

Scottish Affairs Committee

Oral evidence: English Votes for English Laws, HC 569

Tuesday 19 July 2016

Ordered by the House of Commons to be published on 19 July 2016.

[Watch the meeting](#)

Members present: Pete Wishart (Chair); Kirsty Blackman; Mr Christopher Chope; Margaret Ferrier; Mr Stephen Hepburn; Chris Law; John Stevenson.

Questions 1-76

Witnesses

I: Michael Clancy, Director of Law Reform, Law Society of Scotland, Daniel Gover, Research Fellow, Mile End Institute, Queen Mary University of London, and Dr Kenealy, Lecturer in Social Policy, University of Edinburgh.

II: Rt hon. David Lidington MP, Leader of the House of Commons.

Examination of witnesses

Witnesses: Michael Clancy, Daniel Gover and Dr Kenealy.

Q1 **Chair:** Good afternoon, gentlemen. Could you tell us for the record, from left to right, who you are, what you represent and anything by way of a short statement—a couple of sentences?

Daniel Gover: I am Daniel Gover. I am a researcher at the Mile End Institute at Queen Mary, University of London. We are working on a project at the moment that is analysing the introduction of English Votes for English Laws in the Commons. I am also an associate member of staff at the Constitution Unit at UCL.

Michael Clancy: Good afternoon. My name is Michael Clancy. I am director of law reform at the Law Society of Scotland.

Daniel Kenealy: Good afternoon. My name is Daniel Kenealy. I am a lecturer at the School of Social and Political Science at Edinburgh University. In late 2014 and throughout 2015 I worked on an ESRC project with colleagues on public attitudes towards constitutional change in the UK.

Q2 **Chair:** We are grateful. Right, let's move on to starters for 10. We have had English Votes for English Laws for about a year now. It has been contentious and there have been issues surrounding it. Is it working? Is it doing what it was intended to do?

Michael Clancy: It is getting there. I think we have had something like eight Bills. Daniel and I were discussing the exact numbers outside. I think that shows that so far the process is working, but it is rather early to be able to make an absolute assessment, because it was been less than a year since the Standing Orders were approved by the House. Because of that, we have some time to wait until we have seen perhaps more contentious measures come through.

Some of the evidence that has been given to the House of Lords Constitution Committee talks about legislation made in anger and whether procedure has been used in a time of war. I would not bandy that kind of language around too readily, but some of the witnesses have expressed themselves in those terms. It is only when we see extraordinarily contentious legislation go through that we will find out whether this set of proposals or these Standing Orders hold up. For the moment, it is working about as well as one might expect it to at this stage, given the legislation that has been dealt with so far.

Q3 **Chair:** Mr Gover, perhaps you can help us by adding whether it has been necessary.

Daniel Gover: On the first question of whether it is working so far, I agree with what has been said. Logistically, it has been working: legislation has been certified; the new stages have operated with relatively



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few disruptions; votes have taken place under the new system. There were some teething problems at the start, but generally speaking it has worked relatively smoothly, although the caveat that was just mentioned is important: the legislation so far has been relatively non-controversial, but it remains to be seen how it will work with future Bills.

In terms of whether it was necessary, there is quite a large amount of polling data suggesting that for people in England there is some dissatisfaction about England's place constitutionally within the UK. Part of that is related to voting arrangements in the House of Commons. In a sense, you could say that responding to that was necessary.

- Q4 **Chair:** Before we move on, I asked whether it was necessary. If EVEL did not exist, the Government would still have got through all these measures without any difficulty whatsoever. In that respect, is it necessary as a legislative act?

Daniel Gover: In terms of its application to specific pieces of legislation, I think you are absolutely right; it is difficult to think of anything at all that has happened or any decisions taken that would have happened differently had EVEL not been in operation. I know that you are speaking to the Leader of the House later. I suspect the response from the Government might be that there is this sense of dissatisfaction. It probably is the case that most people are not monitoring how this is applied to particular Bills. Nevertheless, the sense that something is being done and giving that greater confidence that English people's interests are being heard—I suspect that is the justification.

- Q5 **Chair:** Again, because this is important—it is good that you brought this up so early in these proceedings—what you are in fact telling the Committee is that legislatively it has not been necessary, because the Government would have got these things through anyway; it is the political side that is the important issue. As you said, something had to be seen to be done, and so the Government have introduced this to satisfy a political concern of English voters. Would that roughly be your view of this?

Daniel Gover: Legislatively, it may make a difference on future Bills. For instance, they have been very rare since devolution was introduced, but there were the cases of tuition fees and foundation hospitals, where—

- Q6 **Chair:** How many examples were there pre-EVEL?

Daniel Gover: Those are the only two that I am aware of: three votes on those two issues. They have been very rare. It is conceivable that those sorts of scenarios could occur again in future. I am not here to defend the Government, but I suspect that, in terms of whether it was necessary, they would point to the possibility of that occurring.

- Q7 **Chair:** It is putting in place something that may be a scenario in the future and the possibility that we pernicious Scots may impact on English legislation.



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Daniel Gover: I think it would be the possibility that legislation that applied primarily or exclusively in England might be passed without the consent of a majority of England's representatives.

- Q8 **Chair:** I am grateful. Mr Kenealy, we have looked at your research, which has fascinated the Committee and been very helpful in shaping some of the conversations that we are going to have. I think that you have conducted research into public support for different ways to deal with the West Lothian Question. Could you maybe talk a little bit in response to these general questions that we have set in respect of your own conclusions, and maybe help us to address whether EVEL was the only thing that was available to this Government to pursue?

Daniel Kenealy: I will certainly try. To go back to your original question—"Is it working and was it necessary?"—I would then ask, "What was it designed to do?" I would say that your comments that it was largely motivated by political concerns—I draw from a set of interviews with politicians and civil servants that we conducted as part of the project, not just the public opinion survey—is a fairly accurate assessment. It was largely politically and tactically driven, as many things in politics are, so I am not necessarily saying that as an indictment.

Will it work in terms of answering the English question—that is, this notion that there is dissatisfaction among people in England with how England is represented within the UK? I suspect that it will not. We don't know the answer to that question yet because, as far as I am aware, there hasn't been a credible, robust public attitude survey done in the period of time that we are talking about that would say whether it has shifted attitudes. But I suspect not.

The reason I suspect not is that, on the so-called English question, we know from public attitude surveys that there is a dissatisfaction amongst English people about their representation in the United Kingdom, and that people who say they have a distinctly English identity, as opposed to a British one, feel that in a more pronounced way. This is something that has been building over a number of years. I don't think you can solve a political problem like that with a relatively technical change to parliamentary procedure. That would be my opinion on it.

- Q9 **Chair:** In your view, has it gone some way to addressing that? I remember during the debates on English Votes for English Laws—this was put in the House of Commons by the former Leader of the House—it was argued that it was a political imperative, and that it was being introduced so quickly because so much of the last general election campaign was defined by these attitudes. Have the changes to the Standing Orders gone a great way towards satisfying those concerns amongst the English population?

Daniel Kenealy: From a public attitudes perspective, I really don't think we know the answer to that question yet, because we haven't got the survey evidence. Certainly, we haven't done a follow-up on our survey,

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because that is contingent on funding from the research councils. That was a one-off survey we did.

