



Welsh Affairs Committee

Oral evidence: [Pre-legislative scrutiny of the Draft Wales Bill](#),
HC 962

Tuesday 21 January 2014

Ordered by the House of Commons to be published on 21 January 2014.

Written evidence from witnesses:

- [Electoral Commission](#)
- [Graham Allen MP, Chair, Political and Constitutional Reform Committee](#)

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Members present: David T. C. Davies (Chair); Glyn Davies; Stephen Doughty; Nia Griffith; Mrs Siân C. James; Jessica Morden; Hywel Williams; Mr Mark Williams

Questions 246–300

Witness[es]: **Kay Jenkins**, Head of Wales Office and English Regions, Electoral Commission, gave evidence

Chair: Good morning. Ms Jenkins, thank you very much for coming in to see us. As you know, I am David Davies, the Chair of the Welsh Affairs Select Committee; other members will introduce themselves. This is a very straightforward session; I do not think that we will surprise you at all. I ask Mark Williams to start off.

Q246 Mr Williams: The first question relates to the referendum. Some of the evidence we have heard has asserted that if a political party is elected on a manifesto pledge to devolve income tax, it would not be necessary to have a referendum. I know that you would not want to delve into the party politics of that, but do you have a view on it?

Kay Jenkins: We would not have a view on whether it was necessary to have a referendum on the income tax provisions in terms of the substance; the commission would not have any views on that. In relation to the holding of referendums generally, we would say that the key issue for consideration is whether or not it will be something that generates viable debate on both sides of the campaign. The campaigns are the key way in which the public get to know what the issues are in a referendum, so is it going to be something that will generate a viable campaign on both sides?

Q247 Mr Williams: I suppose the ultimate interpretation of the success of the campaign—yes or no—would be turnout. Linked to what you said about the phrasing of the question, we have had evidence that suggested that the turnout could be as low as 25%. Do you share

concerns that the turnout could be that low on an issue that, one way or another, is critically important to the future of Wales?

Kay Jenkins: It is important to look at how the public would participate in the referendum, and make sure that it is easy for them to participate. Public information and understanding is an important part of that. The question to be asked in the referendum is an important part of that, but really it is whether or not the campaigns can generate sufficient public debate.

Q248 Mr Williams: I think I know the answer to this, but, if the turnout were as low as 25%, what would be the kick-off point for your review of the referendum campaign? Would you be looking specifically at matters related to the impact of the question, or the impact of whether there were two organised campaigns? What is the start point for your assessment of how successful the matter has been—assuming that we have a referendum, of course?

Kay Jenkins: We would look at all of those things, because we are required to report on the conduct of any referendum. Primarily we are looking at the administration of the referendum—whether it is well run. We would also look at how the campaigns had been conducted—those sorts of things. Obviously, how well voters have participated is an issue we would report on.

Q249 Mrs James: Going back to the issue of low turnout, my concern is legitimacy, because the big issue whenever we have a low turnout is how legitimate the decision is. Have you as a commission done any research work into this area of what is legitimacy and how much of a vote you really should achieve to gain it?

Kay Jenkins: No, we have not done any work on legitimacy, because all of our elections and referendums are based on a straightforward majority, whatever the turnout is. There has not been any precedent in the UK for a minimum level of turnout being required for a mandate, so we have not done any work on that.

Q250 Mrs James: I saw some interesting work on this with the Canadian electoral commission several years ago. When this Committee asked them about low turnout, they said that they were not bothered by it at all; they actually said that when there is something that excites people, they will turn out. It is a matter of just waiting until something exciting comes along and then people will vote.

Kay Jenkins: I am sure that is true. Again, the campaigns are a key element of that. If there is a good public debate going and an active campaign on both sides, it can certainly generate public interest and encourage people to vote.

Q251 Hywel Williams: I take your point that your considerations are essentially technical, about the nuts and bolts of how it is done, but there was a 40% level for the 1979 referendum, which was not reached, which had a profound effect on the campaign and also on public engagement—from what I remember; it is a very long time ago. Let us take the example of by-elections; Leeds East comes to mind. The turnout there was 19%, I think, but the person was elected—the current Member, actually. Has the commission any view on how low this has to go before you say, “Excuse me, possibly not”?

Kay Jenkins: The biggest concern recently that everybody will recall was with the police and crime commissioner elections, where the turnout was low. That was widely

commented on. At the time, we reported on that and said that the Government should not assume that just because an election is held people will automatically vote in it, which is really your point. It is all about how the campaigns engage with the public and how campaigners can reach the public.

One of the things that we do—we have given evidence to the Committee about it in writing—is the designation process. In a referendum, the Political Parties, Elections and Referendums Act provides for the commission to designate lead campaigners on both sides. We must designate on both sides of a campaign or not at all. In 2011, for the Assembly powers referendum, we were not able to designate, because there was not a suitable applicant on the no side. That does impact on how the campaigns can reach the public, because designation brings certain benefits with it: for example, the entitlement to a referendum broadcast, higher spending limits, the entitlement to send freepost leaflets to all voters, which is obviously a key means by which campaigns communicate with each other, and grants from the commission to spend on the referendum. If there are not going to be suitable campaigns to be designated, it does impact on how well the public understand what the issues are in a referendum.

Chair: We are getting into other questions, which is fine, because the information we want is coming out. I will go back to Hywel, but if anyone wants to pick up on these points, please do so.

