



HOUSE OF LORDS

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The Select Committee on the Constitution
Inquiry on

ENGLISH VOTES FOR ENGLISH LAWS

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Questions 18 - 35

WEDNESDAY 29 JUNE 2016

10.30 am

Witnesses: Chris Bryant MP

Elizabeth Gardiner, Jonathan Jones and Adam Pile

Members present

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

Examination of Witness

Chris Bryant MP

Q18 The Chairman: Mr Bryant, thank you very much for coming. We particularly thank you because you are here in a private capacity rather than as shadow Leader of the House. We appreciate your availability and look forward to your comments with even more excitement, as you may feel able to speak more freely than you might have done.

Chris Bryant: I would have always spoken fairly freely.

The Chairman: I am aware of that. English votes for English laws seems to be somewhat in the shadows at the moment with other events that have developed. Nevertheless, it remains important. We undertook, as others did, to review the progress at the end of this first Session, which is where we are now, and that is the purpose of our exercise. I start the questioning by asking if you think that a future Labour Government would retain EVEL and would adapt it in any way, and, if not, how they might address the West Lothian question.

Chris Bryant: You have to presume that there is a Labour Government first, on which at this juncture it is difficult to conjecture, but what goes around in politics comes around. My fundamental principle is that we do not have enough checks and balances in relation to government in this country. One of the few that we have is the fact that the House of Commons is never a perfectly arranged set of dominos, so you can never be quite sure how things are going to work out. Since the Government get to appoint Members of the House of Lords—it has 95 Members of the House of Commons who are members of the ministerial team, and 45 PPSs—it is pretty much winner takes all in our system. That is why, if I were a Labour Prime Minister or Labour Leader of the House, I would want to dismantle EVEL: because in effect it has given a supermajority to the Government when we should be trying to make the House of Commons freer rather than governed by the Government.

The Chairman: In some of your earlier remarks reported to us you seemed to be supportive of the principle of a clearer English voice in some aspects of legislation.

Chris Bryant: Yes. That is why I thought there was a perfect argument for saying that you could have some kind of vote but not a fundamental blocking vote. Incidentally, there is another, real, side issue in relation to the House of Commons, which is that on any day of any remaining stage we now take at least half an hour on the whole business of legislative consent motions and all the rest, which frankly would be better used for debate and proper consideration of legislation rather than what thus far has certainly been a rather irrelevant shenanigan.

The Chairman: Thank you. Let us pursue some aspects of that.

Q19 Baroness Dean of Thornton-le-Fylde: When the changes went through the House of Commons, one of the new aspects was that they went through by a Standing Order rather than as legislation scrutinised by both Houses. You spoke at the Select Committee and said that you felt that was unfair. The obvious arguments are that if it is done by Standing Order it can be changed so that a government majority can decide what it wants, whereas with legislation it can be challenged in court. Have you had any subsequent thoughts on that that you can give us? In the review that is due to take place this October, would you wish to see that change go from Standing Orders to legislation?

Chris Bryant: It is not just that it was unfair to do it by Standing Orders; it was inappropriate. It was a major constitutional change. The checks and balances of a bicameral Parliament are important, even though, as Members may know, I am not in favour of a fully appointed House of Lords. None the less, the checks and balances are important. There are few countries in the world where the Standing Orders of parliament can simply be changed on the whim of the Government. The Government can always get rid of the Speaker of the House of Commons. The Government can always change the Standing Orders by definition, because it has a majority in the House of Commons; that is what makes it a Government. Although I am a leftie, a radical revolutionary or whatever, I still believe that sometimes being able to apply the brakes to constitutional change is an important part of any system; otherwise, the danger is that you lead to autocracy.

Lord Hunt of Wirral: Mr Bryant, having just heard you describe yourself as a leftie revolutionary, could you assist by telling us, if indeed this is a trial run, against what measures it should be judged to have succeeded or failed?

Chris Bryant: My first question on the Government's trial, as it were, is whether it has made any fundamental difference. In all the time I have been a Member of Parliament I could not

detect more than two votes that would have been any different since 2001 if you had applied this. The same is true since EVEL has come into play. We have had quite a few difficulties implementing it in the House of Commons. We have not yet come up against one of the constitutional rows where the Speaker would be required to adjudicate in a way that not everybody might be happy with, but we have been fairly close to a couple of those moments. The bigger question for me is whether it has made any difference at all, because by definition the Government have a majority in the House of Commons and the Government of the day have also always had a majority of English MPs.

What is difficult to ascertain is whether the process of creating Wales-only Bills or England-only Bills rather than more generic Bills covering all the different legislatures has happened yet. I do not think we will be able to judge that for another year, because this legislative programme is rather curious and may be being thrown out of the window even as we speak. Certainly, when we have a new Prime Minister, it may be thrown out of the window entirely.

Baroness Taylor of Bolton: Can I follow up on what you have said about constitutional rows? We are entering a period in which there is scope for a great deal of constitutional rowing regarding Brexit and the position of Scotland. Have you thought about that as a potential difficulty that is going to face the Speaker and the House of Commons?