My colleague at Edinburgh University, Professor Charlie Jeffery—actually, he also my boss, so I should be careful what I say about his work on the McKay Commission—has carried out his Future of England survey and, as far as I am aware, that has had subsequent waves. So there may be forthcoming research in the near future that might go some way to answering that question.

What our research revealed—admittedly, it is now a year or so old—is that there may actually be two English questions. There is a question about England as an overall unit and how it is represented within the UK, but there is also a question about the remoteness of Westminster from various parts of England as well. To take English Votes for English Laws and put it as a zero-sum option against city regions, devo-Manc in its various iterations and other parts, may not be the best way to look at it, because self-evidently they are not zero-sum solutions. The idea that EVEL is the answer to the English question—I have always put a big question mark over that, myself.

Q10 **Chair:** We know that you have done detailed research, **too**, Mr Gover, which again the Committee has found fascinating, and we will come to you in a minute. We have a couple of supplementary questions, first from Kirsty Blackman and then from Chris **Law**.

Q11 **Kirsty Blackman:** On the topic of public opinion, do you think it is possible that the public approval that this has gained in England has at the same time been lost in Scotland? Is it possible that although this has helped English voters who feel a sense of dissatisfaction, it has actually made Scottish voters less satisfied with the UK **Parliament**?

Dr Kenealy: That would be a distinct possibility. Again, when it **comes** to these things, you are looking for really good-quality survey evidence from things like the Future of England survey, the British Social Attitudes survey, the Scottish Social Attitudes survey and, if I may have a moment of immodesty, the kind of survey that we commissioned last year. You get polls in newspapers all the time that are responding to events, and I would not put too much stock in them.

If we look over the long term at British and Scottish social attitudes surveys, the support for English Votes for English Laws in England, as measured by the British Social Attitudes survey, stayed pretty constant from around 2000 to 2013, which was the last time that question was asked. In the Scottish Social Attitudes survey, there has never been overwhelming opposition to it. Support for English Votes for English Laws in Scotland has always hovered around the 45% mark, with maybe a quarter and at most 30% of people opposed. Again, though, that question unfortunately has not been asked in the Scottish Social Attitudes survey since around 2011. That is a very long-winded way of saying, "I don't **know**."

Q12 **Chris Law:** I suspect I might give the same answer. Many constitutional

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points have come from EVEL, but do you think EVEL is rapidly going to become a victim of Brexit? In other words, Labour are talking about federalism and the SNP are looking at all options, which includes indy ref 2. Will it be one of those things that end up in the margins of history?

Chair: I think that is one for Mr Clancy.

Michael Clancy: It might be. We have yet to find out exactly what the effects of the UK's exit from the EU are going to be, but if one thinks about it, let us say that at the moment the EU deals with an awful lot of law for the UK. In domestic terms, some of that would fall within our devolved arena and some would be the kind of law that would be reserved to the UK Parliament if it were dealt with domestically. Therefore, taking that scenario, when the Speaker is asked to certify something as being devolved, some of that EU law that is repatriated to the UK upon its exit would fall within the ambit of EVEL, some of it would fall within the ambit of the Scottish Parliament and some of it would fall within the ambits of the National Assembly for Wales and the Northern Ireland Assembly.

The answer to your question, Mr Law, is yes, I think there will be an impact on English Votes for English Laws when we get to Brexit and actually see what form we have in terms of Brexit, but if, as the Prime Minister says, "Brexit means Brexit," you can see very easily that things like agriculture and fisheries, which would be devolved, would be the sort of thing that would then fall under these Standing Orders, as well as under the terms of the Scotland Act, the Northern Ireland Act and the Government of Wales Act.

Q13 **Mr Chope:** That is why the EVEL arrangements may well have a lot more relevance now. People would find it extraordinary, would they not, if the Scottish Parliament and the Scottish Government were given control over what to do with their own fishing and fishing waters but were still able to interfere in what the UK Parliament wanted to do in relation to fishing waters outside Scotland? The case for EVEL is in fact reinforced by the result of the referendum, is it not?

Michael Clancy: It is not just the UK Parliament; it is the Legislative Grand Committee of English MPs that is really the crux of the matter. When the Speaker certifies that something applies to England and is within the devolved arena, the Legislative Grand Committee and the process of Standing Orders 83J to 83X obviously apply to that. I anticipate that in the event of Brexit meaning Brexit, there would be more work to be done under those Standing Orders rather than less.

Q14 **Mr Chope:** Yes, more work to be done—and obviously Brexit does mean Brexit, because the Prime Minister has said as much. If England had voted to leave the European Union but the United Kingdom as a whole had voted to remain, that would have created enormous tensions. Do you agree that these EVEL arrangements would not have been sufficient to satisfy English public opinion?

Michael Clancy: It is a realm of speculation on which I am loth to embark. I have heard Prime Ministers say that they want some things and

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they have not got them, so we shall have to wait and see on that, Mr Choqe.

- Q15 **Mr Choqe:** Sir William McKay told us that a veto would create different classes of MP and could provoke deadlock between the UK Government and the majority of MPs in England. Is there now a feeling that devolved voices are less valuable than English ones?

Michael Clancy: Not for me.

Daniel Gover: In terms of the procedures, I would point to the fact that it is a double veto. In pretty much all legislation that comes before the Commons, the UK-wide House has to approve it for it to pass. I guess on that basis, I would say no.

- Q16 **Chair:** Can you think of another Parliament where there is an arrangement such as this? I know you would be loth possibly to use the phrase "two classes of Members of Parliament", but can you think of any arrangement in another Parliament where some Members have full voting rights in the House and others do not?

Daniel Gover: I am not aware of any.

- Q17 **Chair:** Is there no sense at all that by doing this, there are defined Members of Parliament now, in that some Members of Parliament have less of an entitlement in the House than others on the basis of the constituencies they represent geographically? Do you pick that sense up at all, or are we Scottish Members of Parliament fretting overly about the new arrangement?

Daniel Gover: If you look at this Parliament alongside the devolved Parliaments and Assemblies, this procedure seeks to apply the same principle that applies in terms of legislative consent motions, but to apply it to a part of the UK that does not have a subordinate Parliament of its own.

- Q18 **Chair:** To clarify, what this House has therefore done with EVEL is try to use the unitary UK Parliament to resolve some of the devolution issues. To take up the legislative consent motion example that you gave us, it has not bothered to go to the business of trying to create its own Parliament, like Scotland has, but is prepared to use this House to try to fix it through these arrangements. Is that about right?

Daniel Gover: If you look at the McKay Commission report, it is pretty explicit that one of the founding principles related to legislative consent motions and the devolution arrangements. I think the Government has sought to build on that. In that sense, it seeks to apply some of the principles of devolution—you are right—without establishing a separate Parliament.

Michael Clancy: I was just thinking, as Daniel was speaking, about the Legislative Grand Committee dealing with a Bill. In times gone by, the Scottish Grand Committee might have dealt with a Bill in the same way, as

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the Welsh Grand Committee and the Northern Ireland Grand Committee too would have.

- Q19 **Chair:** The difference being that they **were** not part of the legislative process.

Michael Clancy: Indeed. The Legislative Grand Committee, too, is part of the legislative process, because the Standing Orders say that. Daniel mentioned the principles of devolution being applied. One of those is the Sewel Convention. The Sewel Convention is, in essence, being applied through the vehicle of the Legislative Committee. In that sense, devolutionary principles are applied within the context of the House of Commons in relation to English matters only, or English and Welsh matters, or sometimes English and Northern Ireland matters.

