



Public Administration and Constitutional Affairs Committee

Oral evidence: Inter-institutional relations in the UK, HC 525

Tuesday 14 March 2016

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Members present: Mr Bernard Jenkin (Chair), Ronnie Cowan, Mrs Cheryl Gillan, Kelvin Hopkins, Mr David Jones, Mr Andrew Turner.

Questions 334 - 464

Examination of Witnesses

Witnesses: **John Swinney MSP**, Deputy First Minister, and **Leslie Evans**, Permanent Secretary to the Scottish Government, gave evidence.

Q334 Chair: I welcome our two witnesses to this session about inter-governmental and inter-parliamentary relations in the United Kingdom as part of our inquiry into the future of the relationships between the four parts of the United Kingdom. Could I ask each of our witnesses to introduce themselves for the record, please?

John Swinney: I am John Swinney, Member of the Scottish Parliament for Perthshire North and the Deputy First Minister for Scotland and the Cabinet Secretary for Finance, Constitution and the Economy.

Leslie Evans: I am Leslie Evans. I am the Permanent Secretary to the Scottish Government.

Chair: Thank you very much. We have quite a few questions to get through. We do not want to keep you longer than necessary and, Deputy First Minister, we are extremely grateful for your time because we know it is very busy in the run-up to the Scottish elections. Nevertheless, we feel that the work we are doing is of great importance. So, could we have short questions and short answers? If anybody is going on for too long, say I looking at my colleagues as much as you, I will have to pull you up.

Q335 Ronnie Cowan: Mr Swinney, you have been a Minister for nine years and during that time you must have dealt with a Labour Government, a Lib Dem coalition and now a Conservative Government. What is the difference in the inter-governmental relationship?

John Swinney: Structurally I would say there is a bit more regularity in the inter-governmental relationships at formal levels. When we first came to office in 2007, a lot of the formal inter-governmental machinery appeared to have fallen by the wayside. Up until that time the Scottish Government had been led by the Labour Party, the Welsh Assembly Government was led by the Labour Party, the UK Government was led by the Labour Party, and the Northern Ireland relationships I think tended to be a bit more bilateral given the nature of the issues that were being wrestled with there. What emerged during the course of the Labour Government, as we required there to be greater interaction on different issues, was the resumption of some of the formality of institutional interaction that had been envisaged when devolution was established in 1999. That has remained consistent under the coalition Government and under the Conservative Government since May of last year.

The nature of the inter-governmental relationships is at two levels. There is the formal institutional level of activity, which I would have to say is quite formulaic and quite predictable, and then there is the ongoing interaction of inter-governmental business and sorting out issues that have to be sorted out. In some issues it is helpful and pragmatic and in other issues it is not helpful and not pragmatic.

Q336 Ronnie Cowan: In evidence to this Government, the First Minister of Wales claimed that there are occasions when letters to 10 Downing Street have remained unanswered or there is delay in getting an answer from 10 Downing Street. Do you experience that?

John Swinney: Not always. Sometimes letters get replied to very quickly when there is a particular point that is wanted to be made. I would not say that we have issues that are outstanding. They might be unresolved, they might involve a lot of interaction and correspondence, but generally I would not say that correspondence goes unheeded.

Q337 Ronnie Cowan: Were you happy with the way the negotiations for the fiscal framework were conducted?

John Swinney: I was a willing participant in this agreement and it was not in any way forced upon me. We agreed that we would conduct those discussions on an inter-governmental basis and the line we used was that we would not give a running commentary on the details of those discussions. Looking back at it retrospectively, I think that was quite difficult because that meant that very little information, if any, was being shared with the respective Parliaments and that made it very difficult for Members of Parliament, whether in the Scottish Parliament or the United Kingdom Parliament, to feel closely involved or aware of the issues that were being explored. That was a particular lesson I would draw from that process, that there is a need to be mindful, even in these negotiations, about the importance of transparency on the issues that you are considering.

Q338 Ronnie Cowan: One of the outcomes of these negotiations was that the block adjustment has been kicked down the road for a further six years. Are you happy with that? Is that just pushing it away as an issue we still have to face?

John Swinney: What has been agreed and what was my objective throughout the discussions was to ensure that we achieved an agreement that was consistent with what the Smith commission had recommended and set out. My objective was to secure that. For the overwhelming majority of the negotiation period, indeed up until the very last day, I was not convinced we were going to be able to do that. Ultimately what was agreed was, in my view, a practical and pragmatic way of implementing the Smith commission agreements. It was envisaged there would be a review at some stage under the Smith commission recommendations and that has been put in place for 2022 when these issues will be explored again. The crucial thing for me was that I wanted to secure agreement of the principle, and that was secured, and there is an acceptance that there is a review at a later stage in the proceedings.

Q339 Ronnie Cowan: In one of your earlier answers you said you did not want to give a running commentary during the negotiation process but you also said that you think there is a need for a greater transparency.

John Swinney: One of the lessons that I would say I learnt in the process is that it was unsatisfactory that respective Parliaments were not more fully aware of the issues being discussed. Our Finance Committee in the Scottish Parliament had carried out quite a lot of examination of the issues around the fiscal framework. We then had a debate in Parliament, if my memory serves me correctly, in October 2015 on a Finance Committee report, which is a frequent occurrence in Parliament where we consider committee reports. We had a discussion on that report and I used that opportunity to try to inform Parliament more comprehensively of the issues that were involved. I did not say, “The Treasury is saying this and I am saying that”. It was just to try to give a shape of the discussion that was under way to help Members of Parliament. But I do reflect on that and I have said to parliamentary committees that I do not think that was a satisfactory way of operating, that we were not able to be as transparent as Parliament would have a reasonable right to expect.

Q340 Chair: Can I chip in with a question? From your point of view as someone who believes ultimately in Scottish independence, the Smith commission is a pro tem arrangement. Would that be a fair summary?

John Swinney: I would say so, yes.

Q341 Chair: If the Smith commission proposal was to be a pro tem arrangement for a considerable period, maybe 10 or 15 years, even if we have implemented the Smith commission proposal as intended, how sustainable is that arrangement?

John Swinney: The response to that is driven by a whole range of different factors. From my perspective, the fiscal framework that has been agreed and the Smith commission powers that have been agreed reflect agreement among political parties in Scotland that

has now been translated into legislative form by the United Kingdom Government. Assuming that legislative consent takes its course, it will then be implemented by the United Kingdom Government, and I have no reason to suspect that won't be the case. Therefore, that is the statutory position: it has to be sustainable and it has to be taken forward.

Whether it is sustainable politically is a different question. I think that is a question driven by what the mood is here in Scotland. Do people in Scotland look at the Smith commission and say, "That is fine, that is adequate for us" or do they say, "No, it is not, we want to go further"? There is also the politics of the remainder of the United Kingdom as to what is happening in the debate there and what are the implications of what happens in that debate for the issues that would affect the degree to which devolved power has been agreed for Scotland. The United Kingdom could look at further constitutional change from its perspective that could have ramifications for what point we reached with the Smith commission. In a sense, it is a combination of looking at what can be generated by the political mood within Scotland and the political mood within the rest of or the whole of the United Kingdom as a consequence.

Q342 Chair: You are going out to talk to your voters in the forthcoming election. How many of your voters do you think will understand how the responsibility for how much income tax Scottish voters will pay is somehow shared between Westminster and Holyrood?

John Swinney: I don't think awareness of that will be high, but I do think awareness will be higher than it was because millions of taxpayers in Scotland have had a letter from HMRC saying, "You are now a Scottish taxpayer". People have been directly contacted in a fashion that has never happened before to say they are now in a different taxpaying arrangement. If we were to go out into Canongate and stop some people in the street to ask them that, I don't suspect we would get very far, but I think that point has now been communicated. I have set the Scottish rate of income tax, albeit not under the Smith powers, under the powers of the Scotland Act 2012, for the first time. I recommended that in December and Parliament approved it in February. There is more debate and coverage and concentration on these issues than there has been at any stage over the last 17 years of devolution.

Q343 Chair: When will Scottish taxpayers start paying a different amount of tax compared to their comparable counterparts in the rest of the United Kingdom?

John Swinney: That will be a matter for future occasions to be wrestled with.

Chair: That is not what you have decided?

John Swinney: No. I have maintained the Scottish rate of income tax at 10p.

Q344 Chair: I think you will agree that these very complicated arrangements are not very accessible and therefore it is going to be hard for voters to feel that they are accountable.

John Swinney: Yes, they are complicated and it would be unrealistic to expect Members of the Parliament to understand some of the issues that habitually preoccupy my thinking

and concentration. We have had a political debate over the course of this budget process to decide the use of the Scottish rate of income tax and in that budget process the Labour Party and the Liberal Democrats have recommended that we should have increased the Scottish rate of income tax from 10p to 11p. That is a perfectly legitimate proposition to put forward and that has been very vigorously debated within the Scottish Parliament. If Parliament had agreed to do that, then I think people would have become very aware very quickly that they were paying a different level of tax.

One of the other devolved taxes that came to us during the Scotland Act 2012 was for stamp duty land tax and we now have a very different shape of the tax. We started off with a very different shape of the tax compared to the rest of the United Kingdom. The Chancellor has reformed stamp duty land tax south of the border, but we do have different rates and that is a subject of active correspondence that I receive from interested parties in Scotland from a good perspective and a not so good perspective about the differential in rates of taxation.

Q345 Chair: But why have you avoided making a decision that would cause Scottish taxpayers to pay different levels of tax on their incomes from the rest of the United Kingdom?

John Swinney: For the critical reason that the Scotland Act 2012 requires us, when we exercise the Scottish rate of income tax, to apply the same rate of income tax to every band, so we could not differentiate. That would require me to increase the basic rate of income tax if I wanted to do that and politically I am not prepared to do that. I think that would increase the tax burden on low income households and politically I am not prepared to do that.

Q346 Chair: But if, for example, you were to begin to restrain the growth of Scottish public spending and you were then to start running a surplus, you might consider giving that back to your taxpayers?

John Swinney: There is obviously a whole range of different choices. One point I would add to my answer to your last question, Mr Chairman, is that when we receive the powers under the Scotland Bill 2016 we will have the ability to apply different changes to different tax bands. That is a more flexible power than the Scottish rate of income tax that has the lock step involved in it whereby you are required to change all tax rates if you are changing one of them.

Q347 Chair: To come back to the central question, because of the complexity and the opacity of these arrangements, you seem to be accepting that these arrangements are not really sustainable in the long term.

John Swinney: We will find out whether they are sustainable in the long term. The arrangements we have put in place—

Q348 Chair: The very fact that you have to find out means that you don't know.

John Swinney: Yes, exactly. I can't give you a guarantee they are sustainable, no.

Q349 Mrs Cheryl Gillan: Can I probe a bit more about the mechanisms for the inter-governmental relationships from both your perspectives? As Ms Evans has been so quiet there and sitting patiently, maybe she would like to start. Mr Swinney said that the JMC was formulaic and predictable and the House of Lords Constitution Committee cast aspersions on it, saying that its plenary was ineffective and that the domestic subcommittee served no useful purpose. Ms Evans, how do you view these formal inter-governmental relation groupings?

Leslie Evans: As Mr Swinney said, they are an important part, and symbolically important as well as practically important, of bringing the Governments together, but they are only one part of a whole range of inter-governmental relationships that underpins them. It is important that we see them as part of a whole range of formal and informal bilaterals. For example, we are having contact on a regular basis with the Department for Work and Pensions and there is a joint committee with Ministers to look at the work on pensions and the benefits that will be inherited by the Scottish Government as a result of the 2016 Scotland Bill, soon to be Act. In themselves, they are important mechanisms. They represent the coming together of the formal elements of the two polities.

Q350 Mrs Cheryl Gillan: Do you see the JMC as almost a ceremonial?

