



HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Constitution

Inquiry on

INTER-GOVERNMENTAL RELATIONS IN THE UK

Evidence Session No. 5

Heard in Public

Questions 76 - 86

WEDNESDAY 11 FEBRUARY 2015

10.30 am

Witnesses: Rt Hon Alistair Carmichael MP and Rt Hon Lord Wallace of Tankerness

Members present

Lord Lang of Monkton (Chairman)
 Lord Brennan
 Lord Cullen of Whitekirk
 Baroness Dean of Thornton-le-Fylde
 Baroness Falkner of Margravine
 Lord Lexden
 Baroness Taylor of Bolton

Examination of Witnesses

Rt Hon Alistair Carmichael MP, Secretary of State for Scotland, and **Rt Hon Lord Wallace of Tankerness**, Advocate-General for Scotland

Q76 The Chairman: Good morning, Secretary of State and Advocate-General. I welcome you both this meeting of the Constitution Committee. We are getting towards the end of our inquiry into intergovernmental relations, and separately but within the same timeframe we are now studying the new clauses that have been brought forward in relation to the Smith commission. We will probably publish separate reports on them, but we would like to discuss both elements with you if you are agreeable, and I understand that you are.

Without more ado, I will move on to the questions. As a broad, opening question, what is the purpose of intergovernmental relations, in your view, and how do you see them changing in the changing contexts? Secretary of State.

Rt Hon Alistair Carmichael MP: In its broadest terms, their purpose is better government. We have a constitutional set-up now where devolution has developed at different speeds in different parts of the United Kingdom. Occasionally the law of unintended consequences comes into play, so it is important to get everybody around the table occasionally, to share experiences, to thrash out any difficulties that have arisen and to share experience, ultimately with a view to doing things better, because in areas where you have an interface between the different the two Governments in Scotland, which is the focus of my job, inevitably there is a duty on politicians, both in Holyrood and in Westminster, to ensure that the system works properly. That, after all, is what the people of Scotland voted for on 18 September.

The Chairman: Lord Wallace, would you like to add anything?

Rt Hon Lord Wallace of Tankerness: I have nothing to add. As the Secretary of State said, the purpose of intergovernmental meetings is to assist good governance and to try to ensure that the actors at the top level meet, but we should not lose sight of the amount of work that goes on at official level day in, day out. My own office, the Office of Advocate-General, is in

daily contact with the Scottish Government legal department with regard to a whole host of issues. We should not overlook what happens at official level day in, day out.

The Chairman: Yes, but when the Scottish Executive was originally set up, it more or less dealt with matters that were already in the bowels of the Scotland Office, so there was no huge underlying change in the structure of government. Since then, it has become more complex, first with Calman and now with what is in prospect. Is there much more work? Do you see a huge expansion of these forms of relationships developing?

Rt Hon Alistair Carmichael MP: There will be a need for the two Governments to work collaboratively on the welfare provisions, for example. That is hardwired into the draft clauses. You will see that there are duties to consult here and there as necessary. I lay heavy emphasis on the fact that it is a duty to consult. Where either Government have an entitlement to act, that is in no way fettered by a duty to consult. To my mind, dealing with overlap and joint administration is a matter of common sense, but it does no harm to have that common sense spelled out in the draft clauses.

Rt Hon Lord Wallace of Tankerness: One of the changes, which took place as far back as 1999, is the importance, where you have separate Governments, of getting a common United Kingdom position in European Union matters. The most obvious one is fisheries and agriculture, which seems to be talked about regularly. When I was a Justice Minister in the Scottish Executive, we and our officials would discuss it at ministerial level. That is important, because one UK view has to be expressed but it is also important that there is a forum for the differing views of the devolved Administrations and the United Kingdom Government to be considered and agreement reached.

Rt Hon Alistair Carmichael MP: There is one very obvious area where you will have to have close joint working and agreement, and that is in the construction of a new fiscal framework. Work on that has already started, but none of this works unless you get that right.

The Chairman: The Smith commission emphasised the need for improvement in intergovernmental relations. Is work going on across the board on that at the moment?

Rt Hon Alistair Carmichael MP: The Joint Ministerial Committee in plenary session has tasked officials in all Governments to come forward with proposals for a review of that, and that will be an important structural point of action. The first meeting took place today of a joint ministerial working group on welfare matters, in which the Parliamentary Under-Secretary of State at the Scotland Office and Ministers from the Treasury and the Department for Work and Pensions are working with Scottish Government Ministers to ensure that in areas where the future transfer of competence—be it legislative, administrative or both—is

anticipated, decisions taken now by the United Kingdom Government can be informed by the views on the future intentions of the Scottish Government.

Q77 Lord Lexden: Good morning. We have heard that effective intergovernmental relations require a basic level of equality and status between the participants, but is it in practice realistic for the UK Government and devolved Administrations to be seen as equal in their relationships? As a supplementary, do the relationships vary between devolved and reserved policy areas?

