



Public Administration and Constitutional Affairs Committee

Oral evidence: [English Votes for English Laws and the Future of the Union](#), HC 523

Tuesday 27 October 2015

Ordered by the House of Commons to be published on 27 October 2015.

Written evidence from witnesses:

- [Lord Lisvane KCB DL](#)

[Watch the meeting](#)

Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Oliver Dowden; Paul Flynn; Mrs Cheryl Gillan; Kate Hoey; Kelvin Hopkins; Mr David Jones; Mr Andrew Turner.

Questions 1-135

Witness: **Professor Richard Wyn Jones**, Cardiff University, gave evidence.

Q1 Chair: May I welcome our first witness to this first evidence session on the question of English Votes and English Laws, which is the first part of our inquiry into the future of the United Kingdom and the constitutional settlement in the United Kingdom? Could I ask the witness to identify himself for the record, please?

Professor Wyn Jones: My name is Richard Wyn Jones.

Chair: You are professor of—

Professor Wyn Jones: Politics, at Cardiff University. I direct the Wales Governance Centre.

Q2 Chair: Thank you very much. May I just caution you? We are going to try to ask very short questions, and we would like you to answer crisply and succinctly. That would help us very much. If you are going on a bit long, I will pull you up and I hope you will forgive me for that.

Professor Wyn Jones: Of course.

Q3 Kate Hoey: Professor, you have obviously spent a long time working on this whole area that we are looking into. Do you want to tell us briefly what work you have undertaken on public attitudes to the governance of England?

Professor Wyn Jones: Since 2011 I have been co-director of four extensive surveys of English attitudes towards the constitutional position of England within the UK and, indeed, the European Union.

Q4 Kate Hoey: How has opinion changed since you started work on this?

Professor Wyn Jones: The change is between a batch of work that I was not involved in, back in the very early years of devolution, and the work that I have been involved in since about 2011. Very briefly, and recalling the Chair's admonition, back in the early years of devolution there was a lot of work looking for an English backlash to devolution and there wasn't any, frankly. The English greeted devolution with, I think, benign indifference might be one way of characterising it.

A group of us working in Edinburgh University and Cardiff and at the IPPR at the time had this hunch that things had changed, and so we managed to get funding to do a survey of English attitudes and found a really big shift in attitudes. Support for the status quo had fallen quite dramatically and there was very little support for an alternative, which had been much touted by parts of the political class, which was English regionalism. There was very little support for that but we found quite significant support for recognition of England as a unit within the UK—and the final point is very significant. That feeling was most pronounced among those with a strong sense of English national identity, so we saw a politicisation of English national identity.

Q5 Kate Hoey: Is there a common-sense view as to why public attitudes have changed, or do you have some very academic, intellectual reason for it?

Professor Wyn Jones: I am not sure I buy that distinction. Our evidence as to when the change took place is not great, because there was work in the initial years of devolution and then there was almost a decade of a gap. From the data that we have managed to extract from other surveys, it looks as if there was a shift in attitudes in England around 2007 to 2008. That seems to have been a watershed period.

This is anecdotal, I stress that, but my strong sense is that this accompanied increasing awareness in England that public services were being delivered differently in Scotland and Wales. To coin a populist phrase, we were getting things for free that people in England were not. One of the very striking things about the data that we have across the four surveys is that there is very little support in England for policy differentiation. That underpins the lack of support for regionalism. There is a sense that there should be a uniform package of public services for all.

Q6 Kate Hoey: Student fees would have been one example of that.

Professor Wyn Jones: Yes, and prescription charges. Even things like bus fares and so on.

Q7 Kate Hoey: From that there was a feeling that English people wanted to feel that, whatever they were getting, everybody else in the United Kingdom was getting?

Professor Wyn Jones: Yes. There is a strong sense that Scotland, in particular, is doing very well, in terms of relative levels of public spend—and I am sure we will get to this—and a sense that there is an injustice around the principle of non-English MPs being allowed to vote on English laws.

Q8 Kate Hoey: Do you think that has become more consistent now?

Professor Wyn Jones: That is an interesting question. What has changed to some extent in our data over the last four surveys is that I mentioned that there was a sense that England should be recognised. I would say that initially almost any option that recognised England would get relatively equal levels of support. We are just processing data from our latest survey, and I will gladly send a report of that to the Committee when we have done, but what seems to have happened over the last two surveys is that English votes for English laws has emerged as the favourite option in terms of the governance of England.

There are lots of interesting questions as to how much people understand about English votes for English laws and, frankly, surveys of the kind that we undertake are not good at getting into the nitty-gritty of whether people think the McKay Commission's version is better than what has just been passed and so on. You won't be surprised to hear that is not something that these surveys are good at. But English votes for English laws has emerged.

Q9 Kate Hoey: If you were to sum up, what would you say the majority of English people want to see?

Professor Wyn Jones: I would say England recognised not just as a residual category—that is, the thing left over after the Scots, the Welsh and the Northern Irish have done their thing—but some more positive recognition of England is what people want.

Q10 Paul Flynn: It was possibly before your time but in 1953 there was a march in Cardiff, under the banner of Senedd i Gymru, which contained a Labour Party contingent. Since then we have seen a process of devolution that the poet Gillian Clarke has described as a “grudged gift” because of the endemic power-retentive nature of Westminster and possibly MPs. How far do you see the progress going in this stuttering devolution for Wales? There was no one in that march who had a banner saying, “LCOs for Wales”, or “Judges’ laws for Wales” or “English vetoes for Welsh laws”. It has not lived up to the idealism of the past. How do you see the progress going on now that the beast of English nationalism has been released from its lair? Do you see the divisions deepening between the four countries and EVEL leading inevitably to the break-up of the United Kingdom?

Professor Wyn Jones: No. I don't necessarily buy into that apocalyptic vision, if that is considered an apocalyptic vision. One of the interesting things about attitudes to English votes for English laws is that the data we have in Scotland and Wales suggests, on balance, that there is support for the principle of English votes for English laws in Scotland and in Wales. That is not something that you would necessarily imagine from the things that you hear from political representatives from both countries at the moment. On balance, I think there is support for the principle of English votes for English laws, in Scotland and in Wales, as a kind of corollary to devolution, which is supported.

Devolution in Wales is supported by an overwhelming majority of the Welsh population. I should stress that support for the general principle is not necessarily the same as support for a particular version of English votes for English laws in action, but it would be wrong to assume that English votes for English laws is necessarily seen as a threat by the Welsh and Scottish electorates.

Q11 Paul Flynn: How would you describe the difference between what is happening, particularly with the Labour Party in Wales and the Labour Party in Scotland, and is this due to their different approaches towards devolution?

Professor Wyn Jones: That is a really big question. One of the things I would say is that the Labour Party in Wales adapted to the devolution game much better than the party in Scotland. They did so by becoming a small “n” nationalist party. The international evidence we have suggests that in regional-level elections you stand up for the region against the centre. Labour did that in Wales. Labour did the opposite in Scotland, became the tribune of the centre in the region and suffered the consequences.

Q12 Paul Flynn: A final question: do you find that the attitudes towards English nationalism are affected by other matters, particularly by England’s performance on the sporting field?

Professor Wyn Jones: We don’t have evidence on that but, very quickly, there is one germane point here. One thing that is quite striking about the data is that people with a strong sense of English identity feel that Englishness is not valued in the UK, which I think is quite an interesting phenomenon.

Q13 Mrs Cheryl Gillan: From what you said, the Welsh population and the Scottish population at large favour English votes for English laws but the politicians do not. Is there a disconnect between the Welsh national politicians and the Welsh people and the Scottish politicians and the Scottish people?

Professor Wyn Jones: I would extend that to say—it is a phrase that has become popular, and I am not sure if I entirely approve—that the British political class more generally has become disconnected from changing sentiments in England. I would say that, in general, the political class has been very slow to recognise the politicisation of English national identity and the decreasing sense of the legitimacy that the institutions of the UK enjoy among the English in particular. Just to give you one statistic—I don’t want to bombard you with statistics—we have now reached the stage where only around one in five in England approve of the status quo in terms of the way that England is governed. That is very low, and I would say that is quite worrying.

Q14 Chair: Can you tell us where you got that figure from?

Professor Wyn Jones: That is from our most recent survey. Even the previous surveys show that it has fallen to around 25%, so I would say that is not a healthy situation. Again, this is most pronounced among those with a strong sense of English identity.

Q15 Kate Hoey: Will you let us see how you do your survey? I would like to see the demographics and the spread of it.

Professor Wyn Jones: Absolutely.

Q16 Kate Hoey: Do you include Northern Ireland? Nobody has mentioned Northern Ireland, and there are four parts to the UK.

Professor Wyn Jones: No, we don’t survey Northern Ireland.

Kate Hoey: So you don’t do any there.

Q17 Mrs Cheryl Gillan: You don't. Why ever not? Why is that?

Professor Wyn Jones: Because we don't have the money. Our surveys are mainly on England because England is what we are interested in. In our most recent survey, and indeed in our previous survey, we did small boosters for some questions in Wales and in Scotland.

Q18 Chair: Is anybody doing survey work in Northern Ireland?

Professor Wyn Jones: Yes, but I am not aware of anybody surveying in Northern Ireland on attitudes towards England.

Chair: That is very interesting. We will come back to that.

Q19 Mr Andrew Turner: Can I ask what you called the tribune, meaning England as represented in Scotland or—

Professor Wyn Jones: I meant the centre; the UK, representing the UK state in Scotland.

Q20 Mr Andrew Turner: Had that happening in 2007 anything to do with the then Prime Minister?

Professor Wyn Jones: I don't know.

Q21 Mr Andrew Turner: Could you find out?

Professor Wyn Jones: Probably not.

Q22 Mr Andrew Turner: What level of support is there for alternatives to EVEL?

Professor Wyn Jones: That is a really interesting question. One of the challenges of doing the survey work in England on constitutional attitudes is that the debate is not particularly fully formed. There is a long, long history in Wales and Scotland, let alone Northern Ireland, of talking about the territorial constitution. The debate has not been as mature or as long-standing in Scotland, so one of the concerns then is question wording effect. You are asking questions about issues that people have not thought about, and then you are over-interpreting on the basis of the data that you receive back. I have sent three of the previous reports to the Committee as evidence. As you will see in those reports, what we have done is ask a myriad of questions trying to get at the same issues in slightly different ways.

That is why, in my response to an initial question from Kate Hoey, I said we can say that support for the status quo has fallen, that there is very little support for regionalism and that there is support for England being recognised in some way. It has been difficult to be much more robust in terms of the conclusions because, depending on the way you ask the question, you find support for an English Parliament. You even find significant support for English independence, even though that is on nobody's radar. It depends a lot on the way you ask the question. The common factor is that people want England recognised as a unit and, as I said, English votes for English laws seems to have emerged from the pack in the last few years.

Q23 Mr Andrew Turner: I want to ask you about enhanced local government, for instance, metro mayors—a horrid word, isn’t it?—and combined authorities, which we are not allowed to use in my Isle of Wight. Is it a realistic alternative, or have we not gone that far?

Professor Wyn Jones: There is very little support for those proposals, certainly when compared with something that recognises England as a whole. As I mentioned earlier, one thing that is striking is that the corollary of strong local government is policy differentiation, clearly, and there is very little support for that beyond the most trivial things like collecting bins and so on. There is a very, very strong presumption in favour of uniformity in England.

Q24 Mr Andrew Turner: What people are really saying would appear to be that they are not terribly interested in local government, however important it is, and it would be just as good if that were run by an office in Birmingham.

Professor Wyn Jones: I am not going to suggest that people are entirely consistent in their views all the time. That is not what we find when we survey the population. There is very, very little support for any of these city region ideas and regionalism, certainly when compared to anything that recognises England as a unit, and there is very little support for the kind of thing that is the inevitable corollary of a strong local or regional level, which is policy differentiation.

