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THE UNION AND DEVOLUTION

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Witnesses: Lord O'Donnell and Lord Kerslake

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Members present

Lord Lang of Monkton (Chairman)
 Lord Brennan
 Lord Cullen of Whitekirk
 Baroness Dean of Thornton-le-Fylde
 Lord Hunt of Wirral
 Lord Judge
 Lord Lester of Herne Hill
 Lord MacGregor of Pulham Market
 Lord Morgan
 Lord Norton of Louth
 Baroness Taylor of Bolton

Examination of Witnesses

Lord O'Donnell and Lord Kerslake, Former Heads of the Civil Service

Q226 The Chairman: The Committee is very grateful to have the opportunity to ask questions of two such distinguished former civil servants with huge experience throughout their Civil Service careers. The Civil Service is a strand of the inquiry that we are conducting into the union and the devolved Administrations and their relationship. It is one that we followed up in Scotland when we met Sir John Elvidge, and when we met the Minister for Culture, Fiona Hyslop, and her secretary, Mr Ken Thomson. Their views were slightly at odds with what we thought the United Kingdom view of Civil Service obligations should be. Let me just start with a general question. Is the unified Home Civil Service now a constitutional fiction? Would you like to start, Lord O'Donnell?

Lord O'Donnell: Certainly. Perhaps I could kick off. No, I do not think so. If you look at the various codes we have for the different Civil Services you will see they are all very similar: shared values. That is a hugely important part: the whole honesty, objectivity, integrity, impartiality—and particularly the impartiality part; that is very important. If you were thinking of trying to devise a stress test for a unified Civil Service, what would you do?

You would have a referendum where the Scottish Government are in favour of it, and the UK Government are on the other side. That showed you, to my mind, the success of Peter Housden in Scotland and Bob down in London in the way a unified Civil Service was able to manage what I would regard a probably the hardest thing that you can manage when you have a unified Civil Service. This is where you have one Government arguing the case for independence, and the UK Government arguing completely the opposite. It reminded me, to be honest, of being in the Coalition Cabinet when we had the vote on alternative voting:

another referendum, with two sides, both within the same Government in this case, having to go out there, argue completely different things, and then once that had been decided come back and form together.

That is an example where I give the credit to David Cameron and Nick Clegg—to the politicians. However, during the referendum I would say that was a real example of a unified Civil Service working extremely well. It is very difficult to think of examples in other countries where you could have that operating so successfully and coming back together so successfully.

Lord Kerslake: I would entirely endorse what Gus said, so I will not repeat it. I do not believe it is a fiction; it is an absolute reality, and it is shared values, shared culture and, indeed, often shared processes. Peter would attend the Wednesday morning colleagues' meetings, but he would also be on the Civil Service Board and involved in other processes of assessing performance and so on. It is a very intertwined set of arrangements that combine both the value of being a single Civil Service with the proper flexibility and difference that you needed in Scotland and Wales. It is not a fiction; it was a well-functioning reality in my view.

The striking thing about the referendum was how few challenges came up. There were a few bumps along the way—you would have expected it—but given how hard-fought and passionate the issues were, there was the risk you might have seen divisions building; they did not. I entirely endorse the view that it is not a fiction but an effective reality.

The Chairman: You use the word flexibility, and Lord O'Donnell referred to the Civil Service Code. I understand that in Scotland, and separately in Wales and Northern Ireland, accountability peels off towards the Government in the devolved Administration, as well as to the United Kingdom. That implies that, in an existential situation, where the future of the United Kingdom is at stake, as happened in Scotland, if the Civil Service is accountable to the Scottish Government, it cannot be accountable to the United Kingdom Government. Therefore, there cannot be a united UK Civil Service.

Lord O'Donnell: Okay. You can have a united Civil Service in the sense it is one body with one set of values—and I will come back to the accountability question, if I may. As Bob mentioned, you can have one set of processes and procedures, so all the Permanent Secretaries from Scotland and Wales would come to every Wednesday morning meeting we would have. I included them in all my structures for the development and training of staff, for example, and all those sorts of issues.

Furthermore, there was the exchange of staff. I remember going up to see Alex Salmond about the change from John Elvidge, whom you saw, as Permanent Secretary, and half-

wondering whether he would say, “I am going to have someone from my Scottish Civil Service”. In fact he said, “I want the best person; I want to look as widely as possible”, and ended up picking the Permanent Secretary who at that point was Permanent Secretary in DCLG. To my mind, that is a demonstration of the commitment to that broader role.

In terms of accountability, the civil servants have accountability to their Government, directly, and there are some UK-wide issues, particularly in the international sphere, where they need to be very careful about the accountability, as there may be a UK position. That is where it can get quite complicated at times.

Lord Kerslake: Yes. I have two additional points. I did not go through a process of appointment in Scotland but I did in Wales, and we were able to have an open recruitment process. The First Minister was closely involved in the process as it went along. The panel considered and made recommendations, and he was happy with the outcome of that process and felt, I think rightly, he got a very good person to be the Permanent Secretary. Therefore, there are two examples here, not one, of how this process worked very effectively to deliver from the devolved nations’ perspective and fit in with the principles of the Civil Service.

On the accountability, it is absolutely clear that the Permanent Secretaries in the two devolved nations had to work to the priorities and the agenda for devolved Governments, of course. That is their role there, in the same way as Permanent Secretaries in departments work to their Secretaries of State, I think. The key thing was that you had a clear framework in which civil servants would operate during the time of the referendum. Where there were conflicts, there was a clearly established process and understanding of how those issues would get resolved. You can’t put civil servants in that position. There is a responsibility here, and you have to address the underlying issue of accountability that you have raised through clear understandings between the Governments, such as the MoU.

