HOUSE OF COMMONS

Scottish Affairs Committee

Oral evidence: The Smith Commission: Proposals for Further Devolution to Scotland, HC 835

Wednesday 3 December 2014

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Watch the evidence session

Members present: Mr Ian Davidson (Chair); Mike Crockart; Jim McGovern; Mark Menzies; Graeme Morrice; Pamela Nash; Mr Alan Reid; Lindsay Roy.

Questions 1-163

Witnesses: **Lord Smith of Kelvin KT** and **Jenny Bates**, Head of the Smith Commission Secretariat, gave evidence.

Chair: I welcome you both to this meeting of the Scottish Affairs Committee. This is the first time that we have ever had in front of us the man who sells me my electricity. I don't know whether that is right, or how many other people here are in that situation. Think of this as a customer complaint session as much as anything else. I hope that is not an inflammatory remark, but we will come to that in a moment. I will start by asking you to introduce yourselves for the record.

> ***Lord Smith of Kelvin***: I am Lord Smith. I am a business man, but I got a phone call a few days before the referendum asking if I would chair this commission. I have been chairing it for the last 10 weeks, and you see the results before you.

> ***Jenny Bates:*** I am Jenny Bates. I have been head of the secretariat for the Smith commission for the last couple of months.

Q1 Chair: Fine. Can I start by asking you a little bit about the process? It was obviously a pretty tight timetable. You had staff, but were they enough? We want to clarify whether the time constraints meant that you could not do as thorough a job as you would have wanted, or whether the time taken would simply have expanded to fill the time available. Did you feel, with the resources you had, that you had sufficient information?

> ***Lord Smith of Kelvin:*** I felt I did have sufficient information. To start at the beginning, I was given 18 full-time civil servants, headed by Jenny. They came from the Scottish

Parliament, Scottish Government and UK Government; there were experts on Treasury issues, taxation and so on, people who knew about social issues—so we had a whole range of expertise. On top of that, they were able to call for papers. I spoke to the head of the constitutional staff down in London, in Scotland House, and he said there is a cottage industry going in this thing, so there were hundreds of civil servants producing paper.

We took the original proposals from all five parties. You remember I asked them to produce it in two weeks, and they all delivered within two weeks. A lot of this material was coming from the Strathclyde commission, Ming Campbell's work, stuff the Labour party had done—a lot of work had already been done, so they were able to produce a digest of it within two weeks. That was given to the UK Government and the Scottish Government. I remember the analyses that came in from the two Governments; the UK one was 330 pages, and I cannot remember how many the Scottish one was, but I think it was even bigger. By the way, exactly the same material and exactly the same analyses, but different answers—but at least we got them. Just so you know, the coalition obviously had access to all this information, as did the Scottish Government, but the Labour party and the Greens did not have that backup, so we arranged with the UK Government and the Scottish Government that everybody got all the information.

As for the time scale, because a lot of pre-work had been done on the thing, the time scale actually was not an issue. In many ways, it was a benefit because I was able to say, "We've got a very short space of time to do this." We had nine plenary sessions and about four or five individual sessions where I went to see people on their own. In amongst all that, we asked civic society to send in. I wrote to, I think, 129 civic society bodies. There were third sector, unions, business organisations, charities and so on, and 407 sent us really quite voluminous replies. They were analysed and, again, we had our secretariat doing that. We had 18,000 e-mails from the public. I went walkabout in Inverness, Dundee, Sterling, Aberdeen, the Borders—I covered the Borders—and Glasgow. I met with people from education, local councillors, citizens advice bureaux—a whole group of people. That information was fed in—they did not get special treatment; I just wanted to get the voice on the street. But the 10 weeks was enough. Towards the end, as you would imagine with anything, we were moving very quickly in the last week or two weeks to arrive at a conclusion, but can I just say that all five parties signed up to every word that is in that document?

Q2 Chair: I just wanted to clarify, first of all, in terms of the process, that there should be no unhappiness from anybody about the process that was undertaken. We read before about the thoroughness with which this was done, but I just want to clarify that you yourselves were happy with both the time and the resource that were available to you.

Lord Smith of Kelvin: I personally was. Let me tell you: whatever has been said outside since, all five parties came to me and said that they were happy with my chairing and with the process, and they felt that we had arrived at conclusions properly. I have not actually heard anyone criticise the process since.

Chair: Fine. It is always useful to just establish what people agree on at the very beginning, as I am sure you know.

Q3 Lindsay Roy: Lord Smith, well done on achieving a mammoth task. Can you tell us what weighting you gave to the details submitted from the 18,000 people and organisations?

Lord Smith of Kelvin: This is difficult to be very definitive about. You have to remember that there is a very wide range of things. We actually had a few who wrote and said that the existing powers should be transferred back down to Westminster, so this is free-range comment from people. Did we give that a lot of weight? I can't remember. But anyway, we were there to talk about more powers going down.

A number were in the form of petitions—just one format with lots and lots of signatures at the bottom or lots and lots of the same pre-printed material—but several thousand of them were well thought out things. We took all of those, analysed them into themes and presented them to all the parties. When we got the submissions from civic society—I am talking about trade unions, both TUC and STUC, and various other organisations—we immediately put them up on to a website, so that the whole world could see it, and of course we shared it with the people who were going to be sitting round the table. We started from the submissions that the parties had made, because that is clearly what they brought to the table, but that was added to by the material we got from civic society.

We had one full session where we talked about everything that had come from civic society and from the e-mails that had come in. We put weight on them, but it was informing a discussion rather than saying, "There's 17,000 in favour of that and 1,000 against." That would not have been a very fair thing. It was their ideas that we were more interested in. We talked quite a lot about those ideas. In fact, a lot of the stuff that you will see—the four recommendations that I made personally are very much from what I heard from the e-mails, civic society and the walkabout that I did.

Q4 Lindsay Roy: And nobody was unhappy with the methodology you used?

Lord Smith of Kelvin: No one was unhappy with the methodology used. It was very transparent; it was out there for people to see. We actually had two meetings with civic society in Holyrood, where we had the 10—I was going to say protagonists, but will say instead the 10 members who were helping me with this. They faced civic society and asked them questions about why they wanted various things and so on. That was informative as well. No one complained about the process.

Q5 Lindsay Roy: Given that this came from the Edinburgh agreement, and given the agreement of all five political parties, why is the report not entitled "Smith Commission Agreement" rather than "Smith Commission Report"?

Lord Smith of Kelvin: Well, I think it should probably be called the agreement now, whether it is eponymous and has "Smith" on it or not. It is an agreement; there is no question about that. The people who were in that room signed up to an agreement.

Q6 Lindsay Roy: They all signed up to it?

Lord Smith of Kelvin: Absolutely. They all signed up.

Q7 Chair: Following on from that, is this a package or a menu? To what extent was it drawn up in a way that was deliberately intended to hang together, as it were, and to what extent was it there to be amended subsequently if people didn't like bits of it?

Lord Smith of Kelvin: As far as I am concerned, it is a package, and one that I expect to be implemented as it is set out now. There might be details or technical complications that make some things difficult to implement, but I can tell you that as we were going through this, we were checking with the Treasury, Department for Business, Innovation and Skills and Department for Work and Pensions to ensure that the thing was implementable. We genuinely believe that it is implementable so I would be surprised if there is some detail that is not.

Chair: We just wanted to clarify that the intention is that it is a package.

Lord Smith of Kelvin: This is not, "Here's a shelf of goodies. Decide what you think would be appropriate out of that." It is supposed to hang together. It is a complete package.

Q8 Chair: You were quite strong yesterday, when you were speaking to the Scottish Parliament, about calling this the Smith agreement. You have stressed several times already that this was unanimous, accepted by everybody and so on. How then can you explain that almost as soon as it was announced, some of the participants were attacking it?

Lord Smith of Kelvin: Look, I have only been in politics 10 weeks. I don't understand these things.

Chair: You didn't become the head of the company that you run and chair of the Commonwealth games without a few of the black arts.

Lord Smith of Kelvin: The people around the table absolutely signed up to that agreement. The fact that some have gone out afterwards and said things that are not in the agreement, I would characterise like this: people might have lifelong ambitions—for example, for an independent Scotland—and they might leave that meeting and say, "I still have ambitions for an independent Scotland. I still think these powers are not enough. I still think that one day we might get all those powers," but all the people around the table signed up in the end. We had some vigorous debates, but they all signed up to every word that is in that agreement.

Q9 Graeme Morrice: I understand that it is an agreement in the sense that all those who participated in it, signed up to it, as you said, Lord Smith. Is it the understanding, and is it implicit in the report—or the agreement—that the proposals contained therein were implementing the vow that was given by the three main UK party leaders during the referendum campaign?

Lord Smith of Kelvin: Can I just refer you to quotes at the time? The day after we published our report, David Cameron said he was delighted and that "We are keeping our promises…we made a vow of further devolution…we are keeping that vow." Alistair

Carmichael, Secretary of State for Scotland, said, "We back the agreement and its recommendations, and will produce draft legislation in January" and that the recommendations "will be implemented without hesitation, reservation or equivocation." Ed Miliband said, "Elect a Labour Government"—a slightly different twist, even I notice that—

Mike Crockart: How many times have you said that? *[Laughter.]*

Lord Smith of Kelvin: "Elect a Labour Government in May and we will implement the Smith Commission in our first Queen's Speech." Nick Clegg said, "I back it and I back it fully." That sounds to me pretty unequivocal from all the Westminster party leaders.

Q10 Graeme Morrice: That's right, and even the *Daily Record* said that on its front page on the Thursday. In terms of the two other participants—the Scottish Greens and the SNP—was it their understanding and specifically said by them that the eventual agreement honoured the vow?

Lord Smith of Kelvin: Yes. They are expecting that what we have in here will eventually become draft clauses and then law.

Q11 Chair: Sorry, there are two different issues here. One is, is this going to be implemented? I think we have heard that. The second is, does the agreement that has been produced meet the terms of the vow that was given beforehand? There is now a vow to implement the agreement, but does the agreement, in your view, meet the vow that was given in the run-up to the referendum?

Lord Smith of Kelvin: It is difficult for me to comment on that, but if all the leaders of the parties that made the vow are saying, "We believe that is the vow—"

Q12 Chair: But they are not here, and you are. You chaired the commission, and you were in charge of implementing—translating—the vow into an agreement. I think it is reasonable for us to clarify with you whether you believe the vow as given in the *Daily Record* before the referendum has actually been met.

Lord Smith of Kelvin: The vow had a lot less detail in it—a lot less. There is a huge amount of detail in here, but what was said there—meaningful powers to the Scottish Parliament and, and, and—it is all here. So I believe that to that extent it has been met.

Q13 Chair: When you say "to that extent", it implies a reservation. The vow has either been met or it hasn't. Leaving aside the fact that some people want independence and have a different view of what should have been done, the question is that, in the run-up to the referendum, a vow was given. I am seeking clarification as to whether, in your view, the agreement that has been produced—leaving aside the consequential decision to implement—meets the terms of that vow.

Lord Smith of Kelvin: Jenny, you're better at these things than I am. What is the direct answer to that?

Jenny Bates: I think it is what you said, really, which is that the three political parties are the parties that made the vow, and they have said that they will back it and implement it.

Q14 Chair: Sorry, but there are two different questions. One is the question of whether this is subsequently going to be implemented. That, in a sense, is a second-order question. The issue is whether the content of this meets the terms, in your view, of the vow that was given in the run-up to the referendum. As you will be aware, there were accusations of betrayal, treachery and so on, even before the whole thing started. People in Scotland are entitled to know whether you, the chair of this structure, believe that the terms of the vow are actually being implemented by what is being offered.

Lord Smith of Kelvin: Look, I really do not want to sound equivocal—okay? I know you are accusing me of being that, but my job here was not to determine what the outcome was; my job was to get five political parties to agree, and that is what I have managed to do, but it is their agreement, not mine.

Q15 Graeme Morrice: I understand that. In terms of the vow made by the three UK party leaders, all of them are saying the vow has been kept, and the vow specifically talked about "extensive new powers for the Scottish Parliament", and I don't think many people will disagree with the fact—

Lord Smith of Kelvin: I am prepared to say I believe these are extensive new powers.

Q16 Graeme Morrice: Therefore the vow has been kept. The point I was raising initially was with regard to the Scottish Greens and the SNP, who obviously take a different line, in that they support independence and are not naturally devolutionists. Were they saying during the course of the deliberations in your commission that the vow was being implemented?

Lord Smith of Kelvin: They did not use words like that, but the test of the thing is, did they sign this agreement? And they did—both parties.

Q17 Graeme Morrice: Presumably, they signed it on the basis that it was providing extensive new powers to the Scottish Parliament.

Lord Smith of Kelvin: Yes. I don't think anyone can disagree that these are extensive new powers.

Graeme Morrice: Thank you, Lord Smith.