Q25 Mr Andrew Turner: But there is a difference, isn’t there, between a region and even a combined authority, compared with people’s liking for, for instance, my Isle of Wight and other people’s Cornwall? That is a different kind of being than something being created.

Professor Wyn Jones: I see the point. I will answer this in a slightly round-about way, and please forgive me, Chair, for this. One of the things we have looked for very closely in England is regional differences in attitude. When we started this work I was told, “There will be very big differences between the south-west and the north-west or the north-east and so on and so forth. Even if the east midlands is not a proper region you will find it somewhere.

We spent a lot of time looking for regional differences within England, and the only place that stands out in any way is London. The rest of England is incredibly consistent in its views and, while there are clearly strong local identities, they do not seem to have any real political purchase. It may be that Cornwall is different. That is a small area. We haven’t surveyed Cornwall. It may be the Isle of Wight is different but in terms of the so-called official regions or indeed things like “the north”, which we have tried as well, they don’t really seem to have any effect. London is the only place where you get any noticeable difference.

Q26 Kelvin Hopkins: It is my suspicion that those pushing the regional government concept are those who are pro-EU, who want to diminish the role of central Government and raise up the Europe of the regions, as it is called, which will cement us into the EU more strongly rather than having a strong central democratic Government, and I think people are aware of that.

Chair: The question?

Kelvin Hopkins: That was the question.

Professor Wyn Jones: I can't really comment on what lies behind people pushing for regions. I would say—and this is very striking in the data—that there is a very strong relationship between people in England being unhappy with the status quo and also being unhappy with the European Union. There is a very strong link between English national identity and anti-European sentiments, an overwhelmingly strong link. There is a general anxiety in England about the two unions.

Q27 Chair: What do you say to people who don't want English votes for English laws and they don't think that we need to do anything to address this? The status quo before the vote last week, how sustainable was that?

Professor Wyn Jones: My own view, for what it is worth, is that I think there is a genuine problem that needed to be addressed. If you are in a situation where only a quarter or even a fifth in England think that the status quo for England within the UK is acceptable, then I think you have a problem and you need to do something about it. I think that sticking one's head in the sand would be a big mistake.

Q28 Ronnie Cowan: Is it the case that EVEL is perceived by the English electorate as some sort of payback in addressing the balance and, once it is delivered, it will be seen as inadequate and therefore lead to even greater division?

Professor Wyn Jones: Clearly we don't know. It would be wrong of me to speculate on how attitudes in England will evolve now that we have this new system. I would say that the experience of Wales, in particular, suggests that once you start to recognise a national entity—even if it is in a very weak way—that has longer term political implications, the legislative Grand Committee, which will deal with England, will have a legitimacy well above and beyond that because it constitutes England. I think that is an important development. Even it had been the McKay proposal—the weaker proposal—I think that probably would have been very significant, moving forward, because recognising England, and having a voice for England, experience would suggest will be very important in the long term.

Chair: Very interesting. Moving on, Mr Jones.

Q29 Mr David Jones: Moving on from the attitudes you have identified in your surveys, what would you say are the core constitutional principles that underpin English votes for English laws?

Professor Wyn Jones: What would I say are the constitutional principles? Again, the architects of the plans are better placed than I to explain what they thought they were doing.

Chair: You do not have to answer the question. Next question.

Q30 Mr David Jones: Thank you for that. How polite. How consistent would you say is the principle of English votes for English laws with the House of Commons' status as a United Kingdom legislature?

Chair: I appreciate that we are asking you some technical questions about the proposal that we voted on last week.

Professor Wyn Jones: I am happy to talk about the proposals. On the intentions of the people behind the plans, they would almost certainly answer by saying this is entirely consistent, of course. I think there are some major issues with these proposals that are problematic, and I am happy to talk about those.

Chair: Yes, please.

Professor Wyn Jones: Okay. In terms of the proposals, the coherence of the proposals and the coherence of the UK as a state—more so than the role of House of Commons, if you will forgive me—I think there are three fairly obvious problems from my perspective. One is finance. Because of the way that the finances of the devolved territories are tied to English decisions through the Barnett formula, I suspect that what the Government has sought to do there will eventually create a sense of unfairness in Scotland, Wales and Northern Ireland because potentially there will be decisions made that will have implications for funding levels in Scotland, Wales and Northern Ireland.

Of course, what the UK Government is saying is that it will separate out finance Bills and will treat those differently, but time will tell. I suspect that, because of the way that Barnett works, it is potentially the case that veto decisions may well have knock-on effects in Scotland and in Wales, just because of the way that the finances are tied together.

Chair: Staying on Barnett for a minute, do you want to ask more about Barnett or can we bring in one or two others?

Q31 Mr David Jones: The one point that I was going to mention on that was that that is not a problem in the short term, given that we have the same party with the majority vote in England and in the United Kingdom. I think that is right, isn't it?

Professor Wyn Jones: Yes.

Mr David Jones: If this is a problem, that is further down the track.

Professor Wyn Jones: Yes. One needs to try to have a long-term perspective on such a major change. This is a major constitutional change. I don't think there is any doubt about that, and I think that is a long-term point, absolutely.

Chair: Kelvin, your question is about Barnett in particular.

Kelvin Hopkins: Did I have a question about Barnett? Am I to be the next speaker?

Professor Wyn Jones: Sorry, one further point on David Jones' question. Ultimately it is a long-term issue but, even if it were to happen in this Parliament with an English majority and a UK majority and Scottish and Welsh MPs were excluded from being involved in the vote, I can see that creating a sense of unfairness. One of the dangers is that you just shift the sense of unfairness from the English to other parts of the UK.

Q32 Mr David Jones: I find your concept of a Welsh grievance quite novel, frankly. In practical terms, surely, it cannot arise until you have parties of different stripes at the English and UK level?

Professor Wyn Jones: The history of the last few years suggests that it is the principle rather than the practicality that has been the big issue. As we know, very, very few things

have been imposed on England because of non-English votes since devolution. It has happened very, very rarely but the feeling is very strong in the data that it is wrong in principle.

Q33 Kelvin Hopkins: How compatible do you think English votes for English laws is with the continued operation of the Barnett formula?

Professor Wyn Jones: I think that this is an interesting example of the way that there is a lack of coherence in the general approach to reforming the constitution. In principle, in a position where funding allocations for Scotland, Wales and Northern Ireland are linked to English spending, breaking that link would seem to me to be sensible if one wants to move forward and treat England separately within the state. Logically that makes sense. The other thing I would say is that politically—this would be another of my criticisms—one of the big problems that the state faces is what happened during the Scottish referendum, because one of the things that I think is deeply problematic is that the Better Together campaign promised things to Scotland to remain in the Union for which there was very, very little support in England and in Wales. Maintaining the Barnett formula is the classic. It was in the vow, but all the public attitudes evidence from Scotland and Wales suggested, “We are not happy with it”.

The other thing, which was implied—not promised but implied, and certainly was trumpeted by leading Labour and Liberal politicians—was that English votes for English laws would not happen. Again, there was ample evidence that the English thought that the status quo was not acceptable. So I think one of the issues that the UK Government faces now is that, in the context of what was said during the Scottish referendum campaign, there will be cries of betrayal. I think on English votes for English laws the impression was left that this would not be happening.

Q34 Kelvin Hopkins: Are you suggesting that there was a disjuncture between the political establishment campaign for Better Together and popular opinion within England, in particular?

Professor Wyn Jones: Absolutely, and there was very little scrutiny of what was being said by a media that was in campaigning mode, frankly. The evidence was made available at the time.

Q35 Kate Hoey: What we are getting at the moment is a kind of wishy-washy English votes for English laws, isn't it? Because in the end, English MPs could potentially be outvoted in the final vote. For example if the hunting ban, which only applies to England, was coming through again, English MPs would discuss it first, make a decision, presumably to oppose the ban, then it would go back to the whole of the Parliament. With Scotland it is very hard to say.

Professor Wyn Jones: As I understand what the House of Commons has just passed, it is stronger than the McKay proposals from 2013. This is a veto, and the clauses will fall if they are vetoed, so this is a stronger version of English votes for English laws. What McKay was suggesting was a semantic difference. I think that this is a stronger version. Whether it will satisfy public opinion I have no idea, and I don't think that the public opinion is knowledgeable about the details.

Q36 Kate Hoey: Does public opinion want an English Parliament?

Professor Wyn Jones: At the moment the most favoured option is English votes for English laws. What people think that might mean is something that I cannot tell you.

Q37 Kate Hoey: Just quickly, what would you replace Barnett with?

Professor Wyn Jones: Just quickly? That is impossible to answer succinctly. There are lots of states across the world that have worked out ways of allocating funding. The problem with trying to carve out a space for England within the House of Commons, or perhaps one day Parliament, and then tying all the funding to Scotland, Wales and Northern Ireland to English decisions is pretty obvious, I think, in principle, and there are ways and means of allocating funds between the territories in different ways.

Q38 Paul Flynn: An interesting possible manifestation of the accuracy of the acronym EVEL is the prospect of English MPs seeking to restore cruelty to fox hunting.

On the question of the Barnett formula, would you agree that there is a deeply held perception in Wales that Wales has been short-changed by it, and it is one of the reasons for discontent in Wales?

Professor Wyn Jones: Yes. Not only is it a perception, but I would say that it is accurate.

Q39 Chair: You have been incredibly helpful and very clear. Your work makes me hungry for you to do more work, and we might explore how we could do that.

Professor Wyn Jones: I am very happy to do it.

Chair: There are two things I wish to ask for your clarification on: the inconsistency between what was promised about the Barnett formula in the vow and the subsequent announcement the Prime Minister made on the steps of Downing Street after the referendum. That is what you are saying—I have that right?

Professor Wyn Jones: No. The Barnett formula and English votes for English laws are linked but separate issues. What I am saying is that, during the Scottish referendum campaign, Scotland was promised the retention of a Barnett formula. The fact that that was not a legitimate position in England and in Wales was just ignored. There was a specific vow around Barnett. The impression was also created that English votes for English laws would not be pursued, again ignoring the overwhelming evidence from England, which was extant at the time, that this was not regarded as legitimate among the overwhelming majority of the English electorate. That is what I am trying to say.

Q40 Chair: What effect on public opinion did the Prime Minister's announcement on the Friday morning after the referendum have on public opinion in Scotland?

Professor Wyn Jones: I don't know. Our data cannot tell you that.

Ronnie Cowan: Can I answer that question?

Chair: Can you answer that question? No, you cannot. You can ask a question.

Ronnie Cowan: I understood the answer was a Westminster presumption.

Chair: Would you like to ask a question?

Ronnie Cowan: No.

Q41 Chair: Okay. I think you can guess where I am coming from, having asked the question.

I am picking up this phrase that you said: the risk of English votes for English laws is that it is transferring the sense of unfairness from English voters to other parts of the United Kingdom.

Professor Wyn Jones: Yes. This is a very recent development, but I think it is worth making the point that one of the challenges around English votes for English laws is clarity. In particular, the role of Speaker was mentioned earlier, and how one determines what clauses are relevant. One of the things that I thought was very striking last week was that we had the move towards English votes for English laws in the same week as we had the publication of the draft Wales Bill, which seems to me—at least on the first reading of what is a very complicated piece of legislation—to actually make clarity in terms of the difference between Wales and England much more difficult. Again it is about: are these things joined up? As I mentioned, we had the vow, we have Barnett, and what does that mean? We are now seeing the UK Government pursuing a new devolution settlement for Wales. I cannot see any evidence that they have thought through the implications of that for English votes for English laws in terms of clarity, and the clarity is going to be very important.

Q42 Chair: Presumably the same applies to the outcome of the Smith Commission and the Scotland Act?

Professor Wyn Jones: Yes. In a sense, Smith was devolved on to the Scottish parties. The UK Government cannot blame anybody else for the draft Wales Bill. I struggle to see that that has been drafted in a way that is going to make the constitutional border between England and Wales clearer.

