



HOUSE OF LORDS

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Witnesses: Fiona Hyslop MSP and Ken Thomson

Members present

Lord Lang of Monkton (Chairman)
 Lord Cullen of Whitekirk
 Lord Hunt of Wirral
 Lord Judge
 Lord MacGregor of Pulham Market
 Lord Morgan

Examination of Witnesses

Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party, and **Ken Thomson**, Director-General Strategy and External Affairs, Scottish Government

Q123 The Chairman: Minister, good morning. Thank you very much. It is very good of you and Ken Thomson to come today. I have already explained to my colleagues that he used to be my secretary in the Scottish Office many years ago. He has gone on to great things, and is still doing great things, whereas I am beyond all that now, on the reverse side of the slope, so to speak. We are extremely grateful to you for coming to meet us today. I have already apologised to you for the disastrous electronic connections that ruined our last interview, and we much appreciate that you are forgiving us and coming again.

Before we go into the questioning, I should say that the Committee understands and recognises that you are a Minister in a Government whose main objective is independence, and most of our colleagues, although we are a non-partisan Committee, would tend to prefer maintaining the union. If we can put that aside and try to find common ground between us on the issues on which we want to ask questions, I hope that we will get some interesting answers because, with the developments that have gone on and with the present Scotland Bill, there are a growing number of issues where collaboration is going to be increasingly important, where responsibility for certain activities is going to be shared, and so on. I am sure that you are as keen as we are to ensure that the relationship in the union between the United Kingdom Government and the devolved Governments is not only maintained but developed in a positive way that is beneficial to both. That is the sort of objective that we are seeking. Can I ask you the first question? How do you think that the UK Parliament has adapted to the large number of SNP Members and how do you think the SNP Members have adapted to the UK Parliament? Have there been benefits for both from the encounters?

Fiona Hyslop MSP: I cannot speak on behalf of the SNP Members, so I suggest that is a question you could most usefully ask of them in London when you are in London. I am here,

obviously, as a government Minister, and I am a member of the SNP—it is an SNP Government—but that is a strange premise to start our discussion, reflecting your opening remarks about the objectivity of your approach.

The Chairman: Perhaps the unasked aspect of the question is: to what extent do they communicate with the SNP MSPs here? Is there an interflow of information that is useful to both of you?

Fiona Hyslop MSP: That is a private party matter.

The Chairman: All right, so you have nothing to say about that at all.

Fiona Hyslop MSP: If you are asking about how, as an outside observer, I see the operation of the Westminster Parliament, it is interesting in a number of ways. If you are looking at the status of the union, how it functions just now, and the nature that it can and should have in a constructive way, you would expect that every Member of the Commons, particularly, would be treated equally regarding how they are respected in terms of the political arrangements that exist and have existed for some time. There is something about reflecting on whether there has been equity in the operation of the Westminster Parliament since the SNP MPs arrived.

There are no more or no less Members of the Parliament from Scotland than before. It is quite interesting that a lot of people are suddenly making comments like, “There seem to be more Scottish MPs than there were before”. No, there are not. There is exactly the same number. They might attend more, they might speak more, and there is a good example of a young woman from Lanarkshire who spoke more in the House of Commons in five weeks than her predecessor had in five years. The visibility is there. Nothing has changed. The numbers have not changed. The political arrangements have not changed. The political dimension might have, but that is not a constitutional issue. That is a political view and expression democratically by the people of Scotland.

In terms of practicalities, I will give you two examples. It is for you to judge whether there has been equity of treatment and cementing of the union in terms of these Members representing different political parties but the same constituencies. Their constituents have not changed. They are still the same people. If you take the example of the human rights group that has been set up, my understanding is that the membership of that includes a number of Peers. It has Labour members, Conservative members and, indeed, Liberal Democrat members, but in that review there is no member from the SNP. If you look at the constitution of the House of Commons—some of you may have been Members previously—the SNP group is the third largest party, so you would have thought that we would have had some representation on that.

Take the debate on Syria—a very important debate. Clearly, the Conservative Party had a whipped position. The SNP had a whipped position. Others may not have, and obviously Labour had a different position, but for the third biggest party to have only three speakers in six hours 49 minutes perhaps would not be what you would have expected previously.

I am a government Minister. I co-operate with the Government in Westminster and have done for seven years as a Minister. I happy to share with you how that works, as I think I did in my last evidence session. If you are asking me to look at how Westminster is treating the SNP group, it has to treat them as full equitable Members and, if it does not, if it treats them as other or different, it is choosing to say that Scotland is somehow “not of us”: that Scotland and the representatives democratically sent by the people of Scotland are somehow not to be treated as the same or with equity. I have given you two examples: the human rights working group and the Syria debate. Perhaps you might want to draw your own conclusions from that.

Q124 The Chairman: That is extremely interesting. The House of Lords operates independently from the House of Commons on these matters. We are without direct influence, but we have noted what you have said on that. Thank you very much.

Can I move on to a more specific point, which is quite topical at the moment, namely the Sewel convention and the Scotland Bill going through the House of Lords at the present time? Do you think that the convention should be judiciable and actionable in the courts or not?

Fiona Hyslop MSP: The important thing is that the Sewel convention has operated since 1999. That is 17 years. It has operated, and there has been no question of any court action or any question about it. My concern about what is on the table just now in relation to the Scotland Bill is that it may weaken what has been the operation of the Sewel convention and, indeed, the legislative consent Motion to date. Legislative consent Motion activity has a mechanism by which the UK and the Scottish Governments, and indeed the Parliament, can co-operate in terms of those areas of difference, but there are concerns that the weakness of the Scotland Bill may undermine what has been a co-operative system. I would like to ask Ken to come in, because he is probably closer to this.