Q227 Lord Cullen of Whitekirk: Sir John told us that he regretted the loss of the National School of Government, which was dissolved, I think, some three years ago or thereabouts. Has that effectively been replaced by what has followed? It was done, I think, by the Cabinet Office. Is that right?

Lord O’Donnell: Yes. This is where it is good to have both of us here. I was there for the closure as part of the cutbacks that were going on and resulted in 20% cuts in the Civil Service, which is now the smallest since the Second World War, and it was replaced by a different system of training—that is absolutely right—which Bob can talk about.

Lord Kerslake: Yes. The point about the National School of Government—obviously there were differing views about that—was whether we should invest funds in a building and an

organisation, or in a programme of training and development that people could use and that was commissioned and delivered by a wide range of people. It was not simply that abolishing the National School of Government meant we did not do some of the things that were done by the National School of Government. They were done in a different way and reflecting the fact that resources were very tight, and therefore choices had to be made about where you put your money to best effect.

If there is an issue here, it is about what things you can do that emphasise and build on this unified Civil Service across the different nations. In the transition we lost something, but this was more about changing the model than changing the underlying intent.

Lord O'Donnell: I would add just one point, which is that I had started this process of the top 200 getting together. As you would expect from a former Treasury person, we never had 200 people in the top 200; there were about 160. However, this brought together the senior people both in Government and agencies, and across Scotland, Wales and London and the UK. That was really effective in terms of getting all the senior staff on one page. Whilst we did not have the national college, which went further down as a place where they would all come together, we had this at the top. That was a partial replacement at least.

Q228 Lord Lester of Herne Hill: What do you think would be the advantages and disadvantages of following the Northern Ireland example of having a separate parallel Civil Service, say for Scotland and for Wales?

Lord O'Donnell: I always had a very strong interest in Northern Ireland, as you can imagine, dating back to the days when I worked with John Major and the IRA almost blew me up in a Cabinet room. I had gone with him a lot; I was very interested in the peace process. We had a separate Northern Ireland Civil Service, which meant that there were issues. They did not come to Wednesday meetings. When it came to the selection of, say, a head of the Northern Ireland Civil Service, I was not part of that process. I went out of my way, and I always had great co-operation to go over to Northern Ireland and talk to them about the common issues we had, and it was very important the Northern Ireland Civil Service worked very closely with the UK Civil Service. It worked; it shows you that model is not impossible, but there were definite drawbacks from them being a separate Civil Service, in my eyes.

Lord Lester of Herne Hill: Such as?

Lord O'Donnell: The fact that they were not there every Wednesday; they were not listening to everything we were doing as a Government. When it came to selecting civil servants and senior civil servants, they selected from a far smaller pool than anywhere else. That was not great, and I talked to a number of heads of the Northern Ireland Civil Service, who also

thought it was not great. However, the one thing I would say that would improve matters is, alas, not within the hands of this Committee, which is: please, could you reduce London house prices? That will make an enormous difference, and that really did seriously damage mobility between Northern Ireland, Wales, Scotland and London.

Q229 The Chairman: To what extent have either of you, as head of the Civil Service, had direct authority over the Civil Service in Wales and Scotland?

Lord Kerslake: I shall say a few words on that. In passing, Gus, I am leading a review called the London Housing Commission on exactly this issue of supply of housing in London. I will not yet say I am brave enough to say I have an answer to it. However, on the substantive point, of course the Northern Ireland arrangements worked, and I think can be made to work. What was different, I think, was through the Scotland/Wales model, the Permanent Secretaries were permeated more into the systems and processes of the UK Civil Service. That helps them enormously in dealing with issues where they need to connect into the UK. Any smart person thinking who they would have as their Permanent Secretary for Wales or Scotland would think they need to be somebody who gets our issues and priorities, but they also need to be incredibly good in connecting into the UK as well, because we can only survive and prosper if we have that relationship right. That is just easier to do with the model for Scotland and Wales. It might be possible for Northern Ireland. I have regular meetings with the Permanent Secretary, but it is easier with the Scotland/Wales model.

Lord O'Donnell: In terms of Scotland and Wales, I was the line manager for the Permanent Secretaries. I would work with them on setting objectives. I would have appraisal sessions six-monthly and annually. I would go to Scotland and Wales and talk to the First Minister and say, "How is the Permanent Secretary doing?", and talk about performance, succession and objectives for the next year, and all those issues. I felt very much directly in control.

Lord Kerslake: It was exactly the same for me. I was supervising those two Permanent Secretaries in the same way as I was exercising a supervisory role for other Permanent Secretaries. It was not really a different process. It was the same process, I think, Gus.

Lord O'Donnell: Yes.

Lord Kerslake: That is quite a powerful role. That is a powerful connecting role. I did not expect them to do everything the same way as we did it in the UK Civil Service, but I did expect there to be a commonality of objectives and approach to the issues about raising capacity, proper performance management and so on. It could be done differently, but the functions, if you like, needed to be the same. I met regularly with the Permanent Secretary for Northern Ireland, but we had a different kind of conversation.