Q43 Chair: Do you have any evidence in your survey work that this unfairness has been transferred?

Professor Wyn Jones: No.

Chair: So you are speculating.

Professor Wyn Jones: Yes. At the moment what we are seeing is a deep sense of grievance in England. That is very clear from the data. What I am suggesting to you is that there is a potential danger—

Chair: But you do not have any evidence for that yet?

Professor Wyn Jones: No, because obviously English votes for English laws was only passed last week.

Q44 Mrs Cheryl Gillan: Would it be fair to say, as an objective observer, that Government appears to deal with the three other nations, apart from England, in individual boxes and does not actually join up the whole of their constitutional arrangements?

Professor Wyn Jones: Yes.

Mrs Cheryl Gillan: Thank you.

Chair: Any other questions? No? It has been fascinating and very, very interesting.

Professor Wyn Jones: My pleasure, thank you very much.

Examination of Witnesses

Witnesses: **Professor the Lord Norton of Louth**, University of Hull, and **Sir William McKay KCB**, Chair of the McKay Commission and former Clerk of the House of Commons, gave evidence.

Q45 Chair: Could I welcome our second panel this morning on English votes for English laws and looking ahead? Could I ask each of you to identify yourselves for the record, please?

Sir William McKay: I am William McKay, and I am slightly worried because where I come from “pannel” means the accused.

Lord Norton of Louth: Philip Norton, Lord Norton of Louth, Professor of Government at the University of Hull.

Q46 Chair: It is always an honour to be interviewing a former Clerk of the House, and it is a great pleasure to see you with us. May I pounce on you at the outset with some unscheduled questions in the light of events in the other place last night? First of all, could you just explain, as objectively as you can from each of your perspectives, what is the convention that people are claiming has been breached?

Sir William McKay: I think the primacy of the decisions of the House of Commons in matters financial.

Lord Norton of Louth: Yes, I would agree with that insofar as the convention is engaged. It is that the Commons has primacy in relation to financial matters. There is not a convention that the House of Lords does not reject statutory instruments. It variously does; it has asserted its right to do that. It is not an issue whether it is can, it is in what conditions it should.

Q47 Chair: What is the distinction that the House of Lords in these cases can or should make between primary legislation and secondary legislation, or to what extent should we regard it all as just law?

Lord Norton of Louth: The law is clear, in that the Parliament Act stipulates what the Lords can do in respect of money Bills, and indeed non-money Bills, but secondary legislation is not covered by the provisions of the Parliament Act.

Sir William McKay: If there were complaints that the House of Lords was interfering in very high policy, as Lord Norton was saying, they have done it. They did it, if I remember rightly, on Southern Rhodesia. I cannot remember the circumstances, but it was as hot at the time as yesterday's events were. But yesterday's events were tinged by finance.

Q48 Chair: What I am trying to establish is, when applying this convention of financial privilege, to what extent is it relevant that it is a statutory instrument rather than being a Bill? Is it of any relevance at all?

Lord Norton of Louth: It is crucial, because the Commons can assert financial privilege in relation to a Bill—

Chair: Through statute?

Lord Norton of Louth: Yes, because if an amendment infringes Commons privilege it can assert that. It cannot do that in respect of a statutory instrument.

Chair: I am sorry, I have not understood the point.

Sir William McKay: A statutory instrument is a “yes” or “no” event, and where the Lords say “no”, it is by statute as final as could be.

Chair: Except the Government can reintroduce another Bill.

Sir William McKay: Oh, yes.

Lord Norton of Louth: It is final until it re-lays that one again, yes.

Q49 Chair: In technical legislative terms there is a different procedure, but in constitutional terms is there a distinction to be made in terms of financial privilege between a statutory instrument and a Bill?

Sir William McKay: I would have thought the offence that the House of Commons could take would be much the same.

Q50 Chair: Thank you, Sir William. My other question is: how significant is the breach, if there has been a breach? How significant is it?

Sir William McKay: Only politics can answer.

Lord Norton of Louth: It need not necessarily be significant, for the reasons you have given. One of the reasons that I think secondary legislation was not brought within the ambit of the Parliament Act was partly because there was not much of it at the time, but also—as Sir William has touched upon—it is only fatal until the Government re-lays a new instrument, which may only be one word different from the original. So it does not have the effect as if you are killing a Bill, which is then covered by the Parliament Act. A Government can re-lay an instrument.

Q51 Kelvin Hopkins: This is clearly different from a Lords amendment, which can ping-pong. You can't do ping-pong with SIs, but would it not be possible to legislate or change the constitution slightly to have ping-pong with SIs as well?

Lord Norton of Louth: You could legislate for it, and indeed the proposal that is being put forward, of course, is that there should be provision for recommending amendments to SIs. At the moment it is a take it or leave it basis.

Q52 Chair: What would be the effect of allowing amendments to statutory instruments, Sir William, in your view?

Sir William McKay: I suspect we are not talking about amendments but suggestions for amendments.

Chair: Right, so that the instrument would be withdrawn and re-laid and amended.

Sir William McKay: If the Government were persuaded that was the best way forward.

Q53 Paul Flynn: Could we welcome you, Sir William, and say a word of thanks and congratulations on your report, which was a far-sighted one that anticipated, before many others did, the problems that we have with the progress of devolution?

Chair: Sorry, I do not want to move on to devolution yet.

Paul Flynn: No, indeed not. I am just being polite to our guest and saying it is nice to see him again, which it is. He was a splendid Clerk of the House.

One of the interesting things that has come out of the last few days has been the threat by the Government—probably the most serious threat since the days of Lloyd George—to create 150 peers. Would you think that this is such an egregious misuse of power by the Prime Minister that it would call for the intervention of the monarch to stop that happening? Because this is a situation where the Prime Minister, if he did that, would be judged to be acting in his own political interests and not in the interests of the nation. The prime role of the Head of State is to intervene on those situations, as she has done once in the past.

Sir William McKay: Quite honestly, Mr Flynn, it is beyond my pay grade, even as a retired Clerk of the House—particularly as a retired Clerk of the House—to pronounce on what the monarch ought to do and ought not to do.

Q54 Paul Flynn: Well, on the duties of the Prime Minister, would you think the Prime Minister would be acting beyond his powers if he abused the constitution in this way to gain a political advantage by appointing 150 new peers, at a cost of £600 million, in order to hammer the poorest in the country?

Sir William McKay: Objectively?

Paul Flynn: Yes.

Sir William McKay: That was a point of view taken in 1911.

Paul Flynn: Yes; still valid?

Sir William McKay: Whether it would now be taken—my answer would not have any weight—I honestly don't know.

Lord Norton of Louth: I have three points to make, and the third is general and I think rather important, overall, in terms of approaching our constitutional arrangements. On the point about the monarchy, I think the monarch would be in the same position as in 1910 and 1911. To some extent one would act on the advice of the Prime Minister.

Secondly, I draw attention to the fact that, insofar as one wishes to address the issue through the size of the House of Lords, the danger is that we are going at it at the wrong end. You should not be expanding the size, you should be reducing it. If you are going to take the opportunity, why not look at some of the proposals, which a number of us are considering at the moment, to slim down the size of the House, in effect facilitating doing what it does well, which is normally to complement the House of Commons by being a chamber of legislative scrutiny, fulfilling tasks that the House of Commons may not have the time or the political will to do? How does the Lords do its basic tasks, and perhaps do them better? I think that could be achieved through addressing the size of the House by reducing it while addressing the point that the Prime Minister is concerned with.

Q55 Paul Flynn: The act of appointing 100 or 150 new peers would not be a reform of the Lords that is likely to deteriorate its work and handicap it?

Lord Norton of Louth: It would add. We already take the view that we are too large, both in terms of how we are seen outside and in terms of how we are seen inside and in terms of the efficiency of the chamber doing its work. There is a case for reducing the size of the House to enable it to better what, I would argue, on the whole it does well.

Chair: My Lord, your other two points, as briefly as you can.

Lord Norton of Louth: It is the final point that is fundamental, because it relates to English votes for English laws, and I get the intimation that you may be interested in addressing the size of the Ministry relative to the House of Commons in the event of reduction of the number of MPs. It encompasses all those points.

In recent years we have seen, and continued to see, significant constitutional change. The problem with it is it is dealt with in a disparate and discrete way. Each is justified on its own merits. We do not stand back and look at the constitution as a constitution. Successive Governments have not engaged with the constitution as such. We are moving towards new constitutional arrangements without any clear idea of where we are actually going. It is just going to be the product of these different changes with no thought as to how they relate to one another and, therefore, the sort of constitution we are going to end up with in five or 10 years' time.

Chair: You had a third point?

Lord Norton of Louth: That was the third point.

Q56 Chair: That was your third point. I beg your pardon. Thank you.

Is it possible that the present crisis, if it is fair to call it that, could be addressed without opening up all these other questions?

Lord Norton of Louth: Yes. I think we could build on what both Houses have done already. Do not forget there was the Joint Committee on Conventions report on the relationship between the two Houses of Parliament, back in 2006. That took us an awfully long way to identifying areas where it might be appropriate for the Lords to reject an SI but argued that, in other cases, one should not do it simply because you disagreed with the Government. There had to be some basis on the criteria set by the Joint Committee. I would recommend, in particular, paragraphs 229 and 230 of the Joint Committee report. I think that takes us some way forward in clarifying those areas where the Lords would be justified in saying no when an SI came forward, but otherwise not challenging, and doing what we normally do, which is to discuss them but normally pass them, or, if there is a problem, perhaps—

Q57 Chair: That begs the question: is some technical agreement about criteria going to be sufficient to address what is a large majority in the House of Lords for a very different kind of Government? In your opinion, Lord Norton, how militant is that majority? Because it would appear from this end of the corridor—there may be another defeat tonight, for example, on individual registration—that so far this Administration is losing an inordinate number of votes in the House of Lords compared to predecessors. Where does this lead?

Lord Norton of Louth: Proportionally more than in past Parliaments. From Parliament to Parliament the Lords variously defeats the Government on a range of issues, but then nowadays occasionally so does the House of Commons compared with previous eras. It does not affect the general point that the Commons is entitled to get its way. That is the fundamental point. That is what the Lords accepts. If the Lords votes down or passes an amendment against the Government's wishes—which is a minority of the amendments we consider, so of the amendments carried or secured in the House of Lords, usually less than 2% are done as a consequence of a vote—it is then perfectly up for the Commons to send it back, having considered it. The normal position is that the House of Lords would accept that. Ultimately, if it did not, the Commons is entitled to get its way. You have the Parliament Act for legislation. You could keep relaying an SI or indeed embody the point, as with tax credits, in primary legislation.

Q58 Chair: An SI cannot be Parliament Acted, can it?

Lord Norton of Louth: No. You can re-lay it, or you could then embody the point in primary legislation.

Sir William McKay: One small addition. We used to have a method of arranging these things between the Houses, and we dropped it. It was called conferences. The Americans have them and, more or less, they work.

Q59 Chair: So you might be recommending to the House of Commons that we should invite the House of Lords to—

Sir William McKay: No, I am simply saying, Chairman, that nothing engages the interest of the House of Commons more than a reform that is picking up something that used to be there.

Chair: Thank you for that very constructive suggestion, and I am sure it has been noted. Are there any other questions?

Q60 Mrs Cheryl Gillan: Is there a danger that the Lords are being positioned now for a big reform from the Government and the House of Commons? Because until about two weeks ago I think out of the 14 first votes that were held in the House of Lords, 10 defeated the Government, which is an extraordinary number. I have this feeling that the whole scene is being softened up for a big House of Lords reform, based on the fact that the Government of the day is continuously being defeated. Do you think that that is a possible scenario?

Lord Norton of Louth: It is certainly a possibility. I draw attention, of course, to the fact that the last Labour Government suffered plenty of defeats in the Lords as well.

Mrs Cheryl Gillan: But we are dealing with a different Government.