Leslie Evans: No, it is more than that. I can point to an example where at the last plenary there was discussion around counterterrorism and a particular piece of work was then commissioned because that works slightly differently north and south of the border. There have been very specific pieces of work commissioned by the JMC. However, I think what is required is a lot more than that one important part of the mechanism. We have thousands of interventions every week with the UK Government and the Scottish Government and that is what makes a lot of the work and the inter-governmental relationship operate effectively.

Mrs Cheryl Gillan: It is really the informal networks that are the—

Leslie Evans: I think it is a combination of those things. However, if we were looking to improve the JMC—and there is work under way to have a look at how it works in the future and the memorandum of understanding—it would be about ensuring good, high-quality and open communication. It would be about parity of esteem and it would also be about ensuring that we have an effective dispute avoidance and resolution procedure.

Q351 Mrs Cheryl Gillan: Would you like to redesign the whole process?

Leslie Evans: That would be a big ask and a big question. I think it needs a fundamental look. The relationship between Governments and the relationship between the civil service

north and south of the border has to take account of the fact that devolution is not a blueprint. It is a journey, so we have to keep investing and nourishing the structures and the relationships that support that.

Q352 Mrs Cheryl Gillan: Have you produced any papers on this or done any work on this?

Leslie Evans: There is some work being undertaken by the Joint Ministerial Committee secretariat that is still in train at the moment.

Q353 Mrs Cheryl Gillan: Have you, in the Scottish Parliament, done any work on this?

Leslie Evans: We are involved in that process. We are part of that.

Q354 Mrs Cheryl Gillan: Do you have anything that you can share with this Committee at some stage before we finish or we reach the conclusion of this part?

Leslie Evans: I would need to check on that and the level of readiness on it.

Q355 Mrs Cheryl Gillan: Sorry, I interrupted you, Mr Swinney. You wanted to say something on this as well.

John Swinney: What I was going to say, Mrs Gillan, is to try to illustrate my perspective on the Joint Ministerial Committee with the use of a couple of examples. They are examples that took place during the five years of the coalition Government. I can remember at one JMC, or more than one JMC, the three devolved Administrations essentially saying to the UK Government, “We disagree with the stance you are taking on fiscal policy, so we want you to relax the fiscal disciplines”. The UK Ministers would go through that and say, “We have heard you but we are the UK Government. We have macroeconomic competence. This is our policy; this is what we are doing”. That is what I think is the formulaic part of it. On another occasion the three devolved Administrations got together again and raised specific concerns about consequential funding for the Olympics, which I suspect you may have been familiar with.

Mrs Cheryl Gillan: I am afraid we both have to declare an interest in that.

John Swinney: Yes. The discussion went a particular way that eventually gave way to a resolution of that issue that had been going on for years. It is an issue that the Conservative-Liberal coalition had inherited from the Labour Government and my Labour predecessors were badgering them about this before 2007. That is an example of how an issue raised in the JMC in a particular fashion on a particular day led to an acceptance, saying, “All right, we have to sort that” and it was sorted satisfactorily. Those two

examples summarise my view of the JMC. On some of these more strategic questions it is a bit formulaic; on some of the practicalities you can maybe make a bit of headway.

Q356 Mrs Cheryl Gillan: That is when the JMC is acting as a dispute resolution, effectively as a small court, and it also depends on the weight of evidence that came from the territorial secretaries of state as well. In a strange sort of way, you are describing a vehicle that is sometimes a one-way street with the UK dominance. If the constituent parts of the UK dominance of the JMC operate in favour of the devolved Administrations, that is when the results go in favour of the devolved Administrations.

John Swinney: Not necessarily. On that Olympics issue, the UK Government could have just said, “We are not moving on it” because UK Governments for a number of years had said they were not moving on it up until then but eventually decided to do so. I don’t think it is necessarily about dispute resolution because the issue was then taken away and resolved elsewhere. It is more about a platform to consider these issues and try to make progress on them.

Q357 Mrs Cheryl Gillan: I don’t have the experience of the Joint Exchequer Committee, but that was established after the Scotland Act in 2012. How do you find that in comparison? How do the JMC and the Exchequer Committee compare?

John Swinney: The experience in the Joint Exchequer Committee is slightly different in the sense that the Joint Exchequer Committee aims to operate by agreement, so there is a presumption that we are obliged to get to some form of agreement. In a lot of cases that can be the case. If I think about the block grant adjustments that I have reached with two Chief Secretaries for the smaller taxes in Scotland for 2015-26 and 2016-17, we got to points of agreement about that with which I am perfectly satisfied. The assumption of the Joint Exchequer Committee is to work on the basis of agreement. Obviously in the fiscal commission negotiations, which took place over 10 meetings of the Joint Exchequer Committee over the last nine months or so, we were operating to a requirement of the Smith commission that the fiscal framework had to be agreed. It was not “it would be nice to”; it had to be agreed between both Governments. That obviously put a particular discipline on getting to an acceptable conclusion for both parties.

Q358 Mrs Cheryl Gillan: Ms Evans, any comment on that?

Leslie Evans: I think is comparable. As I mentioned earlier on, we have some good bilateral mechanisms that work as the Exchequer Committee does. The DWP, in terms of the benefits, is working well. I think it has met four times. It has a very particular focus and it was set up for a very particular purpose and a very particular timespan as well in terms of the new powers. Those bilateral communications work quite well. There are other ad hoc communications between Ministers of the territories that work well too—on sport, on health, indeed on finance—where Ministers come together on a trilateral or quadrilateral basis and they work well together. They are more informal, they are ad hoc and on the basis of particular topics and issues that need to be resolved.

Q359 Mrs Cheryl Gillan: The First Minister of Wales said that the inter-governmental relations machinery had declined over the past two years. Do you agree with that or do you see it differently?

John Swinney: The past two years? That period would encapsulate some of the period of the referendum campaign on Scottish independence. We were all involved in a big debate and that would undoubtedly have hung over the issues. After that, I don't think I would agree with that analysis, to be honest. I would have to check the regularity of discussions. They may have slowed up. It would not surprise me if that was the case and it would not surprise me if that was a product of the fact that the Prime Minister has been concentrating on other external issues on the European question that will have dominated his time. Clearly, it is beneficial to have the Prime Minister at these forums; it is very helpful to have him there. There may have been some slippage in timings of meetings, but I don't think I can point to a deterioration in the quality of interaction with the Governments in that way.

Q360 Mrs Cheryl Gillan: That would apply across the board to every forum in which you exchange?

John Swinney: There are essentially three forums that formally do this: the Joint Ministerial Committee, the European Joint Ministerial Committee and the Joint Exchequer Committee. We have had 10 Joint Exchequer Committees, so there has been a lot of interaction there. On the European agenda, I am aware that my colleagues have been involved in discussions with relevant Foreign and Commonwealth Office Ministers about the European negotiations that have been underway and on other international issues around the migrant issues and replied to a lot of questions. I would have to look at whether there has been any decline in the number of meetings of the Joint Ministerial Committee, but we have also had a Prime Minister-First Minister meeting that took place in about December and telephone calls as well.

Leslie Evans: There was due to be a meeting in November and I think the Prime Minister found diary problems that were entirely understandable. Since then, of course, we now have a lot of other things on the agenda, not least the May election and then the referendum, so it is not surprising that it has been difficult to find a date that can suit everybody during that time.

Q361 Mrs Cheryl Gillan: But generally the bottom line, from what you are both saying, is that it is going quite well and you are looking at how you can improve it in the future and adapt it and change it so that it is even better?

John Swinney: My sense is that a lot of good joint working goes on. There will be issues where we disagree about things and trying to make progress on issues where we disagree can take time and it can be quite difficult, and on some things we can. If I go back to my macroeconomic example, we just took a different view to the view taken by the United Kingdom Government, and UK Ministers are perfectly within their rights to take that

view. They have macroeconomic reserved responsibility. If I give you another example within that, we have encouraged particular policy interventions to be taken forward and considered by UK Ministers and I think on different occasions that has been done.

Q362 Mr David Jones: Mr Swinney, I am sorry to keep putting the pronouncements of the Welsh First Minister to you, but another thing that he said to us in evidence was that inter-governmental relations should be put on a statutory footing, that the JMC structure should be revived and that there should be quarterly meetings for finance and domestic Ministers. To what extent would you agree with that?

John Swinney: I am not sure I can see what a Joint Ministerial Committee domestic would do that a Joint Ministerial plenary can't do, so I don't take the same view on that point. I think quarterly meetings would be desirable, beneficial, but I am also conscious of the pressures there are on people's time. I know what my diary management issues can be like and other Ministers will have the same and greater congestion of diary pressures. Regular would be something I could sign up to quite happily. On the question of statute, I think it would be beneficial if there was statutory recognition of joint ministerial structures from the simple point of view of ensuring that that was part of the architecture of the constitutional arrangements. In one of my answers to Mr Cowan I made the point that I had the impression that by the time we came to office some of the joint ministerial structures had fallen into abeyance because people were of the same politics and there was no need to have these formal sessions. It could all get done in other fashions. To avoid that happening, I think it would be beneficial to have a bit of statutory underpinning.

Q363 Mr David Jones: Has that ever been discussed between your Administration and the Westminster Government?

John Swinney: It may have been touched on at some stage but I would need to check that to give a definitive answer. I will check that point and write to the Committee.

Mr David Jones: It would be useful to know what discussions have taken place.

Q364 Chair: Can I interject on that point? There are two kinds of statutory underpinning. One is that you could create a statutory body that perhaps has to meet a certain number of times a year and has a remit, or you actually give it powers and functions so that things cannot be done unless there is a meeting of the statutory body and it agrees to certain things to be done. What kind of statutory footing are you thinking about?

John Swinney: It is not something that I am actively proposing. I am simply giving the Committee my opinion on this issue. You offered two very distinct options, Mr Chairman, on what that statutory underpinning could be. I think it would be difficult to object to the first statutory underpinning that you referred to: that it should be part of the architecture of the constitutional arrangements; it should meet regularly; it should have a remit to do this, that and the next thing. When you get into the question of issues cannot be resolved unless they are resolved in a particular fashion, within that is a deeper form of statutory

underpinning and that has constitutional implications for Parliaments and has to be thought through very carefully.

Q365 Chair: You already have a Joint Exchequer meeting. There have been suggestions that there should be what Lord Strathclyde described as a council of the union, whether it is called a council of the union or some other title that does not offend non-unionists. This whole question of the distribution of central government proceeds for spending by the constituent parts of the United Kingdom is not something that can be decided in legislation. At the moment, it is basically being decided substantially informally. How satisfactory is that or is that something you want to see more statutory underpinning for?

John Swinney: The financial arrangements are driven by well publicised financial models, principally the Barnett formula that is applied to changes in public expenditure in England.

Q366 Chair: But it is not a statutory formula.

John Swinney: It is not but it is a well entrenched formula that has been part of the currency for about 40 years and well understood and with high awareness about its implications. That is a pretty clear and transparent exercise of financial distribution policy within the United Kingdom and the fiscal framework is set within that context because that was what was required by the commitments given prior to the referendum in Scotland on what the financial arrangements had to be post-referendum.

Q367 Chair: Would you be against any statutory underpinning of that conversation?

John Swinney: I think we are talking about two quite different things here. We are talking about the point that Mr Jones made to me about the statutory underpinning of a structure of interaction and then statutory underpinning of a whole host of other things that might follow from that but that is a matter of debate.

Chair: We will leave that.

Q368 Mr David Jones: I was wondering whether in fact a danger of a statutory underpinning of the arrangements could lead to a rigidity that would militate positively against good governance. Ms Evans mentioned a moment ago that the reason that certain Ministers had been unable to attend meetings was because there are other things going on, but aren't other things always going on? This year you have the Scottish elections and we have the EU referendum.

John Swinney: That is why I was saying that I think it would be more sensible if the word was "regularly" as opposed to "quarterly". I think four meetings a year for a Joint Ministerial Committee involving the Prime Minister of the United Kingdom, with the Prime Minister exposed to criticism every time he can't be there, every time a meeting is cancelled, is unfair given the issues that he is wrestling with. Having some degree of anchoring of this process might be helpful, but I do accept the point you advance. If that is

at the expense of having the flexibility to resolve issues outwith formal machinery then I think that would be undesirable.

