



# HOUSE OF LORDS

Revised transcript of evidence taken before  
**The Select Committee on the Constitution**  
Inquiry on

## **ENGLISH VOTES FOR ENGLISH LAWS**

*Evidence Session No. 3*

*Heard in Public*

*Questions 36 - 45*

WEDNESDAY 6 JULY 2016

10.30 am

Witnesses: Rt Hon Baroness Smith of Basildon  
and Rt Hon Lord Wallace of Tankerness QC

### Members present

Lord Lang of Monkton (Chairman)  
 Lord Beith  
 Lord Brennan  
 Lord Hunt of Wirral  
 Lord MacLennan of Rogart  
 Lord MacGregor of Pulham Market  
 Lord Morgan  
 Lord Norton of Louth  
 Lord Pannick  
 Baroness Taylor of Bolton

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### Examination of Witnesses

**Rt Hon Baroness Smith of Basildon**, Shadow Leader of the House of Lords, Labour Party;  
 and **Rt Hon Lord Wallace of Tankerness QC**, Leader of the Liberal Democrats, House of  
 Lords

**Q36 The Chairman:** We live in very interesting times, particularly today, and on behalf of the Committee I am very grateful to Baroness Smith of Basildon and Lord Wallace of Tankerness for coming to this meeting. We fully appreciate how busy you both are and we will not detain you longer than necessary. In that spirit I will forge straight ahead with the first of the questions we would like to ask you. We are talking about EVEL today, for clarification, since there are so many other things on our minds, but perhaps these are slightly calmer waters. We have been told that the EVEL procedure has not raised many unexpected political impacts, or any other kind of impact, between the two Houses. Do you agree with that assessment, Baroness Smith?

**Baroness Smith of Basildon:** I am not sure it has been tested properly yet. It is not until there is a conflict or difference that it will be tested. So far we have not had any issues that have caused great concern. I would say one of the difficulties for Lords' starters is, there is no clarity or information as to whether they are going to be designated EVEL when they get to the House of Commons. The Bus Services Bill applies to England but there are some issues around Wales as well, so it was slightly confusing, and so we called the Lords Legislation Office. They said they did not know. We were referred to the Public Bill Office at the House of Commons. No one could say straightaway whether it would be or not. Then I was told it would not get an EVEL certificate until it reached the Commons. In theory, you could have a Bill that started in the Lords that is going to be designated EVEL, and we will not know about

that. I do not know yet whether that will cause additional complications, but it would be helpful to know.

**The Chairman:** So you would like to see the Bill certified by the Speaker of the House of Commons before it starts in the House of Lords.

**Baroness Smith of Basildon:** Or for them to know whether or not it would be. The problem was that nobody knew what was going to happen. There is a lack of clarity.

**The Chairman:** That is an interesting point. Lord Wallace, do you have any thoughts?

**Lord Wallace of Tankerness:** That is an interesting point. I do not know whether it is feasible for the Speaker to pre-certify, but for the Lords proceedings it would be useful to know. I agree with Baroness Smith: we have not had enough experience yet to know whether there are any procedural or detailed implications for the House of Lords.

I recall raising one point when this issue was being debated quite extensively a year ago. We can now find ourselves in a position where, for the sake of argument, a Bill starts in the Commons and comes to the Lords; the Lords passes amendments; the amendments go back to the Commons; a Commons majority accepts these amendments, but the English Members of Parliament do not, so the provision in question does not form part of the Bill. We will therefore have a situation where a particular provision has been passed by the Lords and Commons, but it is not submitted in that form to the Queen for Royal Assent. I think that is quite a constitutional change.

**The Chairman:** I know you raised it earlier.

**Lord Wallace of Tankerness:** I do not know whether it has a direct impact, but it raises the issue of whether the will of Parliament as a whole can be vetoed by a subset of the House of Commons. I think that is an important constitutional issue.

**Baroness Smith of Basildon:** Could I add to that? Recently some of the amendments we have had passed in the House of Lords have had large majorities. A Bill could be passed with a substantial majority in the House of Lords—cross-party, Cross-Benchers; we are more likely to have those wider cross-party alliances—but when it goes to the House of Commons, there may be a very small majority against what we have done. I think that reinforces the point that Lord Wallace has made.

