



Constitution Committee

Corrected oral evidence: The governance of the Union: co-operation, consultation and legislative consent

Wednesday 17 April 2024

1 pm

Watch the meeting

Members present: Baroness Drake (The Chair); Baroness Andrews; Lord Burnett of Maldon; Lord Falconer of Thoroton; Baroness Finn; Baroness Goldie; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 4

Heard in Public

Questions 50 – 71

Witnesses

[I](#): Professor Laura McAllister, Professor of Public Policy and the Governance of Wales, University of Cardiff, and Co-chair, Independent Commission on the Constitutional Future of Wales; The Revd and Rt Hon Dr Rowan Williams, Co-chair, Independent Commission on the Constitutional Future of Wales.

Examination of witnesses

Professor Laura McAllister and Dr Rowan Williams.

Q50 **The Chair:** Good afternoon, everyone. This afternoon we are hearing evidence on the Constitution Committee's inquiry into the governance of the union, co-operation, consultation and legislative arrangements. Our witnesses are the co-chairs of the Independent Commission on the Constitutional Future of Wales, Professor Laura McAllister, professor of public policy and the governance of Wales at the University of Cardiff, and Dr Rowan Williams, former Archbishop of Canterbury, and chancellor of the University of South Wales.

Thank you for travelling to be here today. It is a long way for some. We are grateful for and interested in getting your views, particularly in view of your role as co-chairs of the commission. Hopefully, you have had an indication of the questions that we are likely to want to drill down into. Before we do that, do either of you wish to make any opening remarks?

Dr Rowan Williams: We had a word about this just before coming in. Obviously, we will answer questions about the commission as fully as we can. The commission has now done its work, so we probably just need to have it on record that we have completed the work and we have no official standing as co-chairs at the moment.

Q51 **The Chair:** I understand that. Your value in particular will be the knowledge and understanding you have anyway and have accrued in being members of that commission.

I will open with a general question. Given the understanding that you acquired in your role as co-chairs of the commission and your wider knowledge, how effective, in your view, are the new intergovernmental relation structures in maintaining and improving relationships between the UK Government and the Governments of the devolved nations?

Professor Laura McAllister: We spent two years as a commission receiving and seeking evidence on that very theme, which was a fundamental part of the first part of the commission's terms of reference. I am afraid the picture that was presented to us was fairly uniformly negative in that respect. Maybe we should caveat that by pointing out that our work began in late 2021, so clearly just before the revised intergovernmental relationships were reconstituted. Nevertheless, we finished our work in December of last year, so our work straddles a period when one might have expected changes in the IGR structures to have delivered some dividends.

We heard some glimmers of hope that things might be improving, but I think it is fair to say that the evidence we received was very patchy in that regard. We were certainly presented with more negative portrayals, from a Welsh perspective, as to how those relationships were working, and that came not just from Welsh Government Ministers, and indeed from the First Minister himself, but from other key individuals involved

with the governance of Wales. I would include organisations that were not within the Welsh Government in that respect as well.

Dr Rowan Williams: The structures set out in 2022 for rethinking some of the habits of intergovernmental relations were very promising. It is notable that the flagging up of the need for Heads of Government to meet regularly was, to us, a very important element in that, as well as the cross-representation of ministerial responsibility and all that went with that.

The impression we have had is that a couple of areas—Defra, and finance to a slightly lesser extent—have worked fairly well so far, Defra particularly. There has only been one meeting of Heads of Government, I think in November 2022. So, as Laura says, it is a patchy picture. I suspect we will want to underline this afternoon that quite a lot is already provided for in the protocols that we have, but it is not quite good enough for that to depend on just good will and personality; we perhaps need some more robust protections.

Q52 **The Chair:** Just picking up on that comment about a patchy picture, what did your work on the commission reveal about the extent to which government departments were allocating to, or had the resources in place dedicated to, the relationships with the devolved nations? Could you develop that?

Dr Rowan Williams: That is a key question, if I may say so. In our discussions, we looked back at various points in the last 10 years or more where suggestions have been made about how this might be capacitated more fully and more effectively—for example, by routine secondment of civil servants from UK departments to a devolved governmental setting.

It is important at two levels. One is the sheer expectation of familiarity with how devolved government works and the need for effective and exhaustive briefing on that. That is probably not rocket science, but it has not worked uniformly well, let us say, so we would like to see some serious investment in that.

This is perhaps pushing the envelope a little further, but if a devolved Government are pursuing some more experimental policy and it is acting as a bit of a canary in a coal mine for the rest of the UK, that may also need practical and financial resourcing at a particular level. So we would certainly want to underline the training element there.

Professor Laura McAllister: Yes. Another relevant point is to step back a little so that the committee can understand what we were trying to do as a commission, which was to look at the stability and security of the current constitutional arrangements as they affect Wales. Obviously, that included going beyond the nation of Wales itself, but also looking at progressive options for alterations in the constitutional arrangements that might benefit the Welsh people too.

The reason for the heavy emphasis in the report on intergovernmental relations, consent and so on is because we were regularly being told by

expert witnesses and in the expansive public opinion work that we did that citizens in Wales wanted the Governments to work better together. I am sure we can provide you with lots of statistics on that, because the research that we commissioned on state of the union polling is quite significant, in that it tells us what citizens in each of the four nations feel about intergovernmental relations. Of course, they do not express it in the terms that we might hear in committee; they do not necessarily call it intergovernmental relations, but they call it things like co-operation, consultation, good behaviours, respect and esteem.

Finally, that led us to insert a very strong recommendation on intergovernmental relations and legislative consent, because it was a constant theme in the conversations we were having with the public and with experts.

- Q53 **The Chair:** In chapter 4 of your report, you state, as you have said, that the majority of people wanted their respective Governments to work constructively together in the interests of the citizens. But there was also the point that a lot of people believed that, although there were different political Administrations in a devolved Government from the central government, that was almost a permanent constraint on the efficiency of how the inter-government relationships worked. What do you feel about that observation?

Professor Laura McAllister: For me, it was fruitful to compare the settlement that we have here in the UK with federal settlements to see how relationships worked there. Clearly, there is a fundamentally different legal and political operating climate in federal states but, given that one of the constitutional options we wanted to pursue was a federal perspective on relationships between the nations of the UK, it allowed us to look at what makes federal IGR relationships work better than non-federal. In all that work it was about security of relationship and the co-operation process, it was certainly about parity of esteem between the partners in a federal system, and it was about the protection of those relationships within the legislative framework that is then judicial.

A lot of the comparative work that we did when we analysed the three major constitutional options for the future of Welsh governance allowed us to compare and contrast. That, again, created the space for us to develop some more muscular recommendations about this area in the report.

The Chair: We will drill down more into the parliamentary, sovereignty and Sewel points in our later questions.

- Q54 **Baroness Goldie:** Good afternoon. Going back to the opaque concept of culture and attitude, I just wondered whether, despite all the changes that we have seen, there is still an attitude at the Westminster/ Whitehall end? Professor Jim Gallagher alluded to this in an earlier evidence session: that Whitehall and Westminster tend to see devolution as a cascade of power down from the centre rather than a distribution of power across the UK. What is your opinion of that?