- Q20 **Chair:** Do you have **a** view, Dr Kenealy, about what has been created—the idea that there are now two classes of Members of Parliament, uniquely it would seem, in this unified national **Parliament**?

Dr Kenealy: I agree in terms of the mechanics and how it has worked. First, I agree with my colleagues, but I also defer to their greater knowledge on points of parliamentary process—that is not something that I am an expert on. If I bring it back to public opinion, and particularly public perception, I don't think it's a stretch to suggest that that may be how it is perceived by some people.

That was my issue—I am speaking here in a personal capacity almost—with the way in which the Government chose to proceed with English Votes for English Laws, as opposed to, say, a model that was more along the McKay principle, which was a little bit more consensual and avoided vetoes and so **on**. From a public presentation perspective and in terms of being able to take forward a constitutional debate that seemed like a more sensible option to me, but reasonable people can obviously differ on **that**.

- Q21 **Chris Law:** You said that eight cases have come through already and that they are fairly anodyne and non-controversial. I am sitting here and thinking about some of the things that have been said—it is a classic ad hoc UK **Parliament**. What kind of future Bills do you see coming forward that are not only controversial but are likely to put the unitary Parliament into some sort of constitutional crisis; potentially to lead to requests from the public for an English **Parliament**?

Michael Clancy: We know what some of the Bills which are going to come forward might be, because the Queen's Speech contained some of those that will apply to England only, such as the Neighbourhood, Planning and Infrastructure Bill; the Local Growth and Jobs Bill; the Bus Services Bill, the Children and Social Work Bill; the Education for All Bill; the Higher Education and Research Bill, although that will have some Scottish provisions in it; and, I think, the draft Law of Property Bill. I suppose HS2 will be one where there might be some controversy, but as that is limited to the Midlands, I'm not so **sure**.

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That is what we know at the moment about Bills that you can identify as having significant England-only provisions, or perhaps England and Wales provisions. That takes us through this Session of Parliament. I think one would have to wait for the next Queen's Speech to be able to predict with a degree of certainty what might be there. Out of that list, with the best will in the world, I couldn't find something which I would say fits your category of controversiality, Mr Law.

Daniel Gower: In terms of Bills that are likely to be controversial, I can easily imagine a Bill that was perceived to have significant cross-border effects, particularly around funding. I can very easily see a dispute about that sort of Bill. I am not aware of any coming down the line, but we will see. Even in relation to a Bill like that, it remains the case that, because of the double veto, MPs from outside England are in no weaker position to block the Bill than previously.

It is true that MPs from outside England represent a minority of Members in the House. They could still find that they are on the losing side. That is not because of EVEL, which protects their existing ability to block such a Bill.

Q22 **Chair:** What is the point of all this then? The issues we have with all of this confound us. Why on earth are we doing this if nothing has changed?

Daniel Gower: I don't think it's fair to say that nothing has changed. There is now a veto for English—

Q23 **Chair:** There is a veto? There is either a veto or there is not. It either passes with the will of the House or English Members have a veto. What you seem to be saying to us is that it would still require the consent of all the House to go through, but there is still a veto.

Daniel Gower: English MPs cannot force something through against the wishes of the UK-wide House, but they can block something that the UK-wide House wants if it is in a certified clause. Taking the real-life examples of tuition fees or foundation hospitals - if you look back at them they are a bit more complicated than that, but that sort of thing, under these procedures, would not be able to reoccur.

Q24 **Chair:** I was in the House when tuition fees went through. I voted against tuition fees as proposed by the Blair Government. What happens now in the same scenario? Let's say another Bill comes forward with another new diet of tuition fees—what happens? I would obviously get to vote at the end of the process; English Members would have a veto. Who prevails?

Daniel Gower: All MPs will vote throughout the process until it gets to the Legislative Grand Committee, at which point there would be an opportunity for presumably English MPs in this case—it might be English and Welsh MPs—to veto that provision. If there is disagreement—

Q25 **Chair:** So they could veto the Bill? They could kill it off?

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Daniel Gover: They would have the opportunity to veto any clause that had been certified as relating to the area of that Legislative Grand Committee.

- Q26 **Chair:** So there is a veto, but once the veto is applied it then goes to the full House for the conclusion of the Bill where we all have a say on the final outcome, even though parts of it may have been vetoed exclusively by English Members. Is that roughly right?

Daniel Gover: If the veto was applied it sets off a chain of potential additional new stages.

- Q27 **Chair:** Is it not incredible that we are still discussing and trying to figure out what is going on? I have taken part in every single debate and have given evidence to Committees and I still haven't got a clue what is happening with all of this. What a dog's breakfast. Surely this is an offence to canines' favourite morning meals to call it a dog's breakfast, given the situation that we're in here.

Michael Clancy: But it is not really new is it, Chairman? This has been going on since 1977. In fact, if you wanted to bring Mr Gladstone into it, it has been going on since the 19th century. This is part of the way in which one Government have tried to resolve it and a future Government may find an entirely different solution.

- Q28 **Chair:** Could you think of a way to try to solve something that is quite difficult and technical and obviously very political that isn't as much of a mess as this?

Michael Clancy: Well, it is complex, but you don't honestly expect Parliamentary procedure not to be complex in some respects. As I said in September, we are where we are. We have got to deal with the Standing Orders as they are, and I am sure that, after the full review has taken place and we have had a throughput of legislation that gives us enough experience upon which to base ideas for change, we might see that ideas for change could be brought forward.

- Q29 **Chris Law:** Do you think that, given that eight Bills have come forward so far, this has had any impact on the House?

Michael Clancy: I think you would be better placed to answer that than I would because you are Members of the House. Certainly, it hasn't had any impact on the work that I do, in terms of looking at legislation. I should have taken a straw poll of my colleagues in Edinburgh, but no one has come to me and said, "See this provision here? What do you think about it? Is it subject to the EVEL provisions or not?" It is, however, not necessarily the easiest procedure to follow.

Chair: Absolutely. I think that is an understatement, Mr Clancy.

Michael Clancy: As you well know, Chairman, I am renowned for understatement in some places. Sometimes the Bill is relatively simple and

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it is easy enough to identify whether it is subject to this procedure. Sometimes, tracking whether it is clause 79, 78, 77, 81 can be a bit of a chore simply because of the way in which amending the Bill goes in terms of its passage through the House, but anyone who has dealt with any legislation in this House knows that that is part of the territory. We all have to look at the legislation with care as it goes through.

- Q30 **Margaret Ferrier:** Just a point on Legislative Grand Committees. We have heard that the last three that have taken place have been poorly attended and haven't taken very long—just a matter of minutes. Does this suggest that English and Welsh MPs are not taking this seriously and are not there to veto any part of the Bill anyway?

Daniel Gover: You are right, the Legislative Grand Committees have mostly been a formality. There has been no Division in any of the Legislative Grand Committees. Part of the reason for that, quite honestly, is because of how the Government have designed this process. If you look at the McKay Commission's report, the recommendation was for there to be something like the Legislative Grand Committee—without a formal veto but a similar sort of body—at the start of a Bill's passage.

In order to apply a hard veto, the Government has had to place it after Report stage, to take account of any amendments that may have been passed during the Bill's passage through the House. It is probably an inevitable consequence of that that there is not much appetite for having a debate about the Bill, given they have just had one at Report stage and they are going to have another one at Third Reading. It is one of the unfortunate side effects of reinterpreting the McKay Commission recommendations to include a hard veto.