Ken Thomson: This is something on which our Ministers have set out their position fairly clearly over the last few years, especially in June in response to an interim report by the Devolution (Further Powers) Committee in the Scottish Parliament. To put it briefly, I think our Ministers’ concern is that the Smith Commission recommendation that the Sewel convention should be put on a statutory footing means more than enacting a quotation from Lord Sewel. You need to enact the convention rather than the quotation. The specific concerns are that the scope of the proposal in the Scotland Bill currently extends to only one

of the three legs of circumstance in which the Sewel convention currently applies and has applied since 1999. The second concern is on process, and that, if you simply put the words that Lord Sewel used on to the statute book, you do not enact or put on a statutory footing the process of consultation and consent that currently operates and has since 1999. The third concern, which I know has been shared by some in the House of Lords, and indeed in this Committee, is to do with the clarity of the language. If you take the word “normally” and put it on a statutory footing, what does it mean? Our Ministers expressed those concerns when the Scotland Bill was first being discussed and set out an alternative approach, which would put the three legs on to the statute book and would also provide for a process of consultation, bringing on to a statutory footing the process that has, as the Cabinet Secretary said, worked pretty well since 1999.

Lord Cullen of Whitekirk: Can I take up that point? I take entirely what you said about the word “normally”, but if you put the Sewel convention into statute, there is always a risk that the matter may get before a court on some ground or other. It has been suggested that it might be useful to add to the Scotland Bill a clause saying that the occasions for the use of the Sewel convention should be entirely a matter for Parliament—in other words, to oust the court from being drawn into some dispute about whether the clause applies or not. Does either of you have any view about that?

Ken Thomson: Perhaps I could come at your point from a different starting point. As a civil servant, I would always want to find a way for Ministers to either reach agreement or agree to disagree as a matter of government, rather than going to the courts. I hope you will forgive me for saying that going to the courts tends to take longer and cost you more. My approach in advising Ministers on this would always be to say that we need a process that will work to allow Governments to come to agreements, as they generally have done over issues to do with the Sewel convention. To come back to the starting point of your point to me, clarity of language is important in relations between Governments, just as it is important in the courts. My problem with “normally” is less whether or not it is justiciable but more whether, in the context of intergovernmental relations, we can find ways of making it work.

Lord Cullen of Whitekirk: Of course, there might be a problem even if the word “normally” is taken out. There still may be a dispute, so, for that purpose, it may be of some use to have a declaration that the occasions should be a matter for Parliament and not for the court.

Ken Thomson: We currently have, of course, a dispute resolution procedure within the memorandum of understanding.

Fiona Hyslop MSP: It is interesting that there is a dispute mechanism in the memorandum of understanding, but it is very rarely used. Perhaps we can follow up and provide you with examples of where it has happened—consequential or funding for Olympic Games, perhaps, and one or two with Northern Ireland—but dispute mechanisms are very rare indeed. That comes back to the point about how you behave, as opposed to the rules of the game in which you are set up, whether it is legislative, et cetera. The behaviour of people, the culture and the respect for how Governments work together are far more important. Yes, you need the parameters, and we have those parameters, but in relation to the Sewel convention, as with other mechanisms of dispute, the resolution has happened because of the will of Ministers to understand that we do not want to end up either in the Privy Council or elsewhere, or in this instance in the court, to resolve it.

Lord Morgan: I just have one question. Do you have any alternative form of language or construction of this particular phrase or sentence that you think would embody the appropriate views of the Scottish Government?

Ken Thomson: Yes, we do. We published that on 8 June this year, and it is in the form of a draft clause that would, first of all, bring into the statute book the three circumstances in which the Sewel convention currently applies and, secondly, on this point, would provide a requirement on the UK Government to consult with the Scottish Government in relation to legislation of this sort unless there were exceptional circumstances or Scottish Ministers agreed that consultation was not required in the timescale set out. We can certainly provide you with that. That is the process our Ministers have set out.

Lord Morgan: That is very clear. Thank you.

Lord Judge: You spoke about cost and delay, but subsequent answers by the Minister rather suggested something else. Is it wise for the judges to get involved in a dispute between Governments? Speaking for myself, I cannot see it. What is your view?

Fiona Hyslop MSP: I know a number of you have experience in the legal profession, and I think anything that avoids courts in legislation is a good thing. However, there are times when you need to have a backstop of where things might have to go, but that is also a disincentive, dare I say it, to get there in the first place. I know in my operation, and I am sure, Lord Lang, this is your experience as well, there are many instances as a Minister where you have to avoid situations of going to court, because that is an incentive not to go to the final degree. You should resolve things before that. That is in every operation of government life, not necessarily just this one. In the context Ken set out, having the provisions that we have set

forward we think is the most workable solution that seeks to resolve what people want to see as a firmer status for the Sewel convention.

The Chairman: As you know, this is unfinished business in Parliament, and we have had extensive debate already in the House of Lords. We are at Committee stage, and I have no doubt it will be returned to at Report stage.

Ken Thomson: I have a very brief point, to amplify what the Cabinet Secretary said. The protocol in the memorandum of understanding is called the “dispute avoidance and resolution procedure”, so it is exactly about the point that you both referred to.

