

HOUSE OF COMMONS  
MINUTES OF EVIDENCE  
TAKEN BEFORE  
JUSTICE COMMITTEE

*(uncorrected transcript of oral evidence to be published as hc 75-ii)*

**DEVOLUTION: A DECADE ON**

Tuesday 29 January 2008

RT HON DES BROWNE MP and DAVID MIDDLETON

RT HON PAUL MURPHY MP and ALAN COGBILL

Evidence heard in Public Questions 46 - 113

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## Oral Evidence

Taken before the Justice Committee

on Tuesday 29 January 2008

Members present

Mr Alan Beith, in the Chair

Jessica Morden

Julie Morgan

Dr Nick Palmer

Mr Andrew Tyrie

Dr Alan Whitehead

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Witnesses: Rt Hon Des Browne MP, Secretary of State for Scotland, and David Middleton, Head of Department, Scotland Office, gave evidence.

Q46 Chairman: Secretary of State and Mr Middleton, welcome. We are very grateful to you for assisting us with our inquiry into how devolution is working after ten years. It is not a review into how Scotland is governed but rather into how the whole devolution structure has developed and might develop in the future. What about your job as Secretary of State for Scotland? There was an estimate in one of the newspapers this morning that you spend 10 to 15% of your time on it. It is clearly not the job that the Secretary of State was before 1997. What is it?

Des Browne: I saw that article in The Times this morning and I have to say that, as an arithmetical exercise, if I had handed that to the person who taught me arithmetic they would have said, "Can I see the workings, please?"

Q47 Chairman: So is it more than 10 or 15%?

Des Browne: It was not immediately obvious how that figure had been arrived at. My honest answer to that is that it is difficult to give an estimate because the work that I do is intermingled. I have tried to be open and transparent and if people draw their conclusions, they draw their conclusions. The job that I do is the job that all Secretaries of State for Scotland have done since devolution in 1999 and that is fundamentally to promote the devolution settlement and act as the guardian of it here in Westminster. That has a number of manifestations which you may want to explore, but that is fundamentally it.

Q48 Chairman: Is it a relatively small minority of your time?

Des Browne: I think the answer is yes.

Q49 Chairman: Has it changed in terms of the character or extent of the work you have to do with the arrival of the new SNP administration in Edinburgh?

Des Browne: I do not think the role of the Secretary of State has changed. I find it difficult to answer that question because I have had no experience of the job in another environment. I have only been the Secretary of State for Scotland in a context where there has been a minority led SNP administration in Scotland so I have no comparator. Rather than speculate, the best thing is to say to the Committee if you could persuade somebody who previously did the job to come and explain what the job entailed then you could draw your own conclusions just as the columnist in The Times did this morning.

Q50 Jessica Morden: Mr Middleton, in your biography it states your job title as being "Head of the Scotland Office, at Senior Civil Service Director level, within the Ministry of Justice". Can you explain what that means in practice? Why does Scotland not have a Permanent Secretary?

David Middleton: The Scotland Office is only a relatively small department of around 50 people and would not justify someone at Permanent Secretary level for that number of staff. It has been at that level, director level - in old money Under-Secretary - since 1999 and that has been found to be a satisfactory level to conduct the business of the Office. Obviously everyone has to report into somewhere and I believe between 1999 and 2003 the Head of the Office reported into part of the Cabinet Office, but since 2003 it has reported into first the Department for Constitutional Affairs and now the Ministry of Justice.

Q51 Jessica Morden: Your staff is at 50. What would be the budget of the Scotland Office and how does that compare to 1997 and then 2001 and in terms of staff levels as well?

David Middleton: It is almost hard to compare with the old Scottish Office because the old Scottish Office prior to devolution ran into thousands. Indeed it depends how you define it. If you define it as the relatively small number that deal with policy it is about 4,000 or 5,000. If you include all the staff of the various agencies of what is now the Scottish administration it could run into 10,000, 12,000 or 13,000. So the comparisons are between a very small organisation focused on secretariat liaison duties and a big organisation which not only had a policy capability to advise ministers but also to direct and manage services throughout Scotland.

Q52 Jessica Morden: What about the budget?

David Middleton: The budget is about £7 or £8 million. It is a budget which covers the staff of myself, the Office of the Advocate General and it also covers a small amount of capital expenditure for the buildings that we occupy both in Edinburgh and London.