- Q31 **Kirsty Blackman:** On the earlier comment about us being best placed—as new MPs probably not, because Standing Orders in the House of Commons are so incredibly confusing it is difficult to work out which bits are new confusion and which are old confusion. On the question of what we have got, Margaret mentioned that these debates are incredibly short and the last three lasted an average of two and a half minutes. You have mentioned that. Do you think they have made a politically motivated change that does not provide any practical improvement in how legislation is discussed and proceeds?

Daniel Gover: On the question of whether it has any practical improvement effect, partly because of the Bills that have gone through so far there has not been any desire to apply a veto. That is also partly down to the current partisan composition of the House of Commons. In future, there could be an appetite to apply a veto, so it could serve some sort of purpose.

Underlying your question is perhaps a concern about whether it is necessary to apply it in all these cases. On that, I am inclined to agree with what the Procedure Committee recommended in its interim report, which is that the Government might want to look at whether some way could be found to apply it to specific Bills where it was particularly

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necessary for that process to kick off, rather than for every Bill that meets quite broad criteria to go to the Speaker for consideration.

Michael Clancy: The other thing is that if the degree of consensus about the Bill is such that there is no contention at the point at which the Legislative Grand Committee decides, one wouldn't expect there to be either significant attendance or a series of votes. There are plenty of pieces of subordinate legislation that go through this House every year where the Committee dealing with the particular statutory instrument might last for a minute or so. It is all about the specific circumstances of the measure that is before the Legislative Grand Committee and which the House is considering as a whole. The day will come when it is contentious; just not now.

Q32 **Kirsty Blackman:** On the confusion around certification, or whether there is confusion around certification, there have been times in the past six months or so where I was expecting a certain clause to be certified and it wasn't, or where I was expecting that a certain clause wouldn't be certified and it was: that has possibly created more work than it might have done. As you say, the Procedure Committee's suggestion is interesting, to have it only on those which are contentious, rather than having staff spend a huge number of hours looking at something that nobody is going to be upset about anyway.

In terms of Governments drafting things to try to get certification, do you think it is possible that a Government could change the way they draft legislation so that it is looked at by a more favourable section of MPs, if you like? Could they draft things so they are likely to get certified?

Michael Clancy: Simplification of legislation, so everyone can understand it easily, is one of the holy grails that we all seek after. Certainly, the Office of the Parliamentary Counsel must wonder sometimes, when they are preparing an extent provision, whether people will understand it immediately or not. If one looks at some of the extent provisions which have been inserted into Bills, some would say that except for part 4, this Bill applies to England and Wales. In part 4 there might be some provisions which apply to England, some provisions to Scotland, some provisions to Wales and some provisions to Northern Ireland.

The guidance we are given by the extent provisions could be more clearly drafted in such a way that, for example, there is a reference to an earlier provision in the Bill that says that the extent provisions applying to that earlier provision, which amends another Act, apply. Therefore, you have to go back not only to the Bill but to another piece of legislation to see that. That raises an issue about legislation.gov.uk, which is the standard website for legislation. That is problematic because it is invariably out of date and something needs to be done about it.

Q33 **Chris Law:** I have a very straight question. Was changing the Standing Orders of the House of Commons the best possible method for introducing EVEL? It can be a yes/no.

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Daniel Gover: There are arguments either way. The consensus seems to be that Standing Orders was the best way of achieving this, partly because there is a fear that once you put something in legislation it opens up decisions taken by the Speaker to legal challenge. The consensus also seems to be that that would have been a remote risk, but nevertheless still a concern. It also makes it easier to change in light of experience once we get to the end of the review period. Also there is, in the Sewel Convention, this “normally” and there is an argument that if you use Standing Orders they can be easily suspended by the House, which is an equivalent of the “normally”, it is argued.

Against that there is a concern that if you put it in Standing Orders it has less scrutiny as it is going through the House. Some people may want decisions taken in the House to be subject to judicial review. Some people would say that the fact that it can be easily changed is a disadvantage. I can see both sides. The consensus is that Standing Orders is the most appropriate.

Mr Chope: Can I ask Mr Gover about the Enterprise Act and the Sunday trading amendment? I think it is your view that the Government could have drafted that amendment in such a way that it would be certified by the Speaker as being England and Wales only. But the Government, in order to avoid the then consequence that it would have been voted down by the whole House under its rules, decided to draft it in a way such that it did not raise the profile of the inadequacy of the arrangements brought forward, where they had led English voters to believe that they were going to be able to deliver laws that applied to England only—or England and Wales only—without interference from Members of Parliament from Scotland. Was it duplicitous of the Government? Was it intentional of the Government that they drafted that amendment in such a way that the Speaker did not certify it as being for England and Wales only?

Daniel Gover: I am afraid on the first part of the question, I agree: the Government could have drafted it in a different way. Had they drafted it in a different way, it would have presumably fallen for certification after Report stage. As for the Government’s motives for doing that, I don’t know. I suspect that this was just the way they drafted it, but you would have to ask the Government what their motives were for drafting it in that way.

Q34 **Mr Chope:** So cock-up rather than conspiracy is your summing up.

Daniel Gover: I am not sure that it is necessarily either. It may just be that this is the way in which Government drafts legislation. It was introduced as a new clause in Committee, if I remember correctly, and it may have been a way of saying, “These two bits hold together: Sunday trading liberalisation alongside protection for employees’ rights.” I don’t know; that is just speculation.

Q35 **Chair:** That suggests the supreme uselessness of EVEL, when something that—I agree with Mr Chope—could have been seen as an English-only measure did not even start to be covered by it, and that led to a big

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political fight in the House. What is the point in having something like this if it cannot even deal with basic issues such as Sunday trading in England?

Daniel Gover: I think it does show that legislation that only applies in England or England and Wales can slip through the EVEL net.

Q36 **Margaret Ferrier:** The past few weeks have seen a lot of changes on the Government and Opposition Benches. Does the introduction of EVEL mean that we cannot realistically have another Prime Minister, Secretary of State or Speaker who does not represent an English constituency?

Daniel Gover: My view is that I do not think it has that effect. You have to separate the procedure from the politics. In terms of the procedure, it does nothing that affects the ability of an MP from outside England to become Prime Minister. It does not even relate to any of the Prime Minister's usual responsibilities, because EVEL is basically about legislation.

In terms of the principles that underpin the EVEL procedural changes, essentially they allow any MP from anywhere in the UK the right to speak and to vote on all legislation, so to my mind that affirms that all MPs from anywhere in the UK have a legitimate interest in all legislation that comes before the Commons.

I think what EVEL does do—I suspect for the first time—is explicitly recognise the fact that there is such a thing as England-only legislation. People may, from that, draw their own conclusions. There may be political factors as to why people choose to emphasise that, and I think we saw this with the recent case of Stephen Crabb when he was running to be Conservative party leader. It is important to recognise that, in making those arguments—by saying that he could not become Prime Minister—first, England-only legislation is not a consequence of EVEL; it existed prior to that. It is actually devolution that has created this situation. Secondly, in order to make that argument, you have to rely on a principle that is actually not the principle that underpins EVEL. The principle you have to rely on is that there is England-only legislation and that nobody from outside of England has any business voting on it, which is different.