Q252 Hywel Williams: I was going to ask about the campaigns later on, but I will pursue that now, as it is before us. Perceptions of what the turnout might be may have an effect on the question that is framed as well. One of the things that we are discussing is whether the question should be a general permission for subsequent tax changes as well, not specifically for this particular one. There would be a general agreement that the Assembly Government should pursue that with the Government here or in whatever way they chose. If there is going to be low turnout, it might affect that perception.

I do not expect you to speculate, particularly here, but when there was not a no campaign on the other side, some people thought either that there was no no campaign as such—but clearly there was one—or that they were so incompetent that they could not get their act together. The no campaign will forgive me for saying this, but there was also a suspicion that it was a tactical way of preventing the yes side from having the benefits of being designated. I do not expect you to give me a view, but perhaps I can tempt you to speculate about that.

Kay Jenkins: I would not want to speculate on the reasons why the no campaign did not apply for designation. We spoke to them about it at the time, and they gave us a number of different reasons, and they gave evidence to us after the referendum for our report. One of the reasons they gave was that there would not have been sufficient advantage in their having designation; they would not have been able, for example, to raise sufficient funds to circulate a leaflet to all voters in Wales. They gave a number of reasons. Our concern is that, without lead yes and no campaigns, there is an impact on public understanding. It is very important that campaigns are able to communicate directly with voters so that they are able to understand what the issues are and are encouraged to participate.

Q253 Hywel Williams: Finally, is there a case for saying that, if one side does not turn up, it is ceded to the other side, as it were? I am not talking about the actual result of the referendum, but, at least in that situation, the yes side could take advantage of the help that

was available. After all, it was not the yes side's fault that the no side did not turn up for the game.

Kay Jenkins: We would have been able to designate the yes side if we had been able to do that under the law. That is one of the reasons why we have said that the Government should look again at the provisions on designation. We would be very keen to work with the Government on looking at how that could be solved so that it reduces the advantages and disadvantages to one side. For the Scottish independence referendum, there are different provisions enabling only one side to be designated.

Q254 Jessica Morden: What is your gut instinct about the turnout for a referendum like this?

Kay Jenkins: I can only say that it is very important that the campaigns continue to engage with the public. As has already been said, it raises questions about legitimacy, but ultimately the referendum would be based on a straightforward majority.

Q255 Jessica Morden: What were the turnouts in the last two referendums, in 2011?

Kay Jenkins: The turnout in the Wales referendum was 36%.

Q256 Jessica Morden: And in the AV in Wales?

Kay Jenkins: I cannot recall off the top of my head. I will have to come back to you on that.

Q257 Jessica Morden: What were the costs of those two, just off the top of your head?

Kay Jenkins: The cost of the Wales referendum was in the region of £5 million. We have specific costs on that in our report. I cannot recall off the top of my head the cost of the UK referendum, but we have those costs; they are in the public domain. I could provide those to the Committee afterwards.

Q258 Jessica Morden: You mentioned the difficulty of not having a no campaign. You mentioned in your evidence having learned lessons from those two referendums. What other issues came up for you? What are the other lessons learned as we look at this possible referendum?

Kay Jenkins: A key one is that the rules for the referendum are in place in good time. For the Wales referendum in 2011, the campaign period was very short. The Order in Council came into effect in December 2010, and the referendum was held on 3 March 2011, which was a very short period for the campaign, for planning and for people to organise their campaigns in time. The way it worked was that even if we had been able to designate, there would have been only four weeks during which the campaigns on both sides could have used the benefits of designation.

For the Scottish independence referendum, which is being held in September, legislation is already in place and the designation process will be over the Easter period, ahead of the referendum in September. One of the recommendations that we are making is that the referendum period be at least 16 weeks before the poll is held, which would enable campaigners to have a four-week period in which to register, two weeks for the

commission to make a decision on who would be the lead campaign organisations and then 10 weeks for the campaign once designation has taken place.

Q259 Jessica Morden: Did that lack of time tie into the difficulty of not finding a designated no campaign?

Kay Jenkins: That is one of the reasons why the no campaign said they did not apply for designation.

Q260 Stephen Doughty: To follow on from that, under this Bill, the Government are proposing that the rules of the referendum, if it took place, would be in another Order in Council. What are your concerns about that? Specifically, do you think that they should have included a generic order that could be used for all future referendums, so you could at least see what it looked like and have some broader rules set in advance?

Kay Jenkins: Yes. Following the 2011 referendums, we recommended that there be a set of generic rules that could apply to all referendums, so that as soon as a referendum is triggered the legislation can concentrate simply on the question that is being asked in the referendum and when it will be held, not on the nuts and bolts of how it will be run. That is why we called for a generic conduct order. The Government have said that they are sympathetic to that and will talk to the Law Commission about having a generic conduct order.

Notwithstanding that, we said that we would like the Order in Council to be sufficiently broad in scope to enable the lessons learned from the 2011 referendums to be taken into account. That could not be done fully for the Wales referendum in 2011 because of the scope of the order-making provision. I am sorry; this is very technical. Some of the elements of the Political Parties, Elections and Referendums Act need to be revised. One example of that is designation. Another is that the regulatory regime does not apply to loans; it only applies to donations. There are some basic things around that that the Order in Council in 2010 could not amend. We would like to ensure that the provision for the Order in Council this time around enables the framework for referendums to be amended for the Wales referendum.