**The Chairman:** You are both anticipating what was going to be my supplementary question, about emerging problems in the longer term and any limited experience we may have had with ping-pong or how we anticipate ping-pong developing in the future. Do you have anything to add on that?

**Lord Wallace of Tankerness:** As I say, I think it is too early to say. These Standing Orders have not been tested in wartime, if you want to put it like that, because anything that they have applied to so far has been fairly uncontentious. We have also not had a situation where we have had a different Commons majority from an English MPs majority. It is only when you get into that situation that the system will be properly tested.

**Baroness Smith of Basildon:** This is why we were so supportive of Lord Butler's Motion to have a Select Committee or Joint Committee to look at this, because, as Lord Wallace says, in peacetime it is relatively smooth. We do not know what problems we may have in the future, and I would rather anticipate problems and prepare for them than get down the road, find we have a serious problem and that no one has thought how to deal with it, and a serious constitutional issue arises. I would have thought the idea of both Houses looking at it in more detail and anticipating all the potential problems is a helpful one. It is good that you are doing your investigations, but I am sorry the Government did not take that route themselves.

**Baroness Taylor of Bolton:** I wanted to follow up this peacetime/wartime theme because, given what happened on 23 June and the uncertainty around Brexit and all its consequences, and how Parliament, and, indeed, the Government must deal with this, maybe that is when wartime will break out and all these issues will be tested. The situation is already incredibly complex and then you have this additional factor, especially with the Scots wanting their own negotiations with Europe.

**Baroness Smith of Basildon:** It is a problem that follows all Governments; piecemeal constitutional change is very difficult, and you have to anticipate the impact across the board, not just on that day, at that time, for that institution. One of the things about peacetime/wartime is that upon Brexit—and this brings in Scottish MPs—you are more likely to have a non-Conservative Government who draw support wider than England, if you look at the political arithmetic. I think this point was made during one of the debates we had. You could have a Government in place who draw the majority of their MPs, depending on what happens post-Brexit, from Scotland, Wales and large parts of England, but the Opposition have a majority of MPs in England. That will be a terribly complex position. You could even find that on Budget matters, the Budget or parts of it are voted down by English MPs, and then it becomes almost impossible for Government to do business. We do not know how it is going to work yet.

**The Chairman:** We may get back into these issues with later questions.

**Q37 Baroness Taylor of Bolton:** We have been speculating, in a sense, about whether we could end up with a form of EVEL in the House of Lords and what the consequences would be there.

**Lord Wallace of Tankerness:** I think that is a non-starter, at one level for a very simple reason: with very, very few exceptions—I think there are two hereditary Peers who are Peers solely of the Scottish peerage—we are all Peers of the United Kingdom, regardless of the territorial area in our title.

**Baroness Taylor of Bolton:** What are MPs?

**Lord Wallace of Tankerness:** MPs have constituencies.

**Baroness Taylor of Bolton:** Yes, but they are Members of the whole Parliament.

**Lord Wallace of Tankerness:** And I think that is important. They are representing people in a defined geographical area and that does not apply to us. Where would you start? Is Lord Lamont of Lerwick a Scottish Peer because Lerwick is in Scotland—although Shetland might query that—yet his political career has been in England? Lord MacGregor of Pulham Market represented an English constituency and it is an English title, but he is a Scot. I do not think you could do it. Apart from anything else, I think we would lose something in the House of Lords, where we all take part. If one of the arguments we put forward for justifying it is the expertise we bring, I think that is far more important than any tenuous geographical link.

**Baroness Smith of Basildon:** I would concur with that in large part, but I think there is an added complication. I have just put in my notes here, “How?” and I think that bears out a lot of the comments. It is also changing the nature of how the House of Commons works.

I looked up an Edmund Burke quote before I came along today. As some of you will know, it is from his speech to the electors of Bristol: “Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole”.

