

Procedure Committee

Oral evidence: The procedure of the House of Commons and the territorial constitution, HC 838

Monday 22 March 2021

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Members present: Karen Bradley (Chair); Aaron Bell; Kirsty Blackman; Bambos Charalambous; Chris Elmore; Nigel Mills; James Sunderland; Owen Thompson; Liz Twist.

Questions 20-47

Witnesses

Rt Hon Stephen Crabb MP, Chair of the Welsh Affairs Committee; Simon Hoare MP, Chair of Northern Ireland Affairs Committee; Pete Wishart MP, Chair of Scottish Affairs Committee.



Examination of witnesses

Witnesses: Stephen Crabb MP, Simon Hoare MP and Pete Wishart MP.

Chair: Hello everybody. Welcome to our evidence session. We are delighted to be joined by three Select Committee Chairs from the House of Commons—Stephen Crabb, Chair of the Welsh Affairs Committee, Simon Hoare, Chair of the Northern Ireland Affairs Committee, and Pete Wishart, Chair of the Scottish Affairs Committee.

The point about the work we are doing at the moment on the Procedure Committee is that this is a very long inquiry. This was the very first inquiry we instigated when we first formed in March last year, and strangely enough, we have had a few other things keeping us busy in that time, but this has always been bubbling away in the background. It comes out of a desire of the members of the Committee to understand the way that our four legislatures work together today. When we started the inquiry, we were still in the transition period, but with Brexit and the change in the constitutional arrangements, the like of which we haven't seen post the devolution settlements in Wales and Scotland, we want to understand how the four Parliaments will work together in the future and how we can make sure that there is a better understanding, perhaps, across all four Parliaments, of the work that all other Parliaments do, so that we can further relations and improve our working together.

We are looking at a number of areas and we are very happy for you to explain to us what your Committees do, where they do things differently and where they have different powers, perhaps, than other Committees. We are also keen to explore, in particular, the way that some of the constitutional arrangements are working at the moment. That includes double majority voting, known as EVEL—English Votes for English Laws. It also includes the way legislative consent motions operate and how parliamentarians across the four nations work together and could, perhaps, better work together.

That is the basis of what we are doing. We are very happy for you to make whatever comments you wish to make in that sphere.

We are going to start with some questions on EVEL, then we will move on to legislative consent motions and then to interparliamentary relations. If there are points you wish to make in addition, we are very happy to hear from you. I will start on the EVEL questions by asking James Sunderland to come in.

Q20 James Sunderland: Good afternoon to all of you. Thank you very much for coming in.

I am very much interested in EVEL and whether it has succeeded in providing fairness for England. You will recall that in 2015, when the Government introduced EVEL, it said that the procedures would “provide fairness for England in our constitutional arrangements.”



HOUSE OF COMMONS

The first question is to each of you. How effectively does EVEL provide an English voice as well as English votes?

Simon Hoare: Thank you, Mr Sunderland, for your question. Clearly, something needed to be done. I always thought a better acronym than EVEL would have helped, but we arrived where we arrived at.

I don't in all honesty think it has done the job that it was intended to do. Now, whether you move to an English Grand Committee, whether you take something upstairs or what, I am not sure, but I think it is seen as technically pernicky and slightly embarrassing. I don't think anybody representing an English constituency sits back and says, "That's it—job done," because there is this thing called EVEL. I think it drives a further wedge, if one were needed in the arena of political debate, between Scottish MPs of all parties and the rest of the House of Commons. There is a job that needs to be done, and my assessment is that this is not the way to do it.

James Sunderland: Thank you very much. Can I please ask the same question of Pete Wishart?

Pete Wishart: Thank you to the Procedure Committee for a further invitation to come across and give evidence. I think this is the third time, Chair, that I have had the pleasure of appearing before the Committee. It is always a delight for visiting Chairs to come forward and speak to you about some of these very important issues. I recognise the tortuous progress of your inquiry. You and I chatted about it at its inception almost a year ago. I wish you all the best in your deliberations. I am sure all of us, as Chairs of the territorial Committees, will do everything possible to assist you in your inquiry.

Has EVEL been fair to England and the English people? Absolutely and utterly not. I actually think that the whole procedure is approaching the embarrassing. If this is the best that an English voice can achieve and secure, God help you, seriously. If it was to give a voice to English matters and a forum for English-only issues to be considered and deliberated, no one would be able to conclude that this is even remotely fair or has even started to address these issues.

I will give you one example of how badly it has failed. I hold the record for appearances in the English Grand Committee. I have probably taken up about 85% of the time available for EVEL procedures and the opportunities to talk in debate. I think the work of Gover and Kenny found that most of the Legislative Grand Committees last around two minutes. During the first year of operation, only two Bills had entered Legislative Grand Committees at all for any significant length of time. Two are mentioned; one is 43 minutes on the Housing and Planning Bill, and I think I took up 35 of those 43 minutes in debating that.

There are a number of ways that you can develop and progress the idea of English fairness when it comes to constitutional matters. One is that you do it properly, and the second thing to note is that it is hard work. You



HOUSE OF COMMONS

create Parliaments like those that we have in the territories we look after as Chairs, and have proper democratic institutions, where you have real politicians doing the hard work of developing public services and leading their nations. You don't do it by squatting in some other Parliament or by appropriating another Parliament and rebranding it briefly for a number of inconsequential measures and manners.

The outstanding thing about the EVEL procedure—I will end with this—is that it has been suspended for the past year. Would anybody really notice it?

James Sunderland: Thank you very much. Can I please ask the same question to Stephen Crabb?

Stephen Crabb: Thank you very much, James. Thank you very much to you all for the invitation to appear this afternoon.

The answer to the question of whether EVEL has been a success depends very much on what you are expecting it to do. If you are looking for a technical process that enables the House of Commons to avoid the kind of situation that we saw in 2003, 2004, when there was a risk of legislation for England being passed through the House of Commons without securing a majority of votes from MPs representing English constituencies—if that is the problem that you are trying to avoid by inserting a mechanism—EVEL in some sense provides that mechanism. It is not particularly well understood or attractive part of the procedure, but then very little of parliamentary procedure is.

I think it was Bismarck who said that there are two things you do not want to see being made: one is sausages, the other is laws. EVEL inserts another stage in the sausage-making process that is not particularly attractive. If you are looking for EVEL to provide a response to a growing sense of English political identity—a sense of a stronger, more defined English voice within the House of Commons—then I do not think EVEL is a success at all, for the reasons that Pete and Simon have both just talked about.

I am actually personally sceptical that the sense of English identity overall needs particular changes within the House of Commons—that it requires much along those lines. I have spent 16 years going back and forward between my constituency in Wales and the House of Commons in Westminster, and of all the problems I think about in relation to the Westminster Parliament, the absence of English identity is not one of those problems. The whole place is imbued with a sense of English identity, so I am not convinced that when you were posing the question, Mr Sunderland, we were very clear about what it is that you are looking for EVEL to do.

When I look at emerging identities that do require some parliamentary innovation, I think about the sense of political identity now in the north of England: phrases like “northern powerhouse” and “red wall”, the different evolving devolution arrangements in the north of England, and the



HOUSE OF COMMONS

Treasury wanting to open up an office in the north. I think there is probably a stronger case for a Northern England Grand Committee than there is for something about the whole of England, or you could even make arguments similar to that around Cornwall or the west of England.

- Q21 **James Sunderland:** Thank you very much indeed for that. The second part of my question relates to the possibility of an English Affairs Committee, noting of course that all three guest witnesses are themselves Chairs of Select Committees. My question is this: how far do you think the English electorate's desire for a political voice would be met by an English Grand Committee or an English Affairs Committee? Can I please ask Simon Hoare to come in on that one?

Simon Hoare: I do not think it is a static thing. I think a lot of it depends on two things: first of all, what is the legislation going through the Commons, and secondly, what is the size of the Government's majority? You do not get a clamour for that if the Government can command a majority to carry its business, but if business is either being carried or defeated on the backs of the votes of people whom that legislation is not going to affect, the problem is that the issue then arises. People see the Barnett formula, the block grant, and so on; they see all of the collaboration that exists, perfectly properly, between Belfast, Edinburgh and Cardiff; and you get a lot of, sometimes, English nationalism saying, "Hang on, London is the engine room of the economy. We are generating all the cash. We do not have a concomitant body for ourselves."

However, broadly, I think it lies dormant—I am not saying it disappears, but it lies dormant—until the parliamentary arithmetic is such that the Government's wishes can be frustrated or amended beyond recognition by the votes of people whose constituents are not going to be touched by that legislation. Then, I think, it raises the blood pressure level.

James Sunderland: Thank you very much. Can I please ask Pete Wishart to comment?