Q261 Stephen Doughty: Is that a view of the Electoral Commission across the UK in terms of the conduct of referendums more generally? I have followed what has been going on in Scotland quite closely and took part in the debate on the EU Referendum Bill that has been going through. We seem to be in a situation where we are having a debate each time about the rules. Obviously the question will be different each time, and that will require a specific debate, but is it your view that there needs to be a bit more standardisation of the conduct and the rules surrounding all referendums?

Kay Jenkins: Yes, very much so. If you have generic rules in place, it is possible for the Government of the day and the legislatures of the time to concentrate on the substance of the referendum and not on the nuts and bolts. At the moment, the Law Commission is looking at revising electoral law generally. That is one of the things it is looking at, so there would be a sort of off-the-shelf set of referendum rules that could apply.

Q262 Jessica Morden: Do you think there are too many referendums?

Kay Jenkins: We went for a long time after 1975 with very few referendums, other than the devolution ones. Since then there has been an increase in the number of referendums. I do not think we could say that there are too many, but there has certainly been an increase. I think we need to look at how those referendums are run and how they are called, to remove the need for this sort of debate to be held in advance of every single referendum.

Q263 Chair: Stephen Doughty talked about formalising the process for referendums. One of the aspects we are interested in is whether there should be six months between a referendum being agreed and taking place; at the moment, there does not have to be any time limit. Is it right that you would like to see a time limit?

Kay Jenkins: The commission has said for a long period of time—and the Government support this—that it is a very good idea for rules that affect the conduct of any poll to be in place six months before the poll is held.

Q264 Chair: Would you like to see this particular draft Bill amended to reflect that desire for six months between a referendum being called and a referendum taking place, or is this just a general view that you have?

Kay Jenkins: This is a general view that we have for all electoral events, but it would be marvellous if that could be in place for any referendum in Wales. The reason for that is that the rules are then clear for all campaigners—they know what the regulatory regime is going to be—and also for the counting officers, who are the equivalent of returning officers, running the referendum. Obviously they have to commit resources to things like booking polling stations and booking leisure centres to hold the count. They will know that they are going to have funds to do that and can then plan well in advance.

Q265 Mrs James: Going back to the point about whether we have too many referendums, other countries seem to cope with them very well, have them far more regularly than we do and have a mechanism for triggering those referendums. It also appears that they have a provision for funding referendums that is quite prescribed. We need to sort that out in this country and have properly funded elections, taking in all the things that you have said about equality for the two sides and equal access to information and promotion. Is it the case that what we need to reform in this country is political funding?

Kay Jenkins: There is certainly an argument for that. We would always say that any electoral event needs to be fully funded and fully costed. There is certainly a cost that goes with any referendum that is being held.

Q266 Hywel Williams: It is a bit lost in the mists of time, but a long time ago we had referendums in Wales on Sunday opening every seven years—a bit like the plagues of Egypt. At that point everybody knew that in seven years' time there would be a referendum and both sides could prepare. The popularity of those referendums declined, then they were held by district and then they were abandoned, possibly largely because of the end of mass religious observance. Is there anything that has been learned from that long experience, from the 1920s onwards in Wales, where we have had referendums?

Kay Jenkins: I think referendums have moved on. We have been reporting on the referendums that have been held in the last 10 years, in particular. There have been three major referendums. In 2004 there was one in the north-east; in 2011 there was a UK-wide

referendum as well as the Wales referendum. We will have the Scottish independence referendum and, possibly, one on the EU as well, so I think there are a lot of recent lessons to be learned.

Q267 Mr Williams: As a matter of process, you intimated that there are amendments that you would like to see made in this Bill. Have you made those representations directly to the Wales Office? What is the extent of your dialogue with them? More importantly, what was the reaction when you suggested the amendments?

Kay Jenkins: We have had dialogue with the Wales Office. We reported to the Secretary of State for Wales after the Wales referendum and we published a report. The UK Government responded to all our recommendations on both referendums in December 2012 and were sympathetic to a lot of the recommendations that we made, because many of them are practical. So yes, we are in regular dialogue with the Wales Office. To our knowledge, there is no opposition to a lot of the things that we have proposed.

Q268 Mr Williams: Specifically on this Bill, have you talked with them to date?

Kay Jenkins: We have, yes. We have been in contact with the Secretary of State for Wales and we explained what we will be seeking in the Bill, in terms of a generic conduct order and the need for the scope of the Order in Council to be sufficiently broad to include lessons learned. They are aware of that. To my knowledge, there is no opposition to that.

Q269 Chair: Some people might argue—and, in fact, have argued—that any referendum question should be set as generally as possible: for example, “Do you think the Assembly should have tax-raising powers?” It may well then be granted initially the power to vary things in lockstep by 10p or whatever, but that power may be extended at some point in the future virtually to allow the Assembly to do whatever it wanted, without any future referendum. The alternative argument would be that this is such a big change that the question ought to be narrowly focused on exactly the powers that the Assembly is being given so that everyone knows clearly what they are voting for when they vote. I hope that is not too lengthy a question. What is your view?

Kay Jenkins: We have a responsibility to advise Government on the intelligibility of the referendum question. We do that by conducting research with voters. Our concern is always that the question should be one that is easy for voters to understand so that they know what they are voting for and can mark the ballot paper easily in the way that they intended.