Chris Bryant: Historically one of the things that Parliament does particularly badly—your House does it better than ours—is scrutinise EU legislation. I have said this many times, and I said it when I was Deputy Leader of the House. It is partly because MPs have very little interest in going to boring committee meetings up on the top corridor where nobody is going to report what they say or do. Governments have tended to be very reluctant to take many EU legislative moves to the Floor of the House, particularly in the last five years because they have been more nervous about losing the vote because a combination of Labour votes and Brexiteers and Eurosceptics might defeat the Government. There will have to be a major rethink of how we conduct our parliamentary business in the House of Commons. One Conservative Member said to me yesterday, “Oh, it’s all going to be very easy. We just have to delete the European Acts and then everything else follows on”. I am not sure that it is anywhere near so simple. There will be 10 years of legislation, and even at the end we will find things that have not quite worked and there will be legal battles in the courts, businesses will not be sure how to resolve things, and with Scotland in play it will be even more difficult to resolve those things. For me, Parliament needs to grow up as a legislature and realise that we are there not to scrutinise government but to legislate, and good legislation requires people sitting in boring meetings going through the fine detail and having enough time to do so.

Lord Norton of Louth: You interpret difference purely on the basis legislative output, but is not one of the arguments for it also about perception? How important is that, and although it may not yet have made a difference, might it?

Chris Bryant: That is the fundamental conundrum in the middle of the question. I have not met a member of the public yet who has said anything to me about EVEL, so perception is difficult to measure. There is the issue of whether we do our job of scrutinising legislation properly in Parliament. There are other elements, such as Private Members' legislation, which are in such a mess that they are bringing the whole process into disrepute, because members of the public think, "On Friday there's going to be a vote on banning fox hunting", or whatever, and then it turns out there is not. We need to do a great deal more to make our processes transparent. Incidentally, I would be amazed if there were more than two MPs who understand the Standing Orders of the House of Commons, and I would be amazed if there is a single Member of the House of Lords who understands them. No, that is unfair, because you have a couple of former clerks who you have stolen from us.

The Chairman: You do not understand them yourself, possibly.

Chris Bryant: I understand most of them. On the whole, it is better if you have clear, transparent and simple rules. Our rule book now is very, very lengthy, not least because it has something like 42 pages of amendments to Standing Orders to implement EVEL, which has made the whole thing ludicrously incomprehensible.

Q20 Lord Morgan: The week before last—perhaps last week should be forgotten—we had evidence from a member of the Scottish National Party who observed that he thought that different categories of MPs had been created—you are probably familiar with the arguments—and that now Scottish MPs could not consider certain legislation in the House. Bearing in mind that you sit for a Welsh seat yourself, do you feel that this is a factor? Does it affect the role of the House of Commons in representing all regions and nations in the United Kingdom?

Chris Bryant: If we were a federal country this would be easier, but we are not. We are also asymmetrical, which renders it very difficult to provide a neat solution to the fundamental conundrum, which is: why should I be able to affect legislation on the health service in England when an English MP cannot affect legislation on the health service in Wales? My anxiety is that the fundamental principle of all MPs being equal is important. I never wanted to surrender it. We have ended up with two, three or four tiers of MPs. I give one instance. When the health Bill was going through, which made it illegal to smoke in public places, there was a big row about whether the amendment that had been tabled meant that we were

making it impossible for Wales to decide for itself to ban smoking in public places in Wales. Those kinds of rows will come again. That is my major anxiety: that we have created several tiers of MPs.

It is a waste of time in the Commons process. I do not suppose a single person has ever looked up the difference between a majority and double majority. There is the added problem of what happens in the relationship between your House and our House. I worry that, theoretically at least, Lord Strathclyde's report is on the table. One of the problems is more and more government business, including significant pieces of legislation, going through as secondary legislation, as happened with working tax credits. Secondary legislation was never designed for that purpose. If the idea is that your Lordships should not be allowed to have a say, I think you would be within your right to say, "We are not going to have any more legislation that has clauses that say that the Government may allow the following things to happen by statutory instrument or order".

Lord Morgan: As you know, we are awaiting the Government's response to our response to the Strathclyde report. We have been waiting quite a long time. You raised the conundrum about public smoking in Wales and said that there were different views. What is your own view on that?

Chris Bryant: At the time I was trying to tell everybody that if we carried the amendment it would mean that the Welsh Assembly would not be able to decide that private members' clubs could allow smoking. Everybody in the Commons Chamber said that I was talking a load of nonsense, but I was right.

Lord Morgan: Yes, you are without doubt.

Lord MacGregor of Pulham Market: To follow up that very point about smoking, is the dilemma or clash not intrinsic to further devolution to Wales and Scotland? I am not sure how you would have resolved that particular issue.

Chris Bryant: I resolved it by voting for what I believed in, which is that private members' clubs should not expose their staff to smoking.

Lord MacGregor of Pulham Market: If there had been a clash between the UK Parliament and the Welsh Assembly, would that not have been a real dilemma?

Chris Bryant: It would have been. I think they wanted the power to do exactly the same, so the dilemma was not as keen as it might have been. My point was that the vast majority of people in the debate had no idea how the amendment worked. I am not sure in the present EVEL situation how the Speaker would have treated that amendment. Certainly I think it would have been challengeable.

Lord Judge: Would it be fair to encapsulate what you have been saying as requiring a root and branch re-examination of our entire legislative processes?

Chris Bryant: Yes.

Lord Judge: When we come to review EVEL, might that be a vehicle for doing so?

