



HOUSE OF COMMONS

Scottish Affairs Committee

Oral evidence: [English Votes for English Laws](#), HC 399

Tuesday 13 October 2015

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Members present: [Pete Wishart (Chair); Kirsty Blackman, Mr Christopher Chope, Mr Jim Cunningham, Margaret Ferrier, Chris Law, John Stevenson, Maggie Throup]

Questions [52-148]

Witness: **Chris Bryant MP**, Shadow Leader of the House of Commons gave evidence.

Q52 Chair: Welcome, Chris, and thank you ever so much for coming along at such short notice. Congratulations, by the way, on your elevation to Shadow Leader of the House. That is probably the best Department that I know to shadow just now in the House of Commons, so there you go. We wish you all the best and thank you for coming along to this Committee to answer a few questions. We are not in the business of the process issue. We are leaving that to the Procedure Committee, but the thing that we are looking at is the impact that this would have on Scottish Members of Parliament and some of the outstanding issues that have emerged in some of the debates. We are hoping that you could help us with this and give us the Shadow Leader of the House's view. I do not know if you have an opening statement that you would like to make to the Committee or whether you just want to get straight to questions.

Chris Bryant: My only opening statement would be that I note you call me Chris, so I will call you Pete, if that is okay.

Chair: That is absolutely fine.

Chris Bryant: I am very happy to be here. While I loved my DCMS brief, I do enjoy this brief and I have taken a long-term interest in how Parliament functions. I just think that it is one of the jobs that you have to do with an element of grace and non-partisanship. Insofar as you can help me to do that, I am up for that challenge.

Q53 Chair: Fantastic, thank you very much for that. Your predecessor, Angela—if we could call her that, too—has contributed quite significantly to the ongoing debate about English votes for English laws. She obviously gave her own evidence to the Procedure Committee. I think one of the issues that was picked up by the previous Shadow Leader of the House was this idea of the McKay commission, where it was all about consent as opposed to veto. What

distinguishes this approach by this Government is the idea of the double majority, the veto that English Members of Parliament have. I do not know if you have any particular views about this. Your predecessor noted that this was a significant departure from the McKay commission and was a new innovation that was suggested by the Leader of the House. What is your view about this idea of a double majority, an effective English veto in certain parts of legislation?

Chris Bryant: I have views on nearly everything to do with this and feel quite passionate about it. I think, first and foremost, that there is a fundamental principle that is operated in every other parliament in the world—every other legislature—that you do not have two tiers of Members. The one breach to that two tiers of Members is if you have a veto rather than a voice. I am perfectly happy with an English voice. Indeed, though I represent a Welsh seat and I am delighted at Welsh rugby's and Scottish rugby's success of late, I none the less feel that England does need a stronger voice in the way things go through Parliament. But other parliaments, like the European Parliament and many other parliaments, have rapporteurs. There are many different ways of developing that voice for English representation within Parliament.

We have anomalies because of the asymmetric devolution that we have in this country—and I and my party are proud of our devolution record, though there may be elements where it is not quite enough for you. None the less, as far as it is possible—following papal encyclicals, for that matter—I think no power should abrogate to itself responsibility for decisions that could be better done at a lower, more local level. That is my fundamental principle in terms of decision-making and that should apply here. But the anomalies that exist because of the West Lothian question, or however you want to term it, are multiplied by the Government's proposals if you have a veto because—just as a for instance—a Scottish MP would be barred perhaps from taking part in a Division on a piece of legislation that might have Barnett consequential, whereas a Member of the House of Lords, who is only a Member of the House of Lords because they had sat for many years as a Member of the House of Commons for a Scottish seat, would none the less be allowed to take part in that. That seems to me a more fundamental anomaly than any of the anomalies that we presently have.

There is one fact that I might put in, if it is okay, which I do not think anybody has as yet spotted. The House of Commons Library did a report. If you took all of the Divisions since 2001 and analysed—taking all the Scottish MPs out of all of those divisions—how often it would have made a difference to the vote, there are 25 such occasions that they came up with. However, if you do the further analysis of how many of those would be affected by the Government's present proposals, it is more extraordinary. They came up with 25 occasions, of which a significant number are things like whether there should be a screen in the House of Commons Chamber, which still would be all Members. Some of them are antiterrorism legislation, which still would be all Members. Some of them are private Members' Bills, which still would be all Members. The one that the Leader of the House has repeatedly referred to in the House of Commons Chamber where there would have been a difference is on tuition fees. However, that was on a vote on Second Reading, which would not be affected by the Government's proposals. The only thing that I can see that would have been affected was the inclusion of the Pubs Code last November in one of the Government's Bills, which they then in the end did not seek to have removed.

I think, much as I respect the desire for an English voice, there is a real danger that they are chopping up the constitution in an inappropriate way—one that will leave us with more anomalies than we presently have and will not even do what they say it is going to do.

Q54 Chair: Listening to the Leader of the House and his evidence to the Procedure Committee, the way that he proposes and suggests what is on the table here is that it is a very modest type of proposal that addresses a great anomaly and there is no great significance attached to the status of Scottish, Welsh and Northern Irish MPs. I do not know, it cannot be both a modest measure and a measure of constitutional importance and historic significance. Where do you rate that in the range of a modest measure to doing something significant constitutionally?

Chris Bryant: It is a significant constitutional change in several regards, first of all because it is changing our constitution via the Standing Orders. I know there is a debate that we might want to get into later about whether that is the right way to do it or not, but I would merely point out that it leaves the other House of Parliament out of that decision-making process and is, I think, therefore, inappropriate. Secondly, it is a significant constitutional difference because it creates two different tiers of Members of Parliament. It is true that different MPs have different workloads because of their constituencies. Some have very large geographic areas to cover and they spend half of their time at the weekend travelling around their constituency. Some may have small ones and have large numbers of immigration cases. Some seats have no immigration cases whatsoever but have large numbers of miners' compensation cases, and so on and so on. It is just a fact that the workloads and the pattern of work is different from MP to MP, but the fundamental principle that was in the original writ of summons to Members of Parliament from the 14th century onwards was that you came with—excuse the Latin—*plena potestas*: full power to be able to treat and vote on behalf of your constituents. I think that this breaches that fundamental principle from the beginning.

Q55 Chair: Lastly from the opening questions, when your predecessor gave evidence to the Procedure Committee she also noted there might be an occasion where in the UK there would be a majority but in England there would be a different majority. There would, therefore, be the opportunity for all type of mischief and for a Government that did not enjoy a majority across the United Kingdom but did enjoy a majority in England to block domestic English legislation. Is that something that would concern you? It is unlikely to happen to my party but as a Labour Member of Parliament that must be something that would obviously make concerns for your party.

Chris Bryant: We should dispel the view, which along with many other parliamentary myths still exists, that it is frequently the case that a Government that has a majority in the whole House does not have a majority in England. It is actually very rare for that to happen, so I think that that element of the argument is overstated.

There is a real danger that you would have a bifurcated Government and that you would not be able to tell who was really running the country; for that matter, whose finances really added up. I know that that is even with the exclusion of Finance Bills and money Bills and so on from these proposals. I think that that is the biggest danger of all and the anomaly that is likely to come from this, which is why I think there are simple changes you can make to the Government proposals that would make it more sensible, which would render it more of a pilot—a genuine pilot rather than fixing something in stone—and I

hope that those who have similar ideas might want to come to similar conclusions next Thursday.

Q56 John Stevenson: Related to what you asked, you mentioned two things: a fundamental principle, no two-tier MPs, and you recognise there are anomalies in our constitution. Is there an argument that, to contain the parity of MP—the MPs would represent seats on the same terms—and also to recognise the anomaly that Scotland has greater devolution than other parts of England, Scotland has less representation at Westminster? Would that be a solution in the way that it was with Stormont Parliament back in the 1920s and 1930s?

Chris Bryant: I have a fundamentally different view about how representation should be structured. I think the old system whereby one did not fix the number of MPs but you said that every community should be represented makes for better representation. We have already had the number of Scottish MPs fall quite significantly. We make allowances for three constituencies in the land under the new arrangements for boundaries. I would revise that to say there should be greater leniency to the Boundary Commission to allow for 10% rather than just 5% difference between the size of constituencies, because I think the geographical size of your constituency makes a significant difference to the kind of workload you have. So no, I disagree with your fundamental premise, I am afraid.

Q57 Kirsty Blackman: I have a few questions. The first one is slightly procedural. The Leader of the House said that the spending implications of legislation were addressed solely through the estimates process. I was wondering if you agree with that. Following on from that, what levers are available to Scottish parliamentarians to have an impact on the Budget?

Chris Bryant: We have never met. Hello, Kirsty.

Kirsty Blackman: Hello.

Chris Bryant: I have long argued that one of the things we do particularly badly in the House of Commons—and the Lords are not even allowed to touch—is expenditure. We do not have an annual budget. We have a series of statements about changing or varying or keeping duties and taxes and a sort of declaration of intent on what is going to be extra money that is going to be spent on this, that or the other, unlike the United States, where they have a full budget from zero process and the Scottish Parliament and everywhere else that has a proper consideration of expenditure. I think it is one of the things where we as the House of Commons fall down. We rarely have votes on estimates because you cannot amend them. The only person who can table a charge to the public is a Government Minister. All of this is very much in the hands of Ministers and not in the hands of Parliament or in the hands of the House of Commons.

The only point at which an ordinary Member of the House of Commons can have an effect on expenditure is when legislation is being considered that has a consequential effect in terms of spending, whether that is a Barnett consequential or any other kind of consequential, which is why I think it is important that in the Government measures Barnett consequentials should be excluded or that we should change the Government measures so that anything where there is a Barnett consequential will be able to be considered.

Q58 Chair: On that, in his evidence to the Procedure Committee the Leader of the House suggested—in fact, he said it quite boldly—that there was no such thing as Barnett consequentials. They did not exist. I have a sheet here, which is from the Scotland Office, about all the Barnett consequentials from either the resource or the capital budget. It is quite a long list.

Chris Bryant: Yes.

Chair: Did you have any idea what the Leader of the House meant when he was saying that the Barnett consequentials do not exist—that he cannot find any examples about how they operate?

Chris Bryant: I am afraid you did not ask me to provide a list of all the mistakes that the Leader of the House has made in his various contributions to these debates, so I have not brought it with me, but I can if you want me to provide one. Seriously, it is just a fact that there are consequentials from nearly every decision that we make. It may be true that that all then gets swept up into the estimate that is eventually laid before the House, but since we have no means of amending the estimate—we can only vote against it or vote for it—we nearly always vote for it, apart from, I think, in 1912 or something like that, when we voted against one because they were going to redecorate the King’s bedroom and consequently everybody felt that this was quite outrageous. I will have got those facts wrong, I am afraid, but broadly speaking the point is that we have little choice about estimates. Historically, voting of supply was a means whereby the House of Commons would say to the King, “No, you cannot go to war because we are not going to give you any money to go to war with,” but that does not even exist now because we would be voting against money for the NHS or we would be voting against money for the police or whatever. There is no subtlety in the way we approach it other than through Barnett consequentials that come from legislative decisions.

Q59 Kirsty Blackman: In terms of English votes for English laws as the proposal stands, do you think that this could cause Scottish MPs to have their voice reduced in relation to Bills that could have effects on Barnett consequentials?

Chris Bryant: Absolutely, and not only Scottish but also Welsh.

Q60 Kirsty Blackman: One more question from me: the certification process directs the Speaker to discount minor or consequential effects that individual clauses could have. How do you think the Speaker should decide what is minor?

Chris Bryant: Well, or consequential. I think we should take “consequential” out and I expect that we should be tabling some kind of amendment to that effect. Who knows, maybe we will have co-operation between parties for that.