Q230 Lord Norton of Louth: Lord O'Donnell, you mentioned what you saw as the disadvantages of the separate Civil Service in Northern Ireland. Some of those would relate, as you mentioned, to the size. Would you see the same problems being replicated if there was a separate Civil Service for Scotland?

Lord O'Donnell: On this point about trying to fish in the biggest possible pool, it may well be that the right Permanent Secretary for Scotland and the right senior civil servants grow up within the Scottish Civil Service—absolutely. I am sure they are working on all that. However, the interchange of senior civil servants who start in Scotland then come down, spend some time in Westminster, and then go back is great for understanding how both sides see the issues.

Lord Norton of Louth: Would that be ruled out if you did have separate Civil Services?

Lord O'Donnell: It is not that it is ruled out. I cannot think of an occasion when someone, for example, from the Northern Ireland Civil Service came across and did a senior job in the UK or in London.

Lord Kerslake: That is right, Gus, and interestingly when we did the appointment to the Permanent Secretary in Wales, we had candidates who were actively involved in the Welsh Government and people from the UK Civil Service going for the job in the end. Derek Jones had been somebody who spent a large part of his career in the Welsh Government, but he had had a significant part of his career in the UK Civil Service as well, and that was immensely helpful to him in doing his job. It is not impossible for Northern Ireland; it can happen, but it would have to be, for example, a more formal secondment arrangement than a natural move into a job. That is the difference, and that is quite a big difference in practical reality.

Lord Norton of Louth: Looking at it from the perspective of government, your view would be that that is, therefore, problematic in terms of, presumably, ease of communication.

Lord Kerslake: It makes it harder. You have to work harder at it. I suppose the point you might make is both the Scottish and Welsh Governments have found it a good model to work with. They could quite easily at different points along the way, Gus, have said, "Actually, we would like to change. We would like a separate Civil Service". They could have asked the question at least.

Lord O'Donnell: Remember the SNP have a manifesto commitment to a separate Civil Service, but they have never implemented it.

Lord Kerslake: They never implemented it.

Lord O'Donnell: I talked to Alex Salmond about that, and on balance we are happy where we are, I think.

Lord Kerlake: The reality is, even though it was in a manifesto, I do not recall big conversations happening. That can change, of course, but all I can say is I deduced from that that they saw the value in the current arrangements.

Q231 Lord Lester of Herne Hill: There is, I suggest, another way of looking at this. I am out of date, of course, but when I was working in Northern Ireland in the 1970s I perceived resentment that the Home Office was dominating the Northern Ireland Office in ways that the local politicians and civil servants did not really agree with. I am thinking of when they were debating whether there should be a European convention incorporated into Northern Ireland and so on. There was a great deal of feeling that this should be the business of the Northern Ireland civil servants and the Northern Ireland Minister, and not being backseat-driven from the Home Office. I do not know to what extent any of that is within your experience. I am simply speaking about the experience that I encountered in those days.

Lord O'Donnell: I did not come across those sorts of issues, to be honest. I am sure they exist because there is always the question of something that is UK-wide and how that will be represented. The area where I found most tensions would be in EU negotiations, where you take a fisheries issue or something that was very strongly felt in Scotland and they wanted to have the seat for that negotiation. In fact, the UK Government would often insist on having that seat, because there were more interests than just the Scottish interests in all that, and hence the UK Minister had to take all those into account.

Lord Kerlake: I would not say I experienced that as you have described. The issue was more about whether departments had properly thought through the particular issues for Scotland, Wales and Northern Ireland—particularly Scotland and Wales—when they were bringing forward policy: had they consciously put time into it? That has got a lot better now than it was, but that was an issue that came back regularly: had they put enough time into both thinking about the different issues for the devolved nations and then having the conversation with them ahead of publishing legislation or regulation, or whatever it was?

Lord O'Donnell: One other obviously really big issue that we should mention on Northern Ireland was the Northern Ireland Office and the Secretary of State for Northern Ireland, who was often annoyed by the fact on the Northern Ireland side they wanted conversations directly with the Prime Minister. That was a big issue.

Q232 Lord MacGregor of Pulham Market: I understand all the points that you are making about the unified Civil Service in terms of the code, ethics, manners of operation, personalities and all that. However, I want to turn now to the policy issues that follow. Do civil servants working for devolved Administrations have a responsibility in terms of policy

from the UK Government as a whole, and how should they act if they perceive that the aims of the two Administrations are contradictory?

Lord O'Donnell: It is very clear the Civil Services have to act with respect to the objectives of their Government. A classic case would be the referendum. The Scottish Civil Service had to support the Scottish Government in its objective in terms of independence, just as the UK Government had to support the UK position. Like I say, the caveat I put to that is when you get to these issues where there may be differences between the Governments but the UK has to come to a position—particularly in EU areas, where you need a UK position. You will have officials from the Scottish Government arguing with officials from the UK Government, but in the end there will be a UK position, because that is the way we are represented.

Lord Kerslake: Exactly. Their first duty must be to the Administration they work for, but they also have a duty to ensure that we come up with workable solutions to issues that cover the whole of the UK. Where we have a difference, both the UK Civil Service and Scotland or Wales need to put time into working constructively to resolve and address those issues. It is the responsibility of civil servants to use their skills to work through the issues and put clear choices in front of their Ministers, and where possible resolve things that can be resolved. That is how I would see it, and by doing so, clearly, they help with the effective functioning of the union.