Chair: We have arrived at the end of the session. I know we have got limited time with the Leader of the House, but we are very grateful to you for answering these questions. We have rattled through a lot of business, and if there is anything you have observed or want to add that you feel you have not had time to tell us, please give us that in writing. We are grateful to you. We will wait with great interest, Mr Clancy, for the formal review. I think you said that it is happening in September and that is our understanding, too. We will look forward to that. Thank you ever so much.

Examination of witness

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Q37 **Chair:** Leader of the House, we are very grateful, surprised and impressed that you have decided to join us today. I think this will be your first outing to a Committee as Leader of the House, so we are looking forward to this session. We understand that you are new to the post. If you need to refer to anybody, please do.

Mr Lidington: That is appreciated, Chairman.

Q38 **Chair:** We find it difficult to understand and follow what is happening with English Votes for English Laws. For a new Leader of the House to come in and assume those responsibilities—we can understand that that is quite a task for your good self, so if you need to refer that is fine by us. I know we are time-limited, too, and that you have to be away by four o'clock. I ask my colleagues to be as brief as possible and, with your always snappy responses, I am sure we will get there. English Votes for English Laws: how do you think that is getting on?

Mr Lidington: I think it is going well so far. We have had 11 Bills considered under the process. Of those, nine have had either clauses or schedules certified, and we have had 26 statutory instruments certified, only one of which actually led to a Division at the end of the day.

In terms of the time being used, it has been a pretty minimal addition to time so far. Clearly, to a significant extent, that reflects the fact that the party majority in the UK Parliament overall is the same as the party majority among English Members of Parliament. So far, it has been on average 10 minutes—something like that—for the Legislative Grand Committee stage.

Q39 **Chair:** I am certain you were an astute observer of the several conversations we had in the House about English Votes for English Laws. I think it was presented to the House that this was a raging issue within England that had to be addressed. English Votes for English Laws was going to be the means whereby this resentment about us pernicious Scots coming down to vote on all this English legislation would be addressed. Is there less resentment in the good shires of England now?

Mr Lidington: I think the change is something that has been welcomed. That is my experience as a constituency Member of Parliament in England and I think that is the case for some other of my English colleagues as well. It is still the case that our colleagues from Scotland come down—of course expected and welcomed—as they have a right to do every week and vote on legislation affecting the United Kingdom as a whole, including legislation that affects England. The English Votes for English Laws arrangements provide for English and Welsh MPs, as appropriate, to be able to withhold assent to a particular Bill or clause, if that has been certified, but it is still the case that no legislation can pass into statute unless it has secured a majority among all Members of the House.

Q40 **Chair:** Surely, this was such a huge issue. We were hearing from concerned colleagues that it was a massive feature on the doorstep. Surely, no good English man or woman would accept the fact that we Scots could still have the final say and indeed determine legislation that

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affects only England. Have your constituents been sold a pup in terms of what has been introduced?

Mr Lidington: I don't think they have been sold a pup at all. They know now that it is not possible for a Bill or part of a Bill that applies and has effect in England—

Q41 **Chair:** These are laws and we could still have the last say.

Mr Lidington: But there is a power of veto for English Members of Parliament for those matters that affect England alone and—this is a key additional point—those that in Scotland or one of the other devolved Administrations are subject to devolved powers. We have sought—as I think you know, Chairman—to craft the current arrangements on English Votes for English Laws in a way that mirrors the devolution settlements themselves.

Q42 **Chair:** So we have solved the simmering resentment that was abounding through the shires of England last year about all these pernicious Scots voting on legislation. You alluded to the Bills that have been passed. Can you tell me one piece of legislation that actually required this? Would the Government not just have had its way anyway? Why are we doing it?

Mr Lidington: Because there is an important point of principle here. It is a fact that the way in which the devolution settlements of the late 1990s were brought into law is such that they left an asymmetric set of arrangements whereby powers were granted to devolved Parliaments and Assemblies in Scotland, Wales and Northern Ireland—powers that, of course, have been added to in subsequent years—but there were no corresponding arrangements for England.

Q43 **Chair:** But has it made any practical difference to the will of Government? There were all these measures. You've got a packed legislative programme. You've got this new procedure in place. You've got your Legislative Grand Committee. You've got your veto when it comes to specific parts of the Bill. Has any of it been necessary?

Mr Lidington: The assurance of the right of veto is important, and it is still—

Chair: So it is political and cultural.

Mr Lidington: It is still early days. My predecessor, as you know, committed the Government to review the current arrangements once they have been in operation for 12 months. That is a review to which I am happy to reaffirm a commitment. We will look at this later this year and take stock. I find it interesting, for example, to see that these new arrangements are starting to have an effect on the thinking of Government Departments around Whitehall when they draft legislation. They take into account that there are now particular procedures to ensure fairness for England.

Q44 **Chris Law:** A quick puzzle—I am thinking about some of the responses you have given, particularly on the resentment that had been building up

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in England. Do you think we have actually lanced that resentment as a result of Brexit, and EVEL is kind of a side dish? After all, we have discussions on independence or reunification in Northern Ireland. We have discussions on an indy ref 2 as a possible outcome of Brexit, and we have the Labour party talking about federalism at the moment. What role does EVEL play in your mind? Has it satisfied people in England with regard to feeling left out of the devolution settlement?

Mr Lidington: I have found that being able to stand up in front of audiences in my constituency or other constituencies in England and say that we have changed our arrangements so that matters that in Scotland would be devolved and that are going through Westminster to apply to England only are now matters where English MPs alone have a veto. That does give considerable assurance compared with the previous situation. I think the referendum outcome on Europe is a different issue entirely. It has enormous consequences, as Mr Law rightly says, but I do not think that it in any way undermines the principled case that I and others have made for English Votes for English Laws.

Q45 **Chris Law:** Would it not be a lot more straightforward and—let's be direct—honest with English people to settle the West Lothian Question? In other words, just to go ahead and ask the people of England, "Would you like an English Parliament?"

Mr Lidington: It is a perfectly legitimate proposition to make. I have heard from you, Mr Law, and other members of the Scottish National party the idea that one should move to a formal federal system in the United Kingdom. Historically, that has been debated. There have been particular problems over the sheer size of England compared with the other constituent nations of the UK. Of course, there are questions about the cost and bureaucracy involved if one were to set up a completely self-standing English Parliament. We put these arrangements in place. They have been operating for a bit under a year, and when we get to the end of the 12-month period we can make a first assessment of how they are working out in practice. At the moment, I do not see that there is evidence that the arrangements are working badly.

Q46 **Chris Law:** That brings me to my next question. So when the Government were consulting on the West Lothian Question, who were they consulting and how widely did they consult?

Mr Lidington: That is really a matter for my predecessors. As you know, I took on this responsibility a few days ago. Those arrangements were, of course, voted on by the House of Commons after considerable debate. On votes on changing the Standing Orders of the House, every MP from every constituency was able to take part.

Q47 **Chris Law:** What I find extraordinary is that we are sitting here discussing EVEL and we have discussed it for the best part of a year. Some of us who are privy to it as MPs still do not quite understand it. I am trying to understand. When you were consulting different organisations throughout for England, how many people said, "I know what we want. We want EVEL and we want the nuances of EVEL", rather

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than saying, "Actually we want a similar settlement to Wales, Northern Ireland or indeed Scotland." Was that overlooked or was it just omitted?