It is the nature of how the House of Commons works. When you represent a particular area or region, you are supposed to represent the national interest as a whole. Once you start dividing that national interest, as we have seen with the possibility of Scotland becoming independent, where does that end? It is not that long since I was an MP, but I saw a change in my time, and others will have seen it as well, in the focus of your role with your constituency. Members of Parliament are a lot more focused on their constituencies now than they would have been, say, 100 years ago. Having structures such as EVEL, we are in danger of losing that representation of the whole. I am told that some of the minor parties no longer nominate anyone to serve on

Delegated Legislation Committees. That is quite a serious matter, because they are seeing their representation as of part of the UK, not the whole UK. I do not know how we would do it in the Lords, but I do not think we should even consider it, and I am uncomfortable with the legacy it is leaving in the House of Commons.

**Lord Brennan:** By way of testing the proposition of how it will work between the two Houses, let us take a simple example. Let us say in the House of Lords there is a vote that the certification of a Bill was wrongly made; it is not an appropriate Bill for certification. It would appear that, even if the Lords did that, the Standing Orders of the Commons would prevail if it went back to the Commons. It strikes me that in practical terms, this is almost like a Parliament Act consequence achieved through Standing Orders. The Commons decides how it will vote; it votes. The Bill has to go back to the Commons; it votes again, and it is determinative in practical terms. That is achieved through Standing Orders and not legislation.

**The Chairman:** There is no need to answer. That was a statement rather than a question.

**Baroness Smith of Basildon:** I nodded.

**The Chairman:** You are welcome to answer if you would like to.

**Lord Wallace of Tankerness:** There is a later question on Standing Orders rather than legislation and we may come to that in more detail, but I think, on balance, I prefer the Standing Order route at the moment because I think other issues could arise if it was through legislation; not least, possibilities of it being challenged in the courts. Where we are is very new, and I think Standing Orders give us the opportunity to be flexible if it needs changing, whereas, as we all know, opportunities to change primary legislation are sometimes few and far between.

**The Chairman:** Do you want to add anything, Baroness Smith?

**Baroness Smith of Basildon:** We will come on to this point later, but I suspect the reason it was done by Standing Orders was not to give flexibility, but to get it through as quickly as possible with as least fuss as possible.

**Lord MacGregor of Pulham Market:** May I follow up on Lord Wallace's first answer to this question? Do you see the House of Lords treating parts of a Bill or a Bill that has come up from the Commons certified as English-only any differently from the way we treat any other Bill? If so, what happens when we pass amendments which have been looked at in the House of Commons as English-only? When those go back, who looks at the amendments we have passed?

**Lord Wallace of Tankerness:** To take the first point of whether it makes a difference, I do not think it has yet. There were some Bills where at least parts were certified, and I suspect we

were not all that aware of that when they came to our House. It might make a difference when there is something a bit more controversial. It is in the nature of a veto, you would not get it coming to us, because it would have been knocked out at that stage in the House of Commons. If a Bill starting in the Commons had a provision knocked out by English MPs, that provision would not get to us. It might be more interesting if it then became another amendment, and if the amendment that had been knocked out in the Commons was reinserted in the Lords. I think that would create an issue.

My understanding of the Standing Orders—and let us presume that is what happens—is when a provision goes back to the Commons, there is a certification when it comes to deal with Lords amendments and that particular amendment would be certified again. It is my understanding—and I notice one of my colleagues, Tom Brake, when he gave evidence to you, said he found a very helpful flowchart, which I think I have managed to track down—that at that stage, there would be a double vote, and it would require a vote both of the House of Commons and of English MPs for it to be incorporated into the Bill. If it only passed the Commons but not the English MPs, it would not be incorporated in the Bill, and no doubt that would be explained in the Reasons when it came back to our Lordships' House. That is the point I made earlier: that you then have a situation where Lords and Commons have both passed it but a subset of the Commons has not. That is where we get into uncharted waters.

**Baroness Smith of Basildon:** That is when the Lords would be most unhappy. If an amendment to a Bill comes through the Lords, and it goes to the Commons and is passed but English MPs veto it, I think we would find that quite difficult, having had our debate and sent something to the Commons. That is where some of the complications arise and the relationship between the two Houses becomes difficult.

**The Chairman:** We must press on. We will come back to these issues in other questions. Lord Morgan.

**Q38 Lord Morgan:** There has been concern expressed that EVEL threatens a very important principle of all members in the House of Commons having equality of status and equality of weight in debates. I noted in yesterday's Cardiff *Western Mail* a statement that it could be very difficult for Stephen Crabb if he were to become Prime Minister, as he is the Member for Preseli Pembrokeshire and would not therefore be able to speak and vote on large chunks of business. The Scottish nationalists have raised this point. Are you sympathetic to it at all?