Q18 Jim McGovern: I have quite often read books and watched documentaries about pre-war Germany. In one of them, the National Socialist party—the Nazis—burned books.

Yesterday, apparently, SNP elected Members filmed themselves burning copies of the Smith commission report. How would you view that?

Lord Smith of Kelvin: I am chairman of the Green Investment Bank. I'd rather they had recycled them. *[Laughter.]*

Jim McGovern: Good answer.

Q19 Chair: And you say you've never been involved in politics before. Well, well, well.

Perhaps I can turn to another issue of process. You have already touched on the commitments given by the three leaders to implement all this. Are you satisfied that the timetable that was laid out beforehand in terms of the vow and the report that you have produced can be meshed together in a way to allow things to be implemented within the time scale promised to people in Scotland?

Lord Smith of Kelvin: Yes, I am. People thought that my timetable was the most difficult. Draft clauses to be produced by 25 January sounds tight as well, but actually all departments of the civil service are aware of our document coming forward. For example, there were effectively four bits—there are three pillars, but the first bit is about constitutional reform. That is about 16 and 17-year-olds voters; it is about voting; it is about the permanence of the Parliament to the extent you can make a Parliament permanent within UK law; giving Holyrood the power to decide boundaries, after advice from the Boundaries Commission and to decide by a two-thirds majority how many MSPs they have—extensive new powers. That was effectively agreed very early in the day, and the constitutional lawyers in the civil service elsewhere in the UK have no doubt been working on that, because they knew that was where that was coming from.

A lot of the tax areas were agreed relatively early, though there were still things being discussed towards the end, and in welfare as well. The final bit, about borrowing powers and fiscal responsibility, is quite complicated—even the 2012 Act is still being worked through on that. That has again been fairly obvious to people who were going to draft Bills later. So I think they will be able to come up with the draft clauses. It is not the final version of the Bill, because that will have to go through the House of Lords eventually.

Chair: Bad luck there.

Lord Smith of Kelvin: I thought I would just mention that. I think that they had already been looking at our work so they will be well down the track and able to produce draft clauses. People like you have to look at the heads of agreement, the agreement that has been made, and at the draft clauses and see if they match up.

After that, Ian, it comes straight down to when whatever hue of Government we get enact this. If you are in power in May, there are immediate things to think about. I guess this would be quite high up the list of priorities but there are holidays in July and August, so I guess September or October will be the earliest this Bill could probably come in. I think that would be enough time to prepare a final Bill as well. I think they will meet the deadlines.

Q20 Chair: Fine. I think that is helpful because, again, accusations of betrayal, treachery and so on have been flying around in relation not only to content but to timetable. It is helpful to have the assurance that you think it can be done within the times promised.

I see two elements to this. One is the question of the words, where I can see that that can be done easily enough. The other is the issue of the big sums—there is an awful lot of big sums involved in this, which that might take longer to work out in detail. In a sense, those are also issues of implementation rather than principle, aren't they?

Lord Smith of Kelvin: Yes, they are.

Q21 Chair: The fact that the lady from the Treasury is nodding gives us great reassurance.

Lord Smith of Kelvin: She thinks in terms of years rather than months.

Q22 Chair: She thinks of very, very big sums, bigger than we would normally think of. That is very helpful.

There is only one other issue around implementation. We are conscious of the seven points of principle that you made. It is the question of whether you expect that Scottish MPs will continue to vote on the entirety of the UK Budget, as you have recommended that they should?

Lord Smith of Kelvin: We have said in here that the recommendations of the agreement we have arrived at does not preclude—in fact, allows—Scottish MPs to continue to vote on UK budgetary matters. That is why we have put it in, and I will remind you that all five parties agreed that that wording should go in—all five parties.

Can I bind anything, even the permanence of the Parliament, in perpetuity? Of course I can't. That is a matter for Westminster and it is way outside my remit. We wanted to be clear that what we were proposing, the agreement we arrived at, would not stop Scottish MPs voting on UK budgetary matters. That is why it was said and that is why all five parties signed up.

Q23 Pamela Nash: Lord Smith, I would like to turn to income tax. You commented in the report that there is not a wide understanding of the current devolution settlement within Scotland, and certainly those of us who campaigned in Scotland are aware of that. I don't think there is a strong understanding at the moment among the Scottish public about the benefits and risks of the full devolution of income tax. Could you put on the record why it was decided that income tax should be completely devolved and what the benefits to the Scottish people might be?

Lord Smith of Kelvin: I am sorry; say that again?

Pamela Nash: In terms of income tax, I don't think there is a strong understanding among the Scottish people about what the benefits of the devolution of income tax to Scotland might be.

Lord Smith of Kelvin: Before I address income tax, I will preface my remarks by saying that there are a lot of people everywhere, including in Scotland, who do not quite understand which matters are already devolved, never mind the effect of income tax. That is why I said in my opening remarks in the report that we all owe it to everyone to make sure that people do understand. Some people do not understand that the health service is devolved, some people do not understand that education is devolved and so on. I am just making a plea, because we are bringing in much more complex things—tax raising powers and so on—and we need to work really hard to ensure people understand what that means.

Income tax is a shared tax. The measure of income tax will not change. That is something that all of us were very strong on. We felt that if we started to change reliefs and allowances, it would become too complicated for people to understand in different countries. Personal allowance is still a shared tax; then there is complete freedom on rates and bands of income tax. Any responsible Government will think very carefully about what they do with those rates and bands. If you increase them, you raise more tax. Incidentally, this all comes out of the block grant on day one. That is £6.8 billion you are now raising as a Scottish Government, so it has come out of the block grant, subject to Barnett and all that. It is now a number—a tax base.

That tax base, by nature—the measurement of what income is, and of reliefs and allowances—does not change. It is unlike previous powers, where you are allowed to vary by 3% or 10 points; there is a lockstep, so you have to change each tax rate. The 20%, 40% and 45% rates would all have to be varied by, say, 10%. If, say, you reduced taxes and took 20% down to 10%, you would have to take 40% down to 30% and 45% down to 35%. If you increased taxes to 55% for the 45% payers, 40% would have to go to 50% and 20% would have to go to 30%. What we agreed on here is that you can vary tax threshold and tax rates, and you can vary the areas in which they come in. So you could drop your lower rate of tax and increase your upper rate of tax, or vice versa.

Let's suppose we have a lockstep, because it is easier. You have got a total tax take of £6.8 billion. You increase that by 1%, so you have got more money in. It may, however, have effects somewhere else in the economy. Things happen when you increase taxes. If you reduce taxes, it may spread more benefit around the economy, and so on, but you have raised less tax, and you can no longer say of the block grant, "We'd better have more money from that." With power comes responsibility. Parliament becomes more accountable to the electorate, if you like. It has the freedom to move the taxes, but it has to live with the consequences, and that brings risk.

If you have risk, you have to be able to deal with risk, which is why we put in borrowing powers in another part of the paper. Scotland will have to be able to borrow to take out fluctuations in tax revenues due to economic circumstances or due to whatever the Scottish Government decide to do with tax, so we are going to allow the ability to borrow. We could not, in the 10 weeks that we are talking about, decide what that threshold should be, how much they can borrow, how they can borrow and so on. There has to be fiscal responsibility, because down in the UK, you have credit rating agencies saying, "This is your borrowing relative to GDP." We have not had time today, but I believe that today is the autumn statement, and a lot of those numbers will be in there. Rating agencies are saying, "Be careful how much you borrow. Watch that you are living within your means." Anything that Scotland does will have to be in consultation with what is happening down in the UK.

Do not ask me to go down the route of asking me to outline what consultation means. With another hat on, it is like asking, "What is significant? What is material?" All I know is that the two Governments will have to work closely together so that the sterling position is protected, but also so that Scotland, having been given the freedom to change taxation, can even out fluctuations. There is risk, but with power comes responsibility, and with responsibility comes an element of risk.

Q24 Pamela Nash: You mentioned a couple of things. One of my colleagues will ask more in-depth questions on borrowing later, but I wanted to check something. You said that there was not a threshold specified in the report. My understanding was that there would not be a threshold. I think you just said that there was not a threshold put because you did not have time to calculate it.

Lord Smith of Kelvin: Do you mean a threshold for taxation?

Pamela Nash: For borrowing.

Jenny Bates: The report says that it needs to be consistent with the UK framework, and that is something that the two Governments will have to sort out in implementation. You are right that there are limits. The precise form of borrowing in future is something that the Governments will have to agree as part of implementation, but it would need to be consistent with the overall UK framework.

Lord Smith of Kelvin: I think we used the words "increase" and "sufficient" somewhere in the document, unless they were taken out by someone.

Q25 Chair: But that should not pose a difficulty, because I remember that those parties that were pressing for independence agreed, as part of their plans for a shared currency, that there would be a pact on borrowing limits. The principle of a borrowing limit being agreed is not something that should cause any problem, I would have thought.

Lord Smith of Kelvin: I would not have thought so. Consistently through the document, we talk about two Governments talking together and showing respect for each other.

Chair: Yes. Jim, you wanted to follow on.

Q26 Jim McGovern: Lord Smith, on the subject of income tax, the report indicates that there is possibly a weak understanding by the general public about income tax, and I freely admit that I have a weak understanding. Following the report, last week my wife Norma said to me, "Jim. Who employs you?" I said, "I think I'm self-employed." She said, "You live half your life in England, so if Scotland changes its income tax, will you pay the Scottish tax or the UK tax?" I said, "I don't know."

Lord Smith of Kelvin: Where are you domiciled?

Jim McGovern: Dundee.

Lord Smith of Kelvin: So that is your home.

Jim McGovern: But I spend more time in London than I do in Dundee.

Lord Smith of Kelvin: I spend my life everywhere around the world. That is your home. I will not go into MP expenses, but—

Jim McGovern: I hope not.

Lord Smith of Kelvin: If that is where home is, you will pay the Scottish rate, and you will pay income tax whether you are self-employed or not. It will be the Scottish rate.

Jim McGovern: If that is my main home.

Jenny Bates: Yes. So the point is that rules are already in place as a result of the Scotland Act 2012. There are options to vary income tax between Scotland and the UK, and the presumption is that that would continue under the new approach.

Jim McGovern: I can tell my wife when I get back.

Lord Smith of Kelvin: Is that good news or bad news?

Jim McGovern: I think it is probably good news.

Chair: You are very lucky that Norma is not here asking these questions. She would want a full explanation.

Q27 Lindsay Roy: You have already said that there has been a weak understanding of the current devolution settlement.

Lord Smith of Kelvin: Can you speak up?

Q28 Lindsay Roy: Sorry, I have a sore throat. You have already said that there has been a weak understanding of the existing devolution settlement. How can we enhance understanding of the new one? It is very complex.

Lord Smith of Kelvin: It is complex. I cannot solve all the world's problems at once. I am just seeing that even with the existing settlement, people are unsure what is there. This is much more complicated. We all have to try quite hard to get the messages across to people on exactly what the Scottish Parliament will be responsible for in the future as well as now.

Q29 Lindsay Roy: Who would you say would have key roles in that?

Lord Smith of Kelvin: Schools, but also political parties and both Governments, because people in other parts of the UK need to understand it, too. If there are further plans for Wales and Northern Ireland, it becomes ever more important to understand exactly what is there. Look, I don't have an answer and I don't want another commission, okay? But genuinely we have to find ways of making sure people understand it, because they do not at the moment.

Q30 Lindsay Roy: Not an idiot's guide, but a simplification?

Lord Smith of Kelvin: Yes, a simplification, and actually it can be stated fairly simply. I was very pleased that a lot of the tabloids in Scotland got behind what we were doing, by encouraging the public to write in and so on. They have an amazing ability to take what is difficult to read in some of the broadsheets and put it down in very simple terms. It is people like that who can actually spell these things out. I was reading some of these newspapers to understand what we were doing!

Lindsay Roy: You are doing a good marketing job for the popular press.

Lord Smith of Kelvin: I read big newspapers as well, but the tabloids state a lot of things very simply and people do need that; even I need it. They are very good at just setting things down in nice, simple terms.

Chair: You are doing very well for someone who is not involved in politics, I must say, as you stroke the tabloids as well. You're really good!

Q31 Graeme Morrice: This is just a follow-up point from what Lindsay was saying. When you were engaged in public consultation on your report, did you find that members of the public or organisations out there—civic Scotland or whoever—were aware that there was a Scotland Act 2012? Since the establishment of the Scottish Parliament back in 1999—obviously, that followed the referendum and the Bill that was passed by the newly elected Labour Government in 1997—we have had another Act of Parliament to give even more powers to the Scottish Parliament that clicks in in the next and subsequent financial year. I find that people just don't seem to know about that Bill or Act and the additional powers.

Lord Smith of Kelvin: Some people knew and some people weren't even clear that Calman was the 2012 Act—

Graeme Morrice: Exactly that—Calman.

Lord Smith of Kelvin: This is a different thing. That is another point that we need to get across to people. Calman, a year later or whatever, became the 2012 Scotland Act. That, in many respects, is only now and next financial year going to be implemented. It just takes that time for various tax powers and so on to come in.