Lord Norton of Louth: Yes. I take the point you are making, and that could be used as a basis for suggesting that. I think it would be wrong on its merits, and I think it would create problems in terms of my wider point about our constitution, because we do tend to look at these things in isolation and not think, “What are the consequences for the rest of the constitution?” We do not look across at the impact of one change for another or what it means for our constitution as a whole.

I would be very wary and, indeed, opposed to going down that route, but I take the point you are making. I think the Lords is normally sensitive to the position of the two Houses and would not normally seek to push those powers that it still retains, particularly in the face of the Commons if it persists in a particular position.

Q61 Kate Hoey: How much is this particular difficulty down to the fact that we had a coalition Government and, therefore, so many extra Liberal Democrat peers were appointed that we have ended up with a ridiculous situation where there are literally hundreds of Liberal Democrat peers, none elected, and then in the House of Commons hardly any, and yet they have so much seeming power? Coalition Governments have led to all sorts of—

Lord Norton of Louth: That is a fair point. We are conscious of that, and I think we want to take that into account in looking at the size of the House. I think any change would not be simply reducing numbers, per se, but would have to have regard to the political configuration of the House and look at it perhaps in relation to the outcome of an election. One of the options that I know is being considered, or we are discussing, is whether after an election you would have some formula, perhaps based on the number of votes but also the number of seats, that would determine the political groupings in the House. You could then have internal elections to retain that, but retaining also—

Chair: Okay. We cannot spend too long on this.

Lord Norton of Louth: I think there is a general acceptance that we should have a large Cross-Bench element, so at least 20% of the membership should be Cross-Bench, because we think that independent element is a major factor in the work of the House and, indeed, how the House is perceived.

Q62 Kate Hoey: What we could do is take each of the politically affiliated groups of Lords and, in the same way as for the hereditary peers there are elections, we could have elections within those groups and those ones would sit.

Lord Norton of Louth: Exactly. That is one of the things we are looking at and, as you have just indicated, we have the experience of doing that.

Chair: It sounds like the start of another inquiry, which we are not conducting today, but we are very grateful for you putting on record what you have said. Mr Flynn has one last brief question.

Q63 Paul Flynn: Would you agree that there is an overwhelming case for the reform of the Lords, particularly with the Chamber, where you can buy places in it by making donations to political parties, including my own? Do you think that virtually all of the serious reforms that have been put out have been sabotaged by parties for their own advantage, again including my own party? Isn't this a case where this crisis may well deliver a serious reform of the Lords that would be agreed by all parties?

Chair: You can answer “yes” or “no”.

Lord Norton of Louth: An elongated yes. I think you are right, because in the Lords I am opposed to an elected chamber for all sorts of reasons. I think with the present House there is a consensus in the House for reform, both in terms of the size, improving what we do and the processes, but also what you touched upon—the means and the process by which Members enter the House. I am very keen on, if not restructuring, imposing a much higher threshold for entry. We get some very good Members under existing processes, but there is the point you touched upon about how it may be perceived outside. I think there are a number of issues we need to address there, and I think there is a mood for doing that.

Chair: Nothing to add, Sir William?

Sir William McKay: No, thank you.

Q64 Chair: Thank you. We will move back to our main inquiry today, which is about English votes for English laws. Lord Norton and Sir William, you have both sat on commissions studying this problem. Can you very briefly outline the salient points in each of your proposals and point out how they differ from what we voted on last week? Sir William.

Sir William McKay: The commission that I chaired came up with a series of manifestations of its main principle, which was those things that are separate and distinct to a part of the United Kingdom—in this case England—should normally be determined by Members representing that part. The commission did not however go on to say, “and those Members shall have the final word”. They said that the bridge between the view of England, or England and Wales, and the view of the whole House of Commons, should be a convention. In other words, there would be a voice always for England, and the convention would, the commission hoped, ensure that voice was heeded. But it was not suggested that England, or England and Wales, should have a veto.

Lord Norton of Louth: In the Commission to Strengthen Parliament, which I chaired—we reported in 2000—the scheme we devised was one that did least damage to existing processes. It was premised on delivering English votes for English laws, because that was what we were given a remit to achieve. So where our proposal differs from what the Government has pursued is that it is a more straightforward, simple process. Indeed, as the White Paper looking at the option said, “The key advantage of this proposal is it is implicit in the absence of the need for any new stages in the ledger process”.

Essentially, what it was doing was saying that a Bill would go through the same process as now, but the Second Reading would essentially be English Grand Committee. It would be the House as now, and then it would go through the remaining stages with the MPs at Second Reading, then Committee and Report stage. Who would be entitled to vote—though all Members would be entitled to attend and speak—would be those drawn from that part of the United Kingdom affected by the Bill. We did say that the whole House should be entitled to take Third Reading, as now, although we thought a convention ought to develop that it still should be those Members from the affected part of the United Kingdom who voted on it. So, as I say, that was the proposal, which did not entail doing damage to existing processes; it was just utilising the existing processes. So the only injection in the process that would be new would be the Speaker's certificate.

Q65 Ronnie Cowan: Sir William, you are on record as saying that the current proposals are “a dog's breakfast”.

Sir William McKay: No, I did not.

Ronnie Cowan: You did not?

Sir William McKay: No, I know I have used the phrase dog's breakfast, but it was not in that context.

Ronnie Cowan: What context was it in?

Sir William McKay: I cannot honestly put my finger on it. But I did turn over in my head whether the connection, which you have just made, would be made. I know I looked it up, and I have described, I think, the consequences of some part of this in that way, but I did not describe the Government's proposals as “a dog's breakfast”. I don't think they are very workmanlike. I think there is a complete forest of changes. Frankly, I spent 40 years trying to grapple with procedure, and I still have great difficulty in discovering what each of these Standing Orders that the Government proposed means, and I lose myself when I read it. To be honest, in my view, it does not have the merit of simplicity. The commission that I chaired tried to be as simple and straightforward as we could. The weakness—and one has to admit it is a weakness—is what happens if the convention does not grow, and what happens if people keep busting the convention? We hope that would not happen, and there is no reason for it to happen. So it is not a dog's breakfast that I would describe the Government's proposals as; it is more a forest in which I lose myself.

Q66 Ronnie Cowan: If you spent 40 years grappling with it, what chance does the Speaker have when he is asked to make this judgment?

Sir William McKay: I think my successors will do a perfectly good job—better than I could—of finding their way through the forest.

Chair: You would convert it to Clerk speak, Sir William.

Sir William McKay: Yes.

Q67 Ronnie Cowan: It is a genuine question. It is a very complex issue, and we are asking the Speaker and maybe two MPs to sit on this. What chance do they have to pick the bones out of this?

Sir William McKay: One of the things that strike me is that I don't know how often some of these orders are going to be needed. That is a plus. In other words, you can get through the procedure without going into the forest. But it also has a minus because, when you do meet them, you do not have much experience.

For example, look at the certification process. The Speaker certifies a Bill. Everyone is aware of the possibility that that might politicise the speakership. The answer to that is: it need not, but only time will show whether it does. It need not politicise the speakership because if the Speaker, as the Government is suggesting, does not make explanations but is willing, as I am sure Speakers will be, to talk to Members privately, for example to make it clear when he has problems of spill-over, what is incidental, what is consequential and what his canons of decision are—I think the commission that I chaired suggested a good way of doing that—then that will make it work. But at the moment it is a very complex set of suggestions that the Government have come up with. As I say, I sometimes puzzle to keep in my head what the last one said.

Q68 Chair: Lord Norton, do you want to add to that?

Lord Norton of Louth: Well, I agree wholly with what Sir William has said. There is a problem if you introduce a complex procedure for something that may not be used much if at all. On the Speaker's certificate, it is about how clear you can be in prescribing the guidance or the rules that the Speaker has to abide by. You can see a sort of spectrum. At one end you have the Parliament Act and certifying money Bills, which I think is relatively straightforward. At the other end, there is what was originally in the Fixed Term Parliaments Bill, where it was going to be a Speaker certificate as to whether it was a vote of confidence. That was knocked out and replaced, with all the problems that would have created.

As long as you try to write in as clearly as possible the rules by which the Speaker has to work, then you protect the independence of the Speaker. You have to be fairly precise to avoid the Speaker being drawn into controversy. It is actually about giving that guidance and making sure that the rule is right. I can see the issue there. It is about trying to make sure that it is as clear as possible to the Speaker, and then the Speaker himself develops rules that indicate the process that he is utilising. So there is a clear precedent, so you know how successors will operate. Then I think that goes some way to addressing the problem.

Q69 Ronnie Cowan: We have done this through changing the Standing Orders. Would it have been better putting it through as a Bill?

Lord Norton of Louth: The proposals we came up with, because they relied on existing processes, could be done through Standing Orders, because they would not need the complex arrangements that have been introduced for this distinct procedure, which, as Sir William says, may only apply in a small number of cases.

Chair: We are going to have to press on. Sir William?

Sir William McKay: Very briefly, I have problems of principle, if you go ahead on Bills, of bringing the judges inside the door of the House. I cannot see how it could happen, with

the Bill of Rights as it stands. There would have to be some fairly “heroic” judgments in a court that might, however, be made and would then damage the interests of the House.

Chair: I am sorry, I did not quite understand that.

Sir William McKay: The judges would simply say, “Look, the Speaker made an error in his interpretation of this clause of the Act, and he has accepted the votes of 15 Members, and these votes are now cancelled”.

Q70 Chair: But the Procedure Committee has suggested that, if we stick with Standing Orders, that kind of judicial review of the Speaker’s decisions is extremely unlikely.

Sir William McKay: I am sure they are absolutely right.

Chair: Right. We will move on to the next question.

Q71 Mrs Cheryl Gillan: How sustainable are the proposals on English votes for English laws?

Sir William McKay: I think the complexity would cast some doubt on that; the complexity plus the probable infrequent use.

Mrs Cheryl Gillan: Do you agree with that, Lord Norton?

Lord Norton of Louth: I do, because if you are looking at the proposals, it strikes me that there are three essential criteria to consider: are they desirable, are they achievable, and are they sustainable? On sustainability, that was an argument for what we were suggesting in terms of a simple process drawing on existing procedures. Once you introduce this degree of complexity, I think you may have a problem, and it is about how well it gets bedded in as part of the culture before, say, you see some change in a Parliament where there is a move to actually change them.

I think you are identifying a significant problem: how sustainable are those procedures because they are in Standing Orders as distinct from something that is done by statute? Because there is the other option—they are not mutually exclusive, because in the 19th century one of the Home Rule Bills combined both—which is to reduce the number of MPs from the affected part of the United Kingdom and leave it at that. It is done by statute, once it is done, and there is a Northern Ireland precedent for that. So that is one alternative that may be more sustainable, even though you can see the problems and the objections that may be raised.

Q72 Mrs Cheryl Gillan: The Government’s legislative timetable is always an issue, and remains so no matter what the complexion of the Government is. It is perhaps even more complex in a coalition Administration, in many ways. What impact do you think this could have on the legislative timetable? In particular, I wondered what your reactions were to the Procedure Committee’s suggestion that a double majority at Report stage could suffice, instead of having the legislative Grand Committee stage?

Sir William McKay: I think it might. I am attracted to that as a possibility, yes.

Lord Norton of Louth: I take your point about the implications for timetabling. That is one of the problems, I think, with introducing this new procedure in the different stages.

That is why we simply wanted to follow existing procedures, because you would not be building in new stages. So the only delay that I would anticipate with what we proposed would be the time taken for certification. But otherwise you would be more or less in line with the normal timetable.

Q73 Mrs Cheryl Gillan: The cry has gone up about having two classes of MPs. What are your views on that?

Lord Norton of Louth: My starting point is there are already two, because that is the point of devolution. The West Lothian question is premised on that very existence of two classes of MPs. If there weren't, you would not be having the West Lothian question.