Dr Rowan Williams: We have had some very helpful conversations with Jim Gallagher ourselves, so this is familiar territory. We did have the impression that, from the point of view of the devolved Government in Cardiff, there is a perception that it is seen as concession from the centre rather than a recognition that there is some legitimacy coming from below. One way or another, the issue of legitimacy kept surfacing in our discussions. Is it something that is simply delegated from, or conceded by, a single sovereign source, or is it something that can reasonably be seen as distributed among, in theory, sovereign nations?

So yes, there was the perception of devolved government in Wales being seen a little as a glorified local authority—that is how it was put rather sharply by some people—and some of the attitudes that seemed to be reflected in what was coming from Westminster rather reinforced that perception.

There is a substantial theoretical question about sovereignty, as you have already observed, Chair, and there is a practical question about attitude. They overlap quite a bit. I think it is fair to say that, if there were any corners to be cut in a consultation, cut they would be in terms of the relationship between Westminster and the devolved Governments. The rather eyebrow-raising level of circumvention of the Sewel convention in the last few years—I think there were 11 distinct overrides or routes around it—totally set a story for us.

Professor Laura McAllister: It is also important to agree where the initiative has to come from with intergovernmental relations, because clearly that has to come from Whitehall; it would be almost impossible for it to come from any other part of the apparatus.

We were constantly told that there was very little investment beyond the minimum in the attempt to lubricate intergovernmental relations. We were also told that the consultation often came very late in the process, particularly around legislative processes, so by then it was almost impossible for the devolved Government to influence any real change. It felt as if that was a gesture rather than a meaningful intervention.

Going back to culture, attitude and mentality, which is really important, witnesses told us that it felt very managerial rather than collaborative leadership-based. The Welsh Government were seen, as Rowan mentioned a moment ago, as just being another stakeholder instead of being the Government from an elected legislature by the people of Wales, one of the nations of the United Kingdom. Again—sorry to keep alluding to the opinion research, but it is quite significant—it did show that people in Wales felt very aggrieved: they felt that that was wrong and that it did not lend itself to a positive interpretation of the union as they would like it to be.

Dr Rowan Williams: Lest what we have said gives a wholly negative impression, there have been instances where Westminster-Wales attitudes and collaboration have been rather good. We took evidence from the police commissioners in Wales. In the last five years or so, there

has been some very constructive work on the collaboration of the police commissioners in Wales, which has helped to produce a coherent and intelligent response to some of the issues in Wales, and it was reassuring and heartening to have that affirmed by the Home Office at one point. People were saying that it is a good model of sustainable local co-operation at a level that makes a difference to citizens. It clearly makes a difference.

Professor Laura McAllister: An interesting contrast was presented to us in the evidence between liaison on the freeports policy versus the consultation over shared prosperity and levelling up. These are contrasts of radical difference, the former an example of a good liaison and co-operation, the latter far more problematic. There is something significant in that, because you have to have consistency in intergovernmental relations consultation as well. It seems incredibly odd to have a policy, such as levelling up, and the distribution of the shared prosperity fund that in effect does not engage Welsh Government or relate to Welsh Government strategies in those areas.

I have read lots about this in my academic work, but it seems anomalous to me to skip the national tier of democratic government and go directly to local authorities, which we all know are hideously cash-strapped and so have no option other than to engage in that way. In terms of constitutional principles, that is a poor example of how things should work.

Baroness Goldie: Thank you.

Q55 **Baroness Andrews:** Thank you. It is very good to see you both, and congratulations on the report.

Following up on what you have said, Laura, you describe the IGR arrangements as a work in progress. There is a lot to commend them, but clearly they fall short. In particular relation to what you said on federal structures and the need for consistency, co-operation, processes and parity of esteem, could anything have been done to refine the structures themselves that would have made their being part of the process more likely? Again, reflecting on what you have said, were the Welsh Government involved in making those original arrangements, testing them out and so on?

Professor Laura McAllister: I am not sure that Rowan and I are best placed to answer that. My understanding is that the Welsh Government were a partner in those. I am sure they would tell you whether there were issues with that partnership on the new structures, but I do not think there was any real testing of that in the way you might imagine a pilot might operate. Rowan, do you know anything different?

Dr Rowan Williams: No, that is about right, and it brings us back to the fundamental question of whether monitory, advisory and ideal aspirational models are quite enough, or if we need, as we suggested in the report, a more robust statutory basis for this. As I said at the beginning, the particular IGR changes that were recommended in 2022

seemed to us, and seem to us, entirely promising. But the question remains: in whose gift are those if you do not have something a little stronger in the background?

Professor Laura McAllister: The Welsh Government's response to how the arrangements have worked is also quite telling. They submitted a paper in summer 2023 that highlighted some strengths, and the strengths are obvious. Naming the Prime Minister as part of the process is incredibly important, as is an independent secretariat, because it creates a structure and consistency to operations, one would hope. But we heard from the Welsh Government that it was fairly unevenly operated in terms of the ministerial groups and that some portfolios worked very well and some far less well. That raises questions, and did raise questions in the commission's mind, about whether the structure and apparatus could deliver consistency, because 18 months after operation we were being told that there was not that consistency of delivery.

Baroness Andrews: They were dealing with poor communication.

Professor Laura McAllister: Yes.

Q56 **Lord Falconer of Thoroton:** Hello and thank you for coming. I am very interested in the Treasury and its relations with the Welsh Government. You have two complaints. The first is that the Treasury treats the Welsh Government as if they are no different from a government department, so it complains if the Welsh Government are given money and do not spend it well, in the same way the Ministry of Justice or Defra would be subject to complaint. Secondly, if great big changes occur in the allocation of money at a national level and the Welsh Government hear this late, say, "This is not quite right", they end up in great difficulty about how they allocate money for the remains of the spending year, or whatever it might be.

Could you give us an example of where either of the two problems has caused difficulty, with the Treasury having oversight as to how well the Government spend their money, or being told late that there was a big change in the budget, for example, which meant that you could not decide what to do with the money? Secondly, how would you change that?

Professor Laura McAllister: There is an example at the moment, doctors' pay, which is so live that we probably do not have all the intelligence. We are told by the new First Minister of Wales an agreement might be reached on senior medics' pay because there have been changes very late in the financial process with regard to money coming to Wales. Whether that is the entire argument I do not know—maybe it will come out in the wash and we will hear more—but there is a whole series of areas such as that that have been raised as being problematic for Welsh Government operation.

We have to step back a little and look at the constraints that already exist on the Welsh Government's financial landscape, if you like, because Wales does not have the same borrowing and draw-down powers as Scotland. As a commission, we found that odd. There seemed to be no reason not to have the same borrowing and draw-down powers. There were strategic disadvantages, not only for how the Welsh Government operated their financial priorities, but equally for the people of Wales, because the Welsh Government were not able to plan strategically for operating in that climate.

Lord Falconer of Thoroton: In relation to your doctor example, how should it have been done differently?