Secondly, I think there is a bigger problem about the whole process of Speaker certification because there is clear evidence that in other bodies that have to have the Speaker or presiding officer certificate, as in Scotland, Wales and Northern Ireland, it is a lengthy process not a short process. It is complicated and it is contested. The Leader of the House here has said that it is fine because this is what the Speaker has done ever since the Parliament Acts were brought in, and he is right in one sense. The Speaker does certificate on money Bills. However, the only effect of that is that the House of Lords cannot then

look at them. It is nothing to do with the House of Commons. This is all about the House of Commons and I am not convinced that that process would not end up in the courts.

Q61 Mr Cunningham: I agree with you we should have some sort of pilot scheme to have a look at English votes for English Members. Going back to something you said, you used what happens in the United States in relation to the Budget. There has always been a conflict on the one hand between the American President and what he wants to do and, on the other hand, what Congress wants to do. In fact, a few years ago the public service in the United States could not pay the wages. Do we really want to get into that type of situation? Is that what you are really advocating?

Chris Bryant: I was not advocating a republic or removing the Executive from the legislature or any of the American system. I was merely saying that most countries and every local authority in this country and the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly all have more robust scrutiny of their expenditure than we do.

Q62 Mr Cunningham: What sort of system would you like to see then?

Chris Bryant: I think we should have a proper Budget and I would like us to change the rules, which were developed in the 19th century, which meant only Government Ministers can table amendments to duties and taxes and so on. I think the Finance Bill should be a proper Budget, not just a series of amendments to existing legislation. I do not think the Lords should have a say, though.

Mr Cunningham: I was going to ask you about that, actually, yes.

Q63 Chair: Before we move on from this whole question about the estimates, you are right. In my experience—I think you and I entered Parliament the same year, in 2001—there has never really been a debate about the estimates and the Liaison Committee selects, I think it is, three Departments for any sort of debate and scrutiny of the estimate process. If the whole issue of Barnett consequential now has to be bound up with a debate about the estimates and it is the only opportunity for Members from Scotland, Wales and Northern Ireland to have a look at knock-on, down-the-road consequential impacts in legislation, we are going to have to spend an awful lot of time looking at these estimates, aren't we, which is going to have to be a bit more robust than sitting round in the Liaison Committee deciding which three Departments will have a look at estimates. Do you agree that if this is all going to be bound into the estimate process, the Leader of the House is going to have to find quite significant amounts of time so that each Department is properly scrutinised about its departmental spending and the impact it might have on our nations?

Chris Bryant: I think the system that we have, which is basically a “Like it or lump it” expenditure process, is wholly inadequate for a modern country and a modern constitution, so I think we would have to change it. You are right that I think Scottish, Welsh and Northern Irish Members would want Barnett consequential to be an explicit part of what estimates would look like. You are also right to say that all these extra processes—four extra processes or five or six, depending on how a Bill goes through, different stages for the Bill, which the Leader of the House, who is present, and the Government are suggesting—will, I think, mean several things in terms of time. First, Bills will take a lot

more time to go through Parliament, in particular exclusively England-only Bills. Consequently, Ministers will never make anything an exclusively England-only Bill because they will want it to have fewer processes to go through. They will want it to happen more swiftly and the pressure from the Whips' Office will be to make sure that it is not just England-only, but that it is everybody.

Chair: That is really helpful because we are coming on to the issue of timing and the impact this is all going to have on the legislative timetable. I know Maggie Throup has a question for that.

Q64 Maggie Throup: That is right, because it is really around that, developing the theme. How much more parliamentary time do you think the English votes procedure will require? Do you envisage that the time available will be taken from Back-Bench business?

Chris Bryant: If I just think about this next fortnight, I think we are doing quite a lot of big legislation and there is only one Opposition day debate. Yesterday's two debates on Northern Ireland and on broadband were either very well attended or very important to have at this particular juncture. I do not think there is much spare time in the process. If anything, people have been clamouring for more time for the Report stage of Bills. Sorry, we have not met either. Hello. My anxiety is that it will just be taken out of Report stage or out of Committee stage, so you will end up with less scrutiny rather than more.

Q65 Maggie Throup: Following on from that, what impact do you feel that further devolution of powers would have on the frequency in which the English votes procedure would be enacted?

Chris Bryant: I suppose in theory it would mean that it would go up, except that in practice I think Government Ministers would end up crafting their legislation according to which process they wanted it to go through, because you can always do that. You would end up with less scrutiny of significant pieces of legislation. Having been Deputy Leader of the House, when the legislative Committee met for any Bill we would go through the whole business of territoriality and it was very rarely as obvious as you would think.

If I just give one example, which was very fiercely contested at the time, it was the Health Bill that was allowing—I think the Scottish Parliament already had the right—the Northern Ireland Assembly and the Welsh Assembly and the Secretary of State in England to make provision to ban smoking in public places. How the amendment was tabled and what its territoriality was had a significant effect on how the Bill would be able to be considered under the Government's new proposals. You would have another row about process rather than about substance, and I think one of the things that really irritates voters is if we spend all our time rowing about process rather than getting to the substance of the matter. Is that an answer to your question?

Maggie Throup: Yes.

Q66 John Stevenson: Assuming we have the procedures in place, you have a Minister for Education who is from a Scottish constituency taking an English-only Bill through and they are at Committee stage. Should that Minister have a vote or not?

Chris Bryant: First of all, I think that the formal processes of the House have always established that no Member is barred from taking part in a Committee. It is just whether or not they have a right to vote in it because of the composition of the Committee as appointed by the—I have forgotten what it is called—nominations committee or whatever it is. I am against a veto, I am in favour of a voice, so I would think it would be a shame if a Welsh Member—more common—who was the Shadow Minister or the Minister for Schools, for instance, were not able to take forward a piece of legislation through Committee stage.

The other point I would make is that if a Government chooses to override England, as it were, because of the votes, the scores on the doors—which are publicly available; everybody knows how the votes come out—then that is a political matter, I think, and a Government would be wise not to keep on doing that. I am in favour. The lists of voting are already made available, but I am perfectly happy if that is listed by England, Scotland, Wales, Northern Ireland, if that makes it clearer. Then if a Government chooses to override England, it has made that decision and that is—

Q67 John Stevenson: But on this particular point about a Committee taking a Bill through Parliament, you have no real objection to the fact that a Minister might not have a vote on that Committee?

Chris Bryant: No, I think they should have a vote on the Committee.

John Stevenson: You do?

Chris Bryant: Sorry, I am saying that they should have a vote on the Committee because I am not in favour of a veto, I am in favour of a voice.

John Stevenson: Just as a follow-on from that, is there in your view a danger that if we have this procedure—

Chris Bryant: I am sorry, if I might, not least because let us say for the sake of argument it were I and I was voting, if it were not I, it would be another member of my party, a member of the Government, bound by the same collective responsibility. I think it is almost immaterial. It would have the same effect, but the Prime Minister would have to make the decision: should I put in as Minister somebody who has no locus there?

Q68 John Stevenson: Interesting. That follows on to my next question. Do you think there is a danger, if we have this procedure, that you could end up with a situation that there are certain offices of state that would never go to a Scottish constituency MP?

Chris Bryant: Well, the Speaker, for instance. I think there is a real danger that you would effectively be saying you could never have another Scottish Speaker or, arguably, a Welsh one.

Q69 John Stevenson: Under devolution there have been very distinguished Scottish Secretaries of State who have represented English Departments. We would call this the John Reid question, John Reid certainly as a Health Secretary. Are we looking at the possibility of there no longer being Scottish Members who represent Scottish constituencies being

Secretaries of State in certain Departments? Are we looking at the possibility of never having a Prime Minister who represents a Scottish constituency?

Chris Bryant: Indeed. The point is extremely well made—or Welsh—which is more of a worry, obviously.

Q70 John Stevenson: I just go back to my very first question at the beginning of this session. If we are to address the fact there is an anomaly and to address the fact that England feels there has to be some sort of change to the present situation, wouldn't it be better to have a change in the number of MPs representing Scotland rather than do any other changes, because they would then be on the same platform as all other MPs from all other parts of the country? You could do the same in Wales; you could do the same in Ireland.

Chris Bryant: Do you mean that the average number of electors would be higher for a Scottish MP?

John Stevenson: Yes.

Chris Bryant: The thing is, I am not sure how you would add that up and how you would estimate what the right figure was. In the end, you could still end up with the same situation, which is that you might have a vote of confidence that was won by a single vote and people thought the Scots made the difference. Not that that would ever happen.

Chair: I want to return to certification because this is one of the key debates. We know the anxiety that exists within the Speaker's Office about the whole issue of certification. I know Margaret Ferrier has a couple of questions on that.

Q71 Margaret Ferrier: Yes. Do you feel that the certification process should be limited solely to consideration then of where the legislation has legal effect or should wider cross-border implications or financial impacts also be part of the assessment?

Chris Bryant: Yes, Margaret, I think definitely the consequential that we were talking about should be part of the consideration in the sense that the Speaker should be able to go, "There is clearly an impact for elsewhere in the land and, therefore, others should be able to take part," if we are going to go down this veto route. If we are not going down a veto route and we are only going down a voice route, then I think it is much easier. Then the Speaker certification is not the essential moment.

There is another issue about the Speaker certification, which is the normal process between First Reading and Second Reading is that there are two weekends between the two. In the Government's proposals, the Speaker will have to certificate in that time before Second Reading and after First Reading. I think that that is quite problematic in terms of time and being able to deliver a secure decision without significantly increasing the amount of legal support that the Speaker will have.

Q72 Margaret Ferrier: Do you feel that devolved Governments should be consulted on the territorial extent of a Bill during the drafting stage of it and even as part of the Speaker's certification process?

Chris Bryant: I think territorial Governments should always be consulted about the legislative process anyway. I know this may not be everybody's view, but I believe in the Union and I believe that the Union has to function in a way that is respectful between the different bodies. We have not quite worked out how that is going to work.

Incidentally, there is another issue. Devolution has clearly become a rolling programme rather than a fixed settlement, certainly thus far and for the next two or three years. Who knows what the Wales Bill next week will say, but it may well say something that the Welsh Government is not happy with. If that is the case, then it is like a moving target for the Speaker's certification process as to what is counted in and what is counted out.

Q73 Margaret Ferrier: I have another question about the Speaker's role in all of this in the certification process. Do you feel that his office has the sufficient legal and constitutional expertise and resources to assess legislation for its territorial impact? Would it be able to do so within a really tight legislative timescale? Is that what you are saying, that there would not be enough time?

Chris Bryant: You have just put it better than I did. Yes, I agree—yes, I agree that, no, they do not have enough. First, the time would be enough, unless you are going to move Second Reading to a month after or three months after or whatever, and, secondly, I do not think they have enough legal support and they would have to at least quadruple the amount of legal support that they have.

Q74 Margaret Ferrier: Do you feel that the politicisation of that office is going to put the Speaker in a really difficult position?

Chris Bryant: Yes, and if I can just explain. Pete, you will remember before the general election the Government then tried, on the very last day of Parliament, to change the rules—the Standing Orders of the House—on the election of a Speaker. I thought that that was done with an express intention of trying to remove the Speaker. I will explain why I am saying this now in a moment.

Why I think that is an inappropriate thing for a Government to do is that a Government by definition always has a majority. It can always change the Standing Orders of the House of Commons, unless it manages to lose some of its Back Benchers or whatever, and that is why that fell just before the general election because people felt it was inappropriate. A Government can always get rid of the Speaker, but then you have just demolished the Speaker's role and you have nobody able to enforce order and to rise above the party political fray. I think it is exactly the same with these measures. I understand the justiciable argument about using Standing Orders rather than legislation, though I would point out that the Government said that they would use legislation to back up Standing Orders, which they are not doing because I think they know that they would not get it through the House of Lords. You end up with a situation where I think they are abusing, as things stand, or they are in danger of abusing their majority in the House of Commons to achieve party political advantage.