Chris Bryant: I hope so. Lord knows what we might be re-examining by the end of this year. Not only EVEL but Brexit might force us to do so, because there is a lot of legislative process that we will have to do in a better and more thorough way here. In a sense, you could argue that the European Parliament, the Council of Ministers and the Commission in some areas of legislation, for instance on broadcasting and telecommunications, did a substantial chunk of that pre-legislative scrutiny before it came here. When we transposed all the framework directives into UK law in the Communications Act 2003, we did not have to do a great deal more legislative scrutiny because it had been done very thoroughly already and the British Government were pretty satisfied with it, whereas now, if we are going to do our own telecommunications legislation, broadcasting legislation and intellectual property legislation, we will have to do it far more effectively and tidily than in the normal legislative process in this country thus far.

Q21 Baroness Taylor of Bolton: Can we talk about the House of Lords for a moment? It has been said that EVEL in the Commons has no impact in the Lords, and none has been seen so far. Clearly we have a lot of Lords from Wales and Scotland, and it is perfectly possible that legislation that has been designated as EVEL in the Commons could be subject to amendment in the Lords on the basis of votes, including those of Welsh and Scottish Lords. We are masters of our own procedures, but that could affect the relationship between the two Houses. Can you put aside your personal views on reform of the Lords for a minute?

Chris Bryant: You want me to put them aside for ever.

Baroness Taylor of Bolton: Of course I do. You know that. Do you have any thoughts on that?

Chris Bryant: One of the ironies is that everybody thinks that political life in here is about votes, but as often as not it is about avoiding votes and about the Government making concessions because they know the reality of the political situation in either Chamber. Historically, one of my anxieties has been that in the House of Commons Ministers will say, "It's all right, we're going to tidy it up in the House of Lords", and then the House of Commons never votes on it. That has always seemed to me to infantilise the House of Commons, and we should grow up. You will know extremely well that the legislative process, even before anything gets to either House, involves government Ministers and civil servants

saying, “What are we going to concede when it gets to the House of Lords?”, so you build in something even before you have written the Bill that is going to be conceded later. My concern is that the play between the two Houses is not grown-up now. Baroness Gale of Blaenrhondda, who is a very close friend of mine—Blaenrhondda is in the Rhondda—will certainly have more say on legislation that affects the United Kingdom than the Member of Parliament for the Rhondda, which is bizarre.

Q22 Lord Norton of Louth: You are on record as predicting that a consequence of EVEL will be more but smaller Bills. Could you flesh out your reasoning on that and on the normative dimension, because the implication is that you think that would be bad rather than good?

Chris Bryant: The latter is a very good point. When I was Deputy Leader of the House, we considered in the legislative sub-committee of the Cabinet whether a Bill was in good shape before it came to either House. One of the decisions under EVEL would now be that we should take all the Welsh parts out so that it is an England-only Bill. That will happen on contentious matters. We saw that in the attempts to deal with Sunday trading and fox hunting. Thus far, because we have not had long enough and not had a full legislative programme after EVEL was implemented, it is difficult to tell whether that will happen, but that is my working assumption. That is bad, because the honest truth is that no MP or Member of the House of Lords can keep more than four or five Bills in detail in their head at any one time. Getting 35 Bills through Parliament every year rather than 25 is going to be a tall order.

Lord Norton of Louth: Is the argument that there is a problem with big Bills at the moment—omnibus Bills—and with lack of clarity? Your point is not a problem with smaller Bills per se but with those types of Bills deriving from the provisions of EVEL.

Chris Bryant: That is a fair point. I am not a fan of Christmas tree Bills either. There should be a Standing Order that says that the Home Office shall never be allowed a Christmas tree Bill, because large chunks of those Bills end up never being implemented. Sometimes people are so conscious that it is declaratory legislation rather than effective legislation that they do not bother to scrutinise it properly.

Lord Norton of Louth: I am interested that you would do that by Standing Order rather than legislation.

Chris Bryant: Touché, Mr Turtle.

Q23 Lord MacGregor of Pulham Market: Previous witnesses have told us that for EVEL to be successful the Government need to present it as a pro-union not as a narrow pro-English measure. Is that correct?

Chris Bryant: I find that difficult to answer, because I have no idea where the union is going now, although I have a sinking feeling in the pit of my stomach. John Donne was an MP and a clerk in holy orders—he did it in a different order from me—but was right: “No man is an island entire of itself ... never send to know for whom the bell tolls; it tolls for thee”. I believe that we achieve more by our common endeavour than by going it alone, and I have a terrible anxiety that Scotland will leave. Any union-minded Government or political party should be doing everything in its power in the forthcoming months and years to strengthen that union rather than dismantle it.

Lord MacGregor of Pulham Market: On the criticism of the English votes point, opinion polls tell us that on the whole there is support for that in England. Taking the wider point that you have made, it seems that the hints that we are getting now from Nicola Sturgeon and others in Scotland that, as a result of the referendum decision, they may wish to go it alone is much more a threat to the United Kingdom than anything to do with English votes for English laws.

Chris Bryant: I am sure that is right, but because it is a bigger threat does not mean that it is not an additional threat. I would want to try to minimise any threats that there are. It is certainly true in the House of Commons that the SNP is deliberately trying to stir this up as much as it can, and that is not a good outcome for anybody who is in favour of the union remaining. It seems to me very possible that Scotland will leave the union. That is one of the main reasons why I campaigned for us to stay in the European Union, so I am a double unionist.