Professor Laura McAllister: I would like to think that it would be part of a multi-year budgeting process, so that we were clear that if a Government wanted to address what is a long-standing and strategically important issue on doctors' pay, it would not suddenly fall in the lap of a brand new First Minister at the point when there are threats of greater strike action. All that is important, not just to good relationships, but for public delivery and value for money. The idea that you have to get money out of the door very quickly, so to speak, makes no sense in any strategic spend. That was raised with us by several organisations that had struggled with it. Greater flexibility with financial in-year changes would assist not only Welsh Government processes but the people who receive the policies and who could benefit from those.

Lord Falconer of Thoroton: What about the other point: namely, that the Treasury should not be looking to see how well or how badly Wales is spending the money?

Professor Laura McAllister: Absolutely. It seems completely illogical to treat the Welsh Government as if they are a department, for the very simple reason that they have their own scrutiny and accountability relationships. All the spend of the Welsh Government is scrutinised, I think relatively effectively, by Senedd committees. So it makes no sense to have a double level of scrutiny that adds very little to that complex process, because it does not deal with some of the infrastructural issues around finance.

Dr Rowan Williams: The feeling is that it is a kind of double jeopardy for the Welsh Government, which is a point that needs weighing. It also needs weighing in relation to an issue that floated across our radar—the linking of reserve limits to rates of inflation as one possible way beyond what sometimes seems a rather mechanical and not very consultative approach from the Treasury. That, in turn, takes us to the Barnett question, which haunts our pages one way or another without any clear sense of exactly what needs to be done. It seems fairly clear that at present it is not working particularly fairly and simply needs an overhaul, a spring clean, which it has not had for a very long time.

Professor Laura McAllister: Can I give you another example? The vacant land tax was brought to our attention a few times. The Welsh

Government have been waiting for over four years for Treasury approval to pursue that policy of a vacant land tax. We were told that there was no effective communication as to why that delay had happened. That is hugely problematic. If there is to be fiscal devolution of the type that we have in Wales, there have to be faster processes to sanction the operation of, in this case, that fiscal autonomy.

Unless there is a strong reason for not pursuing that policy, which should be communicated very simply if that is the case, we go back to our issue of mentality, respect and co-operation that we raised at the very beginning. We did seek alternative perspectives on that, by the way—this is not us taking a line—but we were not told anything to the contrary and we struggled to get an answer from the Treasury as to why such a policy would have taken so long to have had a yay or nay.

Q57 **Baroness Goldie:** I was not going to ask this question until I heard your comment, Professor McAllister, on the NHS situation in Wales. There was a finding in your report—in particular, your graph based on sample polling—about who should be responsible. The answer on the NHS surprised me, because 45% responded by saying that the Prime Minister and Westminster should be responsible, and a slightly lower proportion, 42%, said the First Minister and the Senedd. I am genuinely curious about that.

Professor Laura McAllister: The best answer is that there are a lot of levels to that. So much depends on political support for policies that are being enacted within the NHS at that time. If there is a high level of discontent with the conditions of the NHS's operation, generally speaking in polling people will opt for an alternative. That said, we did not have such granular research that we could work out how many of those people who were choosing an alternative felt that was a political choice rather than a constitutional one. So I am afraid that leaves it hanging in the air, but usually when it comes to policy choices such as that in opinion polling, there is a mix of politics and constitutional options merging into one.

Dr Rowan Williams: Yes. Rather anecdotally, the condition of the NHS in Wales is of course one of the things that weighs most heavily on the doorstep for people who are thinking about the nature of the country and its well-being. And if it is a devolved power, which it is, those who are immediately administering it tend to be in the firing line in an opinion poll like that. That is one thing. This is not really an answer to your question, although it is not entirely irrelevant, but there is a very high level of confusion about exactly where responsibilities lie, even within the devolved powers, but that is another story.

The Chair: Thank you. Just for clarity, because references have been made to Whitehall and Westminster regarding the Welsh Administration being treated as a local authority or a government department, when you use the phrase "parity of esteem" as one of the conditions for improving relations, what do you mean by that?

Dr Rowan Williams: It is to do with recognition that the elected Governments of the devolved national authorities are Governments with—what is the word? “Autonomy” is perhaps putting it a bit steeply, but people will know what I mean. They are certainly self-contained and self-sufficient, with means of guaranteeing accountability, as Laura has said, in the financial area for example, and to have a genuine ability to set an agenda and a budget, and are seen in that light. They also, as I said a little earlier, have the legitimacy that comes from being elected by the people of Wales, Scotland, or wherever.

Professor Laura McAllister: It goes back to contested interpretations of the union, and I know you have heard from my colleague Professor Ciaran Martin, who has written recently on different notions of the union: the multinational, the muscular and the “muddling through”, which is probably the most accurate notion in terms of how things actually work. Of course, there are contested ideas of how the union should function, but from the point of view of the Welsh Government, which of course is run by a unionist party—a party that is committed to the union of the UK—to be summarily ignored at times or treated with less respect than maybe an English mayor is problematic. It is problematic politically and constitutionally and certainly does not help to solidify the union as being a progressive and modern entity. We have heard this from lots of organisations and lots of individuals.

Q58 **Lord Falconer of Thoroton:** This is such an interesting topic. Parity of respect could mean treating the UK Government and the Welsh Government as equal, and in many senses they should be, but there is obviously the fact that the Welsh Government are less rich and less powerful in so many respects. Could you distinguish between parity of respect in terms of being treated properly on the one hand, and a recognition of so many of the cards being in the hands of the UK Government on the other? How does that work in practice?

Dr Rowan Williams: That is absolutely right, and it reflects something that Laura has said. The parity is about respect for a democratic process that has been set up by the UK Government originally to create a system that has its own integrity, as you might say. So long as the union survives there will be reserved areas—we have various thoughts on that—such as defence and various aspects of international policy, which the UK Government alone can decide on. I do not think there is any sense that speaking in these terms requires the Westminster Government to regard the Senedd as comparable to the Governments of France or Sri Lanka, for example. That is not the issue.

Q59 **Lord Thomas of Gresford:** It seems that the UK Government find it politically expedient to denigrate the policies and outcomes in Wales. How does that reflect on funding and on carrying on intergovernmental relations?

Dr Rowan Williams: The word “denigrate” is a strong one, but I do not think it is too strong for some of what we have seen over the last few years. It was certainly quite difficult at one point when one very senior

Whitehall politician, who had better be nameless, in effect explicitly attacked policies of the devolved Governments as part of a leadership campaign. That was felt rather bitterly on the ground. So, yes, there is a certain amount of that. That pays out in low expectations from the devolved Administrations of respect and collusion with the culture in this part of the world, which seems, as I said earlier, a model that is entirely about rather grudging concession and delegation rather than respect for a democratically elected Government.

Lord Thomas of Gresford: It goes so far as there being a political campaign for the forthcoming election. Look what is happening in Wales if you want to vote for a particular party, the Labour Party. Surely, that must affect relations between the Governments.