Q75 Chair: We spoke to Speaker's counsel as part of this little inquiry into English votes for English laws and I think what we ascertained was that there is a real anxiety and nervousness among Speaker's counsel about the role of the Speaker in all this. I do not know if you have

any views about this possibly bringing the Speaker into conflict with Members of Parliament who represent Welsh or Scottish or Northern Irish constituencies and whether that is a concern. As it currently stands, the Speaker will continue to determine his position concerning certifications without giving any explanation. Again, I do not know whether you have any views about whether that is going to be good enough given that he will now have a political role. There is no denying the fact it will be a political role. He will be deciding whether you, myself and several other members of this Committee get to participate in all stages of legislation. Do you have any concerns about that type of conflict emerging between the Speaker, who has this neutral position, and the fact he is not going to be bound to give an explanation as to why we would be excluded?

Chris Bryant: I understand the argument that has led to the position of having the Speaker doing it without giving reason, because if he gives reasons then everybody can pick over the reasons and then that ends up even more likely to be challenged in some kind of court if people manage to dismantle article 8 or 9—I can't remember which—of the Bill of Rights. Yes, I do worry about that and I think if you wanted to dismantle the political support for something, you would just start attacking the Speaker. I think that is a very dangerous route to go down because we have had a settled view for 500 years that the Speaker is the servant of the whole House, not the servant of the Crown. Even when it was effectively the Crown that appointed the Speaker, none the less the Speaker was the servant of the House, not the servant of the Crown. I think this will make the Speaker the servant of the Crown, not the servant of the House.

Q76 Chair: Just to follow up from Margaret's question, this idea of the Speaker being put into what is quite clearly a political situation where he will have to make a political decision about who gets to and who does not get to participate at all stages of a Bill, is it not the case that the Speaker will have to ensure that his decision is absolutely spot-on, in that he will have to consult, particularly with devolved Assemblies—because part of the certification process, if it is settled in an arrangement for one of the devolved legislations, that therefore means it is at least to be considered for certification—the presiding officer, the Welsh Assembly, the Scottish Parliament and the Scottish Government just to make sure that it is absolutely right when it comes to certification?

Chris Bryant: Indeed, and there is another point there, which is: are you consulting the Welsh Government or the presiding officer of the Welsh Assembly, because they are not exactly the same thing? Are you consulting politicians or are you consulting independent civil servants, the legal service? As I said already, I just do not see how you could possibly do that between First Reading and Second Reading.

Q77 Chair: Lastly on certification, the Leader of the House in his evidence to the Procedure Committee suggested that he wants to try to make certification as easy as possible for the Speaker. He would come to the Speaker with a civil service view and possibly even a Minister's view about what should and should not be certified as English or English and Welsh-only. This seems to me that Departments will be deciding what will be certified and the Speaker will be asked maybe just to rubber stamp that, though he did say in his evidence that it would be up to the Speaker to decide that. He could discount the advice that has been given by civil servants. Does this not strike you that what seems to be in the Leader of the House's mind is that certification will be decided within the Department and they will go along to the Speaker for some sort of rubber stamping?

Chris Bryant: Two things: first, I think again that it is basically part of turning the Speaker into a servant of the Crown who has to justify disagreeing with the Crown rather than being a servant of the House. I think that that is wrong. Secondly, I think that it is based on a fundamental assumption that it is easy to determine whether a Bill is or is not caught by the measures and I do not think it is easy to determine that. My own experience from previous legislation would suggest that it is rarely as simple as people would think.

Q78 Kirsty Blackman: I am obviously a new MP, but it seems to me that a lot of the procedure in this place is written to increase Executive privilege, not just about inbuilt majority, which is a totally different thing, but things like the timetabling of stuff, the estimates process, the ability of the Government on some issues to make amendments and motions rather than anybody else. In terms of moving forward and, I suppose, some of the stuff that this has brought to light, would it be sensible for some change to be made to the procedures to reduce the Executive privilege of the Government in order to strengthen the constitutional arrangements of the UK?

Chris Bryant: If I am allowed a brief moment of history, Edmund Burke used to—

Chair: We were never going to get through the session without one.

Chris Bryant: Sorry. Edmund Burke, when he was complaining about the corrupting of Parliament, said that the problem was that there were 140 Members of the House of Commons—which was larger than it is today—who were in the pay of the Government in some shape or form. They were either a Minister or they had some sinecure or a pension or whatever. Today, there are 95 Members of the House of Commons who are Government Ministers and 45 Members are Parliamentary Private Secretaries. That is 140. On top of that, 140 people are Opposition to those; they are their shadows. On top of that, the SNP and other political parties have their own. In the end, it does not feel like a very free Parliament. When you add on top of that the fact that in the 19th century the Government, first of all, took I think Wednesdays and then Mondays and then Tuesdays and Thursdays when they had priority on legislation, on the order of business, over anybody else rather than the chaos that there was before—it was chaos, but at least it meant anybody got a say—and on top of that they laid down rules that said that only a Government Minister can do XYZ, I think you end up with a situation where we are not a proper legislature, we are a plaything of Government. I am not sure whether that is Labour Party policy, but I might be making it Labour Party policy.

Q79 Margaret Ferrier: Just a quick one: what would be the alternative to EVEL? How would you get the English—

Chris Bryant: As a priest in the Church of England, what is the alternative to evil? I think it is not difficult to do two things. First of all, I think you have to consider everything in the round. You cannot just look at the processes of the House of Commons if you want to answer these issues. There are still issues around how disputes on devolution are resolved through the Privy Council. The legislative committee of the Privy Council—that is an odd way still to be proceeding.

Secondly, obviously the devolution process—we have more going through now in regards to Scotland and there is going to be more coming through in regards to Wales. I think you cannot look at this without looking at the House of Lords as well, because a significant

proportion, ironically, of the House of Lords comes from London and the south-east—not the whole of England, but London and the south-east. I would prefer to see a second Chamber that was wholly elected and I have campaigned for that for a long, long time, and one where you had representatives of all the nations and regions of the UK.

That is my answer to that, but in the short term I think it is perfectly possible to change the Government's measures to make it clear that there is an English voice, that if English MPs have voted against something or have been outvoted by the rest of the House, that that is clearly evident in the way we present the *Hansard* at the end of the day and votes are recorded, but that it is not a veto. A veto creates a bifurcated Government, two tiers of MPs, and I think breaches the fundamental principles that McKay was very keen to rest on.

Q80 Chair: That is really interesting because in his evidence Sir William suggested something like that. He reminded us, the Scottish Members round this Committee, that we have the Scottish Grand Committee that could, in effect, make legislation. There is obviously the Welsh Grand Committee, which is still in operation and still functions. Ours does not function anymore since devolution. His suggestion, he was leading us to conclude, was that one way that we could resolve some of these difficulties would be the establishment of an English grand committee with the same Standing Orders and the same approach as the Scottish and the Welsh one and then the House would then look at what was decided by the English grand committee and decide whether to pursue that. Would that look like a means to try to address some of the concerns that English Members have and a means in an English grand committee to maybe consider some English-only legislation?

Chris Bryant: The rub is, having attended many Welsh Grand Committees—or Welsh grandstanding committee as I call it—the problem is that it is the Government that determines when it sits and what it considers, and only the Government. For instance, I think it would be perfectly legitimate for the Welsh Grand Committee to consider a report and amendments to that report and to express a view, but it cannot because it is not enabled to do that by Government and because the Standing Orders of the House of Commons prevent that. There is no reason why a similar provision should not be made for an English grand committee. The only thing I would say is that I think the Chamber should never have Members excluded. If there were to be an English grand committee, it should meet in Committee Room 14 or elsewhere and I think it should be able to determine its agenda.

Q81 Chair: Yes. Just lastly on the alternatives, obviously it has been suggested in debate that if England did feel that there was a situation where their voice was not being heard, what is the difficulty about an English Parliament? Why do they not just do the work and create an English Parliament and they would come together here in the UK Parliament as a federal arrangement where all these issues are devolved and reconsidered by members from the different nations who would come together and settle all the big reserved issues, defence, foreign affairs, international relationships here? Do you have any views about that?

Chris Bryant: I am not convinced that people want lots more politicians, so I am not convinced that there is a great deal of support for another structure. Indeed, quite often citizens have voted against having their own elected mayors even, let alone the north-east regional assembly, which was voted down quite significantly, quite heavily. I think we have to live with the fact that the United Kingdom of Great Britain and Northern Ireland is a fudge and there are anomalies. It just is a fudge; the negotiations in 1707 were a fudge and they were a bribe in 1800. I think that part of our constitution and the way of doing

things in this country is that you have a fudge. I prefer a written constitution. I think it bizarre that we do not have one. If you are going to say that there should be some kind of double veto or whatever, that should be in a constitutional amendment that goes in a written constitution, not just decided by the Government of the day through the Standing Orders.

Chair: I think that brings us to Chris Law's questions then, enduring settlement.

Q82 Chris Law: Going right back to 19 September, when the Prime Minister came out and announced that we were going to have English votes for English laws, I was just looking at also what Chris Grayling said in the House. He said there was a longstanding sense of grievance in England. In fact, the Procedure Committee, he said, would be a running sore in England if it was not dealt with. I wondered if you yourself experienced in your constituency or with your colleagues in your constituencies a great overwhelming sense of a need for an English voice. I am looking at the 2014 Future of England survey and it showed that actually less than 40% were looking for this strong English voice of opinion. I wanted to know whether EVEL is more or less a bodged job or a fudge.

Chris Bryant: I went to speak at a rugby club a couple of weeks ago in my constituency and as I arrived everybody had obviously had quite a lot to drink. I spoke fairly late in the evening and I started off by saying, "I would just like to say, before I say anything else, that I have heard some very nasty whispers being said behind my back as I came in the room and I think that these are words that should not be used in a modern society and we should respect people." I am not actually English. You seem to be labouring under the misapprehension that I represent an English seat.

Chris Law: No, not at all. I just wondered if there is—

Chris Bryant: No, there is no pressure for an English voice in my constituency in the Rhondda and for that matter there are people in my constituency who dislike the existence of the Welsh Assembly and would prefer us to go back. Somebody the other day in the rugby meeting said, "Why can't we scrap the Assembly and go back to the Welsh Office running everything?" I disagree with that because I believe in devolution, but devolution in England, does that mean England itself having a voice? In some cases, yes, I think it may do, but it also means the midlands having a voice, the north-east having a voice, the north-west having a voice. I think all too often that has been ignored because we have a hideously centralised system in this country. That is one of the things that needs to change.

Q83 Chris Law: Yes, apologies if I insinuated that you were anything but Welsh. I was more talking about your colleagues, in fact. But to move on from that, in terms of the English concerns, do you think they are about the existing arrangements of devolution or perhaps perception of how public funding is devolved? Do you think it is one or the other or both?

Chris Bryant: Do you mean in relation to local government?

Chris Law: Yes.

Chris Bryant: I do not think I have ever met a voter that did not work for a local authority that understood the council tax, because everybody says, "What do I pay my council tax for? My council tax pays for the council". You go, "Well, no, it does not. It pays for somewhere between a fifth and a quarter of the council and the majority of the funding for

the local authority comes from Westminster or Westminster to the Welsh Assembly to the local authority.” How you get round that—and, for that matter, how you get round the perception that there undoubtedly is among some people in England that Scotland and Wales get too much money—I genuinely do not know. The truth of the matter is, I believe, from each according to his ability, to each according to his need, and there are parts of the United Kingdom, if you believe in the United Kingdom, which are more deprived, have more financial difficulties, require to spend more money to achieve the same level of service because of geographical and other complexities, and that is why we have the financial arrangements we have round the country. I have rarely met a voter on the doorstep who has wanted to go through the whole of that discussion.

Q84 Chair: Just on that—I know Chris has another question—so we do not lose this theme, one of the things that the Leader of the House said in respect of these anomalies from funding is that he talks about a constituent who talks about free prescriptions in Scotland, for example. This so often happens in the debate about English votes for English laws. It seems to be conflated with issues to do with the block grant and the Barnett formula. This builds up a sense of—if I could use the word—grievance in England that they are seeing Scotland getting all these extra services and extra resources. This is one of the reasons why they feel that there is a requirement to address this for English votes for English laws. Do you have any views about that and this conflation between Barnett and English votes for English laws as complicating the issue somewhat?