Q369 Mr David Jones: This is the third issue on which you are not wholly in agreement with the First Minister of the Welsh Government. What further reforms would your party like to see to the current inter-governmental machinery arrangements?

John Swinney: The essential interest that we have is that we have the ability to satisfactorily address issues of concern to us. If I go back to my Olympics example, that went on for many years and was eventually resolved but I have to say it was resolved satisfactorily because we came to the agreement about it. I suppose an issue that troubles me is not being able to get to points of agreement about issues that matter to us. Some elements of acknowledgement within the machinery that that has to be an objective is an important characteristic of the reform that is involved. Secondly, I would want to see us able to have greater access to the formulation of positions of agreement. For example, some of the discussions that we have experienced about the formulation of a position on the work that has gone on in relation to the European Union renegotiations is an issue that matters to everybody within the United Kingdom. It would be helpful to be closer to some of the discussions that go on in that respect.

Q370 Mr David Jones: To what extent are you being kept in the loop at the moment?

John Swinney: There is dialogue between UK Ministers and Scottish Ministers on different stages in the run-up to key landmarks in the process. Certainly there would have been interaction between Scottish and UK Ministers in the run-up to the summit in February. I don't have a complaint about that process but it would be helpful to acknowledge that. The third point is to ensure that we are in a position to advance the issues about which we are concerned as effectively as possible within that machinery. A recognition of that would be an important element.

Q371 Mr David Jones: The memorandum of understanding that governs relations is currently under review. Have you seen a draft of the revised memorandum yet?

John Swinney: Yes, I have seen a draft of the revised memorandum and we have been involved in drafting changes about that. I believe that there are efforts underway to try to arrange a further telephone conversation on that between myself and Oliver Letwin.

Q372 Mr David Jones: What further changes would you like to see made to that memo?

John Swinney: We are in quite an advanced position with our discussions on the memorandum of understanding. We went through a process some weeks if not months ago

where we made a number of suggestions, and we discussed them by telephone, that were able to be resolved. I think we are at a point where most of the issues are addressed.

Q373 Mr David Jones: What issues are they?

John Swinney: I think at this stage there are no significant issues remaining outstanding, but I would have to be absolutely certain that we don't have any other issues that we are putting to the UK Government that are required to be resolved.

Q374 Mr David Jones: When the memo is finally concluded, what significant changes do you think will have been made to it?

John Swinney: Some of the characteristics of that more regular interaction will be acknowledged. The desire to intervene earlier to try to resolve issues will be recognised and to try to establish the mechanisms. Well, more than the mechanisms, the presumption in favour of resolving these issues in that fashion will be within the memorandum of understanding. We would be in a position to see a much smoother process for resolving issues that have to be resolved on an inter-governmental basis.

Q375 Mr David Jones: It is essentially a process that you think has not worked sufficiently well so far and you are hopeful that the changes that are going to be made will result in improvements to that process?

John Swinney: That would be my view of it, yes.

Q376 Mr Andrew Turner: Good morning. A number of the powers in the Scotland Bill may require UK departments to work more closely together with the Scottish Government, for instance in the field of welfare. What discussions have there been about how this will work?

John Swinney: There have been quite a number of discussions on some key areas and the principal areas of that discussion will be around tax and welfare. We have quite a lot of experience on tax in that we have gone through the process of formulating an approach that has resulted in taxes being switched off by the UK Government and switched on by the Scottish Government on stamp duty land tax and landfill tax. We have gone through that process already and implemented those on 1 April 2015. We are in the very advanced stages of active preparations with HMRC on the income tax power. The Scottish rate of income tax will commence on 1 April and processes are underway in that respect, and there will be further discussions in relation to the Scotland Bill 2016 powers. On welfare, we have been involved in a number of discussions with DWP Ministers and DWP civil servants and a lot more discussion will be required in that area of activity to deal with the operational devolution of responsibilities.

Leslie Evans: Could I add something else that you might find useful to know? There has been a lot of contact, as Mr Swinney says, between civil servants in the Scottish Government and DWP and with HMRC. Later this week we have all of the senior

management team of DWP coming to Edinburgh, the Permanent Secretary and all of his director generals. They are staying with us for one night so that we have a full day on Friday and a session in the evening on Thursday. My senior team and his will be getting around the table to understand what the details are but also where our political stances are and the areas of interest that the Scottish Government are setting out to make changes in the future and to ensure that we get the maximum out of their skill and experience, because they are highly skilled and experienced in these areas. We have had exchanges, we have had people on short-term secondments and so on. It has been really close working and I am delighted to welcome Robert Devereux and his team here later on this week. I would like to see that model used more often in the future.

Q377 Mr Andrew Turner: Would you describe that as similar to the Joint Exchequer Committee?

Leslie Evans: It is civil servant to civil servant, so Ministers are not involved in it, but it is supportive of the joint working group that has been set up for DWP powers to be transferred. I think it shows a positive development in the way in which civil servants in the Scottish Government and civil servants in the UK Government can work effectively and productively and efficiently to make sure that we are understanding where each side is operating from, skills and capacity needs. I think it stems from the fact that civil servants across the piece want to make sure that this handover works really effectively, that nobody falls into any holes that might appear and that there is a professional commitment on behalf of the civil service to make sure that there is a smooth transition and a very effective and efficient service delivered in Scotland.

Q378 Mr Andrew Turner: Would you like to predict some future arrangements in different areas other than welfare or Exchequer?

Leslie Evans: I think welfare is a particularly important element because of the nature of the powers and also the vulnerable people for whom those benefits and welfare services are provided. There are other areas. For example Mark Sedwill, who is the Permanent Secretary of the Home Office, is coming up on Thursday. He and I are jointly welcoming a group of civil servants to look at how devolution works in Scotland. HMRC are keen. There is a lot of corporate work that goes on as well between myself as a senior civil servant and others. A colleague of mine, a permanent secretary, was on a recruitment panel for senior civil service last week. I was on the panel that awards prizes for the UK civil service last year. I mentor people in the civil service down in London. We have exchanges and shadowing weeks. So apart from loans and secondments, of which there are a lot, there is a lot of corporate warp and weft, as I would call it, relationships between the senior and the engine house of the civil service on specific areas but on corporate initiatives too.

Q379 Kelvin Hopkins: Questions to both of you here. Richard Parry, an academic based at Edinburgh University, has previously described what he calls a powerful disjuncture between the political allegiance of civil servants to the Scottish Government and their

managerial allegiance to the Cabinet Office. Have there been any instances where this disjuncture has caused problems for the Scottish Government?

John Swinney: Not that I am aware of. This gets to the nub of the nature of the model in which we are operating. Civil servants operating to support the Scottish Government in its work are expected to support Scottish Ministers selected by Parliament to exercise their functions and they do so. I am not aware of any conflicts that have emerged between their responsibilities in that respect and their responsibilities as civil servants in the traditional UK civil service.

Leslie Evans: I don't recognise that. My line manager is Sir Jeremy Heywood. He was on the panel that appointed me and I have a line management relationship with him, see him, and discuss my objectives, end of year review and the business of the day. But I serve the Scottish Government and I am the chief policy adviser to the First Minister and to her Cabinet. I don't recognise that description, I have to say.

Q380 Kelvin Hopkins: I won't go back over old ground, but at the time of the referendum there was some controversy about the seeming politicisation of civil servants writing a White Paper for the Scottish Government, but we did deal with that some time ago.

John Swinney: My perspective on that, just for the record, is that the Scottish Government were perfectly entitled to put forward their policy position. Civil servants simply performed the functions for Scottish Ministers that were required of them in the same way as civil servants working to the United Kingdom Government do for the policy position of the United Kingdom Government.

Leslie Evans: Could I make one point on that too? I think it is important that we differentiate within the White Paper and other policy statements between, in that case, the nature of the powers that would come through independence and then examples of how those powers might be deployed. That is the case in many policy documents that are produced and it is not unusual to make those assessments and assertions prior to an election taking place; budget documents do that all the time. I think it is important that we differentiate between those two elements of the White Paper, but I appreciate that there has probably been a lot of other discussion around all of that and you may not want to open that up again.

Q381 Kelvin Hopkins: To Mr Swinney now: presumably you wish to see the political and managerial allegiances aligned. How committed are the SNP and Scottish Government to the policy of a separate Scottish civil service?

John Swinney: That is our policy position. We would prefer that to be the case, but the United Kingdom Government do not take a similar view so we have been unable to secure that agreement. The arrangements that we utilise just now we utilise in the fashion that I have expressed already to Mr Hopkins.

Q382 Kelvin Hopkins: Interestingly, this commitment was included in the SNP 2007 manifesto but not in the 2011 manifesto. What you have just said suggests that it will be in your manifesto for this year's election.

John Swinney: If you will forgive me, I won't share the contents of the party's 2016 election manifesto in such august company, but we will see what comes out in that document.

Kelvin Hopkins: You would expect us to raise that point anyway.

Q383 Chair: Moving on—I will resist the temptation—we took evidence in a very similar way from your counterpart in the Welsh Government, Sir Derek Jones, and he suggested that there was good collaboration at an official level between Whitehall and the Welsh Government. How far would you say this is the case in respect to the Scottish Government?

Leslie Evans: Broadly I would agree. It is a collaborative working relationship. I think the knowledge, understanding and grasp of what devolution means and how it is developing and evolving is uneven. Sometimes it is uneven within departments, not just between departments. That is one of the reasons why I have been very keen to support Philip Rycroft's work and his post has helped on that. I think the establishment of the second permanent secretary post has been a very welcome development. The Devolution and You programme, which I am sure you have heard about, which is a new programme to try to raise the general awareness of what devolution—

Chair: Sorry, the devolution—

Leslie Evans: Devolution and You.

Chair: The Devolution and You programme. Yes, we have heard of that.

Leslie Evans: It started about three weeks ago with a series of shadowing and secondments down to Whitehall from the Scottish Government and Wales is involved in it as well. We have been part of a video that will be splendidly available for civil servants to enjoy.

Q384 Chair: The Devolution and You programme is aimed at whom?

Leslie Evans: It is aimed at UK civil servants.

Q385 Chair: A lot of UK civil servants think, "Devolution: what has that got to do with me?" because they are not devolved.

Leslie Evans: Indeed, although a huge amount of the work that does go on, whether it is devolved or reserved, does have an impact on the devolved Administrations, as you know.

Q386 Chair: We heard a rather painful story over dinner last night of an official in Whitehall who used to have a post-it note above his or her desk before devolution that said, “Remember to consult the territorials”, i.e. Scotland, Wales and Northern Ireland offices. The post-it note came down after 1997 because he or she thought that that was no longer necessary after devolution because the matters that would have been consulted on with, say, the Scottish Office were now delegated to the Scottish Executive and the Scottish Parliament. How common do you think that misunderstanding has been?

Leslie Evans: To use a civil service word, that is disappointing to hear. I don’t think I have seen overt examples of that. I can remember not that many years ago asking a colleague in a policy office in Whitehall if I could find out what was happening with their policy that had a really big implication for Scotland and I was asked to turn on the “Today” programme the next day. I don’t think that is likely to happen now. As I said, I welcome Philip’s approach and his support for a greater understanding. There are two things. One is that we need to be quite clear about what the level of awareness is as a de minimis across all UK civil servants: what does everybody need to know about and understand about? That is not just new powers and new legislation changing; it is the nature of the polity. We need to think about what that looks like and how deliverable it is. The second thing to say is that as more delegated authority takes place into the English regions, the skills and understanding and behaviours that help make devolution work better will be just as important for that too. Some of those skills and understandings are transferrable and they are taking place in departments that do not have a reserved-devolved split.

Q387 Chair: It was the Constitution Unit at UCL, which one might describe as a British university, who claimed that too many officials and departments tend to treat the devolved governments as an afterthought or like any other Whitehall department. Sir Derek Jones told us that this still happens all too frequently. How fair are these assessments?