Rt Hon Alistair Carmichael MP: It is not particularly instructive to talk about equality of status, which I think is the term that you used. What does that actually mean? I am more concerned about every constituent part of the structure of government that we now have demonstrating proper respect for the other parts of that government. As a Minister of the United Kingdom Government I fully—and enthusiastically, if you can have such a thing—respect the right of Scottish Ministers to undertake the functions that are given to them in a way that they then have to be accountable to the Scottish people through the ballot box. I think that is a more meaningful approach than talking about equality.

As for the working relations between the different Administrations, because they are different settlements they work in different ways. The relationship between the United Kingdom Government and the Northern Ireland Assembly Government, for example, is always going to be different because of the history of Northern Ireland and the way it came to devolved politics, and given the fact that the peace process itself gave the Republic of Ireland a role in the management of that particular constitutional settlement. The relationship between the Scottish Government and the UK Government is not without its tensions. There is no hiding that fact, particularly in the course of the referendum. Politics occasionally gets in the way of good government.

I come back to the point I made earlier that the people of Scotland said on 18 September that they wanted to have two Governments, they want a Scottish Parliament. They want, though, to remain part of the United Kingdom, and anybody who uses the structures of government to demonstrate a lack of respect for that decision is into dangerous territory.

Rt Hon Lord Wallace of Tankerness: I share the Secretary of State's view that I am not quite sure where it takes us to talk about equality of status. It is much more important that you get on with the job. If you are in meetings, whether Joint Ministerial Committees or one-to-ones, it is important that you deal with that in a rational way and that there is no superiority complex—or inferiority complex, come to that. It is important that there is respect. Members

of the Scottish Government have a legitimacy, and we would be wrong to gainsay that. Respect is probably the key word.

Lord Lexden: Can I just come back to the supplementary point as to whether the relationships differ between devolved and reserved policy areas?

Rt Hon Alistair Carmichael MP: Sorry, I understood your question to be about the relationships between the different devolved Administrations. In that case, yes, I think they do vary, for a whole variety of reasons: you have different settlements, different areas of interface and, bluntly, different politics and different personalities involved.

Rt Hon Lord Wallace of Tankerness: Inevitably if you are dealing with a policy area that is in a reserved field, the United Kingdom Government Minister is going to be the lead Minister. Constitutionally, the Minister from the devolved Administration does not necessarily have a locus, but that does not mean that if there are issues, which may be reserved issues but have impact on devolved matters, the relationship or the dialogue should be anything other than respectful and constructive.

Q78 Baroness Dean of Thornton-le-Fylde: Good morning. I would like to turn to the Joint Ministerial Committee and after that the domestic sub-committee. We have had written evidence, and indeed evidence from witnesses before us, that they feel that the JMC is really a place for grandstanding—a word that has been used by a number of people—and for airing grievances but not necessarily resolving them, and that it is certainly not for policy-making. The Welsh First Minister said that he felt that it was a place for grievances rather than achieving co-operation. He went on to identify two areas where there had been major reform but where they had been insufficiently consulted: one was education and the other was the NHS. The Chairman of the National Assembly for Wales Constitution and Legislative Affairs Committee also took the view that it was a place for grandstanding. The official from the Cabinet Office, Helen MacNamara, rebutted that: she said that that was not the case. So we have two sets of evidence: one saying that the JMC is a place where really not much takes place, and this being rebutted by the officials involved. What is your view, Secretary of State?

Rt Hon Alistair Carmichael MP: I will share with you the briefing that I have been given by officials in preparation for this. It says that Joint Ministerial Committees and plenary have been, and are, productive and useful. I think it is important that we have that on the record.

Baroness Dean of Thornton-le-Fylde: But what is your view?

Rt Hon Alistair Carmichael MP: When I hear talk of grandstanding, I can identify elements that justify that tag. They occasionally generate a bit more heat than light, but let us not forget that when you take a room, fill it with politicians from different parts of the country and from

different parties and leave the press at the door, yes you are going to get a bit of politics happening. That is kind of how it works. My observation is that there is a need for a structure that allows formal meeting, discussion and sharing of experience, but that you have to have realistic expectations of exactly how much that will achieve. I was not aware of Calman's view that it was not appropriate as a mechanism for discussing policy, but I can see why he would reach that view. Ultimately, the best structure in the world will work as well or as badly as the politicians who are part of it want it to work. The day-to-day quality of the working will be determined by the willingness of the politicians who hold ministerial office in particular to make it work. If you do not have that willingness to make it work—candidly, there were times in the last few years when there was not that willingness—ultimately it does not work as well as it should. That is why I keep coming back to the point that that sort of game-playing has to stop, and that continuing to use the points of interface between the Governments as an excuse for generating grievance or friction between the Governments demonstrates a lack of respect for the views of the people of Scotland.

Rt Hon Lord Wallace of Tankerness: I have not been present recently at a JMC—plenary or domestic. I am a member of JMC Europe, which does not attract many headlines or much press coverage, but I think it is a useful venue. We tend not to have grandstanding. They are usually held ahead of European summits, and the agenda is issues coming up at the forthcoming European Council. There is usually a Minister from the relevant UK Government department, who will introduce a paper that is constructive. The various devolved Administrations have their say on their perspective on the policy issues.