Chris Bryant: I think it is also writ large within England because nobody wants a postcode lottery but everybody wants local decision making. Everybody wants their local health organisation, whatever it is—we have local health boards in Wales so that is the model I am used to dealing with—to make the decision, but they do not want them to have made a decision that is different from the local health board next door because that is a postcode lottery and, therefore, unfair. I spend a lot of my time explaining the difference between the decisions that the Welsh Assembly has made and England has made.

All I would say, or the one instance that I give most frequently why I support devolution, is that in the past it was the Welsh Office that decided what the Forestry Commission did in Wales from Westminster and they just planted all the same trees across the whole of Wales and nobody had any engagement or involvement with the local community at all. Since the Assembly has taken responsibility for the Forestry Commission there is a much greater engagement with the local community. When there is harvesting and when there is new planting and all the rest of it, the local community is involved in that decision making.

Q85 Chris Law: Just picking up from previous evidence we have taken here regarding EVEL, Bill McKay called the proposals a bit of a dog’s breakfast. In fact, Charlie Jeffery also pointed out that the approach that has been taken by the Government is driven by “Shorter-term considerations of tactical advantage”. My question is: do you think the Government’s proposals will strengthen the constitutional arrangements of the UK or do you see it hastening the break-up of the Union?

Chris Bryant: I think that is a rhetorical question in a sense. I have never understood the phrase “dog’s breakfast”, because my dog always used to eat his breakfast rather happily. I just think it is daft to provide four extra processes for a Bill at least, to introduce major anomalies, to bifurcate the Government and to create two tiers of MPs, all for possibly

affecting one Bill a year. I am a Unionist. I want the Union to stay together. I think that this undermines the likelihood of that happening rather than supports it.

Q86 Chair: I wonder whether you have any views. While EVEL has been happening we have had the Scotland Bill going through on the Floor of the House. We have had Committee stage; we have had Second Reading. There was four days in Committee stage. Several amendments were tabled—I think in the region of 200 amendments—and some of the amendments that certainly the Scottish National Party put forward for consideration were amendments that were agreed in the Scottish Parliament, cross-party, about what was required in order to ensure that the Smith proposal is met. At the same time when EVEL was being progressed, which several of us believe will make us second class in the House, we were being vetoed by English Members of Parliament who were objecting to it, voting down amendments that had partly been agreed and determined in the Scottish Parliament. Do you think this helps good relationships between the Scottish Parliament and the Westminster Parliament? Does this, as Chris perhaps very delicately put it, hasten the demise of the Union and fuel the sense that there may be a parting of the ways down the line?

Chris Bryant: I think the Union can survive even a Conservative Government so I do not want to please you, Mr Chairman. In the end I think it is a bit of constitutional jiggery-pokery and I do not think it serves Parliament well. I think it will make processes inexplicable to ordinary voters, who will simply not be able to make their way through the spaghetti of processes that we will have, the legislative consent motions, which can only be tabled by a Minister, of course, and all that kind of stuff. I just think it will do the Union no favours, I do not think it will do Parliament any favours, but the one bit I do think is that you can save all of this by going back to McKay and having an English voice rather than an English veto. That to me is the key. I think it would be grossly discourteous, incidentally, if the Commons were not even to acknowledge that it has had a motion from the House of Lords demanding that there be a Joint Committee of the Lords and Commons to consider the matter before anything should be started. I think that we should make it a pilot to see whether it works, so I would time limit it.

Q87 Chair: Just on the process and the relative support there is for English votes for English laws, every political party in the House seems to be determinedly opposed to English votes for English laws. All the Assemblies, Parliaments and devolved legislatures seem to be opposed to English votes for English laws. Even the all-Unionist, unelected House of Lords has massive issues and concerns about English votes for English laws. Is it right that something, as you said yourself, of such constitutional significance, which is almost historic in what it is suggesting, should be progressed when there is so little agreement and consensus?

Chris Bryant: I think you should only do something of significant constitutional reform on the back of consent that is secured by consensus in Parliament. Normally, that means the Commons and the Lords. The Government is using a process that expressly excludes the House of Lords and only relies on its own majority and I think that that is constitutionally inappropriate.

Let me just give you another example, if it helps. I referred earlier to the Health Bill, which was making provision for the Welsh Assembly, the Scottish Parliament and the English Secretary of State for Health to make provisions around both banning smoking in public places and exemptions to that ban. In the end, the way the Commons voted because of the

English majority meant that the Welsh Assembly never got to have a choice about whether there should be any exemptions whatsoever. So, actually, this does go both ways all of the time and there is legislation that regularly goes through, clauses that only affect Wales, where the Welsh MPs never get to sit down and decide because there is no veto. They do have means through the Welsh Affairs Committee, just as you do in the Scottish Affairs Committee, of having a voice, but they do not have a veto. I am afraid I return monotonously to the voice, not a veto.

Q88 Chair: Okay. Thank you so much for coming along and we look forward to seeing you continue in your role as Shadow Leader of the House. I think we have touched on most of the issues that we certainly want to consider. Is there anything that you feel that we have missed or anything you want to add to any of the questions that you have answered?

Chris Bryant: No.

Chair: Right. Well, thank you so much, Chris.

Chris Bryant: Thank you.

Examination of Witness

Witness: **Rt Hon Chris Grayling MP**, Leader of the House of Commons, gave evidence.

Q89 Chair: Leader of the House, thank you so much for attending this Committee at such short notice. We are very grateful. We are not intending to do any great inquiry or report or several recommendations, but what we want to do is to try to help the House in its consideration of English votes for English laws and possibly prepare some sort of paper with some evidence we have been able to secure thus far. We are really grateful to have you along this afternoon and that you are able to take some questions.

Chris Grayling: Could I just say on that point I will set out a bit more clearly in the business statement where we go next on this?

Chair: That was the first question we were going to ask you.

Chris Grayling: I was going to say that if there are things that come out of this hearing that you want to do what the Procedure Committee did—which was to write to me after the hearing—I am perfectly open to that.

Q90 Chair: We are very grateful for that and we are hoping that you may be able to help us about where exactly you are with the process, because we have obviously had that debate and I think the intention was to have a further debate and then a vote. I know the Procedure Committee has just about concluded their report, which you were waiting to secure in order to make a decision about when this is being brought forward. Are we any further forward about when we will be considering this? Is there anything as an opening statement you want to say to this Committee in terms of where we are with EVEL?

Chris Grayling: If I might tantalise you—or perhaps as an excuse to get you to come along to business questions on Thursday and perhaps ask an insightful question about a constituency matter—I would hope to perhaps give some more information at that point, but I think I probably ought to save that for the whole House, if you will forgive me.

Q91 Chair: Thank you for that. I think what we will be doing now is all attending business questions on Thursday just to ensure that we do get that information straight from the Leader of the House's mouth, so thanks for that. You are leaving it all very tantalising for us in terms of the whole process.

Looking at the process just now—you and I have debated this, obviously, in the House in the debates that we have had—you seem to describe this as a relatively small measure, almost insignificant in terms of the way that the House is going to be doing its business; it is nothing to concern ourselves with, it is just a very modest, little bit of tweaking here and there in order that English Members have the view. Others have said this is of such huge constitutional importance, nothing has been done like this, we have to go back to the days of Parnell to find some sort of historical precedent. It cannot be both. Where do they have it all wrong that they have been able to see this as something massive in terms of turning the constitution on its head, like we are talking about 19th century procedures, and for you it is just a modest little tweaking here and there?

Chris Grayling: I think perhaps you are adding to the two cases your usual flourish, if I may, Mr Wishart. I think perhaps the gap between those two views is slightly narrower. What we are trying to do with all of this is to produce a package of proposals that I think provide a sensible balance. You and I had a very different emotion on the day after the Scottish referendum. I thought, “Phew, thank goodness.” You thought, “Damn and blast.” I value us working together side by side in the same Parliament building. We get on very well, I think.

Chair: Absolutely.

Chris Grayling: I think it is great having the Scots here. You guys have done a bit of a political earthquake north of the border and you have come here with a mission, but I like to think we have quite good relations between the parties. I respect what you are doing and I hope we can always work in the spirit of openness. On Sunday I will be cheering on Scotland, hoping you do better against Australia than England did. I am not sure that is always the case the other way round, and with all congratulations to Wales, Northern Ireland and England, I am very disappointed that Scotland have not made it to the Euros. I think it is a great shame. I am a great lover of Scotland. It is a great country. I am delighted that I am part of a country of which Scotland is part and I appreciate that you have strong views the other way round. You want Scotland to be a separate country. My view is I want to strengthen the Union.

One of the things I have found a bit worrying in recent years is that as we have moved forward, I think rightly, with devolution—I think the growth of devolution has been the right thing and what we are trying to do with the Scotland Act and with what will come forward in Wales is also the right thing—I have been concerned about a bit of resentment building up in England. Well, not a bit of resentment; there is resentment that has built up in England about the fact that it is all about Scotland, Wales and Northern Ireland. The question always arises: what about England?

I think the important thing that we can do is to find a balance that says to the English, “Look, you are not left out of this,” but also that does not create a situation where we exclude the other countries from decision making. I know the SNP view is the desire to have an English Parliament. Of course, an English Parliament would give you even less say over these matters than what we are proposing. I think that this is a sensible balance that ensures that England cannot have something imposed upon it against its wishes but at the same time does not exclude the other parts of the United Kingdom from participation in debate, discussion and voting about matters that affect England. I think this is a balance that has it about right.

Q92 Chair: Can I ask why you have therefore failed to convince anybody about this? All the other political parties in the House—we have just heard from the Shadow Leader who was again giving his great reservations about English votes for English laws—every devolved Assembly, legislature and Parliament in the United Kingdom is utterly opposed to these plans. Even the unelected, all-Unionist House of Lords have massive concerns about these plans. I think you know the views of Scottish Members of Parliament now because you have heard them across the Floor on several occasions. It is not really an exercise in building relationships and going forward in partnership, is it?

Chris Grayling: First of all, I think it is not quite as clear-cut as you say. We have not had a vote on this yet and I have deliberately listened to the requests from the House to have more time for debate, even though our manifesto committed this to happen within 100 days. We have stretched that timeline to accommodate the wishes of the House. It is interesting. I heard a bit of a change of position today from the Labour Party spokesman compared with three months ago and his predecessor. Three months ago it was outright opposition, today it was much more measured, so I cannot be sure what the Labour Party will decide to do next week. As you know, Mr Wishart, there is an awful lot of rhetoric in this place. Sometimes that rhetoric masks a slightly more measured view.

I cannot speak for the other parties. All I know is that we stood on a manifesto in which these were printed out in great detail and I think they are defensible. They do not mean that you will be as a Scottish Member of Parliament—you and I, although we may not always walk through the same Division Lobby, that option will continue to be open to us. This does not exclude; it simply provides what I have to say was very much the spirit. I have listened to all the debates and all the evidence given, but when I read the first paragraph of the McKay report, what it said is, “Decisions at the UK level having a separate and distinct effect for England or England and Wales should normally be taken only with the consent of a majority of MPs for constituencies in England or England and Wales.” I think this fulfils that principle, which was the first core principle of his report, in about as much detail as one possibly could.

Q93 Chair: We listened very carefully to Sir William when he came in front of this Committee and I gave evidence to the McKay commission when it was established in the last Parliament. The key difference is the consent versus a veto. The new innovation, of course, the thing that you introduced particularly, is this idea of a veto. I know you dismiss the concerns that this somehow makes Scottish Members of Parliament or Welsh Members of Parliament second class and a different status from English Members of Parliament, but what was wrong with the McKay proposals and why didn’t they work for you that you required the veto, the second-class status?