Pete Wishart: It all depends, really, on what you want to achieve. If it is a means to try and secure an effective voice and proper democracy, and holding to account an Executive and responsibility for running your own affairs, that will not be achieved by an English Grand Committee or some sort of Legislative Grand Committee. What you really need to do is create an institution to do that. The idea that we have just now is that we use Westminster to try to satisfy some of these demands, and try to find a way to offset some of the concerns about what is happening and a democratic deficit across the United Kingdom. You either want to properly fix that view of a democratic deficit and set up institutions, or you don't, and to tinker around with some parliamentary procedures to try and achieve this is, I think, entirely the wrong way to achieve and secure that.

I have been in Parliament long enough to remember the Scottish Grand Committee, which sat probably up until about 2003 or 2004. One of the features of the Grand Committees is that they cannot design legislation; they can get Ministers in and have debates and motions. Their



HOUSE OF COMMONS

membership is exclusively from Members of the different nations of the United Kingdom. But a Grand Committee can't do the legislation or the holding to account for the running of the services and for policies, so we would not achieve that with that.

People who demand legislative and constitutional change right across England have got to decide what entirely they want to achieve. It is totally legitimate to ask for an English Parliament, for example. The idea of a federal UK is an attractive and elegant one for the way that we could come together as different nations of the United Kingdom. You could have an English Parliament that would deal with all the domestic responsibilities and we would come into a United Kingdom Parliament, as we have now, to decide all the reserved issues. There is something that would work about that. But all we seem to get is just tinkering around some of the procedures and Standing Orders of the House, or the use of Committees to try to secure that, and I do not think that that achieves anything close to what that seeks to happen.

The other thing to note—we might move on to this—is that there seems to be quite a bit of demand across England for some sort of legislative voice, but it all breaks down when you ask about devolution across England and the creation of regions and devolved government for some of the regions across England. That demand does not seem to work its way down to any sort of legislative assemblies across the English nation. If we look across the United Kingdom, England dwarfs the rest of the nations—I think the population of England is 55 million, and we have 5.5 million in Scotland. A whole range of things need to be done and worked out, but I just don't get this—to create Committees in the House of Commons, which is the UK Parliament, does not satisfy anything close to what may be a legitimate demand for some sort of form of English legislative voice.

James Sunderland: Finally, Stephen Crabb, please.

Stephen Crabb: As I said in my earlier answer, I am sceptical about trying to create England-wide structures within the House of Commons. I do not think it is necessary. I think it is potentially the kind of thing that people, without thinking too much, say yes, they like the idea of, but not in practice—as perhaps we have seen with the Welsh Grand Committee, which has not met now for two or three years. There is no shortage of appetite among Welsh MPs for debating Welsh affairs, as you see in the annual St David's day debate or in the attendance at Wales questions on a Wednesday morning every four or five weeks, but the Welsh Grand Committee is probably one of the least popular things that Welsh Members of Parliament were invited to participate in.

I have another concern as well. The House of Commons is fundamentally part of the UK Parliament, and the more effort that goes into trying to evolve English-wide processes and structures within it, there is a real danger—I say this as a Unionist—of the House of Commons beginning a journey down a pathway to becoming in effect an English Chamber. I don't think that would be good for the Union or the health of British democracy.



James Sunderland: Thank you. That is me done.

Q22 **Kirsty Blackman:** Professor Henderson told us a couple of weeks ago that about 60% of people in England, when they are polled, support English Votes for English Laws, but if they are asked about excluding Scots MPs from making legislation, that goes up to 65%, so about 5% extra people support English Votes for English Laws if it is framed as being about excluding Scots from making them. In fact, a significant percentage of people polled support there never being a Scot in Government, for example, which seems to me to be pretty extreme.

How do you square these views of people with what the UK Government are seeking to do, but also with the Barnett formula and the fact that the estimates procedure is substandard and the Scottish block grant—as well as other devolved nations' block grants—relies on the making of English legislation, if you like? How do you square that circle? That question is to any of you who's interested in coming in.

Pete Wishart: I will give that one a bash, Ms Blackman. I think there is demand throughout England for some sort of legislative forum and legislative voice. I think people look at the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly and believe that that is something that England would benefit from, and it would greatly secure some sort of authority within it that would allow them to hold politicians to account for the running of services.

The problem is that we have always looked for a solution within Parliament to do this and we have not started to try to create and design the institutions that would deliver it. I think that is the great deficit in all this: we have tried to bolt it on to how Parliament works here. We made the House of Commons a de facto English Parliament for a few sessions per year, and that has not quite worked.

I am quite surprised at what was said. I did read the stuff from Professor Henderson that said that EVEL was popular. I think it is popular only because people don't really understand it. We as MPs don't really understand EVEL. We don't know how it works. We are not entirely sure of the impact that it has on our parliamentary business. We are not entirely sure how outcomes are properly determined and decided. So it surprises me greatly that the public know anything whatsoever, but I think they like the idea that Scottish Members of Parliament, like you and me, are not going to be part of the process of decision making about things that they see as intrinsically English. There is nothing wrong with that at all, but you just can't do it in the UK Parliament, the Parliament of Great Britain and Northern Ireland, of which we all should have equal membership.

The question that you raise about the Barnett consequential and estimates is really, really important. You will know that there has been a number of pieces of legislation that have been considered EVEL by the Speaker but that have a financial consequence for and impact on Scotland because of Barnett formula funding, and this has never been resolved throughout all this. It's a point of immense frustration for us, as Scottish



HOUSE OF COMMONS

Members of Parliament, that we are seeing this happening; we are seeing that there are huge funding questions and issues that impact on devolved services, but there is nothing we can do about this.

This come back to the idea that if we are going to do it, we do it right. If you had an English Parliament that considered all this, we would come together in a UK-wide federal Assembly, Parliament or whatever, and then we would work out all these issues when it came to all the macro spending issues. But we have not started to get into that territory; we are left trying to bolt this on to the work, institutions and Committees of Parliament, and it is just failing. And it is not just failing you and me, as Scottish Members of Parliament who now see ourselves as a different class of MP from English Members—we have different voting rights from English Members. It is also not serving the English public, who do seem to rate this reasonably highly as a priority; it is something that they do seem to want to have resolved.

Q23 Kirsty Blackman: Just to be clear, Professor Henderson was clear that although members of the public in England support EVEL, they don't support this particular mechanism whereby EVEL happens. It's the concept that they support, rather than the actual mechanism. Mr Crabb and Mr Hoare, do you want to come in on that at all?

Stephen Crabb: I fundamentally disagree with my fellow Chair, Pete Wishart. I don't think EVEL, for all its faults, has created what he describes as two classes of MP. The fact is that every piece of legislation provides an opportunity for every single Member of the House of Commons to vote on it. When you look at examples of the legislation that has been categorised as England-only or England and Wales-only, a lot of it is fairly narrow, technical stuff, like the Kew Gardens (Leases) Bill from a couple of years ago. There isn't actually an awful lot of major legislation that excludes Scottish MPs at all; and as I said, Scottish MPs are not excluded from actually voting on those items of legislation at different stages of the parliamentary process.

EVEL is a fudgy outcome, as I was trying to say earlier in one of my answers. It doesn't do a lot, but the one thing it does do is provide that very technical piece of procedure that, on the face of it, prevents a scenario whereby legislation is being passed primarily for England without being able to secure a majority of votes from English MPs. That is the narrow purpose that I personally view EVEL as addressing, rather than responding to some broader aspiration around English self-government or English political identity.

Simon Hoare: Ms Blackman, to answer your question, I was struck by something that Mr Wishart said, which is the differential in size and population, which, occasionally, we are all inclined to forget in the general political lives that we all lead. It speaks to the problem of the difficulty of delivering devolution for England, just because of its size and the competing narratives and aspirations across the country, which is why we have directly elected Mayors in London and so on. However, you can construct a perfectly legitimate and reasonable argument that says that



HOUSE OF COMMONS

EVEL is a rather cheap sticking plaster to put over a call for English devolution. These people calling for English devolution—I may live to regret this—none of them live in North Dorset, because I have had no calls of “Let’s have more politicians and more taxes to deliver even more priorities”, and so on. It ebbs and flows and, at the moment, whether it is because of covid or whatever, the demand for it is on the floor.

On the Barnett formula, I was sorry to see it excluded from within the scope of the Dunlop review. It is not a sacred cow. We should look at Barnett. Created in 1978, pre-devolution in any shape or form, it needs to be looked at, refreshed and made fit for purpose for the 21st century. Just relying upon it because it has always been there and may be tricky to look at does not strike me as a particularly compelling defence.

Q24 Aaron Bell: Thanks to all three of you. Just a few more on EVEL, feeding from what you have already said. Kirsty mentioned Professor Henderson’s evidence. EVEL is incredibly popular as a concept but at the same time a lot of people do not think it has happened. One of the concerns is, first, what Mr Hoare was saying about what might happen if the parliamentary arithmetic were different and whether things would be being done to England against our will, if I can quote the usual line that we hear from Members opposite. However, there is also the robustness of it. It does not feel robust to me, in that a new Government for whom EVEL was politically inconvenient could abolish it without people making too much of a fuss—they would make a fuss, but there would not be much to stop them abolishing it in institutional terms. However, given that people do not seem to want a Parliament, is there a way we could make EVEL more robust without running into some of the problems you have described? In the spirit of constructive criticism, I will go to Pete Wishart first.