I hope we are agreeing here. If this goes through in September, October or whenever with the new Government in Westminster, you can tell your wife, Jim, that it will be 2018-19, perhaps, before some of these things happen. They could happen earlier. One thing we have asked, as you probably saw, is for 16 and 17-year-old voting to be fast-tracked, and that is something a Westminster Government could do to a Scottish Government. They could say, "You will be empowered if you should choose to do this." It still has to go through the Scottish Parliament, but if the Scottish Parliament votes for 16 and 17-year-olds to have that, it could be implemented in time for the Holyrood elections in 2016. If it is left until after the Act that goes through to put this on the statute books, that will be too late.

Graeme Morrice: Well, an incoming Labour Government next May will obviously reduce the voting age to 16 for all elections.

Chair: Let's leave that aside and come back to Pamela.

Q32 Pamela Nash: To be clear, one of the reasons why the Scotland Act 2012 has taken so long to implement is that the infrastructure for the collection of income tax did not exist in Scotland previously. That will obviously help to speed up the implementation of your report, Lord Smith.

I will move on to more detailed questions on income tax, but we were discussing, using income tax as an example, the risks and benefits of the transfer of responsibility to the Scottish Parliament and Scottish Government. How does that fit in with the very important principle of the commission not to cause detriment to the UK or any of the constituent parts? How wide-ranging is that clause and how could any detriment to Scotland or any other part of the UK as a result of that be balanced?

> ***Jenny Bates:*** I think that, as Lord Smith was saying, once income tax is devolved—some of the other principles that are set out in a bit more detail in the fiscal framework section of the document go into a bit more detail about how this would operate under the principles the commission would like to see.
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> The key thing on income tax, as Lord Smith said, is that once the power is devolved, the block grant is adjusted and what happens then is a function of what decisions a future Parliament in Scotland makes. So, if taxes were to be put up, more revenue would flow to the Scottish Parliament; if taxes were cut, less revenue would flow to the Scottish Parliament. And that is something that a future Scottish Parliament would have to make decisions around, based on what it judged the right balance to be.
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> This is really about devolving the power and then it is up to the future Parliament and future Government to decide where they want to draw that line in terms of how much revenue to raise, or not raise, in future. So it is devolving the power and then the revenue that flows from that is a function of what decisions a future Parliament makes.

Q33 Pamela Nash: But it could end up causing a detriment, too. However, you are saying that would be the responsibility of the Government and not of the decisions that have been made.

> ***Jenny Bates:*** Exactly. The transfer of the power is not saying—
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> ***Lord Smith of Kelvin:*** At the time of transfer, no detriment. After that, you are devolving powers and it is about how they use the powers. So, you could have changes in taxation either side of the border, but the actual move of giving them the power doesn't bestow any benefit or cost either way.

Q34 Pamela Nash: Okay. So the principle is that it will not cause detriment to the UK as a whole, nor to any of its constituent parts, at the time of transfer?

Lord Smith of Kelvin: Yes.

Jenny Bates: Just in terms of how this operates within the fiscal framework section, there are some more detailed principles that kind of work through how this would operate once the power is devolved.

Q35 Pamela Nash: Was the obvious risk of tax competition within a UK with different tax rates considered by the commission and its members when this was being discussed?

Lord Smith of Kelvin: It was talked about, but all five eventually signed up for the income tax to be devolved in its entirety, save only measurement of tax, which is very important. Once you get into that kind of tax competition, it is very difficult. And personal allowance.

Q36 Pamela Nash: May I just ask: was horizon scanning being done for different possibilities of devolving income tax? There is concern about higher-rate taxpayers, being mobile, leaving Scotland if income tax goes up; indeed, if income tax drops for them, maybe there will be a movement in from other parts of the UK. So, was horizon scanning done by the civil servants in order to provide that information to the commission?

Lord Smith of Kelvin: In general terms, but it is up to Governments—the Scottish Government of whichever hue it is then. They have to look at what they will do with those powers. Whenever you move tax rates, you have to think of the long-term consequences of that. I just believe that people will be more responsible when they have the authority and they have got the accountability.

Q37 Pamela Nash: There is no point in devolving the power if we are not considering the fact that it might be used at some point; that is the point of devolving it. So what I am asking is this: was horizon scanning done prior to that decision being made, and did the commission have that information?

Jenny Bates: The decision was about the devolvement of the power rather than how it would be used once it was devolved, but there was discussion around what the long-term implications of having this power would be. And in paragraph 95(7), which refers to the fiscal framework, there is a specific point about the need to have greater independent fiscal scrutiny of the decisions that will be made by a future Parliament, which reflects the sense that people were of the view that there would need to be a good understanding of what the operation of this power would look like over time when those decisions are made. That was part of the point of looking at fiscal scrutiny.

Q38 Pamela Nash: Okay. So that information was given. Why has the personal allowance remained reserved at UK level?

Lord Smith of Kelvin: It was felt that Scotland is still part of the UK, that income tax would still have elements of it where it is a shared tax, so the measurement of income, very importantly, remains a shared and a UK-based system, and personal allowance also showed that it is a shared tax, but the elements of rates and bands—absolutely devolved.

So it was to show we are still part of a shared taxation system, and parts of it—a substantial chunk of it—involve £6.8 billion of variation.

Q39 Pamela Nash: I'm sorry but I'm still not clear on this. I can understand the argument for reserving some elements of income tax and devolving others, but why was it felt that the personal allowance specifically should be calculated at a UK level?

Jenny Bates: I think, as Lord Smith says, it was a reflection of the sense of where the shared element of income tax is. One way to think about the personal allowance is that it defines the point at which people start paying tax, because it is the element of income that is untaxed. I think there was some sense that having a common definition of where people start to pay tax should be part of the shared element of income tax.

Q40 Chair: Notwithstanding that, presumably it would still be open to the Scottish Government, with these powers, to circumvent that, if necessary by creating a nil tax band above the level of the personal allowance, which effectively would increase the personal allowance but would not use those words.

Lord Smith of Kelvin: Yes, they could, but "circumvent" is not right. Above the personal allowance, yes, you're right; they could have a zero-rate tax band.

Q41 Chair: Similarly, if the UK Government decided to increase the personal allowance, my understanding of the "no detriment" principle is that because it would result in a loss of tax income to the Scottish Government due to some people being taken out of tax, the Scottish Government would have to be compensated for that, because it would be a decision taken elsewhere whose financial impact they would feel.

Jenny Bates: You are right that there is an element in the more detailed definition of "no detriment" in the fiscal framework that talks about after the point of devolution of the policy, but it is about what happens to the operation of policy after devolution. That is section 4 of paragraph 95. Again, this is principles, because the commission operates in terms of principles. The principle exactly is that where one Government makes a policy decision after devolution that has a revenue effect on the other, in either direction—whether it increases or decreases—either way, symmetrically, it will be offset.

Q42 Chair: Can I just clarify, though, that there would still be a way for the UK Government effectively to get round that? Instead of increasing the personal allowance and then incurring an amount that they had to pay to the Scottish Government, they could, if they wished, create their own nil tax band, which would have the same effect as expanding the personal allowance. If they created a nil tax band, it would have no effect in Scotland and avoid the need to pay compensation.

Jenny Bates: I think the way you have explained that is right, yes. The UK Government could affect rates and bands in the rest of the UK that would not directly affect Scottish taxpayers.

Q43 Chair: There is a need to clarify for people what the "no detriment" principle means. I was struck by one of the exchanges that took place yesterday with one of the MSPs. I think you, Lord Smith, said, "If the Scottish Government wanted to bring additional benefits, it would have to find some way of paying for them", which seems reasonable. The MSP responded, "But that being the case, one could argue that the Scottish Government could be put in a negative position or at a disadvantage compared with the current situation." They obviously had not quite grasped the principle that if you make a decision, you have to pay for it.

To be fair, you went on to explain that to them. The policy on cake of having it and eating it has been prevalent in the Scottish Parliament for quite some time. The idea that you have to pay for your decisions might be quite a novel one. How will you make sure that the reality of the new situation is conveyed without people howling that they are being betrayed, sold down the river, disadvantaged or something similar?

Lord Smith of Kelvin: I think we are being pretty robust in our language. You talked about additional fiscal scrutiny, I talked in general terms about scrutiny and we talk about scrutiny in the body of the report. By that I mean Committees like this, but I also mean scrutiny in plenary sessions. If you have power, you have responsibility. All MSPs are going to have to realise that these are amazingly big new powers, and they have to be used responsibly. I have said a lot on this in talking about external, independent scrutiny, the power of Committees like this and so on. I think Holyrood will have to ensure that there is proper scrutiny. These are very big decisions.

Q44 Mr Reid: Lord Smith, in answer to the Chair's question about the personal allowance you said that under these powers the Scottish Government could effectively increase the allowance by having a zero rate. Would I be right in saying that the only additional power that the Scottish Government and Parliament would have if the personal allowance was devolved would be to cut the personal allowance?

Lord Smith of Kelvin: We never went into that in detail.

Mr Reid: If, under the powers that they are being given, they can effectively increase the personal allowance, as you've said, then if the personal allowance was to be devolved surely the only additional power that would give to the Scottish Government and Parliament would be the power to reduce the personal allowance. Is that right?

Lord Smith of Kelvin: You could logically say that.

Mr Reid: I think that is a yes.

Lord Smith of Kelvin: No, it is not. The point is that that sort of discussion never came up. The feeling was that the personal allowance is part of this uniform tax base system that we have in the UK, and Scotland is still part of the UK. It was important to keep that and the measurement of income.

I hear what you are saying, because if they can produce a zero rate tax, what else would you need except the ability to reduce it? I hear you.

Mr Reid: Is the answer not yes?

Lord Smith of Kelvin: What do you think? You're a mathematician; I am only an accountant.

Jenny Bates: I think there is a technical term in law, in that some things are referred to as the personal allowance, whereas it would be referred to as a zero rate band if you were doing it on top of the personal allowance.

Q45 Mr Reid: But in practical terms, I am right that the only additional power the Scottish government and Parliament would have, if the personal allowance was devolved, would be that they could reduce it?

Jenny Bates: The effect of it would be more symmetric, yes. With the personal allowance set where it is, the thing you can do is to take more people out of tax by adding a zero rate. Under this model there isn't a way to do that the other way round, whereas if you devolved the personal allowance you would be able to increase it or decrease it.

Lord Smith of Kelvin: It is difficult to argue with your logic. The only reason I'm being a bit precious is that I don't think that any of us think the personal allowance ought to be devolved so that it can be reduced. I don't ever remember that kind of conversation.

Mr Reid: But that appears to me to be the only practical power—

Lord Smith of Kelvin: Well, that's fine. If you're sure of your logic there, then I'm sure—

Chair: I think, to be fair, a number of people subsequently have said a number of things about the proposals you are making—"If only we had x, then such and such." Alan is raising the entirely legitimate point that, effectively, had the personal allowance been devolved the only difference would be that they would have been able to cut it, because we have already identified that effectively, they could increase it under the scheme you are proposing. The answer is yes, but it wasn't a trick question in the way that it might have appeared.

Q46 Mr Reid: May I just ask another question on income tax? Lord Smith, earlier on you gave an estimate of 2018-19 for when the new powers over income tax could be devolved to the Scottish Parliament.

Lord Smith of Kelvin: It may be that Pamela is about to correct me, because you were saying that was because of systems as much as anything else.

Q47 Mr Reid: The point I was going to make was that because of the Calman commission's proposals, which became the Scotland Act 2012, the power to vary all the rates up or down by 10p in the pound comes into effect in 2016-17. It would appear to me that introducing the Calman proposals and that variation is the complicated part of the administration. Surely the extra powers being devolved to vary the bands, although extremely significant politically and in terms of setting a tax policy, are fairly straightforward in administrative terms, and just require a simple change to the HMRC computer programme. I do not really understand why those powers cannot come in at the same time as the Calman proposals in 2016-17.

Lord Smith of Kelvin: I may have been misleading the Committee, because I do not know how long it will take to implement. It is simply that each time we change things, it takes an awfully long time to come in.

Jenny Bates: To be honest, that is a practical question that I think you will have to address to the Governments that are implementing this. We didn't look at—

Mr Reid: I thought that you were here to answer these technical questions.

Jenny Bates: We were looking at the powers that are being devolved. That is quite a specific question about how something would be implemented.

Q48 Mr Reid: Have you had any feedback from the Treasury about when this would come into effect?

Jenny Bates: Not specifically on that, no.

Lord Smith of Kelvin: But I was told, very much in outline terms, that it is not difficult to do that and it could be that it comes in earlier than that—by a Treasury official, actually. I said, "Is this impossible? Would it mean whole new systems?" Varying allowances, reliefs and so on are just a nightmare, because there are thousands of them, but varying just rates and bands is apparently not too difficult technically, so it may be that you are right. If Pamela's right, as I am sure she is, that the systems have already gone into place for different rates, it may be that it could be done an awful lot more quickly. But we can maybe find out about that.