Lord MacGregor of Pulham Market: Before I come on to the broader question on this, can I just go back to the fisheries point that Gus O'Donnell raised? I was the Minister of Agriculture, Fisheries and Food at a period when fisheries dominated a lot of the European Union discussions. I always took with me the Scottish Minister. Now, of course, it was within the same Administration, but I always took him with me, and we never had any problems, nor with the ferocious Scottish media on this issue, or fishermen themselves, because they could see we were working very closely together. However, going to the wider issues beyond that, the written evidence from Scotland in Union to us recommended that one civil servant in Scotland “should (naturally) assist Scottish Ministers in carrying out the devolved functions of those Ministers within terms of the Scotland Act”, and I understand all that. It goes on that they should not be able to “carry out work which relates to reserved matters”—and “reserved matters” is the distinction I want to make—“unless it is in support of” the UK Government. Would you like to comment?

Lord O'Donnell: Who is saying this?

Lord MacGregor of Pulham Market: It is evidence from Scotland in Union to us.

Lord O'Donnell: Scotland in Union?

The Chairman: That was the lead campaign for staying in the Union during the referendum.

Lord MacGregor of Pulham Market: I am asking you just to take the point they make.

Lord Kerslake: I am nervous of commenting on something I have not read the entire content of. Clearly, I see their role in part as to understand the impact of the UK policy being referred to—let us say it is welfare—in the Scottish context, if you like, and advise the Scottish Government about the issues that might flow for Scotland. That is different from saying they are in support of the UK policy, because they may have issues that are particular to Scotland that they want to raise. That is a perfectly reasonable thing for them to do, and they should have capacity and expertise to properly analyse the impact of proposals on welfare in Scotland and say, “This works for us, but this does not”. That is clearly part of their role.

Lord O'Donnell: Yes. I think we are saying we disagree with them.

Lord MacGregor of Pulham Market: In reserved matters, are you saying that the Scottish civil servants, perfectly properly, can put the Scottish point of view in the discussions leading up to the final decisions, but in the end they must support the final decision because they are reserved matters and it is the UK Civil Service position that should be taken?

Lord O'Donnell: Yes, absolutely.

Lord Kerslake: Once the policy has been formalised and agreed by the Government, or taken through Parliament, of course they have to implement it because it is the law of the land.

Lord MacGregor of Pulham Market: Would this create any tension within the Scottish Government: tension between the civil servants and the Ministers who are taking a very different view?

Lord Kerslake: I do not think it should, because, as I said earlier, the first role they will have is providing proper advice to their Scottish Ministers about the impact of the policy in Scotland. Their Ministers will expect them to engage in a robust debate on their behalf on those issues with the UK civil servants, and then they would accept that if a decision is taken it has to be implemented. That is how I would see it.

Lord O'Donnell: I would also point out that there are lots of UK civil servants in Scotland and Wales, so you are concentrating on the issue of those civil servants who work for the Scottish Government and Welsh Government, but there are plenty of civil servants in Scotland working for DWP, for example.

Lord Kerslake: There are more for the departments than there are for the Government—quite a lot more.

Q233 Lord Brennan: Here is a different form of stress test to examine your proposition about unified Civil Service standards: let us suppose there comes a time when a Scottish

Government breaks with the fiscal framework established between London and Edinburgh, for example, by taking a deliberate political step as part of a ploy to expand the fiscal framework or amend it, or alternatively through economic incompetence. What then would be the position of specialist senior civil servants in Scotland when in either position you have a frank difference of political objectives with an adverse consequence to the UK Government?

Lord O'Donnell: It would depend on the nature and status of that fiscal framework. Having spent a long time in the Treasury, we have had fiscal frameworks we have for one reason or another not managed to live up to. That is quite possible. The world and the economy is not entirely predictable, and sometimes you might have an objective and you fall short of it—in fact that is rather more normal in those circumstances. If it is a legal requirement, of course that is different, and then the civil servants would have to be advising their Ministers that they needed to do what was necessary to meet that legal requirement. For example, on the 0.7% commitment on aid, that would be one thing. If there is a vague statement about, “Well, we should have a sustainable fiscal policy”, what does that mean? Therefore, it would very much depend on the nature of that fiscal framework and its legislative status.

Lord Brennan: That is why I gave you the example of deliberately breaking it or doing it through simple incompetence.

Lord O'Donnell: Yes, but it depends. By breaking “it”, what is “it” in this case? Is the fiscal framework in legislation or is it aspiration?

Lord Brennan: We are expecting it to be in legislation.

Lord O'Donnell: If there is clear legislation, civil servants will be required to advise their Ministers that certain things they are doing are inconsistent with the legislation.

Lord Kerlake: However, that is no different from any civil servant role, is it, in that sense? They have a duty to ensure that their Ministers are acting in accordance with the law—whatever that law is.

Lord O'Donnell: Remember, on the point about fiscal frameworks, if I come back to that—and I can understand where you are coming from on this—within the Treasury officials would give advice, and Ministers may decide where they want to go. All parties now have come to the view that they think that system needs to be strengthened, and hence that is why we have the Office for Budget Responsibility, and that has been a fantastic improvement in the way in which our fiscal frameworks are implemented.

Lord Lester of Herne Hill: I hope I do not sound paranoid. I probably am, but I have to say listening to both of you that the impression you give is that everything is more or less fine. My experience is when you have a devolved institution that is playing a different game from

Whitehall and Westminster, things are not fine. We have to assume that there will be folk in Scotland who are interested in maximising friction with Whitehall and Westminster in the search for independence. I simply want to put that to you, because my experience in Northern Ireland was that the Home Office was looking over the shoulder of the Northern Ireland Office to make damn sure that Northern Ireland would not have its own Bill of Rights. Furthermore, a number of things happened at that time that caused great resentment in Northern Ireland, where the politics were very different. I just wanted to say that so you have a chance to tell me that I am paranoid.