Leslie Evans: There can be occasions when I think we are forgotten about. There can be occasions when the response is somewhat sluggish. However, I have just cited DWP coming up later on this week and devoting a considerable amount of very senior time to invest in the transfer of powers and services from the UK to the Scottish Government. I think that is a great signal. There have also been other great examples: the Edinburgh Agreement and the work that went on in the fiscal framework, which I think the Secretary of State for Scotland praised in the House of Commons as showing both parts of the civil service working well together. If you are asking me is there a consistent understanding and a very front-footed approach to devolution in every part of every department in Whitehall, I would have to say no, but we are working on it.

Q388 Chair: You take a day out every week to travel up to London for the weekly meeting of colleagues and the Cabinet Office.

Leslie Evans: Yes.

Chair: Why is that a good use of your time?

Leslie Evans: Two reasons. One is coming into this post new it was really important for me to get to know my colleagues around that table. It was very important for me to be there and be in that space regularly, and I prioritise those meetings and, indeed, my meetings with them on a one to one basis. I have now met 17 of the Permanent Secretaries face to face and invited them all up to Scotland. That was one reason. It was important for me to get to know and understand how business worked down there.

The second thing is I am representing the Scottish Government and the Scottish Government's interests and the devolved Administration when I am around that table. Yes, I am a corporate player and I mentioned earlier on some of the corporate roles and responsibilities as a senior leader in the civil service that I undertake. But I am also there because it is important that I can help people understand what is going on in Scotland, why it is going on in Scotland, and where our common areas of complementary interests are, and where I would call the more ragged edge of devolved and reserved powers bump up against each other and how we can prevent those bumping up.

Q389 Chair: When you go down to London, you arrive in time for the colleagues' meeting and then after the colleagues' meeting how do you spend the rest of your day?

Leslie Evans: I make sure that I have other meetings taking place. Up until recently and, in fact, still usually I make sure I meet a Permanent Secretary colleague after that meeting. I am also still getting to know other parts of the infrastructure. I have been meeting with people from Ofcom, the BBC, and so on and so forth, so I have a busy day. I am not down there every single Wednesday because the meeting is not held every single Wednesday. I assume that I will be down there, so it has to work for me because it is a big investment of my time.

Q390 Chair: What other contact do you have with your fellow Permanent Secretaries?

Leslie Evans: We have written contact, as you might expect, mainly on corporate but not that alone, telephone call contact, and they also often come up here because many of them have large numbers of staff up here. The rule of thumb is if they come up here we try to get a cup of coffee together and we try to see each other informally.

Q391 Chair: How much other contact is there between your officials and their counterparts in Whitehall?

Leslie Evans: Enormous, thousands of interactions a week.

Q392 Chair: How aware are you, Deputy First Minister, of the degree of contact?

John Swinney: Very.

Chair: Is it something you also encourage?

John Swinney: Very much so, yes. The fiscal framework discussions that we have had have involved a colossal amount of official interaction, colossal, and I am aware of all of that. On other issues, issues around, for example, the formulation of policy by DECC on renewable energy, an issue that matters a great deal to us, our officials will be in very regular dialogue with DECC officials about that and that will be a pretty widespread issue.

I think one of the areas where we need to make some more progress is on areas where, for example, there is a wholly reserved issue but which will have implications in Scotland, where we just need to raise some awareness about the perspective within Scotland. We do work quite hard to be able to secure that. Where there is an utterly legitimate exercise of reserved policy but where we may have a perspective where we think some particular factors in Scotland need to be taken into account, that can sometimes be quite difficult. I think that goes to your point, Mr Chairman, about how aware everybody in the UK civil service is about the devolved perspective.

Q393 Chair: Are there instances where reserved matters have become impaired in some way by devolution and, therefore, it is Whitehall seeking the support of the Scottish Government? I am thinking particularly of things like emergency planning.

Leslie Evans: I cannot think of any examples—the Deputy First Minister may be able to—where impairment has taken place. I can think of examples where we have been asked to provide information about how we are going about a different policy. We have taken a different route and a different approach to the way that we develop policy in Scotland, as you know, and there is quite a lot of interest and intrigue in some parts of the other Administrations, Wales, Northern Ireland and the UK Government.

One example I would give, which goes back to the point that Mr Swinney makes, is that the UK armed forces is a really good example where there was a UK initiative to try to ensure that the serving forces, but those also that were coming out and going back into civilian life, were given the best access to public and third sector services so that that transition back into civilian life and the way in which families were housed and supported within communities was the very best it could be because we have evidence to show that that was not always happening. A great initiative; Scottish Government Ministers absolutely signed up for it. Unfortunately, the way that it was drafted did not take account of the fact that nearly all of the services that are accessed by serving members of the armed forces and those who are leaving it are devolved. Schools, health, skills, housing are all devolved, so we had to do quite a lot of retreading on all of that to make that applicable, relevant and to fit the different infrastructure and services in Scotland.

Chair: A very good example, very helpful.

Leslie Evans: The danger of that is that the public and, indeed, the armed services themselves were being confused by the kinds of text and product that was being put out, which was intended to help them. That is what we have to be very careful about.

Q394 Chair: How much does the same apply in relation to emergency planning and resilience from terrorist attack? For example, a great many of the functions of resilience are

held by local authorities or by the Scottish Government, but they necessarily have to be co-ordinated to a UK plan.

Leslie Evans: Yes, and Mr Swinney may want to speak about that.

John Swinney: In that respect, I think we work very hard and very co-operatively on these questions. There was a recent exercise in Scotland of one of the significant terrorist incident planning sessions and Scottish Ministers were heavily involved in observing that. Our teams were involved in planning it but with a huge amount of interaction from UK officials. It was, from our perspective as Ministers, a very interesting and challenging experience to see. It is something that we hope we do not have to deal with, but it was very helpful to be involved in that.

Over the last nine years that I have been a Minister we have had countless resilience issues. If I think about industrial action at the Grangemouth petrochemicals plant, which is a huge part of our economy, critical to fuel supply, we had very good interaction with the UK Government about how to handle that and to work our way through that. I think emergency planning is probably one of the areas where relationships are at their strongest, to be honest.

Chair: Very good, thank you.

Q395 Kelvin Hopkins: A question to Leslie Evans, and I have touched on this in my previous questions to an extent. Your predecessor as Permanent Secretary received some criticism during his tenure on the role of the Scottish Government officials during the referendum, who did attract some censure from this Committee, most notably for their role in producing the Scottish Government's White Paper, as I said before. I have heard you explaining your relations now, but what impact did the referendum have on relations between officials in Edinburgh and Whitehall? Were there tensions?

Leslie Evans: The first thing to say is that the referendum, of course, was rooted in an excellent piece of work that I mentioned earlier on, which is the Edinburgh Agreement. That was a great example of the two Governments and the officials working for each of those Governments setting a firm foundation.

I think there was some anxiety, and that is understandable. I think there was some concern from the Scottish Government to the civil servants working in the Scottish Government that the UK civil servants did not catch up with what the referendum was about and what it meant until quite late on. Understandable; they have plenty on their plates doing other things.

The other thing to mention, though, was that one of the most important aspects of the referendum, and it was a prerequisite set down by the Ministers, was that normal business should go on. We continued to reform public services. We continued to prepare for, for example, the Commonwealth Games taking place in Glasgow. Those were all bits of normal government machinery that required us to still have contact with our colleagues down south, particularly something like the Commonwealth Games, which was very closely connected with the civil service and with UK-wide vehicles and institutions. Yes, I think there was an issue about whether or not they were engaged enough down south. I

think people up here were very clear about what their responsibilities and their alignments were based on the civil service code and the conversations that we had about their responsibilities during that time. I do not think it has had a lasting impact that I can understand or see.

Q396 Kelvin Hopkins: Was there a sense in which both sides felt they had to mend some fences after the referendum and that has improved things since then?

Leslie Evans: I did not detect that particularly but, for example, since that time there have been other things happening, not least the Scotland Bill, the introduction of Philip's role. There has been some very good work done to try to support and grow the understanding and relationships between the two Government Administrations, so I do not feel that it has had any lasting damage.

The point I would continue to stress, though, is I think the UK civil service can and does continue to support devolution, but as devolution continues its journey we have to continually refresh and nourish what it is to be a civil servant in the 21st century. That is not just about further devolution across the Administrations of Wales, Scotland and, indeed, of course, Northern Ireland to have a separate civil service, it is about how you work as further devolution takes place within England as well, as I mentioned earlier on. We really do have to invest as leadership but also across the piece in what it means to be a 21st century civil servant because we are a profession, despite the fact that we are working to three different Governments.

Q397 Mr Andrew Turner: Many years ago now, I suppose pre-devolution, there was an interchange between officials working in the territorial offices and the departments and this helped "glue together" the civil service. What is the impact now on the interchange between officials?

Leslie Evans: We have a very healthy interchange of two natures. One is what I would call interchange as in informal shadowing connections and so on, people going down for a few days, people coming back up, mentoring. On a formal loan and secondment basis, we have about 80 civil servants from the Scottish Government who are on loan or secondment to other departments, predominantly the Scotland Office and also the Office of the Advocate General, a healthy number.

Q398 Mr Andrew Turner: A healthy number as a percentage of what?

Leslie Evans: Well, a healthy number as in if you look over way back before devolution, which I think is what you were talking about, the numbers there I think dipped quite a bit around the 1980s and then came back up again in the 1990s. We would like to continue to develop that programme. I think people get a lot out of working in other departments. We have some people from the UK Government who come and work for the Scottish Government. We have about 10 at the moment on loan or secondment. We also have, of course, people who apply for jobs and who come from the UK civil service. We have had

two recently join us, one from DECC and one from the UK Food Standards Agency, so there is a flow.

Q399 Mr Andrew Turner: How important do you think it is that the Scottish Government have the training with the UK service?

Leslie Evans: It is important while we remain part of the UK civil service, and I think it is important for two reasons. One is we get a huge amount out of the corporate programmes that are developed. I myself was part of the high-potential development scheme. Several of our senior civil servants and director generals were also part of that scheme. We have a senior leader scheme, which we nominate people for. These are competitive processes. There is a very high-quality level of investment in leadership and in talent, which is important for us because we get benefits from that, but it also allows us to act as a benchmark so that we know how well our own civil servants are doing.

The second thing, which will not get written about but is vital, is civil servants create networks as a result of that kind of interaction. Somebody e-mailed me over the weekend who was part of my high-potential development scheme, which was five or six years ago, and said, "Let's all go out for lunch and see what is happening". Not that we will find a date, I am sure, nevertheless the networks that come out of that allow people to understand more about Scotland, more about the UK departments from which people come and where the points of connection are. It is a really important, under-the-radar element of how we work together.

Q400 Mr Andrew Turner: How difficult do you feel it would be for the Scottish, UK, Welsh and Northern Irish Governments to exchange learning about the effectiveness of policymaking without those conversations becoming political?

Leslie Evans: It is not an issue. We are civil servants that serve the Governments of the day, but it just does not come up. It is a craft. Policymaking is a craft.

Q401 Mr David Jones: Are you issuing guidance to Scottish Government officials about their conduct during the EU referendum?

Leslie Evans: Yes, we have already shared the guidance that was circulated by the UK Government to our own teams, with a caveat, of course, that it had an element in it that does not apply to our civil servants in Scotland because Scottish Government Ministers are united in their support for remaining within the EU.

Q402 Mr David Jones: You are presumably aware of the evidence session that this Committee had with Sir Jeremy Heywood. Have you read the transcript of that?

Leslie Evans: No, I have not read it word by word.

Q403 Mr David Jones: You are aware of the criticisms, however, that have been made about that guidance?

Leslie Evans: There seemed to be some confusion about how it was being applied in the UK Government, yes.

Q404 Mr David Jones: To what extent would you say that confusion would trickle down to your officials in the Scottish Government?