**Baroness Smith of Basildon:** I am entirely sympathetic to that point of view. I think it changes the nature of representation along the lines of the Edmund Burke quote. Many years ago, when we were discussing in the other place the reform of the House of Lords, I was one

of those MPs who refused to vote for something that gave a hybrid character to the House of Lords, because I could not see any sense or anything proper about having different categories of Peers. You are absolutely right; we are going down the route where we have different categories of MPs. It is affecting MPs' behaviour. That might play out—and I have mentioned the Delegated Legislation Committees and you have mentioned Stephen Crabb—and continue and become more obvious, and possibly more extreme.

**Lord Morgan:** You explain it, as always, with enormous lucidity. Is that the Labour Party's view? I have never heard Jeremy Corbyn utter anything on a constitutional matter. Do we have a position on this?

**Baroness Smith of Basildon:** As far as I am aware, at present the Labour Party would have a constitutional convention to look at these issues, and that is the policy. I would make the point strongly that when we are dealing with anything that has a constitutional impact we have to be very aware—and all Governments have been guilty of failing to do this in the past—of the knock-on effects and unintended consequences. We have been pretty poor, as Governments, in governance over the years at doing that. EVEL has compounded the situation. Also you have the proposals to change the boundaries, EVEL and Brexit. These three things happening at the same time have enormous constitutional implications. I do not know if anyone is thinking of the medium and long-term let alone the short-term implications.

**Lord Wallace of Tankerness:** I agree with much of what Baroness Smith has said. My own party's policy is to have a constitutional convention. That picks up a point this Committee has made a number of times about piecemeal legislation. I remember as a Minister getting it in the neck sometimes about piecemeal legislation. I think this is another example. It is not just a question of asymmetries between Scotland, Wales, Northern Ireland and England. Even with England now, you have London and the City deals, which are changing the relationship between parts of England and the centre. There are quite a number of asymmetries and I do not think trying to address it Standing Order by Standing Order is the way to do it; an overall view would be much better. Therefore, I have some sympathy with the point Lord Morgan made—that some MPs might feel they are on a different plane.

There is an important political and practical point to this. When I was thinking about coming to the Committee today, I remembered that back in 2004, when I was in the Scottish Government as the Minister for Enterprise and Lifelong Learning, Westminster passed the legislation on university top-up fees. You could argue about it, but I suspect that would have been seen as English because it applied only to English universities. However, I gave a statement to the Scottish Parliament on 24 June 2004—I went and looked it up—the opening

line of which was: “I would like to make a statement on cross-border student issues arising from the proposed implementation of variable fees in England from the academic year 2006-07”. What was expressly English, had—and I remember it well—consequences in Scotland. Obviously Scottish MPs would be able to vote at the Second and Third Reading, but they would not be part of the Committee looking at it, and a lot of these issues, which are perfectly legitimate issues for Scottish MPs to take up, would have been missing from deliberations in the Committee. There is a potential difficulty there, where in the strict legal sense it might not apply to Scotland, but in a very real, practical sense it would.

**Lord Beith:** What about the reverse situation, if it had been the Scottish Parliament introducing variable fees that would apply to English students going to Scotland?

**Lord Wallace of Tankerness:** That is the case. That is the anomaly that this seeks to address, but I would suggest it does not address it very well. That is why our party has recommended a constitutional convention. Ultimately, we would want to see a federal solution, but that is probably not on the table in any near future. A constitutional convention to tease out these things would be very helpful.

**The Chairman:** There is huge confidence in the potential of a constitutional convention to solve all problems.

**Lord Wallace of Tankerness:** At least it would air them in a coherent way.

**The Chairman:** I did not mean to start a hare running there. Lord Hunt.

**Q39 Lord Hunt of Wirral:** When I first entered Parliament 40 years ago, the West Lothian question was very much being asked by everyone, and the then Prime Minister, Harold Wilson, had well-known views on conventions and royal commissions. Although he went out of another door on the very day I arrived in the House of Commons, it has been a problem for many, many years. Whatever the intention of using House of Commons Standing Orders, in the view of the shadow Leader, what are the advantages and disadvantages of implementing EVEL through these Standing Orders rather than through legislation?