Lord Kerslake: We need to distinguish between two things here. One is if there are huge political forces challenging the union, and quite clearly there are. That is happening and that is a reality. That in turn creates challenges in the way the Civil Service works. I do not think either of us would deny that. I think we are saying that, notwithstanding those huge political forces, the model we have has managed some very big issues, like the referendum, as well you could possibly have expected to have done, and certainly a lot better if you look across Europe in other similar situations. Could they prevent, or should they even try to prevent, further change? That is not in their role. Have they handled the situation we have faced so far well? The answer is yes.

Lord O'Donnell: Your example is about Northern Ireland. Obviously the issue about Northern Ireland is that Northern Ireland does indeed have a separate Civil Service. That is part of why I would expect there to be greater tensions than there are with Scotland or Wales, even though we are talking about in Scotland, particularly, the harshest test you could have, with such a virtual one-party state. It is SNP, is it not? It is SNP land, and that is going to create big tensions. What surprises me is that has been managed, and that is down to the responsibility of the politicians involved. The discussions I have had with Alex Salmond and the odd chat with Nicola Sturgeon have suggested to me that they see the value of a unified Civil Service.

Lord Kerslake: Ultimately, whether it is manageable comes down to the way in which the politicians act and behave. That is really what I am saying.

Q234 Lord Judge: Unlike Lord Lester, I am not paranoid. Instead, I am a 30 year-old, very bright civil servant working in Scotland. Is it my duty to seek to preserve the unity of the United Kingdom?

Lord O'Donnell: No.

Lord Judge: To advise my Ministers that they should?

Lord O'Donnell: No, absolutely not.

Lord Judge: Therefore, how do I square this with the unified Civil Service, when I actually work for a United Kingdom service?

Lord O'Donnell: You are working for the Scottish Government and you are doing what that Scottish Government's objectives are. You could transfer to London, subject to being able to afford the rent, if you are a bright 30 year-old, where you would be working for a UK Government who have a different set of objectives. That is part of being a civil servant, because you have to have that ability and flexibility to work for a Government who have a different set of objectives, because, surprise surprise, every five years a Government come in who have a different objective, potentially. Therefore, you need that flexibility. I would say your bright 30 year-old will have no problem with that. They would have understood from the day they joined the Civil Service that "servant" is in there: they are a servant of the democratically elected government of the day.

Lord Judge: Forgive me—before Lord Kerslake answers, because I would like you both to—but you were going to reassure me, as a 30 year-old civil servant, that those for whom I work in Scotland for the moment are not going to have it against me that I have a loyalty, which I have to have, to the United Kingdom service.

Lord O'Donnell: No, as long as you interpret that loyalty in the correct way, which is you uphold the values of the Civil Service, one of which is to operate according to the code, which says that you will help your Government implement their policies.

Lord Kerslake: I have two points to make. Gus has covered it exactly as I would. One is to say that the loyalty here is to the principles and the values of the Civil Service, and to serve the Government that you work for. I spent much time up in Scotland during the referendum period, and that was very well understood by very bright civil servants.

The addition I would make is that they also have a responsibility to ensure that the agreements and frameworks that are established between the different countries are honoured as well. Going back to a point that was made earlier, whether that is a legal framework or a less binding framework, they do have a duty to point out to their own Government, "You signed up to this agreement, and therefore that brings with it responsibilities". However, that is again back to the values of the Civil Service, of honesty and integrity, is it not?

Q235 Lord MacGregor of Pulham Market: You have partly answered the question I was going to ask; can I just probe you a bit further? It is a reserved matter. The Minister in Scotland is urging his senior civil servants to challenge the reserved matter in every way possible and to undermine the position on the reserved matter, because that Government takes

a very different view about what should be reserved from the UK Government. What is the position of a civil servant in that instance?

Lord Kerslake: It is clear, and it has happened, of course, on welfare issues, that their job is to represent their Government's views in the debate on that reserved matter with as much rigour and skill as they possibly can.

Lord MacGregor of Pulham Market: Do you mean the discussions between the two Governments?

Lord Kerslake: Yes. Clearly, whether in private or not, in the advice they give back in their conversations with civil servants in the UK they are of course going to make the arguments that their Government has about that policy. That is their role.

Lord MacGregor of Pulham Market: They do that, but do they also say to their own Ministers, "Frankly, this is a reserved matter, and you are asking us to do something way beyond what is our duty on a reserved matter".

Lord Kerslake: It is not beyond their duty to properly express the views of that Government to the UK Government. That is not beyond their duty. It would be wrong if that policy is then determined and is law and needs to be adhered to.

Lord MacGregor of Pulham Market: In Scotland.

Lord Kerslake: In Scotland.

Lord MacGregor of Pulham Market: Yes.

Lord Kerslake: That is how I would distinguish it.

Baroness Taylor of Bolton: Would that cover Trident and people who are working for Ministers in Scotland, where Scottish Ministers are wanting to say things about Trident and being asked to write speeches, put out press releases, whatever, on that topic, which is clearly a reserved matter?

Lord O'Donnell: They would certainly give objective advice about answering factual questions about Trident, which Ministers could then use.