Mr Lidington: The history is on the record. The McKay Commission came up with a number of options. The Cabinet at the time considered what McKay had recommended and decided to adopt a slightly different route, which I think is true to the spirit of the McKay recommendations, but which sought to reflect in practice relating to England the way in which the devolved Administrations had particular responsibilities of their own. All political parties were consulted by my predecessors as Leader of the House at the time of the introduction of English Votes for English Laws, and certainly when we come to the review later this year, my intention is that we will invite views and representations from all political parties in the House.

Q48 **Chris Law:** Do you think it is possible for us to see these consultations and for them to be submitted to the Committee? I want to see how wide they are and how representative they are. Would that be possible?

Mr Lidington: I don't want to give a commitment on the record, but my instinct is that if political parties are making representations they are likely to want to put them on the record themselves anyway. I can't see immediately why there should be any case for withholding them. They will be a matter of public record if people want to make representations.

Q49 **Chris Law:** Thank you. I would appreciate that because you say other parties were consulted, but it came as a shock to Scotland on the day after the referendum in Scotland that this was even getting introduced on the doorstep of No. 10. It came as a shock to the entire UK. That is why I am surprised at this depth and width of consultation taking place.

Mr Lidington: We will come to the review and invite comment from all political parties and from outsiders, such as academics and so on who have experience of constitutional matters.

Q50 **Chair:** There were a couple of things you said that I found quite intriguing. I suppose now they will carry on to your stewardship of the leadership of the House, which we are very much looking forward to. You said something about federalism and if I picked you up correctly I got the sense that this was something that you might be open to considering.

Mr Lidington: I don't want to sell you a pup, to take your phrase. When preparing for this evidence session I paid careful attention to your previous questions and speeches in the House in which you had openly advocated that, so I thought it fair to acknowledge that that was a point of view that had been advocated by you and other Members.

Q51 **Chair:** This is a real opportunity to be a reforming Leader of the House and to introduce a federal United Kingdom where we are all self-sufficient and come together for the great issues of defence and foreign affairs.

Mr Lidington: I am sure you will continue strongly to advocate such an outcome. For the time being, I will rest on the fact we have a Government review coming up. We also have a review by the House's Procedure

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Committee as well as by this Select Committee. I am sure that all those will inform this debate.

- Q52 **Chair:** The other thing you mentioned and I think we had this from other panellists is that there will be a review. Could you tell us just a little bit more about what type of review it will be? Will there be a possibility of getting rid of this dog's breakfast once and for all if it is found that it is totally impractical, unnecessary and seems to create these two classes of Members?

Mr Lidington: I shall be inviting representations when the 12-month period is up later this year. I think you will understand if I say that in the few days I have had these responsibilities I have not yet focused on the exact remit of the review and how it will be conducted.

Chair: We are grateful. I assume this Committee will hear first when you have decided how to conduct it.

- Q53 **Margaret Ferrier:** We heard you mention that you and other MPs have been able to go to your constituents with EVEL and that they are all very happy about it, but it does not tie up with the Legislative Grand Committees that MPs from England, or from English and Wales, are able to attend. The last three of them have been really poorly attended—one lasted one minute, the next one lasted two minutes and the longest one of all lasted four minutes. So they were very short, there was hardly any debate, and there were no Divisions. Does this not demonstrate that the need for EVEL was overstated, and that none of the MPs care about it anyway when they cannot take the time to appear at the Legislative Grand Committees?

Mr Lidington: No, I think it demonstrates that the system that we have is working well. The legislation being brought forward commands a majority both of English MPs and of MPs across the UK as a whole. The existence of that right of veto for English MPs on matters that apply only to England, and which in Scotland or perhaps Northern Ireland are devolved to the respective Parliaments or Assemblies, is an important gain in terms of principle. It is that assurance that people have welcomed.

- Q54 **Margaret Ferrier:** Now that EVEL has been in place for a number of months, has there been an impact on the handful of Bills that have been certified? What has that impact been?

Mr Lidington: It has meant that we have been able to say that, where there have been clauses or schedules that have applied only to England, they refer to matters that English MPs have assented to by a clear majority. As the Committee knows, there have been one or two controversial cases in which there has been a debate about whether or not certification was right in those circumstances. One case in particular is the Childcare Bill, where the Speaker decided not to certify, whereas the Department's advice had been that the relevant clause did qualify for certification. The certification decision, as that particular decision demonstrated, is entirely a matter for Mr Speaker.

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Q55 **Chair:** You know as well as I do that EVEL has changed absolutely nothing, and that the Government would have got their way regardless of whether English Votes for English Laws was in place. I suggest that it is not really a legislative tool; it is a political tool, is it not? This is something that you felt you had to deliver, whether or not it was substantial or substandard. It is all about the politics, and this makes no difference whatsoever to legislative outcomes in the House.

Mr Lidington: I think that just because there has not been a massive impact on legislation in those first few months is not a reason to dismiss the exercise. The point of principle—the right of veto—is important in constitutional terms, and I think that it does send a very clear message to people in England about parity and fairness. I will strongly support the devolved settlements and the right of people in Scotland, Wales and Northern Ireland to determine their own affairs through their regional and national Parliaments and Assemblies for devolved matters. Correspondingly, we need to have arrangements that safeguard the position of people in England.

Q56 **Chair:** So legislatively it has achieved nothing because the Government would have done that. Politically, it may not have satisfied this huge concern that was raging across the shires of England. What it has done is create two classes of Members of Parliament in this House. You were Europe Minister, so you must know the answer to the next question. Can you think of another national Parliament that has two classes of Members of Parliament: one class for those who can participate in all parts of legislation, and another for those who, like my colleagues around this table, cannot? What other national Parliament has that arrangement?

Mr Lidington: I am not aware of other Parliaments that have adopted these procedures. What I am aware of is the way in which different countries, particularly European ones, have adopted varying constitutional models, some of which have a symmetric federal system, and others—Spain comes to mind—that have a very asymmetric constitutional arrangement.

Q57 **Chair:** But I am talking about national Parliaments. This is the Parliament for the whole United Kingdom of Great Britain and Northern Ireland, and it is responsible for the devolved Parliaments as well as for legislation in this House. There is no other Parliament that has two classes of Members of Parliament.

Mr Lidington: I differ from you on the notion that this creates two classes of Members of Parliament. It remains the case that all Members of the House of Commons are entitled to vote on all items of legislation. The certification arrangement comes in to require English MPs to give or withhold their assent. It is not possible for English MPs to insist upon a piece of legislation or a clause going through that is rejected by the majority of the House as a whole.

Q58 **Chair:** Let's come to this veto issue, because we kicked it around with the earlier panel and I think we all ended up even more confused and baffled at the end of the process. My understanding—you can correct me

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anywhere down the line if I have got this wrong—is that we could have legislation with part of it certified as English-only. There will then be a veto, which will be exercised by English Members of Parliament, on sections of Bills that have been certified as English-only. We then all come back together as a House and either pass or reject that legislation as amended, or possibly vetoed, by English Members. Is that your understanding of English Votes for English **Laws**?

Mr Lidington: I think that is slightly oversimplifying the procedure. What would happen politically, it seems to me, is that if a Government had a piece of legislation that had certifiable clauses within it, and they knew that there might be difficulty in getting the consent of English MPs to it, the Government would have to take account of that opinion among English MPs in drafting and perhaps amending those clauses during their passage through the House of Commons. They might even, at the last stage in the House of Commons, want to give pledges to bring in amendments in the Lords in exchange for agreement to take the Bill through all stages in the Commons. It seems to me that there is a dynamic that was not there before, which the EVEL arrangements make possible, that ensures fairness to **England**.