**Baroness Smith of Basildon:** I suspect it depends which side of the argument you are on. If you are the Government, the advantage of Standing Orders is that it would be quicker and there is less consideration. There are pages and pages of Standing Orders—is it 17? I have lost track now—but it was dealt with pretty much in an afternoon, so there was not the consideration; legislation would have taken much longer. It also can be undone more quickly. A future Government might look at this, or indeed this Government might, and say, “Have we given it proper consideration?” I understand the issues about the West Lothian question, but I wonder if this Government are going for belt, braces and a piece of rope around the waist to

keep the trousers up. We have the boundaries Bill, Brexit and this. There are so many ways it is being looked at, and a little more thought and reason on how to do it would have been better. It did not have the deliberation and consideration it deserved.

**Lord Hunt of Wirral:** Should it have had that consideration in this House?

**Baroness Smith of Basildon:** I think it should have because I do not think we yet know what the implications are for this House. I mentioned the Bus Services Bill, and one of the reasons we were looking at it was to see what was in the current Bill and what the interests were. It is the point Lord Wallace made. It is very difficult to disconnect ourselves legislatively from other parts of the UK. Decisions being taken on bus services in this Bill could affect buses in the north-east of England, in Berwick, that will also have that connection with Scotland. Again, I do not think it has been thought out. There could be some further consideration about what happens to Bills when they get here and what happens to our amendments. The fact is the Lord Speaker could certify a Lords amendment as EVEL. I do not know what the implications of that would be or how we would manage that, or whether it would come back to us because it has been certified EVEL. I am not convinced we had that full discussion. Legislation would have provided the discussion; it may have led to some amendments and been more difficult to dismantle. However, I think the reason we have Standing Orders is because it was quick and easy to get through.

**Lord Hunt of Wirral:** Lord Wallace, given that these Standing Orders could be revoked by the House of Commons at any time, while we are exploring this step-by-step approach, what do you think of the shadow Leader's idea that we ought to introduce our own procedures alongside the Commons Standing Orders by giving the Lord Speaker the right to certify?

**Baroness Smith of Basildon:** No, I did not suggest that.

**Lord Hunt of Wirral:** It is a possibility.

**Lord Wallace of Tankerness:** I would be very wary of giving that power to the Lord Speaker or, indeed, to anyone in your Lordships' House. I am not quite sure what would happen if you had one certification in one House and a different certification or non-certification in another. That would be a recipe for considerable confusion. I think Baroness Smith is right that it was done by Standing Orders because it was quick. I am not saying it was quick and easy—when you look at the Standing Orders it clearly was not—but it was quick. Given that it was done, as I think Ministers said at the time, on a trial basis, I think there was merit in doing it that way because they can be amended. We have not had enough experience to see how they should be amended, but it points to the fact that Lord Butler's proposal for a Joint Committee of both Houses, which we overwhelmingly endorsed, to work through the procedural

implications for both Houses was very positive. It is regrettable that the Government did not respond more positively to it, given that it was passed in a very cross-party, Cross-Bench way.

**Baroness Smith of Basildon:** As a point of clarity, I hope I was clear: I was not for a moment suggesting we give powers to the Lord Speaker. I was querying the process by which the Speaker of the House of Commons could certify a Lords amendment.

**Lord Pannick:** Is the best way to ensure that the constitutional implications of this profound change are properly analysed to have legislation? I cannot see any other way of doing it, other than to have the tried-and-tested method. Can you think of any other similar, profound constitutional change which has been introduced by Standing Orders?

**Lord Wallace of Tankerness:** Maybe Lord Norton will know of something from the Irish experience in the late 19th century, because I think the Standing Orders of the Commons were changed a few times then in response to Irish nationalists. I suspect we would have to go back that far to find it.

**Baroness Smith of Basildon:** You describe it as a profound constitutional change, and I think it is. As Lord Morgan was saying, it changes the status of MPs and how the House of Commons operates as a United Kingdom Parliament, so there is an argument for legislation. Had there been fuller and greater consideration of amendments, it may not have ended up in its current form, but I still find the principle of it unsound.