Pete Wishart: I think you were asking whether there is anything that can be done to make EVEL more effective and efficient. Is that basically it?

Aaron Bell: And robust, so that it could survive a change of Government.

Pete Wishart: When EVEL was first introduced into the House, as matter of a response, as you say, there seemed to be a demand. It came from the moment after the Scottish independence referendum, when David Cameron, who was Prime Minister at that point, said that this had to be addressed as a priority. This carried on for a year. The Conservatives won the election in 2015 and one of the first measures—I would not call it legislation because of the change to Standing Orders—was English Votes for English Laws. I will come back to this essential point, which is that it is about trying to use the Parliament of the United Kingdom as a means to try and deliver and secure this; about trying to ensure that this becomes an effective forum for articulating that English voice and having that say on English-only issues. It has fundamentally and totally failed as a measure to try and achieve this. Nobody understands how it works, it is disruptive to the parliamentary timetable, it has effectively been vanquished for the past year and I am sure nobody would even notice that it has gone. It has been so insignificant and proven to be such an opaque



HOUSE OF COMMONS

measure that nobody has actually missed the fact that it is not there any longer.

I do not think there is a particular way of strengthening it as a procedure in the House. I was listening carefully to some of the other responses on creating some sort of English Grand Committee or an English Select Committee. All these things are perfectly doable without English Votes for English Laws. I cannot see any reasons why these could not happen. The problem with EVEL—I know that my colleagues as fellow Chairs take exception to this—is the fact that what it has to do is deny myself, Mr Thompson and Ms Blackham particular rights and abilities in the House that are extended to every single Member. We cannot vote—our vote is of less value than that of other Members of Parliament—when it comes to particular pieces of legislation that have been certified as English-only. I do not think there is anything you can do to strengthen that or make it much more of a feature to address some of the issues around all this just now.

Aaron Bell: Understood, but equally, imposing a parliament on England that England does not want does not solve the problem either, Mr Wishart. We seem to have a bit of an impasse in terms of where we go from there. I will bring in Mr Hoare.

Simon Hoare: Thank you, Mr Bell. As I said moments ago, the EVEL issue is, technically, devolution on the cheap. It is saying, “We are not going to go to the expense of a new building, new politicians and bureaucrats and all the rest of it.” However, things move on, and things have been quite dynamic. There is greater strength, actually, in reaffirming Westminster as the Parliament of the United Kingdom where we have interest and reach. That might sometimes mean that colleagues are voting on things that do not affect their constituents; rather, they do so in the interests of the unity of the United Kingdom, and in those circumstances they may seek not to vote.

At a time when the fabric of Unionism is under a greater strain, I think, than I can recall in my adult lifetime, we are better focused on repositioning Westminster as the UK Parliament, reminding ourselves of the four patron saints in Central Lobby and the rich cultural voices that we hear across the Chamber. We might just be better to focus on that for the future unity of the UK, rather than on trying to deliver English devolution on the cheap in the House of Commons. If it is to be done properly, then it is to be done properly: have a separate building, or give more hours to county councils, or turbo-charge the city Mayors and the metro regions and all of that type of thing. But do not play around with the intrinsic unity of the United Kingdom Parliament in Westminster.

Q25 **Aaron Bell:** Thank you. My constituents in North Staffordshire have much the same opinion as do yours in North Dorset about the desirability of more politicians, Mr Hoare. That answer seems to suggest that, rather than worrying about whether EVEL is robust to a new change of Government, it would be better if we simply did not bother with it, given that we have managed without it for a year and are managing perfectly



HOUSE OF COMMONS

fine with a Government majority of 80-something. You are advocating, it seems, that we would be better off as English Members who want to keep the Union together, not worrying about it and acting as a Parliament of a United Kingdom again.

Simon Hoare: I have only been an MP for six years, and that was one of the first things on which we voted, when I came in '15. Mr Bell, you may be pleased or disappointed to learn that I do not lie awake every evening thinking about the issue in the wee small hours. There are improving books to read, and all the rest of it. It is, though, starting to strike me now that it is a little bit like the Fixed-Term Parliaments Act: it is needed at a certain period of time to address an issue, but it does not necessarily stand the test of time.

Q26 **Aaron Bell:** I have just been on a Committee looking at the repeal of that, so it might be a good example. The irony is, perhaps, that EVEL was brought in after the problem was no longer there, because it was a manifesto commitment. I will turn to Mr Crabb to answer on the robustness point and what might happen in the future, then I had better hand back to the Chair.

Stephen Crabb: On the issue of making the procedure more robust, a lot depends on the view of the Government. The Government of the day have enormous powers to change Standing Orders. If the Government want it to remain a permanent feature of the parliamentary process, then the Government need to start using the process more effectively than they do at the moment. A lot of it boils down to timetabling. Earlier on, Pete Wishart was talking about how the English Grand Committee stage of the EVEL process happens in a matter of minutes. If you are looking to make this procedure more robust and more respected, then actually have a proper sitting as part of the procedure. Yes, it makes things longer and more cumbersome. But with all of these things there are trade-offs between efficiency and elegance of procedure and making things real and have meaning. I share a lot of the scepticism of my two colleagues with regard to the EVEL process, but it serves a purpose, as I have been trying to say in my previous answers. Now, if the Government want to make that more meaningful and create a sense of permanency around it, then they need to, first of all, reactivate it when circumstances allow that to happen in the House of Commons, but also make it more meaningful by having proper English Grand Committee sittings that actually feel part of the process.

Q27 **Kirsty Blackman:** Can you tell us about any issues that have arisen on the legislative consent processes in the work that you have done in your Committee? In particular, how has the recent experience of Brexit legislation being passed in the face of opposition affected some or all of the devolved legislatures? Mr Wishart, could you answer first please?

Pete Wishart: This is something that the Scottish Affairs Committee regularly touched on, and in our inquiries it is always something we have taken a keen interest in. I think what we have to conclude just now is that there are massive issues and problems with legislative consent. I think



HOUSE OF COMMONS

this became apparent in what was the 2017 *Miller v. Secretary of State* Supreme Court case, which clarified—I wouldn't say helpfully clarified, but certainly set out—exactly where the Sewel convention or legislative consent sat within the thinking of the UK Government.

There was always this view when the Scottish Parliament was set up and established that the Sewel convention for legislative consent would be a key cornerstone in securing and guaranteeing protection of legislation and the devolved responsibilities. I think what *Miller* showed us in 2017 is that that was not really worth the vellum it wasn't even written on, and that the UK Government could effectively do whatever they want when it comes to the devolved responsibilities if it fitted into the general view of legislation across the UK.

Brexit has been a huge challenge to legislative consent, and I think we have seen a number of Bills now that went to both the Scottish Parliament and the Senedd and did not secure legislative consent. The UK Government totally and utterly ignored that and went ahead with the legislation anyway. We have got to decide and determine whether legislative consent is to be a feature of devolved responsibility—whether it will be a guarantee and security that devolved responsibilities will always be there and that we as our nations have an exclusive interest, concern and stewardship over devolved responsibilities—or whether that is something the UK Parliament can simply override and determine its own view upon.

There is some soul searching to be done in all this. It does maybe need to be clarified, and perhaps your Committee could help to try and establish this. If devolution is to be successful, we have to trust our devolved Parliaments and Assemblies and allow them the opportunity to determine their own legislation and look after their own responsibilities. If anything that comes through UK legislation has an impact upon all that, there has to be that consent. That is what legislative consent from our Parliaments and Assemblies is about. It is to ensure that there is a whole buy-in right across the United Kingdom.

There are a number of things that can be done. The Institution for Government has done some very helpful work on how that can be achieved—whether it is about changing Standing Orders so that legislative consent is a feature of anything that is going to be passed in the House, or even things like statements about why legislative consent has been denied by the UK Government and why they are not prepared to follow what has been decided and outlined in the Parliaments across the UK.

As it currently stands, it is insufficient. It is a problem. There are multiple issues with this, and it is certainly a long way from where the original Sewel convention was intended to be when this was first included in the Scotland Act 1998.

Q28 Kirsty Blackman: Thank you very much. Mr Hoare, do you have views? Obviously, the situation in Northern Ireland is a bit different because of the way the Parliament works there.



HOUSE OF COMMONS

Simon Hoare: I think Sewel just throws up the problem of relying upon a convention. Sometimes we need something a bit more robust than merely a convention. You are right to point to the differential as far as Northern Ireland is concerned. Given the multiple parties running Stormont, often the consent is, of itself, enshrined by the First Minister and the Deputy First Minister trying to get agreement among the Executive. Then, of course, you have the whole principle of consent set out very clearly within the Good Friday agreement.