Lord MacGregor of Pulham Market: I agree with that. The likely consequence of Scotland leaving is because of the referendum decision rather than English votes for English laws.

Chris Bryant: Indeed. If I am honest, the better answer to the concerns of English voters about having a say over their own destiny is devolution within England. We have been a far too centralised Government. A mayor of a major city in the UK, even with the new powers they are being granted at the moment, has many fewer resources and levers of power than in most other major cities in the world. My answer is therefore more devolution within England than EVEL, which frankly is neither here nor there to the ordinary voter.

Lord Brennan: You anticipate my question: if not EVEL, what should we do about devolution in England?

Chris Bryant: Again, the difficulty is geography. I think everybody knows what Greater Manchester looks like, although some people who are now being lumped in with Greater Manchester may not feel as much affinity to Manchester as others. Likewise, if you were to

do the same in Wales, the Rhondda would not feel part of Cardiff, although it would probably be lumped in with Cardiff if you were creating larger city regions. You have to have asymmetric devolution within England as in Spain, a country I know you know well.

Q24 The Chairman: You may not have had a chance to read the report that we published recently on the union and devolution, in which we studied ways of strengthening the union, raising its profile and re-establishing its primacy as the dominant sovereign Parliament, but also improving the relationship between the union and the devolved Parliaments. It is more than 100 pages long, but if you have a sleepless night you would be very welcome to dip into it. It might reassure you to some extent, although I suspect it may also have been overtaken by events.

Chris Bryant: I have a lot of sleepless nights.

The Chairman: Have any of my colleagues any further questions to ask? In that case, thank you. You have been very forthcoming and given some stimulating and interesting answers, and done so in 28 minutes, which is brilliant. We are very grateful to you.

Chris Bryant: I am normally accused of being prolix, so I am grateful.

The Chairman: I can tell you that is admirable. Let us hope our future witnesses do the same. Thank you very much for coming.

Examination of Witnesses

Elizabeth Gardiner, First Parliamentary Counsel, **Jonathan Jones**, Treasury Solicitor and Head of Government Legal Service, and **Adam Pile**, Head of the Parliamentary Business and Legislation Secretariat, Economic and Domestic Secretariat, Cabinet Office

Q25 The Chairman: Good morning. Such was your enthusiasm to come and talk to us that you were in through the door before we could invite you in. You are very welcome. We are impressed by the CVs that accompany you and feel that we have a very strong and authoritative bench in front of us to answer our questions on EVEL and its implications.

One of the things that concerns us is whether there are subliminal changes in the way the Government prepare Bills and draftsmen draft them to take account of EVEL, with a view to achieving certification more easily. Is that something that you identify yourselves? Do you have any thoughts about it that would be of interest to us?

Elizabeth Gardiner: From my perspective there are no obvious impacts at the moment. The Government's policy is that they are not drafting to the Standing Orders; they are continuing to draft Bills in the way they always have. I did a survey of my office before I came here to see whether there was any suggestion that people were looking to the Standing Orders to influence the drafting of Bills, and I have no evidence for that.

There is one provision in the Finance Bill currently before Parliament where the structure of the rates of tax has been set out in such a way as to ensure that there is a vote here corresponding to the vote on the rate of income tax that will occur in the future in the Welsh Assembly and the Scottish Parliament. Above and beyond that, I am not aware of any impact on the drafting of Bills. Indeed, the policy is that that is not the way we approach it. We approach it as we always have: to produce the best quality of legislation regardless of the Standing Orders.

The Chairman: Mr Jones, do you agree?

Jonathan Jones: I do. I should add a few words from my perspective, particularly in relation to statutory instruments, where again the lawyers for whom I am responsible, who are drafting statutory instruments, do not report any difference in the approach taken to the way policy is translated into the legislation. The evidence base is relatively modest so far; we are talking about 24 SIs that have been certified. There is no evidence so far of some systemic change in approach.

The Chairman: Mr Pile, do you take the same view?

Adam Pile: I have seen no evidence that departments are changing the extent or the way they draft their legislation.

Q26 The Chairman: I hope you did not all sit outside agreeing on what your answers would be. You are a close-harmony group so far. Let us talk about the certification process itself. Is the system working smoothly, or are there any rough edges that create problems?

Elizabeth Gardiner: In the certification process, it has taken the office a little while to get its head around all the Standing Orders and how they are going to affect the office and what sorts of questions we have to be asking ourselves. The certification unit in the Cabinet Office is taking the lead on that and is advising our office and the departments. We are involved in that but we are not taking the lead. It is similar to any new process; it takes people a little while to get used to it. It has been time-consuming in the first Session on some Bills, but that is as much because we are not familiar with it as anything. Hopefully it will settle down and people will understand how the rules apply, and I imagine that our involvement will reduce and the certification unit will take more of a lead.

The Chairman: Mr Jones, any thoughts?

Jonathan Jones: We are agreeing again. It is a new process. It has involved the production of a new form of Explanatory Notes, and it is taking a while for people to get their heads around that, but people are doing it. I dare say that we can refine the process and the format of the notes, which we will look at when we come to review the way in which the whole system is working. It is not creating serious problems. To go back to the earlier question, it is not making a difference in the end to the way in which the legislation is constructed. It is about getting used to the process rather than any substantive change.

