question. First of all, you are not paying me any money at all, so let me make that quite clear. The question is, and I think the significant shifts, and I have tried to hint at this, are likely to be in relation to the inter-governmental relationship bit and the financial accountability bit. The bits about the reserved devolved powers I have tried to say as nicely as I can, and I think Mr McGovern has in a sense summed it up, there are not huge votes coming in for do this, do that. There are issues around how best to manage it. It was a very good Act. It works very well, and I think the big changes which come from all this money that you have put into this Commission are likely to be in terms of the inter-governmental relations bit and the financial accountability bit. These are the two big issues that have come up for me.

**Q147 Chairman:** I think these are very important issues. There has to be accountability when people are spending money on taxpayers’ behalf, but on the other hand you have to look into what benefits the

people of Scotland from having more financial and tax powers. One issue which concerns me and I think I raised it in the last meeting as well, is this nuclear energy. If the British Government decides that they want to put nuclear reactors in Scotland and planning permission is not granted from the Scottish Parliament because they are opposed to it, are you taking that issue seriously and considering what could be the solution to this problem, which may occur very soon in the future?

**Sir Kenneth Calman:** I think what we are looking at is that as a model of what happens if the two Governments do not agree. It could be either way. The question is, how do you resolve that? That is the issue that is interesting. You can go down the nuclear debate road plus or minus planning permission but I think we will step back from that and say there will be times when there will be differences of view between the two Governments. How do you resolve these? I think there must be mechanisms for doing that because it can happen both ways. That makes it important that the dialogue is there and sufficiently there to allow some reasonable solution to emerge. Again, just a few minutes ago we were talking about the Welsh Secretary of State. He gave some really interesting examples of how difficult decisions had been resolved in a particular way and that was fine—real consensus after discussion. If there is no discussion that cannot happen. Question: what is the best mechanism to do that rather than getting involved in a particular issue, nuclear debate, for example? There are other issues, I think.

**Q148 Chairman:** Can I thank the witnesses for their attendance and I am sure my colleagues will agree that we have had a very positive, constructive and informative evidence session.

**Sir Kenneth Calman:** It has been very nice meeting you. I hope you will invite us back.

**Q149 Chairman:** Yes. There are still questions to be answered so we will invite you back. Would you like to say anything in conclusion on areas we have not covered?

**Sir Kenneth Calman:** No, I think we have covered everything I could possibly wish to cover.

**Chairman:** Thank you very much.

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**Monday 6 July 2009**

Members present

Mr Mohammad Sarwar, in the Chair

Mr Alistair Carmichael  
Mr Ian Davidson  
David Mundell

Lindsay Roy  
Mr Ben Wallace  
Pete Wishart

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*Witnesses:* **Sir Kenneth Calman KCB**, Chairman, and **Professor Jim Gallagher CB**, Secretary, Commission on Scottish Devolution, gave evidence.

**Q150 Chairman:** Good morning. I would like to welcome our witnesses this morning. Can you please introduce yourselves for the record?

**Sir Kenneth Calman:** My name is Kenneth Calman, Chairman of the Commission on Scottish Devolution.

**Professor Gallagher:** My name is Jim Gallagher, and I have been the Secretary of the Commission on Scottish Devolution.

**Q151 Chairman:** Before we start detailed questions, would you like to make any opening remarks?

**Sir Kenneth Calman:** Thank you very much, Chairman. It is a pleasure to be back with you again and to see this Committee in Glasgow. The last time we met, if you remember, we discussed the Commission's first report and I know that you were slightly impatient to know what the outcome was going to be, but now you have it I hope you agree that it is a substantial report and as substantial as perhaps you were hoping for. I am delighted to be able to discuss it with you today. It would be appropriate to take this opportunity to say what a privilege it has been to do this work. It is important for the future of Scotland. It has been a pleasure to work with all the Commissioners and, indeed, all those who gave evidence to us, including MPs and on the local visits that we made. I do not want to go through all of the recommendations, you will have read them yourselves, but perhaps say one or two things at the beginning. First, and as I made clear at the introduction of the report in Edinburgh, we really began with no preconceived ideas; indeed, as the report developed new things came along all the time. Secondly, it is not a set of haphazardly chosen changes or adjustments to the Devolution Settlement to meet particular problems or political pressures; it is very much a package of 63 recommendations which hang together. Indeed, one of the points that we made during the work of the Commission was that the Commission would not accept any of the recommendations until we had all of the recommendations to make sure there were no conflicts. It is very much a package. It is based on what we think is a pretty carefully thought through understanding of what Scotland's place is in the UK and what it should be. We asked ourselves, as you can see in the introduction, how devolution and the Union fitted together and how each could be changed to serve Scotland better. So we talk in the report about how power can be decentralised to the Scottish Parliament inside a political union. We

think that there is scope for greater financial accountability as part of that inside an economic and social union. We think our recommendations do two important things: make devolution stronger but also the Union stronger. That is how we think the constitutional arrangements can serve the people of Scotland better. The Commission, of course, has now finished its work and it is up to others to decide how to take the recommendations forward and, indeed, that is how it should be. It is not up to me or the Commission to make decisions but to make the proposals and the democratically elected people in Scotland and the UK Parliament can decide. I was genuinely very pleased with the reception that the report got from the press and the public and, indeed, the political parties. I was particularly pleased at the resolution passed in the Scottish Parliament a week or so back and the statement in Westminster by the Secretary of State for Scotland which supported the Commission's recommendations. It has been gratifying for us to see how the proposals are going to be taken forward and I am very pleased to answer any questions that you might have.

**Q152 Chairman:** To what extent do you believe that you were successful in engaging with Scottish people and achieving a wide range of participation in the work of the Commission?

**Sir Kenneth Calman:** I think the way in which the Commission functioned was, I hope, a very open way and we attracted, as you know, 300 different submissions. These submissions were substantial in themselves and have been important because they provided the basis of the evidence on which we have taken things forward. Our visits out to different parts of the country from Dumfries to Orkney & Shetland were very important. These were sessions in which we did not talk to people, we listened to them, and they helped us to answer the questions. They were very much listening sessions with people in a number of sessions around the country and very much shaped the report. It was extraordinarily useful to get their comments. These were individuals from all backgrounds, indeed all political parties, and that made it very powerful indeed.

**Q153 Chairman:** Did you receive evidence from all the sources that you desired?

**Sir Kenneth Calman:** Yes, I think we did within the timeframe. There are detailed issues where we would have welcomed more in some places than in others perhaps, but in general we got a lot of evidence and



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where we did not get the evidence we went out to try and find additional evidence to support one view or another.

**Q154 Chairman:** You started from the assumption that the Union would continue and the review must be to secure the position of Scotland within the United Kingdom. Had this not been the case, do you think that your recommendations would have been different?

**Sir Kenneth Calman:** That is a very difficult question to answer. We worked very clearly within the remit that we were given by the Scottish Parliament and also by the UK Government about strengthening the Union, strengthening Scotland within the Union, and in particular doing what we thought was best for the people of Scotland. What we tried to achieve was all three things: good for the people of Scotland; a stronger Scotland; a stronger Union. I think that is the framework within which we operated.

**Q155 Chairman:** But if that remit was not there and you were just looking at what is the best for Scotland, would your recommendations be different?

**Sir Kenneth Calman:** I do not think they would be. I cannot think beyond what we were doing at the time. Indeed, the breadth of that remit was actually quite considerable.

**Q156 Pete Wishart:** Good morning, Sir Kenneth. It is great to be here in your home city of Glasgow in these beautiful surroundings. I suppose for somebody like me, who cares passionately about the issue and wants Scotland to be a normal self-governing nation, I do not know whether you are the road block or the yellow brick road to independence. In the past couple of weeks we have heard some very senior Labour members and former Labour ministers in particular who I think described your report as having pushed Scotland closer to independence. Is that how you recognise your report? What do you make of comments like that from very senior Labour ministers? I am thinking of the comments in particular by Brian Wilson and Sam Galbraith.

**Sir Kenneth Calman:** Both of them are well-known to me. Mr Galbraith owes all his surgical expertise to early links with me, so we have known each for quite a long time. It is legitimate that they take any view that they wish to take. I do not think that their comments, which I read with interest, and I know them both very well, alter my views on anything at all.

**Q157 Pete Wishart:** What is your view? Do you think that what you have produced in the report puts Scotland further and closer to independence or do you think that what you have done is enough to be a bulwark against progress towards independence?

**Sir Kenneth Calman:** Again, I have not seen it in those terms, and I have not seen it because my own view as we developed the Commission was very

much within the remit and the remit was to look at Scotland within the Union. Independence was an issue which was there and around us all the time.

**Q158 Pete Wishart:** Would it be fair to describe it as the elephant in the Calman Commission room in the fact it has never been discussed but was always there?

**Sir Kenneth Calman:** No. I think it is entirely inappropriate to describe Scotland and independence as an elephant and I think that you should withdraw that remark immediately.

**Q159 Pete Wishart:** They never forget, you see!

**Sir Kenneth Calman:** If somebody had asked me to look at the issue of independence I would have been happy to look at that too but they did not, they asked me to look at Scotland within the Union and how Scotland could be stronger and the Union could be stronger, and that was the remit that we had.

**Q160 Mr Davidson:** Following that same theme, it has been suggested to me that Calman is independence for slow learners. How would you respond to that in terms of arguing that it strengthens the Union?

**Sir Kenneth Calman:** Again, I really do not like that terminology. I have not seen that before and it does not fit into my academic background terribly well. I think what the Commission and the Commission's report does is strengthen Scotland in a number of important ways without withdrawing support from the Union and, indeed, strengthens the Union. If we can work the two bits together well then Scotland does better out of it and the UK does better out of it.

**Q161 Mr Davidson:** Can you just clarify for me how you believe that your report strengthens the Union?

**Sir Kenneth Calman:** First of all, the bit which is perhaps very relevant to this Committee has not been picked up well in the papers at all, and it is about the intergovernmental relations, a crucial part of the report. I mentioned earlier that we began this report with no preconceived ideas and this was not an issue that I had in my mind before we began, but the more we listened to people, like this Committee, talked to MPs and MSPs, looked at how things were working across governments, we recognised there was a very real need to change things and that the position of Scotland within the Union should be looked at in a much more positive way. Indeed, a whole series of our recommendations do that to strengthen that link between Scotland and the Union, and that is mutually supportive.

**Q162 Mr Carmichael:** Just following on from that, and Ian has essentially picked up the question, first of all I think you are right to repudiate the comparison with the elephants. Elephants have a certain beauty and grace that people do not often associate with the cause of Scottish independence. You spoke about intergovernmental links, which have been well developed in the last years, but what we have not seen are interparliamentary links, the opportunities for MPs, MSPs and, indeed, MEPs

outside Government to have a formalised structure for dialogue. What is there in your report that addresses that?

**Sir Kenneth Calman:** I think there is quite a lot in the report. Indeed, one of the most striking things that I found was that MPs sometimes have difficulty getting into the Scottish Parliament and MSPs have difficulty getting into the UK Parliament. That seemed to me to be quite pointless and there is no reason for that at all. It seemed to me that there were very good reasons and, indeed, our recommendations set out ways in which that can be strengthened. We were very struck by the fact that the Scottish Parliament is having a review on child poverty, and of course the UK Parliament is having a review on child poverty, and the two did not seem to meet at all although here is expertise in both Parliaments which should be harnessed for the good of the people of Scotland. The more we worked through this Commission, the more that section on interparliamentary, intergovernmental, MP, MSP, MEP relations became stronger and in my own mind a very important part of the Commission's report. I do hope that is an area which will be picked up and will be developed further.

**Professor Gallagher:** Can I just draw the Committee's attention in particular to the 11 recommendations in part four of the report which deal with interparliamentary relations beginning with the general principle of mutual respect and then a series of detailed recommendations about legislative processes, interparliamentary communications and parliamentary committees and practical recognition, all of which address very precisely the question which Mr Carmichael raises.

**Q163 David Mundell:** Just to follow up on that, I would be interested, Sir Kenneth, in how you see the report in terms of it being a package of measures or whether it is individual standalone measures because it certainly seems to me that the section on intergovernmental and interparliamentary relations is a standalone section which could actually be implemented now or very straightforwardly if the will is there to do it. We have already seen in relation to other parts of the report a suggestion from some that parts can be picked off and you can have one recommendation but not necessarily the others. I would be interested to know, firstly, how you see the report in terms of a package but, secondly, in the context of intergovernmental and interparliamentary relations that you have identified as one of the most important issues, that that is something that could go forward more quickly than other parts of the report.

**Sir Kenneth Calman:** I return to the point I made at the beginning. The Commission saw this as a package within which there are four big strands, one of which is intergovernmental relations. That underpins much of the other bits of the work of the Commission. Looking ahead, it is difficult to introduce a new financial package without having good intergovernmental relations, for example. It is difficult to think about some of the areas which might be further devolved without having good

interparliamentary, intergovernmental relations. Just by picking off bits here and there you do not get very far with this. This was meant to be a much wider review. I am sure they can be implemented at different rates, but the big picture has to be kept in mind at all times rather than just saying, "Let's have this little bit of the Scottish Parliament that we can change or this little bit here". The wider picture has to be kept in mind.

**Q164 David Mundell:** Just to clarify that, you seem to be suggesting that the intergovernmental and interparliamentary relations are a precursor to the implementation.

**Sir Kenneth Calman:** The rate at which you implement the 63 recommendations will vary depending on a variety of things. Things like intergovernmental and interparliamentary relations could be implemented faster than others and the Scottish Parliament issues are quite important. Some of the devolutionary changes which we put forward could once again be implemented at slightly different rates and there will be discussion required for some of these. The financial issue requires further discussion too but it is pretty central to the whole bit as well.

**Q165 Lindsay Roy:** I think rightly you highlight the need for a change in culture in the relationships. How strong was the evidence of a genuine desire to work together? I note in the papers a focus on structure and process, but would you also agree that there needs to be genuine goodwill for collaborative working for this to be carried forward in a positive way?

**Sir Kenneth Calman:** Indeed I do. If you read the report in detail you will see that very phrase that we took in evidence from you. Simply to have structures and processes in place does not change anything. They might help to change, but people need to believe that this is the right way to work together, to have a Scottish Parliament and a UK Parliament for the best for the people of Scotland and that cultural change is central to it, which is why we used your phrase within the report just to show that we took evidence and used it!

**Q166 Pete Wishart:** I was listening very carefully to some of the interviews you gave when you introduced your Commission's proposals and I want to take you back to a question that was raised by Mr Mundell about how a lot of this could be unravelled because there are certain things that could be done very, very quickly and there seems to be agreement on a whole range of recommendations, like devolving responsibility for airguns, electoral registration, drink-driving issues, that all these things can be done. Is there a particular view now you have suggested that there is willingness, certainly across the Scottish Parliament, to get these proposals in quickly and should be done as quickly as possible? I noticed the exact comment you made on *Newsnight* which was, "There are lots of bits which I think can be implemented quickly and easily without too much fuss". Is that the way that we

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should take up your proposals and that is the spirit in which we should now engage with some of these recommendations?

**Sir Kenneth Calman:** I am tempted to say, Chairman, that I am in huge admiration of the textual analysis that goes on in this Committee. The whole science of exegesis, which is a particular interest of mine, is one which is interesting. I think you can read too much into what I said is what I am saying. What I said was that there is a package and, just as I have mentioned to Mr Mundell, there is a package within which there are 63 recommendations and some of these will be possible to take forward faster than others, but if you just take one and say, "That's all we are doing" then you have missed the point.

**Q167 Pete Wishart:** Is there not a point, given there is overwhelming agreement on some of these recommendations, that we should now be implementing them as quickly as possible? The Scottish Government has already drawn up an order which shows how legislation will be taken forward in the Scottish Parliament. Last week in the legislative programme by the Prime Minister there was not any mention of your report and that must be profoundly disappointing to you, that it did not even merit one word in the course of the legislative programme for the course of the next year.

**Sir Kenneth Calman:** I think the statements of the Prime Minister and the Secretary of State have been very strongly supportive of this and I am not particularly disappointed that did not appear. I am absolutely delighted that people want to take forward the recommendations within this report. All I want to do is to make sure that if they take forward some, like airguns or whatever, they keep the others in mind too because without appropriate intergovernmental relations and changing the culture, as Mr Roy mentioned, in how the Scottish Parliament works and in the financial side of things then we have missed the point. We could have finished the report in about two weeks if all we wanted to do was to devolve airguns, but that was not what we wanted to do, that is a small part of a much bigger and wider change.

**Q168 Pete Wishart:** What we are hearing from you, Sir Kenneth, is it is one package, it is give all or take all. Is that what you are saying? Are there elements of this that you believe should be implemented quickly, if not almost immediately, or is it take it all or leave it all?