Q49 Mr Reid: Would you write to us, if possible?

Lord Smith of Kelvin: Let's see what we can find out about that.

Mr Reid: Okay.

Q50 Chair: As long as it can pass the Norma test with your colleagues.

Lord Smith of Kelvin: Listen, I am not signing up for that.

Q51 Pamela Nash: Just to be clear, with all this legislation and the current Scotland Act, it could be quicker. The point I was making was that setting up the infrastructure was an added thing that had to be achieved this time, but that won't be the case next time. On that point, these powers are coming in in April—the devolution of 10p in income tax is coming in this April. Do you think that should be going ahead at this stage, or do you think we should wait until we are in a position where we can devolve all income tax?

Lord Smith of Kelvin: I think the Act has gone through and it has to be implemented. We certainly have not come in here and said, "Can we just put the Scotland Act 2012 on hold, while this works its way through?" It is an Act and it will be implemented. Do you agree, Jenny?

Jenny Bates: indicated assent.

Q52 Graeme Morrice: May I turn to VAT? Obviously, one of the proposals in your report is to have devolution of half of the VAT receipts raised in Scotland; they would go to the Scottish Parliament. Why that particular figure?

Lord Smith of Kelvin: The feeling was that we wanted to devolve more tax. The thing about VAT is that this is controlled by Europe; it is not something that you can play around with. Scotland could not have entirely its own VAT ability to change rates and so on. That is just absolutely impossible. It is slightly more subtle than half of receipts; it is 10 points of VAT income. If you imagined a future UK Government reduced to 17% or 18%, the 10% would still be collected on behalf of Scotland—right? It is 17%, so we will get 8.5% of that under the block grant. It comes out of the block grant and 10p on every VAT-able item comes into the Scottish Exchequer, collected by the UK. Where do you fix that? Do you say it should be 15 points? That was talked about. Five points was talked about, and it just seemed a reasonably chunky number and a meaningful assignment of additional revenues, and that is where we came out.

Q53 Graeme Morrice: But did you look at other options, for example, Scotland's population compared with the rest of the UK, or the GDP share of receipts?

Lord Smith of Kelvin: We looked at a lot of these things. We thought about something relatively simple, rather than a percentage of total revenues. It means that if the Scottish economy prospers, that 10% will go up. It will just go up through natural prosperity. If things that the Scottish Government are doing reduce the amount of VAT activity, that take will go down, but there is a possibility, supposing that there is austerity at UK level and there is more cutting, say, of the block grant, that that money would still be in place. As long as your economy is tracking reasonably well, you would still be getting 10 points of whatever sales tax is being collected, outside something happening to the block grant, which may or may not be being reduced, for other reasons. It is an opportunity for Scotland to rise or fall on the prosperity of the economy that is there. We just felt that although this is not something that can be devolved, it can certainly be assigned, and that it would make the Scottish Parliament responsible for a bigger take. Very roughly, income tax is about £6.8 billion of what we are talking about, and about £4.5 billion is 10 points on VAT for Scotland, so that is an £11 billion transfer of money.

Q54 Graeme Morrice: Okay. Did you consult HMRC on that conclusion about the 10 points, or on any of the options that you considered?

Jenny Bates: We got input from HMRC on that assignment, in terms of the different ways that it could be done.

Q55 Graeme Morrice: Okay, and how easy or difficult will it be to implement?

> ***Jenny Bates:*** The general advice that we received was that assignment of VAT would be more straightforward than some of the other taxes that were under discussion for assignment at various points. Obviously, the detail of how that would be done is something that needs to be done in implementation by HMRC, but we were certainly not told that it was not implementable or could not be done.

Graeme Morrice: Okay, so we will need lots of black Fridays and cyber Mondays to increase the tax take through a sales tax. You don't need to answer that—it was a joke.

Chair: Can I come back to VAT, just before we move on to corporation tax, which I think was going to come next, wasn't it?

Graeme Morrice: Yes.

Q56 Chair: I want to come back to the question of "no detriment". If the UK Government increases VAT to, say, 30%, you would imagine that they would get more revenue, but also that there would be a choking off of demand, so the Scottish Government's 10-point take could possibly fall as a result. In those circumstances, would the Scottish Government be compensated because of the "no detriment" clause? What would happen if it was the other way around? If the UK Government cut VAT from 20% to 15%, there would presumably be an expansion of sales, but although the UK share—as it were—would fall quite drastically, the Scottish Government's share would not. Indeed, it could be expected that the Scottish Government would get a boost because sales would increase since tax overall had been cut. In those circumstances, would something be taken off? How would VAT flexibility and "no detriment" work together?

> ***Jenny Bates:*** Again, it is in the explanation of "no detriment" in the fiscal part of the document, paragraph 95(4). The principle is as you described: where either Government makes a decision that directly affects the tax revenues or expenditure of the other, you would expect to see a reimbursement in either direction.

Q57 Chair: Fine. So you might end up with the Scottish Government having some of the gain taken from it on the "no detriment, no gain" principle.

> ***Jenny Bates:*** Yes. You would have to look at the evidence behind it. Some of that is policy and some of it is the economy, so the principle says very clearly that there would need to be a shared understanding of the evidence for that, for that very reason: to be able to understand which of those effects was operating.

Q58 Mr Reid: What happens with the 5% rate?

> ***Jenny Bates:*** The Commission was not specific in detail on that, in part because it is a very small share of VAT revenue. That is a small part that would need to be looked at as part of the implementation.

Lord Smith of Kelvin: Am I right in saying that the intention was that the Scottish Government would get the 5% rate and 10 points of the other rate?

Jenny Bates: I would need to check what the agreement actually says—I think that it only refers specifically to the 10%.

Q59 Mr Reid: Yes, it just says 10%—it doesn't mention the 5% rate at all.

Lord Smith of Kelvin: As Jenny just said, the actual take from the 5% rate is very small indeed, but perhaps we should get back to you. It may be a drafting issue.

Mr Reid: Okay.

Q60 Mark Menzies: Changes to air passenger transport duty are highly political and highly sensitive—in fact, the issue has even featured in this afternoon's autumn statement. Under your proposals, if the Scottish Government were to abolish or reduce air passenger duty, would the UK Government cover the loss of income or would the Scottish Government have to raise taxes to cover it?

Jenny Bates: Again, it is about the operation of the first part of the "no detriment" principle. At the point of transfer, an adjustment would be made to the block grant for the revenue lost by the UK Government—the equivalent revenue that is raised in Scotland would be adjusted in the block grant. After that, once the Scottish Government have authority to have APD, they could increase it, decrease it, or have a different format for the tax. If they increased it, they would keep the revenue, and if they decreased it, they would lose the revenue. If they got rid of it completely, they would lose all the revenue that came from that tax.

Q61 Mark Menzies: I am unique among the people around the table because I represent a north of England constituency. It is something that colleagues who represent north of England constituencies are particularly concerned about. For example, I have Blackpool airport in my constituency. If you speak to people from Newcastle, Liverpool, Leeds Bradford, Durham Tees Valley and, indeed, as far south as Manchester, they are concerned that this could have medium to long-term implications, and impact on decisions of airlines. Does that bring them into conflict with one of the principles of your commission, which was for any conclusions not to cause detriment to the UK as a whole or for its constituent parts? Do you accept that if the Scottish Government chose to cut or abolish APD, that might cause detriment to some of the airports that I outlined in northern England?

Lord Smith of Kelvin: I think again that the transfer of the tax would not cause detriment. What happens—we were talking only about powers—is about what people do with those powers afterwards. You may find that a green party wants to increase APD but we have huge representation from people and civic Scotland to reduce or abolish it. It was on the grounds of tourism, and the cost of doing business—you have to go down to a hub to do things—but the effect on, for example, Newcastle, or on Bristol if Wales was to follow suit was talked about.

At the point of transfer, there is no detriment. Thereafter, whatever the Scottish Parliament does with things could create different tax regimes for airports. The knock-on effect and what would happen was talked about, but we were talking about powers, not what you do with the powers.

Q62 Mark Menzies: As part of this work, has any modelling been done to try to anticipate, were a reduction in APD to take place, what impact that is likely to have on airports to the north of England? I had the discussion with the Chancellor a few months ago and he was not prepared to budge on APD from small regional airports on the grounds that, potentially, a large sum of revenue was affected. If we are starting to see this creep in by the back door, that would be a concern for MPs who represent north of England constituencies.

Jenny Bates: The commission did not do any modelling in terms of looking at the impact on airports in the north of England of future use of APD. As Lord Smith says, it was about the devolution of the power and the discussion around the table was a mix of views on what you might do with APD were it to be devolved. Certainly, people were arguing in both directions about whether it would go up or down. We were looking at the point of transfer. In terms of the point that we made earlier on the wider fiscal scrutiny for the Scottish Parliament, as and when it receives the power it would need to look forward for itself in terms of the revenue effects of having a tax and changing it, and what the long-term effects of that would be. That is why the commission was keen to see that there was greater fiscal scrutiny of the decisions that the Parliament would make.

Lord Smith of Kelvin: Several hundred million pounds are involved in this; it is not a trivial tax. There is a push for it. A lot of people have done some modelling for Scottish airports and tourism receipts. Does that really pay for the several hundred million pounds—£270 million pounds or something in tax—that would be lost?

Q63 Chair: That is right, but that is a decision for the Scottish Government. The question of review and supervision that might be undertaken in the Scottish Parliament would not, understandably, cover the impact on north of England airports, because they would not see that as being their responsibility. Therefore, there would be a detriment, quite clearly, to another part of the country. However, that would not be part of the Scottish Government's or Parliament's remit to examine. Somebody else would have to pick that up.

Jenny Bates: That is probably right.

Q64 Graeme Morrice: Okay. So we are devolving 100% of income tax. Why not national insurance as well? It is not a criticism.

Jenny Bates: The general point remains that this is the view of the parties that came together and agreed on which things should be devolved and which things should not.

Graeme Morrice: I take that as a given. What was the reason for their excluding it?

Lord Smith of Kelvin: Let me put it this way. It is all part of a package. Relatively early on, the decision was taken that pensions should not be devolved. National insurance is quite tied in with pensions. Pensions have to be paid for, and national insurance has a link—a pretty direct link in some areas and an indirect link in others—with pensions. So it was felt that you should not break the relationship between those two. That is the bottom line.

Q65 Chair: So effectively national insurance followed pensions. That is the logical way to think of it.

Lord Smith of Kelvin: I said I would not give you a blow-by-blow account of things, but we started off saying that pensions would not be devolved, and then it was a case of, "But they have to be paid for".

Q66 Chair: Do I take it, then, that the question of devolving pensions was not a big issue and not particularly argued for? I take it people did not go to the wire on it and nobody threatened to fight anybody else for it or anything like that. Is that reasonable?

Lord Smith of Kelvin: I think I do not want to go into the detail of it.

Q67 Chair: No, I think you do not, but I think we do. We want to clarify the matter. Unless I am mistaken, you are saying that effectively the question of pensions was given up. There was nobody really battling for that.

Lord Smith of Kelvin: That is not what I said at all. The idea that pensions would not be devolved was arrived at before the national insurance area.

Q68 Graeme Morrice: I understand your explanation with regard to national insurance and its link to pensions. I am sure we will cover pensions and other issues later, but I want to turn to corporation tax. The suggestion is that that is not being devolved. Why?

Lord Smith of Kelvin: First of all, it was the five parties that decided this.

Graeme Morrice: Of course. I understand it is not your decision.

Lord Smith of Kelvin: Just in case the question is about to come up, because I understand there was something in the autumn statement about Northern Ireland, there were rumours around at the time that there might be something. You must be aware of this. It has been talked about for some time that Northern Ireland may or may not get powers over corporation tax. We discussed this and we agreed that the fact that Northern Ireland, or indeed anywhere else, might get corporation tax devolved, did not get us away from thinking about Scotland and about what is right for Scotland, and whether corporation tax be devolved to Scotland.

The five parties agreed that we would not devolve corporation tax. In that, we were assisted a great deal by information we had had from civic Scotland, where a lot of people understand corporation tax. The STUC and business organisations strongly said, "Do not devolve corporation tax", and unimpeachable organisations such as the Institute of

Chartered Accountants of Scotland, of which I am a member and which understands tax, said, “Do not devolve corporation tax.” There was a very strong body of evidence from all these people that devolving corporation tax would lead to behavioural issues, if I can put it that way, and it would not be in the interests of Scotland to devolve. That was the STUC and business organisations all coming together to say that, and the five in the room all agreed it should not be devolved.

Q69 Graeme Morrice: So all five parties agreed—

Lord Smith of Kelvin: Absolutely.