The Chairman: Mr Pile, do you agree?

Adam Pile: I concur, yes.

The Chairman: We will move on then.

Q27 Lord Norton of Louth: My question picks up on Chris Bryant's view earlier of how the Government will look at legislation. His view was that the Government will want to make life easier for themselves and are therefore more likely to draft Bills that are English-only or English and Welsh-only, and that a consequence would be more but smaller Bills. There are two questions. First, do you think there is anything in that? If there is, the question I put to him was normative: would that be a good or a bad thing? The Good Law initiative is based on greater clarity and perhaps shorter Bills, and some people might think that it is quite helpful to move away from the large omnibus Bills to which we have tended to move, even though you

could say that there is a distinction between the two. Is there anything in his interpretation or in the consequences of it? Did you feel that it was a valid interpretation?

Elizabeth Gardiner: On the question of there being more England-only Bills, the evidence to date is that there is not, in the sense that there have been a couple of Bills in which just one provision prevented them from being certified as English only. People might like to see how the rules operate on an England-only Bill, but in fact there has been no pressure to remove those provisions to create one. The appetite is not there at the moment; I am not seeing it anyway. As to whether there would be more England or England and Wales-only Bills in the future, that is perhaps an inevitable consequence of the changes to the devolution settlements as opposed to the Standing Orders. I can see that there may be.

As to whether more small Bills is a good idea, the Christmas tree-type Bills are a challenge to handle for the Government as much as anybody else. We are constantly looking at how we manage business and at the scope of Bills as a result of them being very large. Sometimes a large Bill can be quite focused. I would say that there are pros and cons to large Bills under the procedures of the House, so it is always a balancing act for discussion with the Whips when looking at whether we divide things up or put them together.

Adam Pile: I do not think there is any evidence that we have been paring back the extent of UK Government Bills. If you look at the figures for legislative consent motions, there are three or four for the current set of Bills for Scotland and about the same for Wales. They are areas where the UK Government have been working with the devolved Administrations and have decided to extend beyond England, or beyond England and Wales, so they are still working actively with the devolved Administrations and choosing to extend the Bills beyond England.

Q28 Lord Hunt of Wirral: Is there a risk that attempting to create English-only legislation could reduce the attention paid by officials who are compiling instructions to parliamentary counsel to potential knock-on impacts in the devolved nations? Of course, I speak as someone who was Secretary of State for Wales for several years and as a lawyer. We are dealing here with a trial period. Rather than all giving the same answer to every question, could you open up—

The Chairman: Without perjuring yourselves of course.

Lord Hunt of Wirral: —and explore with us the best way forward? During every trial we should learn the lessons from what has happened already. Certainly Andrew RT Davies expressed concerns in our evidence session in Wales about the impact for cross-border service

users, most prominently people living in Wales whose local hospital is in England. Could you take us through the lessons that we need to learn to avoid the pitfalls?

Jonathan Jones: To be boring, first, I do not think there is any evidence of that yet. In the end, the content of Bills, and indeed of statutory instruments, will be driven by the policy, and if the policy is that the Bill should apply solely or mainly in relation to England because that is the territory that is being legislated for, that will be the effect of the Bill. As Elizabeth has said, that is likely to become the case more often as the scope of devolution settlements becomes wider.

On the technical point of whether there is a risk that less attention is paid to the cross-border knock-on effects, again boringly I would say that there is no evidence for that. In fact, the requirements of the new procedure mean that officials, including lawyers, have actively to turn their minds to the precise devolution effects of any given provision. In a way, that is helpful. Whatever the policy may be, officials have to think about the devolution effects and cross-border implications of a given Bill.

We will look at the process behind the Explanatory Notes, and its format, to see whether it is working in the most efficient way, and whether it is indeed making officials turn their minds to those questions in the way that was intended, but on the whole I think it is a positive development from that point of view.

Adam Pile: I completely agree. This has not changed the policy approach or the way we have drafted Bills. It has ensured that devolution is brought to the front sooner and we are more open about our analysis of whether it is reserved or devolved and how it applies to different parts of the UK.

If we take the example of cross-border services in Wales, EVEL is not the reason why a policy will or will not apply to each part of the border; that is devolution. More often than not, the policy does not extend to Wales or another part of the UK because it is a devolved matter and the devolved Administrations have a separate policy.

Elizabeth Gardiner: We have evidence now of greater attention being paid both in the context of preparing the draft for introduction and of things that are picked up during the passage of the Bill as a result of concentrating on looking at the application and the extent of the Bill. Our drafters are acutely aware of having application and extent first and foremost in their minds. We also have closer communication now with the territorial offices to make sure that we are all joined up and are talking to each other, probably in a way that we were not as aware of before. I think it has bought it to the fore for us.

Lord Hunt of Wirral: Are you able to share with us specific examples of the evidence to which you have just referred?

Elizabeth Gardiner: Issues were raised when it came to preparing the notes on the Housing and Planning Bill, and we realised, when we had to explain the policy and how it was going to apply to the various parts of the UK, that perhaps the drafting did not accurately reflect the policy, so examples would be its extent and application. I was not directly involved in that, but that is one example. Certainly when we were looking at the Enterprise Bill, it brought to the fore on every provision that we had to consider where this was meant to apply and the effect of it applying only there. It definitely brought it to the fore for the drafter in a way that we were probably not as aware of before.