There are three things that will certainly give cause for concern. We have the enforcement of the changes that Westminster made with regard to abortion law in Northern Ireland, where there is a very big debate going on. The Chair, from her experience as Secretary of State, will know all too well about this; she could write a doctoral thesis on it.

We have had concerns about the proposed expenditure on tunnels or bridges in an area that is devolved through transport, with Nichola Mallon as the Infrastructure Minister saying, "If there's spare money, we could use it here. We're not giving you our consent to instigate this sort of feasibility. We want to do things more locally here."

Then of course we have the protocol, which is an entirely different thing, but the cross-community consent underpinning the Good Friday agreement is, of course, one of the sources of Unionist discontent about the protocol. It was given initial effect, but article 18 of the consent mechanism does not require a consent mechanism, which again has caused a lot of concern because cross-community consent was not required in order to instigate it.

It does have a different dimension to how it affects Scotland, and how Scotland perceives it, in Northern Ireland, because most things in Northern Ireland creep forward very slowly on a building-up of the mosaic of consent between parties, which often can be frustrating but it is the only way of making something happen.

Q29 **Kirsty Blackman:** Is it not, then, even more important that the Westminster Parliament listens to the voices, considering how much time and effort is put into building that consent across communities that are often diametrically opposed in many ways?

Simon Hoare: I think there is much in that, yes. It will have gone through a more testing fire, if you will, to arrive at a position. You mentioned Brexit. About 54% of Northern Ireland voted to remain. You have the DUP, which was advocating to leave. You are right to point to the fact that if a unified position, or an agreed position, is identified by the Executive, it really has gone through the testing mill to arrive at that position. A very different kettle of fish, without crossing into territories, is where Welsh Labour is running Cardiff and the SNP is running Holyrood. That is a different kettle of fish altogether.

Q30 **Kirsty Blackman:** However, I would add to that that in the Scottish Parliament we have a history of minority Government, or coalition



HOUSE OF COMMONS

Government previously, because of the PR system that we have. You do not have the level of massive majorities that you get in Westminster, so there is a level of consensus, particularly in Scotland, required by different parties in order to not have a legislative consent motion passed—but I agree that it is different.

Simon Hoare: I take that, Ms Blackman, but in the Northern Ireland context coalition Government really is coalition maxima, if you will. It is slightly comparing apples and pears.

Q31 **Kirsty Blackman:** I don't disagree. I am just pointing out the fact that the Westminster system and the Holyrood system are really pretty different. Mr Crabb, did you want to come in about legislative consent motions, and particularly any information that your Committee has discovered on this recently?

Stephen Crabb: I would just sound a note of caution about using the experience of the last few years, with respect to Brexit, as the framing for making judgments about legislative consent. It has been an extraordinary period that we have gone through as a nation, with constitutional, legal and political turbulence.

I was Secretary of State for Wales back in 2014 when we began drafting this legislation, and it is interesting that, when the Welsh legislation talks about the Sewel convention, the convention boils down to a commitment to not normally legislate on matters that are the devolved responsibility of the then Welsh Assembly, now the Welsh Senedd—"not normally legislate".

The last four years that we've been through have been anything but normal; it has been an extraordinary time. I would like to think that the passing of legislation in the face of the Scottish Parliament and the Welsh Senedd withholding consent, was extraordinary measures to get us through this crisis, and as part of the reordering of the British constitution post-Brexit.

If you look back prior to Brexit, legislative consent motions have actually been a pretty useful device within the devolution settlement to help delineate lines of responsibility. A lot of times, motions have been granted and passed to facilitate co-operative law-making between Westminster and the devolved Administrations. That has happened in Scotland and in Wales, and we should resist the temptation to see legislative consent as a kind of constant flashpoint—it needn't be that, and certainly, prior to Brexit, that wasn't always the case.

I would hope that, as we move forward, we would go back to something more normal in terms of relationships with the devolved Administrations. Where I think there is a potential risk is that we clearly have a UK Government, at the moment, who feel very keenly the need to assert the relevance of UK government in the devolved territories, with a more muscular approach—if you want to call it that—to Unionism. I can see risks around legislative consent in that approach. In other words, we wouldn't want it to become a habit; we wouldn't want the UK Government to get a



HOUSE OF COMMONS

taste for—if you like—disregarding the will of the Welsh Senedd or the Scottish Parliament, but that remains to be seen.

I do get the sense, from the ministerial sessions that we've had on my Committee, that Ministers and the UK Government want good relationships with the devolved Administrations, want good relationships with the legislatures there, and see the European Union (Withdrawal) Bill and the IM Bill, which were both passed without consent, as extraordinary steps.

Q32 Kirsty Blackman: And the way the levelling-up fund is working as well, which is going over the heads of the devolved Parliaments.

Mr Crabb, how do you feel about the word “normally”? You have mentioned it there. Do you think it is too vague? Do you think it should be strengthened so that it becomes justiciable, so that it is in the statute book, or do you think that there's another way to approach this?

Stephen Crabb: I would not want it to become justiciable; this is fundamentally a political device that we are talking about. I appreciate that there will be those who say that without legal force—without being able to take it to the Supreme Court—it really doesn't have the strength that it was intended to have. However, I just foresee so many problems with our system of government potentially becoming “gummed up” with constant challenges coming to the Supreme Court, and I just don't think that's a particularly healthy state of affairs.

If there are steps that could be taken to give more clarity and more force to that, that is to be welcomed. I certainly would not want to see the Sewel convention fall by the wayside because it continually gets broken, but neither do I want to see us go round the mountain time and time again at the Supreme Court, just to try to get things done in our country.

Q33 Kirsty Blackman: Who do you think should define “normally”, then?

Stephen Crabb: In the spirit of partnership, it should be a joint enterprise between the UK Government and the devolved Administrations. That is exactly the kind of thing that should be developed collaboratively, I would like to think. Certainly, in the Welsh and Scottish context, you are talking about mature Parliaments that know what they are doing. We don't talk about the respect agenda anymore, but that used to get talked about a lot in the context of devolution. I think this would be a good enterprise for UK Government Ministers and devolved Ministers to look at together.

Q34 Kirsty Blackman: Mr Hoare, how do you feel about “normally”?

Simon Hoare: Post Brexit and post covid, people are going to be writing great books on what is normal. I think Mr Crabb is right: it couldn't be a Westminster impost. There would need to be an agreed framework.

I think, Ms Blackman, that this, as with other issues—let's take, for example, the United Kingdom Internal Market Bill—shows both the inherent strength and the inherent weakness of not having a written constitution. The devolution genie came out of the bottle in the Blair



HOUSE OF COMMONS

years. I remain to be convinced that they ever thought it was going to be an organic, iterative process. I think they saw it as a rather static event that would solve a problem and not mature.

The trouble is that these are all legitimate questions that you and colleagues on your Committee are asking, but I am not entirely sure that constitutionally we are that fleet of foot in trying to address it, and whether we should have—I don't advocate it—a written constitution. We have these conventions, somebody has a conversation with somebody else, and something comes out at the end of the sausage machine. I'm not convinced that one can run a successfully devolved United Kingdom in that sort of slightly airy-fairy framework. I think it needs to be far more concrete, with very clear paths. Hopefully, we may see in the Dunlop review more collaboration between the Prime Minister and the First Ministers.

- Q35 **Kirsty Blackman:** Thank you. Mr Wishart, on this, it seems to me—and it possibly seems to you—like Westminster are the ones who are dictating and defining what “normally” means currently. How do you think that works just now, and how do you think it squares with the vow that we were given in 2014?

Pete Wishart: I think there are huge issues here. It all comes down to respect—respecting the devolved institutions and allowing them the opportunity to run their devolved responsibilities and determine their own legislation without real interference from Westminster. What has happened in the course of the past couple of years—we saw this with the United Kingdom Internal Market Bill, which Mr Hoare raised, and the levelling up fund—is that there seems to be a view that what needs to be done to the Scottish Parliament is to have it constrained to bypass some of its responsibilities and ensure that Westminster has much more authority, say and control over what happens.

Effectively, what Westminster is trying to do when it comes to Brexit—we see this through the shared prosperity fund and a number of the other initiatives—is assume the responsibilities that the European Union had over the United Kingdom. It seems like Westminster now wants to assume and secure that for the devolved nations of the rest of the United Kingdom, and there are huge, fundamental questions associated with that about the type of United Kingdom that we are going to have. I know that a lot of our colleagues in the House of Commons took a different view from us about the EU and creating some sort of super-state, but it seems sometimes in Scotland that what is happening with the UK just now is that a new super-state is being invented and created. We are at the sharp end of all that.

If the Government are serious about working with the devolved institutions, Parliaments and Assemblies, they will have to put in a means where that will be enshrined. You asked Mr Hoare and Mr Crabb about the word “normally”. “Normally” is an inelegant and inadequate word for the Sewel convention and legislative consent; we need to have that tightened up. We need to hear from the Government that it doesn't matter; they will



HOUSE OF COMMONS

just do it all anyway. If the Government want to bypass and override devolved Assemblies, as is their right—they have a majority of 80 in the UK House of Commons and they can do that—I think it just gets a bit tiring for us to hear consistently and continually this respect for devolved institutions, how they want to work with us and want to ensure that we are all part and parcel of the collaborative, consensual United Kingdom, when it is nothing of the sort. We need to hear their intention with all this.