Ask the devolved Administrations what they think about it, but I think that JMC Europe is a constructive meeting. I last attended the JMC plenary when I was Deputy First Minister. I recall that we had three. The first one in Edinburgh was novel and everyone was quite excited by it. The second one in Cardiff was less exciting. In the third one, held in No. 10, my recollection is of Prime Minister Blair looking out of the window. We never had another one. Neither the noble Lord, Lord McConnell, nor I were particularly aggrieved—it freed up time in the diary. It did not do very much.

The Chairman: When Calman produced his report in 2009, which complained about the lack of commitment to the use of the JMC, there had been long periods where not much had happened. I fear that is going to change, which is why we are asking all these questions.

Rt Hon Lord Wallace of Tankerness: I served on the Calman commission, which did quite a bit of work on intergovernmental issues. We identified that things had lapsed, and that that

was not healthy. The Calman commission made a number of recommendations, which may or may not be relevant to the Committee's considerations, but I commend them.

Baroness Dean of Thornton-le-Fylde: A question for both of you. I do not want to be diverted into the issue of grandstanding, which is certainly not unique in politics to the JMC; we all know that. The two important areas which the Welsh First Minister felt excluded from were the NHS and education changes. He felt that there had been insufficient consultation on that policy change, which put them in a very difficult position. That should not be allowed to happen, should it?

Rt Hon Alistair Carmichael MP: I do not know the detail of either of those matters. I am sufficiently absorbed in dealing with Scotland and relations between Scotland, Westminster and Whitehall to leave the responsibility for what happens in Wales to my colleague Stephen Crabb, but that is where work at getting the proper understanding and co-operation needs to be done daily and weekly at ministerial level in between the relevant Minister in Cardiff and the relevant Minister in Whitehall, and if necessary escalating it to discussions involving the Prime Minister or Deputy Prime Minister and the First Minister. You should not have to wait for a Joint Ministerial Committee to come along to deal with those things. However, the Joint Ministerial Committee provides a forum where all the different Administrations, be it the UK Government or the devolved Administrations, can take working examples like that and share their experience. A different view may well be taken from another devolved Administration. It comes down to what I said earlier: you have to have the political will to make the constitutional settlement work. That matters more than structures.

The Chairman: We have further questions on this. I bring in Lady Taylor and then Lady Falkner.

Q79 Baroness Taylor of Bolton: First, I reassure Lord Wallace that what he said about JMC Europe echoes what we have been told, but that seems to be a very particular area where relations have developed to look forward on policy as well as problems that arise. For the rest, we get a very mixed picture that causes some concern. We have quoted the First Minister of Wales. He talked about the lack of input into policy. Secretary of State, you said that you have to treat the devolved Administrations with respect, but you talked about consulting, which implies that the policy initiative comes from Westminster. We need to think about how far policy development is a joint process and that the initiatives can come other than from Westminster, and whether the structures allow for that or need to change in future, particularly post the new clauses and the new challenges that we will have dealing with them.

Rt Hon Alistair Carmichael MP: Let us deal first with the point about consultation. The duty to consult, for example in relation to welfare benefits, is an area of shared responsibility, essentially. Consultation is required in both directions. Where the United Kingdom Government are anticipating change in future, they are required to consult the Scottish Government in those areas, and if the Scottish Government anticipate changes they are required to consult the United Kingdom Government. The suggestion that the policy initiative will come from here in future is not correct. The policy initiative can come from either side of the border in relation to those parts of the draft clauses.

Baroness Taylor of Bolton: Would you accept that that happened in the past?

Rt Hon Alistair Carmichael MP: No, I do not accept that, because in the past there was not the same range of joint responsibilities that are anticipated in future. I do not think, for example, that there should be any role for the United Kingdom Government in being consulted on education policy in Scotland, where responsibility is completely devolved. It is entirely up to the Scottish Government to decide what direction they wish to take on education policy. I know that it is different in Wales. As I say, you would need to speak to the Secretary of State for Wales about how that has worked.

When I say that the constituent parts have to respect each other, I mean exactly that. That means that whether Scottish Ministers, as politicians or UK citizens, like or dislike government policy on defence or foreign affairs, they have to respect the fact that that is the constitutional responsibility of the UK Government.

Baroness Taylor of Bolton: Do you see the JMC structure having to change in the light of the new proposals and the Smith commission?

Rt Hon Alistair Carmichael MP: We have tasked officials to go away and look at that. I would anticipate that, yes, where you have an increased number of shared responsibilities, you will have to find a different mechanism to deal with the consequences.

Baroness Taylor of Bolton: And you are quite clear that the initiatives for any changes could come from either party?

Rt Hon Alistair Carmichael MP: Yes, that is what is in the draft clauses.