Lord Hunt of Wirral: Thank you very much. That is very helpful.

Lord Judge: I rather got the impression from the answers you gave the Chairman that, to use your phrase, Ms Gardiner, “getting your head around” the certification process and so on is simply ongoing. I rather gather that is true of all three of you. What do you see as the next hurdle?

Elizabeth Gardiner: We have probably not come across every permutation of a Bill and how it will apply, so we have to apply the Standing Orders to particular Bills all the time, and that might raise particular issues. One example is the Childcare Bill; we had not—we should have, and I personally failed to do so—picked up that a provision about HMRC meant that, although it was only one very small provision in the Bill, the Bill would not be certified. We had not been thinking about it in that way, but it was brought to our attention and it was quite right that it was not certified because of that. We learned from that and we have spread that through the office so that everybody now understands that. There are bound to be points like that that come up on new Bills as we are doing different things.

Lord Judge: Mr Pile, you are responsible for the Cabinet Office’s *Guide to Making Legislation*.

Adam Pile: Yes.

Lord Judge: Can you tell us in advance what your next edition will provide in relation to this?

Adam Pile: We have already updated chapter 11 to reflect how the Explanatory Notes have changed. We will be providing extra chapters on the procedures and guidance on how the EVEL process works. It is worth remembering that the *Guide to Making Legislation* does not represent all our guidance. A lot more goes on in government behind the scenes that you guys will not see.

The Chairman: I find that rather disconcerting. Could you give us a hint of the sort of behind-the-scenes guidance that you issue?

Adam Pile: Yes. There is quite a lot. The team in the Cabinet Office that leads on EVEL has introduced a workshop for policy officials, Bill teams and the wider array of policy officials who feed into the policy in the Bill. We are also developing an online module for Civil Service Learning, which, crucially, will be accessible to people right across the UK Civil Service, not just the ones in London who can attend courses. The Cabinet Office is developing a module for the Government Legal Service as part of the induction for new government lawyers. I have already mentioned the *Guide to Making Legislation*. The main thing to remember here is that we have all sorts of formal guidance and training, but we are not leaving Bill teams and policy officials in the lurch. They have support from the specialist team in the Cabinet Office, from the Office of the Advocate-General for Scotland, from the three territorial offices—the Scotland Office, the Wales Office and the Northern Ireland Office—from my team in the Cabinet Office, from parliamentary counsel and from the Whips' Office, so we are taking them through this process all the time and sense-checking their evaluation of extent and devolution.

The Chairman: This is a slight digression, but I have heard anecdotal comment to the effect that Bill teams change personnel very rapidly and so are not as on top of the job as they perhaps were in times past, or that they perhaps do not have the relationship with parliamentary counsel that they should have. I am not suggesting that is true but I have heard comment to that effect. Do you think that is nonsense, or is there something in it?

Adam Pile: You get good and bad Bill teams across each Session. Yes, you have lots of personnel changing, because the project, policy area or department is different all the time. Training is like painting the Forth Bridge. If you think that part of our goal is to increase knowledge and understanding of Parliament in the Civil Service, the more people can work on a Bill and pass on that knowledge is a good thing.

The Chairman: Do you have a thought on that, Ms Gardiner?

Elizabeth Gardiner: We bring our cohort of Bill managers together fairly regularly and train them. During the Bill process, I do not think there is a huge turnover in the Bill team now, certainly not at the senior level. I think they are better trained and prepared now and have a lot of just-in-time training as they are going through than was the case five or 10 years ago. We do not have a lot of people who make it their career to be a Bill manager. We have some people like that and some not. Some of our best Bill managers may do it only once, but they

do a really good job, and, as Adam says, they take that out and spread that good working practice elsewhere.

The Chairman: Do you want to add anything, Mr Jones?

Jonathan Jones: I was going to add that lawyers, if I may say so, play an important part in this process. The drafters in Elizabeth's unit and the lawyers in departments for which I am responsible are often a point of continuity, because legislation in various forms is a core part of the skill and the practice of government lawyers. Adam has referred to some of the training that we do, both on induction and on specific aspects of Bill work, including EVEL now, throughout lawyers' careers, so they are not substituting for the role of Bill managers and policy leads, but there is lots of embedded experience and learning in the legal community, which I think is an important part of the process.

Q29 Baroness Taylor of Bolton: Can we say a word about the House of Lords? I think it is generally accepted that so far EVEL has not particularly affected how Bills are handled in the Lords. Do you anticipate that having to be factored in when you are preparing legislation? A Bill might be designated with certification in the Commons, and EVEL has been considered, and then it comes to the Lords, where we have lots of Lords from Scottish or Welsh areas who then vote through an amendment. Is that at the back of anybody's mind as a potential area of difficulty in the future?

Elizabeth Gardiner: As I was on the way here I was trying to think of any impact that it would have on the House of Lords, and I struggled to see how we would do things differently, taking into account the business in the House of Lords. Any legislation in the House of Commons has to have the consent of the whole House, in the same way as if it were an England-only Bill it would have to have the consent of English MPs, so I do not think there are particular considerations for us. We have not identified those at the moment.

Baroness Taylor of Bolton: Do you have anything to add?