**Sir Kenneth Calman:** There are 63 recommendations and I suspect some of those can be implemented more rapidly than others, I agree entirely with you on that, that is not the issue. What I want to be sure is that we do not just pick off the four that seem quite interesting and then forget about some of the bigger issues which are behind the report otherwise I do not think the Commission would have spent as much time thinking about the other issues as well as the three or four that could be picked up quite quickly. It is a broader package. I can tell you that the

Commission would be more than delighted if all the recommendations were implemented, but we will wait and see how many are.

**Q169 Mr Wallace:** The question I was going to ask, Sir Kenneth, was you have referred a number of times already this morning to the need for this and the need to the extent of the remit that your Committee examined and some of the options, and you went for 63 recommendations as you just said in response to Mr Wishart when you were talking about airguns. In your deliberations how many people came forward and said, "We really need so many areas to be covered"? Of course, there was a need when it comes to certain policy issues, and you can argue the air rifle need and things like that, those were present day needs that were causing people stress and problems and needed to be tweaked and sorted out, but from all the witnesses you heard how many came forward with striking views that we needed new grand gestures on devolution and you had to come up with some recommendations that would solve the gaping hole in people's aspirations for devolution? I am trying to match that with the public out there and I do not really see that they have been queuing up to tell you that it has been so bad and I wanted to know how that played in your deliberations.

**Sir Kenneth Calman:** That is a very good point and you will see in the report we make the point that the Scotland Act 1998 was a pretty good Act, it covered much of the issues. I suppose when we began the report it was that aspect that I thought would be dominant but, in fact, it is less dominant than the intergovernmental relations and the financial accountability. If you take the intergovernmental relations bit, we did get quite a lot of evidence from a wide range of civic Scotland as well as MPs and MSPs but things could be better. On the financial side of things, we heard a great deal of evidence about that. In terms of what is devolved and what is reserved, we asked on two separate occasions widely across Scotland and essentially what you see is what we got. The Act was pretty good at the time.

**Professor Gallagher:** I wonder if I could add to that, Chairman, and draw Mr Wallace's attention to page 56 of the report, which I am sure he has looked at, table 2.1, which indicates the consistent set of answers over time to the constitutional preferences of Scottish people and the largest single group of preferences is that the Scottish Parliament should have more powers than it does now, but short of full independence of the UK.

**Q170 Mr Wallace:** We have all read the report.

**Professor Gallagher:** Good.

**Q171 Mr Wallace:** I know you keep referring to us as if we have not, but we have.

**Professor Gallagher:** I think I said—

**Q172 Mr Wallace:** It is rather patronising. What I would say is what I have also read in the report is nearly every beginning of every chapter is a statement that devolution has been a great success,

whether it is your expert group or your advisory group on financial issues, there is a whole paragraph about how successful it is and then you go on further to talk about perhaps trying to make it a little bit better. There seems to be a slight contradiction, that there is a set of views that devolution has been a successful progress but there are no massive gaping gaps there and then we get your own recommendations and some of them are quite grand gestures.

**Sir Kenneth Calman:** For me, as I step back, there are two big gaps in devolution. First of all, I think most people think it has been a success and almost all of the evidence we got was positive. The two big gaps were the interparliamentary and intergovernmental relations and in a sense that was a slight surprise to me not having been involved in it and it has been quite interesting. The second thing was the financial issues where there is a real wish that Scotland did have some more accountability in relation to the financial side of things, and that was part of the remit. These were the two substantial areas. The bit about how the Scottish Parliament works tidies up some things which we got very clearly and very early on from previous Presiding Officers and officials. These are the two big bits, not the reserved and devolved boundaries bit.

**Q173 Mr Davidson:** Can I just come back to this question of whether or not this is a package or a menu and the issue of implementation. I thought it was very interesting at the beginning when you said that you had held back your recommendations until you had them all to make sure that none of them were incompatible. That is not the same thing, of course, as saying that they all have to be taken together. It was interesting as well that you mentioned that you were waiting with interest to see how many of them are taken up. The cherry pickers are obviously out in force wanting to select the bits that they like and ram them through as quickly as possible, and I am tempted by the view that there should be a period of reflection and there should be an assessment of the extent to which some of these can be separated because there are some things in here that I am very supportive of and others where my enthusiasm is less than total. What I am not clear about is the extent to which they do all actually hang together. I was wondering about the extent to which you and your colleagues will be willing to work with the group that has been set up by the Secretary of State and the other main Unionist parties to discuss the questions of implementation and whether or not they all do hang together and are all essential.

**Sir Kenneth Calman:** The point I made about not agreeing one until we had agreed them all, we wanted to be sure that in terms of intergovernmental relations, the financial package or whatever, that there were no incompatibilities, and that was what we did. As to whether the Commission or myself could be part of or linked to the steering group or give advice to it, I have no views on that at all. The Commission has now finished, the secretarial staff have almost completely disappeared. My friend,

Professor Gallagher, is still around but there is no Commission any more, in a sense, to answer your question.

**Q174 Mr Davidson:** Given that the Commission as a whole has disappeared you still survive and you are the only man left standing at the end of the exercise it would appear. One of the things that I am not entirely clear about on some of these things is the question of transfer of powers to Edinburgh. For example, with airguns, with speed limits, I wonder why you saw Edinburgh as being the logical stopping off point when in many cases it would have been entirely feasible to have transferred these powers to local authorities. Did you at any stage during your deliberations examine the governance of Scotland in the context of over-centralisation in Edinburgh? As we sit here in the centre of the government of Glasgow it is quite clear that there is too much power in Edinburgh and there ought to be a transfer of functions and responsibilities to local authorities, particularly Glasgow.

**Sir Kenneth Calman:** I may not answer that question.

**Q175 Mr Davidson:** I just wanted to have it on the record again. A good argument can do with repeating. Did you discuss things like airguns, for example, being devolved further to local authorities and, if not, why not?

**Sir Kenneth Calman:** The issue of local authorities came up on a very regular basis as we went round Scotland in particular, and the relationship between the Scottish Parliament and local authorities. It was the bit that came up all the time. It came up much more regularly than you might expect. We did have that opportunity, but we were aware that local authorities had been reviewed, and were being reviewed, and, therefore, it was difficult for us to get involved in that. The principle we worked on more than anything was the principle of subsidiarity: if something could be devolved then why not. These were the areas that we thought could be devolved relatively straightforwardly without too much difficulty. You are quite right, I think, to consider a pause for reflection. If I draw your attention to one of the recommendations on animal health, for example, the recommendation on animal health says that the Scottish Parliament should have responsibility for the funding of animal health problems and general outbreaks of infection, and foot and mouth was the obvious one. Secondly, that if there are exotic diseases, of which Bluetongue would be a good example, then that should be a UK-wide responsibility for funding if there is a problem. To us, that seemed to make sense. If I was you or in the Scottish Government I would want to reflect on that in terms of what does that mean, how can it be implemented, are there funds being transferred, are we sure of what we mean by an exotic disease so that we do not get into difficulties in years ahead. There is an opportunity to reflect on some of these slightly more complex recommendations which are important, but if they were tackled on a cross-Scotland basis I think it could be much more

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powerful. I will give you one other example, again in the agricultural area. A number of Scottish institutions, Scottish Agricultural College, for example, Moredun Research Institute, cannot claim Research Council funding because they are funded in a slightly different way. They have first class research and it seems like a really good idea that they should. If there was a broader Scottish consensus on that, which we recommend—this is the intergovernmental bit—and an approach made to the UK Government about that, because there is a minister who deals with that kind of thing, then that change can come about. That needs a bit of reflection, a bit of talking about, a bit of getting the Scottish act together on that, and that may be a very significant change for a number of research institutions in Scotland.

**Q176 Chairman:** Mr Davidson has mentioned a steering group proposed by the Secretary of State for Scotland to look at the implementation of your recommendations. I just want to ask you do you welcome this initiative and, secondly, will you be working with this steering group?

**Sir Kenneth Calman:** The first and obvious thing is I certainly welcome it. I think it is more than the Commission might have hoped for. The fact that it got a debate in the Scottish Parliament, a very positive debate in Parliament, before the session had finished is very positive and the statements from the Secretary of State and the Prime Minister have also been very positive. I certainly welcome it, there is no question about that. The role of either the Chairman of the Commission or, indeed, the Commission itself is the response I gave to Mr Davidson, I do not think we have a role in that. If I was invited to speak to that steering group I am sure I would be happy to do so, but I do not see it as a role. This is over to you now to take forward. The Scottish Affairs Committee is strongly mentioned in this report and, indeed, I think has an increasingly important role.

**Q177 Mr Davidson:** Can I turn now to the question of finance and the major proposal for the power to vary income tax. Given that the Scottish Parliament already has the power to vary income tax by 3p in the pound but has not, to what extent is the power to vary it by 10p in the pound likely to be used, firstly, and, secondly, increase any degree of accountability that there might be?

**Sir Kenneth Calman:** That is a very important point and it is one which we talked around quite a lot. The current Scottish variable rate of plus or minus 3% has not been used, as you rightly record, because in one sense there is no need to use it, they do not have to make a decision. The proposals that we put forward mean that the Scottish Parliament would have to make a decision whether it is back up to 10p or changed in any other way, it has to make a decision. It has to make a decision because the block grant is reduced by an appropriate amount and it has to fill that gap up again. By doing that, by allowing the Scottish Parliament to decide whether it is 10p, 9p, 11p, whatever it decides, that gives them very real accountability.

**Q178 Mr Davidson:** I fail to grasp this distinction that you are making between not having to make a decision on the 3p and having to make a decision on the 10p because there will be an automatic default position, will there not, whereby it will be the same as in the rest of the United Kingdom and it will require positive change to alter the position from the rest of the UK position in exactly the same way as there is now? I do not see people in the streets being aware that there is this change in simply a procedural matter. I fail to understand actually how this would really make the Scottish Parliament much more accountable unless there was a genuine ongoing debate at the present time which was then likely to result in a change, but since they have got that power anyway I do not quite see that there is any momentum that would bring us to a position where the battle lines were drawn clearly.

**Sir Kenneth Calman:** I think I disagree with that. I disagree because the current position, plus or minus 3%, does not need to be enacted at all and nothing happens if the Scottish Parliament does not do anything about it. With the proposal that we put forward if they do not make a decision then Scotland loses 10p in the pound on its income tax and that would not be a good thing for Scotland. It has to make a decision and it could make it back up to what it is, but at least it will have made that decision and it would have to justify to both Parliament and the electorate what it is they want to use that funding for. That was the accountability point.

**Q179 Mr Wallace:** Sir Kenneth, I am slightly confused because the recommendation implies that the block grant is predominantly made up of income tax receipts and the reason I say that is if I pay my income tax in England and live in Scotland then at the moment I contribute to the national debt, some of my income tax goes to the national debt. If I take off 10p and give Scotland a Scottish block based on Barnett and then ask the Scottish Parliament to make it up the accountability is still not quite there because Scottish people will pay income tax at the 10p rate, let us say, but that will be entirely protected from UK Government debt so they can pay into the Scottish block and just top it up but they will not be contributing in the same way. The fact that your block seems to be made up of a subsidy plus 10p from your Scottish Parliament budget seems to be a bit simplistic to me.

**Sir Kenneth Calman:** I am not sure if I follow the reasoning there. We have always made the assumption that tax raised in Scotland would be part of the UK tax. That is what it is at the moment, it goes to the Treasury and then that is distributed in whatever way. What this allows the people in Scotland to do is to see a proportion of that coming back into Scotland. The proportion taken away from the block grant gives some real accountability in terms of what happens. At the moment, as you know very well, what happens is the block grant comes and funds the Scottish Parliament's work. It comes on an automatic basis and the Scottish Parliament can spend it in any way that it chooses. But there is no way in which it changes the amount

and there is no real accountability. There is accountability for spending but not for raising the funds. This is an opportunity to get some accountability for raising the funds as well as for spending.

**Professor Gallagher:** I am not sure if I quite understand Mr Wallace's question, but it is worth remembering, as Sir Kenneth says, that at the moment the block grant for the Scottish Parliament is funded by taxation raised in Scotland just as it is funded by taxation raised elsewhere in the UK, whether it is income tax or VAT or National Insurance contributions, or whatever it might be. The Commission's recommendation is designed, as Sir Kenneth says, to ensure that the Scottish Parliament as well as having to make a spending decision has to make at the same time a taxing decision. There is no sensible possibility within the UK of having a spending decision and a taxing decision which are exactly the same, it is always going to be, as it is in every country in the world, that a level of government that is not a national government is partly funded by its own taxation decisions and partly funded by subventions, if you like, from a different level of government. In the jargon that is called a vertical fiscal imbalance and you see it across the world, every sub-national level of government depends to a greater or lesser degree on grants or sometimes assigned revenues from the higher level of government. The trick in these systems is to find a way of doing that which produces the right balance, as this report says at great length, between accountability at the margin for both tax and spend, efficiency in making the system both administratively and economically efficient, and equity, that is to say the public resources which are collected centrally are redistributed across the UK on a basis which at least allows for the possibility of the recognition of a degree of equity as well, and this is quite a difficult balance to get. The recommendations are intended to do that.

**Q180 Mr Wallace:** I think what I was trying to imply is I understand the simplistic proposition you made, which is effectively that if the Scottish Government's behaviour directly affects the number of people employed, for example, in Scotland it would have to face the consequences, and therefore be accountable, but government administration can affect tax revenues not just in income, the number of people employed, it could take that 10p, that money, and its direct actions could damage corporation tax receipts in Scotland rather than employment, it could damage sales, VAT receipts, and, therefore, it is not asymmetrical accountability, it is not accountable because it may generate debt elsewhere in the public purse that will not be consequential into Scotland. Do you see what I am saying?

**Professor Gallagher:** I think I understand the point you are making. I distinguish accountability and, to use the phrase in the report, having a stake in the performance of the Scottish economy. You are right to say that the extent to which the Scottish Parliament depends on tax revenues generated in Scotland and, therefore, on the performance of the

Scottish economy, is a little bit about accountability, but the real accountability is when the Parliament and the administration says to the voters, "We propose to spend this and in consequence of that we propose to tax you for that". We are sitting in the City Chambers here and a local authority does that all the time and addresses the same issue, the balance between grant and locally raised revenue. One of the thrusts behind the Commission's recommendations is to point out that a level of administration, of government, which is responsible only for spending and not for taxation lacks that kind of accountability, which is accountability not via the engine of economic growth but a direct accountability to the voters for the amount of money which is being taken from them, in return for which they are receiving services. You are right to say that of course there is a link between the decisions of the Scottish Parliament, the Scottish ministers and the performance of the Scottish economy, but that is true today. In fact, if you look at the issues which are important in the long run for the Scottish economy, issues about investment in infrastructure, investment in skills and training, those are already at the hands of Scottish ministers. What is not at their hands is the financial accountability for the way in which they exercise that. I accept that it is entirely possible that an administration, indeed any level of government, could do something either unwise or, indeed, malicious even, if you like, but all politicians are heavily incentivised to promote economic growth. Remember Bill Clinton's famous quote, "It's the economy, stupid". That is true already and this system gives it slightly more of an edge for the Scottish Parliament.

**Sir Kenneth Calman:** If I can put it another way, the issue of unintended consequences in making the wrong decisions or decisions which cover wider economic impact were certainly considered by the Commission.

**Q181 Mr Wallace:** The point is in parts of Scotland you may have a large public sector employer, or private sector, so there are all sorts of issues that could damage the tax receipts. Your answer seems to me to be saying the concept of the income tax proposal is about buying a stake in the Scottish Parliament as an elector, as a taxpayer, and feeling part of it, but it is not really making politicians that much more accountable when they already have the option of the 3p. The current system accepts it is a block, it does not pretend to be anything else. You did the income tax but then you came up with the Scottish savings tax proposals which abandoned the geographic link and went down the proportionate route which somehow gets us back to where we are going.

**Professor Gallagher:** You are right to raise that issue which is one that has not received much consideration. The Commission's line of argument was that the tax that was most suitable for devolution was the one which already had a degree of devolution, to which Mr Davidson referred, that is to say the Scottish variable rate. It was most

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suitable because it was not like corporation tax or VAT or duties, one where devolution would introduce substantial economic distortions, and it was one which produced a substantial degree of revenue. There is quite a lot of money brought in by income tax and, therefore, the revenue that could be produced is significant in relation to the size of the Scottish block. The Commission then had to consider the fact that income tax, broadly speaking, breaks down into basic rate income tax, the higher rate, or rates as they now are, and the savings rate of income tax. The Commission's recommendation, as you know, is that the Scottish Parliament should be able to have an influence over the basic and higher rates. In principle, the Commission thought it would be good if the Scottish Parliament also had an influence over the savings rate. However, the practicalities of that are such that it would require every bank and savings institution to identify its customers' domicile for tax purposes and that clearly is not practical, so the recommendation instead was that the yield of income tax on savings should be split between the two Parliaments on an assigned basis. The logic for that is it then completes the sharing of the income tax base between the two Parliaments. It means that all elements of income tax would be shared between the two Parliaments. There is no suggestion, essentially for good practical reasons, that the rate of tax on interest income, savings income, should be variable throughout the UK. Does that help?