There are a number of things that can be done and achieved, if they are serious about legislative consent and about our having responsibility for our own affairs and for our devolved responsibilities. You don't have to look any further than the Institute for Government about how that can be done—enshrining it in Standing Orders, giving statements if they are going to override legislative consent motions, coming to the Floor of the House and having it debated in the House of Commons. None of that happens at all just now. They have just decided that the Scottish Parliament has its say, decides to withhold legislative consent, and it is ignored.

A lot of it has to do with Brexit and the UK assuming the responsibilities of the EU. We might get back to a better place, as Mr Crabb said. He is right: up until Brexit, it was working reasonably well and there was never a fight or an issue about legislative consent or the Sewel convention. It was only with Brexit that this emerged. It was a sharp lesson for us, who just assumed that if we did withhold or we weren't happy with something, Westminster would review that and look at it and redesign its policy, rather than just be told no.

You will recall, Ms Blackman, in Scotland we had the continuity Bill, our own piece of legislation, designed to ensure that Scotland could have that relationship with the European Union and could adopt European law and legislation into our own domestic legislation. When we produced that, Westminster actually changed the law, which would make that illegal, and struck it down. I don't know what that says to members of your Committee, but it says to me that it just doesn't seem to matter.

I think Mr Hoare is right to raise the threat to their Union out of this, because the Scottish people are observing this. They are seeing what is happening. They are seeing our Parliament being constrained and curtailed and our view not being recognised and being ignored. All that is doing is driving support for Scottish independence. If we cannot achieve this through being part of the Union, being a partner in this Union, then the Scottish people are going to decide that this isn't working for them and look for other alternatives to secure the primacy of their decision. That is the threat that I think Mr Hoare is referring to when he is talking about the threat to the Union. Believe me, it is a live threat, which may well be realised in the coming months and years.

Simon Hoare: Might I make a further point, picking up on what Mr Wishart has said about the respect, hearing and ignoring? There is a tendency, I think, and it is one that I think we should all consider and probably lament, which is the growth in the political narrative that unless one is agreed with, one hasn't been heard. One can be heard and one can



HOUSE OF COMMONS

be heard fully and with the greatest of respect—it doesn't necessarily mean that the person who has done the listening is going to agree with the person who has done the narration. That misdefinition of hearing or listening adds bogus grist to a grievance mill, which we should be trying to de-grist, I would suggest.

Kirsty Blackman: I think the problem there, Mr Hoare, is the fact that when we speak to external organisations, almost every single external organisation I speak to says that they get a better hearing and they feel they are listened to by the Scottish Government, whereas they don't feel that is the case with the UK Government. Unfortunately, that is the case with the Parliaments as well.

After the Brexit referendum, we put forward our paper on what we thought the best Brexit could be—we don't want Brexit to happen, but the Scottish Government put forward their paper—and the UK Government basically just laughed and put it in the bin. There is a difference between listening and disagreeing, which, you are right, is totally legitimate, and not treating us with any sort of respect or recognising that our MSPs and the AMs in Wales and in Northern Ireland have been elected by people to make decisions on behalf of those people. I am just concerned that there is a tension there that the Westminster Government is not able to fix, basically.

Chair: Thanks, Kirsty. I am very conscious of time and we have kept the witnesses for an hour already. There are a few other matters to consider. Can we move on to Chris Elmore?

Q36 **Chris Elmore:** Thank you, Chair. I think all the witnesses have touched on this in one way or other, but I am keen to explore it a little bit further. Going on from what Ms Blackman said, it is about looking at what the solutions could be. Another way of looking at it is the mechanisms in which Members in the Commons can be better informed about what devolved consent is, when considering legislation as a starting point, which I think every one of the witnesses has mentioned in one way or another.

Then, really, from your perspective as the Chairs of the Committees on three of the four nations that make up the UK, what recommendations would you like to see, in terms of consent, to ensure that devolved Parliaments and Assemblies are actually represented in terms of the views they give, if they do not give consent? In Mr Crabb's comments to Ms Blackman around the unprecedented times, it was touched on briefly; but we still have the problems of levelling up from the shared prosperity fund, the community levies, the infrastructure for transport framework that says it should be UK-wide, and how that actually works in terms of consent. There are other things coming down the road that could cause that friction.

Mr Crabb and Mr Hoare will know I am a Unionist. I believe passionately in the Union and speak on this frequently. It won't please Mr Wishart, I know. I would like to try and find solutions to that, rather than it being a



HOUSE OF COMMONS

debate of either the nations breaking up or us remaining as one United Kingdom with a dominant UK Government. I would far rather find a solution to this than it be the two extremes—or extremes in my view. That is not everyone's view, but it is mine. Mr Hoare, you have particular expertise in this, because there is such complexity around the Good Friday agreement—as does the Chair, in fairness. Also, having suspended devolution—not personally—you have an understanding of what happens in the context of Northern Ireland, and equally with the Republic and the British Government. Just to understand, could you give your feeling on that—but, then, equally, Mr Wishart and Mr Crabb—on where we think we could make improvements to deal with consent, however you define it? I leave that to you three. You are far more expert than I on this.

Simon Hoare: I would not bank on that, Mr Elmore, but thank you for your question. All the answers may well be contained in the infamous Dunlop review, for which we wait with, I am sure, the same eager anticipation with which the Israelites waited for the ten commandments. We all want to know what this thing says. You will be aware that Mr Wishart, Mr Crabb and indeed Mr Wragg and I have exerted quite a lot of pressure on the Cabinet Office, No. 10 and elsewhere, to try and get this document into the public domain; because by definition his lordship's remit was to look at these sorts of things, and it would be interesting to see what he has to say. I think we should try and avoid at all costs—turning to your point about how you try to do it—relying upon the courts to interpret these matters. I think that just adds time and also, I think, adds an element of politicisation of the judiciary which they themselves would be quite keen to avoid.

I think it has to boil down to more collaboration. I take Mr Crabb's point—and I don't think it can be over-amplified—which is the strangeness of the last years that we have just gone through. You are a seasoned practitioner of the Labour Whips Office, so you will know all too well of the difficulties and challenges. I think to try and frame things against that as a new normal rather than as a legislative aberration would be damaging. I think we need to have a period of calm reflection to make sure that we get these things right, rather than trying to respond to what have been incredibly strange circumstances. That would be my hunch. If you consider the amount of effort that the Northern Ireland Ministers deploy among themselves within the Executive to arrive at a position of tempered unanimity, in some instances, that might provide the signpost to a better way of working between the United Kingdom Prime Minister and the First Ministers in the devolved areas.

Chris Elmore: Mr Wishart or Mr Crabb?

Pete Wishart: I always enjoy your contributions when we come to discuss these issues in the House, Mr Elmore. I think the first thing it could do is respect decisions of the Scottish Parliament. If the Scottish Parliament has decided that it is not going to give legislative consent for the UK Government to legislate on its own responsibilities, I do not see why that cannot be respected, but I have got the impression that that is not going to happen. The use, or abuse, of the word "normally" and the



HOUSE OF COMMONS

way things have transpired over the past few years point to every indication that that is now the view of the UK Government, and they are not going to do that. If they are not going to do that, they ought at least to make that clear. If they are not going to do that, we are going to survive with a form of legislative consent that is not really legislative consent: it is issues going to the Scottish Parliament, they give their view, and then they come back and Westminster decides.

However, there are a number of things. I do not think you really need to look any further than what the Institute for Government and even the House of Lords Procedure and Privileges Committee have said about what can be done. I will go through a few that may be adopted and could be used in order to try and address some of this. I do not think it would ever be satisfactory to the Scottish Government and the British Parliament, but there are things like the UK Government sharing legislation that impacts on devolved services at an early stage, and prelegislative consent for some of these things: going to the Scottish Parliament and saying, "Listen, we are thinking of bringing forward this Bill. It impacts on devolved responsibilities. What do you think about that? Share your views with us and see if we can design and shape up legislation." That would be a useful thing to do.

We could have devolution committees of both Parliaments—the Scottish Parliament and the UK Parliament—where we bring together parliamentarians to look at any proposed piece of legislation that might impact on devolved services, and once it is all done, have a statement in the House of Commons to say that the Scottish Parliament or the Welsh Senedd has not agreed to legislative consent in devolved areas. If you were really serious about this, you could have it in Standing Orders—a bit like we do with EVEL, as we have just discussed—that legislation cannot be passed in the House of Commons unless there is an agreement and consent by the Parliaments. There are loads of things that you can do.