Sir William McKay: I think one would want to avoid a serious manifestation of the two classes, in which one was distinctly subordinate to the other. I hope the commission that I chaired avoided that, and I think Lord Norton's commission avoided it. It may be that the two classes of Members issue is really between Members' ears. It does not actually exist, but if you think it exists, that is bad enough.

Q74 Mrs Cheryl Gillan: In other words, what we are doing is refining the jobs of MPs, to be truthful. It is a much more sophisticated operation than that, and to translate it into two classes of MPs is a simplistic and dismissive approach, which is more likely to raise a rabble outside this House than would actually be the actuality of the roles of an MP inside the House.

Lord Norton of Louth: Yes. I don't think you can resolve the issue, because you cannot answer the West Lothian question perfectly without either doing devolution or moving to federalism, so you try to make the best of it within that framework. If you want to avoid the point you are making about the class of MPs, it is the other option, which is to reduce the number of MPs from the affected part of the UK, but those who are here then become equal with all others. That is exactly the same way as it operated during the period of Stormont, from 1922 to 1972, when Northern Ireland had fewer MPs than its population justified because it had its own Parliament. They were treated as exactly the same.

The issue did come up in 1964 to 1966. In effect, Harold Wilson raised the West Lothian question and asked his Attorney-General to come up with what would be the equivalent of English votes for English laws, or MPs other than from Northern Ireland voting on issues that affected them. It came up in that context, but otherwise it was not particularly challenged, and all MPs were equal as Members of the House.

Q75 Mr David Jones: Sir William, you have touched already on the issue of certification by the Speaker, which is a crucial part of the process, and part of that certification is considering those issues that are devolved to Scotland, Wales, and Northern Ireland. How happy would you, as Clerk, have been advising the Speaker as to the boundaries of devolution, especially given the evolving nature of the devolution settlement in these countries?

Sir William McKay: Indeed, I would not have done it on my own. The advice to the Speaker on the boundaries of devolution will almost certainly come, if the commission's suggestions are followed, and indeed in most other models, from the devolved Administrations, who we know—for obvious reasons—have great expertise in that area. Doubtless it will come from parliamentary counsel, who will be drafting the Bill to go

before the Parliament at Westminster. The Clerk of the House may assist in the immediately procedural consequences of all this, but I would not expect the Clerk to be able to give an ex cathedra view on whether fishing in the River Tweed can be dealt with by only a Scottish Bill, or a Scottish Bill and an English Bill. These are very touchy issues if you are a fisherman and, indeed, they are complicated in more serious areas, too. So no, the Clerk would not be alone. There would be the best possible advice the Speaker could have.

Q76 Mr David Jones: Would you anticipate that individual Members should be in a position to make representations to the Speaker on these issues?

Sir William McKay: This is a matter for the Speaker of the day's decision. In my view, I think they should be able to, but privately. The problem is that the Speaker's decision is an almost a legal and procedural decision. Members' complaints are political. The one level does not meet the other, and I would have thought the Speaker cannot in many cases, on legal grounds, satisfy a Member whose complaint is political. The answer is: the speakership suffers. Therefore, let these representations be done privately, if you see what I mean, and let the Speaker say, equally privately, "These are the principles on which I will interpret consequential/incidental".

Chair: Have you finished, David?

Q77 Mr David Jones: There is one point I want to raise on that. Would you think that in certain cases it might be appropriate for the Speaker to give his reasons for his certificate? Or should there simply be a certificate that that is what he has decided?

Sir William McKay: It is a hard question to answer, because there will obviously be decisions where giving reasons would be sensible. Looked at overall, I think the Chair ought to be reluctant to do that, and to do it only in the tightest of corners and for general benefit.

Mr David Jones: Thank you.

Q78 Kelvin Hopkins: The danger of the Speaker's role becoming politicised to an extent would depend on the individual character and political inclinations of the Speaker. Would it not be sensible to go to extreme lengths to minimise the discretion of the Speaker, so that it is supporting him as a built-in automaticity. In other words, like the Queen choosing the leader of the largest party to be Prime Minister. It could be that kind of role, so that the Speaker will not be a figure of controversy.

Sir William McKay: The difficulty with that is that devolution settlements are so complicated. We have heard of over 400 pages of advice to the Presiding Officer in Wales on, "Can we do this or not?" I hope that matters can be achieved at Westminster with less paper, because the problem is different. I don't think many—if any—problems will present themselves as yes or no, black or white. There will always be a judgment, and where judgments are made, at the back of the judge's mind there is always a doubt and he has to take a decision. The decision should, as I said, probably be explained only privately, but it would be a difficult decision. I don't think a black-and-white decision is ever going to be something any Speaker can be happy to receive. It will not be that simple.

Q79 Kelvin Hopkins: If his decision is based upon consensual advice from people from different parts of the spectrum, then it would be acceptable. But if he is seen to make a strong decision one way or the other himself, or herself, it could be controversial.

Sir William McKay: In a sense, he is like the monarch. He will take advice, I should think.

Lord Norton of Louth: I agree with the proposition you are putting forward, because the more precise it is, the less scope for independent judgment and, Sir William is quite right, it is very much similar to the monarch. You look to them to act on the basis of precedence, so that their behaviour is fairly predictable. The greater the clarity of the guidance the better, but, as we have touched upon, there is the difficulty of actually constructing that and trying—I think this is your point—to protect the Speaker from controversy in any event. The further you can go down that road, absolutely, the better. As Sir William says, the difficulty is actually getting there.

Q80 Chair: Could I ask a supplementary on this? Could there be more litigation about the legislation that emanates from this process, on the basis that the Speaker made the wrong decision about how the legislation was constructed?

Sir William McKay: Chairman, as I said to another Committee, if the House gives the Speaker, in the Chair, a responsibility, which he exercises, if that is not a proceeding in Parliament—

Q81 Chair: No, that is not the question I am asking, Sir William. I am asking: if the Speaker were to mis-certify an aspect of the procedure in the House of Commons, and the legislation then emerged in a certain form, would that itself give rise to litigation, on the basis that the legislation had somehow been invalidated by what the courts thought about the procedure in the House of Commons? Or are we still in that protected area, so that it would not be a legitimate concern?

Sir William McKay: I think we are still in the protected area. If that happened, there is a 19th-century case of a private Bill that got the Royal Assent before Royal Assent could be given to it, and that had to be corrected by legislation. In a sense, that would be the only way to correct the kind of error that people held up their hands to after the event.

Q82 Chair: Forgive me for inviting you into the forest, but how surprised were you that the parliamentary draftsmen—who of course work for the Government and not for the House—produced 35 pages of Standing Orders to advance quite a simple principle?

Sir William McKay: My impression is this, Chairman: it reads like a text drafted for the decision of some third party. It looks like a Bill of which, in the end, a judge will have to determine the meaning. But it isn't that. This is something for the House, and the House will determine its meaning. It is too prescriptive, I would have thought. "Over-engineered" was the word used by the Procedure Committee.

Q83 Chair: I will read out the part of this for you. It is 83J(8) and (8)(b). It says, "In deciding whether to certify a Bill, clause or schedule under this order the Speaker...shall disregard any provision inserted by the House of Lords which, in the Speaker's opinion, has the sole objective of ensuring that Standing Order number 80(a) (Privilege (bills brought before the Lords)) will apply to the Bill". Sir William, how would you envisage or imagine

advising the Speaker to divine the covert intention of the peers in having put an amendment into a Bill in that way?

Sir William McKay: If I am right in interpreting that myself, that is a kind of pro forma thing. The Lords try to avoid privilege. It is not substantial, I think, but I would need to see a case and have some cold towels.

Q84 Chair: Isn't this advising the Speaker to look at a Bill and say, "The only reason they put that in was to trip me up, and I am not going to be tripped up, so I am disregarding it"?

Sir William McKay: You might well say, "Yes, it is part of the forest where I fell among bushes and could not get out". Yes.

Q85 Chair: How fair is it to put the Speaker in that position?

Sir William McKay: If you really have a need to tie up all the privileges of the House, then you should do it, and when an issue of interpretation comes up the Speaker will be advised by the Clerk of the House, I think.

Q86 Chair: If the Lords were to put in a provision to try to make it a United Kingdom Bill, when it is only an English Bill, he could say, "That does technically make it a United Kingdom Bill, but I think the only reason they put that in was to make it a United Kingdom Bill, so I am disregarding it".

Sir William McKay: That is a matter for which, if I may, I would like to give you a short note on afterwards?

Chair: Perhaps you would. I would be very grateful.

Q87 Paul Flynn: Isn't the problem with the series of devolution Bills that we have had that they were all done piecemeal, taking into account what was happening in each of the countries with insufficient regard to the consequences beyond those borders? We had the example from Professor Richard Wyn Jones of the fact—it is not just a perception—that Wales see the Barnett consequential as a cheat and Scotland see it as a great advantage and want it continued, so there is a great contradiction there. We are on our fourth Wales Bill, and in most cases the intention of each Bill has been to correct the problems created by the previous Bill. It has been a legislative futility on a grand scale, or legislative incompetence, let's say, in most cases, if we look back at what has happened since the 1990s. Do you think there is a case for having some kind of constitutional convention, or some kind of body that would look at all the consequences for the four countries and come up with agreed solutions?

Lord Norton of Louth: I agree with you. To take your point about the different parts of the United Kingdom, it is basically the point I am making about our constitution. It is about the way you do it. The Government tends to look at it in isolation and does not stand back, look at the links and, in this context, look at the United Kingdom as the United Kingdom and how it relates to one another.

When I chaired the Constitution Committee in the Lords, we did an inquiry into devolution and into inter-institutional relationships in the United Kingdom. One of the things we were looking at was co-ordination between the Scotland Office, Wales Office and Northern Ireland, as to whether they should be brought together so that you could

actually address that. There is an allied problem as well, I think, which was very apparent when there was Stormont from 1922 to 1972—and we are in danger of getting it now—which was, “Oh, these things are hived off. That is the responsibility of Scotland and Wales”. Therefore we leave them alone and do not stand back and look at how they relate more widely to the United Kingdom and actually think in United Kingdom terms, so I agree with you.

I would qualify the solution, because what I have argued for—and I see Arthur Aughey touched upon it in his written evidence to the Committee—is not a convention, because that tells us where we should be going. My point is that we need to make sense of where we are before we start going in a different direction—“Hang on, let’s stand back and see how these things relate to one another. Where have we got in terms of the constitution?” So what I foresee—I have termed it a constitutional convocation to avoid the baggage associated with convention—is a body that can make sense of where we are. It could think about the principles that underpin this: how does the United Kingdom fit together? How does it fit within the constitution more generally? That would be where I would move initially, because we cannot go off in a particular direction if we do not even know where we are.

Where we are at the moment is rather uncertain because of all the changes that have taken place on a scale that we have not seen. Robert Stevens in his book “The English Judges” makes this point. It is about all the changes taken together; it is the scale of it. We have not had anything like this since the late 17th century and early 18th century. Yes, we have had big changes since, but they have been isolated, with time to bed in before moving on. Now, we are seeing a whole raft of changes and not standing back and looking at it holistically. I think you are absolutely right; the point you make about the United Kingdom is absolutely spot-on.

Q88 Paul Flynn: Sir William’s description of something else as “a dog’s dinner” would be accurate in describing the whole process of devolution rules.

Sir William McKay: If I can very briefly add that the commission on the consequences of devolution looked at a particular aspect of the matter that Lord Norton has just been describing. That is, in the House of Commons, devolution issues are splintered. We recommended a devolution Committee—not to cross Scottish, Welsh, and Northern Irish Committee affairs but in fact to co-opt the Chairmen of those Committees—to get a hold of the need to put the House of Commons in the driving seat in the shaping of the relationships between the devolutionary systems and the House, on things like the Barnett consequential. If they are to be revised, then the House of Commons needs its foot in that door. It is not enough for the Treasury and the Finance Departments in the devolved Administrations to settle on a good system. The House needs to know, and the House needs to look—and keep looking—at the relationships between the territorial Secretary of State and the devolved Administrations.