Professor Laura McAllister: It is a fair point, but I am not sure you can ever separate out politics from matters constitutional. Even in federal systems, when different parties run different state governments, closer to elections there will be less co-operation rather than more. There is evidence of that pretty much everywhere. But I take your point, and we heard lots of that in our evidence to the commission.

It seems really important that we concentrate on the framework for how constitutional relationships should be, and extract some of the noise around political criticism. I suspect that will get worse as we run through into a UK general election, but for those of us who are more interested in the sustainable parts of the constitution, we need to drill down into what would make good relationships function, regardless of which parties are in power.

Of course, we may face a situation that we have not had for 14 years, where there is the same party in power. Come the Senedd and the Scottish Parliament elections in 2026, who knows—there may be the same party in power in the three nations. There may not be too; I am not anticipating anything in particular. But it would be an interesting case study to look at whether the relationships alter longitudinally after a period of cohabitation, as the French would call it, into a period of the same parties being in power.

Lord Falconer of Thoroton: The system has to be able to withstand the fact that Labour might be in power in Wales and the Tories in the UK. Let me tell you: they will be abusing each other and saying how bad/good it is. The system has to be able to deal with that and be durable. Nothing would be dearer to my heart than if we all congratulated each other, even though we are in different parties, on how well we performed. But that, I have discovered over time, is not the way it works, so we have to have a system that can deal with the dreadful UK Government saying how awful the Welsh Government are, and vice versa. I am responding rather sharply to the idea that it is somehow not right that they abuse each other. They are going to, because they are political, and they are elected and they want to get re-elected.

Professor Laura McAllister: That was my point, really. We cannot avoid it, nor can federal systems, and we never will. You are absolutely right. In some respects, as a commission we did not particularly want to come to the recommendation that intergovernmental relations and Sewel should be put on a statutory basis with proper legislative protection. It should not come to that, because it comes with difficulties as well as advantages, of course. But all the evidence we received suggested that, within the current framework, it simply was not creating the conditions that you refer to. Therefore, based on what we were told by the public, what do we do to change things? Hence our recommendation.

Lord Thomas of Gresford: Whatever the abuse, there has to be respect between the various Governments, does there not?

Dr Rowan Williams: We are into terminology here, are we not? Obviously, Governments, especially those of different political colouring, will attack one another. That is what I am told political parties do.

The Chair: Political contestation does not have to deny the existence of respect.

Dr Rowan Williams: Indeed. What we were hearing from some quarters a few years ago was what felt like a—forgive the jargon—de-legitimation of the devolved Governments in a way that was a bit disturbing, and that just compounds the long-term point.

If I can add something to what Laura said about not particularly wanting to get to the point of recommending a statutory backstop, our original remit as a commission had to do with mapping out possible constitutional futures and the pros and cons. We were not expected to produce a majority recommendation for constitutional change on a global scale but to look at what the possibilities might be.

In the process of working out what the three main options would look like—of course, those take up a significant part of the report—we came to the conclusion that, for anything to work at all and for any of those options to be viable, in the short term there needed to be adjustments to the settlement simply to make the settlement as it is viable, hence our appeal for a statutory backdrop or alternative to Sewel. We felt that this was something we were rather pushed to by the way in which the discussion evolved.

The Chair: I appreciate that. I do not want to take us into Sewel. What I do want to do is deal with this point about contestation and dispute and how you handle that. Going back to Lord Falconer's point, the fact that there are different Administrations in different parts of the country does not mean that you cannot run an efficient system of intergovernmental relations. Baroness Andrews, take us to the dispute resolution process.

Q60 **Baroness Andrews:** It fits in very neatly in a way, because in the IGR arrangements we have a proper dispute resolution process. It has not been tested very much, but given all the things you have said about what

we need in order to make the agencies and structures that we have function, what do you think are the chances of the dispute mechanism functioning competently or respectfully?

Professor Laura McAllister: As you say, a dispute resolution process is fundamental to any IGR structure. Obviously it has to be there as the bedrock of a problem arising and being dealt with. It has not been tested, as you say, to any great degree. In many respects, one would hope that things do not develop so that the dispute has to be escalated in that way, but I fear that, from a Welsh perspective, it will at some point soon because of the issues we raised earlier around the stage at which the Welsh Government are consulted on significant matters.

There has to be an element of extracting some of the politics away from that, because—I am sure Rowan will agree—we do not want to suggest that every problem is entirely Whitehall and Westminster's fault. I am sure there have been plenty of instances where the Welsh Government have not engaged sufficiently in a process to deliver a fruitful, co-operative exchange. Our problem as a commission was that we struggled to get evidence presented to us from Whitehall departments that might have helped to counter some of the evidence we were receiving from the Welsh Government. I raise that, because it tells you a lot about the mentality of Whitehall that, even with an important commission such as ours, it was extremely hard to drag bits of information and data from departments that might have helped us to provide a counter to some of the arguments that were being presented to us.

I will give you an example from justice. You will see in our commission report that we recommend the devolution of the criminal justice system and policing to Wales, based on the starting point of Lord Thomas's commission report I think five years ago now. We came to that conclusion, because we analysed and evaluated the recommendations of Thomas and found them to be strong and compelling, particularly in terms of public delivery of the justice system. Wales has the highest rates of incarceration and stop and search in western Europe, and it seemed to us that, if the system was working well, those issues would not be as prominent as they are.

We requested conversations with key Ministers and officials who might help us to present the argument for not devolving justice. By the way, Wales is a complete outlier with regard to the constitutional framework in not having control of its criminal justice system and jurisdiction, bearing in mind that it has an Executive and a legislature. You will find very few states anywhere in the world that only have two legs of a three-legged stool. Nevertheless, the point is that we struggled to receive good counterarguments to the Thomas report. I cannot think of one serious argument. We had a conversation with Michael Gove—after he was Minister for Justice, though—who presented some arguments to us, and the commission evaluated those carefully, but they certainly were not powerful enough to allow us to move away from that conclusion.

Dr Rowan Williams: We had a letter from Robert Buckland as well, which set out something of a case.

Baroness Andrews: Can I follow up on what you said in two respects? You said that Wales might find itself in the dispute mechanism soon, and I wondered what you had in mind there. Also, did I pick up the idea that somehow, since there was a dispute mechanism and since everything else seems to be so feeble or fragile, Wales might proactively choose to accelerate things through this mechanism, because it might get a clearer result in the end?

Professor Laura McAllister: I did not intend to suggest that that will happen, but I suspect it is an option.

Dr Rowan Williams: It is a risk, is it not?

Professor Laura McAllister: It is a risk and an option. It is an option for Welsh Government, and it poses risks and opportunities, I guess. I do not know whether that is something that Welsh Government would pursue, but one can imagine the frustration that they sense in their relationships as they are, so, with that mechanism in place, that would present itself as an option.

Q61 **Baroness Andrews:** Moving on slightly, you have been exploring the relationship between the functionality of structures and the reality that, if the relationships do not exist, the structures are virtually useless. Without re-opening that point, do you agree that the successful operation of those structures depends on good will? What do we mean by good will in these contexts?