Adam Pile: Regarding the House of Lords, it has not changed how we handle Bills or draft the policy. When the Bill is nearing the end of its passage through the House of Lords, there is a lot of extra work, in having to prepare for its return to the House of Commons, knowing that we have to have the Government's view on certification for amendments, but it is not affecting how we are handling Bills in the Lords.

Q30 Lord Brennan: The complexity of the system that is created by the Standing Orders is challenging to everybody and will be so with respect to every Bill that comes through. Forgetting the theoretical structure of this process and looking at its practical application, a jaundiced observer might say that this system for EVEL offends our bicameral system in

which, if the House of Lords disagrees with something, it might not be accepted in the Commons. Instead, for EVEL, we have a unicameral system.

Adam Pile: I am not sure that I would recognise that view, in the sense that, as Elizabeth has already said, all the legislation passed through the House of Commons under the new procedure has to be approved by Members from across the House, so nobody is being excluded from approving the final piece of legislation, and although you may have Peers from different parts of the United Kingdom, ultimately the House of Lords is a UK Chamber. I think that both constituent parts of Parliament are playing their role as they were before.

Lord Brennan: I asked you about the practical application, not the theoretical one. Is it not almost inconceivable that the Commons is going to go back on certification and the double-majority system?

Adam Pile: This is the steer that we have had from Ministers, and these are the House of Commons Standing Orders that they have agreed, so, yes, I think they are here to stay.

Q31 Lord MacGregor of Pulham Market: As part of that, how does EVEL affect the work during ping-pong in a Bill's passage through Parliament? Clearly, you are very much aware of the speed of how that applies. Are you planning ahead for those sorts of eventualities, and how do you see that being dealt with?

Elizabeth Gardiner: Yes, there is lots of planning ahead for all the possibilities. It was always thus. This is just another factor. When planning ahead for ping-pong we always thought, "If these are accepted, what is the result? If these are rejected, what is the result? If these are rejected with amendments, what might those look like and what would we do?" We are always trying to plan ahead. Although the actual stages might happen quickly, that work ought to have been done ahead. Looking at and considering the advice and information that we might give about EVEL certification is just another element of that now. Yes, it is about advance planning. You are in trouble if you have not been planning ahead.

Lord MacGregor of Pulham Market: Does that include non-government amendments that are coming through in the House of Lords?

Elizabeth Gardiner: Yes, it does.

Adam Pile: While we can say that this has made the situation more complicated in procedure and administration, particularly if you have last-minute amendments in the House of Lords made on Third Reading, where a lot of work goes on behind the scenes to work out the extent and devolution implications for those amendments, as Elizabeth said, that is work we have always done. If amendments are made at the last minute in the House of Lords, we have always needed to establish the extent and the devolution implications. The Government have

always abided by the Sewel convention, so we have always needed to know whether they will trigger an LCM. Even for reserved matters, we have always needed to know whether the new pieces of the Bill are compliant with Scots law, Northern Ireland law and the different administrative arrangements in different parts of the UK. It is work that we have always done behind the scenes; we are just more open and transparent about it now.

Lord MacGregor of Pulham Market: So if last-minute amendments from Back-Benchers in the House of Lords come through and the implications of EVEL have not been thought through, you would advise the Front Bench to draw this to the attention of the House, and then, presumably, it would be looked at again when it returns to the House of Commons.

Adam Pile: Yes. We need to be clear about the devolution implications. Has someone inadvertently through drafting triggered the need for an LCM? Elizabeth will know better than I, but quite often when we have Back-Bench amendments, there have not been consequential amendments to amend the extent clause, so it is not quite clear when a Bill returns to the Commons what the extent will be, and that is what we have to work out.

Q32 Lord Beith: With some of the earlier public comments that were picked up about knock-on consequences, I wanted to clarify how you saw your role, because it would appear to me that knock-on consequences are policy matters as opposed to issues of extent. If you look at it the other way round, decisions of the Scottish Parliament have exactly the same implications for residents in England who use Scottish hospitals. I assume that it is not the job of any of you in the course of the process that we are describing to deal with knock-on consequences that are policy issues.

Elizabeth Gardiner: I think that is right. From my point of view, if it is a policy question I just try to ensure that the drafting properly reflects the policy, whatever that might be.

Lord Beith: It may or may not be a good thing that England looks after Welsh hospital patients and Scotland looks after English hospital patients, but that is not what this process is there for.

Elizabeth Gardiner: No, it is not.

Adam Pile: That is the role for the territorial offices—the Scotland Office, the Wales Office and the Northern Ireland Office. They are part of all the Cabinet committees that agree amendments, so those are the things that will be taken into account when they decide what the Government’s position on an amendment should be.

Q33 Lord Beith: Has the process for compiling the “Territorial extent and application” annexes involved the devolved Administrations and a lot of interaction between your teams and the devolved Administrations?

Adam Pile: The thing to remember is that the extent table in the back of the Explanatory Notes is the UK Government's view on the extent and the devolution implications. That is drawn up by departmental officials working with their lawyers. They will come to a view within the department and they will stress-test that with the territorial offices, the office of the O-General for Scotland and the special team dealing with EVEL in the Cabinet Office. They will not consult the devolved Administrations directly. However, that does not mean that there have not been discussions throughout the policy development for the drafting of a Bill with their colleagues in the devolved Administrations. We are always encouraging Whitehall officials to have that dialogue with counterparts in the devolved Administrations.