What you cannot do is continue in the current system, in an environment where nominally we have the right in our nations, in Wales and Scotland, to withhold consent for the UK Government to legislate in areas of devolved responsibility, but for that to then be rejected in the UK Parliament. You have to design a way. Bring people in at an early stage; get them to work together. Let's have prelegislative consent involving all Parliaments where the legislation might be applied. I do not see anything wrong with that. There are a number of things that have been looked at by the Institute for Government, and the Lords Committee has done this. We have done a little bit of this in the Scottish Affairs Committee, and there are ways to get through this, but I think we need to hear from the UK Government that they are willing to respect the decisions and outcomes of our respective nations, because if we cannot do that, there is maybe not even any point doing it.

- Q37 **Chris Elmore:** Just on that, before I ask Mr Crabb to respond, Mr Hoare made the point that I am a seasoned veteran of the Opposition Whips Office. For a lot of consent, when I sit in DLs as a Whip, Ministers will



HOUSE OF COMMONS

often say—I know that Mr Crabb is a former Welsh Secretary, so he understands this more than most—that the Scottish and Welsh Governments and the Northern Ireland Executive do give consent to DLs, and this is done constructively, without argument. I should give the Chair some significant credit as a former Northern Ireland Secretary, sorry. A lovely Welsh phrase, as Mr Hoare will remember: they do do that, but I suppose these bigger, controversial issues are the problem.

What I also wanted to follow up with, and then I will bring Mr Crabb in, is whether or not anyone feels that Ministers on the Floor of the House should set out why it is that they are overriding the decisions of the devolved Administrations, because actually, that is not just a party political point. There could be genuine reasons why Ministers feel this does not work, and that might actually lead to better working. I do not know, but I just think it is an interesting point. I am going to bring in Mr Crabb; obviously, if Mr Hoare and Mr Wishart wish to come in because I have just thrown in another question, by all means, but I would be interested in Mr Crabb's perspective as a former Welsh Secretary.

Stephen Crabb: I was nodding my head when you were talking about the Minister making a statement on that, because I absolutely agree with it. While I said earlier that I don't want to see this concept developed in such a way that we end up with devolved Governments and the UK Government fighting it out in the Supreme Court and having our system gummed up like that, I think that at the moment the controversy that attaches to overriding a withheld legislative consent motion isn't felt enough.

The row that we had around the IM Bill and the European withdrawal Bill all got lost in a lot of the political noise. It is a serious thing if the Westminster Government takes a decision that they are going to override the position on the part of the devolved Parliaments to withhold consent, and Ministers absolutely need to explain that. So, I would agree with that.

I would agree in principle with some of the thoughts that Pete Wishart was sharing a few moments ago around early-stage sharing of legislation. In fairness, some of that happens, probably more so than it ever did, and not just with legislation. We had Jeremy Miles, one of the Welsh Government Ministers, in front of us recently, talking about trade and post-Brexit trade arrangements. He was full of praise for the Department for International Trade for the way they shared details about the roll-over trade agreement with Japan at a very early stage and really brought Welsh Government into that process.

Things like that can set the tone. Sharing at an early stage of legislation would certainly be helpful. Raising the political cost of overriding a withheld consent is useful as well, but at the end of the day you are going to come back to the issue of who has sovereignty in this particular case. Pete Wishart is saying that the Scottish Parliament should have the right of veto over proposed legislation from Westminster that may touch on devolved responsibilities. Of course, that is ultimately what he wants to get to. The whole *raison d'être* of being a member of the Scottish National party is to get to a position where the Scottish Government is the only



sovereign body making law within Scotland, but that is not the constitution we have.

We are part of the United Kingdom and so long as we are part of the United Kingdom unfortunately, as much as Pete Wishart may want to wish it away, we have UK parliamentary sovereignty. I think I am right that even the Scottish devolution legislation recognises the sovereignty of Parliament; certainly the Welsh devolution legislation does. That is why there is a clause that says, "will not normally legislate."

The UK Government, the UK Parliament, reserve the right to legislate in extraordinary circumstances. I would argue that the last few years absolutely tick the box and meet the definition of extraordinary. Beyond this, we hope that we will move back to a more normal time where, by and large, the UK Government respects the positions taken by the devolved Governments on legislative consent. If not, they would need to be much clearer and much more upfront about explaining the reasons for wanting to override. Does that answer your question, Chris?

Chris Elmore: It does, Mr Crabb. I am pretty sure that with the covid regs from last year, the legislation was put through the Commons and the Lords on the basis of consent from the devolved Administrations. That was done with consent for expediency. That is a good example of something being done constructively. That brings about your comment on the idea of it being an emergency and that it is done because it needed a quick response that could get the consent of everyone across the four nations. Thank you, Chair. That has been very helpful.

Q38 **Nigel Mills:** We have probably looked at this idea for long enough, but I wondered if you had any thoughts arising from your inquiry on the Northern Ireland protocol as to how consent could be handled better, Mr Hoare? Specifically, should it be the Assembly that consents in Northern Ireland rather than Ministers, or is that not practical to achieve?

Simon Hoare: Mr Mills, you are a former distinguished member of NIAC, so you will know many of the complexities involved. At the moment, the situation with regards to the protocol is the worst of both worlds in a way. In the first instance, Westminster was right to say this will not require consent, because this was an integral part of delivering the withdrawal agreement and delivering Brexit. Quite properly, those sorts of matters of public policy are reserved for Westminster to deal with. The problem is that it is a bit like St Augustine: "Lord, make me good, but not yet." We are not going to have consent now, but you will have a vote on it at some point in the future—narrowly drawn, but a vote none the less. That allows people to egg puddings in certain ways in advance, which is not terribly helpful in trying to get a contemporary analysis of issues, problems, strengths and things that need to be addressed, because too many people are casting their eye to later on in the horizon, instead of just taking the fences as they appear to them at the moment. It is a clumsy, clunky and uncomfortable circumstance to be in, with everybody feeling that either they have a legitimate voice on it now, or they are going to have a legitimate voice on it in the future.



HOUSE OF COMMONS

Q39 **Nigel Mills:** Do you have any view on whether it should be the Assembly that grants the consent, rather than Ministers in Northern Ireland? Given the way the cross-community coalition works, that amounts to much the same thing anyway.

Simon Hoare: I am not a constitutional lawyer—that much will have been clear from my previous answers—but I am inclined to think that because this is such an integral part of the withdrawal agreement and how everything works out, it should only be up to Westminster.

Q40 **Nigel Mills:** I was thinking more generally, perhaps, rather than just about the protocol. It is slightly unusual that the other two devolved Parliaments grant the consent. In Northern Ireland, it is the Government that grants it, rather than the Assembly.

Simon Hoare: I am always keen to have as many fingers in the blood as possible. It is much better for a Minister to bring a case to Westminster, Belfast, Edinburgh or Cardiff in order to make the case and let the Parliament, Senedd or Assembly opine on it. That gives a more robust democratic input, rather than just the chosen clique of Ministers. I don't use "chosen clique" in a pejorative sense, but by definition, Ministers are chosen, and lots of people aren't.

Q41 **Nigel Mills:** You almost sound upset. Perhaps we should move on to the next topic, rather than debating why we have not been chosen. Do you think there will be a role for better interparliamentary relations? Obviously, we have the British-Irish Parliamentary Assembly, which brings together the UK and Irish Parliaments, the Channel Islands and the devolved Parliaments and Assembly, but do you think there is role we could have within the UK for institutions or processes to give us better joint working between the various Parliaments and Assemblies?

Simon Hoare: I am so glad that you asked that question, Mr Mills. Our previous Clerk, Nick Beech, has submitted written evidence to your inquiry—I think it is reference TTC 05. I have to say that I agree with every word that he has written. He wrote it off his own bat. Looking at the Welsh Affairs Committee and the Senedd, they have always been allowed to have formal interactions and meetings, and there is potential for joint inquiries and joint working on a formal, clerked, transparent and in-the-public-domain basis. That perfectly desirable and very sensible thing is not available either to Mr Wishart or to me, and I think it should be, looking at the Good Friday agreement and at "New Decade, New Approach". By definition, there are so many things here which it is madness to deal with either continuing informally or in splendid isolation in Westminster.

I have had informal conversations with Chairs of a variety of cross-party Select Committees, as far as Stormont is concerned. They are very keen to see that, and I referenced the fact that I was appearing before Ms Bradley's Committee today, and they were very keen to see it delivered, and at pace.

I have to say, as well, because of NDNA and the Good Friday agreement, one cannot deal with the affairs of the island of Ireland, where they



HOUSE OF COMMONS

straddle the border and where there is a mutuality of interest and involvement, without involving Dublin. In informal conversations that my Committee had with the Committee on the Implementation of the Good Friday Agreement, there was a very strong appetite there for the ability—it might never be taken up, and again it was interesting that this was cross-party as far as the Republic was concerned—to have that as well.