The Chairman: We also have an intergovernmental relations report, to which you contributed, Minister, which was published some time ago but has not yet been replied to by the Government, because ongoing work is taking place in relation to the memorandum of understanding. We hope that it will be published soon and that it will reply to the report we published. We should be able to debate that further. We should perhaps move on to other issues, though.

Q125 Lord Hunt of Wirral: Minister, we received evidence advocating a new charter or statute of the union that would set out the principles underlying the union and devolution, asserting the voluntary nature of the union and setting out principles for the relations between the Governments of the nations of the UK. Is that something the Scottish Government would support?

Fiona Hyslop MSP: I do not think it is necessary. We set out our views prior to the Smith Commission in this document *More Powers for the Scottish Parliament*. Clearly, in terms of the principles and practice that the Scottish people already adhere to, we have to think about the exercise of power, behaviour and practice as opposed to words of principle. If I refer you to the Claim of Right of 1989, we are very supportive of that sentiment as a Government: “We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount”. That was supported by the declaration of the pro-United Kingdom parties during the referendum last year, and their collective phrase was: “Power lies with the Scottish people and we believe it is for the Scottish people to decide how Scotland is governed”. Therefore, a centrally imposed statute or form of words that is presented to the people without their agreement may itself cause more dissonance than is needed.

A change of behaviour and practice is needed, as opposed to a form of words. Indeed, if you want to have a demonstration of the will of the Scottish people, while I would have liked a

different result in the independence referendum, the people expressed their view in that referendum. That in itself is a statement of the views at that point in time. You should not try to get the lowest common denominator of a common statement when, if you look at the Administrations in Wales, Northern Ireland and Scotland, we are evolving differently. It is not the same. It does not need to be at the same pace, because it reflects the interest and needs of the different jurisdictions and Administrations and the different political focus and emphasis. Sometimes this is looked at from the other end of the telescope: there is more need to resolve what form of administration and form of government the English people want. There may be a statement from that, because they do not have that. We have that with the Scotland Act. Certainly, Wales has it as well, in relation to the form of powers it has and the ongoing discussion it has. We have that as an ongoing discussion in Scotland, and indeed, in Northern Ireland, you have ongoing discussions even as we speak in relation to their fresh powers and the fresh start they have had in recent weeks.

It is trying to make a statement of principles, but for what purpose? The purpose is more important than the words. We can have the best words in the world, but if people either in Whitehall as officials or as government Ministers do not adhere to that and behave differently, the words might be more counterproductive. If you look at the position here, all parties in Scotland in recent years have reflected that it is what the people of Scotland express that will set out the terms, parameters and limits, even, of what those powers would be.

Q126 Lord Morgan: I want to ask a slightly different question. I notice that you are Minister for Europe among other things. Could the forthcoming referendum on Europe affect relations between the different countries? There is a view in Wales, where I come from, that to a degree Wales should be thought of as a separate entity in that referendum. That is the Scottish view too, I take it.

Fiona Hyslop MSP: Yes, it is. Indeed, I am giving evidence to the House of Lords European Committee, next week, so I seem to be having a surfeit of Lords all at the same time.

Lord Morgan: We await that with interest.

Fiona Hyslop MSP: If we respect the union—remember the Act of Union in terms of the Scottish situation was of equals coming together—and if there were any major constitutional change in relation to our European situation, we think the people of Scotland should express their views of that change and no part of the United Kingdom should be taken out of the European Union against its wishes. Clearly, if the Scottish people, as the polls are suggesting, vote to remain in and the rest of the UK—polls are very tight—were to vote to leave, that would cause a real constitutional strain. There are strong views and opinions across the United

Kingdom on these issues, and they are different views and opinions. In terms of the articulation of this, I have very severe concerns. I will express that with your colleagues next week, but it is a live issue and I am very engaged. It is another example of where we co-operate with the United Kingdom in different ways on Europe.

I will give you an example. I was in Brussels only two days after the major security issue there. Democracy has to continue, as I am sure you all agree. Although other meetings were cancelled, the ministerial meeting went ahead. Not for the first time, I represented the whole of the UK at that meeting. I was at the audio-visual and culture section of the Education, Youth, Culture and Sport Council in Brussels as the representative of the UK and spoke on behalf of the UK. Perhaps that might be an example of where there is interest in different areas. Climate change is a global issue but very much a European issue, and we work very co-operatively with the UK on those issues in relation to climate change, because we have a good story to tell in terms of our example. Rather than looking for the problems in resolving the state of the union, it might be very good to look at some of the positive examples and ask, “Why do we not have more of the better behaviours?” as opposed to a construct that is trying to provide words and principles rather than practice.

Lord Morgan: Do you have any discussions with the Welsh Government to see if some kind of uniformity of view might be achieved?

Fiona Hyslop MSP: Uniformity of view on what?

Lord Morgan: On what you have been saying about Europe.

Fiona Hyslop MSP: We have, for example, the Joint Ministerial Committee on Europe, which probably reflects more your previous inquiry on intergovernmental relations. We meet with our Welsh colleagues, and there have been joint letters from the Welsh and Northern Irish on some of these issues, depending on the state of the political situation in Northern Ireland. I cannot recall if the letter was supported or not by Northern Ireland. Ken might be able to correct me on this, but that was regarding the views on Wales not being taken out of the European Union against its wishes. These views have been expressed and are expressed between our First Ministers, and we have our First Ministers meeting David Cameron on Monday, I think. A number of issues will be on the agenda, not least, for example, the trade union legislation, where there is a clear majority in Scotland and the Scottish Parliament not to proceed with what we see as a draconian piece of legislation. It is issue by issue, whether it is Europe, trade unions or other things, where we work very well with our colleagues, and sometimes we have a common view. Quite often we have a common view, and that is with

different parties, remember, because it is a Labour First Minister in Wales. A lot of these issues are not about party politics. They are about other interests.