Lord Kerslake: Particularly in relation to Scotland and its impact on Scotland.

Q236 Baroness Dean of Thornton-le-Fylde: Good morning. Could I follow up on the point that Lord Judge was making? I guess my interpretation would be we are expected to be comforted, with all due respect, by the responses you have given, but I am not and I am questioning why I am not. Lord O'Donnell, you said, "Well, of course, we have this issue every five years", or around then. We have an election and Governments change, but of course that is consequential. I am not talking about the lower-level civil servants. I am talking

about the key senior civil servants, and we are talking about a situation that was brought into harsh focus by the referendum.

However, there is the day-to-day business, where there are, in some instances, significant differences. We are talking about Scotland at the moment, obviously. That situation is not going to remain the same, because as time goes on their own view of themselves is getting stronger. You have one government in Scotland—a one-party state almost. What happens in the day-to-day activity where you have politicians pushing very hard at the door of something that may be—and Trident may be one—in opposition or different from the UK Government? You are almost asking the civil servant in that situation to be a Samson, to be able to balance those challenges. My interpretation of what you are saying is that really is not an issue. I am not sure that it is not an issue. They are either successful as a Scottish civil servant in the eyes of the Scottish politicians in doing what their bidding is, or they are not because they are doing what the UK Government are saying in some instances: “No, this is the UK policy; you will do what we say”. How do you see that situation evolving?

Lord O'Donnell: I do not see that as a problem. I am a Scottish civil servant. I am working for the Scottish Government and they have certain objectives, maybe issues of Trident or welfare policy or whatever, and they happen to be different from the UK Government's. Therefore, my job is to advise my Ministers in Scotland on those issues and to help them to support their arguments. Then there will be a debate and there will be a decision. Once that decision is made, my job, as a civil servant, is to ensure that it is implemented. It is not hard. I do not see the difficulty, and I do not think civil servants see the difficulty. If that had been really difficult, they would have fallen apart during the referendum, but they did not.

Lord MacGregor of Pulham Market: Can a civil servant say to a Minister, “You cannot do that, because it is clearly a reserved matter; the legislation is clear and I cannot give you advice on it”?

Lord O'Donnell: Absolutely, at times you spend your life saying to Ministers, “That is a brilliant idea, but it is illegal”.

Lord Kerslake: I have two points to make about what has been raised there by Lady Dean. One is that the model works as long as the politicians recognise and respect the model and see it has value. At the point at which they stop seeing it as that, it will not work or it will struggle. At the moment it works because all parties see the value of the model we have and recognise the conflicts, tensions and compromises that go with it.

Secondly, it has not been unknown for there to be quite ferocious differences between different UK Government departments on issues. Civil servants act on behalf of their

Ministers in those discussions. They are robust. I am sure Ministers in the other departments see them being robust. Their most likely conclusion is: “If they are good at it, I would not mind having them in my department”.

The Chairman: We must move on, sorry; we are running short of time.

Q237 Lord Morgan: We have been circling around a bit what seems to me the absolutely essential problem, which is the growth of diversity. We have more and more diversity. You have both rightly and cogently talked about the need to have common values, common methods of operation, but we are operating in a situation, as you very well know, where the different Administrations are becoming more different. The reserved powers vary enormously. The balance of the exceptions to those reserved powers changes as Bill follows Bill.

We are discussing, as you know, the Scotland Bill at the moment. We have had evidence from distinguished civil servants saying the emphasis of it should be more marked about the difference, particularly between Scotland and Wales. They are not the same in their methods of operation. Is the task of the Civil Service becoming more and more difficult—to find some kind of uniform procedure within what seems to us and this Committee a picture of growing variety, almost in a destructive sense?

Lord O'Donnell: The UK was unusually centralised as a Government, when you contrast it with other, let us say, European countries. That has its strengths and its disadvantages. Obviously, we are moving through a process now where we are devolving not just to nations but also devolving—and I am sure Bob can pick up on this—the areas of the northern powerhouse, what is happening in Manchester and all those sorts of areas. Yes, it creates some tensions, but there are also big advantages. Scotland can do some things and the rest of the UK can learn from them. If you look at smoking in pubs or the Welsh example of reversing the opt-out for organ donation, there are lots of areas where we can look at what they are doing. John Elvidge may have talked to you about the changes to the organisation of the Civil Service in Scotland. There are lots of things we can look at and say, “Actually, there’s quite a lot we can learn from this”. Therefore, we have an area where we are testing different sorts of policies that we can then learn from and adapt, and I hope, for the UK as a whole and for the parts of the UK, come up with better Government and better decisions for the people. In the end, that has to be a good thing.

Lord Kerslake: I have two or three points to add. One is I share Gus’ view that diversity strengthens the ability to learn and try out new ideas, and I would like to see more devolution and diversity in England as well as what we are achieving across the UK.

Secondly, the UK constitution is facing some very considerable challenges across a range of fronts, and they have been pretty well articulated, particularly in Vernon Bogdanor's pamphlet on this, which sets out the issues we are facing. They are very stark, very real and very considerable, and that brings a need for civil servants to grow and develop new skills in handling this complexity and diffusion of power—in handling a constitution and a nation in transition. Those things do test civil servants, and they have to develop new skills and capabilities to manage it, whether they are part of the devolved nations' Governments or whether they are part of the UK Government.

Lord Morgan: Thank you. May I just ask another one?

The Chairman: Yes, of course.