**Lord Pannick:** Lord Wallace mentioned earlier a concern that if there were legislation there might be a legal challenge. I am a bit puzzled; on what basis could legislation be challenged in the courts?

**Lord Wallace of Tankerness:** I meant that that legislation could pave the way for a challenge to the Speaker's certification.

**Lord Pannick:** I see.

**Q40 Baroness Taylor of Bolton:** You have both said that it is early days, but the Leader in the Commons has said, as you mentioned, that this is going to be trialled and at some stage it is going to be assessed. What measures would indicate whether it was a success or a failure? Who do you think should be assessing this? Should it just be the Government? Should it be the Commons? Should it be the whole of Parliament?

**Lord Wallace of Tankerness:** I think it would be preferable, and this goes back to what Lord Butler proposed, if the whole of Parliament were involved. I would reiterate that I think it is too early. We have not had proper experience. When you ask who should assess it, if the driver for this—and I do not in any way minimise this because I have had enough colleagues from England who have mentioned it to me—was a perception, perhaps a reality, of a

democratic deficit, and people in England feeling that it was possible for the Scots and Welsh to override the majority view from England, we may want to know whether the constituents of English MPs feel that their concerns have been better addressed as a result of this change or not. Again, they probably think it is too early and I suspect people are not talking about it terribly much in the pubs.

**Baroness Taylor of Bolton:** And will not do so until there is some kind of crisis.

**Lord Wallace of Tankerness:** I think we described it earlier as a wartime issue, which might well provoke the discussion, yes.

**Baroness Smith of Basildon:** The way most Governments decide on success in these kinds of matters is whether they can get their legislation through. My worry is that will be the major deciding factor in assessing if this has worked. That is not true only of this Government; it is the priority of all Governments, and this would help them do so. My worries are more the constitutional long-term impacts on the role of MPs, and if the Government are talking about a review in October, as was said originally, I do not think that is any time at all to assess something of this significance.

**Q41 Lord MacGregor of Pulham Market:** Lord Wallace referred to the feelings among a lot of English MPs and constituents. I recall vividly the early debates. I think I spoke immediately before or after Tam Dalyell in a particular debate, and I have held the view since that it is a matter of great concern. Is there a better answer to the West Lothian question than this form of EVEL?

**Lord Wallace of Tankerness:** I would like to argue that federalism provides a rather neat way of addressing it, but it is not without its problems. I am not one who is readily persuaded—although I hesitate to say this because as a Scot I am looking from the outside—that an English Parliament is the answer either, because it would be so large. We want to see decentralisation, but what we have seen with the Scottish Parliament under the present Administration is that there is more centralisation within Scotland. I am not persuaded that an English Parliament would be the answer. Obviously, efforts made during the last Labour Government to establish regional assemblies in the north-east to start with did not work. We are starting to see different solutions in different places, but again it is piecemeal. It may go some way to addressing this, but I still think it would be better to have an overarching look at this.

There are issues within England as well. It is maybe not so much the West Lothian question as the West Yorkshire question. There is no easy answer to this, given the considerable asymmetries that abound. I am not necessarily persuaded that this, which in many respects is a

very narrow veto, is the answer. If push comes to shove, I rather suspect it will not satisfy people. It begs the question whether, if a subset of the House of Commons can have a veto, democratically elected Members of the Scottish Parliament can have a veto, which would mean repealing Section 28(7) of the Scotland Act. I am not proposing that, but the genie is out of the bottle.

**Q42 Lord Morgan:** I want to make a general point. We have heard quite a lot of serious criticism of the possible implications of EVEL. As an historian, it occurs to me that so many experimental temporary procedures under our constitution—such as the Barnett formula—last for ever. Is there not a danger that these will be perpetuated because people cannot think of an alternative?

**Baroness Smith of Basildon:** It follows on from the previous question. There is a danger of that because people do not know the answer. Given that most political parties and most people in the UK are committed to retaining the United Kingdom, if finding a solution to the West Lothian question was easy it would have been done. Because it is not easy, it has not been done. We have had numerous ideas. I do not think the idea of regional assemblies was a particularly elegant response. It was a response to a different question; not to that question. There is a danger here that because nobody can think of anything better, we are stuck with this.