The Chairman: Did you want to add something, Mr Thomson?

Ken Thomson: No, I have nothing to add.

Q127 Lord Hunt of Wirral: This takes me back, Minister, to when I proudly, as Secretary of State for Wales, used to sign treaties with other motor regions of Europe: Baden-Württemberg, Catalonia, Lombardy and Rhône-Alpes. I suppose that leads me into my next question about a more overtly federal structure. Would the Scottish Government support something that set out the divisions of powers and responsibilities clearly? It is not really there at the moment.

Fiona Hyslop MSP: It is. It is in the Scotland Act and it is in the Wales Act, and it is in the legislation governing Northern Ireland. It is just not there for England. That is probably the issue.

Lord Hunt of Wirral: The evidence we have had is that it is quasi-federal, but you would see it as properly federal.

Fiona Hyslop MSP: We still hold the view that independence is the best solution. If we do not have independence, the improvements in the devolution settlement with Scotland are important. This probably reflects the last question: I am not going to stand in the way of the people of Wales and the Government of Wales in what they want to pursue, and they might want to pursue change that is of a different range and speed. Similarly, Northern Ireland has its specific requirements, and so does Scotland. You can have a system with multi-speed operations, with different degrees of devolution, but which reflect—going back to my point about sovereignty—what the people of Scotland want to see. I do not think there is a difficulty in setting that out.

The issue is whether you do that by bilateral enhanced devolution for each part of the United Kingdom or whether you need to do that in a construct that is centralised to a view from London and Westminster. If you do that, clearly a federal system would have to include England, and that is the challenge. If you think of federalism as just being about Scotland, Wales and Northern Ireland, you are missing the point of federalism. A federal system would have to include England, and what the people of England want in terms of powers clearly has not been articulated, although it is not for me to speak on their behalf.

Q128 Lord Cullen of Whitekirk: I would like to ask you about the social union. That may have a number of different meanings. What do the Scottish Government see as the meaning and significance of a social union?

Fiona Hyslop MSP: There are many different unions: economic, defence, the monarchy, constitutional and social. Social union is exactly what it says. It is about social relations, which means family, language and culture. I was brought up in Grantham in England. I bought my sweets from a certain corner shop before I moved to Ayrshire. In terms of our co-operation, those relations still stand and continue. There is a quote from David Cameron regarding relations with Ireland as an independent country. He recognised himself what are probably now the most enhanced relations between Ireland and the United Kingdom there have been. There is a social relationship that continues with Ireland, and that is the important part.

I will give you a good example. The BBC is part of the culture of our state, and we are currently in discussions about the renewal of the BBC charter. How we reflect ourselves to ourselves is very important in terms of the operation of the culture, what we see and how we ensure we can still share in it. I hate to tell you that “EastEnders” is still part of our social connection and social relations; “Strictly” is; “Doctor Who” undoubtedly is—of course, there have been more Scottish Doctors than any others, I might add. Never undermine that social relationship, because that will continue. It is not about social benefits; it is not about fiscal sharing. It is about social and cultural attitudes.

Lord Cullen of Whitekirk: Yes, but the fact of the matter is that the words “social union” are also used to cover things like fiscal sharing of resources, sharing of risks and so on, under the general heading of social solidarity. You will know what I am talking about. What is your attitude to it? Do you think it is important?

Fiona Hyslop MSP: It is interesting: until I was preparing for this Committee, I had not seen it in that context at all. It has not been the language or, indeed, the understanding in Scotland of what is meant by that. It might be from your perspective.

Lord Cullen of Whitekirk: Now that you are here, you know what I am talking about: the way that income revenue can be redistributed, sharing of risks to do with welfare and pensions and so on. That subject matter is sometimes referred to as a social union. How significant or important do you see that being on a UK-wide basis?

Fiona Hyslop MSP: Certainly the Scottish contribution fiscally has been very strong over many years in terms of that pooling and sharing. It is a different construct and context, and it is interesting that we see things differently. I would talk about that as welfare or fiscal, and you are now in the argument of fiscal framework and in the territory of the Scotland Bill. One of the big concerns we now have about welfare and spending is that you could have a transfer of powers and responsibility for social protection and welfare, but if the economic and

financial framework undershoots what should be required for that welfare provision, that would create a real anomaly in powers. In terms of that aspect, we pay our way and we always have done.

As to whether there should be more devolution of welfare, we think so. A simpler system is to make sure we have full transfer of the powers, the responsibility and the finance for those areas. In the current discussions about the Scotland Bill, our proposition as a Government is that there is an unsatisfactory settlement, but we are very much in the middle of those discussions, and Ken is probably more involved in that than I am.

Lord Cullen of Whitekirk: Putting it more generally, is there some benefit in revenue being distributed in such a way as to provide support where it is required? Do you see the benefit of being within a UK-wide system?

Fiona Hyslop MSP: Not necessarily, if it does not meet the outcome for the individual. You can have a very centralised system of welfare provision, but some of the most meaningful impacts for people are where you can have rapid reaction to local circumstances and local needs. Not everybody has the same experiences in all parts of the country in relation to what they need.