Lord Beith: Of course, there is no reciprocal or reverse procedure under which the devolved Administrations are required to show that they do not have secondary effects.

Adam Pile: No.

Lord Beith: Indeed, some of you might remember that under the Scotland Act 1998 (River Tweed) Order 2006, the Scottish Parliament can make and modify criminal offences in England by statutory instruments that are not subject to annulment in this House, but there is no reverse process for a similar order coming forward from Scotland.

Adam Pile: It is also worth pointing out that we were thinking of producing the grid in the back of the Explanatory Notes before EVEL came along. Before then, they had a very short sentence describing the general gist of the extent and the devolution implications of the Bill, but if you are a Scottish or English MP you want to know whether the this legislation applies to their part of the UK, so we were working on this before EVEL came along.

Lord Beith: Does the same process apply to statutory instruments?

Adam Pile: There is an assessment in the Explanatory Memoranda, so the same process is gone through within government, yes.

Elizabeth Gardiner: It is different in an SI because, from an EVEL point of view, you are either in or you are out, so you do not have to go through the line-by-line scrutiny in quite the same way in your information.

Q34 Lord Beith: On a technical point, can a Bill that has a clause allowing it to be applied to the Channel Islands and the Isle of Man be certified as an England-only Bill?

Elizabeth Gardiner: I think not.

Jonathan Jones: No, I do not think so. That would be part of England and Wales.

The Chairman: Is there any reason why you should not consult the devolved institutions earlier in the process?

Adam Pile: We are always pushing Whitehall officials to have that engagement and dialogue behind the scenes, not just when they are about to legislate. They should be sharing ideas, knowledge and know-how all the time.

Lord Morgan: Several of the Explanatory Notes for defining the range and implication of particular Bills say, “Blah, blah, blah, applies to Wales”, “applies to Scotland”, “applies to Northern Ireland”. Do you consider the distinctly different point about whether a Bill affects Wales or Scotland or Northern Ireland? I am thinking, for example, of the implications of a Bill for the Barnett formula.

Adam Pile: We are quite clear that the notes relate only to the application of the legislation. There may be wider policy effects across the UK, but the notes are quite clear for MPs and peers: where does this legislation apply?

Lord Morgan: Do you mean territorial application?

Adam Pile: Yes.

Lord Morgan: So the territory of Wales or Scotland, although obviously they can be affected in all sorts of other ways.

Adam Pile: They can, yes.

Lord Morgan: Financially or culturally or whatever.

Adam Pile: I think we have to be clear in the Explanatory Notes that that is an assessment of where the legislation actually applies, so it forms part of the law.

Q35 The Chairman: Are there any other issues on EVEL on which you would like to unburden yourselves that we have not asked you about? You can even volunteer personal opinions on its political viability or suitability or desirability, or anything you like.

Adam Pile: I would point out that this is a new process and that parliamentary process does not change that often, so we are doing a lot of work within government to bed this in and make it work. It is really important to note that this is highlighting work that we have always done. We have always worked with the devolved Administrations. We have always tried to work out where our Bills apply across the UK and whether they trigger the Sewel convention. The transparency and openness that this has led to is a good thing. It definitely has some issues bedding in, but so far we seem to be going quite well. I think it is definitely here to stay, and we seem to be handling it quite well so far.

The Chairman: You talk about having consulted the devolved Administrations, but do the government departments do that? You talk about your relationship with government departments, but are the departments sufficiently in touch with the devolved Administrations?

Adam Pile: Yes. There is always a dialogue between policy officials in the UK Government and the devolved Administrations.

The Chairman: That does not have quite the tone of what some of them said to us in our earlier inquiry on the union and devolution.

Adam Pile: So far we have had seven legislative consent motions for Scotland in this Parliament and six for Wales. The evidence is there. There must have been lots of dialogue to make that happen.

Lord Beith: Are you agreeing with the witness who told us that the procedure has not been tested in anger, that it has not been stress-tested?

Elizabeth Gardiner: I think that is true, because we have had few Divisions. There has been one Division on a to-and-fro Motion. Given the current make-up of the House of Commons, I would say that it has not been tested in anger.

The Chairman: Mr Jones, is there anything you would like to say to us?

Jonathan Jones: No, except that our overarching responsibility as lawyers is to deliver legislation that meets the policy of the Government in legally the most coherent, cleanest way, and that is what we are trying to do. That might sound a bit unglamorous, but that is ultimately what we are responsible for. I underline what has been said: that so far this has not been tested in anger, but the system is working with the grain of the new arrangements, so to that extent it is not creating major problems.

Elizabeth Gardiner: From my point of view it has gone very smoothly. We have worked very closely with the House authorities to consider how it is going to work in practice, and, on particular Bills, we are making sure that we talk early and understand where each is coming from. From our point of view, the decision is in the hands of the Speaker. We are quite relaxed about that. We have provided the Speaker with the information that he requires, and if he has required more information we have been very happy to provide it. In drafting terms, I think we will look back at it and think that it has been a good thing because it has focused minds on extent and application, which is really important, particularly with the evolving devolution settlements, and that is probably a good thing for drafting.

The Chairman: Thank you very much. It has been a very interesting session. You have been very forthcoming and admirably concise. We are very grateful to you. Thank you.