Q70 Graeme Morrice: Despite the fact that it was in the Scottish Government’s White Paper on the independence referendum that it should be, and the fact that they were looking at reducing it by 3p in the pound. Nevertheless, John Swinney, the Scottish Finance Secretary, signed up to that.

Lord Smith of Kelvin: All five parties signed up to that. On a matter of procedure, may I say that we did not sit taking votes—4 to 1, 5 to 0, 3 to 2 and so on. If I felt that that was where it was, I kept talking to people about coming together to find common ground, and either someone would make a concession or move ground a bit, and every decision in there was agreed by everyone.

Q71 Graeme Morrice: No, I am sorry, and it seems like a very mature process that you presided over. You mentioned Northern Ireland earlier and rumours that the Chancellor, in his autumn statement today, might have been devolving its corporation tax. That is exactly what he did say today, so what is the difference between Northern Ireland and Scotland in that regard?

Lord Smith of Kelvin: I am not an expert on Northern Ireland. I believe that they have a long border with the Republic of Ireland and there are corporation tax issues there. But let me tell you that I agree with what the five parties and Civic Scotland said: I do not think it would have been in the interests of Scotland to devolve that. I think you would have ended up with behavioural issues.

Graeme Morrice: Thanks, Lord Smith; that is very clear indeed.

Q72 Mike Crockart: Turning to another omission from the report, oil and gas tax receipts, which we talked about almost constantly during the referendum campaign. Looking through the Smith Commission report—or agreement, as we are calling it—

Lord Smith of Kelvin: Smith agreement—good.

Mike Crockart: There is stuff there on onshore oil and gas extraction and that is the only point at which it says, “The licensing of offshore oil and gas extraction will remain reserved.” Was there any discussion about the potential for devolution of oil and gas tax receipts being assigned instead of VAT? Why did you go down the VAT route rather than oil and gas, since oil and gas has an obvious link to Scotland?

Lord Smith of Kelvin: It was talked about and it was agreed by all parties that we would not devolve that. I think some of the thinking around that would be on volatility. By the way, when we started these discussions, oil was nearer $100 a barrel and today it is nearer $70, so these decisions were being made with a slightly different oil price regime, but I think it was largely to do with volatility and we all agreed that that should not be devolved.

Q73 Mike Crockart: I accept that you do not want to go into blow-by-blow accounts, but was it pretty much an easy agreement among the five parties that the volatility—

Lord Smith of Kelvin: If I make anything sound easy in this commission—believe me, nothing was easy. People were arguing very strongly on this.

Q74 Mike Crockart: Equally, there are degrees of ease with which agreement is reached for various things.

Lord Smith of Kelvin: There was quite a discussion and eventually all parties agreed: no devolution of oil revenues.

Q75 Mike Crockart: And with the benefit of hindsight, it is obvious that that is a pretty good decision for Scotland, given the current oil price.

Lord Smith of Kelvin: Hindsight is a wonderful thing, but, never mind hindsight, it is a very volatile tax because it is subject to market supply and demand. You have got America totally self-sufficient in gas and just about to become totally self-sufficient in oil—it may even be an oil exporter if it finally decides to do that. And you have seen what is happening in other areas with OPEC and so on, so it is quite politically sensitive as well internationally. If you are choosing a tax, it probably would not be an easy one to choose, because it is subject to—

Q76 Mike Crockart: And that was the view of all parties in the negotiations?

Lord Smith of Kelvin: All parties agreed.

Q77 Chair: Can I just clarify? One of the issues about the oil price is, to some extent, when you fix it. If you fix it at the mid-point and that is what is considered in terms of no detriment, there is an upside and a downside. If, however, you manage to fix it at the very bottom price, presumably it is all upside. That to a lesser extent applies to a number of the other taxes and spending items where there will be degrees of variation. Will a snapshot or a moving average be taken, or will that be a technical issue for subsequent discussion?

Jenny Bates: I think it is an issue for a subsequent decision on how you do that.

Chair: As soon as I gave you an option, I realised that that was what you were going to say.

Jenny Bates: The parties were not specific on that in the way that they set out their principles.

Lord Smith of Kelvin: She is a Treasury girl through and through.

Q78 Jim McGovern: Lord Smith, I am not entirely sure what the Commission's terms of reference were, but I believe that the Barnett formula was to be excluded. Did that hinder the Commission's work?

Lord Smith of Kelvin: I was told that the Barnett formula would stay in place.

Q79 Jim McGovern: I think I am saying that any discussion about the future of the Barnett formula was to be excluded.

Lord Smith of Kelvin: We didn't discuss it. We just assumed the Barnett formula would stay. It is a very complicated formula, incidentally.

Q80 Jim McGovern: I'm sure. It is not one I understand.

Lord Smith of Kelvin: It is like the Schleswig-Holstein question; someone said only three people in the world understood it. One was dead, one was mad and the other had forgotten the answer. I have got to know a lot about it, but we did not go there. We believe that Barnett will be applied as it has been applied until someone decides not to. Barnett stays. That was said very explicitly so we didn't go near it or tinker with it. Barnett is Barnett.

Q81 Jim McGovern: I think my colleague, Pamela, mentioned the block grant earlier. It must be crucial.

Lord Smith of Kelvin: The block grant is what Barnett applies. When income tax is taken out, that amount—£6.8 billion—will come out of the block grant and appear as directly raised tax. The VAT assigned amount will come out of the block grant, and 10 points of VAT will be assigned in future out of the block grant. That is £11 billion of tax-raising powers now out of the block grant, which is the amount that comes from the UK.

Q82 Jim McGovern: On borrowing powers, which I think Pamela mentioned, if Scotland is to have increased borrowing powers, that would need to be funded almost by the UK taxpayer. Could that have an impact on the rest of the UK?

Jenny Bates: In principle, there is an interaction between what Scotland does on borrowing and the rest of the UK.

Q83 Jim McGovern: Does interaction mean impact?

Jenny Bates: Impact, interaction, yes. Lord Smith talked about that earlier in terms of the potential impact on the credit rating that the UK Government have for overall debt in the UK, which is why the Commission has said it would need to be consistent with the UK framework, and something that was sorted out between the two Governments, recognising that there is that potential linkage.

Q84 Jim McGovern: The notes I have here say that Brian Hilliard of Société Générale has said that it is not something people are talking about. I probably believe that. It is not a burning subject in the pubs and clubs of Scotland, but it could impact on the people of Scotland and the people of the UK. Is that right?

Jenny Bates: I think that it could potentially, which is why you would need to have the principles in the Commission recognising that there are interactions between what Scotland does on borrowing and what the rest of the UK does, so it needs to be done within a framework in a managed way and consistently with what the rest of the UK is doing. The scale of that impact depends on the scale of the borrowing and how any power was used in future. At the level of principle, therefore, there is recognition that these things can interact with each other, so it needs to be done in a framework that brings that together rather than done separately. That is the sort of principle that the Commission operated under.

Q85 Jim McGovern: Okay, so when someone says it is not something people are talking about, that is probably quite accurate, but if it starts to impact on people, they will start talking about it.

Lord Smith of Kelvin: It will have to be talked about. You can't have those sorts of tax-raising powers, which may create some volatility and the risk that Pamela was talking about earlier, without being able to smooth some of these things out by borrowing money. But you can't have unfettered borrowing powers without having regard to the UK's credit rating. It has to be done by quite skilful communications.

Q86 Jim McGovern: Skulduggery.

Lord Smith of Kelvin: Don't lead the witness.

Q87 Jim McGovern: Alan, you wanted to ask about that.

Q88 Mr Reid: On reforming powers, are the Scottish Government effectively getting the money from the UK Government? I will rephrase the question. Are the UK Government going to the market, borrowing the money and then lending it on to the Scottish Government, with the Scottish Government paying the same rate of interest as the UK Government paid to the borrowing market?

Lord Smith of Kelvin: I thought they were borrowing direct from market, but let me—Jenny, you understand these things.

Jenny Bates: So this is a question about how it currently works—the Scottish Government—

Lord Smith of Kelvin: No, how it will work, or—

Q89 Mr Reid: If you could explain how it currently works, and then the changes that your agreement would mean. That might be the best way.

Jenny Bates: So my understanding of the way it currently works is that the Scottish Government can either borrow directly from the UK Treasury or could issue its own debt. It hasn't chosen to do the latter yet, but has the power to do that.

In terms of how it would operate in future, the Commission has gone as far as setting out principles, but has not set out the precise detail of how that would work. So it has said that it thinks that the borrowing powers, as Lord Smith said, should be sufficient—that they should be increased, recognising that there is a wider level of risk, potentially, that the Scottish Parliament would need to manage—but the precise mechanism by which those borrowing powers would operate is something to be sorted out by the Governments in future. So the Commission itself has not been specific to that level of detail about how that should operate.

Mr Reid: If the Scottish Government was going out to the money markets and borrowing money at an agreed rate of interest with security being, presumably, assets that the Scottish Government has, what implications are there for the UK Government?

Jenny Bates: Again, it depends a bit on how the borrowing powers were operating. The reason that people think about the need to link these things together is about whether there is a sense that there is any kind of implicit guarantee, or otherwise, being offered by the UK on any borrowing that Scotland may be doing. So that is the reason that needs to be thought about within a framework.

Lord Smith of Kelvin: I think that is quite important, because if you go out and borrow direct, and people feel there is no implicit UK Government guarantee, the chances are you will pay more for the money—it is like a public loan board, or something. Probably the Scottish Government would have a natural tendency to say, "We need another £1 billion", or something, would go to the British Government—the UK Government—and they would go into the money market with the UK credit rating. If you go too far in the other direction—California, I think, went bust and there are other examples: this is the United States of America we are talking about, and individual states can actually go bust.

To me, it is inconceivable—and I think to anyone in these islands it is inconceivable—that a UK Government would allow a devolved Scottish Government to go bust because it over-borrowed. So if that is the case, there is effectively an implicit guarantee and, if there is an implicit guarantee, you have to talk very closely together, because no UK Government would say that the Scottish Government is completely free to go out with an implicit guarantee from the UK Government and borrow potentially recklessly. It just would not work. The UK Government would eventually say, "Hold on. That did not have our implicit guarantee", and then you are into all sorts of—

I think: trust people to be grown up and work together in a mature fashion, saying, "Look, we're going to have to smooth this out. You did say you'd give us sufficient and increase borrowing powers. We now need these and the way we'll do this—the smartest way to do this with the lowest interest rate—is to come through you." Or, "We are going to do this direct, but we're absolutely saying as we borrow, 'We have your implicit guarantee. Are you prepared to say that that's there?'"

Mr Reid: Yes, but if UK Government give the guarantee, then effectively the UK Government is the borrower.

Lord Smith of Kelvin: Yes.

Mr Reid: This is where I am not clear what the agreement is: whether everything that the Scottish Government borrow will be guaranteed by the UK Government and therefore effectively is UK Government borrowing, which as you indicated earlier would probably be at a lower interest rate than the Scottish Government could get by going out directly. I am not clear whether the agreement is that all borrowing would be done that way or whether the Scottish Government would have additional powers to go straight to the money markets, borrow its own money at a higher rate of interest, presumably giving its assets as security.

Lord Smith of Kelvin: It is to be discussed, right? All we have said is, "You cannot devolve tax powers and not allow the Scottish Government to be able to borrow money, to ease out fluctuations." We heard, when Mike was talking earlier, about North Sea oil revenues, and so on, that if something happened—you get economic shocks and wee tides come in, and various things. You have to be able to iron out these things. You have to be able to iron out these things. You have to be able to borrow to do that. Scotland has to be able to borrow against its tax base, but they can't do it, so they have to find a mechanism. Ten weeks is not long enough. I told your Chair that 10 weeks was long enough to arrive at these principles, but 10 weeks is not long enough for me to sort out with the Treasury exactly—I don't want that job either.

Q90 Chair: Can I just clarify a point? You mentioned over-borrowing. Over-borrowing, to some extent, is in the eye of the beholder. There are two things that the Scottish Government want to borrow for. One is the question of fluctuations in income. There can be genuine disagreements about whether downturns are temporary or structural. You can therefore have a tension about the figure that is arrived at. Secondly, there can be borrowing for capital expenditure, which again comes down to the question of aspiration versus economic sense.

In this structure, there is scope for all sorts of disagreement and political tension to build up, with accusations flying back and forth about bad faith and so on. The only consolation I take from this is that the Scottish Government and those who wanted independence did agree to this sort of mechanism when they were saying that they wanted to have a shared currency. Implicit in the shared currency was the idea of negotiations over borrowing limits for a separate Scotland with a shared currency. Presumably, it is doable, but it would be unreasonable not to predict that there were going to be tensions, particularly if one side had a vested interest in provoking conflict because they want to make the case for independence. Does that all seem reasonable to you? I think "yes" would do fine, actually.

Lord Smith of Kelvin: I think I will go into politics after all, because I am finding it—

Q91 Chair: You're doing fine. You praised the accountancy profession. You praised the tabloids. You have survived 10 weeks. You have obviously done well on it.