Leslie Evans: It does not apply in that respect to the Government in Scotland because Scotland does not have Ministers who are seeking to go against the Government policy. The guidance that was circulated for information to our teams was clear about the fact that the element that described what was talked about as “no” Ministers informally was not applicable to the Scottish Government civil service because the Scottish Government are supporting the retention—

Mr David Jones: There is no read-across to Scottish officials?

Leslie Evans: Not in that respect, no.

Q405 Mr David Jones: Would you say that the Scottish referendum has any lessons that could be applied in connection with the conduct of the EU referendum?

Chair: That may be one more for the Deputy First Minister, or is it for the Permanent Secretary?

Mr David Jones: No, I would like to hear from both, really, but certainly from Ms Evans in the first instance.

Leslie Evans: Okay. I think the first thing it taught us was the absolute imperative and importance of the civil service code and the values that are enshrined within there and the clarity of that. That was our foundation point; it was our touchstone.

The second thing was I think it was very clear to differentiate between a referendum and an election and to do that very early on. A referendum was about a government policy but was not an election. Therefore, Ministers were entitled to support from the civil service.

The other point was to be very clear about what “impartial” meant. Impartial is one of the values, of course, but it does not mean neutral. We are civil servants who support the Government policies of the day, the elected Government.

I suppose the other two things that I would say were we spent a lot of time allowing people to talk and understand what this guidance meant for them at a local level with their local managers. That was very important that people felt they could ask questions, express views about what this meant for them, and we spent a lot of time doing that. We also had a particularly good relationship with the propriety and ethics team at the Cabinet Office, who were very helpful. We maintained very strong and open communications with them

the whole time, which goes back to my point about business as normal as much as anything else during that time.

Mr David Jones: Do you want to add to that, Mr Swinney?

John Swinney: I do not think I have an awful lot to add to it, Mr Jones. We were very clear during the Scottish referendum that the civil service code had to be maintained in the work of civil servants. I think there was a very sustained, focused, judicious effort by Sir Peter Housden in leading us through that process or leading the civil service through that process to maintain that point. I think that is the key issue that I would reflect on. Obviously, I am not in the situation that the UK Government find themselves in with the difficulties that arise out of Ministers not being of the same view around the Cabinet table, and I do not underestimate the challenge that that poses to the exercise of ministerial and civil service responsibilities.

Q406 Mr David Jones: The Scottish Government have a corporate position in the context of the EU referendum, as I understand it?

John Swinney: Corporate and individual as well. There are not colleagues of mine who are saying, “I would like to be able to take a different position to the position being taken by the Government”. Nobody is aspiring to take that position.

Mr David Jones: I am sure the Prime Minister is very envious.

John Swinney: I am sure he is.

Q407 Mr Andrew Turner: Could I ask, Ms Evans, why you use the word “no” in identifying certain Cabinet Ministers who have a view? You used the word “no”.

Leslie Evans: I was using a colloquialism, which is perhaps unfortunate, but I was referring to those Ministers in the UK Government, as was described earlier on, who have decided not to sign up to the Cabinet agreement on the EU, just in case there was any confusion about that.

Q408 Chair: Can I just clarify something about the word “impartiality”, which is something we are very interested in? Impartiality could be reduced to meaning that a civil servant is capable of serving any master, but the public think that impartiality has a higher, rather more noble meaning. It is elsewhere in the code under the word “objectivity”. Sometimes we do not expect politicians to be particularly objective, but we do expect civil servants to be objective. Impartiality does not mean that civil servants are required to be neutral on a question, but it does require them to act in a manner that is different from the way a politician would act in relation to a political question. How do you think that is expressed or how do you think that is understood in what you just said to us, Ms Evans, about impartiality not being neutrality?

Leslie Evans: I do not feel that the civil servants in Scotland—and I cannot speak on behalf of all of them—have any doubt about what the code means for them. They are quite clear about what the four qualities and values are that the code is based on. There was a discussion and lots of conversations around what that code meant in the context of the referendum, and there were examples that people were seeking to use and deploy to be absolutely clear about all of this. I think the civil servants are absolutely clear that they serve the elected Government of the day and their role is to support the policies. There have previously been controversial policies. I would not put the smoking ban on the same level as the constitutional change we have been talking about, but you understand the point of illustrating it.

Chair: I understand absolutely.

Leslie Evans: Same-sex marriage, incredibly controversial. Some of the policies that are being put through at the moment about land reform, as Mr Swinney will say, are very controversial, people really engaged and clear about opposing views on this. The civil servants still continue to put those policies into implementation; that is part of their role.

Q409 Chair: But we still do not expect civil servants to be involved in promulgating campaign slogans, for example?

Leslie Evans: No, and I have never heard a Scottish Government civil servant do that.

Q410 Chair: I remember working for Michael Forsyth and he was not allowed to put the words “roof tax” into a Scottish Office press release, but we see civil servants talking about it being better for the United Kingdom to be in the European Union because it is, “stronger in”, but that is a slogan.

Leslie Evans: I have never heard—in fact, it was something we talked about very clearly during the referendum. It was made very clear that no civil servant should be using any kind of campaign language or slogans or strap lines.

Q411 Chair: They should not be saying, “Leap in the dark”?

Leslie Evans: I think it depends whether you call that a strap line or not. Civil servants are fairly careful about how they express themselves generally, I find. Not all of them—

Chair: Or in official publications?

Leslie Evans: In every sense. I think there was some debate about the use of sloganising and the use of campaign language as part of the referendum. I remember that myself, but I have never heard that. I was incredibly impressed by the behaviour of the civil service in Scotland. The only time I ever heard civil servants of the Scottish Government talking about their own personal views was when I went round every single office in St Andrew’s House at six o’clock in the morning to meet with those people who were still working

overnight on the day of the result. Only then were people saying, “My family thought this, I thought that”. Only at that point; that is the only time I ever heard it.

Q412 Chair: In the 1975 referendum, civil servants below a certain level had the right to take part in private political activity with regard to the referendum. Is that the case this time?

Leslie Evans: No, private political activity is not seen as being appropriate during the lead-up to a referendum.

Chair: Well, it was in 1975, if you wanted to—

Leslie Evans: There is very clear guidance about that. I was not around in 1975.

Q413 Kelvin Hopkins: I was taught at university in the 1960s by a former civil servant, former Treasury official, who said one of the strengths of the British civil service was that within the Department there would be people with different views. For example, when devaluation took place, there would be those who were strong, firm money people and those who thought we had to be reflective of the currency, and so on, and that was one of the great strengths of maintaining impartiality, people of different views working within the Department. Is that in evidence today or has the civil service in a sense been politicised, going for a new model of how society should be run?

Leslie Evans: No, I do not recognise that model. Our job is to present a robust evidence base to Ministers. That inevitably means that one could have opposing, different, contrasting options or arguments. That is part of the craft of being a civil servant, as you have described yourself.

Q414 Kelvin Hopkins: The British civil service, particularly in London, on the matter of the EU, there might well be different views?

Leslie Evans: Indeed.

Q415 Mrs Cheryl Gillan: You will not be unaware that the UK Government tried to alter the rules under PPERA on purdah. I just wondered if you would care to share with the Committee what you are going to do on purdah with this referendum, whether you are going to make any adjustments to the guidelines that you issue to the civil service or whether you are going to rely on existing guidelines.

Leslie Evans: We will draw on existing guidelines.

Mrs Cheryl Gillan: Could we have a copy of those?

Leslie Evans: Sure.

Mrs Cheryl Gillan: Thank you.

Q416 Chair: Are you aware that the UK Government are issuing new guidelines or planning to issue new guidelines?

Leslie Evans: Indeed.

Q417 Chair: Have you been consulted on those?

Leslie Evans: Not yet, no. Well, I am saying that; it may be that some of my team have been, so I cannot say for certain. We would expect to have a conversation around that.

Chair: Thank you. Any other questions?

Q418 Mrs Cheryl Gillan: Can I just say if you do consult with the UK Government you have currently no plans at all to alter your guidelines? You are quite clear about your purdah provisions?

Leslie Evans: We are quite clear about our guidance prior to a referendum, yes. What we tend to do is we would send that out. We are going to send it out probably a little bit later because we have an election to get through first and we are trying not to overburden staff with sets of guidance.

John Swinney: Allow me to put in a caveat, and I am treading into territory that is not really my area of expertise. The UK Government may under their reserved responsibility for PPERA and their reserved responsibility for the civil service create a code, which may well oblige us to operate on that basis.

Chair: That is my understanding as well.

John Swinney: If you follow my sequence.

Chair: I do.

John Swinney: We have very limited discretion, although I think we are going to get some discretion over PPERA under the Scotland Bill 2016, civil service codes and so on we do not have. I think just to be clear in answering your question, Mrs Gillan, that if there was to be a change in UK guidance, I am not sure we could do anything other than follow that.

Leslie Evans: That is not the nature of it.

Mrs Cheryl Gillan: No. That is why I was trying to establish a sort of baseline, that you have no plans to change your standing instructions. You have existing guidelines that will give us an opportunity, if you do have an instruction from the UK Government under the PPERA, to see where the differences are.

Q419 Chair: Can you see any reason why the UK Government's guidelines would be any different from what you issued in 2014?

Leslie Evans: No, although clearly when we issued guidance in 2014, we were serving a Government that had one view.

Q420 Chair: But the purdah restrictions should be the same?

Leslie Evans: Very comparable.

Q421 Chair: When it comes out, we will compare the two documents with great interest and maybe invite a response from you, but thank you very much for being with us today. It has been very interesting. As you know, we wish to continue these conversations, whatever happens in whatever referendum, because obviously these arrangements between the four Parliaments and the four Governments in these islands are very important. I am tempted to ask you, Deputy First Minister, following Nicola Sturgeon's speech, what the word "independence" really means, but I think that might be a question for another session.

John Swinney: How long do you have?

Chair: I realise it would be a long answer, but thank you very much indeed. All the very best wishes. Thank you.

Examination of Witnesses

Witnesses: **Professor Nicola McEwen**, Edinburgh University, and **Professor Stephen Tierney**, Edinburgh University, gave evidence.

Q422 Chair: Welcome to our second panel of witnesses. We are very grateful that you have been able to hear at least part of the previous session. Could you each identify yourselves for the record, please?

Professor McEwen: Professor Nicola McEwen, Professor of Territorial Politics at the University of Edinburgh.

Chair: We are on your home patch.

Professor McEwen: You are indeed.

Chair: It is a great pleasure to be here on this lovely spring morning.

Professor Tierney: Stephen Tierney, Professor of Constitutional Theory. I should also say I serve as legal adviser to the House of Lords Constitution Committee, but anything I say today is in a purely personal capacity and does not represent the views of the committee.

Chair: That is understood. Thank you very much.

Professor McEwen: In that vein, I should probably also say that I have been serving as adviser on inter-governmental issues to the Devolution (Further Powers) Committee and that committee's work has just completed.

Chair: In the Holyrood Parliament, yes.

Q423 Ronnie Cowan: Good morning. How successfully has the inter-governmental relations machinery worked post-devolution?

Professor McEwen: I suppose it depends on what you mean by machinery. You have just heard in the previous session that there is an awful lot of work that takes place outside of the formal machinery, like the Joint Ministerial Committee. We know of course in the period of a predominant party holding Government that the JMC in its plenary and subject-focused forums met very rarely. It has been resurrected to some extent, but there is still a prevailing preference, it seems, for informality in inter-governmental relations. The JMC still do not meet all that regularly if you compare inter-governmental relations in the UK to other federal states, for example.

Professor Tierney: I would say that inter-governmental relations are characterised by two things: bilateralism mainly, so Edinburgh to London, London to Cardiff and so on, and secondly, as Nicola says, informality. I think that has worked fairly well, due to fortunate circumstances. The devolution model is an asymmetrical one, so different powers have been given to the different regions, therefore bilateralism has made a certain sense. We have an unwritten constitution, so informality is well practised in the British Constitution.