Lord Morgan: You mentioned, Lord O'Donnell, particularly, that there might be, so to speak, opportunities or refreshing chances for people in some particular part of the United Kingdom to operate differently. Would there be a Civil Service view on occasions when parts of the Civil Service in these islands would like to experiment but their capacity for so doing is held back by the system we have, for example by the distribution of reserved powers? That is to say that diversity might conceal equality of opportunity, including within the Civil Service.

Lord O'Donnell: Within the Civil Service itself, the constraints are, like I have said, mostly about financial issues. In terms of the ability to test and try out different ideas, that is growing throughout the Civil Service and individual parts are doing that. The fact there are differences going on will indeed lead to inequalities, and I regard that as quite healthy in that we will learn from that. I do not think there should be one policy for everybody. The whole principle of devolution is that by devolving power to smaller areas sometimes you can come up with better answers. Obviously, for some areas that does not work, but it is well worth testing out whether that is true or not.

Lord Kerslake: The caveat is about how you ensure equality of resources and capacity, and how you align devolution with equality of distribution and opportunity. That is a much tougher ask, because you have to look at the whole way finance happens, particularly in England, and if you localise business rates, for example, how you ensure you get a proper re-distributional system across from Westminster to Sunderland. There are issues about how resources work in a devolved mode, but an inevitable consequence of devolution is that you will, even if you have the resource balance right, get different outcomes, otherwise why do it? The trick is to learn from that and then adopt the best.

Q238 Baroness Taylor of Bolton: Going back to the devolved Administrations, given that we are seeing an increase in shared powers and tax-raising powers, it seems that this means

there has to be greater interaction between the different Administrations. Would a physical presence—offices—for key government departments, such as the Treasury or BIS, in Edinburgh or in Glasgow help in that? Would that help ease that issue, or would it help diminish the antagonism that often exists because of this centralisation that you talking about—everything happens in London? Is there a strong case for an actual physical presence of physical offices to negotiate, to discuss, to ease these new administrative shared responsibilities?

Lord Kerslake: It varies from department to department. It is not absolutely the case that every department needs to have a physical presence. They do have to have a good understanding of the different issues in different areas. The mechanism by which they might do that might vary. For example, the Bank of England has representatives across the country to pick up local intelligence about how the economy is going. That is not separate offices or big teams there; it is individuals who connect to the local issues and the local players.

There are different ways of doing this, but it is an absolute and proper expectation that every department organises itself in a way such that it knows what is happening in different parts of the UK and, obviously, in different parts of England. That is how I would see it. How they do it is for each department to determine. As we touched on earlier, if you look at Scotland and Wales, we have a very big departmental presence in those areas anyway.

Baroness Taylor of Bolton: However, those departmental presences are usually administrative rather than policy, and if we are talking about shared powers, it is the people who make the decisions about the powers who can be very distant and can cause increasing difficulties in the future.

Lord Kerslake: I do see that. Obviously, a key issue in relation to Scotland and Wales is the Scotland Office and Wales Office and how they work. Each department, as I say, has to have an ability to gain that intelligence, sometimes through physical presence and sometimes through very strong networks, particularly in the way they run the department. I always felt very strongly, and this is how we did it in CLG, it was not so much about having lots of teams out there on the ground. Sometimes the Government offices found it difficult to make their views known back into the department.

What was really important was that senior civil servants saw it as part of their job to get out of Whitehall, however challenging it was in terms of their diaries, and spend time in different parts of the country. As I say, it is not a simple question of physical presence. It is about how the whole department operates, and does it have a conscious, agreed way in which picks up different views across the country, not just at the bottom but at the top as well?

Lord O'Donnell: One way that I tried to make what Bob is talking about a reality was, as I talked about, the top 200 and getting the top people together. I remember meeting in Cardiff and getting everyone together there to say, "Let us see how these things really play out, and let us make sure that we have an understanding of what the issues in Wales are, so that we all go back". That was across the whole of the UK Civil Service.

Lord Kerslake: In CLG we had assigned parts of the country to senior managers, who made it their business to connect with the key local players there. These are all ways of making sure you really grasp the different issues across the country.

Lord O'Donnell: Yes. Sir Bob mentioned the regional representatives the Bank of England have. Those regional representatives report to the Monetary Policy Committee as part of the two-stage decision-making process, and on the first day, and obviously throughout that period, you have a Treasury representative there. The Treasury representative is there listening to the bank's regional reps report, and quite often they do surveys and all the rest of it. Therefore, they are getting an understanding of what is happening in all the different parts of the economy, which is pretty fundamental to most of the activities Government are involved in.

Lord MacGregor of Pulham Market: In Parliament you get a great deal of evidence and discourse about that from MPs in those areas. There is constant interchange. When departments go out like that, do they relate to the local MPs?

Lord Kerslake: I would expect them to, and certainly in relation to the department I ran directly, I did want them to connect with MPs, with the local authorities, with business and with the voluntary and community sector. All those should have been part of the conversations they had as civil servants to hear what was happening, because they were all able to bring different and valuable perspectives on what is happening in their area.

Q239 Lord Cullen of Whitekirk: I would like to ask about public perception. What could be done now to clarify for the public the respective roles of the United Kingdom Government on the one hand and the devolved Governments on the other?