Q80 Lord Brennan: Good morning, gentlemen. What can be done to improve the transparency of intergovernmental relations under this new constitutional framework? Some examples: should the four Governments report regularly to their Parliaments about the progress of intergovernmental relations, and should their Parliaments have a significant scrutiny role in order to inform the public how things are working? A particular example that concerns some of the commentators we have been listening to is in the financial arena. It is

noticeable that in the JMC in the past, financial disputes have been significant, not in quantum but in differences of opinion, such as the Olympics and the Barnett formula. We had a little paper from Professor Berrell which I found surprising in one regard—not disturbingly surprising but informationally—that there is a quadrilateral meeting each year outside the JMC between the Finance Ministers of the four countries that is not accountable to anybody. It deals with macroeconomics and how the four are balancing their obligations. How do we make sure that the public know what is going on?

Rt Hon Alistair Carmichael MP: That is the job of Parliament. I regularly appear in front of the Scottish Affairs Select Committee in the House of Commons, I have appeared before the committees of the Scottish Parliament and, indeed, here I am today. A willingness of the Government to account for their actions to Parliament is absolutely central, and the extent to which the Government are held to account relies on Parliament doing its job.

The point was made that the agenda for the Joint Ministerial Committee is generally not published. I hope that is the sort of thing that we will look at, because for all intents and purposes if I really want to know what is going to be discussed at a Joint Ministerial Committee I make sure that I listen to “Good Morning Scotland” at eight o’clock on the day of the meeting. That is where I will generally find out. Some of the structures need to catch up with the reality.

On the question of the Finance Ministers’ quadrilateral, yes, more can probably be done to improve its transparency. That comes back to the requirement for the Parliaments to do their jobs. There are plenty of committees in both Houses with competence to look at how those things work. The Treasury Select Committee and the Public Accounts Committee here and the Finance Committee in the Scottish Parliament should all be quizzing their Ministers about what has been happening there.

Q81 Baroness Falkner of Margravine: We have had two slightly different views from our witnesses, depending on which group we were talking to. Academics and constitutional experts tended to suggest that, on the whole, constitutional change in the United Kingdom has been driven by calls from within the component parts of the United Kingdom for change to which Westminster then reacts, and then the change happens: one person described it as a constitutional chain reaction. Their view was that we ought to have a unified structure within the UK Government to deal with UK-wide joint working on the implications of a change in one part of the country on another part of the country, in effect recasting the relationship, perhaps in a single department for the nations and regions. That would of course impact on whether you had different Secretaries of State continuing in office or whether it would be

more efficient to have Ministers of State attending Cabinet as and when. What are your views on that and on the co-ordination of relations between the UK Government and the devolved Administrations to make it work better for everybody rather than just for the component parts?

Rt Hon Alistair Carmichael MP: Well, if you are going to take that holistic view, it has to be genuinely holistic. In the first instance, you need to look at the constitutional settlement across the whole of the United Kingdom. The missing link, candidly, at the moment, is what the English are going to do. I think there is an understanding in the different parts of England now that the conventional model of government, which is highly centralised and coming from Westminster works as badly for my family in the south-west of England as it does for my family in Scotland, and they now want a different constitutional structure for themselves. That is now a live debate in England in a way that, frankly, there has never been hitherto. I wish the people of England as much joy with it as we have had in Scotland, but there is no substitute for having a debate and building a consensus. That is now what has to happen.

There has been talk of a constitutional convention following the next general election. Personally, I am an enthusiast for that. That was the mechanism by which we built the consensus in Scotland for constitutional reform, and yes, I would like to see that taken up in a UK-wide process. Only then can you look to the best structure for government. For the moment, talk of a department for the nations and regions is inappropriate until you have a constitutional settlement, when we know that so much other change is coming.

Baroness Falkner of Margravine: Forgive me, but I am going to push you a bit on that. This is simply a change to do with the machinery of government. This is not to do with powers, it is to improve co-ordination between the component parts. To wait for a constitutional convention implies that this is a process change, not a constitutional, legal change in that sense.

Rt Hon Alistair Carmichael MP: My point of view is that to try to make an overarching process change without an overarching constitutional change will not ultimately be sensible or workable.

Baroness Falkner of Margravine: You fall very much within the politicians' camp in terms of the evidence that we took. Lord Wallace, can I take you back to what you said about the EU committees? We have had quite positive reaction to how well it works, but one issue came up persistently. We got the impression that the devolved Administrations felt that they wanted to be part of the delegations. Did you feel in your time that that would have enhanced the UK delegation, or would it have spoken with too many different voices?

Rt Hon Lord Wallace of Tankerness: In many respects, they are part of the delegation. There is sometimes an issue as to who sits at the table. When I was the Justice Minister, I remember sitting at the table with the Home Secretary, David Blunkett. An issue came up at the Justice Council which he said was more relevant from the Scottish perspective, and he invited me to lead. There were occasions in my last year when the Scottish Education Minister led at council meetings. That was before the accessions of 2004; there is a physical limit to the number of people who can get into the room.