I will give you an example. Back in the end days of the last Labour Government, I worked with the then Employment Minister—I think it was Tony McNulty—of the UK, and one of the things we were trying to do was integrate employment services and benefits, which were clearly a reserved matter for the United Kingdom, with retraining, skilling and getting people back to work. The outcome is not about whether you have a wonderful centralised system that does not then have an impact on the people it is meant to serve. You can have a far more fluid system that is under local control, meets local needs, has better outcomes and gets people back to work in an improved way.

I went to Greenock, where we had a pilot integrating those services. That is part of the challenge we have. We had better results in getting people back to work by integrating employment and welfare benefits with the skills and training responsibilities that were devolved. It is about what makes a better impact for individuals. One of the reasons we want to see the devolution of welfare is that we think we can help people get back to work, if they are able to—because some people are not—and suit their circumstances better than a very bureaucratic centralised system that is not reactive or a system where we have disagreements as to how the policy works.

If you have a policy, which the current UK Government have, that certain services will not kick in until after 12 months of unemployment, we think that is not the best way to get people

back into work. Earlier interventions work. We could make those changes, were welfare devolved to us to allow us to do that. If welfare is centralised, you could then have a system where maybe you are pooling and sharing different revenues and distribution, but you are not having the impact. If you think that services like employment and welfare are to help people as opposed to being simply administrative, we can have better outcomes if decision-making is more devolved. I think the UK Government currently think that in relation to some of the suggestions around city deals or the northern powerhouse, et cetera. Some of the issues they might be looking at are in that territory, because they think they might get more rapid reaction.

Lord Morgan: There you completely diverge from the views of the Welsh Government, do you not? I am not saying they are right.

Fiona Hyslop MSP: It is horses for courses. Difference is not necessarily a problem. It is only a problem if you see it as a problem. Difference can be about being more reflective of how you can work and how you can operate. That is not a bad thing. As long as you can get the fiscal framework correct, which is absolutely crucial to the operation of the Scotland Bill, you might get better outcomes, and we think you would get better outcomes. But it might be different in different parts of the country.

The Chairman: There is no disagreement on the importance of the fiscal framework to the Scotland Bill.

Fiona Hyslop MSP: I am sure there is not.

Q129 Lord MacGregor of Pulham Market: I am glad that you mentioned the fiscal framework, because that is what I wanted to come on to and explore in more detail. We have heard that one of the purposes of unions is to spread wealth through fiscal redistribution. On what basis do you think that fiscal redistribution should take place, and how will fiscal redistribution in the UK be affected by the Scottish Parliament's increasing revenue raising and spending power?

Fiona Hyslop MSP: Part of the challenge is that 70% of the taxes will remain at Westminster, even under the current provision. If you think about the fiscal framework just in distribution of what is already there, which reflects the last question in terms of welfare, you have a very narrow box. The point about fiscal distribution is that you should be able to generate wealth as well as spend it, and that is the challenge we have had in Scotland. We wanted to be able to generate more wealth, not just spend it. That comes back to, for example, my concern about the limited scope of what the fiscal framework is more generally.

If you wanted to do a tally of contribution, over many decades Scotland has contributed more to the UK Exchequer than it has necessarily distributed. If you take out some of the more centralised state-funded issues around defence and foreign affairs, London itself is probably the most subsidised part of the United Kingdom, for a number of reasons. Therefore, we can exchange political views as to the distribution, but that can operate at different levels. You would have a far more dynamic economy and a far more responsive society if you had more responsibility for fiscal levers to raise and spend revenue. It is not unusual. Other parts of Europe and, for example, the United States do that on a regular basis. It is having a bit of dynamic creativity about what you do. That is one of the arguments for more devolution of fiscal responsibility, but Ken has been operating more in this territory in relation to the Scotland Bill.

Ken Thomson: The quotation that is going through my mind is what Churchill said about democracy: that it was the worst form of government, apart from all the other ones. You could say the same of the Barnett formula, I think. It is the worst formula for distributing money apart from all the other ones.

Lord MacGregor of Pulham Market: I was coming close to saying that myself.

Ken Thomson: To put the point a bit more seriously, the nature of the changes in the Scotland Act 2012, as well as the Scotland Bill in front of us, requires changes to the formula that distributes the money. That is exactly the challenge we are facing as both Governments: how you fulfil the agreement that was reached in the Smith Commission in a way that is clear and simple in operation, gives a reasonable certainty of outcome and supports, as the Cabinet Secretary said, dynamism and growth in the generation of revenue as well as in the distribution and spending of it.

Lord MacGregor of Pulham Market: These are very complex matters in relation to the fiscal framework, and obviously we cannot go through all this today, partly because we do not know what is going on in the negotiations. But I think you know that the Economic Affairs Select Committee of the House of Lords recommended that the fiscal framework will be central to future devolution arrangements, and the Scotland Bill cannot be properly understood or considered in its absence. That was very much the refrain in the Second Reading in the House of Lords from many contributors to the debate then. Do you agree with that?

Fiona Hyslop MSP: I agree that the fiscal framework is absolutely central. It is not about just the powers and legislation; it is about the financial arrangements that go with it. They are absolutely integral. It is interesting that you have people coming from different perspectives:

clearly that committee, but also, for example, the STUC in Scotland and Anton Muscatelli, the principal of Glasgow University, who recently produced a very thoughtful paper, which is worth examining. He thinks that the current options would slash the Scottish budget by £7 billion over the next 10 years. When you get different perspectives from different analyses, which reflect our concerns as a Government, they are absolutely clear that the fiscal framework is central to these issues. It is not just the legislation; it is about the finance as well.