My plea to your Committee of what to consider when you are deliberating your report is not just to extend that ability between the Northern Ireland Affairs Committee in Westminster and the Committees of Stormont, but to allow it for Committees within the Irish Parliament as well. We have our Ministers and our officials talking to each other, and it undermines and negates the role that Members of Parliament interested by serving on a whole variety of Committees can play in influencing the debate, the policy and the political outcomes that flow from a whole variety of processes. It is a gaping lacuna. By a small amendment to, or by including them in, Standing Order 137A(3), NIAC and the Scottish Affairs Committee could have equal rights with the Welsh Affairs Committee—in a nutshell, you solve the problem.

- Q42 **Nigel Mills:** I will ask Mr Wishart the same question shortly, but do you think that should extend to all Select Committees? So, the Work and Pensions Committee could look at the roll-out of universal credit in Northern Ireland, Wales or Scotland with the relevant local Committee, or should just the three devolved Committees have that ability?

Simon Hoare: I think it could be. You will remember, Mr Mills, as you have chaired albeit a Sub-Committee of NIAC, the very useful work on welfare as far as Northern Ireland was concerned. There is probably a danger of us having—because we have more—lots and lots of time to do that and, in Stormont certainly, not having the bandwidth to be meeting every Committee of Westminster.

It might lead to a slight rejigging of how NIAC might work, but we might be asked, for example, by the Chair of the Work and Pensions Committee whether NIAC could have a meeting with representatives of Stormont to look at this and then, just as we have certainly done with regards to Brexit stuff, to ask a couple of members of that Committee to be guests to listen to the evidence and to take part. It presents an opportunity to have a—I will not say radical, because this is all pretty “Don’t scare the horses” stuff, but it is an opportunity—little look at how the Select Committees can better work not just with their opposite numbers elsewhere in the kingdom, but also in Westminster, because there is a lot of silo, even though there is often a lot of cross-reference and mutual interest.

- Q43 **Nigel Mills:** Mr Wishart, do you agree? Would you like to be able to do some joint working with Scottish parliamentary Committees?

Pete Wishart: It is a great pleasure to say that I agree with practically every single word of my colleague Mr Hoare when it comes to this issue. The time has come for all Select Committees across the UK Parliament to be able to work consensually and collaboratively with their fellow



HOUSE OF COMMONS

parliamentary Committees right across these islands. We are greatly enhanced when we get that opportunity. I know that the Welsh Affairs Committee's having that ability—of which we are all very jealous, Stephen—really helps it to inquire and to ensure that it can present very good reports to the UK Government.

This is important for the territorial Committees, for a start; there are a number of reasons, as Mr Hoare outlined, why this is important to us. I will give one example from my Committee. The devolution of social security responsibilities is going on right now between Westminster and the Scottish Parliament. My Committee has taken a really keen interest in that. We want to assess whether things have been done efficiently, what this means to the Scottish Government, and how this impacts devolution; there are a number of operational issues to be addressed, looked at and inquired upon. In order to work with our colleagues in the Scottish Parliament, we had to have a very complicated guesting arrangement and procedure, which meant the Scottish Affairs Committee going up to the Scottish Parliament and being guests of their Committee, and then having all the Scottish Social Security Committee coming down to Westminster and being guests on our Committee. It would be much easier if there was a procedure in place where we could do that without having to go to that difficulty and that bother.

There will always be a constant devolution of responsibilities and powers, which all of us in the territorial Committees need to look at and properly assess and inquire upon, and we need our colleagues from our Parliaments and Assemblies in order to make sure that we do the best possible job. If there was one thing that your Committee could do, it will hopefully be to change Standing Order 137A(3), which Simon so elegantly highlighted in his contribution. That would really help us to do this.

We are looking at this in the Liaison Committee. I am on the executive quad of the Liaison Committee, and we are keen to see how we can achieve this. I know that, among all Select Committee Chairs, there is a real sense that we need to start to look at this properly and to put in place structures to do this, and also to work across the House, in different Select Committees. Again, I know that the Procedure Committee is perfectly placed to try to design that. That would be helpful.

I recently guested, for example, on the EFRA Committee, which was looking at the fishing industry and some of the issues that have emerged since the transitional arrangements stopped being in operation in January. All that has been really good, because we are looking at it and they were looking at it, and I guested on their Committee and Neil Parish, the Chair of the EFRA Committee, guested on my Committee with one of his colleagues. These are all good things. There is absolutely nothing wrong with collaboration and working together to ensure that we get the very best out of witnesses who appear in front of us and that we can produce the best reports to put in front of the Government.

Q44 Nigel Mills: Thank you. I did not get any views from either of you on whether you thought there was a need for an interparliamentary



HOUSE OF COMMONS

assembly where MPs, MLAs, MSPs and AMs could all get together. Is that something that you would want?

Pete Wishart: I am sorry that I did not address that; I was getting so excited by the prospect of interparliamentary Committees across the United Kingdom. I think there is absolutely nothing wrong with that. There is not a forum—there is the British-Irish Council, as Mr Hoare referred to, which does not actually produce or really deliver that type of cross-national dialogue that is required.

There is one thing that you did not mention in your question and Mr Hoare did not mention in his reply: there is intergovernmental infrastructure in place, with the Joint Ministerial Committees and all the sub-Committees and all the other things designed to bring Governments together. We have our own views on the Scottish Affairs Committee about the efficacy of those and how well they are working just now. We concluded that there are a number of problems and issues that need to be looked at. However, the idea that parliamentarians can come together is fantastic. I have no idea how that should be designed—it is not something I or my Committee have looked at—but if the Procedure Committee were to design some sort of way in which that could happen, I think we would all be really interested in that and I am sure we would all have a part to play in making that work. You cannot get enough of parliamentarians coming together.

One thing that Ms Blackman and I look forward to, when we all become independent nations, is that this would be a means or a forum in which we could all communicate with each other, wish each other well and be involved in a number of joint initiatives as self-respecting independent countries. I am sure that the new, redesigned Council of the Isles would be a lot better because of that.

Nigel Mills: I will gloss over that and move to Mr Crabb, if he wants to add any comments on this.

Stephen Crabb: I basically agree that, if the Standing Orders are in fact a barrier to Select Committees doing things collaboratively with Committees in the devolved legislatures, it absolutely makes sense to change them. I am not 100% convinced that Standing Orders are a barrier. In 2018, the House of Commons Defence Select Committee held a joint inquiry with the Defence Committee of the French Assemblée Nationale. It produced a full report that had a response from Government. Clearly, Standing Orders were not an issue there. However, if this particular Standing Order that my colleagues have referred to is a hindrance and prevents the ready, easy collaboration between Committees, then, of course, amend it.

I think the bigger challenge is around appetite. I am not 100% sure that the enthusiasm that Pete Wishart communicates there would be shared right across the House of Commons and for a sustained period. Absolutely, there is lots of mileage to be gained where there is a particular subject matter that is of salience. Where there is an appetite on the part of parliamentarians in one of the devolved legislatures with the relevant House of Commons Committee coming together and doing a focused piece



HOUSE OF COMMONS

of work, absolutely. However, creating new standing arrangements of the kind of forum you are talking about, Mr Mills, I do not know. The sense I get is that most of my colleagues I speak to seem to be incredibly busy, and finding the appetite and the time to invest in a new structure or a new forum—I am not sure.

I agree with Pete Wishart, though, on his comments about Joint Ministerial Committee and where the different Governments of the United Kingdom have already put in place permanent or semi-permanent structures. It is the case that the legislatures are a few steps behind. We should evolve some kind of joint legislative working to be able to scrutinise those—whether it is the JMC, things like that, to scrutinise those effectively. A few years ago, when there was a devolution of a portion of income tax to Welsh Government, the UK Treasury set up in collaboration with Welsh Government something called the Joint Exchequer Committee, which met at the time to talk about how this piece of devolution was going to work in practice. I felt at the time that there was a good case there for a Joint Committee between Welsh parliamentarians and UK parliamentarians to come together and scrutinise that and provide some input. That is the kind of thing where there is mileage.

Simon Hoare: Just three very quick points in response to what Mr Crabb was saying. Certainly, our reading of 137A(3) is that the Welsh Affairs Committee is the only Select Committee that can hold a formal joint meeting with parliamentary privilege with a Committee of a devolved Parliament. It is stipulated there. So, it is a very easy change to make.

References have been made to BIPA—the British-Irish Parliamentary Assembly—but it is not the same thing that we are talking about here. This needs to be formal, with transparency and with transcript. BIPA is an important organisation but it does not fulfil the function that I am talking about.

At a time when the public purse is going to be under enormous pressure and diaries are under pressure, I would hope, Chair, that in your report, were your Committee minded to pick up this ball and run with it, we would be allowed to deploy IT to have formal meetings but not necessarily having to travel to wherever it may happen to be. We could easily do this as we have been running all of our Select Committees for these several months, with no diminution in either quantum or quality.

I said three, but there is a fourth point. I appreciate that it would be harder to do within Standing Orders with regards to Committees in Dublin. However, the need—Chair, you will get this with your experience—particularly as we recalibrate the bilateral relationship post Brexit between Westminster and Dublin, the thought that Committees of Members of Parliament with interest could not help but further develop that bipartisan relationship and move politics forward to the benefit of all would be a missed opportunity. I do not have a Standing Order reference, I am afraid, although I am sure that some whizz in the Clerks' office could think of something pretty quickly, if it could not be included in 137A(3).