Certainly, if there is relevance to the devolved Administration, the Scottish Minister, or the Welsh or the Northern Irish Minister, should be there. That is the issue. It is all very well saying that a Scottish Minister should sit at the table, but you might then find that the Northern Ireland Minister wishes to do so too. This is a pragmatic issue, bearing in mind that the United Kingdom is the member state and it is not unreasonable that the bulk of the time, the United Kingdom Minister leads, but on the basis of having consulted with the devolved Administrations. For the most part, the devolved Administrations can be part of the team that goes over to Brussels or Luxembourg. I accept that there have been tensions at times as to who sits at the table.

The Chairman: I think we have reached the point where intergovernmental relations blend in with the new clauses, and I bring in Lord Cullen.

Q82 Lord Cullen of Whitekirk: Secretary of State, you have mentioned on a number of occasions this morning the prospective joint responsibilities of the two Governments under the Command Paper and the new clauses. In that context, you said that there would be a need for closer collaboration and you mention the possibility of different mechanisms being brought in.

I have two questions. First, do you think that need for greater collaboration will need a revision of the structure for intergovernmental relations by addition or modification? Secondly, how will that collaboration be achieved? We have had some evidence to the effect that in the context of welfare proposals, for example, there could be great difficulties, legal complications and dysfunctions. How can that working together be made to work?

Rt Hon Alistair Carmichael MP: In terms of the structures, first, the degree to which you have to have formal structures will depend on the willingness of the respective ministerial teams to work together to make the constitutional structure work. I am by nature an optimist, and I think that, as my noble friend said earlier, the day-to-day working, especially on an official level, is good, and I see no reason for that to change. Occasionally, yes, there will be points of tension. Politicians, by their nature, will always look over the fence and say, "I could

do what you are doing rather better”, but at the end of the day they will have a welfare budget of £2.5 billion to £3 billion after the implementation of Smith. I am keen that we move the debate on to talking about what you do with that sort of money, because you could make a big difference to people’s lives rather than obsessing about the legislative and administrative competencies.

Lord Cullen of Whitekirk: You mention what is up to Ministers, but is there somebody in overall charge of what the structure should be, and if so, who is it?

Rt Hon Alistair Carmichael MP: Ultimately, the overall constitutional structure is the responsibility of the whole Government, so the Prime Minister and the Deputy Prime Minister have the final answer.

On the agreement to the structure, the fiscal structure, for example, will be negotiated between the Chancellor and the Chief Secretary on one side and the Finance Secretary in the Scottish Parliament on the other. The creation of whatever new iteration of the Joint Ministerial Committee we have will need to be agreed by all parties. That comes back to my point about respect earlier.

Lord Cullen of Whitekirk: I interrupted you. You were going to talk about its operation.

Rt Hon Alistair Carmichael MP: The opportunity that comes with the Smith commission proposals for welfare, for example, is for the Scottish Government to do things differently if they choose to in certain areas. That is just an extension of the principle that we have lived well with since 1999, when the Scottish Parliament was set up. I do not think that we should see that as any particular challenge or source of concern.

Q83 The Chairman: Given the way in which the new clauses have had their conception and birth—against the background of pressure to make commitments during a referendum campaign, a tight timescale being set, a commission outwith Parliament, a parliamentary process being established and now the production of new clauses—do either or both of you think that there is a proper opportunity for a major constitutional change of this kind to be fully debated in Parliament, and might that not jeopardise what is termed in the Command Paper an enduring settlement?

Rt Hon Alistair Carmichael MP: No, I do not believe it will, for two reasons. There is an earlier part to the work which, with respect, Lord Chairman, you did not touch on, and that is the extensive work that each of the three parties, the Labour Party, the Conservatives and the Liberal Democrats, did in preparation with their commissions ahead of the referendum and the vow that was made then. Sometimes you have to take a step back to see what you have achieved. I think it was quite remarkable that for the first time ever, we have had all five

political parties in Scotland in the room talking about constitutional change and agreeing a package. That is quite a moment for our constitutional future, and that is the guarantee of stability.

As for Parliament's role in this, first, we will have been through a general election where the proposals will have been the subject of some debate and where all three parties will have had manifesto commitments in relation to them. Then there will be the normal parliamentary process. This is a Bill that, as a constitutional Bill, will be taken on the Floor of each House. I know enough about the workings of both Houses to know that nothing here will be given anything less than the total scrutiny that it deserves. These are important matters. We do not want the law of unintended consequences to start operating after that. That is why in the Scotland Office we have already undertaken an extensive programme of stakeholder engagement among the different interests in civic Scotland, the voluntary sector and elsewhere, and that process will continue from now until the introduction of the Bill following the Queen's Speech.

I do not believe that the clauses will suffer from a lack of scrutiny. I do believe that some of the issues that required to be addressed were difficult. I think it actually helped that we did it to a tight timetable, because a lot of these difficult issues do not get any easier for being left for another six or nine months.

The Chairman: Lord Wallace, is there anything left to add?