Chris Grayling: I do not think they do differ. The words “voice not veto”—I am afraid “voice” does not appear in his report. He simply says, “Should normally be taken only with the consent of a majority of MPs.” Now, “with the consent” means, I am sure, you can say yes or no. That is my understanding of the phrase “consent”. If you want someone’s consent, say, “Can I do that, yes or no?” We are saying to the House: where a UK Government wants to legislate in a particular area affecting England only, it basically has to say to the English, “Can we do that or not?” and the English can say yes or no.

Q94 Chair: Just to absolutely clarify this, you are saying that there is not a veto involved in the English votes for English laws proposals? There is not a veto?

Chris Grayling: I am saying that the phrase “Should normally be taken only with the consent of a majority of MPs”—by definition, in order to gain the consent or not get it, you have to ask them to take a decision. Our proposals ask for the English to take a decision on whether they give their consent or not—indeed, through a legislative consent motion—to a proposal from a UK Government.

Q95 Chair: Conversely, if it is a double majority that is required or whether it is the whole House on the other, in order to progress it has to be agreed by English Members. They have, in effect, a veto when it comes to considering these issues. Surely that must be the case. There is no other way to look at it. They might be giving their consent, but they are also allowed and they have available to them a veto to stop legislation.

Chris Grayling: Well, that is my interpretation of the recommendation of the McKay commission report. By definition, if you do not have consent, then you would not be able to proceed with something. Actually, it is double consent because, of course, at the end of this nothing would be able to happen without your consent and without the consent of an English MP because both of you have a say in this. I think that is the strength of the proposals. Unlike the concept of moving to an English Parliament where anyone from Scotland, Wales or Northern Ireland would be excluded in the way that somebody who has an interest in Welsh matters is not able to have an influence if they are outside Wales, what this does is it ensures that everyone from a UK Administration can propose a measure for England. The measure for England can be debated and discussed and voted upon by everyone, but equally it cannot go through unless it has the consent both of the UK Parliament and of the English MPs. It is that phrase “consent” I think is so crucial.

Q96 Chair: I do not want to labour this point, so it will be the last question on this issue. The McKay proposals are radically different when it comes to this because what Sir William described was a process of consent. What there is very clearly here is a veto, and you are right, there is a double majority required when it comes to these issues. What you have done in your proposals and plans is to look at the membership of the House and then decide and determine those that are able to be included in both of those votes, then a section of Members of Parliament who are going to be excluded from one of those sections of votes. Surely that suggests that what you have created are two classes of Members of Parliament in this House.

Chris Grayling: I do not buy that and I think if you sit down and read the summary of the McKay commission report—and read the whole report as well—you see the ingredients of this package all set out there. He talks about the Speaker having responsibility for

certification; he talks about England-only Committees; he talks about using Standing Orders rather than legislation. But if you look through that summary—

Q97 Chair: The key word is “normally” in that, isn’t it? It is normally considered.

Chris Grayling: That is what we are doing. There will be, as I say, exceptions to this. The estimates process, for example, is something that remains a matter for all Members of Parliament. I think the key is that we are not excluding anyone from anything, with the one exception of English-only Committees, which is something in the McKay report, and that would normally perhaps be one or two people would not sit on a Committee. Every vote on the main floor of the House, every debate on the main floor of the House, there is no change to the ability to anyone to participate or vote on Bills. That is a Bill you will vote on Second Reading, at Report, on Third Reading and on Lords amendments.

Q98 Chair: We want to come on to the increase to the legislative programme of the proposals that you have suggested, but the last of the introductory questions is that I listened very carefully, as I always do, to your remarks in the Procedure Committee. We are going to look at certification in this Committee and we want to hear your views about the process of certification, but we have a number of concerns. We have heard some of the concerns from Speaker’s counsel. We know that there is a real anxiety in the Speaker’s Office about being placed into what will be a very pernicious political situation where key political decisions will have to be made from the Speaker’s Office. I heard you in the Procedure Committee describe the process thus: that you would try to make this job as easy for the Speaker as possible and that, as much as possible as you went to the Speaker for certification that would be shaped up, there would be a suggestion and a proposal to the Speaker about how certain things are going to be certified. Is that the case, therefore—that Departments will effectively be making up their minds about what is English-only legislation?

Chris Grayling: What I would expect to happen is that at the Department—and when you say Department, of course, it is the independent civil service whose job it is to prepare a Bill—I would expect them to, as they draft up the Bill, reach their own view about the territorial extent of it—they do that already—and they would submit the Bill to the Speaker for certification saying, “In our opinion, this is an England-only Bill,” or an England and Wales Bill or a United Kingdom Bill. The Speaker and the Speaker’s advisers would look at that and would reach a view whether that was correct or whether it was wrong. Nobody is intending to give the Speaker a blank sheet of paper and say, “You make it up from scratch.” I think it is reasonable that the Speaker should get an initial view from the civil servants who have drafted it, as opposed to the politicians, as to what the territorial extent is, but of course it is the Speaker’s final say and absolute decision over whether that is accurate or not.

Q99 Chair: Have you any concerns about the Speaker being placed in such a political situation? Is that something that bothers you at all? You and I both know that there is unhappiness in the Speaker’s Office about this. We have heard from Speaker’s counsel here within a private session and I know that it has been expressed in the way that the Speaker gave that emergency debate because of his unhappiness about the process. Does it concern you at all that our mutual arbiter of this House is being placed in such an invidious political situation to make these decisions—whether myself or my colleagues here will be excluded from certain sections of Bills?

Chris Grayling: I do not share your understanding of the situation. I have spoken to the Speaker personally about this. It would be wrong of me to share the nature of that conversation. I am comfortable that we are asking him to do something that is reasonable and something that is allied to what he would do as a matter of course. His job is already to certify money Bills. He has to take a number of contentious decisions already—which amendments to call, for example, whether to accept urgent question requests, whether to take other decisions that affect debate in the House, like the granting of a Standing Order No. 24 debate and so forth. I don't believe that this is a process that needs either to be controversial or problematic. In most cases it will be completely obvious what a matter is. In a small number of cases, it will be a fine judgment.

Q100 John Stevenson: There are some people that would suggest there is a much simpler solution to all this. We recognise that there are anomalies in our constitutional system, we recognise that Scotland now has greater devolution than the rest of the country. A quid pro quo for that would be a reduction in the number of Scottish MPs that are sent to Westminster, but that would mean that everybody is still in the level playing field in terms of their role down here and you would not need all the changes to Standing Orders and bring in the question of certification. What is your view?

Chris Grayling: There are a number of issues there. First, of course it does not remove the ultimate issue and the one that we normally debate is that when the introduction of increased tuition fees 10 years ago was put through the House it was only carried by a majority of three or four, significantly exceeded by the number of MPs from outside England whose constituents were not affected by it, so it didn't apply in Scotland. It was carried with the support of Scottish Labour MPs—not with the SNP, I hasten to say, but it was carried with the support of Scottish Labour MPs.

Q101 Chair: That would not affect this. It would not be the impact of English votes for English laws because that was a Second Reading vote, that one you are referring to. Regardless of what you do with English votes for English laws, we would still be entitled—

Chris Grayling: Yes. You would still be involved in the process of that, but if that situation was extrapolated 10 years further forward—

Chair: You are not intending to stop us from voting in Second Readings?

Chris Grayling: No, no, no.

Chair: That is why you gave that example?

Chris Grayling: No. But that Bill only passed into law by a very small majority. Ultimately, if this was in place, it could not pass into law without the consent of English Members of Parliament. Whether you have 15, 20, 35, 57, 59 Scottish MPs, whether you have 17 Northern Irish MPs, whether you have 33, is it, Welsh MPs, you still have that same issue that, ultimately, you can envisage a situation where an English measure is carried against the wishes of the English. The problem with that, of course, is that we would lose 40-odd of our valued colleagues as well. I personally think if you are a

supporter of the Union, which I am, it is difficult to see that the cause of the Union will be enhanced by saying, “Scotland, two-thirds of your MPs are going to lose their seats.” This is a better way of doing it, to be honest.

Q102 Maggie Throup: How much more parliamentary time will the English-votes procedure require? Will the time available for the Back Bench be reduced as a result of the procedure being introduced?

Chris Grayling: That would not be my intention. If you look at where the additional time might come, it is fundamentally mostly in the legislative consent motion stage after Report, which I would expect to be typically an hour, or maybe three sometimes with big Bills. Often it would just go through as a formality. If there is no dissent, the Minister would move the legislative consent motion and the House would simply nod it through and there would be no extra time required. If there is extra time required, you have an extra hour’s debate. If we end up going from 7.00 pm until 8.00 pm, it is not the end of the world. We do have time in the calendar and quite often this House finishes early. I am very confident we can make sure that we provide that time without taking hours away from the Report stage, which is quite important.

Q103 Maggie Throup: What impact might further devolution of powers have on the frequency in which the English votes process is employed?

Chris Grayling: This is, in part, something that needs to take place in parallel with the Scotland Bill and the Wales Bill. We are in the process of devolving considerable additional powers to Scotland and Wales particularly and, by definition, as those powers are devolved and this comes into force, it will be used when there are England-only measures. If you look at the mix of Bills before Parliament in the session, there are a fair number of England-only elements to Bills. There is not that much that is, in its entirety, England-only. I would see this being used regularly but not all of the time.

Q104 Mr Cunningham: In a scenario where a UK Government does not have the consent of the majority of England, could the proposed English veto of consent of English MPs hold the UK Government to ransom by withholding consent to the Finance Bill?

Chris Grayling: No, they couldn’t and the reason for that, of course, is that this is in Standing Orders rather than legislation. Ultimately it becomes a balance between an incoming Government that would, inevitably predominantly based on constituencies in England, take a decision to say to the people it represented, “We are no longer going to have an English vote system,” while also, looking the other way, saying to those MPs who are causing trouble, “If you don’t stop doing this then we will get rid of the whole thing altogether,” suspend Standing Orders or scrap Standing Orders. There is an incentive on both sides of a UK Parliament and a group of English MPs to use this responsibly. That is the only way it will work because by Standing Orders, clearly, it can be changed pretty quickly.

Mr Cunningham: Standing Orders is a moving feast when it comes to issues because that is a key point that—

Chris Grayling: My point is that Standing Orders can be changed and they can be suspended. If you were an incoming Government that was having problems with a Finance Bill and the English were blocking it, of course you can change Standing Orders. There is an incentive that way for both sides, for that incoming Government with a system that gives an element of devolution to England to respect that but, at the same time, of those people who are using that system not to abuse it, otherwise it will disappear.

Q105 Mr Cunningham: Yes, but you and I know through experience, don't we, that to get people to go down a certain road—for want of a better term—you end up in a compromise situation and you could end up in a compromise situation on taxation that could affect other areas of the UK? It is not as simple as you say.

Chris Grayling: Let us suppose that an incoming Administration decided that the burden of tax increase would fall on the English. If an element of taxation had been devolved and put all the increase on to England, it would give the English the ability to say, “No, thank you very much, that is not right.” Ultimately, what this requires is grown-up politics; it requires discussion between groups, between parties to reach a compromise. Again, coming back to the word “consent”, I think this takes Parliament towards dialogue, discussion and agreement rather than confrontation.

Q106 Chair: Just to clarify, because this is the first I have heard you say this in any of the debates that we have had and in the announcements you have made, if we are in a situation where we have one party with a majority throughout the United Kingdom and another party with a majority in England and those English MPs decided for whatever reasons—whether political or just out of mischief—to try to block the UK Government's agenda in England, you would therefore just suspend Standing Orders?

Chris Grayling: I wouldn't personally, but I suspect the UK Government of the time would say, “If you mess around and try to block our Budget, of course we have the power to scrap Standing Orders.”

Q107 Chair: Okay. The way that we look to approach the difficulties of issues is just to suspend the Standing Orders and you would be happy that this would be looked at in any area of difficulty when it comes to EVEL?