**Q182 Mr Wallace:** Yes. You used the word "assigned" and you can argue that the Barnett Formula is an assigned formula, it assigns money. The idea that by some form of assignment you would split savings income, tax receipts, to Scotland, how would it be assigned, based on the same formula as the Barnett Formula, based on per head of population?

**Professor Gallagher:** That is another helpful issue to explain. When we talk about assignment, in this context it is something of a term of art and it means the assignment of tax receipts to a particular level of government. For example, to give you a bit of background on this, if you were to go to Germany you would find that a share of the yield of value added tax is assigned to the Länder, that is to say they get that stream of revenue independent of decision from the central government. It is practically a constitutional issue in Germany. There are probably two equivalents in the UK. One is a certain proportion of VAT is, of course, assigned to support the EU institutions. It is not a decision of the UK Government how much they get; they get a small share of the VAT. Similarly, the TV licence is, if you like, an assigned tax, it is an impost on the population which goes to fund a particular institution. Assignment is a term we use in the context of taxation. In general, the Commission looked at assigned taxation and concluded it did not, as a general rule, produce accountability. The reason it did not produce accountability was that although it would link the budget of the Scottish Parliament

to the performance of the Scottish economy, which was the kind of accountability you were talking about earlier on, it does not produce, as you put it, a stake for the taxpayer in the Parliament because the taxpayer has no say and the Parliament has no say in the rate or the base, it is simply the recipient of a stream of income. That is the assignment issue. In practical terms almost all assignment, unless it is to be done in an enormously complex manner, involves a rough formula and the formula which would have to be devised for the assignment of savings income would be an estimate of the number and wealth or income of savers in Scotland. Further detailed work would have to be done.

**Pete Wishart:** I think it would be fair to say that the financial aspects of your report, Sir Kenneth, are probably the most controversial and I think it is also fair to say it has received a pretty much mixed response from the media, business and community groups. What was wrong with this earlier solution of full fiscal responsibility and accountability to Parliament? I am also interested in some of the dynamic debate that went on when you were coming up with your tax plans. Did you feel under pressure from some of the London-based parties about making sure that financial responsibility was kept off the agenda? Why did you go for this halfway house when there was a much more robust solution in making sure that Parliament was responsible for the taxes raised in the programmes that you pursued?

**Mr Carmichael:** Chairman, before the witness answers that question, I think in fairness to him it ought to be explained what is meant by some of the question. What is a London-based party, for example?

**Mr Davidson:** Not you!

**Pete Wishart:** I ask the questions.

**Q183 Mr Carmichael:** If you are going to ask them you might as well ask them in a form that can be understood.

**Sir Kenneth Calman:** First of all, I should have said at the beginning that this was a unanimous report; that is the first point. We debated long and hard about many of these issues which you have raised. The issue of full fiscal autonomy, I should perhaps ask you to define that for me, please, before I answer the question.

**Q184 Pete Wishart:** I think it is generally understood.

**Sir Kenneth Calman:** It is not generally understood which is why I want you to answer the question. What do you mean by it?

**Q185 Pete Wishart:** What we mean by full fiscal autonomy is that the Scottish Parliament is responsible for all the tax raising powers and spend of the Scottish Government. What you are proposing is—

**Sir Kenneth Calman:** And no other taxes or any other funding, that is it?

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**Q186 Pete Wishart:** This is interesting for me because what this suggests is that you totally ruled this out and you came to your own conclusion about this, so if you do not understand it and have got no conception of it—

**Sir Kenneth Calman:** I think there are a number of ways in which the term “full fiscal autonomy” can be used. I am simply asking you to tell me what it is. You have told me what it is but you have not expanded in terms of any other funding that would come or not come to Scotland.

**Q187 Pete Wishart:** The way this usually works is you come here to give evidence and we ask the questions. That is the traditional manner of a select committee.

**Sir Kenneth Calman:** I understand that.

**Pete Wishart:** I think that is quite an interesting question you have asked me and what interests me is what do you understand about full fiscal autonomy. What is your understanding of “full fiscal autonomy”?

**Q188 Mr Carmichael:** What is your understanding of his understanding?

**Sir Kenneth Calman:** I think full fiscal autonomy implies that Scotland raises all the money that it needs to operate as an independent state.

**Q189 Pete Wishart:** So you associate full fiscal autonomy with independence, that is your view?

**Sir Kenneth Calman:** No, I do not necessarily do that but that is what it would mean, I think, unless you tell me otherwise. It is one of the problems that I had with this in terms of defining what it means.

**Q190 Pete Wishart:** This is fascinating because I think that reinforces a lot of the views that we had that there was never going to be true consideration by the Commission.

**Sir Kenneth Calman:** It was very much an issue that we discussed but we did have difficulty understanding what it was.

**Chairman:** What is your question?

**Q191 Pete Wishart:** My question is when you considered fiscal autonomy, on the understanding that you have and I have, why was it rejected as a basic premise?

**Sir Kenneth Calman:** That is an easy question.

**Q192 Pete Wishart:** What we seem to have in this little exchange is a sense of hostility to the whole concept from yourself, Sir Kenneth. I get the sense that when you do not understand what the concept is perhaps you are accusing me of not understanding what the concept is, but it is a bit more scary to think that you do not. My understanding and assumption from this exchange is this was never really an option at all that was going to be pursued and considered. My question is what happened in terms of the discussion and dynamic debate when it came to considering these issues?

**Professor Gallagher:** It might help Mr Wishart if he wants to understand the Commission’s consideration of the issues of fiscal autonomy and accountability to refer to chapter three of the report, and in particular to paragraphs 3.55 and onwards which consider various options for the funding of sub-national governments in other places, including consideration of the system in the Basque Country, which is often held up as an example, and I put quotation marks around this quite deliberately, “of full fiscal autonomy”. The consideration there explains why the Commission did not think it was appropriate for Scotland. As the Chairman says, I do not know whether the system in the Basque Country is the one which Mr Wishart regards as full fiscal autonomy, but that is one of the issues that the Commission looked at in some detail.

**Sir Kenneth Calman:** The issue was debated. I asked the question back because I think it is quite important that there is some clarity in some of the words used in response to the Commission’s report and I got a very clear response, thank you.

**David Mundell:** Chairman, do you not think that it should just be on the record that the Scottish Government and Scottish National Party refused to contribute to the Commission’s work and would have had the opportunity to set forward all their views on full fiscal autonomy at that time but declined to take that opportunity.

**Mr Davidson:** Surely that was not true?

**David Mundell:** It was.

**Q193 Mr Davidson:** Oh, surely not!

**Sir Kenneth Calman:** There was another implication in Mr Wishart’s comment that the Commission had been under pressure by political parties other than the Scottish National Party to come to a particular conclusion. That was certainly not the case and certainly I would not have remained as Chairman if there had been any pressure whatsoever to take a particular line on this. This was a unanimous report. The majority of the Commission have no particular affiliation. It would have been quite inappropriate if there had been any pressure at all to take a line on a particular issue.

**Chairman:** I hope that satisfies you, Mr Wishart, that there was no applied pressure on the Commission and they would not take it anyway. We should respect their credibility.

**Pete Wishart:** Chairman, with respect, I think the questions are to our witnesses and our guests and we should be directed to that. I do not know the value of these types of cross-interrogations of my questions to our witnesses. If we are going to have a committee conducted on this sort of basis then let us set some ground rules.

**Chairman:** Can we move on now.

**Q194 Lindsay Roy:** I think what we have just emphasised is the need for collaboration and proper liaison. Particularly if there is a variation from the 10p which brings greater complexity into the tax system, what assessment have you made of any additional costs in setting up the new Scottish rate of income tax?



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**Sir Kenneth Calman:** Again, that is an important point which we looked at. Part of that was covered by the existing plus or minus 3% rate and the cost would be in a similar kind of vein. The other question which relates to that in a sense is what about the Treasury and HMRC and will they not be part of it. I just need to refer you to the statement by the Secretary of State for Scotland that the Government believe that financial accountability could be achieved by moving to a system where a greater proportion of the Scottish Parliament's budget comes from their own decisions and the Government will assess and explore how to implement it. There is an agreement from the Government that they will take this forward and that is quite important.

**Q195 Lindsay Roy:** So if there are additional costs they would be picked up through the block grant or additional funding from the Scottish Government or from somewhere else because of your recognition that there may be additional cost?

**Sir Kenneth Calman:** There certainly is, yes.

**Q196 Mr Wallace:** I am just going to follow into the administrative costs of Government and the question of PAYE. Obviously there are possible scenarios where Scottish companies would have to set up a sort of twin-track PAYE method. Is that something that has raised its head only since your publication? I notice that the CBI have been critical of the cost of that, but I also notice that they were part of your contributors in evidence. Has it only raised its head after the publication? Secondly, did you actually look at trying to quantify how much that might cost and what about English firms, firms based in England, having to run a twin-track the other way round as well?

**Sir Kenneth Calman:** That is a very useful point. Again, this was raised within the Commission. Iain McMillan, a member of the Commission, is the Director of CBI Scotland and was very much part of that kind of discussion. I am not particularly surprised that people want to question this. For me, this is a very healthy aspect of reaction to the Commission's report, that people want to ask further questions about how it might operate, and we certainly did discuss that with Scottish or English firms with employees in both countries and how that would be sorted out. There are ways in which that can be done and Professor Gallagher might take that up in a moment or two. There are arrangements by which that could be done but it is one of the complexities of doing this, so we were certainly very aware of that.

**Professor Gallagher:** It is worth adding only this: as a matter of principle the legislative framework already exists for different income tax rates to be applied to different parts of the UK, that is the Scottish variable rate. Various estimates have been made, which are recorded in the report and elsewhere, of the compliance and administrative costs of that and the compliance and administrative costs of the Commission's recommendations which will not be significantly different and they are certainly not zero.

You are right to identify that there is a compliance cost for companies if they have to apply different rates to different employees depending on where the employee lives. There will be substantial numbers of large companies that will have employees in different parts of the UK and, therefore, the administrative task will fall upon them. One of the Commission's recommendations is that the financial recommendations should be implemented very carefully in stages, and obviously an early stage of that would be to work with employers and others in the tax industry to do that in a way with the least possible disruption, but there will be administrative costs.

**Q197 Mr Wallace:** In the evidence you got from Members of the Scottish Parliament who had previously been ministers or part of the previous administration, was that ever presented as a reason why they had not used that? I presume you did ask a number of people why they did not use the Scottish variable rate in the past. Mr Davidson pointed out that it has been in existence since 1999 and has never been used. Was that a factor in why it has never been used? Has the administrative burden been the reason?

**Professor Gallagher:** There was some evidence, and of course it is very difficult to define the evidence that, as it were, proves a negative as to why something has not happened as opposed to why something has. As it says in the report, the most obvious reason, and it is a blindingly obvious reason, why the SVR was never used was that there was never a consensus among the Scottish parties to use it. That may be a statement of the obvious but it is actually the political reality. There were three other arguments advanced, I think. One was that the growth in public spending over the first 10 years of devolution has been very substantial, and certainly for the first two terms of the Scottish Parliament the issue was that there were under-spends in the budget rather than pressures against the budget so, as it were, the pressure to use the Scottish variable rate to generate additional revenue was very limited. The third reason was not so much the administrative cost but the political cost. It is a big thing to take an active step to change taxes and no administration thought that the revenue they would get from that was of sufficient benefit in those circumstances to offset the shock of doing so.

**Q198 David Mundell:** Just on the issue of timing, effectively, and from the evidence you have been giving, you are suggesting if the tax powers were to be changed that would be phased in over a period of time in your anticipation? What sort of period and what sort of transitional arrangements would you envisage in that period?

**Sir Kenneth Calman:** Jim can give you the details in a moment. We were very concerned that although we felt this was a very positive way of getting greater accountability, the last thing we wanted was to make it very difficult in terms of Scottish budgetary terms to take things forward. For that reason there would

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need to be quite a lot of work done in terms of how it would operate and maybe some dry runs to make sure that it worked properly, there were no unintended consequences in doing this. We started the report in early 2008 and the economic circumstances in mid-2009 are quite different. We still think this is an entirely appropriate way forward but it is a cautious time and we need to be sure that we do not do things which would be inappropriate for Scotland as part of it.

**Professor Gallagher:** As part of chapter three of the report sets out, there are two sets of risks to be managed on implementation. The first is what you might call a set of administrative risks. This requires a disentangling of the UK tax system which is already possible in principle because of the SVR though it has not yet happened in practice. Although we have really quite good data on what the tax yield in Scotland is, it has never been used in anger, as it were, it has been used illustratively, and I am referring to the publication, *Government Expenditure and Revenue in Scotland* now produced by the Scottish Government and produced by the UK Government since the 1990s. What the Commission were very clear on was that the introduction of this system should not as a result of some uncertainty in the data produce either a windfall benefit to the Scottish block or an adverse shock that was not justified by the data. That administrative risk has to be managed and, as Sir Kenneth said, there is also the risk of unintended consequences at a more economic level. This is all set out in paragraphs 3.203–3.205 of the report which suggests beginning with a shadow operation to check out the data to improve its quality and to begin the process of developing the necessary systems both of tax collection and budgetary decision. Both of those are important and they should be done, it is recommended, step-by-step. That will certainly take a number of years, there is no doubt about that.

**Q199 David Mundell:** It is also at the stage of that timetable, it is not based on a Treasury analysis, is it? The stage now which those recommendations are at would be to go into an analysis by the UK Treasury to actually formulate their view on the Commission's propositions.

**Professor Gallagher:** That is right.

**Q200 David Mundell:** Those are not necessarily the views of the Treasury.

**Professor Gallagher:** If I was to tell you that the Treasury views on anything were cautious I would not be wrong. That is entirely appropriate for a finance ministry. I think Sir Kenneth drew your attention to the statement by the Secretary of State for Scotland on behalf of the Government in which they in particular welcome the recommendation for phasing and talk about how they are going to assess the recommendations and consider how to implement them, and I am in no doubt that phasing will be a part of that.

**Q201 David Mundell:** Finally on this topic, you also predicated the tax part of the report on a view that the needs assessment within the United Kingdom needed to be changed. Combining the scale of the change which you are referring to in the tax powers and a needs assessment at the same time is an enormous task and would require very significant transitional arrangements.

**Sir Kenneth Calman:** I think that is absolutely right. There are two points. In terms of the block grant and how it is calculated, that could go at a different rate. I just make the difference between Scotland having a block grant and how that block grant is calculated. There is a lot of consensus that a block grant is appropriate. It may not be calculated in the appropriate way within the Barnett Formula and that might need to be more needs-based, but that is not something the Commission could have done because it is very much UK-wide. The central issue to all of this is a political question and that is whether Scotland should remain part of a system which gets a block grant to fund the Parliament for its activities or whether there should be greater accountability within that funding. This proposal is a step that takes the Scottish Parliament into an area of much greater accountability for the funding that it raises, but retains the block grant as an important component of that. That block grant might not in future be calculated using the Barnett Formula, but that is a separate and important question.

**Q202 Mr Davidson:** I wonder if I could move beyond the transition period for a moment. If we moved into Calman land, so to speak, where you have got the 10p rate, what I want to clarify is what the impact of, say, an economic recession would be. In an economic recession, as I understand it, the income from income tax would fall. Unless you have some countervailing mechanism whereby Barnett, or son or daughter of Barnett, compensates for that what you will then have is a situation which is not countercyclical but actually exaggerates the cycle because in a time of recession when income falls the cut in the income for the Scottish Government presumably will fall disproportionately, which is exactly the opposite of what Keynesian economics would tell us, so you would have the money when you did not need it and you would have a shortfall of money when you did need it. How would your system allow for that?

**Sir Kenneth Calman:** That is an issue which Jim will pick up in a moment. Just to remind you that Calman is a Gaelic word which is a term for peace, so Calman land would be a land of peace and happiness.

**Q203 Mr Davidson:** I never doubted that for a moment! I never doubted that.

**Sir Kenneth Calman:** I thought you should just know that. This is an issue which clearly the Commission thought about quite hard because the problems of great swings backwards and forwards is one of the reasons why the block grant, however it is calculated, remains very important to Scotland and its funding.

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**Professor Gallagher:** This is an important question. The first and most important thing to say about it is that it is already true to some degree just now, the public expenditure in Scotland is dependent on some tax raised in Scotland at present, and I refer in particular to local taxes like business rates which are cyclical, as other taxes are. The second issue is that the Commission's recommendations—

**Q204 Mr Davidson:** Sorry, can I just clarify that. The business rate by and large, while it is cyclical, would that not be compensated for by the Barnett Formula?

**Professor Gallagher:** No, absolutely not, and never has been. The second thing to point out is that if the Commission's recommendations are implemented in full, about two-thirds of the revenue spend of the Scottish Government/Scottish Parliament would still be provided for by a block grant, which of course would be financed by UK taxation, and to the extent that the UK was running a countercyclical policy could be financed by UK borrowing. The Commission's report says that the management of the UK economy, in particular the extent to which you choose to run cyclical or countercyclical policies, is a decision which can only realistically be taken by the UK Government because we have a single integrated economy. What you cannot do in the Commission's view is run a separate macroeconomic policy for one part of an economic union. Finally, there is an explicit reference in the Commission's report which says that the cyclical nature of public spending is an issue for the UK to manage and not for the Scottish administration.