My grandmother used to say that sometimes, the best thing to do is nothing. Let us step back and, if we really want to do something, consider the alternatives, the options. We have a difficulty that the four nations are not equal in size, shape and population, so there are always going to be various imbalances. Great minds have been putting their thoughts to how we best address that for many years and have not come up with an elegant, ideal solution, and perhaps we never will.

My main objection is that it has not been thought through. If we sat down and thought it through, we might come up with something better and say, “Actually, we could tweak something here; this isn’t it”, but I do not think those discussions were ever had.

**Lord Morgan:** I am with your grandmother.

**Q43 Lord Norton of Louth:** My question derives from my reflections on Lord Wallace’s question to me about Standing Orders in the Commons. When you think back to those of the 19th century, they were very much internal to the Commons and did not raise wider implications. The last time one might have had a major change to Standing Orders of the sort Lord Wallace mentioned was probably 1907, and to some extent that affected the relationship between the House of Commons and Government, and, in a way, that leads to the question

about wider implications. We have been discussing whether there are implications for the House of Lords, but there is the wider one which Lord Wallace touched upon a few moments ago, which is the relationship between Parliament and Government and the devolved institutions. Do you think there are implications? Your earlier comments suggested you think there are.

**Lord Wallace of Tankerness:** I suspect no one is thinking terribly much about it in the Scottish Parliament, but it is one of these things where something could happen, and the issue could then become very stark. The Scottish Parliament might well say, “If a subset of the House of Commons can veto something, and that is not the Queen in Parliament, surely some other body which has a perfectly good democratic mandate”—some might argue, under proportional representation, an even better one, but let us not go there—“should have that right, so why shouldn’t we?” We went some of the way in the debates we had on the Sewel convention in the context of the Scotland Bill, but, as we well know from these lengthy debates, it does not actually answer the issue. I think that could become an issue if a particular set of circumstances arose on a particular matter.

**Lord Norton of Louth:** So it is something we need to be alert to?

**Lord Wallace of Tankerness:** We should be alert to it, yes.

**Baroness Smith of Basildon:** It is not just the relationship between the constituent parts of Government and Parliament; one of the selling points was that it was said the public wanted this and that this would address the question of the English deficit. I do not know about anybody else, but if I go to my local pubs, clubs and supermarkets, nobody says to me, “Well done on EVEL; that’s really changed things”. There is no excitement about Standing Orders. It is like when statutory instruments became exciting over tax credits, and no one had paid attention to them before. I am not at all convinced that this addresses the question, or that it is something people are crying out for, or are even aware of or know anything about it. My own view is that it was a tool for Government, not for the country and good governance.

**Q44 Lord Beith:** Reflecting on what Baroness Smith just said, that may not have been a political issue in the general election, but what was most certainly a political issue was a fear that Scottish influence over legislation in the form of the Scottish National Party might be too strong after the general election. I think we all experienced the consequences of that.

I want to turn back to the Speaker’s certificate. It seems to me that the courts rightly would be very wary of trying to challenge the Speaker’s certification. However, the courts could not avoid resolving a devolution question in which the devolved Assembly was seeking to assert that a matter was within its devolved competence, even though that conclusion was at

variance with the way the Speaker had certified the Bill. How does the former Advocate-General think we would have to handle that situation?

**Lord Wallace of Tankerness:** I think I raised that point at one of the debates. It is a very difficult issue. It was part of my job when I was Advocate-General for Scotland in two ways. In relation to UK legislation, there were extensive discussions between my department and the Scottish Government as to whether legislative consent Motions would be required. They were always conducted in a very positive spirit, but there were sometimes difficult issues. The other part of my responsibilities was that on every Bill passed by the Scottish Parliament, along with the Attorney-General and the Lord Advocate, I had to decide whether to refer it to the Supreme Court with regard to whether it was within the legislative competence of the Scottish Parliament. Some were fairly straightforward, but others were very difficult indeed and fine judgments had to be made. Speaker's Counsel has been given a pretty challenging task.

In one debate I said you could have a situation where a piece of legislation has come before the House of Commons, and the Speaker has certified, as per the wording in the Standing Orders, that it would be within the legislative competence of the Scottish Parliament to make any corresponding provision for Scotland in an Act of that Parliament. Twelve months later the Scottish Parliament might produce an exactly parallel, identical Bill to apply to Scotland; someone might challenge it—possibly not the Law Officers as private individuals can challenge it—it might go to the Supreme Court and the Supreme Court might find that it is outwith competence.