Chris Grayling: Any Parliament at any time can change any of its Standing Orders; that is a matter of fact. What I would expect to happen in that situation, you have a conflicting pressure. On the one hand you have an incoming Administration that does not want to remove a piece of the devolution settlement, on the other hand you have a group of Members of Parliament who are resisting something, appropriately or inappropriately. The only resolution to that is either the Standing Orders go or agreement is reached, and I think this could facilitate sensible agreement, sensible dialogue, rather than just a decision to scrap. But for any incoming Government, in Standing Orders it is a matter of fact that Standing Orders can be changed by a majority of the House at any time.

Q108 Kirsty Blackman: Just to expand on that, if an incoming Government can just suspend Standing Orders, in relation to these proposals, is that a suggestion that these proposals are just not fit for purpose?

Chris Grayling: No, because what would happen in that situation is that, let us suppose the Labour Party were in Government and the Labour Party inevitably in Government, even if it manages to recover in Scotland, will none the less have a majority of proportion of its seats in England. It will have to say to the people it represents in England, “The bit of devolution that you now have is going, we are getting rid of that.” It is not a straightforward decision at all. It is something they could do, but no Parliament can bind its successor. You can either change Standing Orders or you can re-legislate. In a majority Government you have the power to push through the things that you want to push through. But it becomes a decision then because this is about fairness in the devolution settlement and if an incoming Administration decided to take away the piece that gave England its fairness, it would pay a political price for doing so.

Q109 Maggie Throup: I want to come at this from another angle as well now. One of the recommendations from the Smith commission was that MPs representing constituencies across the whole of the UK would continue to decide the UK’s Budget, including income tax. Could the Government’s proposals on English votes be viewed in contrary to the recommendations of the Smith commission?

Chris Grayling: I don’t think so. For things that are UK-wide taxes, it is absolutely of paramount importance they are treated in the same way they are now. But let us suppose, if you take an individual example of a tax, one of the taxes that is likely to end up being devolved is landfill tax. Clearly, if landfill tax is devolved for Scotland or Northern Ireland or Wales and being set by the Assemblies in Belfast, in Edinburgh or in Cardiff, then it is difficult to argue that the United Kingdom Parliament, comprising MPs who represent areas covered by those Assemblies, should also have the decision for the England piece, and that is where the issue comes.

In my view, if a tax decision and a tax rate has been devolved, then that is when it should be covered by these proposals. If something is a United Kingdom tax, such as income tax—I don’t know yet the full extent that we will end up with devolution of part or all of income tax—that should be reflected in how votes on income tax are established in this place. The overall tax umbrella, the overall Budget—I would love to see Mr Wishart and I walking through the same lobby together and voting for the Budget, and I hope we will see that in the near future. Perhaps not.

Q110 Chair: Stranger things have happened. We have a couple of questions from Kirsty on Barnett consequentials and estimates, because this has become a feature of the debate about all this. But before we go to Kirsty, I would like to ask you about something that I found very curious that you said at the Procedure Committee and it was this: “I have looked long and hard at the issue of Barnett consequentials and I think they are a bit of both an illusion and a side issue. I don’t actually believe that Barnett consequentials exist.” You surely were not serious when you made that remark. We have the Scotland Office coming in front of us tomorrow and as part of their annual report we have pages and pages of Barnett consequentials. Do they not exist and are they an illusion?

Chris Grayling: I have not been able to find any examples—and if this Committee can find them, I am perfectly happy to look at them—of a measure brought before this Parliament that has had a direct effect of increasing or reducing the amount of money that goes to Scotland that is not also covered in the estimates process on which the entire UK Parliament would vote. I have not been able to find any measure that does not conform to that.

Q111 Chair: But you are not going against all sorts of economic orthodoxy in trying to suggest that Barnett consequentials don't exist? It would just be almost daft to suggest that.

Chris Grayling: It depends. Let me take a specific example. When you, Mr Wishart, gave evidence to the McKay commission, you discussed the issue of the Higher Education Act—in, I think it was, 2004. What you described was not a situation where the consequence of that Act was to materially affect the budget available to the Scottish Assembly, as it was then, to finance higher education in Scotland. What you said is: “The problem was that English universities, getting more money through a fee system, would put Scottish universities at a financial disadvantage because the English ones would be better off”.

I am afraid that is just localism; it is a consequence of devolution. You take a decision to fund prescription charges in Scotland; the English pay prescription charges and the Scots don't. That is a political decision, it is a difference of emphasis, but it is not a legislative consequence. What we are talking about here is legislative consequences and I have looked hard to try to find a Barnett consequential in legislative terms where an Act of Parliament passed through this place either increased or reduced the Scottish Budget without that impact going through the estimates process as well, and I can't find one.

Chair: The difficulty we have here is there is such a thing as Barnett consequentials—of course there is, because the Scotland Office would not go to the bother of printing them and putting them here. I could give you some figures if you want, but I suppose I would be wasting my time and your time. They are a feature of devolved government settlement. What you are describing—and I think it is one of the things that we would like to explore with you—is the downstream consequentials of decisions that are taken within a Department that are not part of the estimates process that then impact on the ability of the Scottish Government to secure what it normally receives in Barnett consequentials. We want to look at that, but I know Kirsty Blackman has some particular questions when it comes to Barnett consequentials and the estimates that are worth exploring.

Q112 Kirsty Blackman: I am really pleased that we are discussing estimates. There was a suggestion in the Procedure Committee, and you just reiterated it, that the spending implications are addressed by the estimates process. I am a new MP and I am just trying to get to grips with the procedure of the House. I would appreciate it if you could take us through the estimates process and point out where non-governmental parliamentarians can have an input.

Chris Grayling: There are two main ways to that. The first is that it is the Liaison Committee that decides what is debated on the days that the estimates are debated, so they are free to bring whatever they want before the House. It is not a matter for the

Government. The second is, of course, that it is possible for Members of Parliament to table amendments in this process. Both of those exist, but it is something that the Procedure Committee is now talking about having a look at. Whether they do or not, I don't know, but there are those two ways in which Parliament has the ability to impact on the estimates process.

Q113 Kirsty Blackman: In terms of the amendments that can be tabled by Members of Parliament, I have heard two totally conflicting views. One of them is that amendments can be tabled, which you are suggesting. The other one is that you can only vote for or against the estimates process, you can't table amendments. Which one is it?

Chris Grayling: It is that you can table amendments. There are parameters around which you can table amendments. You cannot table all variations of amendments but the individual Members do have the ability to table amendments in that process. It is also something, of course, that if you want, as a Committee, to talk to the Procedure Committee and support them in their work, you can. The reality is that all of us, collectively, as United Kingdom Members of Parliament, decide how much budget goes to Government Departments and, for the purposes of the estimates process, how much money goes to Scotland, Wales and Northern Ireland for decision-making and distribution within the devolved Administrations and Assemblies.

Q114 Kirsty Blackman: In terms of decisions that are taken in legislative Committees that Scottish MPs will be excluded from for part of the process, when it comes to the estimates process, will the Government be supportive of all of these being discussed or will the Government still be suggesting that only three of them should be discussed?

Chris Grayling: As I said previously: if a decision were taken. The other point about the legislative process is that I struggle to find examples of legislation that changes the departmental spending allocations as well. The estimates at the start of the year decide if Health is getting £100 billion and Education is getting £70 billion and so forth. It is very unusual, virtually exceptional, that any piece of legislation that this House considers during the course of the year changes those amounts. It may move the deckchairs around within the Departments, it may change how they allocate their spending, but a piece of legislation of the kind that we would be considering does not have the effect of reducing the amount of money we spend on Health and, therefore, as a Barnett consequential of reducing the amount of money that goes to Scotland. I have looked for these examples; I cannot find them.

Q115 Chair: The difficulty we have in trying to accept that view and vision of how neatly all this works is that you do have estimates, and they are estimates, and that is departmental spending. You mentioned the Higher Education Bill, the purpose of which, quite clearly, was to ensure that less public money was going into higher education and more private money coming from students was to go in. What that did was, the pot available for higher education, when it comes to universities, was going to be diminished when it came to public spending. That, of course, has a consequence on the Barnett consequentials—which I know you think don't exist—available to Scotland to spend on higher education. That would be consolidated,

because they are only estimates, in the next estimate process, so you have the total departmental spending. What we are getting to in this, if the only way that we can consider downstream Barnett consequentials is through the estimates process, we are going to have to spend weeks and months debating estimates. It is not good enough just for the Liaison Committee to put three days aside to look at three Departments. Every single Department will have to have its budget scrutinised; Scottish Members of Parliament are going to have to be satisfied that there is no consolidation and downstream Barnett consequentials. How are you going to find the time for all of that?

Chris Grayling: Mr Wishart, you may be able to help me on this. There has been an awful lot of talk about Barnett consequentials. I have looked hard for a piece of legislation that would be covered by the proposals we have here that would affect the amount of money that goes to Scotland and I can't find one. You may have some examples, and I am very happy to look at them, but so far in the debate nobody on any side has been able to come up with an example for me. I have asked the officials as well and nobody has been able to come up with an example.

Chair: Because that is estimates when departmental spending is determined, then it is consolidated the next year with a review of estimates.

Chris Grayling: But I can't find even an individual measure that in its own right changes the level of public spending in Scotland. Do you have the example of one?

Q116 Kirsty Blackman: Not an example, but in terms of the budgetary process and the way in which the finances of the UK Parliament work and the lack of transparency that there is there and in fact that it is not a bottom-up budget process, have the Government and has the Treasury given consideration to making the process more open? How does the Treasury feel about the suggestion from the Procedure Committee that they might suggest that the estimates should be more open?

Chris Grayling: That is a question you would have to put to a Treasury Minister. The practicality is that if this House, which is sovereign, chooses to change its way of doing things, it can do that, and the Procedure Committee—or this Committee or any other Committee—can make recommendations about doing that, which may or may not be accepted by the House. But I still go back to the point that all I am saying is that the issue of the so-called Barnett consequentials becomes a real one if there are examples of legislation going through this House that affect the Scottish Budget one way or the other.

I can't find examples of that. I am sitting here today with you guys and nobody can give me an example. My problem is that, having searched for an example, I don't believe this exists. The allocations to Scotland are something that is done in the estimates process at which everyone gets to vote and within the overall envelope of public spending but that is not covered by these proposals. These proposals don't impact upon how we do that. There may be a separate discussion for you and other Committees about how we handle that process, but what I am doing here in terms of the legislation that is going to be covered by these proposals, there is no financial consequence that I can identify and, therefore, my scepticism, I am afraid, is I just don't see this.

Q117 Kirsty Blackman: Just lastly, there is no concern from the Government in general and the Treasury in particular that this has opened up a can of worms that we would rather was not opened?

Chris Grayling: There is no can of worms I can see when we are discussing what is a normal part of the parliamentary process and always has been. Of course, at any point it is open to Committees to discuss these issues, but that is a very different issue to this. The estimates process is one that is long established, we have not changed and it is not affected by these proposals. From my point of view, the question is, as a lover of the Union, is there something that is likely in these proposals to take Scottish or Welsh or Northern Irish MPs out of a decision that will vary the national budgets that their Assembly or their Parliament has at their disposal? The answer is I can't find one.

Q118 Chair: I think the confusion is the way that we both look at the estimates process and the way that departmental budget spend is allocated. Of course, you are right, nobody is disputing the fact that according to the estimates that determines the total departmental spend for the year and there will obviously be a Barnett consequential from that. What is in dispute—and I think we are not going to agree on this—is that further legislation down the line, and the tuition fees being an example where there is less public money going in, which would have a limit on the Barnett consequentials, will be then consolidated in the next year in terms of the new estimates; will have an impact on our Barnett consequentials and the funding for public services. I don't think we are going to agree on this, but that is how we see it working and that is the concern the Scottish Government have about this. I am sure you have seen their evidence; the Procedure Committee have great concerns, particularly with a Conservative Government who are in the business of privatisation, who are looking to increase the availability of private money, particularly in health and education. You will probably tell me the same thing again that I have heard about five or six times from you about the estimates process, but is there any sense that you could see where we are coming from in all this about estimates and consolidation and moving on to the next set of estimates?