In the course of giving our advice on intelligibility, as well as doing focus groups directly with the public, we seek the views of interested parties, including academics and political parties—all those who would have an interest in a referendum. What we know from experience of the referendum questions we have looked at previously is that we always get a lot of evidence from lawyers about whether or not the referendum question is legitimate in terms of bringing into play the provisions of the Bill to which it applies. We had those questions raised in 2011. Various academics and lawyers said to us that the public should literally be asked, “Are you bringing into effect Part”—whatever it was—“of the Government of Wales Act 2006?”

We did not go down that line, of course, because we did not think that voters would understand, but were the question not to be specific, I think there would certainly be a substantial number of people who would start to raise those questions. You would not want to get into a situation where the legitimacy of the question was in some way undermined; that would be our concern.

Q270 Chair: You would veer towards having a specific question. I know that this is difficult and a bit hypothetical, but if there were a choice between a question that said, “I do believe that income tax should be devolved to the Welsh Assembly,” and a question that said, “I do believe the Assembly should have power to vary income tax by 10p across all bands”—which would be the specific one—which one do you think would be a fair question to put in?

Kay Jenkins: It is tempting to think that the public would understand the shorter question most easily, but that is not necessarily the case, because would they understand all the implications that are involved? We would have to do further research on that.

Q271 Chair: This is not a trick question—I am genuinely interested in this. In fact, your instinct as a professional would be to go for the wider question—I do or do not believe that income tax should be devolved to the Assembly—which you feel might be easier to understand.

Kay Jenkins: We know from the research we have conducted for other questions that the public prefer a short and simple question. For example, in the Scottish independence referendum the question is, “Should Scotland be an independent country?” Yes or no. There was a lot of debate about that, in relation to whether people understand what independence means and whether they understand what country means. Actually, we found from the focus group research that they did understand those terms. We know that the public prefer a short and simple question. At the same time, it has to be a question that is rooted in what the Bill enables a referendum to be about.

Chair: So there needs to be some specific element. I will shut myself up, because it is not fair on others.

Q272 Glyn Davies: Thanks, David. I am sorry I was late. I want to come in specifically on what you were just asking about, because I think this is the key issue. We are having a referendum that will essentially be about tax-raising powers. Whatever the wording is, it will be about granting income tax-raising powers to the National Assembly. The position that I and many others would want is that if there were a yes vote for that, and if it followed from that that the Government decided to abandon the lockstep, there would not have to be another referendum. The lockstep is a very significant issue; some of us think it probably makes the whole thing pretty unusable as it is, and there may well be a decision to change that at some later stage. What we really do not want is another referendum. Would a question not making any reference at all to the lockstep be a reasonable one to put, when the lockstep is the key issue?

Kay Jenkins: That is why I said that I could see that people would raise concerns about whether the referendum question was asking about what the legislation provides for the change to be. The question has to be linked to what the legislation provides, so you would not want the term “lockstep” in the question.

Glyn Davies: No—some alternative.

Kay Jenkins: At the same time, I think there would be questions about the legitimacy of the question if there were not some way of conveying to people what the referendum was about.

Q273 Hywel Williams: I was going to ask you whether you would use the dreaded term “lockstep”, but instead I will ask you a slightly tangential question. How do you verify that the version in Welsh and English is the same if there is no Welsh term for “lockstep”? That is a difficulty I was provided with yesterday when I tried to ask the question in Welsh and had to make it up on the spot, and used a rather broader phrase—“locking rates of tax together” or something—rather than the jargon term.

Kay Jenkins: When we test a question in Wales, we do it in focus groups in both languages. We would say that the question should be drafted in both languages so that from the outset it is known how it would work. It should not be obviously drafted in English and then translated into Welsh, but should be written as a bilingual question. We would test it with voters in both languages.

Q274 Hywel Williams: Can I ask you about something else—the 180-day timetable for the Order in Council? The Welsh Government have said that they are “unclear” about why the time frame for the Secretary of State to lay the draft order has been extended from 120 days to 180. Can you explain or give us your view on that?

Kay Jenkins: Yes. In our view the extension to a 180-day timetable is definitely a welcome move. In 2010, the timetable had to be suspended because there was a general election intervening, but even if it had not intervened, it would have been a very tight timetable to meet, simply because the referendum rules had to be drafted during that time. We were also testing the question during that time.

That brings us back again to the question of whether the rules can be done as much in advance as possible, which makes things easier for the timetable. During the 180-day period, we would need time to test the referendum question. We need about two weeks’ notice to set up our testing and about 10 weeks in which to conduct focus groups and public opinion research and come to a view. Then we make a recommendation to the Secretary of State, and then the Secretary of State needs to consider it. There could be a bit of need for iteration. Finally, it needs to be put into the Order in Council. Although 180 days sounds like plenty of time, lots of advance work would still need to be done and included in that timetable.

Q275 Nia Griffith: The legislation talks about a five-year term. I want to ask you about that and the way in which the elections then interact. Do you think it is a good or a bad idea to have elections on the same day for Westminster and the Welsh Assembly?

Kay Jenkins: We give views on particular combinations of elections, and we would advise on the risks that are present in particular combinations. In 2020, there is potentially a UK parliamentary general election, an Assembly election and a police and crime commissioner election. In our view, there are certainly inherent risks in that combination. From the voters’ point of view, it needs to be easy and straightforward for them to

participate. There would be three different electoral systems in play, and four ballot papers.