I do not think anything could be done with the UK Act because that would be done and dusted, and it would be history. Potentially you can see situations arising where an aggrieved party might say, “If that had been determined the other way before the Speaker gave or withheld his certificate, things might have been very different”. It is the law of unintended consequences. We could well find issues arising which could be quite important, with people's rights involved.

**Lord Beith:** Reverting to the situation in which a Lords amendment had been rejected by the English Members of Parliament in the Commons, even though it would have had majority support in the whole House of Commons, surely that situation is not procedurally different from any other reason the Commons might return to the Lords and say, “We are not accepting your amendment”, and would have to give Reasons. Politically it would be very different, but procedurally the argument would go on until the Houses agreed between them, in the case of

the Commons by its special procedure, to include or not include that amendment, or some variant of it.

**The Chairman:** You are talking about a sort of Mac ping-pong.

**Lord Wallace of Tankerness:** That might be one of the more understandable reasons.

**Baroness Smith of Basildon:** That would affect the relationship between both Houses, particularly if we had passed something on a cross-party basis with a large majority and then it comes back having been rejected by a small majority. We are very restrained on ping-pong in this House—most of the time—but it could create a difficulty that I do not think any of us here wants to see.

**Lord Wallace of Tankerness:** It is not that it might have been lost by a small majority; it might have been passed by a large majority in the House of Lords and Commons but defeated by a small majority of a subset of the House of Commons.

**Lord Beith:** That was why I said it was politically different, not procedurally.

**Lord Wallace of Tankerness:** It is political, not procedural.

**Baroness Smith of Basildon:** It is not just politically. There will be political concerns that political parties will have, but it is constitutionally difficult because the relationship between the two Houses is altered.

**Q45 Lord Brennan:** The Government wanted EVEL to be introduced to satisfy the English constituency in the devolved arrangement, but in fact EVEL ought to play a part in the general picture of devolution of powers across the entire union, if it is feasible and practicable. Does EVEL have any chance of being pictured as a successful and fair part of the overall union framework?

**Baroness Smith of Basildon:** I represented an English constituency for 13 years as somebody who is half-Scottish. I do not see people being satisfied that this addresses the question if they were asking it in the first place. It is quite difficult. I take the point made by Lord Beith that people raised the question during the general election of whether the Labour dog was being wagged by the SNP tail. They raised this question but I do not think they have an answer yet, so it is probably no. It does not satisfy the questions that were raised. I come back to the point that we do not have an answer yet. The problem we have is that this is now depicted as an answer, but I think the issues will remain, which is the point you made. We will be in the same situation as we are now but with complications, some of which we are not yet aware of.

**Lord Wallace of Tankerness:** I think this will be revisited. It will go on its way at the moment because it has not been tested. Even since we have had this, on the issue of fox hunting, regardless of your views, there was the threat of SNP members voting against what the

Government were proposing. They could do that because it is a very limited English veto and it does not stop the House of Commons as a whole voting on something at the end of the day. Having had a self-denying ordinance for all these years, they used their political muscle to try and influence that particular resolution. If that can still happen, it will not satisfy the underlying concerns.

I do not think these particular Standing Orders will be a permanent feature of our constitution. I do not think anyone in Scotland, Wales or Northern Ireland thinks very much about this issue at the moment. For good or for ill, they do not think about it. I have always accepted there is an issue to be addressed. I do not think this is the answer to it and I am not pretending there is a silver bullet because, if there was, we would have found it long ago. The more you have lots of different arrangements within England, as well as Scotland, Wales and Northern Ireland, in some sense it may make it more difficult but in another sense it may be part of the resolution. The more people feel within their own communities, as city regions or whatever, that they have more control over important issues, the less the clamour may be.

**The Chairman:** It has been an extremely interesting and very thoughtful session. You have given us a huge number of good insights. The fact that they are insights into problems rather than solutions is something we have to accept. It is not going to make our job easier, but I hope it will give it slightly more substance than it might otherwise have had. The Committee is extremely grateful to you. It is a very busy time for both of you and we much appreciate it. Thank you very much.