Chris Grayling: If we go back—and you mentioned again the tuition fees as an example—you, in your own evidence, said that the consequence of the tuition fees Bill was not to affect the Scottish Government's Budget. It was that it meant Scottish universities would be disadvantaged because English ones would have more money. That is a different question altogether. There are things you do in Scotland. Scottish students, arguably, are better off because they don't pay tuition fees in the same way that English ones do. Those are just decisions about localism; that is what devolution is all about. It enables you to take a different decision in Scotland to a decision being taken in other parts of the United Kingdom. What you are doing there is championing devolution.

I keep saying that I am very open, and I have been all along, to look at problems but this is a problem I have looked for hard and I don't believe exists. With respect, nobody has been able to come along—you haven't today been able to say to me, "Here is a Bill that was passed through the Houses of Parliament, turned into an Act of Parliament, that varied the budget in Scotland and that in future we would not be able to vote on." Bills don't, except in very rare and exceptional circumstances, affect budgets at all anyway because the health budget—certainly if you have a foundation hospitals Bill—it still gets the same £100 billion budget across the year; it is just spent differently. That doesn't affect how much money goes to Scotland at all. I have not been able to find in legislative terms any Barnett

consequential and I have looked. I have asked for it, I have sought advice, and nobody has been able to give me any.

Chair: I think we are not going to agree when it comes to the issue with downstream Barnett consequential and how that impacts on the further estimates down the line.

Q119 Mr Cunningham: A very quick one, and we can go around in circles all day on this: surely to resolve the problem maybe you want to look at a pilot scheme before you legislate in a permanent way and then it will resolve all these arguments.

Chris Grayling: We are not legislating in a permanent way, of course, by using Standing Orders of the House. Effectively what we are doing, as I have said, for that we will have a review after a year. We have a trial period over a year, at the end of which we are going to have a review. I am not going to stop this at the end of a year, but I am very open to make modifications. Indeed, in the meantime if we discover an unexpected consequence, something that is not working, we can move quicker. But this is only going to affect a certain number of Bills over the next 12 months and I said we will do a review at the end of it.

Q120 Mr Cunningham: In effect what you saying to me is that, in one way, we could interpret that as a pilot scheme because you are going to review it at the end of a year.

Chris Grayling: Yes. There is going to be a review in 12 months' time. What I am not going to do is say, "This all stops in 12 months' time," because with the flow of legislation it would be quite complicated to do that. There isn't a simple cut-off point. It is better to say we will introduce this. It is not our intention to introduce it and then get rid of it. It is our intention to introduce it, look at how it works and, if necessary, make modifications. Effectively, we are asking for the same thing, but what I am not doing is saying, "There will be a 12-month period, at the end of which there will be a six-month review and then we might start again." What I am saying is that we will try this on a certain number of Bills and over the first 12 months of operation we will review it as it goes, but particularly at the end of 12 months, and say, "Do we need to make changes?" If there are things that are obviously not working in the meantime, we can make changes sooner, because with Standing Orders it can be done fairly quickly. At the end of 12 months we will do a proper stocktake with this Committee and with the Procedure Committee and say, "Are there things that really don't work? Are there things that are working particularly well that we would do better if we modified slightly?" We will see.

Q121 Mr Cunningham: In any other mode of life where there is a lot of doubt or dispute, if you are going to commit resources in any way, normally you would do a pilot scheme, and if it works out or you adjust it then you carry on with it; if it doesn't you do something different.

Chris Grayling: De facto we are doing that. We were elected on a manifesto commitment of introducing a system of English votes for English laws and we intend to do that, but I am not narrow minded enough to think that, just because we do it on day whatever it is, that means it is absolutely perfect and we should change nothing. We will revisit this and I am actively encouraging the Committees with an interest in this to monitor it over the next

12 months and make suggestions to us. There is bound to be something in the process that we think we could do better. Let us approach this with an open mind, as a first step. If it works perfectly, great. I suspect, as I say, we will want to change something in 12 months' time. What I am not offering is a pilot of the principle, but I am definitely offering an initial period of the practice.

Q122 John Stevenson: Just to give a scenario, you have a Secretary of State for Education who comes from a Scottish constituency, a Bill going through Parliament, clearly English-only, so therefore you effectively have an English-only Committee. Does that Minister who is piloting that Bill through Parliament, sitting on the Committee, have a vote or not?

Chris Grayling: On the Committee, no, because we have had this already. We had John Reid, who was Health Secretary, a Scottish MP when health was devolved in Scotland. No, it would not be the case that if a Scottish Minister was leading on an England-only Committee, that Minister would have a vote and it would be up to the Government of the day to plan around that. It is more of interest can a Secretary of State be from—

John Stevenson: That is my follow-on question.

Chris Grayling: My view is absolutely yes. We have had it already. John Reid was Health Secretary, a Scottish MP. Health was devolved in his constituency; he was Health Secretary in the United Kingdom Government. Yes, I think you can.

Q123 John Stevenson: The follow-on question was: is there a danger, though, that we could go down the road where there are certain Secretary of State positions that could never, effectively, be a Member of Parliament from a Scottish constituency?

Chris Grayling: Not at Secretary of State level, no, because the Secretary of State wouldn't normally take a Bill through a Committee. It would be very unusual to do that. It would be a junior Minister.

Q124 John Stevenson: Is there a danger that we might get to the point where you do not have somebody from a Scottish parliamentary seat being a particular Secretary of State?

Chris Grayling: I would not want to see that. I would want the best person for the job.

Q125 John Stevenson: Do you think there is a danger that, ultimately, you could get to the stage where the Prime Minister could not come from a Scottish constituency?

Chris Grayling: Just the opposite, I think. With a stronger Union, we should make sure that the Prime Minister can always come from one of the other countries. It is a shame that, with the nature of politics in Northern Ireland, it is more difficult there. I think the Prime Minister should be able to come from any part of the United Kingdom.

Q126 John Stevenson: Even if there was a scenario where the Prime Minister is from a Scottish constituency but does not command a majority in England?

Chris Grayling: Yes. As I say, ultimately we are one United Kingdom. They command a majority in the United Kingdom and therefore they are the Prime Minister, very definitely.

John Stevenson: Thank you.

Q127 Margaret Ferrier: Just going back to the previous question, within the 12-month pilot scheme, how many Bills do you envisage being covered by the process? It has been talked about as one Bill a year. It seems a lot of process to end up with not a lot at the end of it.

Chris Grayling: Of course, it is part-Bills as well. It is not simply about a Bill being absolutely English. I would not prejudge the certification recommendations of the civil service or the decision of the Speaker. In my view, there are a number of Bills that are predominantly English but have elements in them that are Scottish, Welsh or Northern Irish, and that would preclude them from being classified as all-UK Bills.

I think that we will see, over the next 12 months from where we are now, seven, eight, nine, 10 Bills in total that might fall within the ambit of this. Not all will be. You will be aware that there are measures set out in the Queen's Speech that are due still to be laid before Parliament, which are obviously United Kingdom matters. Judges will not be covered by this process. There will be some Bills in the next 12 months that will. Exactly how many I could not say, because it will depend on the certification. I think it will be single figures, but not one.

Q128 Chair: On that, your guidance to the Speaker in terms of certification is that minor or consequential measures should be discarded. What are "minor or consequential" effects? What are these?

Chris Grayling: "Minor" is fairly obvious. It is a very small effect judged to be not of relevance.

Q129 Chair: Could you give us an example of one?

Chris Grayling: Probably a very simple cross-border issue would be the best example of both of those. If you take the "consequential" one—indeed, it could be minor as well—and imagine a school just over the border in England, a school in Shropshire that has some Welsh pupils attending, a school of 200 children that has 20 Welsh children attending, and a decision is taken in England to have a new register of absenteeism and each school is asked to keep records of whether children are absent or not. Clearly that has an impact on a small number of Welsh students as well. It is consequential in that it is an English decision that affects a small number of Welsh students but it is also pretty minor because it is about putting 20 children's absenteeism on a database.

Q130 Chair: Could you think of an example for Scotland? We get the cross-border issues.

Chris Grayling: Exactly the same answer between Berwick-upon-Tweed and a village five miles north.

Q131 Chair: We are wrestling with this because there is no clear definition. Your example is quite intriguing in that sharing cross-border services would be what would be considered minor or consequential. This is something, again, that the Speaker has been asked to disregard. Obviously you would be shaping up the minor and consequential issues that should be disregarded. Would that be—

Chris Grayling: As always with these things, it is about the application of common sense and I have no doubt whatever that our Speaker and his advisers have an abundant amount of that.

Chair: One person's minor or consequential issues might be supremely important, something that has to be discussed, debated and voted on. That is the thing. There is no definition of what these actually are.

Chris Grayling: Yes, and one person's probing amendment is another person's dramatic issue. That is why we have a Speaker to cast wise judgment on what it really is. As you say in the House, Mr Wishart, you regard him with great fondness and great respect. I have every confidence, as indeed you do, that his wisdom would apply.

Chair: Let us hope that it does, because we have no definition at all of what these minor or consequential are.

Q132 Chris Law: I want to go back to the beginning a little bit, when Pete was looking for what support you have with regards to this Bill. You argued in July, and you have said today, that you seem to have this question that always arises about fairness. You said there has been a longstanding sense of grievance in England. You said that in July in the House of Commons and you said at the Procedure Committee that there would be a running sore if the English do not have their say over their destiny. Given that the rest of the House opposes this Bill, given that the Unionists in the Lords oppose this Bill and given that the devolved Administrations oppose this Bill, could you tell me how many English Tory MPs support this proposition you have put forward?

Chris Grayling: I think you will find that we all do, and we were elected on a manifesto to deliver it. As somebody who represents an English seat, I can tell you that this is an issue that does come up to me time and again. I appreciate that we have a different view on the desirability or otherwise of the Union, but I want to defend and protect it and I want to particularly reduce resentment to it. I have great fondness for Scotland. As I say, perhaps unlike, I am sure not you, but many of your counterparts, I regard Scotland with fondness and cheer it on when it is doing well. I am not sure it always works quite the same the other way around. I do not want resentment to build up in England about Scotland. Our Union is too important for that to happen. It is something that I and my colleagues have experienced to a significant degree and these measures go some way to enabling us to say to those people, "You are not being left out."

Q133 Chris Law: Let me reassure you, on behalf of the other Scottish MPs here at this Committee, we also have a great fondness for England. I wanted to point out, though—you said that you are supported by the rest of the Tory MPs—that on 15 July I was at the debate with many of the SNP MPs. In fact, the vast majority of us were there. During that debate

there were less than 20 Tory MPs at best and at worst you were down to four MPs. Can you explain where that great support is?

Chris Grayling: I think we will see that great support when it comes to the House deciding whether or not to accept these proposals. I have been really impressed by the commitment of SNP MPs to the Chamber and I commend you all for it. It has added value to the debate and long may it continue to do so. It is, of course, always the case that my colleagues have a number of challenges and responsibilities related to areas that are the responsibility of your MSP colleagues that take up some of our time as well.

Q134 Chair: That question is an important one because we were surprised, given that I think you, the Leader of the House, said that this was a burning, pressing issue for the people of England. We have not seen any evidence for that. In fact, most of the opinion polling that has been done on this shows that less than half the people of England consider this to be a relevant issue, regardless of how hard you tried to stir some of this up during the last election campaign, when a former leader of the Labour Party was in the former leader of the Scottish National Party's pocket. This was an attempt to try to build up this type of views and try to stoke it. What evidence do you have, other than anecdotal and constituency-based, that this is something that is so pressing?