I am not saying that voters cannot cope with more than one ballot paper and more than one electoral system, but that is a lot on one day. Those elections also have to be administered and separated; the timings of the counts have to be planned and so on. You also have the issue of cross-campaigning—the political parties and candidates needing to present the different issues in each different election. There are inherent risks in that combination in 2020. For that reason, lengthening the Assembly term to avoid that particular combination is definitely preferable.

Q276 Nia Griffith: Obviously there is a knock-on effect on the council elections, which have been postponed until 2017—because we have an all-out system in Wales, not a rolling system. When you come to 2021, you have the same issue; you end up with council and Assembly elections at the same time. Is the only solution that everybody has to go on to five years? Are there any other solutions that could be worked out—different times of year or some different solutions? At the moment, it seems that there is an election pretty much every year. If you shift the goalposts for one set, you will have a knock-on effect on the rest. Do you see any other imaginative ways forward that we might look at?

Kay Jenkins: We have previously recommended that it would be a good idea for the Government to look at the whole question of terms of office. As you say, if you keep postponing one election, there is a knock-on effect on others. There is definitely a lot of sense in looking at the situation in the round, rather than one by one. Unfortunately, I do not have an imaginative solution.

Q277 Nia Griffith: Supposing we had an elected second Chamber here, do you think that would have to have a separate day as well?

Kay Jenkins: Not necessarily. I would not say that we are against combinations per se—not at all, because they reduce costs to the public purse, reduce the number of times that voters have to go to the polls and make it easier for them. It is not that we are against combination of elections in general; it is particular sorts of combinations that make it particularly difficult for the election to be well run.

Q278 Jessica Morden: If we shift the term to five years, the next set of elections to clash would be the Welsh Assembly elections and the local government elections, in 2021.

Kay Jenkins: That is right.

Q279 Jessica Morden: In theory, under the Williams recommendations, could you have completely new councils being elected on the same day as the Assembly, or am I getting that wrong?

Kay Jenkins: That would be possible, yes.

Q280 Glyn Davies: This is an area that interests me, largely because I just do not think that five years is a suitable period. I have always thought that four years is a far more sensible period between elections. You are having to balance one issue against another. It seems inevitable that there will be clashes of election. Let us say that the House of Lords is elected—the very good point that Nia just raised—which could easily have happened, and

may well happen. Is it your view that the two elections that cannot be combined are the National Assembly for Wales election and the Westminster Parliament election, and that the other elections are in some way secondary and can be combined with those two, but those two specifically cannot be combined? That is the evidence we have heard from other witnesses.

Kay Jenkins: We have not given a view to that effect; no, we have not said that. What we have looked at is a particular combination in 2020, when there will be three sets of elections on the same day. One of the issues is the different constituencies involved. You will have the parliamentary constituencies; the Assembly constituencies, which are slightly different; the Assembly regions; and the police and crime commissioner constituencies, which are different again. There is a lot going on in that particular combination, but we have not said that it is not possible to hold a general election and an Assembly election on the same day. To be honest, we have not looked at that question.

Q281 Jessica Morden: In your evidence, you argued against banning candidates from being able to stand on the list and in a constituency seat. Do you want to give us your reasons why?

Kay Jenkins: Yes. In 2005, when this was first proposed, we looked at the issue of dual candidacy. Our concern is that there should not be unnecessary barriers to candidates standing in elections and that it should be easy for voters and candidates to participate in elections. In 2005, there was a suggestion that dual candidacy was a disincentive for people to vote. We questioned the evidence base for that and the international norms—there were not really any other comparable provisions banning dual candidacy—so at the time we concluded that the case for change had not been made. We have not done any further work on that since then, and I am not aware of any further evidence either way, but, on the principle that there should not be unnecessary barriers to people standing for election, we would support the change and the removal of the ban.

Q282 Jessica Morden: What about the case of, say, Clwyd West, where Alun Pugh won and then the losing candidates were all elected because it was a marginal seat? What is your view on the fairness of that—in the electorate’s eyes rather than in terms of the barrier to the person standing?

Kay Jenkins: What we said at the time, and what is still the case, is that people tend not to vote or not based on the electoral system or points of detail such as dual candidacy; they vote on issues. People who give reasons why they vote tend to say that it is because they have a civic duty, they think it is important to vote or they are voting for a change. The people who do not vote cite things like circumstantial reasons; they will say they are too busy on the day or that they are not interested in the particular type of election or the issues involved. It very rarely relates to the electoral system. If there were a groundswell of evidence saying that voters were concerned about that, obviously the evidence for change would be there, but we have not seen any evidence like that.

Q283 Jessica Morden: In all elections, there are strong local campaigns about particular issues in individual constituencies. In an Assembly election, if there is a strong local campaign in, say, a marginal seat, and people make the decision not to vote for a particular person because of the closure of something or whatever, and they then see that person get in on the list, does that not seem to you to be unfair, as they have made that choice?

Kay Jenkins: That has not really come through to us as an issue that the public raise in public opinion research that we conduct after the election into what makes people vote or not vote. I completely see the point you are making, but it is not one that comes back to us from the public as a real concern.

Q284 Nia Griffith: I want to talk about some of the international comparisons. A lot of them seem to be under what Roger Scully would call the MMM system—that is, completely separate elections—and not related to the proportion thing, which he calls the MMP. The issue with the Assembly elections is that it is not even the proportion of people in the same constituency who get representation through the list system—what the result will be depends on which constituencies that constituency has been put into a group with. That makes it particularly confusing, as people see characters pop up that they thought were the ones who had not won the election. Clwyd West is a classic example. It was not just one of them; all three of them then popped up, so you had all four candidates. Are there many other examples where we have this particular system—where the proportion is worked out on this d’Hondt system, with all the other constituencies put into one group? What is the evidence from those sorts of areas on this type of system?