Lord MacGregor of Pulham Market: You agree with that general view. Until we are clear about where the fiscal arrangements are going in the negotiations between the Governments, a lot of what we are considering is undecided.

Fiona Hyslop MSP: It shows you that there is an imperative, going back to the importance of Governments working together, that the centrality of the fiscal arrangement must be given as much time, attention and focus as the legislation and powers.

Lord MacGregor of Pulham Market: Can I just move on from that slightly? The Scottish Government advocate full fiscal autonomy. We have been told by Professor Robert Hazell in an earlier hearing, addressing this question of full fiscal autonomy directly, and I quote, “First, it is completely unrealistic ... There is no country in the world, no federal system, where one of the states or provinces has complete fiscal autonomy ... Full fiscal autonomy is a complete opt-out from the social union”. Would you like to comment on that?

Fiona Hyslop MSP: I do not think that is the case at all, in terms of the operation of what you do. As to what you mean by a social union, it is perfectly possible for Scotland to not only raise its own revenues but also administer its own welfare. We could do it in a way that is more sympathetic and understanding of the Scottish situation and, as I was saying, have the opportunity to achieve better outcomes for people. That is perfectly possible. I am not a constitutional lawyer or an academic, but I do not think it is the case that every country or every state has to have a similar level of devolution or the same degree of federal powers for each and every part of the sub-state sector. You have variations in many parts of the world where you have different degrees of devolution of federal powers in terms of taxation, for example. If you look at Canada, they have different levels of taxation in different areas, from British Columbia to Quebec, et cetera. The idea that you have to have a one-size-fits-all form of either devolution or, indeed, tax system within a federal construct is not reflected by experience across the world.

Lord MacGregor of Pulham Market: The discussion on the fiscal framework will explore some of the issues of how that is handled, not least in terms of macroeconomic policy,

currency, fiscal deficits in particular areas and all those sorts of issues. That clearly has to be explored, and we do not know at this stage what the outcome will be. I think you will agree, therefore, that we cannot take a final view on the fiscal framework until we hear what the fiscal agreement is, if it is agreed.

Ken Thomson: Indeed, our Ministers have said that a final view on the Scotland Bill is not possible until the outcome of the fiscal framework discussion.

The Chairman: Can I just ask you to clarify a point of fact? You fought the last election with full fiscal autonomy as part of your manifesto. I get the feeling that the Scottish Government have rolled back a bit from that commitment. Is that still a firm commitment and policy?

Fiona Hyslop MSP: We still think that fiscal autonomy is the correct solution, but, on the basis that it is not the agenda of the UK Government and they are not prepared to countenance it, we deal in the reality of where we are. We have to negotiate within the boundaries of what the UK Government are prepared to discuss with us. That is part of intergovernmental negotiation and relations. But, yes, fiscal autonomy is our position as a Government, and clearly in terms of Westminster you will see SNP MPs have been laying amendments to the Scotland Bill in that regard.

Lord MacGregor of Pulham Market: Can I ask you one last question on this area? This is a point that the Economic Affairs Select Committee in the House of Lords made as well. Given the declaration of continued support for the Barnett formula by the major political parties, the Smith Commission had to accept that the existing mechanism for funding devolved Administrations should be retained, but, if the aim is to produce a sustainable and long-term solution, retention of the Barnett formula is the wrong decision. Based on the earlier comment you made about the Barnett formula, you might agree with that. Should it not be based on relative need rather than the Barnett formula?

Ken Thomson: My first point in reply to that is that the Barnett formula has to be adapted in order to accommodate not just the proposals in the Scotland Bill but the fact of the Scotland Act 2012. It is about how we adjust the current system to take account of the increased devolution of tax-raising powers. The basis on which funds should be distributed is a separate question. The position that my Ministers have taken is that the right interpretation of Smith is to continue with the current system, adjusted as much as is necessary in order to accommodate the further devolution of tax-raising powers, but not going beyond that in a way that would leave Scotland less well off than it currently is. That is the principle of no detriment that was in the Smith Commission agreement.

The Chairman: I think you are suggesting the block should be adapted rather than the formula. The block will, of course, be cut into by the transfer of the tax-raising powers. The specific formula would remain as is.

Ken Thomson: It is how you adjust the block in light of the fact that more revenue would be raised at the Scottish Government's own hand.

Fiona Hyslop MSP: If your question is about the sustainability of things, the no-detriment argument is really important and central, because that means no detriment either to the UK provisions or, indeed, the Scottish provisions. No detriment is a fundamental part of that. To provide that, what I think you are looking at is stability or a forecast or that kind of sustainability. That is very important.

The Chairman: We must press on. Thank you very much. That has been very interesting.

Q130 Lord Judge: It is perfectly clear, Minister, that you take the view that differences in the provision of different services by each of the four nations are perfectly acceptable. I think that is what I have understood you to say: it is up to each nation to decide what services it will provide. Have I got that right?

Fiona Hyslop MSP: Yes. It is the same for the German Länder; it is the same for the federal states in Canada and other places.

Lord Judge: On that basis, do you see any circumstances in which the differences between the provisions in the four nations will grow so great that there are risks to the union itself?

Fiona Hyslop MSP: It depends on how the union responds, and how the Parliaments and Governments respond to that. If you see differences as a threat, there may be a self-realised prophecy that they become a threat. If you see differences as a useful expression of being closer to the people and the connections and services that people need, that is a different situation. It may be reflective of how centralised the United Kingdom is already in terms of a lot of its provision; I am not sure if that is a piece of work this Committee or others have done.