Two other factors I think have made things work reasonably well. One is that there have not been many overlapping powers, the devolved powers tend to be in discrete areas, "Here are your powers, get on with it" and have not tended to involve financial issues, tax and welfare, so the circumstances have been conducive to success up until now. Although Nicola is absolutely right about some of the details, I think in general the system has worked adequately.

Q424 Ronnie Cowan: Do you foresee any problems now with the argument to encompass financial regulations?

Professor Tierney: If I continue, what the Scotland Bill is bringing is considerably more concurrent powers, not simply in the areas of tax and welfare but principally in those areas, but we are seeing a lot more in the way of concurrent powers on electoral registration and energy company obligations. We also see new duties of consultation between the two Governments. There needs to be consent on a whole range of issues, including electoral registration and roads; there are provisions about information sharing that have not been nailed down and there are provisions on the sharing of proceeds from, for example, onshore petroleum. There are a whole range of areas within the Scotland Bill. This is set out in the Lords Constitution Committee report on the Scotland Bill, which I think shows just how integrated the mechanics will need to be to deal with the whole

range of new shared concurrent powers and obligations to share information, which will rely to a great extent upon goodwill.

Professor McEwen: I agree, absolutely. I think we are moving into a new phase of devolution now. The asymmetry that has characterised devolution across the different parts of the UK is deepening, so I think what Stephen was pointing to—which I agree with—is that there is a need to continue to look at the MOU and the JMC and how it will operate but to also look at formalising some of the bilateral arrangements that have emerged in recent years. The fiscal framework touched upon that in relation to the Joint Exchequer Committee, but it does not go into much detail. I think that is something that Parliament might want to have more transparency on, how those arrangements and interdependencies will be managed going forward and how they will be scrutinised as well.

Q425 Ronnie Cowan: Are there particular areas of good practice you have identified that you think could be rolled out across other government departments?

Professor McEwen: It is difficult to see. There are areas of good practice, but whether they are institutional or cultural or to do with personalities or the issues involved it is harder to see, so I am not sure you can find an example of good practice and then use that as a model to roll out. But we heard in the previous session about some examples of that in high-profile issues like the EU agreement or less politically salient areas around sport or health. The one area I was thinking of was—again, this is bilateral—the joint working between the Scottish Government and the UK Government on electricity market reform and particularly the islands’ interests there within a joint steering group. That is an example where they were trying to find a way to have a separate arrangement for the islands and they had to work together towards getting state aid exemptions. It has been stalled for now, but I think where there are areas where they agree broadly with the objective, then it is easier to see an arrangement working, but there will be areas of political difference and that is inevitable.

Professor Tierney: I would make two points about good practice. One is that at a structural level it seems that at the subcommittee level of the JMC framework things work better. The reasons for that are not always agreed upon, but it seems to some extent that civil servants become more familiar with one another, greater expertise builds up, things are taking place out of the spotlight. Unlike the plenary JMC where there is scope for some political grandstanding, those things do not happen at the subcommittee level. I think in structural terms, lower level, more detailed work works better than higher level.

Secondly, we do need to bear in mind—and Nicola was touching on it—that although there are now new controversial areas coming forward where there will be intense political rivalry, much of inter-governmental relations works in non-contentious areas and can continue to work very well. A recent example would be the Scottish move, under the powers under the Scotland Act 2012, to reduce the drink-driving limit in Scotland. That took place with a lot of co-operation with UK civil servants on the expertise at UK level on research on driver behaviour and that fed into the decision that the Scottish Parliament went on to make. That is an example, and that information now is working the other way and the UK civil service can now look at how the Scottish new regulations are working and that might feed into proposals to change at UK level. I would say that we do need to

bear in mind that a lot of these issues are non-contentious and it is about getting the structures right.

Q426 Ronnie Cowan: Do we actively look beyond the UK though for best practice across the globe?

Professor Tierney: We may have different views on this. I am very sceptical of this, given particularly the nature of our Constitution, which has worked so much on the basis of convention and established practice, and given the intense asymmetry of our system and also the fact there was no devolution at all in England. England is not visible in Parliament, so we have this very unusual structure. I am not saying we cannot, as academics, spend a lot of time looking at comparative examples, but my sense is that this is something that has to be worked up from a vernacular level and we do need to work out the machinery through our own civil service structures. Nicola might contradict that.

Professor McEwen: No, I do not disagree with that. I think we have to find solutions that are appropriate for the UK and there is nowhere that I can think of that has the level of asymmetry that the UK has, so the issues have to be internal. If you look at any other country, the processes and practices that are established have developed over a long period of time to suit the circumstances of that particular country. One thing that is striking is that in other multilevel states where there is a more even distribution of devolution or federalism throughout the country, you have a lot more forums for inter-governmental co-operation than we do in the UK. Often it is subject area level or policy sectoral level.

Some colleagues and I did a study of parliamentary scrutiny in different countries to see if there was anything that we could learn in that respect. Although it is true to say that inter-governmental relations everywhere are dominated by Executives, we did not find a case where there was less parliamentary scrutiny of inter-governmental issues formally than there is the UK. So there are processes that you can look at to try to learn from but I absolutely agree, we have to find the solutions internally within the UK.

Q427 Mr Andrew Turner: Professor Tierney, you mentioned the House of Lords, and I am going to ask you a question, because they assessed the Joint Ministerial Council's plenary as ineffective and its domestic subcommittee as, "Not appearing to serve a useful purpose". How could the JMC be made more effective or perhaps you do not believe they were right?

Professor Tierney: No, I certainly wouldn't contradict the views of the committee.

Q428 Chair: You are allowed to. That is what you are here to do.

Professor Tierney: No, I know. There was a lot of evidence taken by the committee that did work in different directions and a lot of the complaints came from the devolved territories with regard to the plenary JMC, that issues were coming on to the agenda very late, they were not getting full cognisance of what was likely to be discussed, that the JMC often operated much more as a relating of UK governmental policy rather than a full

discussion of how things ought to operate. The subcommittees were seen as, to some extent, a reflection of that although, as I say, the internal workings of those subcommittees seem to operate on a better, maybe less partisan level, but the same structural problems are there. Solutions would be, for example, to have the devolved territories have a greater say in setting the agenda for meetings so that the operation of both plenary and subcommittee is a much more iterative discussion of process rather than an information-giving one.

Also a significant complaint is the lack of transparency, which I think Nicola has already touched upon. But lack of transparency has two side effects: one is that it does not lead to good decision-making within the JMC because they do not have to be concerned about what the public find out about but, secondly and of direct relevance to this Committee, is that it does not facilitate legislative parliamentary scrutiny. I think that a more productive role for the devolved territories is a clearer agenda, perhaps a more systematic timetabling of meetings—because as we know the whole system went into abeyance between 2002 and 2008—but also far more information coming out of the discussions at the end or as it goes along so that proper scrutiny can be conducted. I think those are the key issues that I took from the evidence before the committee.

Professor McEwen: Yes, I agree that there needs to be more regularity of meetings, and to illustrate perhaps an add-on associated with this is that the last Joint Ministerial Plenary Committee mandated the Joint Secretariat to review the memorandum of understanding and the operation of the JMC. My understanding is that there is a proposal waiting to be considered, but they cannot find the time in the diary for that committee to meet. If you have a timetable when you are going to meet, then it would seem to me to save an awful lot of time and bureaucracy in trying to find a suitable period for very busy people to agree that they can be available. I know there was some frustrations expressed particularly from the devolved Governments about the lack of time to have substantive discussions with JMC meetings.

I think also it has to be meaningful. If you are going to ask very busy people to make time for these forums, ideally they would be given a task. At the moment, the JMC is not a decision-making body; that is not its purpose. Maybe that should be part of it, or at least to timetable the meetings so that there is something substantive on the horizon that they could meet. The one format of the JMC that has worked relatively well is the JMC Europe, because it is usually timetabled to discuss upcoming meetings of the European Council, so there is something to discuss and something meaningful to get agreement or at least consultation on. You could imagine a scenario where you have JMC meetings in advance of the budget or in advance of spending reviews, or something substantial that would be on the agenda where everyone would have an interest and they would be able to look into that in advance of the meeting.

Q429 Mr Andrew Turner: The First Minister of Wales suggested that inter-governmental relations should be placed on a statutory footing. Presumably you would agree with that?

Professor McEwen: I will leave it Professor Tierney to answer that question.

Professor Tierney: I think there are two separate issues here. One is statutory recognition of de facto inter-governmental relations, which I think is certainly feasible. That would be

something that would formalise and symbolise the existence of inter-governmental relations. Putting it on a statutory footing would indicate an important part of the permanence of devolved arrangements, so at a symbolic level I think it would be significant.

Secondly, it would allow Parliament to set out principles for inter-governmental relations and I think that would tie into a broader rethinking that is now going on in Parliament about the union itself; what the union is for; where we are after the Scotland Bill; where we are after Smith; what principles can be agreed across the union about how we go forward and how to try to use inter-governmental relations to obtain and build a coherent union. Some statutory recognition I think would allow that to be fostered. It would also set out the framework, the skeleton framework, for the institutional structure, so plenaries, subcommittees, possibly even some rough idea of timetable.

The other issue, though, is detailed prescription, and I think that is where we would fall into a trap. There would be a significant danger, if that statutory recognition were to go much further than recognition and to prescribe how the system ought to work in its nuts and bolts. I think Nicola has given good examples of how things should be allowed fluidity to respond to current issues as they arise. I do not think the names of subcommittees is important. I think subcommittees will emerge and disappear according to need and statutory regulation might forbid that.

The final danger is that as soon as you introduce statute, you introduce the risk of judicial review. One of the things that Scottish UK relations has been blessed by hitherto is the absence of judicial involvement in regulating the system, which allows politics to be conducted through the courts. So those are the dangers and, as a good academic, I have given you a balanced view without coming to any firm conclusion.

Q430 Mr Andrew Turner: But having given us what you call a balanced view, how is it that we have succeeded in not getting to the courts so far?

Professor Tierney: The Scotland Act of 1998 polices devolution very well. It makes it virtually impossible for the Scottish Parliament to enact legislation that is outwith its powers because there are so many checks, at the moment a Bill is introduced, as the Bill proceeds. The presiding officer has to sign off on any Bill coming in that it is within the competence and then the law officers can step in before a Bill is enacted to challenge, if needs be, but it does not tend to get that far. Maybe we will come on to shared expertise across the union, but one of the reasons is the Government and parliamentary lawyers at a devolved level are very able people who advise very well on the limits of competence. One of the mercies of the system is that we have not fallen into the trap of, say, Canada, where federal issues are played out before the courts all the time.

Q431 Chair: On the question of putting the inter-governmental relations on a statutory footing, supposing the JMC or the Joint Exchequer Committee were together on a statutory footing, would that be just that they exist and talk about what they talk about, or would it be that they have actual functions and powers?

Professor Tierney: That would be up to Parliament, clearly, in deciding to bring forward—

Chair: Yes, but if you envisage some statutory footing, what do you envisage?

Professor Tierney: I would not recommend it myself.

Chair: So even creating these empty vessels?

Professor Tierney: I think the system can operate on the basis of an inter-governmental agreement by the concordat that we already have.

Q432 Chair: At the moment we have very confused arrangements for determining the distribution of expenditure from the United Kingdom Government to the four component parts of the United Kingdom. We have the remnant of the Barnett formula, which is regarded as increasingly anachronistic, and you even heard the Deputy First Minister questioning the legitimacy and the sustainability of these arrangements. Supposing there was some new body rather like—I am jumping into somebody else's question, or in danger of—the Canadian Commission for dealing with the haves and the have nots throughout their federal system. Isn't that a suitable area for statutory inter-governmental relations?

Professor Tierney: If I may, I think there is a danger of perhaps conflating two different things. I think the Scotland Bill and the Wales Bill are the places properly to set out the demarcation.

Q433 Chair: Yes, but they do not decide expenditure.

Professor Tierney: They do not decide expenditure, but I think a lot of the issues about the demarcation of powers could have been clearer in the current Scotland Bill—

Q434 Chair: But you need to respond to expenditure demands on a year by year basis. It is not something you lay down in a constitutional Act. You need a framework for deciding it and we do not have a framework for deciding it. We have an informal framework.