Rt Hon Lord Wallace of Tankerness: No, the Secretary of State makes the point. By the time the Bill comes before Parliament, there will have been an election in which all three of the United Kingdom parties have indicated that their commitment to the Smith agreement will be in their manifestos, so there will undoubtedly be a mandate. That does not mean that when we get down to the fine detail, Parliament does not have an important role to play in ensuring that what is delivered is what people were presented with, and that it works. I do not want to suggest that the clauses published in January are perfect in every detail. There will be work to be done on them. We have accepted that.

The Chairman: Let me ask the question in obverse form. The Scottish National Party resiled from the Smith commission agreement within 24 hours. The Labour Party is under pressure from Mr Gordon Brown to move towards full home rule—something he opposed a few weeks earlier but is now strongly committed to. Those are two major parties in Scotland commanding a substantial proportion of the electorate. You talk about an enduring settlement. What chance is there of that settlement enduring beyond the general election?

Rt Hon Alistair Carmichael MP: I come back to my initial assertion: to get agreement from all five parties is quite a remarkable achievement. Lord Smith of Kelvin was one of the few men in Scotland who could have achieved it, and we understate or undersell that achievement at our peril.

The position of the Scottish nationalists is interesting. Yes, they have been somewhat less than enthusiastic about it because they want independence. That will always be the case. Nothing short of independence will ever be good enough for the nationalists, but they have still signed up for it. They cannot be allowed to gloss over that too easily. I do not know that I would characterise the debate within the Labour Party in as stark terms as you. I look at these proposals and recognise them as home rule. Home rule was one of the reasons why I joined the Liberal Party as a 14 year-old in Argyll. The late Baroness Michie of Gallanach, who was somewhat of an enthusiast, as you will recall, was very clear that home rule was a big part of what it was to be a Scottish Liberal. I think Ray would have recognised the Smith commission's proposals as home rule, because Ray, like others before her, promoted home rule but always within the context of a strong United Kingdom, and that is what we have.

Baroness Taylor of Bolton: I just wanted confirmation that I heard you say what you are actually saying. We are saying that the Smith commission did good work and that there will be debate during the general election, but that per se will not produce legislation. I think Lord Wallace said that there would be scrutiny of normal parliamentary work in the normal way. Scrutiny to what end? Scrutiny to make sure that anything that is put forward is actually workable and would, as the Lord Chairman suggests, be taken in the context of finding an enduring settlement, not something that is a knee-jerk reaction to certain moods at a particular time?

Rt Hon Alistair Carmichael MP: I believe that what we have is politically durable and that it will endure. That was the task of the commission that we set up. Will it mean that the Scottish nationalists stop believing in Scottish independence? No. Let us be realistic about this. They will always agitate and they will always campaign for independence—and as nationalists, that is their right. But we have the agreement of all five parties, and I believe that by that time the agreement will have been endorsed by the people of Scotland at the ballot box at a general election, and prior to that at the referendum. The job of Parliament will be to ensure that what the people of Scotland have voted for is implemented in a way that is workable. That is where the scrutiny will be important.

Baroness Taylor of Bolton: But it will be amendable.

Rt Hon Alistair Carmichael MP: Of course. Parliament can amend whatever is put in front of it. But remember that it is the job of Parliament to reflect the will of the people as they have expressed it through the ballot box, so anybody who sought to unpick the clauses would risk running against that.

Baroness Falkner of Margravine: We know that what parties promise at general elections, whether it is an EU referendum or House of Lords reform, is not necessarily delivered in Parliament. That is a caveat.

Rt Hon Alistair Carmichael MP: With respect, there is a distinction here. What we are talking about is a proposition that will have been, in terms, in the manifestos of all three parties. With the best will in the world, I do not know that even in Orkney and Shetland, where we are all constitutional enthusiasts, the creation of House of Lords reform came up many times on the doorstep in 2010, whereas this issue will have been front and centre of the debate during the election campaign, and certainly has been during the last two or three years, so woe betide anybody, be they unionist or nationalist, who for any reason wants to thwart the will of the people.

Lord Brennan: This is an extremely interesting topic. How would a new Secretary of State deal with this particular issue? The impression has been given to us by some witnesses that if the political parties, for whatever reasons, have come to a joint conclusion, that will dictate constitutional progress. If there happens by coincidence to be a general election, that will be a safety valve for it and Parliament will pick up the job of dealing with the detail. Many would find that an unusual process for making constitutional change.

Rt Hon Lord Wallace of Tankerness: Well, as the Secretary of State indicated, each of the three United Kingdom parties had already produced proposals. My own party had produced proposals through a group chaired by Sir Menzies Campbell, and the Conservative Party through a committee chaired by Lord Strathclyde. The Labour Party produced proposals, too. The Smith agreement did not come out of nowhere; it was informed. Indeed, we published a Command Paper as a Government in October, setting out the position that the parties had already established. So the proposals did not suddenly emerge; they had been debated within the parties. There is nothing novel at all about having a Bill presented to Parliament that has been in the manifestos of three parties and has been put to the people, with Parliament then being asked to consider the legislation that reflects what has been in the manifestos.