Q89 Paul Flynn: Do you see new problems arising from the EVEL legislation? You have mentioned Barnett particularly, but do you see other consequences that are going to cause us problems?

Sir William McKay: Barnett was the one that the Commission was focusing on, because it kept coming up in the evidence. Most people said, “This is a great difficulty”, and some

people said, “Yes, but solving it is not as simple as you think”. That seems to be a classical example of a problem that a Select Committee is there to solve.

Q90 Paul Flynn: But it is insoluble. It is too difficult, so we leave it alone and go and hide ourselves—

Sir William McKay: No, if we cannot find an answer to the present problem, change the problem.

Q91 Paul Flynn: What we generally do in this place is legislate—whether it makes sense or not, politicians legislate.

Sir William McKay: This is part of legislation. However, vestigially, if you have things like money resolutions you really ought to know what system that is playing in to.

Paul Flynn: All right. Thanks very much.

Q92 Mrs Cheryl Gillan: It is not just the constitutional position that has a disconnect but also the policy positions that flow from it. In 2010 there was briefly a Cabinet sub-committee that gathered Ministers from all the Departments with the territorial Secretaries of State, which only met, unfortunately, twice before it was disbanded. If there is no co-ordination of either the constitutional position or the policy position, this is where we end up—with this disconnect. Would you agree that that is the sort of thing that should be reinstated?

Lord Norton of Louth: Absolutely, because that is what we looked at when we did our inquiry on devolution, and basically we were very alert to that. Our argument at the time was that there is one party in charge and controlling the different parts of England, Scotland and Wales, primarily. This will not always be the case. You need a mechanism in place and kept in working order, so that you can discuss and resolve differences. As you say, the JMC was not meeting, so it wasn’t being kept ready for the occasions when it would be important. We were very focused on that. That is what we needed to do: keep that in working order so that you have that dialogue and that contact between the different parts.

One of the things we touched upon, which I am keen on as well, is not simply to see it in terms of contact between the different parts at executive level. I think at parliamentary level as well, there is a very important process to be pursued to try to build those links, and the Parliaments learn from one another. Quite coincidentally of course, when the first three devolved bodies were set up the Presiding Officer in each happened to be a Member of the House of Lords. That provided an opportunity for them to occasionally get together and talk about how they operated.

I think there is something that you can recommend, not just in terms of how those inter-institutional relationships are pursued at the executive level, but also from a parliamentary perspective as well, so Parliament is keeping abreast of what is happening. On your core point, I think you are absolutely right. We were very focused on that. We would probably take the view now that if only the Government had acted more on our recommendations, we would not quite be in the position that we are in now.

Q93 Mrs Cheryl Gillan: Yes. As the architect of the Cabinet sub-committee in 2010, I also thought it was important that the civil servants had that connection into the departmental

connection, which, as far as I am concerned, does not currently exist in any formal capacity. Would you agree that that needs reinstating as well?

Lord Norton of Louth: Yes, again, that was very much a part of our report. We were very alert to that. You do need that sort of co-ordination. In our report we recommended the continuation of the home civil service.

I agree completely with the point you are making; I think that really needs pursuing. It really follows Mr Flynn's point that there is a danger of seeing these things in silos—they are disparate, they are discrete—when you should be standing back and looking at them holistically and thinking, “How do the Government address that, particularly through Cabinet?” I know there is a constitution committee of the Cabinet at the moment, but it is a devolution committee, not a constitution committee. I think there is much more that needs to be done, not least the Government addressing the constitution as a constitution. It has not really done that. Successive Governments have not really stood back and looked at it in those terms, so there is more it could do. I think you are absolutely right in that proposition.

Q94 Chair: What are the fundamental constitutional principles that underpin English votes for English laws, however they are expressed?

Sir William McKay: It is better looked at it as a political response, otherwise the tensions in the UK may become difficult to handle.

Chair: Lord Norton, you are nodding.

Lord Norton of Louth: I agree with that. I think it is important we do not lose sight of the point that Arthur Aughey made in his written evidence about seeing the United Kingdom as a United Kingdom; the whole is greater than the sum of the parts. There is that that we need to preserve. English votes for English laws, in a way, is designed to facilitate that, because you have to think about the different parts of the United Kingdom, which includes England, and respond to the different needs of those while maintaining that overall principle. That was what our proposal was trying to do, to meet that, but operating within an existing framework that was understandable and that people could accept. But Sir William is absolutely spot-on in the point he is making. It is a political response within an extant constitutional framework, and you are just adapting to that.

Q95 Paul Flynn: We have the prospect of having a Parliament within a Parliament, an English Parliament within the UK Parliament. Does this strike you as something that is practical and can operate, or do you tend towards the idea that the solution to this would be the establishment of an English Parliament and a UK Parliament?

Sir William McKay: I think this is probably not the forum in which to say it.

Paul Flynn: Yes, it is.

Sir William McKay: No, it is not, because the answer would have been: who wants more Members of Parliament? I think that is what my commission did hear occasionally. The argument against a UK Parliament and an English Parliament is cost.

Chair: I should declare an interest; I think that is the representation I made to you in that commission myself.

Sir William McKay: Yes, and that was put to other witnesses, and was what we got back.

Lord Norton of Louth: I agree with that point. You are right, it is a practical point because of the cost of setting one up and all that flows from it. My worry would also be if it encouraged the fragmentation of the Union. One tries to keep the Union through more or less existing processes as much as possible. Why do you need a whole new institution to deal with measures that might be few and far between? You adapt existing processes within Parliament to meet that eventuality, so you meet a particular principle while, nonetheless, maintaining the existing basic constitutional structure.

Q96 Paul Flynn: It is not unknown in other countries to have a regional government on this sort of basis when it has been set up as a single act. People have them in regions of the country, and they have one national Parliament to deal with issues that are national. It is hard to imagine the difficulties of Members of Parliament who are English MPs one day and UK MPs the next, or Welsh representatives in a similar position. It does seem to be creating problems that, if we do have an overall look at this, could be resolved rather than continuing to do things piecemeal and satisfying nobody.

Lord Norton of Louth: There are problems if you go down that route of thinking of an English Parliament, because it is not strictly comparable with elsewhere. If you think about other federal systems, they are comprised of units not one of which dominates all the rest. The problem in the UK context is that England dominates. You could say, “Well, we could live with that”, but you need to be aware of the fact that that is not comparable with how systems operate elsewhere. You either have to go with an English dominance or you need to break up England.

Q97 Paul Flynn: Yes. Do you warm to the idea that to avoid difficulties that would come from the EVEL proposals for the relationship of the House of Commons and the House of Lords, that we need some new set-up for the House of Lords, possibly based on regional representation rather than London-centric representation now?

Lord Norton of Louth: We could look at that and think through whether there is a role for the Lords in that respect. It would depend on how you devised the means of doing that. There may be a role for the Lords but, at the moment, if you move down the English votes for English laws route, in a way the Lords to some extent becomes almost a union house because we do not have territorial representation.

Q98 Chair: This has been very helpful, and we are grateful to you. I have three other strands to ask you about. In your view, how inevitable was it that we were going to finish up having this discussion once we had devolved to a Parliament in Scotland and an Assembly in Wales?

Lord Norton of Louth: Based on history, fairly predictable, because we have been here before. There is nothing to do about the West Lothian question; it came up under the Home Rule Bills in the 19th century and with the Government of Ireland and the different options that were discussed then. You had the in and out option, which is English votes for English laws. You had the completely out option, and you had the proposal for reducing

the number of Members, which is the one that was implemented in the Government of Ireland Act.

Chair: Sir William, you do not need to add anything to that?

Sir William McKay: No.

Q99 Chair: Our previous witness, Professor Wyn Jones, suggested that the present proposals we have just voted through are likely to generate demand for more rather than less of the same, and in fact the proposals we voted on are more of what you each had in your original proposals. How inevitable is it now that the present arrangements are not going to be satisfactory and that they will generate more demand for the kind of changes that these represent?

Sir William McKay: It depends how much they need to be used, Chairman, and that is what we are not clear about. If they are not ever used, then they are there as a target for those who want more, who say, “What we have is insufficient. We are not using it”. I don’t think this is a crystal ball in which it is very easy to see anything. I would not make a link between what is now proposed, or what has now been agreed, and a strong drive to go further. It may happen but I don’t think it is inevitable.

Q100 Chair: Looking at the long-term future, haven’t we started down a track that suggests that we will finish up with a statutory English Parliament that may well be represented by English Members of the House of Commons elected at the same time as the United Kingdom Parliament but, nevertheless, with a separate English Administration from the United Kingdom one, conducting English policy according to an allocation of money provided by the United Kingdom Parliament? How inevitable is it that we have we started down that track?

Lord Norton of Louth: I don’t think that is inevitable at all. There are different things that could happen, of which that is one. I agree completely with what Sir William said. You may find these are rarely used and the issue doesn’t get pursued, particularly if there is a perception that Parliament does have a procedure for English votes for English laws, however little used it is. You could go off in several directions. I tend to draw on history in explaining where we are and where we may go. Here we have no precedent for this, so it is not clear.

Q101 Chair: That leads me to my last question, which is: to what extent are these proposals, in fact, rather unnecessary? For as long as there is a majority in the House of Commons that want to sustain these changes they will remain in the Standing Orders, but as soon as there is a majority in the House of Commons for a different set of Standing Orders, or the removal of these Standing Orders, they will be removed.

Lord Norton of Louth: I was going to say that is the political reality, but that is not the reason they were introduced. They were introduced to meet a particular need and expectation, I think, on the part of people outside, of making some provision for English votes for English laws.

Q102 Chair: Sir William, it must have occurred to you that, so long as there is a majority in the House of Commons in favour of these Standing Orders and there is a majority in England that is aligned with that majority in the United Kingdom, then they are unnecessary. But as

soon as that majority in the United Kingdom no longer exists and they become necessary, that majority in the United Kingdom can dispose of these Standing Orders.

Sir William McKay: Yes, I think that is so.

Q103 Chair: How sustainable is this option?

Lord Norton of Louth: It comes back to the point I was making earlier. It depends how long they stay in place, whether they are used much, and whether you develop a culture and a sense they are accepted because they are not seen as threatening. There is always going to be the point that you have made, Chairman, because they are in Standing Orders, so the House can change them. It depends on looking at different options. If you reduce the size of the House through legislation, you could argue that is more sustainable. It is a blunter instrument. There are different arguments about it, but that is more sustainable—if legislated, it tends to bed in. It may prove to be unsustainable but, then again, it may be that Members come to accept it. As I say, if it is not challenged that much or not used that often, why will there be the pressure to do away with it?

Chair: Mr Hopkins, your final ancillary point.

Q104 Kelvin Hopkins: Yes. The final question is about the Government's planned boundary review. I wonder what your views are on the proposed reduction of the House of Commons to 600 MPs and its simplifications for the balance of power between Parliament and the Executive.

Lord Norton of Louth: I maintain the position I put before the Committee when you last discussed this. Indeed, the Committee in its previous incarnation appointed me as a special adviser to help draft the report. I feel very strongly that, if you reduce the number of Members of the House of Commons, there must be at least a proportionate reduction in the size of the ministry. Reducing the size of the House of the Commons would not create a problem, it would exacerbate a problem. I think there are already too many Ministers; they have grown over time relative to the size of the House of Commons. They have been complemented by the growth in the number of PPSs, who formally are not part of the Government but, in a way, the ministerial code has gradually come to basically regard them as members of the Government.

I do think it is already a problem that needs addressing; it becomes even more of a problem if you reduce the number of Members as you get this rise in what we cannot even call the payroll vote, because PPSs are not paid; somebody suggested it might be called the jobsworth vote. That does need to be addressed, because it is important for the reasons you have given. It does fundamentally affect the relationship between the Government and the House of Commons, because it gives the Government greater weight in any vote that takes place.