Chris Grayling: You say "other than anecdotal and constituency-based"; I regard the conversations that we as elected representatives have with our constituents, of which we all have very many on a regular basis, as a pretty good indicator of what our constituents are asking us to do. Of course, we put those ideas to the country and in overall United Kingdom terms, though perhaps not in Scotland—albeit we came quite close to being the second party in Scotland; it was only 300 votes, quite a long way behind you guys, but we came quite close—the British people, the United Kingdom electorate, gave us the job of implementing our manifesto, of which this was part.

Q135 Chair: Are there any other solutions that you see to this? Obviously this is your preferred option, we understand that, and we of course appreciate that it was in the Conservative Party's manifesto. You are the Government and you have every right and entitlement to make sure that your manifesto commitments are fulfilled. But did you ever consider any other approach to English votes for English laws or did it have to be this one, where there is a second-class status, the extra stages of legislation and so on? Were there any other things that you looked at to try to resolve it?

Chris Grayling: I think you and I have a slightly different view about this. This was done pretty exhaustively by my predecessor, William Hague. I did not devise the proposals myself; I took them over after the election. They were set out in our manifesto and we are implementing in some detail what was in our manifesto.

Yes, of course a number of options were looked at. I know that you have argued, Mr Wishart, for an English Parliament. The thing that turns me against an English Parliament, as I say, is that I have listened very carefully to what you have said about not becoming a second-class citizen, about not being excluded from the process. My worry about an English Parliament is it does exactly what you have said you do not want, which is to be excluded from the process. In fact, we would lose you altogether, which would be a blow. You certainly would not then be able to cast any vote at all in these matters and you are still left able to contribute to the decision-making in the House of Commons on matters

that are even only English. I do not think I want to lose that. The opportunity, maybe once, for the two of us to walk side by side through a Lobby together would be lost forever and that would be a shame.

Q136 Chair: I always appreciate these recommendations to continue, and to at some point vote with your good self on legislation. I am certain that, some day, that might even happen.

We have raised this issue of an English Parliament because we observe that what is being proposed in these plans is a quasi-English Parliament being created anyway, within the environment of the United Kingdom Parliament of Great Britain and Northern Ireland. It is effectively what is being designed in these extra stages of the Bill. Surely the way that an English Parliament works is that we have a Scottish Parliament, we have an English Parliament, a Welsh Parliament, Northern Ireland and so on, and they work in a federal arrangement, a federal system, and then we come together in this House to decide the issues that are still reserved. What is wrong with that as a solution?

Chris Grayling: The problem with that, Mr Wishart, is that you have talked a lot about Barnett consequentials. I have been sceptical about the existence of Barnett consequentials but let us suppose, hypothetically, for a moment that you are right—I do not accept that you are, but let us suppose, hypothetically, that you are. You would of course, in an English Parliament, lose the say over any Barnett consequential that you would have under the proposals I am bringing forward. Under these proposals, if there are Barnett consequentials, you will still get to vote on them; under your proposal of an English Parliament, you would not. To my mind, that takes away your voice.

Chair: We are just interested if there have been any other proposals considered. You have obviously ruled out the idea of an English Parliament because for you it does not work on a number of bases. We are still not entirely clear, given that it was presented to us that this was such a huge issue, there was such demand that surely an English Parliament would be a natural conclusion and consequence of that. But Chris Law has a question.

Q137 Chris Law: It is just to reiterate. The 2014 Future of England survey showed that less than 40% of people, at best, supported how the UK was governed. If you feel so strongly about a growing sense of grievance, is it not time you put that test to a referendum? After all, in Scotland in 1997 we saw 74.29% support for a Scottish Parliament.

Chris Grayling: We just had a referendum called the general election, of which this was a part of our manifesto. We were successful in the general election, so I would argue we have just done that.

Q138 Chris Law: As things stand then, the Tory Government majority is 12, yet you only have a country-wide support of 37% and, as a democrat here, just like you pointed out, it is only 14% in Scotland. Is not the Tory Party running the gauntlet of becoming increasingly irrelevant in Scotland and Scottish affairs with this break-up under EVEL? Would it be the position where William McKay, who you have just quoted today, had the ingredients in his report for the proposals you have, when he said a few weeks ago here that it was “a dog’s breakfast”?

Chris Grayling: I have looked very carefully at what Sir William recommended and I have looked very carefully at what is in our manifesto, and I think what is in our manifesto is entirely faithful to the McKay report.

Q139 Chris Law: You don't agree with his position about it being a dog's breakfast?

Chris Grayling: I don't see where our proposals differ significantly from the McKay proposals, I really do not. Anybody who wants to take a read through and tell me—as I said at the start, “Decisions at the UK level having a separate and distinct effect for England or England and Wales should normally only be taken with the consent of a majority of MPs”. This does that. It focuses on Standing Orders rather than legislation. The McKay recommendation is that secondary legislation should be part of this; that is the case. It talks about using a legislative consent motion; that is the case. I read through this again and again and I find things that are in both, so I do not see this great divergence.

Chair: Sir William did because he made that clear to this Committee.

Q140 Kirsty Blackman: Is there an attempt for these proposals to be all things to all people, and actually they have ended up pleasing nobody? The Back-Bench Conservative MPs quite regularly stand up and complain about the spending allocations and that appears to be the main complaint that has been brought up on the doorsteps, in terms of people speaking to constituents in England, but it has been stressed to us at length today that this has no effect on Barnett consequential and no effect on spending decisions in relation to Scotland. If it does not appease any of those views, what good does it do in terms of giving English parliamentarians more of a voice if it does not on what they care about the most?

Chris Grayling: You are looking at it in terms of spending decisions alone. The answer is this is a House that has lots of different opinions on this. We have tried to find the best balance between those different opinions. We have tried to provide a system that provides that consent for English Members of Parliament.

This is going to apply in things like an education Bill, and all it simply suggests is if the United Kingdom Government wants to make a radical change to schools in England and English MPs do not want that to happen, they can say no. It can only go through with the agreement both of the whole Parliament and of the English MPs. That seems to me to be balanced and sensible. It is the situation that exists in Scotland: the UK Parliament cannot impose, as a result of devolution, radical change on schools in Scotland. It simply means the UK Government would not be able to impose radical change on schools in England without the consent of the English. In the case of Scotland, that decision is taken by the Parliament in Edinburgh. In the case of this House, it is taken by the UK Parliament and English MPs side by side. It can only happen if both want it.

Q141 Kirsty Blackman: Sorry, I am still not clear about the point of this. I get the intention, what it is intended to do, but for most people it is worse than the status quo.

Chris Grayling: Why?

Kirsty Blackman: For most parliamentarians, it seems to be worse than the status quo, because in terms of Scottish MPs we are being excluded from part of the process. We had Chris Bryant here who was not very happy about it.

Chris Grayling: Which part are you being excluded from?

Kirsty Blackman: In terms of the Committee stage, we are being excluded from having discussions of it.

Chris Grayling: That is one of the very specific recommendations of Sir William. But of course anything that is done at committee stage, at report you have the ability to overturn. Whether it is second reading, report, third reading, Lords amendments, the things you would vote on on the Floor of the House, your role does not change. You vote in every Division.

Kirsty Blackman: Again, I am not clear what the point of it is, then.

Chris Grayling: The point is that your vote on an English-only matter has to be in favour and the vote of the English MPs has to be in favour. That is the difference.

Q142 Chair: How many times do you imagine or propose that English votes for English laws will work, that a piece of legislation will be certified? How many times do you think we will be doing this?

Chris Grayling: My view is that, if you look at what goes through this House, we do not vote collectively on very much of the whole gamut. We have detailed discussions at Committee, but generally speaking we reach consensus on most of what we legislate, which is good. In most Governments, the detail is sensible. It is the controversial pieces that prompt debate. Most of the time, this procedure will simply be a nod-through part of the process, as most of what we do is. This will come up as a real issue when we have something that genuinely divides us.

Q143 Chair: The part that I am genuinely mystified about is the stage where we go into the legislative Grand Committee. I heard you describe this at the Procedure Committee and I still was not quite sure about how this would work. That would take an objection from the floor for a piece of legislation—at the Report stage, that would be—to go into the legislative Grand Committee.

Chris Grayling: That is the case now.

Chair: We could vote to put it into legislative Grand Committee if we wanted? Scottish Members of Parliament could do that?

Chris Grayling: You could, and you can debate it for an hour if you want, but I do not think it would be to any great effect. Yes, you can take part. All we are simply doing, I think most of the time it will be a formula stage, where the Minister will say, “I have moved a notice of a consent motion. Those in favour say ‘Aye’. Those against say ‘No’. Fine. It is passed.”

Chair: But we could still be involved in the vote to put a piece of legislation into—

Chris Grayling: It is simply an objection. If there is an objection, then the House will move into debate, but you will not be able to move an amendment to be voted upon. You will be able to speak.

Chair: All right. I think I am clear about that. We are involved—

Chris Grayling: That is the case now in our Committee stages. You can turn up, but somebody else has to move the motion.

Q144 Chair: I think I sort of have the view that Scottish MPs could put the legislation to the legislative Grand Committee. That would be within our rights, where we are in the process?

Chris Grayling: In terms of simply objecting, nobody knows where the shout comes from. If somebody in this House shouts no, then it would move through. As a responsible group of parliamentarians wanting to get home at 7 pm, you will, I suspect, not choose to do that. Also, as a principal party that has operated a self-denying ordinance for a number of years and has made a virtue of doing that, I am absolutely confident, Mr Wishart, that you would not wish to be seen to abuse the system that was there.

Chair: Heaven forbid we would even think about that.

Q145 Chris Law: Just going back to the original point, the more I listen to this decision, the more I am confused and befuddled. Now, that may be the fact that I am a new MP but, in honesty, those people sitting and watching this on television right now must be asking, “What is EVEL all about?” After all this great grievance you have talked about that is being felt in your constituency and many other constituencies across England, surely this is not what they were expecting as the outcome?

Chris Grayling: You have said to me, “What is EVEL all about?” In my view, it is about strengthening the Union, as part of a package that is designed to strengthen the Union, where we are—

Q146 Chair: Do you really think it delivers that?

Chris Grayling: This is part of a package that will strengthen the Union, including devolution. It is not something we are doing in isolation. It is part of a package of change to the government of the United Kingdom that is designed to address the desire for more self-determination in different parts of the United Kingdom. It is about creating fairer Parliaments and Assemblies. It is about giving the English a strong voice on English matters. If somebody was watching, that is what they would be saying this is all about. It is making sure that, in a world where we are giving to the Scottish people more power to decide their own affairs in Edinburgh, we are giving some ability to English representatives to have a final say or a point of consent over whether a change that will affect them actually happens or not.

Q147 Margaret Ferrier: Just a point: you mentioned there that we want to get away at 7 pm, and that is great if that happens, but just half an hour ago you said that we may have to stay beyond, and surely it is about getting the legislation right.

Chris Grayling: It is.

Margaret Ferrier: As elected Members to the UK Parliament, we are entitled to take part in that. It is about getting it right rather than finding shortcuts.

Chris Grayling: Absolutely right. That is why I do not want to exclude you from any of the debate. But what I also say is that I know the SNP has been a principal party over the years in taking part in the things that matter to Scotland and not to others. It has not always been followed in recent times but generally speaking it has. I also know that you would not want to simply prolong a debate in order to stop people going to evening functions or going home.

Q148 Chair: Just one last question. Again, it was something that came out of the Procedure Committee with an exchange you had with one of the SNP members, where you said you were prepared to come to any pub in their constituency in order to debate this. There are several SNP members around the table today who would extend that invitation to you to come to one of our wonderful constituencies and have that debate with some of our constituents.

Chris Grayling: When I am campaigning in your constituencies in the coming months for Conservative candidates in the Scottish elections, I will look forward, at the end of the campaigning, to coming and joining you for either a nice pint of something or, more likely, a smaller glass of the fine Scotch product that we all enjoy.

Chair: You would be most welcome. Thank you ever so much for that. Is there anything further you want to add?

Chris Grayling: No, that is fine, thank you.

Chair: Thank you for your time.