Can I add in here the experience of the common frameworks, as referenced in your report? In the Common Frameworks Scrutiny Committee, we saw it as a missed opportunity because it was not sufficiently proactive or energetically led, and then it came close to being hijacked by the internal market Bill and the European retained law Bill. In that context, can you say any more about what constitutes good will and how it can work despite structures, and whether the common frameworks give another opportunity for that?

Dr Rowan Williams: We were better at recognising where it is absent than laying out what would constitute its full working, but it is the vulnerability of the present system without back-up that concerns us most deeply here.

Professor Laura McAllister: I take your point about good will and the terms we have used around esteem and respect. You could write a thesis about each of those and what they mean politically and constitutionally, but it is fairly clear, to me anyway, that there needs to be an understanding of the current governance arrangements of the UK that appreciates the democratic legitimacy and the rights of the Welsh people to have their Government represent them and exercise policy in the devolved areas.

Throughout our report, and for example in the financial part of our recommendations, we make it very clear that there will still be macroeconomic areas where we would not expect the Welsh Government to have the same degree of autonomy. It is the same with some key policy areas: when we talk about the candidate areas for future devolution, at no point do we not weigh up the benefits of having some policy areas reserved as well. In fact, we came to those conclusions in some of our debates on broadcasting, energy, employment and welfare, because we tried to approach that whole question from a citizen rather than constitutional perspective to ask, "What would be the citizen delivery benefits of pursuing the devolution of this policy?"

I do not want to go off track, because I appreciate that chairs need to keep things in order, but there was a very important element to our work that I do not think has been done by any other commission, which was the engagement process with the citizens of Wales. If you look at the figures we quote in the report, it is probably stronger and more muscular than anything that any other commission has embarked upon. It was a commission of all four parties, by the way. I do not know whether any of you would disagree, but I am not sure that would happen anywhere else in the UK—that we would be able to get a Conservative representative sitting at a table with Plaid Cymru, the Liberal Democrats and Labour to talk about issues stretching from independence to intergovernmental relations. That is a tribute to the people who were involved with the commission.

Q62 **Baroness Finn:** Professor McAllister, what you were saying about getting the information from departments sounds a bit concerning for a commission as important as yours. I wonder just how much that is due to the fallibility of the departments and the system. You can legislate as much as you like—we will discuss the statutory footing and the need for good will—but it strikes me that there is possibly a level of incompetence, or just that the work is not being done and there is a failure to engage, which citizens find frustrating as well. So I am curious to know whether you think that could be playing a part, and an unrecognised one, in the process not working as well as it could.

Dr Rowan Williams: I do not think we would quarrel with the role of what you might call routine incompetence in this, but that might take us back to an earlier point made in the discussion about how staff in central departments are encouraged to become more literate about the constitutional structures that exist and the nature of devolved powers. It is not an all-purpose solution, but it has to be part of the solution and, as I mentioned in the beginning, the possibility of serious long-term secondments as part of the expectation among civil servants would help.

Professor Laura McAllister: There has been a tendency to continue the devolve-and-forget mentality that characterised the beginnings of devolution. There is a contradiction there, is there not? You cannot on the one hand devolve and forget and then interfere when things are not quite financially appropriate from a Whitehall and Treasury point of view, as we

talked about a moment ago. That contradiction was rehearsed with us several times.

The Chair: Thank you. We now move on to some of your comments in the commission's report on constitutional change, starting with justiciable principles.

Q63 **Lord Strathclyde:** This goes back to questions of statutory footings and so on. In your final report, you recommended putting into statute and making justiciable "some key principles of intergovernmental relations and structures". It is not a trick question, but what principles would you like to put into statute, and what would be the advantages of doing so?

Dr Rowan Williams: We spelled out as best we could in the text of the report some of what we had in mind, particularly that any unilateral change of existing executive devolved powers would need, so we argue, something more than a simple majority in the Westminster Parliament, given that these are serious constitutional re-arrangements that have created the devolved powers. That concern was that any change in the devolution settlements—I am thinking of the UK as a whole—should not be simply a matter for Westminster's majority. That was one of the main concerns: that any repatriation, as some people call it, of devolved powers to Westminster would need such a simple majority.

Professor Laura McAllister: There was also concern about the exercise of executive power by UK Ministers in areas of devolved competence. I appreciate the concept of keeping the principles fairly high level, and we had quite some conversation around this, because clearly in order to make them judicial there are issues over how that would work if the principles were too granular and too detailed.

Lord Strathclyde: Some people have argued that it just takes the ball away from the politicians and straight into the courts. Is that necessarily the best place to deal with some of these questions rather than dealing with them politically? Following up on what you have already said about mutual respect, co-operation, good will and all the rest of it, does it really need the heavy hand of statutory authority?

Dr Rowan Williams: As with cases of dispute resolution mechanisms that we have talked about, we think of this as a long stop. I entirely agree that to abandon politics for the courts is a bit of a counsel of despair in some ways. None the less, that certain principles about how to approach possible changes should be established in statute seemed us to be a condition for a generally better and routinely better operation of what we have.

Lord Strathclyde: We will go into the question of Sewel and legislative consent in a moment, which will take us on from there.

Q64 **Lord Burnett of Maldon:** In the constitutional arrangements that were made for almost all former British possessions, principles were worked in for supermajorities of various sorts, sometimes legislative, sometimes more widely. Do you not think there is a little irony in proposing such a

mechanism now, when the referenda that set up the devolution arrangements in both Wales and Scotland proceeded on simple majorities, despite quite a lot of academic debate at the time, I seem to recollect, about the need for supermajorities to make such profound constitutional change?

Professor Laura McAllister: We are where we are in many respects with that. Supermajorities are gaining currency as mechanisms for protecting important constitutional decisions. Some of the debates in the Senedd programme at the moment on enlargement, change to electoral system and potential quotas within that electoral system are, of course, all subject to supermajorities. I understand the point you are making, but it seems to us that we have to look forward now to ensure that anything that we recommended as a commission is duly protected against the kind of erosion that we have seen through unilateral action.

In many respects, all the protecting devolution recommendations we put forward emerged from the 10 ways we demonstrated in which the existing settlement is unstable. Therefore, without addressing some of those in a statutory and a legislative way, we would not be offering any kind of additional level of security in the future. I suspect there will not be another commission like ours for some time, so it seemed to us that we had to move the debate on in a way that offered a greater security to issues, including the supermajority path.

Dr Rowan Williams: It is possibly an irony we have to live with. As Laura has said, we are where we are, and we are trying to establish what a sensible procedure would be now for any major rethinking of the devolved structures. Granted that there were flaws and questions about how they arose, there they are, and now, if they are worth preserving, we would say that this is how we preserve them best.

Q65 **Lord Burnett of Maldon:** Just following up on Lord Strathclyde's point about these problems being thrown into the courts, you will understand my particular interest in that. It is often said that judges really need to be allergic to politics. I think it is fair to say that none of us enjoys dealing with issues which the public will regard as political, which have been thrust into the courts. It might be thought that this proposal is going to create a position where intensely political matters, which have been incapable of resolution between two Governments, effectively, are going to be thrown at the judiciary. Do you think that is a wise thing constitutionally, and you think it is good for the relationship between the judiciary and the Governments in the United Kingdom?