Kay Jenkins: We have not done any recent research on that. We have not looked at that position since 2005, so I could not honestly give you any up-to-date answer on that. The comparable situation is with the Scottish Parliament, where there is no prohibition on dual candidacy.

Q285 Stephen Doughty: I do not want to be too harsh on this point, but would you accept that—whether by design or by accident—by taking that position you are effectively coming down on the side of parties having more control, because they choose who sits at the top of a list or whatever, rather than electoral choice? That is the natural follow-out of this.

Kay Jenkins: I guess we are coming down on the side of as few barriers as possible to people standing for election. That is our view. The rules for people standing for election are complex and are different for every election. We are just in favour of the rules being simple and straightforward. We currently have a consultation on standing for election, in which we have sought evidence from political parties and candidates on how the rules should be improved. We have yet to come out with a final report on that, but the overwhelming conclusion is that people want straightforward rules and as much consistency between elections as there can be.

Chair: I am going to appeal for some very quick questions on this. After Mark and Jessica have spoken, I will make one final point.

Q286 Mr Williams: It is really on the point about confusion. The Labour Government established the scheme in the first place. Then it was changed, and now we are attempting to re-establish their original scheme. Could I ask you to reiterate the fact that, in the mailbag that you and your colleagues get, this really is not a big issue at all, and is not perplexing the electorate of Wales? A bigger point is that there are some consistent rules that stand the test of time, and that people will understand.

Kay Jenkins: It is not one that comes to us from the electorate; that is definitely true. It is not one that comes to us on a regular basis. In terms of rules for standing for election, in the consultation and discussions that we have recently had, we found that all parties want

as much consistency as possible, simplification of the rules and clarity for people. Often candidates feel that the rules are there to trip them up—that they will fall into breach of the rules because they do not know the particular rules for a particular election—so the more straightforward that can be, the better.

Q287 Jessica Morden: Why is it complicated to say to a candidate, “You either stand on a list or you stand in a constituency”? Surely it is more complicated to say, “You can stand for both and there are different sets of rules for both.”

Kay Jenkins: When the rules keep changing, it is complicated. People look at what is happening in Scotland, and it is complicated. It is just about reducing the number of barriers that are there.

Q288 Chair: I have some sympathy with your position, but if you are committed to making it as easy as possible for people to get involved, why are you, I think, coming down against MPs serving as AMs or AMs serving as MPs? Isn’t it up to the electorate to decide?

Kay Jenkins: We have not really come down against that, actually. We do not have a specific view on mandates; we have simply said it is a question of how people can best be represented. Really that is a matter for Government and Parliament to consider.

Chair: And for the electors. Thank you so much for your evidence. I am sorry that we ran over.

Examination of Witness

Witness[es]: **Mr Graham Allen MP**, Chair, Political and Constitutional Reform Committee, House of Commons, gave evidence.

Q289 Chair: Good morning, Mr Chairman.

Mr Allen: Chairman, how are you? It is nice to see you struggling with vibrant and interested members on these issues; I thought it was just me.

Q290 Chair: I suppose there is no point in my trying to put you at your ease and explaining what is expected in front of a Select Committee. You did say to me a few times that you wanted only 10 minutes of our time. I am sure we can overrun a little bit if necessary, but we will try to get through this fairly quickly. Tell us what you think of it and give us your views, please. We will then have a few questions afterwards.

Mr Allen: I speak as Chair of the Political and Constitutional Reform Select Committee, but I am speaking now in a personal capacity. Obviously, I have not cleared all my words with my Committee, so I speak personally on this occasion, although much of what I will refer to has been approved by my Committee.

I start from the premise that the UK is the most massively over-centralised of all the western democracies. I find that deeply unhealthy. I find that it damages creativity and the ability of people to get on with doing stuff locally in a way they see fit, and it makes people risk averse and dependent. That is a pretty long list of reasons why devolution is a very important issue for us all politically, but I think devolution has been used as an expedient, often to buy off people who have been making a lot of noise, rather than being

used as a principle. As you see from my evidence, I believe that all party leaders would benefit from signing jointly before the next election a declaration that they believe our democracy should be based upon two principles—Union and devolution.

I welcome this Bill very strongly because it is a step—not a leap—in the right direction. There are some very good things in the Bill that move us in the right direction, towards greater devolution, not merely for Wales—I will come on to that point, if I am allowed, a little later—but for the other countries in the Union.

Q291 Chair: But how is it good for England? We can argue about whether or not the powers that it gives are significant, but certainly everyone agrees that it is a step in the right direction if you favour devolution. How does that help you, Mr Allen, in England? It is not doing anything at all for you, is it?

Mr Allen: I think it is. If you have the principles and if you work on the basis of the Union—of wanting to keep the Union and keep the Union strong—but you see that devolution done in a principled way is the best way of doing that, there are very obvious consequences for England. Currently Scotland has the right to assign or retain the product of 10p of income tax. This is now on offer to Wales. I would urge all my friends in Wales to seize that opportunity.

Q292 Chair: But how does this help you in England?