**Q205 Mr Davidson:** I can understand that, but if what you are saying is that the fall in the income to the Scottish Parliament as a result of the fall in income tax would be balanced by countervailing economic policy from a Westminster Government, that undermines the link of accountability because the Scottish Parliament then effectively would be bailed out as a result of countervailing policy applied by a Westminster Government and it is not clear then that the Scottish Parliament would be in a position where they were genuinely the authors of their good fortune or misfortune.

**Professor Gallagher:** You are raising essentially the same issue Mr Wallace raised earlier on, and that is, of course, there are two parallel things going on here. One is the extent to which the fortunes of the Scottish economy, whether they are cyclical fortunes or secular long-term trend fortunes, affect the budget of the Scottish Parliament, and that is a limited form of accountability, the real form of accountability is a decision by the Parliament to extract money from taxpayers at the same time as it is redistributing taxpayers' money in the form of spending decisions. You are right to say, however, to the extent that the Scottish Parliament is dependent on revenues generated in Scotland it could be vulnerable to cyclical changes. Whether it would be affected by any decisions that the UK took in the distribution of grant and what the UK decisions are would be up to the UK Government at the time. The

one thing the Commission does recommend is that grant to the Scottish Parliament is based on need because the funding system is one which seeks to balance equity and accountability and the view expressed by the Commission on the current system is that it does not do that successfully.

**Q206 Mr Davidson:** If I can just follow that up now you have taken us on to the needs assessment issue. How soon would you hope to see son or daughter of Barnett emerging? Did you discuss that? Did you have a timetable? How would that mesh in with any other changes that you are proposing?

**Sir Kenneth Calman:** We had no timetable for that partly because the Welsh are looking at a similar thing and the House of Lords is looking at something very similar and our assumption is that it will all come together at some point and people would agree that the formula needed to be changed. How you do it would be some other body's function. In the meantime, to return to Mr Wallace's point, the Barnett Formula would be used to continue to provide a block grant for Scotland and subsequently it would then be changed if that was approved, but there is no timetable certainly from the Commission.

**Q207 Chairman:** One of the major issues in Scotland is about energy, and of course you are well aware there are disagreements between the Scottish and British Governments on planning and nuclear energy. Why did you not touch on this subject at all?

**Sir Kenneth Calman:** I think that is quite an important issue. We saw it as a specific example of a general issue. The general issue is that there will always be disagreements between the two Parliaments. We did not think the way to deal with that was to reserve or devolve all the time so every five years you change things just because there were different views. The way to deal with that is through an intergovernmental process which takes it forward, and that is why we discussed that specific one in great detail but did not take it any further because it is a specific issue about two governments disagreeing and it just happens to be that subject at the moment but it could be something else. If the answer to that is always to devolve or reserve, that seems to me not a particularly mature way of handling disagreements, there are other ways of doing that, hence the importance of the intergovernmental process.

**Q208 Mr Davidson:** I wonder if I could seek further clarification on that. It is entirely possible that just men and women of good spirit coming together cannot resolve some of these disagreements. If you have a Westminster Government elected on a mandate, say to introduce nuclear power, and a Scottish Government elected on a mandate to oppose it, there is no way in which meeting together and having the right structures is going to resolve that. I am not quite sure that you have done us a service by leaving high in the air the present situation which seems to me that the Scottish Parliament's planning powers trump the UK Government's powers on energy. It seems to be an unintended

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consequence of the Devolution Settlement which you have not addressed. Can you clarify this question of one power trumping another unexpectedly? Did you address that as a general issue?

**Sir Kenneth Calman:** Absolutely, and there are two ways in which we discussed it in detail. First of all, there is the Sewel Motion which allows one way to go and we recommended the other way round, that is the Scottish Parliament should be able to make some motions the other way round too. There are ways in which the two get together. I return to the basic issue that if you think there is a possible disagreement I am not sure the solution is simply to reserve all policy referring to energy, including planning, back to the Westminster Parliament. I think that would have caused another kind of discussion. There are ways in which this issue can be debated and there will be others in the future. Whether it is reserved or devolved is not an answer to the issue, there has to be a third way for some of these issues in which there is real debate and discussion.

**Professor Gallagher:** Chairman, it might be helpful just to fill in two elements of background. The first is a slightly technical one in relation to energy. Mr Davidson is right to describe this in broad terms as a planning issue. At a purely technical level the powers which are under discussion which are devolved are not, in fact, planning powers, they are powers under the Electricity Act to grant consents for certain kinds of generating capacity. It is interesting to note that that is an executive devolution rather than a legislative devolution. That is a piece of technical background. At a more general level if I can give an illustration of the point which Sir Kenneth refers to. During the time in which the Commission was sitting there was an apparently substantial disagreement between the UK and Scottish Governments over the question of legislation of the marine environment; not quite as high profile as nuclear power, I agree, but nevertheless a matter of some import at the time. The Commission referred to this at several points during its discussion of intergovernmental relations because it was a live issue as the Commission was sitting. Through the existing intergovernmental processes a set of compromises and accommodations were reached which enabled the Scottish Government and the Scottish Parliament, and the UK Government and Parliament, to agree the terms on which they would work together in what is admittedly a slightly complex way so that both could achieve the aims they wanted. It would be an error to say that because that has been possible in one case it must be possible in every case, but the fact that it has been possible in one case suggests there may be scope in others as well.

**Q209 Mr Davidson:** I am afraid I do not quite share the enthusiasm for the third way, and I never did, I must confess. You are assuming in these circumstances that there is no such thing as a zero-sum game or that all these things can be fudged. Let us look at Trident, for example, where clearly there are different perspectives being taken north and

south of the border, or on a UK basis as distinct from a Scottish Government view. It is difficult to see how that can be squared. If there are powers to block and, in a sense, also a mandate to proceed, I am not clear that simply just meeting together and trying to be all nice and chummy is the way forward because if you compromise and there is a clear mandate then effectively whoever compromises can then be accused of having sold out an electoral mandate that they have. In these circumstances is it not necessary to have some clarity about which Parliament and which institution or which power would override the other because at the moment it seems to be potentially unclear?

**Sir Kenneth Calman:** A good start would be people talking to each other about some of these issues. That is the first thing. The second thing is this is an issue which I do not think we will resolve simply by legislating one way or the other, it is more than that. This is a highly political issue, the one we are talking about, and there are others. The Marine Bill is a very good example of highly political issues which need to be worked through. The Marine Bill is a very good example of how that has happened and, indeed, we make reference to that in the report in that once this Bill is through there is an even greater way that the Scottish Parliament could take over marine environmental issues, and that is a very positive way of doing it. Here was something which was quite difficult at the beginning but a way has been found through it. It is not as high profile and you do not see it in the newspapers in the way that you see Trident or nuclear power stations, but it has worked and worked quite well. I would have thought that simply to try and legislate, and this goes back to Mr Roy's point right at the beginning, simply by saying, "Please come and talk to each other and it will be very nice", it does not work that way, there are political forces at work that you understand much more than I do. If that is the case, the beginnings of that, beginning to talk to each other about it, identifying what the issues are and seeing if there are ways through that, I think that is more appropriate than legislative means.

**Professor Gallagher:** There is one other piece of background information which Mr Davidson might find quite helpful. Of course, one of the things the Commission looked at was the existing framework in the Scotland Act which it did not recommend any changes to because it thought it was appropriate as it stood and you will be aware of the various powers that are available to UK ministers already in that context in respect of international obligations, for example.

**Q210 Pete Wishart:** I think it is also worth remembering that the majority of Scottish Members of Parliament voted against Trident too, not just the Scottish Parliament. I want to come back to the intergovernmental relations. I think you recognise, Sir Kenneth, that there are good relationships between UK and Scottish ministers in a number of areas and they seem to work very well on a number of issues. I would ask what is so wrong with the current Joint Ministerial Committees because they

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very rarely met? Even at requests from Scottish Government colleagues to have these in place they have hardly met at all. Why do you think they have not met in the past and what did they do wrong?

**Sir Kenneth Calman:** For me it was one of the most striking things that we had quite interesting mechanisms for people meeting and talking about things but they had not met at all. As the Commission sat the important meeting of the JMC with the two governments took place and we all welcomed that. It is partly the relationship between the Westminster Parliament and the Scottish Parliament that needs to be resolved. And in a sense by re-emphasising that these are important committees, and perhaps there might even be another one, finance, which is one of our recommendations, this would give some greater power to the two Parliaments or Governments talking to each other. We are entirely supportive of the point that you are making. It was difficult for us to identify why they had not met as often as they might and, indeed, not used what is a really quite important mechanism to develop that further. We looked at how things work in Brussels, for example, and you will see a report on the Coreper type of response in which not only did parliaments, ministers and MPs but officials meet in particular areas, and that might also speed through some things. I am entirely supportive and agree with your suggestion.

**Q211 Mr Wallace:** Mr Wishart will also not like me to point out that I am a Unionist and the majority of Scotland's parliamentary parties are Unionist in Westminster. The point about the Union is that sometimes you have to be a Unionist and perhaps say some tough things. Mr Davidson pointed out nuclear energy or other issues and there will be issues where as a Unionist it does mean some tough decisions and I worry in your report you have avoided some of the tougher questions. Nuclear energy is a good example where people used administrative powers, executive powers, effectively to frustrate a legislative decision or a UK Government policy decision. In the end, that may well mean some tough talking. The Marine Bill was not necessarily about administrative problems, it was to do with some issues about geology and borders, et cetera. There needs to be some toughness and I felt there was a bit of that missing. I will give you an example: recommendation 4.4, which was that Westminster should end its self-denying decision not to discuss devolved matters. I am in Westminster and we are not a talking shop, we are there to make laws that affect people and some very serious decisions, it is not self-denying because we want to put ourselves through the mill, we want to demonstrate that it is the appropriate body to discuss subjects that we have jurisdiction over and leave the appropriate body, in this case the Scottish Parliament, that has jurisdiction for other issues the rightful place to make those decisions. By doing that the public are not misled, they know what it is to be part of the United Kingdom, they know where some things get done and some things do not. You could

have said that the toughest decision in your Commission could have been to say why does the Scottish Parliament not end its habit of talking about things it has no jurisdiction or authority over. That would perhaps point people in a better direction of what the Union is and what it is to be part of the Union and how it all fits in. It seems to me easier just to say Westminster should forget for a day that it is actually a legislative body and have grand debates and make people feel well. It is the Ken Livingstone method of talking about CND and nuclear disarmament in the centre of London that did no good at all. I would be interested to know why some of these tougher decisions do not seem to be there. I am a Unionist but I do not want to pick fights with institutions, I want to work well. My colleague and I both sat on the European Committee of the Scottish Parliament so we saw behind the scenes even in the European Commission and in Whitehall how it had a long way to go if you had not consulted better in Scotland and involved it. In the end there are some tough edges to be faced and I still see that as slightly missing.

**Sir Kenneth Calman:** I am aware from my conversation with Mr Wishart that I am not allowed to ask questions of you, but if I had been allowed to ask a question of you it would presumably be that the Westminster Parliament does have responsibility for Scotland as well, and it does. In terms of the Welsh Assembly, for example, they have a very useful debate on the state of Wales on a regular basis that brings people together to discuss these issues. That was the intention. For example, the intention of the First Minister coming to this Committee on a regular basis to let people know what was happening, the intention that the Secretary of State for Scotland might go to the Scottish Parliament once or twice a year, post the Queen's Speech, for example, to discuss things with the Scottish Parliament: these were meant to bring the two parliaments together. The opportunity for the Westminster Parliament to have a debate on Scotland on a regular basis was no more than that, it was an opportunity to allow you and your colleagues to contribute to the Union and, indeed, the future of Scotland.

**Q212 Mr Davidson:** Can I just follow that up. My impression of debates in the Scottish Parliament which are discussing Westminster issues is they are largely composed of Nationalist MPs howling at the moon aspiring to have powers that they do not have and it is just a long litany of grief and misery. I think we have always taken the view in Westminster that if we have devolved issues then they ought to be responsible for pursuing them and we have other more serious things to be getting on with. We do not have debates about Glasgow City Council, although that probably affects my constituents more in many ways than the Scottish Parliament does. If you are changing what I understood to be your observations that there should be a general debate on the state of Scotland that is one thing, but if you are saying there should be a debate on the Scottish Parliament and all its works then that would seem to me to be another.

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As Ben says, that would raise the issue about accountability and it would blur those lines of accountability because at the end of it presumably we want not just to have a debate, we want to have a vote, and what is the point of us voting to express condemnation of this, that or the other policy of the Scottish Parliament when we have no responsibility for it.

**Sir Kenneth Calman:** One of the things that were very striking for me, having to rethink all this again, was just how important Scottish MPs are. Scottish MPs meet in the Scottish Affairs Committee and no doubt in other ways too. In terms of supporting and developing Scotland and ensuring that the reserved issues, for which you have responsibility, have a Scottish edge to whatever it is then your importance is even greater. My assumption was that just occasionally it might be useful to debate these. They are quite important issues, it matters to me a great deal what you decide on defence and security and all of the other things that the UK Parliament has responsibility for and I would like to make quite sure that there is a Scottish voice within that on a regular basis and that is debated within a UK Parliament. That is the issue. It is not a complicated issue at all: I would like Scotland to have a clear voice within the UK Parliament. It has a Secretary of State for Scotland, it has a number of parties within the UK Parliament, so getting together and giving a strong Scottish voice could be quite a good thing.

**Q213 David Mundell:** On the procedural changes that are suggested, how do you see those progressing because there is one area which is within the remit of government and government itself can take that forward but, even with a new Speaker, the procedures and processes of the House of Commons, despite its many merits, can be quite obscure. It seems to me it is quite a significant task to try and bring together the Scottish Parliament's powers and procedures that have evolved over the past 10 years and the Westminster procedures which have evolved over hundreds of years to get, for example, the Sewel Convention embedded in processes at Westminster.

**Sir Kenneth Calman:** That seems to me to be the task and that is why it is beyond the Commission's role, it is up to you to take that forward. It depends on whether you think it is a good idea and if you do then there will be a bit of work to take that forward. Some of the intergovernmental bits will require quite a lot of thought.

**Professor Gallagher:** To raise the question of who is responsible for implementing various recommendations, some of them will fall solely to the Scottish Parliament, some of them, certainly to the extent that they require primary or secondary legislation at Westminster, will fall to the UK Government in the first instance and then to the Westminster Parliament to agree, and some of them, such as changes to standing orders, will fall substantially to the Westminster Parliament itself. Each of those avenues will have to be pursued and

it might be that is an area which would be usefully discussed in the steering group, of which you are aware.

**Sir Kenneth Calman:** That would be my other response, that one of the purposes of the steering group is to take this forward, to identify those areas that can be taken forward relatively straightforwardly and others where there need to be further discussion. That is a very appropriate function for the steering group.

**Q214 Lindsay Roy:** We have already mentioned the Sewel Convention. Did you envisage the Scottish Parliament having cause to reverse a Sewel mechanism and, if so, in what circumstances?

**Sir Kenneth Calman:** I do not think it was about reversing a Sewel mechanism but we know there are one or two areas, and I raised this with one or two Scottish Government officials, which are currently reserved and would be better to be devolved, but the UK Parliament does not have the time to do certain things about it and, therefore, a kind of reverse Sewel procedure would allow things to be moved on much more rapidly. We had one or two quite interesting examples of how that could be done. It is about making the two Parliaments function more efficiently and not waiting for a slot for a Bill in Westminster when it could be done more rapidly in the Scottish Parliament.

**Q215 Pete Wishart:** I want to ask about LCMs. The number of LCMs has reduced dramatically in the course of the last couple of years, which demonstrates something must be improving in the way that this particular competence is operating. What you are suggesting is that there is increased scrutiny or use of LCMs, but how would that work? What do you have in mind when you are looking at LCMs just now?

**Sir Kenneth Calman:** I think they have worked quite well and I do not think the rate of them has declined significantly, if I remember rightly. They have provided a neat way of allowing business to pass from one Parliament to the other and all we are suggesting the other way round is that there may be other things that can go the other way round rather than the current LCMs.

**Professor Gallagher:** I do not have the numbers at my fingertips at the moment. Although when this began I remember there was quite a lot of excitement about what were then called Sewel Motions, and are now called LCMs, they now seem to have become a very useful part of the furniture. I think one of the striking things about them is the extent to which they already represent cooperation between the Parliaments and administrations, often on perfectly straightforward and mundane matters, sometimes on matters of greater political salience. What struck the Commission was when the Commission looked at the machinery for interaction between the two levels of government, if I can call them that, there were a couple of bits that of necessity seemed to work rather well, the Sewel Motion and the LCM was one of them and another, which perhaps was not perfect, was the arrangement that Mr Wallace

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referred to for European cooperation or cooperation and preparation of the United Kingdom's position on matters which are being discussed at the EU level. On both of those the Commission are saying this has been a good piece of cooperation, it should be built upon and should continue.