To give historical perspective to this, in 1997 the manifestos of the Labour Party and the Liberal Democrats committed to implementing the constitutional convention proposals on the Scottish Parliament. The incoming Labour Government in 1997 very faithfully brought that

forward and there was plenty of debate in both Houses. But at the core was a proposal that had been debated beforehand and put forward in manifestos. Likewise, in 2010, the Conservative Party, the Labour Party and the Liberal Democrats all committed to the implementation of the Calman commission recommendations, and the Scotland Act 2012 delivers on that. It was not without debate in Parliament, and indeed was not without amendment, but at its core was the political commitment endorsed by the electorate and implemented by Parliament. I do not think that is unconstitutional at all.

Q84 Lord Lexden: Have the Government made an assessment of the impact of Smith commission proposals on the union as a whole—on our country as a whole—or was no such assessment thought to be necessary?

Rt Hon Alistair Carmichael MP: Of course. That is part of the assessment that we make all the time. Bluntly put, ensuring that the process we went through up to and including 18 September had to be “fair, legal and decisive”, to quote the terms of the Edinburgh agreement, was a necessary part of sealing the deal for the union. In order to complete the business, we have to make good the promises that were made in the course of that campaign. I look for previous precedent to the other side of the Atlantic and what happened in Canada. They went round this course twice in Canada, as you may be aware. In 1980, Quebec voted 60% to 40% to remain part of Canada. Promises of reform were made in the course of that campaign. They were not followed through and they went back to the issue in 1995, at which point the vote was 49.4% to 50.6%. I do not think it is in Scotland’s interests to leave this as a piece of unfinished business, and we will be able to say that we have finally sealed the deal only by implementing the Smith commission proposals. That is why it matters to the whole of the United Kingdom—it matters to the integrity of the union—that we should deliver what we agreed in the Smith commission to deliver.

Rt Hon Lord Wallace of Tankerness: It is also worth pointing to the principles which Lord Smith enunciated in his report. These principles guided and informed the work of the commission. For example, the third principle states that the proposals should, “Aim to bring about a durable but responsive democratic constitutional settlement, which maintains Scotland’s place in the UK and enhances mutual cooperation and partnership working”. Principle 5 states that the proposals should, “Not cause detriment to the UK as a whole nor any of its constituent parts”. Certainly that non-detriment principle is very important. These were the principles that Lord Smith set out and which informed the work of his commission.

Lord Lexden: In practical terms, the Command Paper refers to ongoing engagement in Scotland, but there is not a word about any work regarding the rest of the United Kingdom.

Rt Hon Alistair Carmichael MP: It was a paper for the future constitutional settlement for Scotland, so that would be in line with previous work in this area. As I said to you earlier, it is now for other parts of the United Kingdom to decide what they want by way of a constitutional settlement. It is worth making the point that since we started the process of devolution, we are now delivering devolution for the third time to the Scottish Parliament. We have delivered it already three times to Wales and twice to Northern Ireland. We have never been faced with a coherent request from any part of the United Kingdom that has not been met and honoured in full.

The Chairman: We have three further topics that we would like to cover and six minutes left. I hope you will forgive us if we overrun by five minutes.

Baroness Taylor of Bolton: We have more or less seen the answer to the question of whether we should have pan-UK reform. My real concern is what the end point of all this change is. You talked about an enduring settlement and non-detriment, but where is the end point?

Rt Hon Alistair Carmichael MP: As a Liberal, I am an unashamed federalist. I know that that is not always a welcome term in the Palace of Westminster, and it brings with it a degree of political baggage in relation to the European debate. In particular, I think that the people of England have right to the same quality of government that we now have in Scotland, and I want to see them come forward with proposals that will allow us to have a settlement across the whole of the United Kingdom that is enduring. In fairness, we will be able to say that we have achieved that enduring settlement—this comes back to your question, Lord Chairman—once the people of England have decided what they want and have been given it.

Rt Hon Lord Wallace of Tankerness: I could not have put it better than that as a fellow Liberal Democrat. Federalism has been my party's policy for longer than I have been alive.

The Chairman: Let us move to something that will be covered separately by statutory instrument.

Q85 Baroness Dean of Thornton-le-Fylde: This is a quick point about the voting age being reduced to 16. Is it the UK Government's policy that the voting age should be 16? Is that the way we are going? It has happened in Scotland and it is covered by the Welsh Bill. Following those, is it quite likely that it will de facto be extended?