Chris Elmore: Mr Hoare, you should know that automatically.

Chair: I am going to bring in Aaron Bell, and then I hope we will have concluded our questioning. If you have any final comments you would like to make as witnesses, please do make them in response to Mr Bell's question.

Q45 **Aaron Bell:** Just following up from your responses to Nigel, I was going to ask about your views on 137A(3), but you have all given those already. I note that 137A(3)—the bit that gives the Welsh Affairs Committee the power to invite Members of the Assembly—it does not give them the right to vote there. Obviously a lot of Committees work by consensus, but if we are, as a House, going to consider making some changes to procedure, how can we ensure that those changes involve and are seen as legitimate by the Parliaments and Assemblies we are inviting to participate in them? And should they be reciprocal? Should it be the case that the various other Assemblies invite Members of Parliament to join their Committees? Should they have the right to vote or should they be guest appearances? We have had a lot of guest appearances during this pandemic. The Science and Technology Committee is having different guests on every pandemic session, and I think all of you have come along to that Committee, for example. Could you go first, Mr Crabb, because you could tell us more about how 137A(3) works in practice?

Stephen Crabb: I would not want you to get the idea that every other meeting of the Welsh Affairs Committee is with a Committee from the Welsh Senedd. It is actually about five years since there has been a joint inquiry. It has been used usefully over the last 15 years or so for different inquiries, sometimes with a constitutional focus, sometimes looking at a practical policy area, for example rail, where there is a mixture of devolved competence and reserved competence. So it is a useful thing that is on the Standing Orders for us, but I would not want you to have the impression that it is deployed very regularly at all. As I say, a lot of it boils down to appetite and timing and such.

Your question about reciprocity of Committee arrangement is a really important one, I think. Rather than seeking permanent changes in our Standing Orders and the way we seek to do business to accommodate potential joint working, I am a great believer that where a decision is taken in principle, there is a joint piece of work that could be done for the two Committees together to decide the parameters of the scope of what they want to do—whether it will include votes or not, whether it will provide substantive recommendations to both Governments or one Government. We leave it for each of those co-operative Committee agreements to decide for themselves the scope of their work on any particular subject.

Pete Wishart: The widest possible engagement, collaboration and working together should be encouraged. I think you are finding support from all three Chairs of the territorial Committees when it comes to this. How that is structured would be a matter for your Committee. As I said, it is not something we have looked at in our Committee, so I have got



HOUSE OF COMMONS

nothing to offer you by way of how to design that. It is probably more for your particular expertise in the Procedure Committee to think through.

I would give a couple of words of caution there. One would be around decision making. We would be very nervous and anxious about any joint decision making being made about outcomes or reports, because we have an obligation to report to the UK Government. We provide conclusions and recommendations to present to the UK Government. We do that because of our responsibilities as Select Committees in the Scottish Parliament. Presumably the Welsh Senedd and the Northern Ireland Assembly have those same responsibilities too. We can only be accountable to the Parliaments that we serve. I do not think we can enlist the authority of other parliamentarians to be responsible for some of these decisions.

There would be a big fear in the Scottish Parliament, for example, because of all the issues around Westminster sovereignty, and Westminster being the larger Parliament and able to impose its views or wills upon us through another means and forum. It would create big problems and concerns. So I would be careful and very anxious about going down that road.

But in terms of working together, joint inquiry and trying to shape up reports, there is absolutely nothing wrong with that at all. We would take whatever was happening to our Minister and our Government, expecting a response. The Scottish Parliament and the Welsh Senedd would take that to their Minister and get their response. That would be the way it would work, but I think how that comes together would really be a matter for your good office, rather than us as Chairs of the territorial Committees.

Chair: Before we bring in Mr Hoare, can we bring in Kirsty Blackman? She has a follow-up question, and it will be useful to make sure that Simon hears it before we go to him.

Q46 **Kirsty Blackman:** Thank you, Chair. It is just about the structure of Committees. Obviously, in the Scottish Parliament, the Committees are structured quite differently because we don't have a bicameral House in Scotland and our Committees therefore scrutinise legislation in a way that Select Committees in the Westminster Parliament don't.

In terms of this kind of meshing together and the possibility of doing joint working, do you foresee that the very different nature of some of the Committees—I don't know enough about either the Northern Irish Parliament or the Welsh Assembly to be able to say whether they are very different—would cause any problems? Do you think that we would need to do quite a lot of dialogue in advance to make sure that those things were ironed out so that we had the same expectations, even though the Select Committee has very different responsibilities in the different devolved regions?

Pete Wishart: Who is that question to?

Kirsty Blackman: It was a general follow-up, but I know that Mr Hoare was coming in next to answer Aaron Bell's question, so if you could add that in—



Pete Wishart: I will be very quick. You are absolutely right. The Committees in the Scottish Parliament are a combination of our Select Committee and Standing Committee, so they have the responsibilities for legislation at the different stages as it goes through the Scottish Parliament and they have to be very careful and conscious of all that. I think these are matters that our respective Parliaments could sit down and work out, iron out, being aware and conscious of some of the limiting factors and some of the things that would have to be negotiated around.

Q47 **Aaron Bell:** Turning to you, Mr Hoare, how can we ensure that any change is legitimate—this is potentially with the Northern Ireland Assembly and the Oireachtas—in terms of working together? Also, could I pick up on what you said about working via Zoom and so on? I know we are all very busy, but it seems to me that one of the great advantages of working together would be the physical going over to these institutions and spending a little bit of time absorbing the culture and all the rest of it. My feeling is that Zoom might not be the best way of doing that, if you just Zoom into a meeting once a week but, anyway, could you answer the general question and let us know any further thoughts that you have about cultural exchange perhaps?

Simon Hoare: In the words of the song, there are more questions than answers sometimes, aren't there? But let me try to address that. In terms of your key point, Mr Bell, which I agree with, that there is nothing to replace everyone being in the same room at the same time to forge proper—deep and meaningful—relationships. I think those can go on. Certainly with regard to NIAC, we obviously undertake trips to Northern Ireland. We undertake trips to Dublin. We actually conducted a very successful virtual trip to Dublin the week before last. We have one to Belfast this coming Thursday. But I think we shouldn't meld the two: the relationship-building stuff—the to-ing and fro-ing of politics—and the scrutiny, analysis and recommendation-making bit of politics, which is far more formal.

I would certainly answer yes to the first part of your question, which was on reciprocity. I think that certainly there is an appetite, both north and south of the border as far as the island of Ireland is concerned, to have that. And I think that is really important so that this is not construed as the mothership or Ming the Merciless summoning all the outer galaxies to Westminster for a chinwag or a telling-off. I take Mr Crabb's point as well.

This may be rarely used, but when it was used, that of itself—the fact that it is not a weekly or daily occurrence—would show the significance, the importance, of the issue. But at the moment we do not have the ability to use it even if we wanted to, because by definition the Standing Order references only the Welsh Affairs Committee. My hunch is that it would be used sparingly, but it would be great to have it with those trappings of privilege, accountability, transparency and a way of formally developing at different strata of politics bipartisan working.

You asked about votes. I think we would need to think about separate reporting structures, if you like. If there were, say, a joint Stormont-



HOUSE OF COMMONS

Westminster or Westminster-Dublin, or even a tripartite Belfast-Dublin-Westminster one, these could be reports that are in effect put in the Library of the three Houses, sent to relevant Ministers and comments invited on them. I suppose they would not have the same status as the Westminster-to-Westminster Select Committee reports we have, but without passing the buck, that is the minutiae that the Procedure Committee earns its spurs on.

It is a perfectly legitimate question, because you could spend an awful lot of time and effort producing a report, only for everybody to go, "Well, that's all frightfully interesting. Go and find a window or a door to prop open with it." A report needs to have some weight for Ministers to be able to respond to, but—I think you are right to point this out—it does need to be on a different workstream from a straight Westminster-to-Whitehall type of inquiry and report.

It is different, I have to say, if that is just a one-off session to feed into a main Select Committee report. There would need to be some nuance there. I am tempted to say that the organics would work themselves out as we moved along, but at the moment we cannot test anything because, as I say, certainly Mr Wishart and I are specifically precluded for reasons that we do not take personally. However, we are specifically precluded.

Aaron Bell: We may make recommendations about that. This Committee is certainly not against innovation. Thank you very much, all three of you.

Chair: I thank the witnesses enormously. We have covered an awful lot of ground. We have kept you for a very long time, but I think you can see that there is a great deal of interest in this, and some real things that we can learn from all three of your experiences and from the way in which your Committees operate with Westminster and the devolved legislatures relevant to you. Again, apologies for how long we have kept you, but thank you for some very important things. You will be quoted at length in our report. Thank you for that.