**Q216 Mr Davidson:** Following up the question of procedures and so on, can I ask about the Joint Liaison Committee. I was not entirely clear what sort of subjects you thought that ought to discuss, whether or not it was an administrative clearing house or something that was going to take forward, as it were, political initiatives. Sir Kenneth, you mentioned about both Parliaments having committees that were looking at child poverty, for example. Would that be the sort of thing that you saw coming to that sort of committee or would it operate in a different way?

**Sir Kenneth Calman:** In a sense it is up to you to decide how it might operate, but it is that kind of area where clearly there are initiatives in both Parliaments, expertise in both Parliaments and maybe legislation in both Parliaments. The last thing we need is legislation which is totally different because it makes it difficult to do things. The opportunities for the two Parliaments to work in terms of what is happening, how things are developing, what are the big issues over the next year or so, to make sure there is sufficient linkage between the two systems we thought would be helpful.

**Q217 Chairman:** Did you consider the recommendations of the Scottish Affairs Committee with regard to a "Super" Scottish Grand Committee of MPs, MSPs and MEPs as a way of improving collaboration between institutions?

**Sir Kenneth Calman:** This is an issue which we certainly did think about and in a sense I almost answered the question earlier on the ability of MPs, MSPs, MEPs to come together on a regular basis to see what is the big agenda for Scotland and how to get the message through, how to ensure that both the Scottish Parliament and the UK Government know what the real agenda is for Scotland. It seems to me a pretty straightforward kind of thing. I hope there are opportunities for that to occur.

**Q218 Mr Davidson:** Can I turn to the organisational arrangements for the Scottish Parliament linking with Westminster in relation to the EU. You make a number of organisational proposals there. You recommend in particular that a UK department should be "engaging proactively" with its Scottish counterpart. I am not quite sure what that means. How would that operate in practice?

**Sir Kenneth Calman:** It would happen, and Jim can expand on this, in the way that it happens with the UK departments. If there is a particular European issue Whitehall departments generally know about it, what is going to happen, making links, does it have implications for us. It seems to be entirely appropriate that the Scottish Parliament would be within that system, "There is something happening in Europe, do you have a view on that?"

**Q219 Mr Davidson:** In your recommendations you have a proposal: "Requests by Scottish ministers to speak in support of agreed UK Government line should be accepted wherever practicable". I can understand that, but what happens when there is no agreed line? Are you saying to Scottish ministers, "You get to speak when you agree with us but you don't get to speak when you don't agree with us"? You can see how that would be an intolerable position for a Scottish Parliament minister to be put in.

**Professor Gallagher:** As a matter of fact, Mr Davidson, that is the current position. When a minister from any administration in the United Kingdom speaks at an EU event, at a working group, at the Council of Ministers, the current arrangement is that he or she does so in support of an agreed UK line.

**Q220 Lindsay Roy:** Is it not the case that what we are trying to achieve here is people being proactive, whether it is MPs, MEPs or MSPs, in relation to these issues and not being reactive, but doing so in the interests of Scottish people? That is really the message that is coming through loud and clear.

**Professor Gallagher:** I think that is right, Mr Roy. It is not a criticism of colleagues in Whitehall or, indeed, Westminster to say that the trick in all of this is to remember that there will be a devolved interest in some matter and to remember in good time. This is an issue which predates devolution and has continued since devolution but with the best will in the world is not always dealt with timeously. People who are under great pressure on some matter or other in Westminster or Whitehall pursuing some issue in Brussels may not realise until perhaps sometimes it is too late. An example of that, and it is sufficiently far back in history not to cause anybody any distress, is that in 1999 there was a proposal within the European Union for greater mutual recognition of lawyers, which may or may not be a good thing, I will leave you to judge on that. In its time this was quite politically salient and it was pursued at the relevant UK department, and pursued very effectively, and an agreement was reached at the EU level. But there had been insufficient thought given to the fact that the UK consists of several jurisdictions, not merely one, and the net effect of that was that it was easier for a French lawyer to practise in Edinburgh than for an English one, which clearly was not right. That is why the Commission is saying you have got to be proactive, you have got to think ahead and you have got to do it at the right time.

**Sir Kenneth Calman:** That is a very good example. Whether that is within a Scottish Grand Committee that meets regularly or whether it is in a debate in the Parliament I do not mind too much personally. We have got to keep remembering that there is Scotland, it is a pretty important place and our report is about improving the lives of the people of Scotland. If that can be done through both Parliaments talking to each other more effectively then that will have been worth our while having achieved that.

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**Lindsay Roy:** To use an overused phrase, it is about effective joined-up working.

**Q221 Chairman:** What is the most important message that should be taken from your report?

**Sir Kenneth Calman:** For me, it is that Scotland is a great place. It is well served by both a Scottish Parliament and a UK Parliament. By bringing them more closely together and seeing how well they can work together, by ensuring that the Scottish Parliament has greater accountability for its funding—we produced one model—I think it would make it even better. I am always reminded of the well-known Burns poem called *The Fete Champetre*, which is “O wha will to Saint Stephen’s House, To do our errands there, man”. It was about the election of a Kilmarnock MP. We need people in both Parliaments who are going to do the business of

Scotland and ensure that the Scots after this remarkable process of devolution continue to have a real place within the Union and can see themselves as being a stronger part of that, indeed leading it in a number of ways. That would be my message.

**Q222 Chairman:** I would like to thank the witnesses for their attendance. Before I declare the meeting closed, would you like to say anything in conclusion perhaps on any issue which we have not covered during our questions?

**Sir Kenneth Calman:** Just to say what a wonderful experience it has been being here again. It is nice to see you and I am delighted that you have come to Glasgow as part of this. In a sense, I think that was part of our report, that this Committee is a very important committee for Scotland.

**Chairman:** Thank you very much for your attendance.

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## Wednesday 13 January 2010

Members present

Mr Mohammad Sarwar, in the Chair

Mr Ian Davidson  
David Mundell

Lindsay Roy  
Pete Wishart

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*Witnesses:* **Rt Hon Jim Murphy MP**, Secretary of State for Scotland, and **Mr Robin Haynes**, Head of Financial Services, Scotland Office, gave evidence.

**Q223 (13.01.10) Chairman:** Good afternoon, Secretary of State and Robin Haynes. Thank you for coming to give evidence to us today on the Government's White Paper. Can you please introduce yourselves for the record.

**Mr Murphy:** I am Jim Murphy MP, Secretary of State for Scotland, and I have with me Robin Haynes, an economist at the Scotland Office.

**Q224 (13.01.10) Chairman:** Before we start on the detailed questions, would you like to say anything by way of opening remarks?

**Mr Murphy:** Thank you for making time to listen to us, but no, I have nothing to say, Chairman. I am happy to be here.

**Q225 (13.01.10) Chairman:** Under the White Paper's proposals, Scotland will still be dependent for the majority of its funding on the block grants from the UK Government. Will this provide real financial accountability to the Scottish Government and Parliament?

**Mr Murphy:** What was proposed by Anton Muscatelli's expert group in finance which, in turn, became the Calman Commission's unanimous recommendation which then became largely the Government's policy through the White Paper, I think it is the right balance. You have got the choice of the *status quo* or the substantial change or, I suspect, a wider change which is separating from the rest of the United Kingdom, and I think it is about the right balance. It increases accountability, it makes politicians in the Scottish Parliament take decisions not just about how much and what they spend money on, but how they raise it. The final decision on the size of the Scottish Government's budget will be decided by politicians in the Scottish Parliament, and it stops people in Edinburgh looking to London all the time. Instead of looking to London, they should look in the mirror because they will decide the size of their budget and, ultimately, they will decide the final spend, so it does provide that accountability, but also some stability because the majority of the budget of course will still come through the block grant, but it is a very important change on finance, however, Mr Chairman.

**Q226 (13.01.10) Chairman:** The Government says that it will implement the full financial model recommended by the Calman Commission "as soon

as economic and fiscal circumstances permit".<sup>1</sup> Has the Treasury set a level that must be reached before this implementation can begin?

**Mr Murphy:** We plan to have a system in place for the next Scottish Parliament and we are working pretty hard behind the scenes to help make that happen, and there is a whole series of other things we are doing on the other powers, but on the finance powers Scotland Office officials and Treasury officials are in regular contact. We met yesterday, I met the Chancellor of the Exchequer this week to go through the detail of it and the entire Government, the whole Cabinet, are 100% committed to delivering on this package and their aim is to that timetable.

**Q227 (13.01.10) Chairman:** Has the Government made an assessment of what would be the ideal period of time for the staged implementation process?

**Mr Murphy:** We have not yet. As I say, we want to get to that period in the next Scottish Parliament. Now, it will be important that we do not just introduce this overnight, but it is about having a transitional period. If, as we envisage of course, there will be a new Scottish rate tax, the UK rate minus 10 across the different bands, it is then for the Scottish Government and the Scottish Parliament to make a decision as to what should the Scottish tax rate be. Now, we have got to decide what is that 10% of the Scottish tax base worth and, therefore, I do think we have to measure that over a period of years so that there is some stability at the point of transition. I do not think we could introduce it on a Monday morning without a transition and without measuring it over a couple of years.

**Q228 (13.01.10) Chairman:** One issue where I have some doubts in my head is that the block grant adjustment will be based on forecast tax yields instead of actual tax yields. Now, it is very difficult to predict what will be the tax revenues for the next year, and do you not think this will create uncertainty in the system?

**Mr Murphy:** Well, of course we have to work on the basis of anticipated tax. Now, you would use as the basis for that what has happened over recent years at a similar point in the economic cycle and all of those other factors, and that is what we would do. I think that highlights the importance of having that

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<sup>1</sup> Scotland Office White Paper, *Scotland's Future in the United Kingdom*, November 2009, para 4.19

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transitional period. Now, if the assessment and the transitional payments were not right, you would have to make an adjustment, but that is why I think that what we need is the goodwill on both sides, the UK Government and the Scottish Government, and really a perfect working relationship on this to help make it happen, and that is what I am determined to try and make happen.

**Q229 (13.01.10) Chairman:** Do you think that is a real possibility?

**Mr Murphy:** Well, without being party-political, you certainly join the Labour Party because you are an optimist and you believe in making the world a better place, so, once we have solved all the rest of the world's problems, we will try and form a perfect working relationship between the Scottish and UK Governments.

**Q230 (13.01.10) Lindsay Roy:** The Barnett Formula initially was seen as a short-term solution. Why do you still feel it is the preferred option now?

**Mr Murphy:** The Barnett Formula or a variant of the Barnett Formula has been in place, I think, way back since 1888, or a variant of it with different governments, different chancellors, different prime ministers, and I think, as we all know, it is a really good deal for Scotland, but additionally it gives you a stability, it gives you a predictability and it has survived both Labour and Tory Governments without any really serious attempt to change it.

**Q231 (13.01.10) Lindsay Roy:** When you say that it is a good deal for Scotland, can you elaborate on that, exactly what kind of deal?

**Mr Murphy:** Well, I think the assessment is, and others will correct me if I am wide of the mark in this assessment, that for every pound spent across the UK, Scotland gets £1.18. Now, that, in my book, is a good deal for Scotland. Now, others will ask, perhaps other political parties and certainly other constituencies, that it is too good a deal for Scotland, but I think it is the right deal for Scotland and we have no plan to change it.

**Q232 (13.01.10) Lindsay Roy:** And the rationale for that is?

**Mr Murphy:** Well, the rationale originally when it was introduced was an understanding of the needs of Scotland and the rest of the UK. It was not a precise needs assessment, but it was an understanding of a fair approach to what were the needs of Scotland at the time, so that was the baseline, if you like, and then the Formula has really to come up with the population shifts and that calculation has worked to Scotland's strength, I think.

**Q233 (13.01.10) Lindsay Roy:** So it has taken into account the dispersal of population, et cetera?

**Mr Murphy:** Well, when you have a conversation about this with some colleagues in other parts of the UK, obviously they jump quite quickly to the balance of net contributions and they talk about the unfairness of it. One of the things we have got to bear

in mind is that Scotland of course, with only one-tenth of the population, has a third of the land mass of the United Kingdom and it just is more expensive to provide public services in a country like that, yes, with only a tenth of the population, but with such a substantial proportion of the area of the United Kingdom, so I think it is a settled settlement and it is the right deal for Scotland. Of course it is the victim of criticism from time to time, but we have no plans at the moment to change it.

**Mr Haynes:** Whilst the Barnett Formula has a number of criticisms levelled at it from a number of quarters, the alternatives become rather difficult to think about. For example, in Australia, which is sometimes perceived as the Rolls-Royce of inter-governmental fiscal transfer, there is an assessment of need conducted by a non-departmental body equivalent called the Grants Commission and it introduces its assessment of need amongst the Australian states every five years, and that would imply that each estimation of needs costs something like A\$40 million. There is no hard-and-fast definition of need within the United Kingdom, and other countries, other than Australia, have found the same difficulties. For example, in Germany the estimation or the measurement of need has become rather a politically charged process resulting in intergovernmental fiscal transfers there, including elements for urbanisation, but then other Länder got in on the act and said, "No, we're very dispersed rural communities, so we need funding to reflect that rurality", so, in effect, a needs assessment could almost be seen as opening the Pandora's box for a very sustained and lengthy political process rather than an empirical exercise.

**Q234 (13.01.10) Pete Wishart:** It is good to see you back at this Committee. There are lots of things that the Calman Commission have said, and of course in the Scottish Parliament and the Scottish Government, as we know, points have been made about those particular issues, but, coming back to the financial side of all of these things, you will know that, of the least contentious and controversial, I think there are two which Professor Muscatelli's team described as unworkable and illiterate, and other economists have gone on to say that implementing them, as suggested by Muscatelli, Scotland could be caught in a deflationary trap and that fiscal drag could lead to reduced revenues for Scotland if it receives a lower proportion of revenue from higher tax rates. I would be wanting to expose the Scottish economy to these types of plans and measures.

**Mr Murphy:** You talk about the Scottish Parliament and the Scottish Government and, I suspect, yourself, even though you are not a spokesman for either of course, but I sometimes think, and forgive me for saying this, it is not personal, but sometimes the Scottish Government or yourself, Mr Wishart, remind me of the way the Conservative Party used to be about the three pence variable rate, that we cannot do it, it is too dangerous, we cannot do it, it is too much of a risk. I will happily answer your next question, if you wish, but you seem to be becoming

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like the Conservative Party of old and saying no. I think out of contortions and out of being out of touch with the consensus of Scotland, you find yourself in a peculiar position, but that is your position. In terms of the specifics, Anton Muscatelli's financial group had enormous fiscal and economic intellectual muscle. It is a unanimous recommendation, it went to the Calman Commission and they signed up to it as well. I think it is the right thing to do. It makes Scottish politicians accountable in the way that they just have not been before and that is why we are doing it.

**Q235 (13.01.10) Pete Wishart:** So you do not recognise any of the dangers that Professor Muscatelli's own team identified when they talked about them being unworkable or illiterate? Surely, it is worth more than some sort of complacent answer. These are serious economists and this would really expose the Scottish economy to a real danger. Why are you proceeding on the basis of advice that has been offered by a number of economists throughout Scotland when it is coming to what could be really dangerous measures for the Scottish economy?

**Mr Murphy:** Mr Wishart, you sound exactly like the Conservative Party sounded in the mid-1990s about risk and scare stories of this sort.

**Q236 (13.01.10) Pete Wishart:** It is not the same.

**Mr Murphy:** The fact is that you are talking about risk in the way that you do on the basis that your alternative contains no or minimal risk. Your alternative has been Iceland on the Clyde and it is racked with risk from top to bottom. The fact is that this is a serious piece of work by heavyweight economists and it has survived and will survive the attempts to rubbish it by yourself and a couple of others, Mr Wishart.

**Q237 (13.01.10) Pete Wishart:** I think some of your remarks are totally unnecessary and unfortunately, I think, they reflect upon the way that you want to try and present your case because what we are talking about here are some substantial plans which, in the view of a number of economists in Scotland, present enormous difficulties, and I cannot believe the complacency you are identifying. You go on about Iceland and stuff which is total nonsense. The question is that a number of economists have recognised real dangers if we proceed with this, and your complacent response is, "Just let's forget about them. Let's not bother with what they're saying".

**Mr Murphy:** No, Mr Wishart.

**Q238 (13.01.10) Pete Wishart:** Why are you right and they are wrong?

**Mr Murphy:** Mr Wishart, this is the work of Anton Muscatelli, and I assume you hold him in good regard.

**Q239 (13.01.10) Pete Wishart:** Yes, of course.

**Mr Murphy:** Okay, good, and the economists that supported him, I assume you have no question of the intellectual economic prowess of those individuals and they produced this report. It is more radical than

many of us anticipated. It actually took many people by surprise, the scale of its radicalism, but we looked at it very carefully. The Chancellor looked at it very carefully, the Treasury looked at it carefully and came to the conclusion that it could work and it would work, and we are determined to implement it, so we are far from complacent in the way that you suggest, Mr Wishart, and there has been months of work, detailed work, within the Treasury to come to the assessment that we should take Calman's recommendations forward.