Rt Hon Lord Wallace of Tankerness: Formally, it is not the policy of the United Kingdom Government to have votes at 16 and 17 for UK elections. It is the policy of one part of the coalition—it is my party's policy—but it is not the policy of the Government. In the few short weeks left to this Parliament, I do not think that we will be legislating to have votes at 16 and 17 for general elections. However, the experience of the Scottish referendum really engaged

young people aged 16 and 17. Most schools, if not every secondary school, had some form of hustings or ballot. Young people certainly responded to that. They also turned out to vote, and my personal view is that that is important. I have often wondered how often people do not vote as they get older because they did not do so in the first place, which means that voting gets a sort of mystique, just as I have never bought a lottery ticket—I am always frightened to do so, because I do not have a clue how to do it. Young people's engagement has been really healthy. The fact that Parliament has legislated to give the National Assembly for Wales similar powers is indicative, but it will be a matter for the next Parliament to determine whether this is taken forward at a UK level for UK elections. As I say, my party is committed to it.

Rt Hon Alistair Carmichael MP: If you look at *Hansard*, you will see that when I took this order through the House of Commons I said that as far as the United Kingdom is concerned, it is unthinkable that the franchise for the 2020 election will still be restricted to people aged 18 and above. Once you see what has been possible by giving the vote to 16 and 17 year-olds in Scotland and subsequently elsewhere, the objections to it are seen, frankly, as the nonsense that they are. I reiterate my experience of the referendum. The referendum was very difficult at times and it was not a universally positive experience for everybody, but one thing that came out from it, quite magnificently, was the participation of 16 and 17 year-olds. I saw it first hand—I had a 17 year-old son who was very much part of the campaign and who voted. He was engaged, as were his friends, and that applies even to youngsters younger than 16. One of the most vigorous “No thanks” campaigners in Orkney was a 15 year-old boy called Jack Norquoy, of whom I think you will probably hear a bit more in years to come. He shared a platform with me and Baroness Williams of Crosby and you saw political wisdom from both ends of the age spectrum, which showed that there is no monopoly of it in either.

Baroness Dean of Thornton-le-Fylde: I presume that we should not read into that that you are going to move to 15.

Rt Hon Lord Wallace of Tankerness: No, we are not. My understanding, Lord Chairman, is that we will have the opportunity to debate the Section 30 order shortly after we return from the recess.

The Chairman: Thank you.

Q86 Lord Cullen of Whitekirk: I have a question about Clause 1 of the draft clauses, which states that the Scottish Parliament is to be recognised as permanent. Given that the Scottish Parliament is a devolved Parliament, what do you regard as the practical effect for the future of this clause if it is turned into law?

Rt Hon Lord Wallace of Tankerness: The Smith commission made a specific recommendation that UK legislation should state that the Scottish Parliament and indeed the Scottish Government are permanent institutions, and that is what we have sought to do with this. In the last 16 years, there has been no question but that the Scottish Parliament and the Scottish Government are permanent and should be permanent institutions. Obviously, we have had to grapple with the concept of the sovereignty of the United Kingdom Parliament and the fact that no Parliament can bind another, but I think that the fact that Lord Smith and his commission have recommended this is a very good signal of—“intent” is not quite the right word—recognition, perhaps, of the central importance of the Scottish Parliament and the Scottish Government in the United Kingdom’s constitutional arrangements.

Lord Cullen of Whitekirk: Would there be anything to prevent the United Kingdom Parliament, at some time in the future, from making an order for a further referendum for independence, which might lead to the end of devolution and the devolved Parliament?

Rt Hon Lord Wallace of Tankerness: It is certainly theoretically possible that that could happen. We did it with the Section 30 order to pave the way for the referendum that we held in September last year. Legally it is possible. However, just as we have been held to the vow that was made, I think that those who said that the referendum was a once-in-a-lifetime event should be held to that vow as well.

Lord Cullen of Whitekirk: Is Clause 2, which deals with the Sewel convention, likewise a clause that, if turned into law, would not have any legally binding effect, because Parliament could think otherwise?

Rt Hon Lord Wallace of Tankerness: I will not look it up immediately, but I think it is to become Section 28(8) of the Scotland Act. Section 28(7) makes it clear that the United Kingdom Parliament can still legislate. But, again, the Smith commission recommended that we should put the Sewel convention on a statutory footing. We have taken that faithfully and discharged it. It does not give rise to justiciable rights, nor do I think that it would be healthy if it did, but it is a very clear signal of the intent of the United Kingdom Government and obviously, if passed, of the United Kingdom Parliament that the Sewel convention, initiated by Lord Sewel when the Scotland Act 1997 was going through your Lordships’ House, should be part of our constitutional arrangements. In fairness, I should say that in the 16 years since the Scottish Parliament was established, the United Kingdom Government have held to that. Just to reflect what I said earlier, considerable work goes on between officials in my department and UK Government departments and those in the Scottish Government to try to address these issues of legislative consent Motions week in and week out and seeing whether

or not a legislative consent Motion is needed. It is very rare indeed that there are any disputes and, if there are, they are always resolved. A lot of work is done to try to make sure that that commitment made by Lord Sewel is honoured.

The Chairman: You are almost talking yourself into saying, “If it ain’t broke, don’t fix it”, but we will leave that hanging. Thank you very much to both of you, Secretary of State and Advocate-General, for coming and giving such forthcoming and helpful answers. We are most grateful.