The Government is already too large; you have too many Ministers relative to the tasks of government. You are handing out PPSs and other posts to get Members on board who are technically not part of the Government. They are formally Back Benchers, but they are not given the freedom of Back Benchers, so I think there is a very serious issue here. Your predecessor came up with solutions in the last Parliament. I think those do need to be

pursued. You do need a statutory limit not just on the number of paid Ministers but on the number of Ministers who can serve in the House of Commons.

Q105 Kelvin Hopkins: I think you are suggesting that a primary motive for doing this is to reduce the proportion of independent-minded Back Benchers—like myself, I may say—who cause trouble for Prime Ministers. Prime Ministers want to aggrandise power, increase power for themselves. Mr Blair went to extreme lengths to get everybody some little title that could be withdrawn if they were naughty, and PPSs have been expanding from 22 to 122, or something. It is ridiculous. Is this part of that process?

Lord Norton of Louth: It is, yes. I think the number of Ministers increased not because the responsibilities of the Government increased. You have this interesting paradox, with a Government that believes in reducing the size of the state but does not believe in reducing the size of the ministry. It is how you achieve that that is the real issue. You can do certain things by statute if you amend the Ministerial and Other Salaries Act, but you then have a political problem in terms of the sort of appointments you are talking about, because of course they are not covered by statute. They are not formally part of the ministry, but then they get tied into, as I say, the payroll vote. It is about how you address that and if you can change the culture of the Commons so that Members would rather stay as independent-minded Back Benchers than being enticed by being given a PPS-ship.

Q106 Kate Hoey: Further to that, do you have any comment on the way Parliament is also increasingly paying Members of Parliament to chair Select Committees? The Speaker's panel is getting bigger and bigger; everyone is getting money. Do you think there is a danger here that we are having different types even of Back-Bench MPs?

Lord Norton of Louth: You might suggest you are getting different classes of MPs, but that is different, and I think that is rather a good development because it is creating alternative career paths to being a Minister. Of course, particularly with the changes of 2010 with the Chairs being elected by the whole House and the members being elected by the party groups, their responsiveness is totally different. You have removed a significant patronage power of the Whips, and you have changed the direction so that Members are looking to their own colleagues, not to the party leadership or the whip. I think that is a rather good development if you—

Q107 Kate Hoey: It is certainly a good development on that, but what about the payment side of it, which is increasing hugely the costs of—

Lord Norton of Louth: It is. Yes, you are absolutely right. There is an issue about expenditure and how many posts you—

Kate Hoey: It keeps going up.

Lord Norton of Louth: Yes. There is an issue from that point of view, but I think in terms of the House of Commons itself, the benefits to the House are rather substantial. You are now getting Chairmen of Select Committees who are substantial figures in their own right. You occasionally got that in the past, but it is even more so now because, in a way, they have greater independence. I think the work of Committees has always been good; it is even better now because of those changes. I think we have to see those changes in a very

different perspective. I think they challenge the position of Governments, so I am all for moving further in that direction.

Chair: Thank you to you both very much indeed. We will now have our final witness.

Sir William McKay: Chairman, can I just say one other thing to Mr Cowan?

Chair: Please do.

Sir William McKay: About “dogs’ breakfasts”, I have discovered that I used the phrase in the context of what would happen if these changes were promoted through legislation, not Standing Orders.

Chair: I am very pleased, Sir William, that you have managed to put that on the record and clarify that.

Ronnie Cowan: I shall sleep easy.

Chair: I am sure Mr Cowan is very satisfied. Thank you very much.

Examination of Witness

Witness: **Lord Lisvane KCB DL**, former Clerk of the House of Commons.

Q108 Chair: My Lord. We welcome our final witness in today’s session on English votes for English laws. Could you very kindly identify yourself for the record?

Lord Lisvane: Certainly, Chairman. I am Robert Lisvane, previously, as Robert Rogers, Clerk of the House of Commons, and now a member of the House of Lords on the Cross Benches.

Q109 Chair: It is a very great pleasure to welcome you to the Committee. Before we deal with the question of English votes for English laws, have you anything to add to the discussion we had with the two previous witnesses about the consequences of the votes in the House of Lords last night?

Lord Lisvane: I think talk of a crisis is entirely hyperbolic. You need to look quite carefully at the meat of what took place. If the decisions of the House of Lords were taken on things that were absolutely and purely about taxation and finance, it is fair to ask why, in that case, the House of Lords had the regulations laid before it for approval. The answer is of course that under the 2002 Tax Credits Act, section 66, all the regulations made under that Act have to be approved by both Houses. If you look at the genesis of that Act, it was quite clearly, in 2002 and in the debate on the very first regulations, seen as being a social security measure, not a taxation and finance measure. Of course, there is finance; £4.5 billion, we are told. I am reluctant to accuse the Government of pilot error, but I think they could have decided—if it were seen to be hazardous—on a single purpose Bill, which would have been very easy to put together. I can see it being certifiable under section 1(2) of the Parliament Act 1911, and of course the Lords would have had no recourse in those circumstances. But it is still open to the Government to re-lay regulations. If I were a

business manager I think I would have some alternative regulations in my back pocket for the purpose.

Chair: Are there any other questions on the House of Lords that we want to ask Lord Lisvane?

Lord Lisvane: Might I just add, of course, that there was a delay motion in July on the Universal Credit (Waiting Days) (Amendment) Regulations? The sky did not fall then, and I think perhaps the passage of a few days may allow us to take a calmer view of what took place last night.

Chair: Thank you, my Lord.

Q110 Ronnie Cowan: A crucial aspect of certification is identifying areas that would otherwise devolve to Scotland, Wales or Northern Ireland. How confident would you have been advising the Speaker of these legislative boundaries, especially in the context of the evolving devolution process?

Lord Lisvane: I think I would echo some of what Sir William said to you a few minutes ago. I have read the Speaker's statement of yesterday and, as I would expect, very serious preparations are being made to operate these Standing Orders. But if the boundaries are not clear-cut then I don't think the decisions are going to be easy.

If I can widen that a little, one of the difficulties of the whole process of certification is that for the first time, to my knowledge, the Speaker is to be asked to certify things as a matter of law. That is very different from certifying a money Bill, whether or not a matter is or is not within devolved competence. Article 9 of the Bill of Rights—

Q111 Chair: I should press you on that. How is that different from, for example, certifying whether a Bill is a hybrid Bill or not?

Lord Lisvane: Because you take a non-legal judgment as to whether a public Bill contains provisions that treat private interests in a different way, one to another—injurious affection. That is something that is easy for a layperson to judge: how is this person being affected? How is that person being affected within the curtilage of a public Bill? Deciding whether a Bill is public or private is a much more straightforward business, and it is not a matter of law. It is a judgment about the contents of a Bill. In the same way, certifying a money Bill—I will not quote section 1(2) of the Parliament Act to you—is about asking, is this purely about taxation as defined? Is this purely about finance as defined? That is a judgment that one can reach from a lay perspective. But if you are saying on this point, “Does or does not the devolved body have the legal power and the competence to legislate?” that is a rather different proposition.

My concern about it is twofold. First, as Sir William said, the Speaker is probably protected by article 9 from correctional review by the courts. But you need to look at the Anisminic case, which suggests that that may not be absolutely fireproof. A stateable case might be made that the Speaker had made an error of law. That is one area of hazard, even if you do it by Standing Order and not by legislation. You may want to come to the legislative point in a moment. The other hazard is that if the Speaker takes a decision that X is within a devolved competence, and so certifies, it would not be very difficult to put together a stalking-horse action, taken entirely separately, inviting the courts to rule on

exactly that point. If you have a situation where the Speaker has certified, but in an unconnected but highly cognate set of circumstances, the courts have said, “That is wrong”, you might have a bit of problem to sort out.

Q112 Chair: Thank you. When I asked this question of the previous panel they said it was political. Looking at the constitutional principles, which underpin this whole question of English votes for English laws, what exactly are they? What are we trying to address?

Lord Lisvane: I don’t think there are constitutional principles. I turn the proposition around the other way. When you are trying to introduce and to operate a system like EVEL, what you are trying to do is not to do violence to constitutional principles rather than being driven by them in order to achieve a particular result.

Q113 Chair: Some would argue that partial devolution to parts of the United Kingdom and not to others represents a breach of a constitutional principle, namely that we finish up with a United Kingdom Parliament that represents different parts of the United Kingdom differently, and that English votes for English laws is an attempt to redress that. Why is that not a constitutional principle?

Lord Lisvane: I don’t want to chop words with you, Chairman, but I think it is more a statement of a constitutional reality rather than some great constitutional principle that we can find embalmed somewhere.

Q114 Chair: How is the proposal that we voted on last week compatible with the House of Commons’ status as a United Kingdom legislature?

Lord Lisvane: There have always been proceedings of one sort or another where Members are treated differently. It is not long since we had a system of Scottish Standing Committees, for example, and the Welsh Grand, Scottish Grand and Northern Ireland Grand. The European Committees have a rule that those members who are nominated to them may speak and may move motions and vote. Other members may attend and speak but not have those powers.

The difference is that with all those procedures there is a confluence later in the process and the whole House is then asked to endorse it. If it was an exclusively Scottish Bill, for example, its Third Reading would be by the whole House. In deciding to take the formula that they have and not the formula that Sir William’s commission suggested, we have moved from consent—where to deny consent could be overridden, but at the political price of delay and Ministers having to explain the reason for overriding—to a veto. That is quite a jump. It is further than I would comfortably have gone.

Q115 Chair: How seriously do you take the charge that this is creating a Parliament within a Parliament?

Lord Lisvane: At the moment, it is a very good debating point. It will depend on how the system develops. Also, one needs to be quite proportionate about what is taking place. The Standing Orders are very comprehensive. They are drafted like legislation, which is a very regrettable thing. If I may just digress for a moment, over the years it has not been necessary to set things out like this, because we have never been addressing a court. We know that if rulings are required, they will be made by the Speaker of the day and, for the credibility of the process, the House needs to see and understand the clockwork.

I would say that good procedural rules have three characteristics. First, they are consistent: the same things, or similar things, are dealt with in the same way. Secondly, they are certain and they do not shift about. Thirdly, they are clear, so that what they regulate may be the subject of contention but the rules themselves do not become the subject of contention. I don't think these Standing Orders pass that third test.

Q116 Chair: How could they pass that test? How could they be changed to pass that test?

Lord Lisvane: Here we run into the question, what is the policy that you want to implement through Standing Orders? If it were Sir William's slightly less full-fat option, then it would be a lot simpler to draft Standing Orders to cover that. These run into what I have heard called the Heidelberg trap, which was always quoted by my father to point out the dangers of over-specification. I am sure it was based on the apocryphal story of Heidelberg University after a particular incident. They introduced a new rule that said that nobody, whether a nightwatchman or not a nightwatchman, may be tied to anything, whether a lightning conductor or not a lightning conductor, at any time, whether during a thunderstorm or not. That is a good example of the dangers of over-specification and it is a trap into which the drafters of these Standing Orders have tended to fall.

Q117 Mr Andrew Turner: My Lord, the Constitution Reform Group has described EVEL as "unlikely to be a sufficient long-term solution". Why do you think this is so?

Lord Lisvane: Whether or not it is sustainable, the proposition is, can you have a process that means that English laws are hermetically sealed from the involvement of non-English Members? Will there still be a perceived imbalance? That will depend very much on whether they are seen to be effective, whether they work effectively and whether the Speaker's certificate is challenged, either politically or possibly legally. That is an outside chance, but we cannot dismiss it entirely.

If, as may be the case, they are used very little, then they may tend to wither on the vine, but if they are seen as being effective then another influence is at work, which may be that English Members would like to extend that process. For example, what about other ways of calling the Executive to account? Might there be pressure for an England-only Question Time, for example? Might the idea of this separation spread into other types of proceedings? At the moment, that is very much through a glass darkly.