**Mr Haynes:** Can I just clarify on the points that you raise, we are aware of two groups of individuals who have raised concerns about the Calman proposals. It sounds like you are referring to Andrew Hughes Hallett, Drew Scott and Ronald McDonald who wrote an article that was published, I think, in *The Scotsman* shortly after the Calman Report was published, and also we have met, as officials in the Scotland Office, Jim and Margaret Cuthbert who also raised a number of concerns. Their particular concern we actually raised with international expertise, and they have led us to believe that the issues that they raised did indeed exist, but they were perhaps not quite as substantive as the headlines might have suggested.

**Q240 (13.01.10) Pete Wishart:** I am grateful for that. At least it shows that you are listening very carefully to concerns that are raised other than the Scottish Secretary and going on about Iceland rather than actually trying to address this question. What I want to know is where did they get it wrong and why are you writing this off? They talk about fiscal drag because of the way that this has all been planned and put into the process, but why is that wrong?

**Mr Murphy:** Mr Wishart, we will have a debate which will be reflected in response to the Chairman's question. We will go about this in a very, very careful way, specific to the work from the Treasury, a phased-in period, transitional arrangements, working very closely with the Scottish Government and the Scottish Parliament to help make this a success. It is a huge change, it is an enormous change in how Scotland is governed and how Scotland is funded, and there is a substantial piece of work still to do, but with all-party support we would hope to make a success of it.

**Q241 (13.01.10) Mr Davidson:** Can I just follow up on the question about Barnett and the ceding of powers over tax. Once the thing is set up and running and once we have gone through all the transitional period, is there not a danger that this becomes a mechanism which emphasises cycles rather than acts countercyclically in the sense that, if there is another recession, then income tax in Scotland will fall and the impact then upon the income of the Scottish Government will be exaggerated and you then have exactly the opposite of what you would want, which would be countercyclical spending? Will there be a mechanism by which the United Kingdom Government can come, as it were, to the rescue of the

Scottish Parliament in these circumstances when they suffer an unanticipated fall in their income due to a recession?

**Mr Murphy:** Well, Mr Davidson, the first point is that of course the majority of funding will still come from the UK Government, 90% or more of the block grant will still come from the UK Government. We are talking about that 10% tax space and currently we think it will be about £4 billion, the current assessment. Now, the protection is there in the fact that the majority will still come from the UK Government and for the real people, if you like, in the street, and it is a terrible phrase, but with all the automatic stabilisers, the Department for Work and Pensions' pensions payments, benefit payments and everything else, really substantial additional costs that come at a time of recession will still be paid directly into the pockets and purses of Scots from the Department for Work and Pensions, so all of that funding would continue even during a recession. Now, the wider point though is that at a time of economic success that 10% tax room would create a larger contribution for the Scottish Parliament at a time of recession. It would lead to a squeeze in the amount of money available to the Scottish Parliament in a similar way that it would lead to a squeeze to the UK Parliament at a time of recession and at a time of success, and that is largely a consequence of trying to make the Scottish Parliament a more substantial parliament, a more mature parliament and with this greater financial power, so it is part of the process here, that the Scottish Parliament will be more dependent on the economic cycle and the tax base.

**Q242 (13.01.10) Mr Davidson:** And there is an opportunity for variation in spending.

**Mr Murphy:** Well, it is for the Scottish Parliament of course. The Scottish Government and the Scottish Parliament will be able to set its own rate. It will get a default rate of the UK rate minus 10 and it will then decide whether it wishes to go default UK minus five or the same as UK or above UK. I think one of the things that it does throw up though is the timing, and it is one of the pieces of the work that we are going to address, that there is a timing of the entire budgetary process. Of course, the UK financial year is April to April, the Budget is March or April, the PBR is November/December and the CSR is in the autumn usually in the course of every three years or so.<sup>2</sup> Now, that is not in kilter with the Scottish Parliament processes where the draft budget starting process would be in November and concluding in January/February, so, when you have a set of arrangements where the timetable is out of kilter, but the relationships and decisions have really substantial impacts, there is a big job of work to do about just meshing the parliamentary and fiscal timetables of both Parliaments because, if the UK Government were to raise or cut taxes in a Budget, say, in March or April, it is questionable whether it is sustainable

for the Scottish Parliament to wait for its budget process to come to a decision on how it would respond to tax levels.

**Q243 (13.01.10) Mr Davidson:** All of these administrative organisational problems can be overcome if there is goodwill on both sides though, can they not?

**Mr Murphy:** I think so, but this is a substantial piece of work. They can be overcome, but it is important, I think, to identify to the Committee that this is a substantial piece of work that we are going to have to undertake because there is an obvious and apparent lack of co-ordination at the moment on the time-lines here.

**Q244 (13.01.10) Mr Davidson:** I wonder if I could put a couple of questions on Sewel. Do you personally feel that the Sewel Convention should be entrenched in the Standing Orders of both Houses, the Scottish Parliament and here?

**Mr Murphy:** I understand it is already in the Scottish Parliament, so my reflection, not as the Government because it is for Parliament to come to a decision, but, as a Member of Parliament, I think it would be sensible for it to be entrenched in the Standing Orders of the UK Parliament, but ultimately it is for Parliament to decide rather than Government.

**Q245 (13.01.10) Mr Davidson:** Do you agree with the Committee's previous recommendation that the Clerk of the Scottish Parliament should advise the Clerk of the House here and vice versa if Sewel motions are passed?

**Mr Murphy:** I do think it is a sensible suggestion in the report that was produced. That is one of the many that are entirely sensible and should happen, and again it is for Parliament but, as an MP, that is my view.

**Q246 (13.01.10) Mr Davidson:** One of the other proposals of Calman is for the UK Parliament to have a debate about there being the State of Scotland and such similar things and debating devolved matters. Now, is that a sensible arrangement if there is nobody in the Westminster Parliament here to actually defend things that the Scottish Parliament and Government have been doing?

**Mr Murphy:** I think it is one of the more uninteresting recommendations from the Commission. It is one of those 21 or so that is for Parliament and the authorities to decide rather than Government and which, whatever Parliament decides, Government would then adhere to of course. At the moment, I understand that the Scottish Parliament actually have a pretty wide-ranging understanding of what they can debate; they debate things that they are responsible for and they debate things that they are less responsible for and less accountable for. Now, I think, as a minimum, there is good merit in having a State of Scotland debate every year in the House of Commons and, arguably, the House of Lords, but certainly in the House of Commons and there seems to be a case for having certainly Westminster Hall debates on

<sup>2</sup> Pre-Budget Report (PBR) and Comprehensive Spending Review (CSR).

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specific Scottish matters, but it is for the parliamentary authorities to go beyond that. Other Members of Parliament, I know, argue that both Parliaments should have a similar degree of self-denying ordinance. I think there is a lot of work we would have to go into before I signed up to that, but certainly a greater profile for backbench MPs in Scotland to have a space in the House of Commons to make an argument and make the case about what is happening in Scotland.

**Q247 (13.01.10) Mr Davidson:** Yesterday, when we had the First Minister here and Mr Wishart, to be fair, had not taken his brave pills yesterday because we were getting on all very well and we were agreeing that he would be willing to come here on a regular basis and would government ministers go there, and it seemed to us obvious that you would be the person who ought to be going most frequently there to represent the UK Government. Is that something with which you are completely happy?

**Mr Murphy:** Well, I would be delighted to do it, and I am really disappointed by the response of the Scottish Government. The fact is that ministers there have vetoed my going to speak at the Scottish Parliament in the Chamber.

**Q248 (13.01.10) Mr Davidson:** Surely not. When did this happen?

**Mr Murphy:** Well, with the Welsh Assembly Government, Peter Hain attends the Welsh Assembly and he goes there to speak about the legislative programme coming out of the Queen's Speech. To me, that seems sensible. It is a good way, it is not just symbolic, but it is an important way for the UK Government to explain its list of priorities and for Members of the Welsh Assembly to then offer their reflections and views. I offered to do a similar thing and Ken Calman recommended that the Secretary of State, whoever the Secretary of State is, of whichever party, whoever fills that constitutional role, should be able to attend, and the Scottish Government have said that they are not interested in that idea. I am really, really very disappointed at their vetoing this. I cannot see the harm in it, I do not see the danger in it, it is a sensible suggestion.

**Q249 (13.01.10) Mr Davidson:** Well, they have actually written back and said that they do not want that to happen. Is that the Parliament or is that just the present Scottish Government?

**Mr Murphy:** Well, what I will do, Mr Davidson, if I have it here or, if I have not got it here, I will provide to the Committee later today a copy of the wording of what it said.

**Q250 (13.01.10) Mr Davidson:** That would be very helpful because that certainly was not the tenor of the remarks I thought we had from the First Minister yesterday when he seemed to be quite agreeable to the idea that there would be an exchange and a discussion on these sorts of items. Can I come back to the question of a state of Scotland debate because it does seem to me that that would be worthwhile

and I wonder if I can explore with you what you think that might discuss. As you will know, there is a very widespread view in Glasgow that Glasgow is being ripped off by the Scottish Government in Edinburgh. Would that be the sort of thing that you are able to discuss, and similarly the way in which a lot of powers are being taken away from local authorities and other agencies in Scotland and centralised with the Scottish Parliament and the Government in Edinburgh. In a sense that would then be a review of the way in which the devolution settlement was working within Scotland. Would those be issues that you thought were appropriate for us to discuss?

**Mr Murphy:** Ultimately it will be for Parliament and members of both Houses to decide what to discuss but certainly how Scotland gets through this recession and the degree of support being offered to Scotland from the UK Government, the Scottish Government, the European Parliament and others to get through this recession is absolutely the type of thing that could or should be discussed, I am certain. As to whether we would be able to discuss the general feeling in Glasgow that the city is being ripped off by the SNP, that is for you and other Glasgow MPs to make that case. I am not a Glasgow Member of Parliament. I think there needs to be that space for Scottish MPs to be able to have that state of Scotland debate. The Welsh do it and I do not see why the Scots cannot, and it is really for Members of Parliament in Scotland then to decide what they wish to discuss. A Government minister can respond to whatever is discussed. I would be happy to respond to whatever the debates backbench Members of Parliament instigate if that is what the House agrees. On the specific point, Mr Davidson, of course we will get you more of the detail of this but I am reading one of the quotes from the Scottish Government response to the Calman Commission on a recommendation about the Secretary of State's appearance at Holyrood post the Queen's Speech. They would not support this recommendation. To me that is a very clear no and I am very disappointed about it.

**Q251 (13.01.10) Lindsay Roy:** What reason was given for that?

**Mr Murphy:** "The Secretary of State is not accountable to the Scottish Parliament".

**Q252 (13.01.10) Chairman:** We took evidence from the First Minister yesterday. Certainly this was not the impression given to Committee members. We thought he was very enthusiastic. He was very happy to appear here and there should be more general communication. It would be helpful if you could drop us a note.

**Mr Murphy:** Of course.

**Q253 (13.01.10) Pete Wishart:** It would be helpful if you could clarify it. In my understanding of what the First Minister said yesterday, he talked about the principle of reciprocity. Now, obviously, if the

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Secretary of State wanted to address the Scottish Parliament but it is true the First Minister is an active member of this Parliament—

**David Mundell:** Active? I do not recognise that term.

**Mr Davidson:** Come now; you are exaggerating!

**Pete Wishart:** A First Minister of Scotland would also be able to address the Westminster Parliament. If that suggestion or proposal were to come forward that would be properly considered.

**Mr Davidson:** What would happen after he stands down?

**Pete Wishart:** That is what I am saying. What happens then is that the First Minister will not be able to address the Westminster Parliament.

**Mr Davidson:** He does not at the moment.

**Pete Wishart:** If that proposal is serious I think there would have to be a degree of come and go with Westminster and the First Minister of Scotland.

**Q254 (13.01.10) Chairman:** Can we move on?

**Mr Murphy:** If it is okay for the Welsh it should be okay for the Scots.

**Q255 (13.01.10) David Mundell:** Perhaps, Secretary of State, part of the rationale for that rebuff came as part of what otherwise appeared to be a very positive contribution by the First Minister during his appearance before the Committee yesterday and I think his appearance was to be welcomed and I hope it will be part of future process, but at Mr Wishart's prompting the First Minister was induced to say that he saw no purpose in the role of the Secretary of State for Scotland and that there was no role there in terms of developing the relationship between the UK Government, the Scottish Government, the UK Parliament, the Scottish Parliament, and I would be interested in your thoughts on his observations.

**Mr Murphy:** It is peculiar. The SNP seem fixated on abolishing me! Why that is I cannot work out their contorted logic, but on the particular issue, my relationship with the First Minister, I think it is public knowledge that when I got this job he was one of the first people I called. I said it was very clear that we do not agree on everything but we have got to work together on behalf of Scotland. I said that clearly. I found it surprising. I think it is the case, and certainly I understand it to be the case, that the First Minister and the Secretary of State had never formally held talks with the CBI and the STUC jointly even when, to be frank, my own party held both of the posts. I found that a peculiar state of business, so I said very early on that that should change. We have now had those meetings of the Finance Quadrilateral. On Monday in Easterhouse we had the first ever jobs summit. You can have the to and fro as we did at Questions today on the merits or otherwise of that but it is important that we get together. There are over 100 different organisations of people there and today I have written to the First Minister, the CBI and the STUC to say, "Look, this was not a talking shop. Next week at the Finance Quadrilateral we need to take some of these ideas forward together, a teamwork approach." It is a peculiar attitude, this idea that Scotland alone should not have a full-time Secretary of State around

the Cabinet table. I find it bizarre. Scotland is no less important than Wales or Northern Ireland. I do not hear the same sort of demand that the Secretary of State for Wales or Northern Ireland be abolished. I think the honourable Member for Moray, is it—last Thursday I heard on the wireless in the morning that he was demanding that I be abolished and by Thursday teatime on the telly he was demanding that I help a company in his constituency, on the same day, so I think it is a peculiar obsession or fixation. That is their business, not mine. Other parties have tried to abolish me at elections, Mr Mundell. I hope Mr Wishart's party is as unsuccessful trying to get rid of me in this role as others are in other roles.

**Q256 (13.01.10) David Mundell:** I have to agree with you that our party has been consistent and argued throughout this Parliament that there should be a distinct role and I find it very surprising that the Scottish Government would not welcome the fact that there would be a dedicated member of the Cabinet, and indeed the Scotland Office, to support them and work with them within Whitehall.

**Mr Murphy:** You are right, Mr Mundell. Your party, business leaders and trade union leaders in Scotland just take a common-sense approach in my view. I know you want the job. I am not saying that is something I would support but the fact is that I think it is the right thing to do. It was a mistake and I have said so before. It was an error to try and job-share these two posts. There was a danger of Scotland losing out in discussions and debates, and it is right that Scotland is treated in the same way as Northern Ireland and Wales in the constitutional arrangements of the Cabinet.

**Q257 (13.01.10) David Mundell:** Regardless of your own relationships, what was clear in the discussions with Mr Salmond is that he and the Prime Minister do not have a very close working relationship and it was perhaps surprising to people outwith the political bubble, for example, that there was no dialogue between Mr Salmond and the Prime Minister over the release of Mr al-Megrahi, which was a very serious matter both for Scotland and the United Kingdom.

**Mr Murphy:** They are not bosom buddies, the First Minister and the Prime Minister. I am not here to speak on their behalf. I am not the official spokesman of either of them but they have a different view about the destiny of our country. They both love Scotland. They have got a different view as to whether Scotland is stronger or better inside the United Kingdom or outside the United Kingdom. They are both passionate men. They believe in what they believe in. That is a good thing. The Prime Minister, of course, hosted a dinner at his house, a very enjoyable dinner, for the party leaders in the Scottish Parliament, which I attended. Annabel, of course, could not make it; she was unwell and that was entirely understandable, and that was a pretty enjoyable event. The chap from the Green Party spent most of the time on his little mobile phone under the table sending out tweets about what

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everyone else was saying, what everyone else was up to, but apart from that it was pretty enjoyable. We do have to try and find different ways and additional ways of getting a better working relationship. When I was Minister for Europe before doing this job, if you start on the basis that you disagree with loads of people, with 26 other governments in the European Union you get very little done, so you try and find where you have got a common purpose and focus on those things, so at the moment we should have a common purpose in trying to help Scotland in the recession and get people back into work, which is why I suggested at Monday's job summit there are more things we could be doing together and we are happy to do so. Today at Scottish Questions your colleague, Ben Wallace, suggested that there might be differences in the way in which veterans are supported north and south of the border. I will happily organise talks north and south of the border with the British Legion? I hope even Mr Wishart would accept that I did not do that in a partisan way. I said if there are differences and we can learn from one another we should do so and I see that as part of the role of the Secretary of State for Scotland.