Mr Allen: It helps England because England, similarly, could retain—initially—10p of income tax. My Select Committee has done a serious report on this. The vehicle we propose, or the way in which we have outlined this could be done in England, is through local government, not an English Parliament, and not English regions now; sadly, I think that issue was mishandled before and probably will not arise again. We should use English local authorities as the vehicle for devolution. In a sense, I am keen that these proposals find favour in general, although there are a number of amendments that I would propose you consider when putting forward your report, before the Bill goes to the Floor. I think that would assist the whole process of devolution. I urge colleagues not to feel that everything has to be done just so before we move on. I think a counsel of perfection actually stops good happening.

Q293 Chair: This is my last question, as I know it will trigger a debate. Essentially, you are saying, “Wales is going to get some powers that we would like in England, so we fully support Wales having them because we will get them soon enough in England.” In reality, what makes you so sure of that? We have had an Assembly since 1999, and since 1999 Wales has had significant powers, but you have had absolutely nothing. What makes you think that this extra tranche of powers is going to mean that suddenly you will get something in England and start catching up?

Mr Allen: I do not think we are suddenly going to get anything. We need to get our local areas—our local councils, in particular—wanting an answer; I think the daily indignity of having their grants cut by central Government may push them in that direction. I think the debate that will take place around the Scottish referendum will also open up some of the eyes in England as to what their possibilities are.

Fundamentally, in terms of political power, I hope that all party leaders see that this is no longer a system that is fit for purpose, and that the man in Whitehall does not know best when it comes to telling people—in my case—in Nottingham or the east midlands what is best for them or when they should empty their bins. In that sense, Wales is much further down the evolutionary development road than the English. I would like us to catch up.

Q294 Mr Williams: I agree with you that this is a step rather than a stride. Obviously I would like bigger steps, and that may well be the substance of amendments in the course of the Bill, when we get it formally. The key argument has been about increasing financial accountability; Silk talked about the need for that to build a mature democracy. Do you agree with that?

Mr Allen: Yes. I think—

Q295 Mr Williams: I agree with you; my party has always believed in devolution for the English regions as well. But how would that fit into what you have been saying about the English regions?

Mr Allen: I think there are a number of things, including some immensely practical ones; for example, having on your wage slip that much of the base budget that is produced by income tax actually will go to Wales, actually will go to Scotland or actually will go to a local authority in England. I think that would wake people up. They would see, rather like they see their national insurance currently listed separately, that income tax to the Chancellor would be x, and income tax to their nation or to their area would be y. I think that would be an immense stimulus to people's involvement.

There is that very nitty-gritty thing, but on the bigger issue this is a political question. We get to it through financial accountability, but if 10p of income tax is retained by the nations of the Union, I think you will then start a process of interaction, negotiation and discussion, which may lead us in even better directions. That is why, in a sense, I would bank this Bill. In some senses, it is not as fulsome as some of us would like, but we are 470 days away from the next election, and another Bill will come along shortly after that general election where we can work through a number of other areas. I think this is a very good start.

The other thing that I would suggest would be to look at the product of 10p income tax not being the product of the Welsh income tax take, but the product of the all-Union income tax take. I think that would help us on the equalisation questions because it would be a more significant sum. I was looking at it just before I came over, and it would raise an additional £800 million in terms of Wales and, equally, a fair amount in terms of Scotland. I think that would be an immense help to greater devolution financially and to greater transparency. The key thing at the moment is not whether rates go up or down, but the idea that you are clearer as an electorate about where the money comes from and who is in charge of it, which is a very great prize politically.

Q296 Hywel Williams: There is another aspect, of course, in Wales, in that the Government would be able to vary tax. This is a very difficult issue, because the Government here want to introduce a lockstep, with which you may be familiar. When you have been considering the retention of 10p for English local authorities, have you thought at all about this issue of a lockstep? Can you help us with it?

Mr Allen: Yes, I have. While it is better to have it as a lockstep than not to have it at all, I would strongly urge you to consider amending the Bill so that it is not a lockstep—so that, in fact, it is just the product of a 10p rate. I do not think that it will be helpful in the long term for it to be locked. It will be helpful in the short term to establish the principle that an amount of your base budget that you spend is not given to you as largesse from the Westminster-Whitehall machine but is your own and is ascribed to you, and you can look at that and feel that it is something you can do something with in terms of your own spending priorities. That is a first step.

Q297 Hywel Williams: Do you have any view on the issue of what is sometimes called tax competition? We had evidence from the First Minister yesterday in which he seemed to say that he wanted the ability to vary but he did not want tax competition, which seems to me to be what will inevitably arise. Between states in America—for example, on purchase tax or whatever—there is competition. Are you averse to that in the same way that some Members are?

Mr Allen: I am averse to there being competition in tax rates, because politically I do not think it is very helpful. However, I am not averse to the fact that you should be empowered to change your tax rates in a way that you and the Welsh people feel is appropriate, rather than in the way that I or Whitehall-Westminster feel is appropriate. Having the power and using it are different things. I hear that some people have used the word “useless.” I do not believe that is appropriate. I would say “not used,” for example, as in Scotland, which has had the power to vary for a considerable number of years. They choose not to do that, for obvious political reasons. I think that should be your choice, rather than a choice imposed upon you by someone outside Wales.