Q59 **Mr Chope:** Congratulations on your appointment. You are down to earth now, so you are not going to have to do anything like as much travelling as you have been used to. Talking about parity and fairness, can you exemplify that in relation to the forthcoming repatriation of UK fishing powers? This country is going to be able to take back control over our fishing. That is a devolved matter in Scotland, and therefore the Scottish Parliament and the Scottish Government will be able to decide how to deal with that in Scotland.

Under the shortcomings in the EVEL arrangements, we won't be able to decide on how to do that in the rest of the United Kingdom ourselves because, ultimately, the Scottish Members of the House of Commons will be able to vote against what we are proposing in relation to England, whereas we will not be able to vote against what they are proposing for Scotland. How can that be an exemplification of parity and fairness?

Mr Lidington: As Mr Chope knows, these are very early days to be speculating about the legislative outworking of the referendum decisions and the negotiations that have only just begun with our European counterparts. Of course, they have not begun in the formal sense, as required under article 50 of the Lisbon treaty. I do not want in any way to prejudice what my colleagues in Government will be doing in that renegotiation or what agreement might be reached at the end of that process.

If we take the fisheries point, it seems to me that there will inevitably be the need for very close working between the UK Government and the Scottish and other devolved Governments on that issue, as on others. While it is true that fisheries is a devolved matter for Scotland, coming out of the common fisheries policy would leave us subject to two United Nations conventions on fisheries, to which, of course, it is the United

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Kingdom as a whole that is party. Other matters would have to be sorted out—as well as details of tax and quotas and so on—such as how one would agree the reciprocal fishing rights in UK waters and other EU member states' waters or how we would secure UK fishing rights in third-country waters where agreement at the moment is done through the European Union and an EU third-country agreement.

This is a complex matter, which is why the Prime Minister has made such a strong point so early on in her premiership of saying that it is vital that the devolved Administrations are fully involved from the start in that negotiating process. She reiterated the point, to which my colleagues David Davis and Boris Johnson are very committed, in Cabinet this morning.

Q60 **Mr Chope:** So will there be one piece of UK legislation dealing with fisheries across the whole UK, or will there be separate pieces of legislation with unequal rights for English MPs as against Scottish MPs in relation to those matters?

Mr Lidington: As tempting as it is to speculate, it is far too early to come to any conclusion on that.

Q61 **Mr Chope:** But would you be prepared, before this is finalised, to use this as a study? It is of fundamental importance that there should be parity and fairness in dealing with these issues between different parts of the United Kingdom. Can we see some of the workings before we wait a couple of years for article 50 to expire?

Mr Lidington: There is a process of negotiation between the United Kingdom and the 27 member states of the European Union under article 50. Once we have left the European Union, there is the question of to what extent and over what timescale we then alter legislative arrangements, whether on fishing or any other subject to depart from those arrangements, that at the moment are subject to EU directives or EU regulations.

The nature of the legislative or regulatory changes that would be necessary or desirable when we leave the EU will depend in part on the nature of the agreement that we reach with the EU 27 at the end of the two years or however long it takes. I think it would be misleading for me to speculate any further on that.

Q62 **Mr Chope:** Going on to something completely different, issues were raised with your predecessor about the role of the estimates process in relation to Barnett consequentials, and whether there should be a revision of the way in which Members representing Scottish interests can to ensure that those matters are properly considered in the context of the estimates process. Have you got any thoughts about how that might be achieved?

Mr Lidington: I am aware that there is a debate in Westminster Hall on estimates tomorrow morning, and of course the Procedure Committee has launched an inquiry into the estimates process. I think that is due to

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report later this year. I am going to hold off forming an opinion about this until I have had the benefit of seeing their conclusions.

One point that I would make, because you mention Barnett consequential, is that while it is true that some pieces of legislation have potential spending implications, that does not automatically translate into any change, or a predictable change, to block grant allocations. All that the legislative change does is either permit or require a Government Department to spend money on a particular objective. The Department has to do so from the resources that have been made available to it under the separate budget-making process.

The legislation, which may or may not be certifiable depending on its content, does not automatically translate into additional spending or into changes in the block grant allocations to the devolved Administrations.

Q63 **Chair:** Could you help me with this, Leader of the House? You and I both voted against Tony Blair's tuition fees; that must be about eight years ago now. I voted against Tony Blair's tuition fees because there was a fear that there would be an impact and consequence for Scottish higher education spending, the suggestion being that if tuition fees, private money, went in, there would be less of a need for public money. I was doing that to protect the Scottish higher education sector and my constituents. If a similar type of tuition fee Bill is brought forward again, how do I protect my constituents?

Mr Lidington: If a tuition fee Bill is put forward that affects England only—it depends on the drafting of the Bill. You would still be able to participate in both the debates and the votes, but if the Bill or clauses in the Bill applied to England only, English MPs alone would have the right to decide whether to assent to that.

Q64 **Chair:** But we wouldn't, would we? Let's say that it is decided and certified that those aspects of the Bill are English-only. I and my colleagues would be effectively excluded in the Legislative Grand Committee, where an English veto could possibly be applied. Therefore, I would lose my right to fight for Scottish higher education and my constituents. What do I do then?

Mr Lidington: I simply say that we have not yet had a Bill that is an England-only Bill. What we have had is a number of Bills where the Speaker has issued a certificate to apply to particular clauses or particular schedules, so—

Q65 **Chair:** But you can understand my anxiety, with this really harsh instrument being in place whereby an effective veto could be applied and my view would be discounted and would not have any relevance whatsoever. Surely I have very justifiable fears and concerns about that scenario happening.

Mr Lidington: It is open to you to make representations to Mr Speaker when he is considering certification. If you believe that there is a strong

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case that the Bill or the clause has an effect on Scottish higher education, that is a perfectly legitimate point for you to make to the Speaker.

- Q66 **Chair:** You are aware of your predecessor's almost nonsensical comments and remarks about the estimates process and Barnett consequential. I think that when he answered that question, it was a matter of everything being involved in the estimates process. I tried to speak in the estimates process and I was ruled out of order in 30 seconds because I couldn't address these very things, so my question to you—I am still trying to see an answer—is: what do I do to try to defend Scottish public spending in Bills and legislation certified as English-only? I can't seem to do it in the legislation, because I might be subject to a veto. We can't seem to do it in the estimates process because we don't actually discuss estimates in this House, quite intriguingly. So what do we do?

Mr Lidington: If a Bill—that has not yet happened—or a clause is certified as applying to England only, by definition of that certificate Scottish interests are not affected. On the estimates question, I remember being on the Front Bench at the time. I think that one case on which you spoke and were ruled out of order involved a European matter; I remember that. That has piqued my appetite for looking at the Procedure Committee's report when it comes out, but I really don't want to get drawn into predicting this afternoon what my or the Government's response to that report might be. I think we have to let the Procedure Committee take this subject away and have a look at it, and then study their report when it comes out.

- Q67 **John Stevenson:** Earlier you said that arrangements are not working badly, so you think overall they are working quite well. Can I challenge that by bringing you back to the Sunday trading event? My constituency is Carlisle, right on the border. We have Sunday trading just over the border—it has a big impact on an English town. That did not go through at all. Was that a cock-up by Government, or was it deliberate by Government?