It is clear that there are differences in the political views and priorities of the people of Scotland. You have a situation where, out of 59 MPs, there is only one Conservative, one Labour and one Liberal Democrat. Clearly, the political priorities of the people of Scotland in terms of provision is different from other parts of the United Kingdom, and that affects the ability of the union to flex within itself. As we said at the start of the discussion, of course I am a supporter of independence.

Lord Judge: That is taken.

Fiona Hyslop MSP: But we are not in that space. We are in the space of the union as it is now. The ability of the union to flex and respond is really important. Difference does not always have to be a threat. There is a general worry that, if you treat people as an other—the word is “othering” of people or institutions—you can start to build barriers where none existed. Perhaps I should reflect on how perhaps the House of Commons is behaving towards the views of people who are democratically, legitimately, representing the views and opinions of the people they represent. There is a danger of that difference becoming institutionalised by the very people who want to maintain a union. If you make people separate, they will become separate. It will be a self-fulfilling prophecy. Therefore, reflecting difference can be a positive for the union rather than a threat. An existential point that you are all probably having to reflect on is: what is the strength of the union? The strength of the union surely must be about how it responds to the individual different circumstances of its nations and the expression of them democratically. To treat people as an other is a very dangerous thing for the union.

Lord Judge: Let us just take a “for instance”, which is entirely hypothetical for my purposes. The people of Wales take a view about university fees; the people of Scotland take a view about university fees. One thinks the other is doing very well; the other thinks the other is doing very badly. At what stage does somebody start to say, “Hang on, we want to have a say”?

Fiona Hyslop MSP: It would be up to the parties that are standing for election at any point in time to be able to carry out that function. I am the Minister who took through the Scottish Parliament the legislation on the abolition of tuition fees. I remember at the time the debate in the UK Parliament about whether there should be an increase in tuition fees coming to the point about who should vote on what at Westminster, but, if you have a situation where you are privatising some of the funding that goes to universities by putting it on to individuals through tuition fees, clearly that has a consequential impact, because less funding will be going into education in England, and that could have a knock-on effect in Scotland. It is the same with the NHS: if you reduce the funding in the NHS in England, that has a consequence for Scotland, et cetera. There has to be freedom to do that.

In terms of Scotland, we have record numbers of Scottish, English and international students going to university, which is a very strong place to be. We have fewer of our young people coming out with the levels of debt that we see elsewhere. The debt levels of our young people coming out of university are far less than those in the rest of the UK. We would argue that that means they have more capability to buy a house or set up a business, unencumbered by debt. That has other benefits. We think that is a good thing.

Our universities have also been, through that period, funded by the public purse to enable them to achieve record levels of international respect, profile institutionally and research status. That was our political choice; it was a different choice, but it was a choice made by us. It has not had a negative effect on England or Wales. That is an example where you can have differences in policy that reflect our different political needs and priorities from the rest of the United Kingdom in different ways. But it has not necessarily had a negative effect on England and Wales.

The Chairman: I am going to have to ask my colleagues to accelerate a little and keep their questions fairly brief.

Q131 Lord MacGregor of Pulham Market: Very briefly, because we have touched on this, some of our witnesses and others have argued for a minimum level of welfare provision across the UK. Should there be a minimum level of welfare benefits set across the UK that devolved Governments can supplement but not reduce? If so, who should set the minimum level and how?

Fiona Hyslop MSP: The issue is what that minimum level is. You have a situation just now where we do not agree politically with the bedroom tax, so the Scottish Government are paying for mitigation of what is a UK welfare situation. Effectively, that means our taxpayers have to pay twice, in many ways, to maintain that position. That does not seem a very effective use of funding when, in our political view, it is right because we think it is a very bad and damaging initiative. It is one that we do not want people to suffer, so we will mitigate it, but that is money that could have been spent on health or education. First, minimum levels are over-bureaucratized; secondly, I do not think they will be very efficient or effective; and, thirdly, I do not think they will be very responsive in policy terms. It is a centrally imposed solution to something.

Lord MacGregor of Pulham Market: Effectively, you do not think that there should be a minimum level of welfare or particular welfare benefits.

Fiona Hyslop MSP: I do not think that concept has been thought through enough for us to examine it and give a comprehensive view. My instinctive response is that I do not know how effective it would be.

Ken Thomson: Having learnt to be a Private Secretary with you, Lord Chairman, I then became Donald Dewar's Private Secretary at the time the Scotland Act was going through. The point on which he and his colleagues used to advocate devolution at the time was that it would allow Scottish solutions to Scottish circumstances. What we were discussing earlier in terms of revenue-raising and full fiscal autonomy is an extension of that principle, it could be

argued. The same applies to welfare benefits. I think the point the Cabinet Secretary is making is that the level of benefit and the operation of the benefit system need to be tailored to the circumstances of people in Scotland, which was the point of devolution. I think the UK Government would say it is also the point of devolving social security powers in the Scotland Bill.

Lord MacGregor of Pulham Market: So the answer to the question is “no”?

Ken Thomson: Yes.

Q132 Lord Judge: Then comes this rather interesting question. We would all appreciate your views on this. What impact would, if it eventually came to pass, English votes for English laws have on the union?