Professor McEwen: I think you are alluding to the Canadian example, the system of equalisation, and there are many examples around federal countries where you have some sort of mechanism for distributing revenues between the haves and have nots and some sort of underlying commitment of solidarity. There probably is a case for that in the UK, but it is a completely separate issue to the issue of whether you put inter-governmental relations in the statute. It is a big issue; it is a big debate to be had. I do not think there will be any change in that in the foreseeable future, given where Government have just got to in relation to the fiscal framework agreement, but it is a separate big debate around the future of the union.

With respect to your issue about whether or not inter-governmental relations processes and machinery should be put on a statutory framework, I am not a lawyer and I am broadly

ambivalent to it. I think it would be a mistake to see that as the solution to the perceived problems, but if having something in the statute that gave symbolic effect could have implications for culture and practice, then that could be a beneficial thing. But it would not much depend on the wording of the clauses. The equivalent, I guess, would be the Sewel convention and the introduction of statutory underpinning of the Sewel convention within the Scotland Bill, but I am not sure what legal effect that will have.

Q435 Mr David Jones: Just one point, please, Professor Tierney. You made the point in one of the answers you just gave that the JMC process had fallen into abeyance between 2002 and 2008. What was the reason for that?

Professor Tierney: My understanding is it was largely party congruence, which has been a double-edged sword. In one way, Labour dominance of the early years of devolution has arguably allowed things to work fairly smoothly, but it also led to things working extremely informally, and it became so informal and so much agreement was involved that I think it was decided that there was no real need for the formal mechanisms of meetings. I think Nicola tracked that at the time, but that was my understanding.

Q436 Mr David Jones: That was the point I wanted to explore with you: no real need to have the process implemented. Isn't that the view that Mr Swinney expressed, that if you have too rigid a process set out in statute, you start going through a process that may not be necessary?

Professor Tierney: I think there is that risk. I was not here, I should say, to hear most of Mr Swinney's evidence, but I heard Scottish Government evidence to the Constitution Committee saying very similar things. The other big risk is that if the machinery does not suit politicians they will bypass it and then you get yourself back into the informal trap where the formal machinery is not being used and people are going back to behind closed doors.

Q437 Mr David Jones: The Welsh First Minister, by contrast, seems to think Cabinet should be a very formal process with a fair degree of rigidity, presumably because he thinks it would be a good discipline. What are your views about that?

Professor Tierney: There may be political reasons for this. I think one is the Welsh devolved Government sometimes can feel marginalised by the process. If there is a sense now that the Scottish Parliament is getting even more powers, that Whitehall thinks about inter-governmental relations and they are thinking about Edinburgh, Scotland, I think there is a real sense in Wales of marginalisation. I think there have also been some tensions with particular departments in relations between the Welsh Government and some Whitehall departments. I would not want to go further than that. It may be that more formality might be a way of allowing Wales to punch a bit above its weight.

Q438 Mr David Jones: So the Scottish Government has a bit more clout in these processes than Wales?

Professor Tierney: That may well be the interpretation. Having secured powers under the Scotland Bill, autonomy is preferable.

Q439 Chair: Going back to the recently concluded negotiations on the fiscal framework, how good or bad does that show the inter-governmental machinery to be?

Professor McEwen: I think it shows that the two Governments can work together when they have to.

Q440 Chair: Okay. On a scale of one to 10, where 10 is good?

Professor McEwen: I think you would have to have two scales. I think it was illustrative of an example where there is a pressing matter, there is a timetable, they have to make an agreement and they came to an agreement. One view of that agreement might be that it is a fudge that postpones some difficult issues for further down the line. That would be my initial reading of the fiscal framework agreement, I thought, “Right, what about the rest?” because there are an awful lot of issues there still to be agreed in the process of managing both the transition and operation of the new system.

The other scale I was thinking of was in terms of parliamentary scrutiny. It was very difficult for either Parliament to get an insight as to how the negotiations were unfolding.

Q441 Chair: So on two scales of one to 10?

Professor McEwen: You are putting an academic into a very uncomfortable position. Five on one, three on the other maybe.

Q442 Chair: Three on the scrutiny side. All right, very interesting. What score would you put on it?

Professor Tierney: I would say in terms of realpolitik, about getting a deal done, probably up at about seven; in terms of parliamentary, I would say about a zero.

Q443 Chair: Yes, all right. Professor McEwen, in your evidence to the Scottish Parliament’s Welfare Reform Committee, you referred to the “jagged edges between devolved and reserved competence in the social sphere” and you said they will increase as a result of the Scotland Bill and suggested that managing these interdependencies “will require ongoing inter-governmental co-operation”. How are we going to do there, do you think?

Professor McEwen: It remains to be seen. There is a joint ministerial group on welfare, but it seems to me to be focused primarily on the transition and it is not yet clear whether its remit will broaden out to include managing interdependence operationally. It may be that that is one area where a revised joint ministerial committee might have a role. If there is a multilateral need, of course social security is devolved in Northern Ireland too, so there is a case to be made to suggest that the JMC might have a welfare focus brought within it. The fiscal framework agreement talked about broadening the remit of the Joint Exchequer Committee, but it did not talk about that in relation to welfare issues, but it talked a little bit about no detriment and how no detriment would be interpreted and applied in its direct effect and behavioural effect and some areas of dispute that might emerge around that. It is not at all clear from the fiscal framework agreement as it stands how that would work in practice. Welfare is one of the areas where you are likely to see those direct and behavioural effects emerging as a result of the new jagged edges between reserved and devolved competency in social security.

Q444 Chair: We might more favourably refer to it as joint competence, or do you think—

Professor McEwen: In some areas, so in the areas where the Scottish Government has Executive competence or it has partial legislative competence over housing-related elements in universal credit, for example, or the delivery of universal credit, but that is designated as now concurrent, where there has to be negotiation, there has to be consultation and agreement inter-governmentally before changes can be introduced and implemented. The welfare powers within the Scotland Bill changed during the course of the legislative process and they are now broader than they were at the beginning, but it is in those areas where policy is wholly devolved, so personal independence payments, disability payments, carer's allowance, where those benefits act as a passport to benefits that are reserved or other services that are reserved. Then if you broaden the scope of entitlement at the devolved level, I would see that as one of the direct effects that the fiscal framework is talking about. If you broaden the scope of entitlement to those who are securing a devolved service and that expands their entitlement to areas that are reserved, then that is a financial consequence that would be affected by detriment.

Q445 Chair: You mentioned there is going to be, I think you said, a social policy committee. What is it called, a joint—

Professor McEwen: It is a joint inter-ministerial group on welfare effects.

Chair: A working ministerial group?

Professor McEwen: Sorry, yes. It brings together the Ministers that are most concerned with this in the Scottish Government and Ministers within the DWP and there is a secretariat that serves that group as well. But it has been meeting, I think, since last year in anticipation of the new powers.

Q446 Chair: But it does not yet have the status of the JMC or the—

Professor McEwen: No. It is a bilateral forum.

Q447 Chair: But should it?

Professor McEwen: I think it is modelled more on the Joint Exchequer Committee. One thing to note about the Joint Exchequer Committee is that after it was set up to manage the transition of powers from the Scotland Act 2012, they did not meet for probably about two years, after they got as far as they could go in the interim process. They could not agree on a block grant adjustment at the time and so they just did not meet. They have been meeting very intensely the last year, year and a half, to come to the point that we are at. The issue is whether it continues to meet regularly and what the status of that committee will be going forward as well.

Q448 Chair: That brings me to my last question: how do you think the Joint Exchequer Committee could be made more effective?

Professor McEwen: I think if it has a clearer remit beyond the transitional period for managing the interdependencies in tax policy, which are just as great as those in welfare, so you have the devolution of powers over the rates and bands of income tax within Scotland, but the broad income tax policy framework remains reserved. There are many areas that we can envisage where reserved and devolved competency will have more of those jagged edges around tax policy, so if the Joint Exchequer Committee became a forum where those matters could be discussed in a private forum so that it reduces the possibilities of—as some people have expressed a concern about—gaming within the system, of Governments at different levels making policy decisions that will have a detrimental effect and maybe come as a surprise to the Governments operating at different levels. Devolution is about to get a lot more complicated and I think we do need forums to manage that and to try to adapt to those complications going forward or it risks the sustainability of the process.

Q449 Mr David Jones: I would like to ask a few questions about the civil service. We had a recent evidence session with Lord Michael Forsyth in which he said that he took the view, to his regret, that the civil service in the United Kingdom was moving towards territorial, differentiated civil services. Would you agree with that analysis?

Professor Tierney: It is a complicated one, because there is disagreement about the role of the civil services, as I heard at the end of the last session. I do not necessarily think that is the case. I think an integrated civil service is still a core part of the function of Government in the United Kingdom, but there are strains on the system and there are ways of relieving some of those strains. One of the things that has been looked at is about how civil servants are trained and the maintenance of a common ethic and a common approach to good Government.

Secondly, the opportunity for an exchange of personnel among the different territories and Whitehall. A practical problem there is the cost of living in London and that should not be underestimated. It might sound like a trite example, but it is a serious practical impediment to the migration of civil servants around the country. But those are issues.

I think one of area of misunderstanding or disagreement is about the proper role of the civil servant in the devolved territory and I caught the end of that discussion about the extent to which objectivity and neutrality are understood. If that becomes too intense a political situation, it might put big strains on the system. But having survived the referendum as a coherent system—and I think it is still a coherent system—one finds it hard to imagine another scenario that will put such strains on the system in the short term again.

Q450 Mr David Jones: So you are optimistic that the home civil service can retain its coherence?

Professor Tierney: Optimistic? I would say so. I am not involved in the political side of things, but I do not see an awfully strong appetite among the devolved territories to take over responsibility for separate civil services.

Q451 Mr David Jones: Not even in Scotland, where of course it was part of its manifesto before its first period in Government, in the SNP, that is?

Professor Tierney: Again, you would know better than I, but I am not sure that has shot to the top of anyone's agenda as something that the Scottish Government wants to pursue. I could be wrong on that, but it does not strike me as something that is actively being pursued.

Q452 Mr David Jones: To what extent—and I suppose you could put this on a percentage basis—would you say that there is a prospect of there being separate civil services for Scotland and Wales, along the Northern Irish model?

Professor Tierney: Again, this is the thing about the British system, you have to know the history and how things develop. The Northern Ireland system emerged very much from the Stormont system. The way the Northern Ireland civil service retained that degree of autonomy—and you see that even in some of the powers the Northern Ireland Assembly has—are a legacy of that very semi-detached status that Northern Ireland had from the 1920s. I do not see any impetus in that direction. That was a particular historical situation.

Professor McEwen: I agree. It is striking that the SNP manifesto commitment was from the period before they were in Government. My sense is that while that will maintain the policy commitment, it is not a priority. The experience of being in Government, particularly during the referendum period, has probably given some reassurances about the civil servants' role within Scotland and their ability to serve an SNP Government. While I do not see and expect the policy to change, I do not expect it to be a policy priority going

forward. I think the advantages outweigh whatever disadvantages people associate with that.

There has been a lot of interesting work going on within Whitehall to try to raise awareness among civil servants across Whitehall departments around devolution. It is possibly telling that the civil servant leading that initiative is one who had himself spent a lot of his career within the Scottish Executive, so I think there is probably a bit less of that interaction or there has been to date of that interaction between the civil service in Scotland and in Wales and in Whitehall, particularly at senior level. I am sure that is a mixture of practical things like London living and family commitments and children's education and so on, but perhaps there may also be a career aspect to that. I think if the current programme signals that spending time in the devolved administrations will be of value to someone's career progression, then that is to the good and vice versa.

Q453 Mr David Jones: Professor Tierney, you have mentioned the advantages, as you see them, of being a single unified civil service in this country. To what extent do you think it is necessary to reconfigure the civil service in order to strengthen the values that it has post-devolution?