Lord Smith of Kelvin: Chartered accountancy is the only qualification I have, so it has done me okay in life. The two Governments have to talk together and they have to thrash out a workable way. If they are not going to respect each other, we are not going to get very far down the track on the borrowing powers, whether it is for capital expenditure or for smoothing. They just have to be able to talk to each other, and they will.

Q92 Chair: Of course they will, but there is an in-built tension because one side has a case for restriction—an in-built caution—and the other side has a natural tendency to want more because they have ambitions.

Lord Smith of Kelvin: But you could say that there is a natural tension within the UK Government between the Treasury and everybody else, because they are spending Departments.

Q93 Chair: To be fair, the Treasury do not stand for elections separately—at least, not to the best of my knowledge—from the spending Departments. There is a different sort of structural tension there.

Lord Smith of Kelvin: I know. I hear that; it is different. But they will just absolutely have to co-operate. Otherwise, the thing will become unworkable. The Scottish Government surely knows that, if it is taking on extra powers and the risk that Pamela talked about earlier, it has to have the power to smooth those out. Really, the UK has the credit ratings, so they have to talk.

Q94 Chair: Coming back to the other bit about the smoothing—it is also a question of capital expenditure, ambitions and so on. If there is a limited pool of capital expenditure available to the Treasury overall, it is a question of how that is then allocated. There is a tension there as well.

Lord Smith of Kelvin: I agree.

Q95 Lindsay Roy: So in effect, a memorandum of understanding is absolutely vital to see this through. In the past, we have had question marks over the strength of the MOU. People are saying that we need to put full faith in them and carry them through scrupulously.

Lord Smith of Kelvin: There will have to be a proper memorandum of understanding in a number of areas. The numbers that we talk about now are really quite material. The two Governments have to agree. Stakes are too high.

Q96 Lindsay Roy: They have to work together.

Lord Smith of Kelvin: They have to work together. It is in lots and lots of other areas. You will see that elsewhere in this document, we talk about Ofgem and Ofcom. As I was saying yesterday to the Devolution (Further Powers) Committee in Holyrood, it is not just about representation in Brussels on fishing and agriculture. There are huge areas: fuel poverty—just a whole lot of areas, and the Governments need to talk and respect each other.

Q97 Pamela Nash: You will not find anything but agreement here.

I would like to move on to those areas of policy that currently lie with DWP, some of which it has been suggested should be devolved in the agreement. Before I go on to individual benefits and areas, can I just ask whether a set criterion was applied by the members of the commission when they were looking at whether to devolve areas of DWP policy? Did they go through each benefit and say, "This is why we should do this?"

Lord Smith of Kelvin: We went through a number of benefits and looked at them individually, but we split them into universal and non-universal credits. Then there is a whole row of other smaller things that we looked at.

There was a lot of discussion and eventually it was agreed that Universal Credit was not something that you would devolve. You would have a Universal Credit box here and a separate one in Scotland. However, within Universal Credit it was felt that some things could be devolved for Scotland. It is not my specialist subject so I will keep deferring to Jenny for all this stuff, but within housing, housing benefit, timing of payments and the so-called "bedroom tax"—I hope that is not a political statement, but everyone knows what we are talking about—Scotland has different housing issues. Scotland does not perhaps have the "bedroom tax" sort of housing issue that perhaps the south-east of England has; so we will have levers in Scotland to address that.

That is one big area, and that is also important because housing, largely, is already devolved to Scotland—having this extra housing bit inside universal credit. Timing of payments is another area. If you started to go beyond that—again, it is tapering and—

Q98 Pamela Nash: Can I just ask either yourself or Jenny—

Lord Smith of Kelvin: You are going to someone who knows what she is talking about, then.

Pamela Nash: Just on universal credit, when the report was first published, one of the first lines I was sitting looking at was on whether housing benefit was devolved or not. It is something that there has been a lot of discussion about. The headlines were that housing benefit had not been devolved, because it is still within universal credit; but from the heads of agreement, it seems that almost everything to do with housing benefit from within Universal Credit has been devolved. Am I right in saying that, or is an element of housing benefit being kept?

Jenny Bates: No, you are right in saying that. So paragraph 45, I think, talks about the housing aspects of universal credit; there was a lot of discussion about how best to achieve some measure of devolution of housing, and the agreement in the end was to devolve these flexibilities. Those are the housing flexibilities within universal credit.

Q99 Pamela Nash: Yes; there was debate when the bedroom tax was introduced as to whether the Scottish Government already had the powers to mitigate it. I will not go into that debate again. I am on the record with what I think; but the Scottish Government said at the time that they did not have full control over discretionary housing payments, and also that they did not have any power over housing benefit. They have both of those powers now, don't they—or they will have if this is implemented?

Jenny Bates: Yes.

Pamela Nash: Thank you.

Lord Smith of Kelvin: That was a yes/no answer, by the way.

Pamela Nash: Yes, I very much appreciate it.

Lord Smith of Kelvin: It did not come from me.

Chair: Let me be clear; it was a yes answer. It was not a yes/no answer at all.

Q100 Pamela Nash: It is very clear in the report, but I think it is important to discuss this and get it on the record here as well that that has been devolved.

Another element I was interested in that was devolved is the Work programme. I just wanted to know, going back to an earlier discussion about detriment and how that impacts on that principle, about the Work programme, or whatever the Scottish Government has as an incarnation of a Scottish Work programme. If that it is more or less successful than UK-wide or than what it is at the point of devolution, would that have an impact on the block grant that it might receive from the UK Government? How will that work in terms of the financial implications?

Jenny Bates: The same principle applies to the devolution of the employment programmes, which is that spending forgone by the UK Government on those programmes is what, in this case, is added to the block grant, because it is a transfer of a spending power at the point of transfer. There is reference here to some element of the administrative costs of delivering those programmes being transferred as well.

Q101 Pamela Nash: Sorry, I probably wasn't very clear. It will have an impact not just on the cost of the programme; the success or failure of the Work programme will also have an impact on the cost of jobseeker's allowance and the ESA in some cases, which has been reserved as part of universal credit. Is there any difference in how this will be treated in terms of detriment? Will it have an impact on the finances?

Jenny Bates: Back to my favourite paragraph 94(4)(a), just to be clear that that applies. It is in the funding principles, as we talked about before, in terms of operation of policy once a power has been devolved. That paragraph is clear that it refers to the operation of both tax policy and spending policy. In that sense, the employment programme would be included in that.

That is a way of saying that, if in a future world the Scottish Government introduced a very generous employment programme that had the effect of keeping a lot more people on jobseeker's allowance—and that could be shown through a shared evidence base, because it would need to be understood by both Governments that that was the case—that was increasing spending in the UK on the remainder of universal credit, the Scottish Parliament would need to compensate the UK for that. That is the principle, but it is subject to lots of policy decisions.

Q102 Pamela Nash: I take it that the reverse is also true if there were a very successful employment strategy in Scotland, with people coming off jobseeker's allowance.

Jenny Bates: Yes, the reverse would be true. If it reduced the cost of Universal Credit for the rest of the UK, the UK would then need to compensate the Scottish Parliament in the case of providing savings. It is intended to be symmetrical in terms of whether it is a gain or a loss for the two Parliaments.

Q103 Chair: It is very easy in words, isn't it? Some of this has got to come out of the very big sums, particularly when you start thinking about the second-level impacts and consequentials. Some of this is potentially enormously difficult. Again, it comes down to the spirit in which these discussions are entered. If people want to find conflict and disagreement, they can do it quite easily. If people enter into this with a grievance mentality, grievances are there to be found.

Jenny Bates: You are right that working out the effects will be complex. It will require the two Governments to agree. The commission tried to be clear that this should be based on evidence as much as possible, so that estimates could be made rather than having arguments without an evidence base. But yes, that will be a feature of implementation.

Q104 Pamela Nash: You said that you were not going to give us a blow-by-blow account of the debate on these issues, and I appreciate why. However, I am still going to ask this. I am interested in why the commission decided that Universal Credit in particular should remain reserved. Was it based on a political argument that the welfare state is one of the key structures, the backbone, of the Union? Or was it just seen as too technically difficult to devolve?

Lord Smith of Kelvin: Both, but more policy and political than administrative difficulty.

Q105 Pamela Nash: More political. It was seen as a key part of the Union.

Lord Smith of Kelvin: Yes.

Q106 Pamela Nash: Okay. That is very interesting. I wanted to ask the same about pensions. You mentioned that that came off the table early on. Can you shed any light on why that came off the table so quickly and why it was not discussed?

Lord Smith of Kelvin: I asked for agreement and I got agreement.

Pamela Nash: You got agreement.

Lord Smith of Kelvin: There was not huge discussion.

Pamela Nash: I suspect I am not going to get any further information.

Q107 Chair: How big is huge? And, therefore, how big is not huge?

Lord Smith of Kelvin: Smaller than awesome, but bigger than insignificant—I don't know.

Q108 Mr Reid: I want to follow up on what we were discussing earlier. With the devolution of the Work programme, the Scottish Government may introduce its own Work programme, and the UK Government might say, "Your Work programme is less effective than our Work programme, and there are more people on jobseeker's allowance, so we are taking money away from you to compensate." The reverse could also be true. The two Governments are not going to agree, so do you envisage any independent body that could adjudicate on whether one or other of the Governments' accusations were correct and, if so, how much it cost the other Government? Do you envisage some sort of constitutional court or independent body to look at these issues?

Jenny Bates: In terms of the commission's work—

Q109 Mr Reid: In terms of accusations. It could happen in the Work programme or in a whole series of other areas, where the policy decisions of one Government cause a detriment to the other, or the decisions of one Government cause a benefit to the other's finances. What mechanism do you envisage for adjudicating on that?

Lord Smith of Kelvin: We really didn't go into that. We talked about "evidence-based". At some point, someone has to decide what that evidence is and whether the two sides disagree. Even after this thing has been enacted as law, never mind the draft clauses in January, this will be all about implementation. But a mechanism has to be found, because you can be arguing interminably, saying, "You did this to your Work programme and we did this to ours." There has to be a mechanism. We don't have time to decide.

Q110 Mr Reid: But there would have to be some mechanism in the future?

Lord Smith of Kelvin: We think so.

Q111 Mr Reid: We asked similar questions earlier about the personal allowance. The agreement on Universal Credit is that the Scottish Government would have the power to pay out additional benefits in areas of reserved responsibility—the power is there for the Scottish Government to pay additional benefits, but there is no power to cut them. So would I be right in saying that if anybody suggested that Universal Credit should be completely devolved, the only purpose would be to cut benefits?

> ***Jenny Bates:*** Let me just check something. I think the language on Universal Credit says "to vary". *[Interruption.]* Yes, paragraphs 45 and 44 on Universal Credit say that the Scottish Government have the power "to change" and "to vary", which means increase or decrease.

Q112 Mr Reid: It says, "to change the frequency of UC payments"; it doesn't say to change the amount.

> ***Jenny Bates:*** And then paragraph 45 says, "The Scottish Parliament will have the power to vary the housing cost elements of UC."

Q113 Mr Reid: Yes, just the housing cost elements. In paragraph 46, you say, "The power to vary the remaining elements of UC and the earnings taper will remain reserved." But further on in the document, you say that the Scottish Parliament will have the power to pay out extra benefits in areas of reserved responsibility. Again, the question is, do the powers in the agreement mean that the Scottish Government can increase benefits in reserved areas but not cut them?

> ***Jenny Bates:*** Paragraph 54 talks about the power "to create new benefits and top up reserved benefits". Yes, it is a power to create new benefits, so, in a sense, additional benefits—

Q114 Mr Reid: And to top up existing benefits.

> ***Jenny Bates:*** And to top up existing benefits.

Q115 Mr Reid: So if, contrary to the agreement, Universal Credit had been devolved, the only extra power that that would give to the Scottish Government would be to cut benefits. Is that correct?

> ***Jenny Bates:*** There were some other elements of flexibility within UC that could be devolved, in the sense that you have a housing element, but you also have other elements, so it would depend on how further devolution was done—whether there were further flexibilities within UC or there was full devolution of the whole of UC.

Q116 Chair: No, surely not. Surely, Alan is absolutely right. If this is in line with the previous discussion we had—that if you have a system where the Scottish Government have the power to increase anything they want, but it has not been devolved—the only power they don't have is the power to cut them.

Jenny Bates: In relation to paragraph 54, I think that is right, but just in relation to universal credit, which is an existing structure within which there is currently the power to vary. There were other elements of UC where they could be given a power to vary that is not in here.

Q117 Chair: Sorry, which powers are there that they do not have the power to vary? I took paragraph 54 as the ability to cover absolutely everything: "new powers to make discretionary payments in any area of welfare" is just carte blanche. That allows the Scottish Government to increase the amount of money that anybody gets for anything. Therefore, Alan is right to say that the only additional power that devolution would give would be the power to cut.