Lord O'Donnell: The referendum campaign brought home a number of those issues to people. I do not think people wake up every morning thinking, "My goodness, I wonder if that is a reserved matter or not", but it is important that in Parliament those things are clear. When you get Bills going through now, it is very clear in legislation what that applies to, so the territorial application and all that. That is an important part. I would say it is the job of everyone in this room to try to explain to the British people the constitutional settlement, what

is reserved, what is not and how that operates in practice. I do not see that as necessarily a Civil Service matter. As members of the Lords—

Lord Cullen of Whitekirk: A view as expressed by one of our witnesses from Scotland is that the United Kingdom ought to make more visible what it is doing in the way of services to people who are in the devolved nations.

Lord Kerslake: I would buy that argument. As you know, quite a lot has already been done in terms of more investment in communication, and there is a leaflet or a document being circulated to that effect. This is not just a problem we face in relation to the devolved Administrations. Sadly, if we went to people and said, “What does local government do as opposed to central government?”, you would find that they would struggle, to be honest. Whenever you have different levels of government, people find it hard to work out who does what. We should constantly strive to do better at being clear about that, but in the end what matters to the public is that they get good and responsive services. We are never going to persuade them this is more interesting than those things they might spend their time on.

Q240 Lord Lester of Herne Hill: One of the proposals put to us by the Bingham Centre and the Constitutional Reform Group is that it might help if there were a charter of the principles of the union, or a statute, so that without getting to a written constitution at least there were a framework that sets out properly the allocation of powers, respective responsibilities, individual rights and so on. That is, as I understand it, an incremental way forward towards a written constitutional settlement. What do you both think about that?

Lord Kerslake: It is something that has come up in the devolution inquiry that Lord Norton and I are involved in. A set of guiding principles about devolution, both UK and within England, is worth exploring. It is easy to say it and harder to write it, but it would be worth exploring it. It is less about who does what and what are the guiding rules that would drive it. For example, if you take the NHS: free at the point of use. Is that one of the guiding principles that we would have that should inform any form of devolution that we talk about? There is definitely, in my view, territory worth exploring here. It will be quite a difficult debate to say what is in that set of guiding principles.

Lord O'Donnell: I would start by looking at the *Cabinet Manual* and saying. “Could we expand the *Cabinet Manual* to cover the recent developments in devolution?”, because it is now a bit out of date, and it should be updated to reflect the constitutional settlement that we have there and put in as much as we can of the points that you are talking about.

Lord Lester of Herne Hill: The *Cabinet Manual* is not the same as a considered view by Parliament itself.

Lord O'Donnell: Absolutely not.

Lord Lester of Herne Hill: We are, are we not, in a strange position among the common law and European countries of the world in not having something like a written code that sets all this out with the authority of Parliament?

Lord O'Donnell: Indeed. In the absence of a written constitution, I decided on the *Cabinet Manual*, and obviously with the Prime Minister's approval, because it struck me that, if Parliament has not done this, and I do not think it will, the Executive—and it is obviously the manual of the Cabinet, so it is the Executive's document—should lay out as far as they can what they perceive the answers to these questions to be.

Lord Kerslake: The only thing I would say on that is that the *Cabinet Manual* can go only so far. It could cover some of the principles and processes, but it could not cover some the bigger level principles that we are talking about here, which have to be agreed in Parliament in the end, I think.

The Chairman: We are into injury time, but I hope you will allow us a few more minutes just to touch on English votes for English laws. I know Lord Hunt has a couple of questions he wants to ask.

Q241 Lord Hunt of Wirral: What impact do you think the new procedures in the House of Commons, English votes for English laws, will have on how the Government operate and legislate?

Lord Kerslake: Personally, it is too early to say, in a sense.

Lord Hunt of Wirral: Thank you, Sir Humphrey.

Lord Kerslake: We are talking about October. The local government housing Bill navigated its way through the processes effectively, so it can be done. I genuinely think we do not yet know. A bigger point, if you like, is one of the things we have looked at through our devolution inquiry is this question of whether we are or should be moving to a federal system. Many of the experts who spoke to us pointed to the fact there is no federal model that works with 84% of the population in one part of the federation, so there are serious difficulties in making that model work. I personally think that Vernon Bogdanor's phrase, "Asymmetry is the price we pay for the union", is quite a strong argument.

Lord Hunt of Wirral: Lord O'Donnell, what impact do you think English votes for English laws will have on the union? Is there an answer to this English question?

Lord O'Donnell: Having struggled to try to answer the West Lothian question for many years and failed, I do not have an answer to the English question. As in all these things, what we now have is an experiment, and we will be able to see to what extent the new procedures meet

the requirements of our current constitutional settlement. In the light of that, we should learn from that and be willing to adapt those procedures to work more effectively within the constitutional settlement we have. We should be in the process now of looking, not with the view we have the right answer but with the view we have an answer that I hope we will be able to improve on.

Lord Kerslake: From my point of view, maybe the answer is that there is not an answer and you have to live with asymmetry as part of the deal.

Lord Hunt of Wirral: I suppose, Lord Kerslake, if anybody knew the answer, with all your experience in Sheffield and Hounslow, you would know what it is, so I am slightly concerned you do not think there is an answer.

Lord Kerslake: I am saying you have to trade off things. A simplistic answer is to move to a federal model. There are very considerable dangers with that, which could have more impact in relation to the future of the union than we realise.

The Chairman: You have been very forthcoming and very informative throughout your answers, and we are extremely grateful to you for giving so much time and thought to what we wanted to ask. Thank you very much.

Lord Kerslake: Thank you.

Lord O'Donnell: Thank you.