Professor Tierney: An over-arching point that I am trying to bring out is that we do need at this point with the Scotland Bill to really think about what we understand by the union and what the principles of the union are, how we go forward in terms of further devolution down the line. We are now looking at devolution in respect of Wales, potentially for Northern Ireland, and I think as part of that if we are to develop some coherent set of working principles for coherence of the state, then those are things that could feed into ministerial codes. Obviously those ought not to be politicised, but it is important that people understand that within a devolved system autonomy is a very important issue for Scotland, Wales and Northern Ireland but so too is the coherence of the state. It is in everyone's interests that the state works in a coherent way with issues of transparency and exchange of information.

There was a civil service training school, which has obviously disappeared. I do not know if it was expensive to operate but that is the kind of thing that would help generate a culture of a commitment to the British civil service ethic, which, as I say, need not be a deeply political point. It would be something that would be to the advantage of the devolved territories as well, that civil servants are operating with a common set of principles and a common framework.

Q454 Mr David Jones: It seems to me that what you are calling for is a common professional standard across the United Kingdom. To that extent, do you think that it is necessary to rewrite the civil service code?

Professor Tierney: No. We have that common framework, we have that common standard and that is evidenced by the fact that the devolved territories are not working actively for a devolved civil service. People appreciate the deep professional skill of the integrated civil service. Something similar to the code as a way of helping to reinforce those principles, those values and that common ethic is still as salient now as it ever was. It would be an

important building block in terms of thinking where we are with the union today and moving on from here.

Q455 Chair: Thank you. Just to advertise, in a previous incarnation this Committee recommended that the National School of Government be recreated or reincarnated in some form because we feel that quite a lot of the baby went out with the bathwater, whatever was wrong with it before. It is interesting that the new police leadership academy has taken over the Sunningdale building. We cannot have that back but there needs to be some permanent home for what is now called civil service learning and it needs to have a stronger influence over the culture of the organisation as an institution. It would seem you agree with that.

Professor Tierney: Yes.

Chair: Thank you very much for your support.

Q456 Mrs Cheryl Gillan: It seems that the training does not include that much around devolution currently, which is one of the things where there is a lacuna. We have concentrated tremendously on inter-governmental relations and the role of the civil service but the big elephant in the room is, of course, the parliamentary relationships, what happens between the Parliaments. The last set of questions is about that. How would you describe the existing inter-parliamentary relationships between the differing UK legislatures?

Professor McEwen: They are probably even more ad hoc than the inter-governmental ones. I believe there is informal communication between, for example, clerks serving similar committees with similar remits. That is very positive. I would like to see a lot more of that. Parliaments generally have issues with a lack of capacity, particularly in exercising a scrutiny role for Governments that have an awful lot more capacity in policy and research. Where you can share best practice and expertise or perhaps even jointly commission research, those sorts of areas I could see as being potentially very valuable.

One of the things we have only touched on indirectly is not so much inter-parliamentary relations but Parliament–Executive relations within each tier of government. There is an awful lot more that can be done there to enhance the scrutiny function of Parliament over these inter-governmental issues, which will become more significant as we move forward. I know that both the Westminster Parliament and the Scottish Parliament have been doing an awful lot of work in various committees like this one to try to improve those processes. The challenge will be in maintaining that level of scrutiny over not just the machinery but the operation of inter-governmental relations as we move forward.

You may be aware of the agreement that the Scottish Parliament and the Scottish Government have agreed to in principle, pending the election result, which will probably be taken up by the next Parliament. It is an agreement about the scrutiny function of the Parliament over the Scottish Government's participation in inter-governmental relations. It is a sort of one-level agreement there but I am sure the clerks will be aware of that. If that works at one level then it might work at other levels too. Where we can learn and there can be mutual learning, that is all to the good.

Professor Tierney: This is a real gap. I do not think it exists at any significant level and it is a real problem. It is a problem for two reasons. One is unnecessary overlap. We saw that with the Smith commission and the Scotland Bill. The previous manifestation of this Committee, the Constitution Committee and the Scottish Parliament all looked at the Smith process and came up with very similar criticisms about the process. That is something that could have been co-ordinated a lot better. As we move forward with devolution, that ought to be something that is co-ordinated a lot better.

The really big issue Nicola touched upon—I would term it almost a crisis now in terms of relations between the Executive and Parliament—is the growing influence of the Executive in legislative drafting. The Executive has always drafted legislation but there has been a real cultural change in the use of secondary legislation. Legislation coming from the House of Commons is getting thinner and thinner and it is being filled out by secondary legislation. What is needed is detailed scrutiny. The devolution Bills are exactly the same. The scope there for widespread secondary legislation is enormous.

I heard *purdah* being mentioned. It is one of the few examples where the House of Commons has asserted itself on an important provision and led to significant changes to section 8 of the European Union Referendum Bill. This is a big issue. I would see the devolution legislation in a broader context of Parliament needing to assert itself in the face of a big cultural change in legislation.

Q457 Mrs Cheryl Gillan: Do you think we need to look at mechanisms such as the grand committees, for example, and see whether they could be used better?

Professor Tierney: Possibly. One of the big issues is going to be dealing with the secondary legislation that comes out of the devolved Bills. The House of Commons itself does not have a committee that actively reviews the substance of delegated powers. The Lords does; the Commons does not. There needs to be a thorough review by the Commons of how it scrutinises legislation in general and secondary legislation in particular. Devolution would be a particularly important example of that but it is a bigger question.

Chair: Very interesting.

Mrs Cheryl Gillan: Yes.

Q458 Kelvin Hopkins: I recognise precisely what you are talking about. We have seen, in recent times, wilful Governments and weak Parliaments. One of the reasons they are weak, I suggest, is that the party machines have gone out of their way to select pliant MPs who will go along with whatever the leadership decides in return for office. It started with Blair and it has continued from that time. The difficult MPs of the past—there are one or two difficult MPs on this Committee, undoubtedly—have become a minority now. Scandinavia, because they have PR, talk of having strong Parliaments and weak Government. We have a strong Government and a weak Parliament. It is not healthy.

Professor Tierney: If I could say one final thing on the problem about moving it to areas of grand committees and so on, when it is in the interest of the two Governments for the information not to be fully scrutinised because a political deal has been done, that is the

danger. That is why specialist committees that go to the nuts and bolts in a less partisan way—I know that is not always realistic in the Commons—are the crux of it.

Q459 Mrs Cheryl Gillan: Do you think it is not outwith the realm of possibility we could get committees that have MSPs and MPs sitting on them?

Professor McEwen: That is a bit more problematic. Picking up on Stephen's point about a lot of overlap between what the various committees were doing around the Scotland Bill, that is true. It is particularly true in the area of inter-governmental relations. However, their perspectives on the issues are coming from different places. They are primarily scrutinising a particular Government's role in those processes. Around the Scotland Bill, the work of the Scottish Parliament Devolution (Further Powers) Committee was thinking of its particular perspective on what it would mean for the competence of the Scottish Parliament. You cannot really replace that.

Can you supplement it with something else? Perhaps there is more scope for doing that but realistically there is already very limited time for Members on serving committees to get stuck into issues and it might be difficult to envisage them adding another layer on top of that. Not impossible.

Q460 Mrs Cheryl Gillan: I was just thinking about my own experience. Whenever there was a Queen's Speech I would go down and sit on the floor of the Assembly and be cross-questioned by the Assembly Members in the Welsh Assembly. Do you think we should have more of that cross-scrutiny?

Professor McEwen: That has been happening to some extent already. The Constitution Committee in the Lords I know had—

Q461 Mrs Cheryl Gillan: That is at committee level. This was at Assembly level. I mean at Parliament level.

Professor McEwen: The politics would make that difficult.

Professor Tierney: I tend to disagree. After Smith, the fiscal framework and the House of Commons passing possibly the most significant Bill for the past 10 years without seeing the fiscal framework, parliamentarians need, for themselves, to sit down and say, "What do we need to do? If it is the case that we need to link up with like-minded Members of devolved territories properly to scrutinise the Executive, then that is what we need to do".

Chair: Very interesting.

Professor Tierney: Thinking out of the box on these issues is important.

Mrs Cheryl Gillan: That is what I was trying to do, to a certain extent. As an English MP, I am all rolled into one and I can have one focus. If I was a Welsh MP with Welsh AMs covering the same territory and being responsible, at some stage it would be advantageous to

work together to scrutinise the Executives in both places, either/or. Again, that thinking outside the box means that it is not impossible. You have to overcome egos, feelings of inferiority and superiority and all the other horrors that go with devolution but surely it should not be outwith the realms of possibility to bring parliamentarians together at different levels to be able to scrutinise what is happening with a very powerful Executive.

Q462 Mr David Jones: Before you answer that, if I could just chip in, you have hinted at it but do you think that with the maturity of devolution this teenage angst is going to be less likely and there will be less resentment at having to interact with parliamentarians from Westminster?

Professor Tierney: That is a very good question. With the Scotland Bill making things much more secure in terms of clauses 1 and 2, it is a very interesting question. My sense is that Parliament has been so bypassed by this recent process that it has to consider where it stands on this. However, I also take the point that in terms of political realities, when divergent Governments are in these different legislatures and when those Governments have fairly strong control over parliamentary business and parliamentarians, it is hard to see how those new models of combination might combine. That is why I wondered if perhaps at the secondary legislative level there might be a way of doing it without the political heat. That would be one possible avenue.

Professor McEwen: There are other possibilities too. If we think about some examples from elsewhere, it is not uncommon for treaties or formal agreements between Governments to be subject to consent within Parliament, particularly around issues of finance. The fiscal framework is a case in point. Why has that not been subject to consent from Parliaments north and south of the border? I do see the practical and political difficulties in some of the other suggested arrangements being perhaps an inhibiting factor. It does not mean you should not get on and try but there are other opportunities as well, other mechanisms.

Q463 Chair: This is what we are very interested in, what you have been describing, your comments about secondary legislation and the ascendance of the Executive in the process of everything. One senses there is no appetite, certainly from the United Kingdom Executive, for this kind of discussion to take place. We are trying to promote that kind of discussion. How should we do this? We have written to all the other relevant committees of the other Parliaments in the United Kingdom. Are we going to finish up with some big meeting in York or somewhere like that where we have a grand council of the United Kingdom Parliaments and start a conversation among ourselves about what we want? How should we do this? Are we going to be stopped?

Professor Tierney: I am not trying to avoid the question but one big problem is that at the moment Parliament is not scrutinising but it has nothing to scrutinise because inter-governmental relations are so non-transparent. Possibly the first step is to get to the point where the agenda, the minutes and more information from these meetings is at least being published.

Chair: Which meetings? There are not any meetings.

Professor Tierney: Perhaps an annual statement by the Prime Minister. Perhaps Ministers who are involved in these inter-governmental—

Q464 Chair: You mean more scrutiny of the inter-governmental arrangements?

Professor Tierney: Yes, just as a starting point in this particular area. Only once you get access to the information do you have anything to scrutinise. In terms of scrutiny of overall devolution, it is very difficult for the Commons because its timetable is so full.

Kelvin Hopkins: It is not.

Mrs Cheryl Gillan: It is not.

Kelvin Hopkins: The Government pretends it is but I am on the European Scrutiny Committee. They are constantly saying, “Shortage of time” and then the business finishes early night after night after night. We cannot debate, shall we say, the free movement of people in the European Union. They have put that one on the back burner for two years now. We have demanded a debate on it and we have been refused over and again.

Mrs Cheryl Gillan: And we have two Chambers.

Chair: We are on the edge of a very big discussion, which we will not embark on now. You have whetted our appetite and you have encouraged us. Thank you very much for appearing before us today. Please stay in touch with our work because we have already done one report on English votes for English laws, which is just the first of many inquiries and reports we hope to produce during this Parliament looking at how we stabilise the settlement. As to whether we still call it a “union”, we might have to change our language in order to accommodate the different perspectives and feelings of everyone we want to have involved in the conversation. That is what we are about. Thank you very much indeed.