Fiona Hyslop MSP: Our First Minister has quite clearly set out that we think the proposals for English votes for English laws are unacceptable. Politically, it was very dangerous for the Prime Minister the day after the referendum to respond to the articulation of the will of the Scottish people by immediately reflecting on the situation regarding England. There is a political danger in treating Members of Parliament as second class. Politically, you could not effectively in practice have a Scottish Member of Parliament ever becoming Prime Minister: what credibility politically would you have as a leader of your party, as a candidate for Prime Minister and operationally as a Prime Minister if there was major legislation that you could not vote on or express a view on? There are the practical areas, but also politically and constitutionally it is very dangerous territory, if you believe in the union. If you do not believe in the union, there is a point of analysis that would mean that, if you had this, it would lead to consequences.

Lord Judge: Have I understood this correctly? If you believe in the union, there should not be any system of English votes for English laws. If you do not believe in the union, it follows inevitably that each, as an independent country, will operate its own legal system.

Fiona Hyslop MSP: Those two statements do not necessarily follow. The first one I agree with: if you believe in the union, you have to treat people equitably. Going back to our discussion about tuition fees, that is an example where there are consequences to pieces of policy, proposals and legislation that, because of the financial impact, are ostensibly about the English health service, the English education system or the English transport system. They have consequences because of the subsequent distribution of consequentials. We are in the middle of a Budget process. Having had George Osborne’s Budget, next week, on the 16th, we will be setting out our budget. A lot of that is dependent on the distribution of funds that we know have come from the consequentials of decisions taken about policies that are to do

with English areas. That is the danger of English votes for English laws. That would cause a real difficulty.

In terms of your second point, if you had English votes for English laws within a federal system or within a system of an English Parliament, that is a different matter from having it within what is a unitary Westminster parliamentary system.

Lord Judge: Is there such a thing as a West Lothian question?

Fiona Hyslop MSP: As the West Lothian Member of the Scottish Parliament, I am the West Lothian answer.

Lord Judge: That is a lovely answer. But it is still a question.

Ken Thomson: The other answer that is often given is that the best answer to the West Lothian question is to stop asking it.

Lord Judge: Forgive me, but that is not an answer.

Ken Thomson: I will give you a more serious answer. We have looked back over the votes in the House of Commons in the period from 2001 to 2014. We think that less than 1% of those votes would have had a different outcome if you took Members from Scottish constituencies out of the voting figures. It seems at the moment to be an answer to a question that is not a practical problem, because the Government have a majority.

Lord Judge: It may be rather different when, as has been pointed out more than once, there is such a very significant and important representation of Scottish nationalists in Parliament.

Fiona Hyslop MSP: If that is how you see that—

Lord Judge: I am asking a question; I am not saying how I see it.

Fiona Hyslop MSP: Why would representation from Scotland, from my constituents, constitutionally somehow be different because they have democratically elected to vote for a different party? Why is it that it becomes more acute now because of the political party rather than the country's representation? Why does it become more acute because of the political nature of the people who vote in those 59 constituencies? That says more about the people who are asking the question.

Lord Judge: With respect, the question has been asked long before there was a huge number of Scottish nationalists in Parliament. It is not a question that has anything to do with it.

Q133 The Chairman: It is an issue we could debate all morning. I think we acknowledge that your first answer was the best answer we are going to get this morning. We will move on, if you do not mind, because we are getting near the end of our time. I would like to ask you the last question. Clearly, the Scottish Government are elected with a long-term objective of independence. The referendum voted in favour of the maintenance of the union. How do you

reconcile your long-term objective of independence with the need to govern all the people of Scotland, recognising that Scotland is part of the United Kingdom?

Fiona Hyslop MSP: The same way that I have done day in, day out, from the first time I was appointed as a government Minister in 2007. We are quite clear in terms of our responsibilities to the people of Scotland: to govern and to govern well. The fact that we have been re-elected and that currently we are seeing very strong poll ratings is evidence that people trust us to govern for Scotland. Our constitutional aspirations remain, but we are quite clear we will roll up our sleeves, as we have done right from day one, and carry out our responsibilities as government Ministers.

The Chairman: Thank you very much. Mr Thomson, would you like to answer on the part of the Civil Service, which must in some way feel itself slightly torn, with loyalties to both Scotland and the United Kingdom?

Ken Thomson: I do not see it that way at all. The purpose of the Civil Service is to serve the Government of the day. The Government of today have their policies, and so we support those policies.

The Chairman: The Government of the day are the United Kingdom Government also.

Ken Thomson: In respect of the civil servants supporting the Scottish Government, our professional duty lies to our Ministers in the Scottish Government, and the professional duty of our counterparts in Whitehall lies in supporting the United Kingdom Government.

The Chairman: Do you see no tension?

Ken Thomson: I think the tension would arise if it were the other way around. If somehow I were saying to Fiona Hyslop, “I am here to do something for you, but I am not really your civil servant”, that is when it would not work. It is the same principle that you have on a change of party in Government: the loyalty of the Civil Service needs to transfer to the Ministers of the day.

Fiona Hyslop MSP: Perhaps I could finish by reflecting on the professionalism of the Civil Service. We have had officials that have worked at different times for both UK Governments and Scottish Governments, and the professionalism with which they carry out their duties is exemplary.

The Chairman: The one on your left had very good training. Minister, thank you very much indeed. We very much appreciate it. You have been very open with us and very full in your answers. You have given us lots of very interesting things to think about. Thank you so much, and you, Mr Thomson.

Fiona Hyslop MSP: Thank you very much indeed.

Ken Thomson: Thank you.