Mr Lidington: That is a bit of a "Have you stopped beating your wife?" question. What happened, of course, was that one provision in the key clause of that Sunday trading Bill did relate to Scotland, and there is no provision under EVEL rules to certify one part of a clause, rather than the entire clause. The fact that part of that clause related to Scotland meant that the clause as a whole was ineligible for certification.

- Q68 **John Stevenson:** Would you not have said, if ever the rules of EVEL were to apply, that this was one of those cases?

Mr Lidington: This is the example that was in my mind when I said that the existence of these rules is starting to focus the minds of Government about how to draft legislation. There is perhaps a lesson. Leaving aside the pros and cons of arguments about Sunday trading, that particular instance suggests that, if that subject were looked at again, the Government might consider—I can't give a commitment—redrafting.

- Q69 **John Stevenson:** In retrospect, do you think Government got it wrong?

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Mr Lidington: I don't know exactly how the discussions went about drafting that Bill and whether the EVEL rules were part of the judgment that was made at that time, so I cannot give an answer to that point. It does seem to me that there is perhaps a lesson there that people need to have in their minds when they look to draft legislation in future.

Q70 **Mr Chope:** But surely, even if that new clause had been drafted in such a way as to qualify for the Speaker's certificate as applying only to England and Wales, that would have been of little consequence, because at a later stage in the consideration of the Bill the whole House of Commons, including Members of Parliament from Scotland, would have been able to vote it down. Didn't that whole exercise show just how weak EVEL is, in so far as it is unable to allow English MPs to vote positively for new laws in England? All they can do is veto other people's proposals.

Mr Lidington: That is what I have said consistently during this evidence session. The logic of your argument is that one moves on towards something that looks more like a formal English Parliament or Assembly. That is a legitimate point of view.

Q71 **Mr Chope:** Finally, can I seek your assurance that, wearing the hat you now do, you will not allow new clauses or amendments or Bills brought forward by the Government to be disqualified from having a Speaker's certificate that they apply only to England and Wales, because the consequence of that certificate might be embarrassing for the Government as it would demonstrate that the Government were not able to deliver EVEL in practice?

Mr Lidington: I want to see all Government Departments draft legislation that is sound and of good quality. That includes taking account of the various arrangements we now have in this country for devolution and EVEL.

Q72 **Chair:** Can I suggest to you, Leader of the House, that this EVEL business is totally associated and tied up with your predecessor? You have a great opportunity here to try to address some of the failures of this. Nobody can understand what is going on. It is really difficult to get a sense of how all this works out. We see here that it is not doing anything to protect the good people of Carlisle and Christchurch when it comes to Sunday trading, and let's not even start with fox hunting in England.

This was done without any consensus across the House. There is no other political party in this House that has bought into this process. In fact, it is total opposition. That is why I and my colleagues perhaps take an interest in things where we can now. Would it not be better just to rip up the whole thing, see if we can start a proper consensual process that would involve all the parties of the House and sort this out realistically?

Mr Lidington: I am always interested in exploring whether a consensus can be reached, but I certainly do not agree that the system we now have in place is shown to have failed. It seems to be working pretty smoothly at the moment. It is still a very novel system, and we are still discovering things about how it works out in practice. I am sure the review later this

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year, the report from this Committee, if it does a formal report, and the report from the Procedure Committee will inform that process.

Q73 **Chair:** We have this opportunity now, with the review coming up. I understand that you are new to the job and are looking at what type of review it will be. The Scottish National Party hasn't got an interest in voting on English legislation. Why would I bother, as a Member for Perth, taking an interest in policing arrangements in Plymouth? I have an interest in protecting the financial consequences of English legislation for my constituency. Why can't we work together to meet what seems to be a real demand in England to have this addressed in a way that doesn't mean we are second-class in this House? Surely there is a way to do this that must be better than this.

Mr Lidington: I am happy to explore constructive suggestions about amendments to the scheme, but it would be wrong of me to make any kind of commitment or rule anything in or out at the moment. We have committed to hold this review, and we will start that once the 12 months is up.

Q74 **Chair:** Another thing has come up, which we asked some of our expert witnesses about before you came in. Does the introduction of English Votes for English Laws therefore now mean there can never be a Scottish Prime Minister—a Member from a Scottish constituency? It would possibly be the end of the John Reids of this world, where a Scottish Member of Parliament was the Secretary of State for Health. Those days are surely gone; there is no way, with these provisions in place that a Scottish Member of Parliament could take legislation through their own Department that they could not vote on. That has gone now, hasn't it?

Mr Lidington: I certainly don't think that this rules out the idea of a Scottish Prime Minister of our country. I think there is some truth in the suggestion that it would probably be more difficult, for the reasons you give, for a Scottish Member to lead a Department whose responsibilities were effectively confined to England and not to the devolved Administrations at all, although most Government Departments in some way have UK-wide responsibilities. These are very hypothetical matters depending on future Parliaments and future general elections.

Chair: Mr Law has great ambitions to be the Secretary of State for Education. You are saying that this might not come to pass. Do you realise how gutting this would be for Mr Law?

Leader of the House, I know that you are new. We are grateful to you, and I do not think the Committee has any further questions, unless any of my colleagues catch my eye quickly. Mr Law has—you are not going to get to be Secretary of State for Education.

Q75 **Chris Law:** I am just recovering from the shock at the moment. The simple question is, do you think the introduction of EVEL has strengthened the Union or made it weaker?

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Mr Lidington: I think it has strengthened the Union, because while the focus, for understandable reasons, has very much been on opinion in Scotland, there was also a risk of a significant section of opinion in England falling out of love with the Union, because they felt it was skewed against England. I think this measure has gone a considerable distance to provide assurances that that is not going to happen.

(You) can test English public opinion by pretty well every recent opinion poll I have seen, showing very strong support for maintaining the Union. I have certainly never regarded Scottish Members here as coming down like raiders—ravaging hordes coming over the border—at all. I think we very much welcome the Scottish (perspective).

Q76 **Chair:** Are you aware of any public opinion in Scotland on this? We were looking at social attitudes surveys, and I don't think there is any evidence that we can point to at this stage about the impact this has on Scotland. What surprised me, and possibly my colleagues on this Committee who represent Scottish constituencies, was the response we got to this in our mail bags. At the same time, the Scotland Bill was going through, where every amendment proposed by Scottish Members was rejected, and there was a culture that somehow Scottish Members were being demeaned in class and our view wasn't being properly listened (to). Is there not a sense that all this is so unnecessary, that you have created these two classes of Members of Parliament who have to try to coexist in this House.

Mr Lidington: I don't think there are two classes of Members of Parliament, for reasons I gave earlier. I think this measure demonstrates to people in England that while very wide-ranging powers have now been devolved to Scotland in particular, but to the other two devolved Administrations as well, there has been a balance in that English voters have the assurance that it is their MPs representing English constituencies who can, if necessary, veto measures that apply to England only and that in Scotland would be devolved to (Holyrood).

Chair: Leader of the House, we are very grateful to you for coming along here and giving us your views on this. We very much look forward to the review when it comes forward in September, and your views on federalism too, which I think have intrigued this Committee. I look forward to seeing you at business questions. Thank you for coming today.

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