**Q258 (13.01.10) David Mundell:** To what extent do you think that process can overcome personality differences, which I think we are acknowledging do exist between the First Minister and the Prime Minister or perhaps political issues? I did put it to the First Minister yesterday that some of his critics would suggest that he has an incentive to have a difficult working relationship with Whitehall. To what extent do you think process can overcome those issues in order to ensure effectively a depoliticisation, de-personalisation, of the necessary dialogue between Scotland and London?

**Mr Murphy:** A better set of rules and a better set of processes and I think Ken Calman recommended 21 separate recommendations that would be the responsibility of Parliaments. I met the Speaker of the House of Commons, I met the Presiding Officer of the Scottish Parliament, along with the three pro-devolution parties in the Scottish Parliament, your party, the Liberal Democrats and my party, and we met the Presiding Officer, and the Speaker of the House of Commons, of course, has designed his own process for structures here in the UK Parliament and he has agreed, Mr Mundell, as you know, to meet the parliamentary leaders of the Scottish pro-devolution parties as well, myself and yourself and Mr Carmichael, to discuss on a cross-party basis the best way of implementing Calman's recommendations and structures and processes inside the House of Commons and the House of Lords. I think these things are important. Again, however, to take a little step back, it is not for the Government to design these parliamentary processes but if we can do that on an all-party basis I think that is a good thing.

**Q259 (13.01.10) Lindsay Roy:** Would you agree that while structures and processes are important, it is attitudinal things, a positive attitude? It is about goodwill rather than grievance in taking things forward?

**Mr Murphy:** Mr Roy, I believe in the United Kingdom for patriotic Scottish reasons. My patriotism takes me to believe in Scotland's place in the United Kingdom. Therefore, I want to strengthen the United Kingdom and the structures in the United Kingdom. If I had a different view about trying to escape from the United Kingdom it is questionable as to whether I would invest as much energy into creating structures that would strengthen the processes and reduce tension. I have just got to take people at face value. To some extent the Scottish Government say they want to play ball on these recommendations and I am looking to find common ground with them, and I keep doing so.

**Q260 (13.01.10) Pete Wishart:** I think you are right, it has a lot to do with personalities. I think when you were first appointed, Secretary of State, in the way you went about your business for the first few months you did come across as a consensual new type of Secretary of State who was making real efforts and I congratulate you for that, but I think in the course of the past few months the mask has really started to slip and your almost obsession with attacking the Scottish Government at every possible opportunity that presents itself; it comes along and there is just a relentless negativity towards the Scottish Government. I do not know if you feel that you could tone it down a little bit and maybe try and be a bit more constructive/persuasive when you do have these dealings with the Scottish Government.

**Mr Murphy:** Mr Wishart, I am obviously very sorry you feel that way. It is also news to me that you thought in the first few months I was being Mr Reasonable. That is why I found it extraordinarily inexplicable that within a few weeks you were demanding that I resign, so I am delighted to see you have extended my life expectancy of reasonableness into a few months.

**Q261 (13.01.10) Pete Wishart:** Can you tone it down a bit, do you think, that British Government stuff?

**Mr Murphy:** Just turn the telly off. I will continue to try my very best to get on with the Scottish Government but it does take two.

**Q262 (13.01.10) Pete Wishart:** What are you doing to try and do it?

**Mr Murphy:** The suggestion that we had a jobs summit on Monday in Easterhouse was a decent start, I thought. Suggesting that the Quadrilateral met at all I think is a decent start. When I was the Minister for Europe, ensuring that JMC Europe was part of the JMC machinery that actually worked. Writing to the First Minister, to the STUC, the CBI today saying let us take forward the recommendations of the 100 or so people who were at the jobs summit. At the instigation of Mr Mundell's colleague today agreeing to host north-south discussions about the treatment of veterans working with the British Legion. If you have an additional list, Mr Wishart, I will happily get to work on that as well. As I say, it does take two to tango but I will continue to try.

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**Chairman:** I am sure people give him private advice in Westminster.

**Q263 (13.01.10) Pete Wishart:** With the First Minister yesterday we were talking about the structures and the obvious desire of the Scottish Government to communicate directly with Whitehall in terms of the JMCs and other structures that we have. We asked the First Minister how helpful and constructive the Scotland Office was in allowing and trying to make sure that the Scottish Government were relating directly with Whitehall departments. We asked him what the added value of the Scotland Office was and he said it was very difficult to see what the added value would be from the Scotland Office in terms of getting that communication across. What do you see as the added value that the Scotland Office brings to allowing the Scottish Government to communicate directly with Whitehall departments?

**Mr Murphy:** I have said before in different committees that I am not a politician who seeks to self-validate my own efforts. It is for others to decide whether I or the Scotland Office does a job of work. As I say, the people we are working with to try and get Scotland through the recession seem to believe we do. Constitutionally, in an abstract sense, it would be peculiar unless you are suggesting today that we should abolish the Secretary of State for Wales and Northern Ireland as well, it is peculiar for a party that claims to be sometimes patriotic and not all the time nationalist to want to get rid of Scotland's distinct voice around the Cabinet table. An example of where the First Minister sought and I provided my help and I thoroughly appreciated it was on the Somerville case and slopping out. He made a personal appeal to me and I, working with others, helped solve that issue. That seemed to be a sensible delivery for Scotland that the job is designed for. It would probably help me do the job of Secretary of State and help the Scottish Government in their dealings with Whitehall departments if from time to time the Scottish Government ministers would more regularly copy me into their correspondence to my ministerial colleagues at Whitehall, because that way I would have some sense of the types of issues the Scottish Government is raising with the Home Office or the Treasury or other departments, and then if they wished my assistance I would have a basis to have that information, but at the moment I am cut out of much if not most of that correspondence. A sensible improvement would be copying the Scotland Office into that Scottish Government to Whitehall correspondence.

**Q264 (13.01.10) Mr Davidson:** Why is that the practice? Have you raised that with them and sought any explanation as to why the Secretary of State's office is not copied in to correspondence?

**Mr Murphy:** On some occasions it happens and on many occasions it does not. Whether it is by commission or omission I am not certain.

**Q265 (13.01.10) Mr Davidson:** It may be just disorganisation rather than deliberate. We raised this with the First Minister yesterday about whether or not there was an element of paranoia in his feeling that he was not sometimes consulted by the appropriate Westminster department. Is it just incompetence on their part rather than deliberate?

**Mr Murphy:** I do not know. Perhaps it is something the Select Committee would wish to reflect on but I continue to ask and continue to offer to help.

**Q266 (13.01.10) Mr Davidson:** But has your department at all written formally to the Scottish Government asking to be copied in?

**Mr Murphy:** Officials are asked to get copies of the correspondence. We regularly do so.

**Q267 (13.01.10) Mr Davidson:** And it is still not being done?

**Mr Murphy:** Yes.

**Mr Davidson:** Goodness me. Pete, surely you can sort that out.

**Q268 (13.01.10) Pete Wishart:** If I could finish my questions—I am grateful for that response to Mr Davidson's question.

**Mr Murphy:** It is something we press on. I do not believe it to be malevolently intended.

**Mr Davidson:** It is incompetence then.

**Q269 (13.01.10) Pete Wishart:** I am interested in your response to the added value that you do bring to the party when it comes to being able to deal directly. You gave one example which I am grateful for. I am sure there are others that you probably want to mention. I suppose what I am doing in asking you, Secretary of State, is to justify what you do in the Scotland Office because for a number of us we have real difficulty in really understanding what your day-to-day function is. You have very little legislative responsibility is. You put out lots of anti-SNP press releases. We see a lot of them.

**Mr Murphy:** Chairman, for the record, I do not put out anti-SNP press releases, not once. Mr Wishart, I wonder if you wish to correct the idea that the Scotland Office as a department of government puts out press releases attacking the SNP. Do you wish to correct the record?

**Q270 (13.01.10) Pete Wishart:** We will provide you with a list of some of the things that you have said in the course of the past few weeks and months. I want to get back to—

**Mr Murphy:** Mr Wishart, that is different from the Scotland Office putting out press releases.

**Pete Wishart:** I am not getting into childish banter on this.

**Mr Davidson:** This is a very important point, Chairman. I think we need to clarify it. I understand that, just as with the First Minister yesterday, people would want to make partisan points occasionally, but the allegation, I think, is that the Scotland Office is actually putting out party—

**Pete Wishart:** I did not say the Scotland Office. I said the Secretary of State.



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**Mr Davidson:** So the Secretary of State, not Jim Murphy MP—

**Pete Wishart:** Do you want to get into this childish debate?

**Mr Davidson:** Yes.

**Chairman:** Can I suggest we move on to the question?

**Mr Davidson:** Let him withdraw. That is fair.

**Q271 (13.01.10) Pete Wishart:** I am not withdrawing anything. With your permission, Chairman, I am anxious to find out what exactly it is you do in terms of bringing added value to the role particularly the dealings with the Scottish Government when it comes to being able to put forward its case. For example, in Joint Ministerial Committees, you talked about getting together the Europe Committee and the domestic one and the intergovernmental one. What does the Scotland Office offer in terms of being able to get these to meet?

**Mr Murphy:** We play our part in trying to get more energy into it, but, Mr Wishart, I am not here to congratulate myself on a job well done, mediocre-ly done or poorly done. That is for others to decide. I suspect your colleague in the Western Isles is at least privately appreciative of the effort we made in trying to save the firing ranges in the Uists. I am sure in a private moment of reflection he shares that with you, not yet publicly, of course. There are other examples, Mr Wishart, but I am not here to offer self-validation. I simply believe in principle in the role of the Secretary of State for Scotland regardless of who holds the post.

**Q272 (13.01.10) Chairman:** Can you tell us why does Whitehall not copy in the Secretary of State when they respond to the Scottish Government?

**Mr Murphy:** We do. That is often the time at which we catch up.

**Q273 (13.01.10) Lindsay Roy:** Secretary of State, do you agree with the Calman findings that there is a lack of understanding of devolution within some UK departments?

**Mr Murphy:** I think there is, but again I think it is a problem both ways. Because of the obvious turnover there is in civil servants at various levels in Whitehall the knowledge of pre-devolution days is very limited. If I am working in a Whitehall department that only occasionally has a direct impact or interaction with the Scottish Government, they perhaps do not know as much as they should, which is why in the Scotland Office officials continually update other departments about interactions with the Scottish Government about good and close relationships and will continue to do that. The other way round as well is that amongst civil servants in Scotland there has been a very large turnover in the past decade since devolution and there are many civil servants in Edinburgh who perhaps have less experience of dealing with Whitehall departments, certainly from pre-devolution days. It is a joint effort in communicating and educating these civil servants and there is a job of work that gets done but I am sure there is more that can be done.

**Q274 (13.01.10) Lindsay Roy:** In his evidence yesterday it was said that there had been some cobwebs developed in the structures of intergovernmental relationships. What have you been doing to try and remove or dust down these cobwebs?

**Mr Murphy:** I am trying to create some relationships that did not previously exist, as I already alluded to, and will seek to do that further with COSLA and others.<sup>3</sup> In terms of the joint ministerial process it did go into abeyance, the whole thing had stalled. As I say, the European work was the one that did continue and again I am not saying it was me; it was when I was Europe Minister there was goodwill on all sides that helped make that be the success that I think it was. It is now about how do you get the Joint Ministerial Committee on domestic policy up and running? How do you get full attendance at the Plenaries? How do you get the Financial Quadrilaterals amongst the UK and the devolved administrations up and running properly? We are happy to give whatever assistance we can and attend at every time possible.

**Q275 (13.01.10) Lindsay Roy:** In terms of a better understanding of devolution within Whitehall departments, have you been raising it with colleagues in Cabinet, ministers?

**Mr Murphy:** I have. The Calman process has been a really effective way of making this happen because clearly the Calman recommendations touch most if not all Whitehall departments, so in the conversation about air guns, for example, within the Home Office or drink driving or speed limits, the Department for Transport or in finance, and the whole argument about implement now, why some people are alleging delays and things, and obviously my argument has been that it is a package. We will do it carefully as a package. Shall I get a Dangerous Dogs Act on devolution? I cannot do it in a rush or you repent at leisure in terms of designing it properly, so that whole Calman process has been really very important in embedding a fresh understanding on devolution.

**Q276 (13.01.10) Lindsay Roy:** Do you believe that this comprehensive package will embrace many departments in Whitehall and therefore that will foster their understanding further?

**Mr Murphy:** I think so. It is not an implicit criticism at all of any of these folks but if I am working in the Home Office on firearms policy, I am working on firearms policy in the Home Office; I am not working on the details of devolution. It is part of the conversation and debate about devolve, do not devolve. You develop an understanding. A wider group of civil servants across Whitehall have developed a better understanding of devolution during this process and as we move towards implementing Calman I think that knowledge will deepen.

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<sup>3</sup> Convention of Scottish Local Authorities.

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**Q277 (13.01.10) David Mundell:** But do you as well think that the need to develop the understanding is a very strong argument for retaining a unified UK Civil Service rather than going down the route which I think the First Minister alluded to yesterday of having some distinct and entirely separate Scottish Government Civil Service because it does allow still for the scope for cross-fertilisation between departments, between people having the opportunity to work in Scotland and come to the UK or work here in Whitehall and go back to Scotland and that that is a very strong aspect of having a UK Civil Service?

**Mr Murphy:** I think there is a very strong argument for maintaining a UK Civil Service. When I was at the Cabinet Office and working on these related issues it was pretty clear that in terms of career and opportunities this is a unified service. The argument is very strongly in favour of it now. If you want to break away from that I think you have to make a pretty compelling case. I do not think the case has even begun to be made properly. I think it is good for government, it is good for the Civil Service. I also think it is good that you maintain this unified de-politicised Civil Service. I think it would be dangerous and wrong to adopt policies that some other countries have, changes in government, either in Scotland or in the UK, where you get rid of a whole section of the Civil Service. I think the system that we have in place, while it can always be improved, is a pretty stable and strong one. When I was at the Foreign Office governments across the world were pretty envious of the system that we have in place.

**Q278 (13.01.10) Mr Davidson:** Can I just follow up this question about departments not knowing about devolution. I am on Public Accounts as well and we frequently find examples of silo working, as it were, departments not linking with other departments. Is it much worse in relation to the Scottish Government or is this just an example of departments being insular and that the paranoia that we have seen exhibited sometimes by people in Scotland is an exaggeration?

**Mr Murphy:** I do not think it is a particularly Scottish issue. I think with the new pattern of devolution in Northern Ireland, Wales and Scotland and London, things are more complicated; they just are. I think that after the start of devolution there was a period where the Civil Service machinery took a wee while to find its feet. I think it has recovered from that, so I do not think it is intentional, it is not belligerent, it is not malevolent. It is just the nature of a more complicated world we live in now, but I think it is between 30% and 40% of Scotland Office civil servants, Scotland Office officials, are secondees from the Scottish Government, so again that is a good thing, that movement of officials, and certainly in my time in the Scotland Office a substantial number of officials moved back and forward between the Scottish Government and the Scotland Office, and that is a good thing.

**Q279 (13.01.10) Mr Davidson:** Is there a process of rotation of people from other Westminster departments into the Scotland Office?

**Mr Murphy:** There is not a formal process of taking people, say, from DFID or the Treasury, but there is a very close relationship with the Ministry of Justice.

*The Committee suspended between 4.00 pm and 4.19 pm for a division in the House*

**Chairman:** I believe the Secretary of State has to leave at a quarter to five for another meeting. I am sure we will be able to finish by that time.

**Q280 (13.01.10) Pete Wishart:** In an effort to be much more consensual than in earlier exchanges, Secretary of State, there is, as you know, a great deal of consensus on some of the measures in the Calman proposals, particularly those relating to air guns, drink driving and speed limits. Already the Scottish Parliament, for example, have prepared orders that would see a quick transfer of powers from Westminster to the Scottish Parliament. The First Minister wrote to the Prime Minister only last week asking if he would consider early transfer of these powers and the impression was given that the UK Government were not in the mood to do this. Is there any explanation why that is the case, given that this could save lives and prevent injury, the police force want it, all the parties in the Scottish Parliament want it? Can you not see the speedy transfer of the recommendations in the Calman Commission if we all agree?