Professor Laura McAllister: One would hope that things would not be thrown towards the courts. In many respects, the recommendation comes from a desire to have this as a preventive mechanism, as much as anything, to encourage the greater co-operation that we have not seen so far with intergovernmental relations, and involvement of early-stage discussions over key areas. Of course, making it statutory creates the risk of that being the case. I take your point entirely about the muddiness between political, legal, and constitutional matters. But, again, I would

refer you to the evidence that we received as to why, without that, things simply were not working for citizens in Wales, and it seemed to us that there were not many alternatives that could be recommended—particularly post-review of IGR mechanically—that would suggest this could be remedied through any other mechanism.

Dr Rowan Williams: Yes, and I want to underline what Laura said earlier. We are quite deliberately not talking about granular issues here but high-level questions of how the entire structure of the settlement works, which I hope might be a little less political—in the rather malign sense that you have implied—than certain issues that have indeed come across the court’s radar in recent years in relation to devolved Administrations. The issue we have in focus is simply that of a change to the settlement, rather than the adjudication of specific points of conflict.

Q66 **Lord Thomas of Gresford:** The very political issue at the moment is the increase of the number of members of the Senedd from 60 to 90. Is that requiring a supermajority?

Professor Laura McAllister: It is part of the Senedd reform programme, of which there are two separate Bills. The first is looking at members and elections, and the second, which is in stage one currently, is looking at the election candidates lists. Both would be subject to a two-thirds majority in the final vote in the Senedd.

Lord Thomas of Gresford: You would not expect the courts to deal with any dispute arising out of that.

Professor Laura McAllister: Only around legislative competence in that case, were there to be a debate over the competence of the Senedd to pursue legislation in those areas.

Lord Falconer of Thoroton: There is an issue, is there not, between the Government of Wales and the Speaker of the Senedd in Wales? One says it is within the legislative competence of the Senedd and the other says it is not. There is a legal dispute, and, as I understand it, the only way that can properly be resolved in accordance with the existing settlement is by the courts resolving that. You would expect the courts to resolve that one, presumably?

Professor Laura McAllister: I answered as I did, because that Bill is at stage one of scrutiny at the moment. You are absolutely right: there is a difference of legal opinion on the competence over the election candidates Bill. The Llywydd, the Speaker, has expressed her opinion that it is outwith the competence, whereas the Welsh Government, and the Minister sponsoring the Bill and her legal advice, suggest that it is within. This is purely at stage one of the scrutiny process, and I am sure there will be quite muscular conversations over the competence issue. That could well end up with a Supreme Court referral. There is no doubt at all about that. I was answering the question with regard to the supermajority process for approving a Bill that was within competence, rather than outwith competence.

Q67 Baroness Finn: I have noticed that there is a tendency to prescribe a lot of things to go into statute these days, as though it is the ultimate solution. We have all talked about the relationship being essentially political, and that you are essentially referring political differences to the court, which can be problematic. It also leads to a lack of flexibility. So before you change the constitutional arrangements, is there not an urgency to explore any other options?

There has been a difference in opinion between witnesses as they have come. I noticed, Professor McAllister, that you mentioned your colleague, Ciaran Martin, who was very firmly against having a statutory settlement because of this lack of flexibility. He also, interestingly, mentioned how well the relationship worked when he had been working in the cybersecurity space, and that the devolveds co-operated very well. It comes back to Dr Williams's point that the police co-operate and work well together. So before one changes the whole basis of the settlement, would it not be sensible to explore where it is working well and why it is working well, before saying that you have to change the whole fundamental nature?

Professor Laura McAllister: Yes, and I understand Professor Martin's position, but, with respect, we did that as a commission. We sought to investigate where there was scope for greater freedom of operation and flexibility, and we could not be convinced that that would be improved without a statutory intervention. I appreciate that other witnesses will have also indicated their support for statutory interventions in this area, including former senior officials in Whitehall. That is the case, I think, because Whitehall operates constantly in a statutory culture and framework. If we have got to the position where we see problems arise because there has been no attitudinal change of respect and co-operation, it will have left us with very little alternative by way of recommending improvements other than going down the statutory route.

Dr Rowan Williams: I am very much of the same mind that we are prone these days to try to resolve issues by law rather than culture, as it were. But Laura is right that we looked very hard at what the culture was and was not delivering. I suppose what we are saying is that, indeed, it is not a particularly good idea to change the settlement idly and, precisely for that reason, to help maintain and perhaps create a culture of greater respect and flexibility between Cardiff Bay and Westminster, something of this order of statutory back-up would be desirable.

I find myself a bit conflicted about this precisely because I share the misgivings that have been expressed around the table about over-regulating in certain respects. But when the evidence suggests that there are not very many lines of defence and protection for what we have that work currently, that we need to shift the culture, this is one tool, one lever, in that task.

Q68 Baroness Finn: Lord Falconer has already referred to it, but this comes back to the implications, in your view, of the Welsh Government's decision to introduce the Senedd Cymru (Electoral Candidates Lists) Bill,

despite the Senedd Presiding Officer stating her view that the Bill is not within the devolved competence of the Senedd?

Professor Laura McAllister: I am afraid all we can say about that is that, at this stage, there are contesting legal opinions as to whether that Bill is within competence. Given that it is at stage one of its scrutiny, it is fair for the Senedd Reform Bill Committee to look at that very issue, which it is doing at the moment. In fact, I am speaking to it tomorrow about the wider principles of the Bill. Given that stage one is all about principles, it has to be aired properly, and the issues over the legal advice that have been given to the Llywydd and to the Welsh Government will be quite properly tested in that process.

Dr Rowan Williams: In a sense, what we say about this would only have the weight of individual opinion. We have not treated it in the commission, and although we have views they are not of any particular authority on this. It is possibly worth mentioning, though, that in the report you will notice a strong recommendation that these internal constitutional shifts in Wales should be reviewed robustly within a relatively tame timeframe. We did discuss some of the general ideas about Senedd reform, informally rather than in depth, in the work of the commission, and the one thing we were agreed about was that whatever went through the Senedd should be reviewed. What was the timeframe we gave? Was it five years?

Professor Laura McAllister: Yes, that is actually part of the legislation: that a review would be built in post the next-but-one election, if you like, because the new electoral system—and, as you alluded to, the increase to 96 Members, should that go through in its current form—elected by a different PR system, would then operate from the 2026 Senedd election. By the way, the Senedd terms would shrink to four years. So in the next election there would be a comprehensive and robust review of how that had worked from a citizen point of view, and we added our thoughts to how that might operate in as strong a way as possible.

Q69 **Lord Strathclyde:** This continues the theme that I asked about earlier. To what extent are the devolved Administrations consulted prior to legislation being introduced in the UK Parliament that alters the executive competences of the devolved Ministers? What impact has this had on the executive competences of the devolved Ministers? What I am really looking at is how Sewel is working in practice. Is it being bypassed by the UK Government, or is there an argument the other way: that the Welsh Government insist on a certain way of doing it? When I say Welsh Government, I am in fact speaking to all the territorial departments and the devolved Assemblies.