Jenny Bates: I am trying to be clear. There are two different things going on in this welfare package. There is a power around flexibilities within UC, which is one thing, and then there is an additional top-up power.

Q118 Mr Reid: It was the additional top-up power that we were talking about.

Jenny Bates: You were asking about the additional top-up, which is in paragraph 54. The power that is being devolved there is the power to create new and additional discretionary payments in any area and new benefits in devolved areas. It is a one-way power.

Q119 Mr Reid: That's right, it is one-way. If the agreement had been to devolve the whole of universal credit, the only additional power to the Scottish Government and Parliament would have been to cut benefits. Is that correct?

Jenny Bates: The point about Universal Credit is that there are a number of different ways that further devolution of Universal Credit could have happened. One of them would have been a full devolution and another would have been to offer more policy lever flexibility within universal credit. There are other elements of universal credit. There is the housing element, which is given variability, and there are other elements of Universal Credit where you could envisage, in theory, a flexibility being offered that isn't through the commission.

Q120 Mr Reid: The flexibility that is offered at the moment is to top up, so the only additional flexibility that would have been offered by full devolution would have been that ability to cut. Is that correct?

Jenny Bates: Within that element, it would have been that you could have done it to either top up or to vary.

Q121 Mr Reid: But, at the moment, the agreement says that the Scottish Government and Parliament can top up, so what I am suggesting is that if the agreement had been to recommend full devolution of universal credit, the only additional power—over and above what the agreement gives the Scottish Government and Parliament—would have been to cut.

Jenny Bates: I think that is probably right—

Mr Reid: Okay, totally fine. We will stop there.

Jenny Bates: I am trying to think through whether there were any other administrative flexibilities that are not in here and that are not about up or down level of payment, but we can come back to—

Q122 Chair: Logically, that must be the case: if there are a whole raft of benefits that are not being devolved and the Scottish Government have the power to increase each and every one of them, individually or severally, the only additional power they would gain by having them devolved, apart from possibly redrawing the whole thing, would be the power to cut them. It just seems to me a logical position.

Shall we work on that basis, unless you write back to us and say that is not the case? These points are immensely important because it has to do with the question of what powers are being transferred. I think it is reasonable to say, given the points that Alan has drawn out, that, effectively, the power to determine the level of Universal Credit is in fact being devolved by paragraph 54. That gives the Scottish Government the power to add anything to anything.

Jenny Bates: The other thing that I would draw the Committee's attention to is the second sentence of paragraph 54, which says, "The Scottish Parliament will also have new powers to make discretionary payments in any area of welfare," which is a particular use of quite a technical term, so you might want just to be clear that you understand what discretionary payments are.

Q123 Chair: A discretionary payment, I assume, means that you have discretion, and it is as simple and straightforward as that. What is the technical meaning?

Jenny Bates: I think we might want to send you something that just clarifies that for you.

Q124 Mr Reid: You said in answer to my question that I was probably right, so we will assume that I am. If at some other stage you decide I was not, will you write to us?

Chair: Does that seem reasonable? The cavalry were not leaping forward with a note. If this had been the civil service and a Minister, there would be notes coming forward if you had got it wrong, so we assume that you have got it right. That has been a very helpful clarification—certainly for us. Politically, that is enormously significant.

Lord Smith of Kelvin: You will not use that information until we are able to clarify?

Q125 Chair: Right, okay. This is being broadcast live and the tabloids, which you praised earlier on, will no doubt be watching this, so unless you come back to correct it, we will assume that it is correct.

May I turn to a question on health? I very much take on board the point you made earlier on, Lord Smith, about people not understanding, because all of us here have recently had e-mails and letters, instigated by the lobbying organisation 38 Degrees, from people who are under the impression that MPs control spending on health in Scotland, when clearly we do not. You can understand individuals being confused when funded organisations get it wrong. That is obviously something we will all have to work at.

The particular element of health that I wanted to look at was the question of abortion. You were quite forthright in your tone when you said you were "strongly of the view" to amend. May I clarify the evidence base you had for that assertion, that you were minded—I do not have the paragraph in front of me—to devolve abortion? On what basis did you come to that conclusion?

> ***Lord Smith of Kelvin:*** It was not hugely about evidence. What we were talking about here was the fact that people around the table felt that this was a health issue that had not been devolved, why had it not been devolved and, therefore, it ought to be devolved. There was a long discussion about it and we felt that on this particular thing we did not have enough time to sift through evidence and so on to ask, "Is it right that this should be devolved?" But there was a very strong feeling around the table that it should be, so we came up with a wording that said we are "strongly" of a mind. Again, everyone signed up to that, but we wanted a lot of discussion and evidence before it would be actually devolved.

Q126 Chair: But had you got in much evidence at all on this?

> ***Lord Smith of Kelvin:*** A lot of people knew quite a lot about it around the table—

Chair: No—had you got evidence in? Had people submitted evidence to you on this, or was it something that originated from the people around the table?

> ***Lord Smith of Kelvin:*** No, I am told that they had. We had quite a bit of evidence from outside as well.

Q127 Chair: How would you envisage the phrase "a process should be established immediately"? What sort of process is that? A 10-week special? "We have found the chartered accountant, so—

> ***Lord Smith of Kelvin:*** Not that level of quality to the thing, no. I honestly don't know the answer to that. People who understand health issues and so on should address this. We have done this for quite a number of different things.

Q128 Chair: No, I understand. That was not intended to be a trick question. I just wondered whether you had in mind a scheme for how to address this, and whether you thought it ought to be proceeded with so quickly that it caught up with the rest of the recommendations and was dealt with as part of the same legislative process.

Lord Smith of Kelvin: No, I don't think we were saying that. I think we were saying that you will notice that it is a slightly separate category from the other health issues, because we felt that a lot of things were strongly represented to us and we needed to look at it very carefully. We did not have the time to arrive at a conclusion.

Q129 Chair: Coming back to the question of process again, we discussed earlier the timetable that has been planned for the legislation and then implementation. Do you envisage that the consultation process will be sufficiently quick to allow any decision recommended here to be part of the same legislative process as everything else?

Lord Smith of Kelvin: I think it would be unlikely, but I would like to see something move on sooner rather than later, because the strength of feeling around the table and in the submissions that came into us was strong.

Q130 Pamela Nash: May I ask why, clearly, you and other members did not feel at this point that it was appropriate to say it absolutely should be devolved? The wording on this is different from the wording in other paragraphs. It does not say that it should be devolved, but that it should be looked at further. Why was it included at all?

Lord Smith of Kelvin: I just could not get consensus for moving forward. That is all I can say. What I did get consensus on was that it would be in a special category—that people should look at it pretty quickly. There were other issues that we all mentioned should be looked at, at some point.

Q131 Pamela Nash: I understand what you say, that there was strong feeling around the table and written evidence was submitted. Was evidence looked at in the commission from, for example, the Calman commission and, indeed, initial discussions when devolution first happened to Scotland? There has been strong public debate on the issue before. Although it says in the report that devolution of abortion is "an anomalous health reservation", it was reserved for very specific reasons. I am interested to know whether past evidence was looked at.

Lord Smith of Kelvin: Yes, it was. People were well aware. There were people sitting around that table who were around at the time the original devolution of Parliament was brought into being, in 1999, and around the time of the Calman commission. There were former Secretaries of State and various other people who knew exactly what had happened, so that was discussed. I am just the guy who was trying to get conclusions. We managed to get firm conclusions on quite a number of areas; there is a very wide canvas, but on this one we could not get agreement to move forward and say that abortion will be devolved. What I did get agreement on was that it should be looked at very soon.

Q132 Pamela Nash: Okay. Could you just indicate why it was felt that abortion should be devolved? Was it just because it should be a part of health, or was any other reason given?

Lord Smith of Kelvin: I really don't want to get into a huge amount of detail on that. I'm sorry.

Q133 Pamela Nash: I understand that but I am sure you can understand why I am asking, because it was not part of the discussion. It certainly wasn't in the vow. It has never been raised with me on the doorstep that abortion should be devolved to the Scottish Parliament.

Lord Smith of Kelvin: There were a huge number of things here that were not in the vow, such as energy efficiency, fuel poverty, transport, tribunals, and onshore oil and gas.

Q134 Pamela Nash: I appreciate that Lord Smith, but there isn't anything else in this that surprised me quite as much as abortion. When I heard that it had been discussed at the commission, I was shocked. I was not happy about it. Everything else that was discussed could have been predicted, even if the final outcome could not be completely predicted; it was a great surprise to many people that this was raised.

Lord Smith of Kelvin: I realise the emotions that the issue raises, on both sides of the argument, and I am not prepared to go into what we discussed in detail. You have what we have decided and, by all means, get involved if this is taken forward, or not taken forward but looked at.

Q135 Pamela Nash: The final point is a more general one, but it is affected by this issue and goes back to something I have mentioned several times: detriment. Can I just be clear: is the concept of no detriment to the UK or its constituent parts at the time of the power being devolved measured only in financial terms, or will any other measure of detriment be used?

Jenny Bates: I think it is probably fair to say that the description in the framework mainly talks about financial issues. They are the majority of what is in the reports.

Lord Smith of Kelvin: We should have been more specific than that, but that it what we were talking about because we were mainly thinking about taxation areas.

Q136 Pamela Nash: Because it could be argued that there would be a change in the rights of a certain group of people in different areas of the country. Although that would be debatable, they might feel that this is definitely to their detriment.

Lord Smith of Kelvin: The power is still up for discussion. In whichever forum it is discussed, get involved.

Pamela Nash: I will.

Lord Smith of Kelvin: That doesn't surprise me.

Q137 Mr Reid: I was pleased that the agreement said that the responsibility for the management of the Crown Estate's economic assets, and revenue generated from those assets, will be transferred to the Scottish Parliament. I was also pleased that it goes on to say in paragraph 33 that, "Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities." As I represent an area where people would seek those responsibilities, let me just clarify what has been signed up to. Does this mean that if, for example, Argyll and Bute council was to write to the Scottish Government saying that they would like these Crown Estate assets transferred to them, the Scottish Government is signed up to saying yes?

> ***Lord Smith of Kelvin:*** The job we were given was to devolve to Holyrood. In my opening remarks, I make a strong plea for further devolution generally, particularly in welfare areas. In this area, again, we were only asked to look at what could go to Holyrood. We are saying in here that Holyrood should—it is stronger than that.

Q138 Mr Reid: In other parts of the report, you are right; it is "should". But this part of the report is much stronger. It says "will".

> ***Lord Smith of Kelvin:*** Yes, "will" be transferred. Then we say that responsibility will be further devolved following that. I would therefore expect, if Argyll and Bute or any other area said, "We want our shoreline or our sea bed to be considered," that that should be taken very seriously and should be transferred. That is what we are putting into our—

Q139 Mr Reid: Just as there is perhaps a view in Scotland that Westminster is remote, there is a view in most of the islands of Argyll and Bute that Kilmory—the castle where the council meets—is remote and that power over the likes of the foreshore and the sea bed should actually be devolved to the island itself, with a representative body of the island operating it. Where you have said "or other areas who seek such responsibilities", do you envisage "other areas" meaning individual islands or simply the local authority?

> ***Lord Smith of Kelvin:*** You are going down into a level of detail that I just cannot possibly go to—earlier, you guys were expressing sympathy at having 10 weeks to devolve to Holyrood. I do not have the answers to all of this. But you see directionally what we are saying. If Crown Estate management is transferred to Holyrood, we expect that to be transferred down to local areas, local authorities and so on. Whether it is Kilmory or—

Q140 Mr Reid: And all five political parties signed up to that?

> ***Lord Smith of Kelvin:*** All five—every word that is in here was signed up to by the political parties, and it wisnae me. Do remember that all five political parties signed up to this. When and if this all comes back to Holyrood, all five parties said "will be".

Q141 Mr Reid: That is good. Thank you. In paragraph 35, you say: "Responsibility for financing the Sovereign Grant"—that is the 15% for the Crown Estate profits that the Queen currently receives—"will need to reflect this revised settlement". Do you have any ideas on how that would work in practice?

Lord Smith of Kelvin: Not a clue. I almost regretted getting involved in this bit. We started to talk about whether we needed Her Majesty the Queen to give her approval; yes was the answer and no was the answer. All we are saying is that there is an existing arrangement now, and we must not offend that existing arrangement. By the way, the revenue here is, from memory, about £13.6 million, which is not huge on a national scale for Holyrood. Clearly, if you spread that around various coastal areas and so on, that can make a lot of difference to communities, but it is not a huge thing. Most of the Crown Estate income is outside Scotland and is down south.

Q142 Mr Reid: I welcome the recommendations. It is, as you say, a huge thing for islands and coastal communities. I certainly welcome it.

Lord Smith of Kelvin: And you do see the reservation of strategic interests and so on in that as well.

Mr Reid: Yes, I saw that.