Q118 Mr Andrew Turner: How do you think a sustainable system of EVEL could be arrived at?

Lord Lisvane: There, again, it depends on what you want to achieve in such a system. If you are talking major structural change, then we could be moving towards the question of how an English Parliament would operate. Could there be a double-hatted arrangement in terms of representation? Could the operation of the institution take place pretty much on the same site and in some of the same ways that it does now? All of that depends on how necessary it is to fix the problem that is then perceived.

Q119 Mr Andrew Turner: Is it that one should have something else in one's back pocket if it doesn't work or if it works rather badly? Obviously there are different ways of it not working, but is it necessary to have that in the back pocket?

Lord Lisvane: You would need a very capacious back pocket to deal with all the possible options that you might have to consider.

Mr Andrew Turner: Thank you.

Q120 Mr David Jones: I wonder if I might return to the process of certification briefly. The Standing Orders as now adopted provide that, “In deciding whether a Bill relates exclusively to England or to England and Wales, the Speaker shall treat any clause or schedule whose only effects are minor or consequential effects outside the area in question as relating exclusively to that area”. Do you regard that particular amendment to the Standing Orders, which was put in rather late, as an additional hazard to the Speaker in making his certification?

Lord Lisvane: Yes. It makes it more complicated. I live in Herefordshire and cross-border phenomena on the NHS are a perfect example. In our part of the world, they are not minor or consequential, but it might well be that, looked at from a UK-wide perspective, the Speaker might be advised they were minor and consequential. It is an additional complication and it is one based on a subjective judgment, because there is no legal ruler that is going to help the Speaker decide what is minor and consequential. There are similar provisions, of course, in the 1911 Parliament Act. “Incidental” or “ancillary” I think are the words used there.

Q121 Mr David Jones: I am also mindful of the fact that there were two Supreme Court cases involving the Wales Office that turned around the issue of what were consequential effects.

Lord Lisvane: Are you thinking of the agricultural wages case?

Mr David Jones: I am, yes.

Lord Lisvane: Absolutely. I agree with you entirely.

Q122 Mr David Jones: How would you suggest that the governance and administration arrangements of England should be reformed in this post-devolution world?

Lord Lisvane: Perhaps I can go back to the considerations that led to the setting up of the Constitution Reform Group, where Lord Salisbury brought together a number of us who felt that the Union was about to walk over the cliff, but not with any particular premeditation. One of the difficulties—Lord Norton touched on this a few minutes ago—is that we have an absolute patchwork of events, changes and restructurings that have a constitutional regional, national and sub-national significance, none of which are plugged into any of the others. Some of the options that we have put together are in order to try to encourage or ignite discussion, rather than any one of them being a preferred option.

It is perfectly reasonable to look at the possibility of an English Parliament. If there were a separate English Parliament and a separate English Executive, my concern would be the relationship between the First Minister of England and the Prime Minister of the United Kingdom. That might be an extremely testing relationship. I am assuming that the arrangements would not allow the two people to be one.

Mr David Jones: It is difficult.

Lord Lisvane: It is difficult. We can agree very readily on that.

Q123 Mr David Jones: What would you say are the implications of the change in Standing Orders that occurred last week for the balance of power and the relationship between the Commons and the Lords?

Lord Lisvane: A number of people have said, “The Lords have nothing to do with this”. I think it is reasonable for the Lords to take an interest in this. First of all, it is an attempt to solve a constitutional problem but to do so by Standing Orders that relate explicitly only to one House. There are some quite odd things about the drafting of the Standing Orders.

I could answer your question, Chairman, about 83J(8). I take it this is simply about the privilege amendment that is inserted in the Lords at the end of the passage of the Bill. It is a polite fiction to ensure that when a Bill that spends money comes down to the Commons, the Commons do not simply refuse to consider it. I am sure advice will be available to you on that. I think it is aimed at the privilege amendment.

I am much more concerned about Standing Order 83O. The effect of that seems to me to be that, if the House of Lords turns a certified England-only provision into an uncertifiable UK-wide provision, the Speaker is nevertheless required, when that amendment gets back to the Commons, to certify it in its original form even though, manifestly, it should not be certifiable. The first time that happens—depending of course on the subject—I think that is going to give rise to some quite interesting exchanges.

Q124 Mr David Jones: How much consideration do you think that the Government gave to the implications of the new procedures for the House of Lords? It seems to me, from what you have just described, that that is an unforeseen consequence of the new arrangements. The Lords certainly, I would have thought, are going to take these measures amiss. Do you think that any consideration was given to how the Lords might react to these proposals?

Lord Lisvane: I could not speculate on that. The implication of the proposals for the Lords—I don’t want to be apocalyptic about this—is that they might produce some odd results. I don’t think they are going to be constitutional outrages, but it is possible to imagine a situation where that change from certifiable to uncertifiable and its reversal, not by judgment of the Speaker but by the unavoidable operation of the Standing Order, might be extremely contentious in both Houses.

Q125 Mrs Cheryl Gillan: Lord Lisvane, you are a member of the steering group of the Constitution Reform Group, and in September you published the discussion paper, “Toward a New Act of Union”. Leading on from that, how can a sufficient long-term solution to the frustrations clearly felt by, in particular, a significant number of English citizens be realised?

Lord Lisvane: I was very impressed by Professor Wyn Jones’s evidence to you that only one in five thought that the current settlement was adequate. Again—and I am not dodging the question at all—this is a stage at which one looks at and tests a wide menu of possibilities. For example, if it is England, is a more effective form of regional devolution going to up that 20% figure? Is it going to meet aspirations? We come back to the English Parliament: is there a possibility that that might meet those aspirations? The answer at the moment, I think, is simply that we don’t know. The group’s position is that these are things that need exploring, but they need exploring in the context of the other

arrangements that have been made. We cannot create another modular discussion that is going on in a different part of the forest—to employ your earlier metaphor, Chairman—and isn't talking to the other bits.

Q126 Mrs Cheryl Gillan: I was particularly struck by the evidence of Professor Wyn Jones in this context as well. Is there not a danger that now, with the position on English votes for English laws and, it would appear, the Executive's desire to devolve to, say, Manchester, Birmingham and other parts of the United Kingdom, the disconnect between the Executive and what people in England want is going to get greater? Therefore the frustrations will grow even more, say from those areas to which devolution is not extended.

Lord Lisvane: Yes. We touch on this in the chapter "Options for England" in the discussion paper. From a personal perspective—and I emphasise it is a personal perspective—there is a danger in devolving to the big beasts because a lot of people get missed out in between. Again, I go back to where I have lived for many years in Herefordshire. We would probably at the moment prefer to be run by London than by Birmingham, which does not know much about us and probably cares rather less. There are a whole series of balances that you have to tackle and get right. That only underlines the complexity of finding an integrated and sustainable long-term solution.

Q127 Mrs Cheryl Gillan: Even if it is not the dog's breakfast that we were referring to with Sir William McKay, it has the potential of becoming a dog's breakfast, because you cannot extract the discussion about the English question, the West Lothian question or the Clwyd West question from what is happening. Therefore, at the moment, the Executive is running ahead of what the people would want or desire.

Lord Lisvane: Yes. There are two elements of that. The first is that the Executive is running ahead but, as your Committee and more recently the Institute for Government have asked, does it have the equipment to cope with this multiplicity of devolutionary activity?

The second reflects what we would like to see, which is a constitutional—I will use Lord Norton's word—convocation to try to get this sorted and the possibility of moving to a new Act of Union, which is by no means a written constitution. We do not want to go down that road. We would be mired in complications for years. A new Act of Union would pick out the rights, responsibilities and powers that are involved and incorporate them into a statutory agreement, which would need to be authorised by a post-legislative referendum, I think.

Q128 Mrs Cheryl Gillan: You would urge real caution on the Executive and on the Government with the route it is going down.

Lord Lisvane: In my maiden speech in the Lords in this context, I quoted a piece of advice that my grandfather was given as an infantry officer on the western front in the First World War. That was, "If in danger, fear or doubt, run in circles, scream and shout". I did not suggest that this is affecting the Government, but there has been a bit too much running in circles going on. The challenge is to corral both the aspirations and the plans in such a way that they can be integrated and the parts made to fit, one with another.

Q129 Mrs Cheryl Gillan: Just leading on from that, you heard what the other witnesses said about the boundary review—

Chair: Before we move on from that, I just want to ask a couple of supplementaries. What do you say to people who say—and I have heard people within Government saying this—about all the imbalances, inequalities and untidiness of the present constitutional settlement, “It doesn’t matter. It has always been like that and that is how we do things”?

Lord Lisvane: That is the “It never did me any harm” argument, isn’t it, which does not always carry conviction. The central problem is the asymmetry of the relationship. If you have one nation out of four which has 85% of the population and something like 85% of the economic activity and contribution, then you have a real difficulty in achieving that equilibrium, which was implied by what I was saying earlier on.

Q130 Chair: The original Act of Union lasted for 300 years but contained that asymmetry. Devolution did not change that asymmetry; it altered where decisions are made. That asymmetry is intrinsic to the nature of the United Kingdom.

Lord Lisvane: It is intrinsic. You are not going to change the asymmetry. The problem is how you acknowledge it in the structures you seek.

Q131 Chair: I think in Scotland, for example, they would say that it is better acknowledged than it was before.

Lord Lisvane: It probably is, yes. I don’t know. I would not substitute my judgment for somebody from Scotland, but my guess is that that would be the judgment taken.

Q132 Chair: If you have already set the objective for a new Act of Union, how do you include people who do not believe in the Union in the conversation about how our four countries should relate to each other?

Lord Lisvane: That depends on the depth of unbelief. If what is on offer is possibly attractive, workable and long-term, then positions may change. Somebody who is determined to see independence may be very hard or impossible to convince.

Q133 Mr David Jones: Just briefly, Lord Lisvane, if we were to move toward a new Act of Union, would you envisage that being preceded by a referendum or referenda of the whole of the United Kingdom and all its constituent parts?

Lord Lisvane: I would not see it being preceded by it. A post-legislative referendum is probably the right answer because then people can see what is on offer. In terms of constituent parts, there is a very complex discussion to be had there. You immediately go into the blocking minority considerations, the turnout considerations and the simple majority and weighted majority considerations. All of those we are very familiar with, and those would need to be worked out at the time.

Q134 Kelvin Hopkins: Such referenda in one of the component parts of the United Kingdom, namely Northern Ireland, could cause all sorts of problems, I would have thought.

Lord Lisvane: Absolutely. I acknowledge that very readily.

Q135 Mrs Cheryl Gillan: On the size of the House of Commons, you have heard the other responses to the proposed reduction to 600. It is true that at the moment there is terrific inequality, because even when the Scottish Parliament received primary powers, the Executive at the time did reduce the number of MPs in Scotland, but of course that did not happen in Wales. There is this proposal to move to 600. What is your view of that? Do you concur with the others that there should be a commensurate reduction in the size of the Executive?

Lord Lisvane: My first reaction is that it is a very modest reduction. It is 7.7%. That is not going to make a change to the dynamic of the House of Commons or to the way it operates. If you really want to do that, then you should come down to something like 400. That would make a very substantial change in the dynamic of the House.

If I use the word “tinkering” I am not in any way being insensitive to those who are going to have difficulty in retaining the seat they hold or the seat in its new form, but that is more or less at the moment what it is. It is also going to lead to some very bizarre constituencies. The 5% constraint on the Boundary Commission has already produced some things that are quite odd. If parliamentary constituencies are incongruent with other administrative areas, it is going to introduce real difficulties for Members to represent their constituents and to engage with those local administrative areas.

In terms of the Executive then, yes, if it means reducing the payroll, it is probably a jolly good thing for the way that the House operates. I agree with Lord Norton and Sir William that the Executive is too large and, again, harking back to your own enquiries, the logic of reduction is a very powerful one.

Chair: My Lord, you have been very helpful to us. It has been a great pleasure to see you again. Thank you very much indeed.