Dr Rowan Williams: I do not have the detail in front of me, but the evidence we had was that there had been, I think, 11 bypasses of Sewel in the last three years or so. That was the basis on which we expressed our concern. Do you want to say anything, Laura, on the detail of its impact?

Professor Laura McAllister: The number of cases is significant, because clearly with the context of Brexit and the withdrawal Act, there was an argument that that was a very different environment. But then the internal market Act and the issues that arose over lack of consent there rode a coach and horses through the concept of Sewel operating in the way it was intended to as a convention, and we heard lots of evidence that indicated the problems associated with that.

Of course, a convention is a great thing if it can be operated in a way that everyone expects it to be, and according to the principles that underpin that convention. But it seemed to us that the evidence we were receiving suggested that the Sewel convention had lost its anchoring in those principles, and that the devolved Governments—particularly the Welsh Government, because we heard much more from them, although we did hear from the other Governments and Executives—had lost faith in the convention as it operated currently. Hence the movement of suggesting that the Welsh Government should press the UK Government to present legislation to protect that consent issue.

Again, however, and I hope Rowan will agree with me, I would not want to give the impression that the commission was too readily keen on pushing things into a statutory and legislative context. As co-chairs, we felt throughout that we were being left with very few alternatives at times and that we would have much preferred to have been able to encourage a better operation and respect for Sewel in its enactment. But 11 instances of not utilising Sewel in the way it should be suggested to us that something more serious needed to be done.

Baroness Andrews: The most egregious instances of where Sewel was overlooked and sidelined completely were in the internal market Act and the European retained law Act. The devolved Administrations told us pretty forcefully that these Bills were not consulted on. I am just wondering whether there is a distinction to be made between that type of legislation, where somehow Sewel gets lost because the whole process of consultation is being lost and it then becomes a sort of habit of mind whereby, “They didn’t mind that last time, so why don’t we do it again?”, or whether there is the possibility that, in whatever passes for normal circumstances, normal legislation, there is a much more likely sense that they would refer back to Sewel and use it as a mechanism. Do you think I am just being romantic?

Lord Falconer of Thoroton: Never.

Professor Laura McAllister: I would not call it romantic, but I would take issue with the fact that they did mind that there was no consultation with the—

Baroness Andrews: I am sorry. I did not mean to give the impression they did not mind.

Professor Laura McAllister: No, they did express their concern. They did mind that they were not consulted.

Baroness Andrews: Absolutely they did, yes. Very much so.

Professor Laura McAllister: But there is an enormous jeopardy, is there not, with suggesting that one area of legislation, albeit very unusual and significant, is exempt from the conditions of a convention like Sewel, because who knows what other unique and interesting contexts we might face in the future that would then have a precedent for being exempt from Sewel as well. That is a dangerous precedent to have, because it undermines the basic principle of co-operation and consent between the Governments, so I would find that problematic in a wider context.

Dr Rowan Williams: It is a fair comment to make about the mentality that might be generated: that is, you push hard on a rather exceptional piece of legislation, it does not completely bring the house down and, as I put it earlier, you may be inclined subsequently to cut whatever corners can be cut because of that. As a process, that is perhaps what we have been seeing. It is a plausible account of it, which takes us back to the fundamental issue of what protections we need.

The Chair: This committee has consistently raised honouring the Sewel convention with the Government and not normally proceeding in areas of devolved competence without consent. I think everyone recognised the pressures that came following Brexit. However, there have been various statements from various Ministers about their intention to go back to the principles in the Scotland and Wales Act around Sewel. In your gathering of evidence, did you see a shift back to working more to the convention, or did you see no evidence on that?

Dr Rowan Williams: We did not pick that up in any very strong sense, and that is reflected in some of the responses we had from Westminster on various issues. This may have been overtaken by events, I do not know, but quite often our sense about the responses we had was almost, "Oh, Sewel. Oh, yes", and kind of dusting off something rather than an immediate awareness that this was something significant.

Lord Thomas of Gresford: By contrast, did you find that the Welsh Assembly were more reluctant to give consent, that there had been a reaction to those 11 instances?

Professor Laura McAllister: It would be hard to suggest that that was a deliberate strategy, if you like, because in every instance what is being presented to Welsh Government for legislative consent is obviously so different. I guess we are back to the space we referred to earlier about relationships, trust, respect and co-operation, because if there are 11 very different instances of Sewel being ignored and therefore the convention is being eroded, clearly it mentally creates a space where there is less likely to be good will towards buying into consent for other areas. That is just an inevitable political consequence. But we were not told that explicitly, so that is my interpretation rather than the evidence.

Dr Rowan Williams: I can see the risk of that in the culture we are talking about, but I do not think we have any hard evidence on that.

The Chair: Let us move on to Lord Falconer and the question on whether to strengthen the Sewel convention.

Q70 **Lord Falconer of Thoroton:** Do you think the Sewel convention can be strengthened? You and your commission recommended a duty of solidarity, which is effectively a duty of co-operation between the Welsh Government and the UK Government. Would that involve having to go through a step of consultation, not legislating if it intrudes on devolved responsibilities before you had heard the result from the Welsh and the Scottish Governments, and then not legislating if they say no unless there are exceptional circumstances? If you say there are exceptional circumstances, would you then make a public statement before you move? Is that what you have in mind?

Professor Laura McAllister: Loosely speaking, yes. It should also include delegated legislation. We talked a little about that in the commission, because clearly if Parliament cannot do something then Ministers should not be allowed to do it. Ministers are not sovereign in any sense. It is in relation to those principles, Lord Falconer, that there needs to be a process through which the convention could be operated, at which points there would be exit routes towards protection, whether that was legal or otherwise, because it goes back to the point we made that the flexibility of Sewel is its advantage. We completely accept that, but the flexibility has become a disadvantage in terms of the devolved Governments, so we would have to lose some of that flexibility. But the advantages might be greater in other areas.

Lord Falconer of Thoroton: You said rather casually there "whether legal or not". If you put in a provision that says, "You have to consult, you have to listen to what you are being told by the Welsh Government, you then have to publish reasons if you wish to disagree with them and say that you're going to legislate in a devolved area", would you want the courts then to say to the UK Government, for example, "We're not going to resolve the issue of how you should deal with the internal market Bill issues, but if you've not gone through the process of consulting first, the courts can block you from moving to the next stage"? Would you want that sort of solution?

Professor Laura McAllister: Apologies, I did not express that very well.

Lord Falconer of Thoroton: I did not mean it in any disrespectful way.

Professor Laura McAllister: No, I appreciate it entirely. What I was intending to say was that if that was how the convention was cast legally and in a statutory framework, it might create greater opportunities to consult effectively before it went into a court environment. Ultimately, of course, there would have to be that sanction, because if it did not have that sanction, the system would be pretty much where it is now, and we have already exposed some of the weaknesses of where Sewel is now.