Q298 Nia Griffith: Can we look at the issue of things happening differently in different counties across the whole of the UK? Traditionally we have had different levels of council tax. Sometimes that has reflected a picture of more owner-occupiers in rural areas, paying a lower council tax and having fewer services. In urban areas, there has sometimes been a high proportion on council tax benefit, so those who pay have been paying more, often with a higher level of services in the more compact urban areas. How do you balance some of those variables and their effects on people’s behaviour with the central issue that, because since the middle ages London and the south-east have been such a central part of the economy of the UK, they are now the only areas contributing every year into the tax system, whereas every other area takes from the tax system? How do you balance that issue of local accountability with, perhaps, a greater redistributive element?

Mr Allen: I think we change the terms of the debate if we say that there is an end point here, which is a clear principle of devolution and Union, and we work towards that. In working towards that, all of us would need to adopt different attitudes and cultures in terms of the four nations of the Union working together. If you were to say honestly that this is, in fact, the federal Parliament and that the nations should work together effectively in that umbrella, there would be new, stronger mechanisms for those countries to work together; some mechanisms exist already. It would not be in anybody’s interest on a small island, unlike in the United States, to have competition wars across borders on terms of taxation.

I talk about this in terms of England, but there is also a question to be addressed, perhaps, in terms of Wales and Scotland—that of double devolution. What powers should there be

for local authorities? One might argue—some have argued this, perhaps unkindly—that in Scotland there has been greater centralisation in a devolved nation than people might have expected when that journey began. You may want to look at that and, perhaps, amend the Bill in the light of how you see local authorities being more independent and devolved. That is something my Select Committee has looked at. We feel that giving local areas more authority and more direct funding—which they retain as their own, rather than having it gifted from the centre—will help people blossom. It will help all our political parties grow and it will help the involvement of local people in their own affairs. In a sense, if we go this way, we will start to supersede some of those narrow arguments that are really saying, “If we are all told what to do by Whitehall, can we cannibalise our nearest neighbour?” I think we change that atmosphere completely and start to work together as mature nations within a federal umbrella.

Q299 Mrs James: To go back to the lockstep issue, the UK Government seem to believe that the lockstep will ensure that decisions about the progressivity of the income tax system are maintained at UK level. What do you think about that?

Mr Allen: I think progressivity can come in lots of different ways. If you have devolution, it means that people do things in different ways to suit their national circumstances. I think that is wholly commendable. I have never understood the idea, “Oh my God, we gave them devolution and now they are doing things differently.” I congratulate people who do that and make their own choices. That is the way things should be.

At the end of the day—Scotland has proved this—I do not believe that the nations would want to use the power to vary. I think they would want to work together in a Union to make sure that we all got the best deal. A number of these things may be under consideration for your response to the Bill itself, but there are others. For example, there is the question of a referendum. I think it is ridiculous, frankly, that technical issues—detailed financial issues—are constantly put to referendums. The big constitutional things should be, of course—as in Scotland, or whether we have a written constitution and so on—but not whether you should have this or that variability, or this or that tax. If you go that way, you will tie yourself into neverendums on every detail. I have faith in colleagues of all parties around this table, and in Cardiff, who can decide as representatives how these decisions are taken. I would urge you strongly to look at the Bill in that light.

Q300 Stephen Doughty: I want to ask you a broader question. I apologise for not having read the recent report on a constitutional convention, but I want to respond to some of the comments you have made about the devolution process and what you have just said about referendums in general. On the question of the process and the way the UK constitutional settlement is developing, do you think there is a risk that because we have had this kind of piecemeal tinkering—a bit here and a bit there, a referendum here and a referendum there, a slightly different electoral system here and a slightly different electoral system there—we have effectively wasted a lot of political capacity time and official energy, rather than having a definitive moment where we say, “This is a settlement. This is where we are. This is why powers should be at this level of devolution and Union,” as you describe? I put the Scottish referendum question in a separate box here. Do you think that we have lost the public in a lot of places along the way and that they are not particularly engaged? Look at the turnouts in the recent Welsh referendum and so on. What are your wider thoughts on the process we have been through?

Mr Allen: I think we need to do this in a principled way. If you do it in a principled way, everybody knows what the pole stars are and what you are trying to get to. If you are trying to get to Union and devolution, some of these decisions become very, very clear very, very quickly.

I do not want to go back over old ground, but it is arguable that had the two landslide Governments of 1997 and 2001 adopted that policy very early on, history would have been quite different. Had the English regions gone very quickly after Scotland and Wales, we would by now be in our 14th year of the nations and regions of the country working together. That is not the way it went, but let us not be sat here in another 14 years saying, “When the Wales Bill was produced and the Scottish referendum was about to happen, and when the chance came for all parties to say, ‘We commit ourselves to two principles that the man and woman in the street can understand. We like our Union and want to sustain it, but the best way to do that is to allow as much power as possible at the most appropriate level’”—subsidiarity, that horrible euro-word for that most beautiful concept—“we did not seize that opportunity.”

I urge you, therefore, to support the concepts in the Bill as a start—and a helpful start—but also to consider very strongly whether you wish to amend things like the referendum provision, the lockstep provision and the provision about borrowing. Why on earth can you not, for example, use your own credit rating, if you run your own domestic economy effectively, to raise money and to do bond issues, to allow propositions—not referendums—on spending on particular things in Wales and to allow local government in Wales to join the devolution party and give them authority and power beyond the Senedd in Cardiff?

Chair: That sounds like a closing speech, so thank you very much, Mr Allen.

Mr Allen: Chair and colleagues, thank you for allowing me to address you this morning. I do appreciate it.