Q143 Chair: I think this reflects very well the sort of report that we had already produced, and we will be commenting accordingly. It is probably just as well that you already have your place in the House of Lords, otherwise it might not have come along after the suggestion that you are taking money away from the monarchy.

Lord Smith of Kelvin: That did weigh slightly on this.

Q144 Mike Crockart: Turning to the back page of the report—the additional issues for consideration—the Secretary of State said last week that your recommendations will be implemented "without hesitation, reservation or equivocation", in a parliamentary equivalent of "Just a Minute". The question really is: does that only apply to the main part of the agreement? Does it spill over into the additional issues for consideration? Does it only go as far as them having been considered? What is the process for the extras?

Lord Smith of Kelvin: I don't know the answer to that. They still have to be looked at, but exactly what you should do is not detailed. For example, on asylum seekers, it says "explore…the possibility of", so we are not being prescriptive. I would have thought that "without hesitation, reservation or equivocation" applies to the body of the report before that. I think the five parties will expect some serious consideration to be given to that page, but I don't think we can expect that they will be implemented without let, hindrance, deviation or whatever. In fact, "explore, with respect to…the possibility of", is not exactly a strong, detailed recommendation, so I think the additional issues fall into a different category. But they kept coming up, and we discussed them very seriously. We just felt that they are somewhat outside the scope of the devolution of power. Food labelling is something we thought should be looked at, but it cannot be a devolved power because it is a European thing.

Q145 Mike Crockart: But some of those things are important; they are not just things that would be nice. Some of them are major economic levers. I represent Edinburgh, and No. 2 states, "explore the possibility of introducing formal schemes to allow international higher education students" to stay on "for a defined period of time." There is the potential for that to have a major effect on Edinburgh, with its student population, informatics department and everything else that is going on.

> ***Lord Smith of Kelvin:*** Mike, let me not minimise what I just said. That is just my interpretation of the thing. I expect that the fulsome "without let or hindrance" applies to the stuff about which we made specific recommendations. We would expect that to be implemented. I would also expect this to be looked at.
>
> There is a strong feeling, particularly among the higher education people, about students who have come to this country to study—more particularly about those who have qualified—and then have to leave. They feel that it is not only a loss to our education system, which is the envy of the western world, but that if people who qualify here have to leave and compete in other countries, when they could stay here and contribute to the economy with their knowledge and expertise, it is a huge missed opportunity. I know the sensitivity of immigration, and that is why we put it into the report.

Mike Crockart: Not so much around this table at the moment.

Q146 Chair: Can I clarify something? A number of these issues are very politically sensitive, and we understand that. But to some extent—I recognise this in some of them—there are vested interests who have tried to get policy changes via other routes, and have then decided to use this route to get those matters on the agenda. Is that a not unreasonable assessment?

> ***Lord Smith of Kelvin:*** I didn't hear anyone say that higher education students should certainly be hoofed out of the country as soon as they qualify. Nobody made that recommendation, for example. I'm not quite sure what you are saying. Should we not have gone into those areas at all?

Q147 Chair: But there is a whole host of issues on which the people of Scotland have wanted to get a change from the UK Government and have not managed to do so because they haven't managed to persuade them. They haven't managed to persuade the Government on the question of changing immigration policy, so they chose to try to get it devolved in order to get the change that way. We recognise some of these issues as being those that the vested interests want to pursue. It is just a question of the extent to which they are central to the thrust of devolution, having a powerhouse Parliament and a number of other things.

> ***Lord Smith of Kelvin:*** It is not about devolution. It is not an area in which I am an expert, but, for example, asylum seekers have to go down to Croydon to get assessments and so on—is that right for asylum seekers in Scotland? Could we perhaps look at that? It is not Scottish devolution, but there is a slightly different situation in Scotland, so can we not just look at that?

Chair: That helps to clarify the context within which these issues have been put forward.

Q148 Mike Crockart: On the general topic of a stronger Scotland within a stronger UK, I think that you are quite rightly proud of what has been achieved in the Smith agreement—

Lord Smith of Kelvin: That's like, "I warmly welcome this report, but—"

Mike Crockart: No, I very warmly welcome the report, but there are others who do not, or who seem not to now that the ink is dry on the signatures. I am trying to pin down how far you feel the agreement will take the devolutionary settlement in Scotland if it is implemented in full. Professor Bell has very helpfully provided a graph showing where we are in relation to other sub-national governments, which seems to point towards quite a major movement in those terms. Is that your feeling as well?

Lord Smith of Kelvin: Yes; I have seen evidence that suggests that we are one of the most devolved in tax raising and locally controlled spend in the world. It is a very a big shift in powers.

Q149 Mike Crockart: The statistics seem to suggest that it is third on spending and fifth on tax within the OECD. The only countries that devolve more in either expenditure or revenue seem to be Denmark, with a little more, Switzerland and Canada, with perhaps a little more, and Spain with a little more in terms of revenue but not powers. We are right up there at the top of the amount of devolution that has happened from a central to a non-central government.

Lord Smith of Kelvin: I think that that is unarguable—which means that it cannot be argued with.

Q150 Mike Crockart: So if someone were to say, "It is not so much the home rule that was promised; in so many respects it is continued Westminster rule"—

Lord Smith of Kelvin: You are now leading me like a QC.

Mike Crockart: I am.

Lord Smith of Kelvin: You are saying, "So, you agree with that, and from that follows that, and from that follows that."

Mike Crockart: If someone were to say that, would that perhaps be disingenuous?

Lord Smith of Kelvin: I have already said that in terms of both tax receipts and share of Government spending it is one of the most devolved in the world, according to the information with which I have been supplied. Have I said something wrong there, Jenny?

Jenny Bates: No.

Mike Crockart: You can't blame me for trying.

Q151 Chair: I know that you indicated earlier that you are happy to wait here until 6 pm or 7 pm—

> ***Lord Smith of Kelvin:*** I am enjoying myself, Chair.

Chair: So are we, but we have been told that there will possibly be a vote at 5 pm, so if we could wrap things up by then, if that is acceptable to you, that would be great. You will have the opportunity to add anything else that you want at the end. Alternatively, we could come back afterwards if there are points that you feel you have not been able to make in the time available.

Q152 Lindsay Roy: As chairman of the commission, you have, euphemistically, had the "very challenging task" of bringing together these disparate groups. What were the rules of engagement for how individuals on the commission were to conduct their work?

> ***Lord Smith of Kelvin:*** The two individuals from each party were representing their parties, and they were there to negotiate with full powers. Clearly, they were checking back with other people in their party to ensure that they had a proper mandate for what they were saying, but that was not obvious to me during the negotiations. The 10 people sat around the table and absolutely took part. It was conducted in a spirit in which people genuinely wanted to reach a compromise.

Q153 Lindsay Roy: Was it under Chatham House rules?

> ***Lord Smith of Kelvin:*** Very much so.

Q154 Lindsay Roy: Why, then, do you think that several leaks occurred recently?

> ***Lord Smith of Kelvin:*** Even Chatham House has been known to have moles burrowing out and telling people things. Let me tell you: during the whole 10 weeks, or almost the whole 10 weeks, when we were just about to print the report, I did not know of anything that was being leaked from inside the room. There was a lot of conjecture going on out there, but I didn't see it. The world's media were getting quite frustrated, actually, because they were not picking up what was happening inside the room. That was the only way I could run the thing: total transparency on the submissions we were getting, total transparency on where the parties started, total transparency on the evidence we were getting and so on, but, inside a room, if you are trying to get 10 people to agree on something, you can't constantly have reports going out.

Q155 Lindsay Roy: To what extent are you confident, then, that the leaks did not come from within the commission?

> ***Lord Smith of Kelvin:*** Well, I would be mighty surprised, because people were getting very frustrated. I can't control—

Lindsay Roy: I understand that.

__Lord Smith of Kelvin:__ I am satisfied—these people were sitting round the table with me. Now, whether other people were getting copies of documents and leaking from there, that is difficult to say. But I was telling people, "Tell anyone you are talking to about this to get advice."

Q156 Lindsay Roy: So the leaks are not something you plan to pursue as chairman?

__Lord Smith of Kelvin:__ No.

Lindsay Roy: I understand that. Thank you.

__Lord Smith of Kelvin:__ Look, the report's there.

Lindsay Roy: And I think the commission was very well chaired.

__Lord Smith of Kelvin:__ That is very kind of you. There is nothing in this for me, by the way.

Lindsay Roy: It's not kind—I'm just being honest.

__Lord Smith of Kelvin:__ I appreciate it. Thank you.

Q157 Graeme Morrice: I hate to interrupt this love-in. You will be pleased to hear I have the last section to ask questions about, which is entitled "Smith 2"—or perhaps "The Return of Smith", which sounds like a horror film, but obviously it's not. Do you think there is scope for further substantial devolution? You are saying there are some loose ends that need to be tidied up with regard to Smith 1. Do you think a second Smith commission could be looked at in the future?

__Lord Smith of Kelvin:__ I don't think I can answer that. Anything I say will be taken politically. I am just a believer that change should happen over time. I don't think that you should, as soon as you have made a change, be starting on the next change. A lot of work has gone into this, effectively over two years.

A lot of this was in response to 85% of the population voting. I have come across people who do not have a political bone in their body but who care about all these issues. That is why we were out on the highways and byways talking to people. People have become engaged—whether you call it politically or not—in the issues of their time in a way that I do not remember since my boyhood. I think that had to be addressed, and we have addressed a lot of it in the report. I don't think I want to be drawn on whether there should be a Smith 2; it certainly wouldn't be called a Smith anything.

Chair: That rules out all the other Smiths.

__Lord Smith of Kelvin:__ That is unfair—that is discriminatory—I suppose. But as Duncan Bannatyne says, "I'm oot."

Q158 Graeme Morrice: When implemented, will your proposals create a stronger Scotland in a stronger United Kingdom?

> ***Lord Smith of Kelvin:*** Yes, I believe so. I think it will create a stronger United Kingdom, and I think it will create a stronger Scotland. You have a Parliament embedded that can decide the way boundaries, voting and all that goes on. There is accountability to the population, because the Scottish Parliament are raising a substantial chunk of taxation—perhaps 40% of the total. Some 60% of all spend will be under their control as well, including some very useful things in the benefits area and so on. So, yes, that makes for a stronger, more responsible Scotland and a more permanent Parliament, and I actually think it strengthens the United Kingdom at the same time.

Graeme Morrice: Good. No further questions, your honour.

Q159 Chair: Could I just add a couple of points? We have not touched on your four points in the introduction at all.

> ***Lord Smith of Kelvin:*** They're the most important parts, by the way.

Chair: I do think that the question of devolution from the Scottish Parliament, issues of oversight and so on are important, and we have already touched on the question of public awareness. We have been keen as a Committee to work closely with the Scottish Parliament—unfortunately, they will not even let us in the building to have meetings. But, in terms of how this would be progressed, do you have any particular thoughts about the four points you draw out as issues that ought to be pursued? As I understand it, those haven't been taken on board directly by the three leaders.

> ***Lord Smith of Kelvin:*** No, they haven't, but they have been listened to by number of people, Ian. The Speaker and the Presiding Officer speak from time to time anyway, and I have asked them to talk about the vacuum in mutual respect. It has to be tackled. I don't think it is because people are deliberately trying to be like that; I think it is just that when you devolve something, you say, "Well that's devolved, so I don't need to be involved any more." If that is not sorted at the political level in quite a formal way, it won't cascade down to civil servant level. I think they can address that—*[Interruption.]*

Q160 Chair: Sorry, but I have just been told that the vote is on now. We have eight minutes to get there. Are there any final points you want to raise? I am sorry to have cut you off. I was told that the vote was going to be at 5 o'clock, which was going to give me five minutes to close.

> ***Lord Smith of Kelvin:*** No. I had a wee opening statement, but I will leave that behind with you so that you can take it into consideration. Basically, just remember that all five political parties at Holyrood have signed up to every word in this document, okay? The legacy is that they have to take this forward. They agreed it; I was just facilitating.

Q161 Chair: Fine. On behalf of the Committee, thank you very much for having come along to see us today. We very much appreciate the work you personally have done in bringing this together. It can’t have been easy, and the fact that you have been prepared to give up a chunk of time for a public duty is worthy of commendation, so we congratulate you on that and thank you. I hope this has not been too much of a bear pit—I know you were anticipating coming here for blood sport, but I think you had possibly been misled by bad people, who have told you things about this Committee.

Lord Smith of Kelvin: You have been very kind—and not just kind; it has been a very useful exchange of ideas and so on—and very forensic. Thank you.

Chair: We like to think that our Committee is for the victim’s own good.

Pamela Nash: We also want to thank the commission’s staff.

Chair: Yes, we have to thank—well, we don’t have to, but we would like to—the staff, because without them, this would not have been nearly as a successful an exercise and enterprise as it has been. We thank not only those who are here but those who are elsewhere—perhaps you could convey our view to them.

Lord Smith of Kelvin: I will do that. Thank you.

Chair: With that, we must run.