Lord Falconer of Thoroton: The alternative route is simply to put it into statute: the UK Government cannot legislate in devolved areas and the settlement must be respected. If the UK Government sought to do so, the courts would have a process of striking those down as being outwith the competence of the UK Parliament. Notwithstanding Section 16 of the constitutional Act, which says that you cannot legislate in devolved areas, some people would say that you would deal with that simply by saying, "In this exceptional case, we're going to legislate in that area". It would be quite difficult to see how it would work in practice. A statement to that effect in a piece of legislation might have some effect. Would you be in favour of that alternative approach?

Dr Rowan Williams: It is a possible first step. We have not considered this in detail, but it is a possibility.

Q71 **Lord Burnett of Maldon:** Professor, in answer to Lord Falconer's question, you touched on the delegated legislation position. There is much more delegated legislation than there is primary legislation and, as we know, it can cover very profound matters as well. As you noted, the Sewel convention does not apply to delegated legislation. You indicated one way or another that you thought it should. The other area that it does not cover is the use of Henry VIII powers to amend devolved legislation. In the last few minutes available to us, could you just expand a little on your thinking on this?

Professor Laura McAllister: Yes, certainly. I made the point about delegated legislation for the very reason you expressed there: that it is often some of the most meaningful and impactful changes to citizens' lives that come through delegated legislation. Therefore, we understood the frustrations of what Ministers were telling us when the Sewel convention had not protected their involvement and consent in those areas.

I take your point about Henry VIII powers. If Henry VIII powers are used, there has to be an agreement by all Governments for that to happen. If there is not an agreement by all Governments, they should not be utilised. I am afraid I am speaking more in my own capacity than as a commission co-chair here, because we did not delve into that area in any great depth, but the intent behind our recommendation about putting Sewel on a statutory footing was very much framed by all the different aspects where legislation had not gained the consent of the devolved Governments, including delegated legislation.

Lord Burnett of Maldon: Obviously, putting it on a statutory footing has all sorts of implications, the beginnings of which were explored in your dialogue with Lord Falconer. I take it that you would support the extension of the Sewel convention to delegated legislation and Henry VIII powers, even if the step was not taken to legislate, to put it into statute?

Professor Laura McAllister: Yes.

Dr Rowan Williams: This is why it is a first step, which would certainly take us somewhere on the route.

Professor Laura McAllister: Yes.

The Chair: Could you just develop that point about extending the Sewel convention to delegated legislation? Some delegated legislation will not be a great moment. How could you distinguish so that you had a proportionate extension of Sewel delegated legislation? I am thinking of every piece of delegated legislation going through a consultation and am pushing you on how that mechanism could work. If one was to put the case for extending, you would not normally do it without consultation.

Dr Rowan Williams: I wonder whether there would be a sort of default convention, so to speak, whereby you would have to make the case for certain pieces of delegated legislation being, as it were, taken for granted as not requiring the full procedure. I do not know. I am thinking on my feet here.

Professor Laura McAllister: The only thing I would add, again speculatively, is that if there was a better programme of legislation which the devolved Governments were consulted on early in the process, maybe there could be some distinction between the areas that would be of import to devolved Governments and those that are of less consequence to them. I am not sure how realistic that is in terms of how it might operate.

Lord Falconer of Thoroton: Some Bills would be of huge interest to the Welsh Government where, putting it brutally, the UK Government would have a huge interest in overriding their interest. The EU withdrawal Act is one. The internal market Act is another. What sort of process would you envisage for a Bill like that where, for quite legitimate reasons, you wanted the Government to do particular things? I do not favour the Government's position in relation to that, but one has to accept politics. What would be the process for the sorts of Bills that you would have in mind?

Professor Laura McAllister: That is a difficult one. There would have to be an analysis of the areas where the changes that were being initiated through the internal market Act had a direct impact on devolved areas. If you take something like agriculture as an illustration, there is a financial and a political dimension to agriculture that is partly devolved, but when it comes to trade it might not be devolved. The only suggestion I could come up with would be to have had some analysis of the areas where there is a distinct jagged edge between the reserved and the devolved implications of a piece of legislation.

Dr Rowan Williams: Yes. That is the point I would be tempted to make. It would be incumbent on somebody to make the case that this properly belonged to reserved issues in a devolution settlement.

Baroness Andrews: There is a sort of process in the Delegated Powers

and Regulatory Reform Committee, and although sometimes it picks out specific examples of how things will impact on the devolved Administration, it is not always consistent at that point. Sorry, I am making a statement without asking a question.

Do you think it is worth the committee structure of the Senedd looking at how it might co-operate or get more automatic intelligence from the way the DPRRC is approaching legislation? When we considered the internal market Act in this House, we on the Common Frameworks Scrutiny Committee worked very closely on it, because we knew what the impact was going to be, and we worked with the relevant Ministers in Wales to help to advise on the floor of the House. The DPRRC is the only committee of the House which does anything like this and, if it were in scope, it would be an interesting avenue to explore.

Dr Rowan Williams: That is really fleshing out some of what Laura was saying: at what point do those interests get flagged on the floor of these Houses?

Professor Laura McAllister: Does it not also underline how poor inter-parliamentary relations are? I know that your previous report in this area highlighted that very well. However, we must not focus entirely on intergovernmental relations, because the inter-parliamentary relations can be as critical to effective scrutiny and preventing some of the problems that occur further down the legislative process.

Baroness Andrews: Indeed. It might be worth thinking about scrutiny as a particular area to explore, not least because the DPRRC comes into the process late. We do not get its reports before committee and, in fact, what you want to do is scrutinise the process before anything approaches Second Reading.

Professor Laura McAllister: Exactly. By the way, that is easily and convincingly the strongest argument for enlarging the Senedd, which is to create an environment where scrutiny is possible. I have had 20 years of research in the Senedd and I can categorically say that, with 60 members, it is impossible to scrutinise the scope of legislation and financial spend effectively. Comparative evidence internationally will tell you exactly the same thing; it is uniquely the strongest argument for creating a Senedd of 96 members.

The Chair: I am terribly conscious that we are very shortly convening as a House, and people have all sorts of business. We have one more question, but we will not do justice to it if I just rush it through. It is this issue between the territorial Ministers and the Ministers in departments with functional remit. We are taking evidence from a panel of the three territorial Ministers, and it is quite an important issue that we want to interrogate. Professor McAllister, I am conscious your knowledge and academic situation will go beyond the commission, so would it be all right if we wrote the question to you? It is not a complex one.

Professor Laura McAllister: Of course.

The Chair: It is about when you route through territorial, should it be greater or whatever. But it will be very useful because it will inform us when we are meeting the Ministers. If I may?

Professor Laura McAllister: Of course, with pleasure.

The Chair: Can I thank our witnesses very much? The variety and considered way with which you have answered our questions and your responses were enormously helpful. We have a much greater understanding, and you have given us room for thought. That is always helpful from a committee's point of view so thank you indeed. We are very grateful.

Dr Rowan, if I may presume from the Chair, my roommate Baroness Maeve Sherlock was very excited when she discovered that I was seeing you. She asked if could send you her regards and she said, "And give him a hug". I declined that, but I said I would send you her regards and she will be very pleased I have done that. Thank you indeed.