**Mr Murphy:** I think there is cross-party consensus that there needs to be this transfer of power and devolution of power on air weapons, as I alluded to and you have alluded to, drink driving and speed limits. Of course, at that point of transfer to the Scottish Parliament the Scottish Government would say what they would wish to do with it in terms of the policy formulation around those new constitutional powers. I do not wish in your new cheerier you, Mr Wishart, to disappoint you unnecessarily, but the position as set out by the Prime Minister, myself and others since the publication of the White Paper remains the case, that we have taken an approach here that of the 63 recommendations the 42 that are for the Government we take forward as a package. We think the measures on better co-operation we can do without delay and in terms of government-to-government relationships they are a matter of practical relationships, the matter of parliament-to-parliament relationships are essentially for parliamentary authorities in terms of a body of legislation and it is our intention to produce one enormous new Scotland Bill and Scotland Act early in the next Parliament once we have done the huge amount of preparatory work that is necessary. On air guns, Mr Wishart, you will be aware that it is easier to craft an argument than it is to craft legislation. The difficulty we have at the moment is that there is no legal definition of air guns, so it is impossible to transfer a power in an imprecise way, and, as I alluded to earlier, if we do this in haste—we are making progress; we are making a lot of progress and there is an awful lot of work going on behind the scenes, but if we do it in haste I think we would

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repent at our leisure on the basis of legislating in a rush. We are aware of the urgency of it, which is why we are going to act on it. We have been open enough to acknowledge that it is a change in our policy because up until a while ago, of course, we said the argument was that we do not see the case for devolution of this power. We have changed our mind and it is important to recognise that.

**Q281 (13.01.10) Pete Wishart:** Thank you for that very helpful response but I do not know if I have got it wrong. Is all that is required a section 30 order, just like we did in terms of the devolution of—

**Mr Murphy:** No, it is not.

**Q282 (13.01.10) Pete Wishart:** When it comes to the definition of air weapons is it not the case that there is a statutory definition of air weapons in the Firearms Act 1968? We have heard this talk that primary legislation is required. Is it not the case that in Somerville (I gave that example earlier in the discussions today) it was just a section 30 order, we can get on with it?<sup>4</sup> It is reckoned here that six lives are lost per year as a result of the current level of alcohol in the blood. We could reduce it and save six lives a year. Does that not create some sort of real necessity to deal with this? There is agreement; we can do it. Why do we not just get on with it?

**Mr Murphy:** I am not, of course, suggesting you are wrong. I rely on the facts. There is a definition of dangerous weapons but by the way of these things there is no definition of an air weapon, and we want to devolve these air weapons. The definition is based upon the kinetic thresholds that the instrument a weapon demonstrates, defined, as I understand it, in legislation from 1993, but we would have to work to a definition of what an air weapon was. There is no friction here about the determination to transfer these powers. It is about doing it properly and we will introduce a Bill early in the next Parliament to transfer these powers and implement financial responsibilities for the Scottish Parliament and we are very clear about it and are 100 per cent committed to it.

**Q283 (13.01.10) Pete Wishart:** But that is dependent, obviously, on a Labour Government being re-elected and, given that we have heard from the Conservatives that they are less than keen to bring forward a White Paper, there is a real chance that we will not get this devolved; we will not be able to save the lives that we mentioned. There is still an opportunity to do this. With the skills that you have at your disposal surely you can look at this and get this moving. We can do something really positive and constructive. Going back to your old consensual self, surely this is a great opportunity to do this rather than leaving it up to the possibility of a Conservative Government not producing a White Paper and not getting these powers. You have an opportunity, Secretary of State, to deliver this. Would that not be a reasonable legacy to leave behind?

**Mr Murphy:** Mr Wishart, I am not in the business of leaving legacies. I am in the business of doing the right thing, and I am not in the business of trying to lose power, so I am not interested in leaving a legacy either. Mr Mundell has gone, so I am not going to talk impolitely about him in his absence, but I am sure he will read the record of your suspicion that he would not progress with the issue on air guns. I think there is a cross-party consensus here in the House of Commons that the transfer of these powers is necessary. There is some debate in the Conservative Party that it is coming out with the financial powers but that is for them to continue to argue from a position of opposition. We are all horrified when we read about terrible cases of injury or death caused by these air weapons, which is why we have changed. It is one of the reasons why we have changed our policy on this about agreeing to devolve it to the Scottish Parliament so if the Scottish Parliament decide it is the will of the Scottish people to go further than the current law then they can do so. It is about getting it right. I do not want to do this in a way that creates permanent danger by doing it on a timetable driven by pure party politics. I want to get it done in a cast-iron way so that we do not re-invent across this whole spectrum of the dozens of recommendations the Dangerous Dog Act sort of syndrome where we think it was right to rush perhaps, but look at the mess we have made in the financial powers. The financial powers is an enormous piece of work to get done. With the latest date for a general election being in June of this year, and when we are talking about a period of transitionary arrangements over a number of years, this cannot be implemented in a rush in the way that I take it on face value your party is arguing for.

**Q284 (13.01.10) Chairman:** The Calman Commission has made recommendations on the working of the Scottish Parliament. Does the UK Government agree with those recommendations in principle?

**Mr Murphy:** First of all, of course, the Calman Commission was instigated by the Scottish Parliament and then agreed to by the UK Government and endorsed by the UK Cabinet. I am sure, Chairman, you will not think I am being evasive when I say it is really not for the Secretary of State for Scotland here in the House of Commons and the British Government to say what the Scottish Parliament should be doing in Edinburgh. As I say, I met with the Presiding Officer and the three pro-devolution party leaders in the Scottish Parliament and they have decided their own programme of work on this. I went to meet the Presiding Officer to formally present the report and the Government's response to it in the shape of the White Paper. It is now not for me sitting here, albeit as a Scottish Member of Parliament, to dictate what the Scottish Parliament does with it. I just have an instinctive sense that there is a real willingness there amongst the three pro-devolution parties to make this work, and I look forward to the House authorities in the Commons and the Scottish Parliament working together on it.

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<sup>4</sup> Q 41

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 13 January 2010 Rt Hon Jim Murphy MP and Mr Robin Haynes
 

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**Q285 (13.01.10) Chairman:** I understand, Secretary of State, that it is a matter for the Scottish Parliament and the Scottish administration to accept or reject those recommendations. I am just asking your view on this.

**Mr Murphy:** Instinctively, without going into the specifics because it is for them to decide, anything that can be done to embed a better structural working relationship is a good thing, not out of politics but just out of governance. I was surprised at the extent to which Sir Ken Calman was surprised at the low level of co-operation that there was between the two Parliaments, between groups of politicians, between MPs and MSPs. He was taken aback by it, which is why it was a substantial piece of his report. It was within his remit, of course, but it was a significant piece of his report. Without going into the specifics, it is right that there are better working relationships.

**Q286 (13.01.10) Chairman:** Sir Kenneth Calman described the recommendations as “a package of 63 recommendations which hang together”.<sup>5</sup> Has the Government disrupted this by only accepting selected recommendations?

**Mr Murphy:** There are 63, as you say, Chairman, 42 for the Government, 21 for others, including the two Parliaments. Of the 42 we are accepting and taking forward 39. It may be helpful for me to mention the three that we are not currently progressing. One is the JMC on finance. We think the current arrangements on the Finance Quadrilateral arrangements are right. The other two are on housing benefit and deprived area funds money because we believe in a social union of the United

Kingdom and that people, whether they are unemployed in Glasgow or Gateshead, should have similar access to benefit entitlements in a welfare state. We instinctively believe as a Government that the welfare state is one of the great unifying things of our nation and in times like these in particular it is important that we support it. Those are the three that we are not attracted to at the moment.

**Q287 (13.01.10) Chairman:** Yes, but is work on the implementation of the recommendations already underway or will it be delayed into the new Parliament?

**Mr Murphy:** Behind the scenes and across Whitehall a huge amount of work is going on. We want to get to a position where we have a Bill ready to go early in the next Parliament, so we cannot wait through the preparations until the next Parliament begins. As I alluded to earlier, Chairman, I met with the Chancellor yesterday and officials met with Treasury officials yesterday, because that is by far and away the vast work that has got to be done out of Calman’s recommendations. The work is taking place and we will try and show that that work is taking place before too long, but we will continue to listen to this Committee and others as to how they think we should progress with it.

**Q288 (13.01.10) Chairman:** Can I thank the witnesses for their attendance this afternoon. Before I declare the meeting closed would you like to say anything in conclusion perhaps on any issue which we have not covered during our questions?

**Mr Murphy:** No, Chairman, I am happy that we have had a full airing of all the issues and I look forward to coming back in the next couple of weeks.

**Chairman:** Thank you, Jim, and Robin, for your attendance.

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<sup>5</sup> HC (2008-09) 254-ii, Q151

# Written evidence

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## Letter from the Speaker to the Chairman of the Committee

The Government's response to the report of the Commission on Scottish Devolution was published today. I know your committee is well aware of the background, and has indeed taken evidence from Sir Kenneth Calman.

Part 4 of the final report of the Commission, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, is entitled *Strengthening cooperation between Government and Parliaments*. This mixes recommendations addressed to the UK Government and Scottish Executive with others addressed to the two Parliaments. The Government's response notes that a number of these are matters for the two Houses to decide. If these matters are to be brought before the House, it will need the advice of its select committees. I have today written to the Chairman of the Procedure Committee, inviting him to consider some of these proposals, and inviting his Committee to examine whether there is room for co-operation with the Scottish Affairs Committee on this.

In their 1999 report on the procedural consequences of devolution the Procedure Committee enunciated as one of their guiding principles that there should be as few procedural barriers as possible to co-operation between Members of Parliament and Members of other UK legislatures, where such co-operation is desired. I agree, and I believe it is important that the House should be seen to be responding to the Commission's proposals touching on its role with due seriousness, and looking for those areas where we can co-operate with the Scottish Parliament to give effect to recommendations on which there is a strong measure of agreement.

The Scottish Affairs Committee examined the operation of the "Sewel Convention" in a report of June 2006. You recommended:

- the introduction of a formal process whereby the Scottish Parliament notifies Westminster when a Sewel motion had been passed;
- that any communication from the Scottish Parliament that it had passed a Sewel motion is, at the appropriate time, "tagged" on the Order Paper, and the text of the resolution made available in the Vote Office; and
- that all Explanatory Notes to Bills are explicit about which part or parts of the United Kingdom a Bill will affect, and could, therefore, trigger the Sewel Convention.

The latter two recommendations were accepted by the Government and implemented without an explicit resolution of the House. The Commission's recommendation 4.2 invites the House to strengthen the convention by entrenching it in the standing orders of each House. Recommendation 4.3 is that the UK Parliament and Scottish Parliament should have mechanisms to communicate with each other, and that in particular there should be detailed communication about legislative consent motions, and in particular if a Bill subject to a legislative consent motion is amended such that it is outside the scope of the motion.

I read the Commission's recommendation for "entrenching" the convention in standing orders to be in the spirit of the Scottish Affairs Committee's recommendation which recognises that the Sewel Convention is about relations between two legislatures as much as about inter-governmental relations. If the Commission are suggesting that the current arrangements should be captured in standing orders in order to signify the consent of this House to the arrangement, that would be a way for the House to endorse current practice, and this would seem appropriate enough, since the absence of any resolution of the House endorsing the Scottish Affairs Committee's original recommendation might be considered a lacuna in the formal underpinning of the Convention. Your Committee may wish to respond to the recommendation in this spirit.

At paragraph 4.143 of its report the Commission makes a recommendation in line with the Scottish Affairs Committee's 2006 recommendation for "... the introduction of a formal process whereby the Scottish Parliament notifies Westminster when a Sewel motion has been passed ... our view [is] that the better way of letting the House of Commons and the House of Lords know that Holyrood had passed a Sewel motion would be for the Clerk of the Scottish Parliament to advise the Clerk of the House and the Clerk of the Parliaments that such a motion had been passed, rather than for the Presiding Officer to contact the Speaker and the Lord Chancellor.". This proposal never came before the House for consideration, but I should say that I find nothing inherently problematic about that suggestion (although I note that the Scottish Government, while supporting the proposal to put the Sewel Convention on a standing order footing, takes a different view in its response to the Commission on this issue).

Recommendation 4.9 proposes that for any UK Parliament Bill which engages the Sewel Convention on a matter of substance, consideration should be given to including one or more Scottish MPs on the Public Bill Committee, who should then be invited, as appropriate, to meet the Scottish Parliament committee scrutinising the legislative consent memorandum. I have invited the Procedure Committee to consider whether the presence of Scottish Members on a committee considering a bill subject to a legislative consent

motion is a factor the Committee of Selection should take into account. Whether those Members wished to accept an invitation to meet the relevant committee of the Scottish Parliament is a matter which I think, in the end, must be left up to them. Your Committee may also have a view.

Recommendation 4.9b proposes that a Scottish Minister should be asked to give evidence to the UK Parliament committee examining Orders made under s 30 of the Scotland Act. This does not seem to me constitutionally outlandish, so long as the decision whether to seek that evidence is at the discretion of the committee rather than in some way mandatory. But it would require a change to the powers of a delegated legislation committee considering a Scotland Act Order. I have invited the Procedure Committee to consider this possibility.

Recommendation 4.4 suggests that the UK Parliament should end its self-denying ordinance not to debate devolved matters as they affect Scotland. Essentially, the Commission appears to be inviting the Commons to debate anything relating to Scotland, whether or not devolved. It also suggests an annual Scottish debate along the lines of the annual “St David’s Day Debate” for Wales. I have suggested to the Procedure Committee that this is something it may wish to examine if it were to revisit its 1999 Report on the procedural consequences of devolution. Your Committee may well wish to express its own view on whether this recommendation should be put to the House.

Recommendation 4.6 is that committees of the UK and Scottish Parliaments should be able to work together and any barriers to this should be removed. The Commission goes on to propose that:

- (a) Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.
- (b) Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.
- (c) Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

It appears to me that, essentially, this recommendation invites the House to extend the power given to the Welsh Affairs Committee under Standing Order No 137A(3) to all select committees. I understand this procedure has worked well, though it has not been used frequently. There does not therefore appear to me now to be any obvious procedural impediment at Westminster to extending this power to all select committees in respect of each of the three devolved legislatures. I would be interested in the views of your Committee.

The power requested in paragraph c of the Commission’s recommendation 4.6 already of course exists (S.O. No 137A(1)(a)), and was introduced on the recommendation of the Procedure Committee in its 1999 report.

The Commission proposes that the First Minister should be invited to appear annually before the House of Commons Scottish Affairs Committee and, in recommendation 4.8, that after the Scottish Government’s legislative programme is announced the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters. Recommendation 4.20 exhorts Scottish MPs actively to demonstrate appropriate oversight and stewardship of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement. The response to these recommendations must be primarily a matter for the First Minister and your Committee.

The above recommendations seem to me to be matters which might be able to be dealt with quite quickly. Recommendation 4.5 appears to be in line with your Committee’s suggestion in your 2006 report for a Scottish “Super-Grand” Committee. While I recognise that there are quite complex issues underlying this proposal, which the Calman Commission does not directly address, and which your Committee did not go into detail about in 2006, the idea certainly seems to me worthy at least of some further consideration. An important principle to bear in mind is, no doubt, the desirability of clarity about formal lines of accountability. Your Committee may wish to revisit its earlier proposal.

As I said at the outset, my principal concern is that the House of Commons should be seen to be giving serious consideration to proposals for improved co-operation if they appear to enjoy the support of the Scottish Parliament. No doubt if these proposals are considered by the Procedures Committee of the Scottish Parliament it will be possible for an exchange of views to take place with our Procedure Committee and your Committee. Although many of the proposals fall into the traditional territory of the Procedure Committee, it may well be that the Scottish Affairs Committee might wish to give its own lead on some of the particular issues relating to Scotland. Ten years ago the Procedure Committee stated that there should be no unnecessary impediments to good relations between this House and the other legislatures in the United Kingdom. We should seek to be sure that we have not let the moss grow on our good intentions in the intervening decade.

25 November 2009

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**Memorandum from the Scotland Office**

I would like to thank you again for the opportunity to come and talk with the Committee on Wednesday 13 about the Government's White Paper: "*Scotland's Future in the United Kingdom*".

At this session I committed to provide you with the Scottish Government's response to the proposals by the Calman Commission that I should attend the Scottish Parliament after the Queen's Speech to discuss the legislative programme and answer any questions that the MSPs may have.

I attach the relevant extract from the Scottish Government's published response to the Calman recommendations:

**RECOMMENDATION 4.8:** Shortly after the Queen's Speech the Secretary of State for Scotland (or appropriate UK Government Cabinet Minister), should be invited to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly, after the Scottish Government's legislative programme is announced the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters.

The Scottish Government does not support this recommendation. While it would be helpful for Ministers to make themselves available to committees to provide information, this proposal would blur boundaries and cause confusion. The Secretary of State is not accountable to the Scottish Parliament and the First Minister does not have to justify the Scottish Government's programme at Westminster.

The full text of the Scottish Government's response to Calman is available here: <http://www.scotland.gov.uk/Publications/2009/11/09152544/2>

As I indicated before your Committee, I am keen to see the system that exists in Wales replicated in Scotland. The Secretary of State for Wales appears before the Welsh Assembly following the Queen's Speech to outline the Government's programme and its implications for people in Wales. I believe that this would be a useful and welcome exercise for people in Scotland to have the benefit of too.

I understand that in the evidence session with your Committee, the First Minister indicated that he would be willing for UK Government Ministers to appear before the Scottish Parliament; I welcome this change of tone.

*Rt Hon Jim Murphy MP*  
Secretary of State for Scotland

20 January 2010

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