Q53 Chairman: How do the staff numbers compare with the London end of the Scottish Office prior to devolution?

David Middleton: I think that is hard to give a direct comparison to because the London end of the old Scottish Office was composed of a small number of permanent staff that stayed in London, but it also included Scottish Office staff who travelled up and down to serve on Bill teams and who came down to meet with colleagues in Whitehall. Therefore in a sense Dover House in full session might have 70, 80 or 90 people in it on a given day, but that would be a different 70, 80 or 90 on any working day. The actual permanent staff in Dover House prior to devolution would still be relatively small compared to the large number in the Scottish Office.

Q54 Julie Morgan: Secretary of State, Mr Middleton mentioned the merger of the Scotland and Wales Office with the Department for Constitutional Affairs. What do you think was the rationale behind that arrangement?

Des Browne: I am reluctant to do this, but just as far as the figures are concerned, the outturn of the budget for the Scotland Office last year was £5.793 million. Mr Middleton got those figures slightly wrong, but that is the actual figure. I have the figures for the outturn of the budget divided between the Scotland Office and the Office of the Advocate General and the figures for staff for the years from devolution in 1999 all the way through to 2006/07. It may be of assistance to your inquiry to see these and I would be happy to send them to you. There is no point in going through them here in the context of this evidence. I was the PPS to Donald Dewar in the latter years of the Scottish Office. My sense certainly, although I never counted the staff when I was in it, is that the staff that was in the Scotland Office then was significantly more than the staff that is in the Scotland Office now.

Q55 Chairman: As you would expect. They were running hospitals and prisons.

Des Browne: Absolutely. As Mr Middleton points out, the staff who were coming down to do policy and other work were coming down to England to advise ministers and there was a different level of accountability here in Parliament so that is a significantly different office. To get to the linking of those devolved administrations' offices with the DCA, I did research this in anticipation to today because I thought you might ask about it and I cannot find any substantial written material in relation to this, but as I recollect it, at that point the then Lord Chancellor who was in charge of the DCA took on responsibility for constitutional reform across the Government and for devolution and that was the logic of bringing the Scotland Office and the Wales Office into that parenting and that has been the consistent policy. Since then the MoJ has had that overall responsibility for constitutional matters and constitutional reform and that is just a logical place for devolved administrations to be. It has the advantage that Mr Middleton pointed out, which is that for pay and rations purposes we have a bigger organisation that has an administration. We do not need to replicate that administration for those purposes. Thirdly - and I think this is really important - from the point of view of those people that work for us, it gives them opportunities in terms of development and in terms of career progress and a coherent environment that we could not offer them because of the scale. We have only got 48 or 50 people working for us so we cannot offer that to people; we cannot offer their own development progress. It makes sense and it sits, arguably, exactly where it should be, in the Government.

Q56 Julie Morgan: Even though the Constitutional Affairs Department has now become the Ministry of Justice and Scotland has its separate legal system, do you still think it is an appropriate place?

Des Browne: Scotland has always had a separate legal system. That goes back to the Act of Union 1707 when the right for Scotland to have that separate jurisdiction was preserved, although necessarily, because it shared the parliament for a long period of time, there has been convergence in terms of the law in Scotland in certain areas and there have been changes in law in the rest of the United Kingdom which have been inspired by things that have happened in Scotland and that has been to the benefit of the whole United Kingdom. Justice is devolved now of course. To the extent that justice is different in Scotland, it is devolved; there is a Minister for Justice in the Scottish Executive so that is devolved. There are still areas of reserved powers such as, for example, counter-terrorism that work their way through the justice system which are reserved for very obvious reasons.

Q57 Julie Morgan: One of the Scotland Office's main objectives is to "ensure that Scotland's interests in relation to reserved areas" - like the one you have just mentioned - "are known and represented within the UK Government." How do you achieve that in practice?

Des Browne: We do that in a number of ways. The principal way is that there is a Secretary of State sitting at the Cabinet table. So when these issues at the high level of policy are discussed then there is a Scottish representative there, not just MPs or ministers who happen to be from Scotland, but there is a person there who has a responsibility to ensure that the decisions that are being made take into account the circumstances of Scotland and particularly the fact that, for example, on terrorism, the administration of justice is devolved. Secondly, my Minister of State, who is an assiduous and hard working and very good minister, works very hard right across the whole of Whitehall to ensure that there is a constant awareness of the difference in Scotland where there needs to be awareness of that difference. So there is quite a heightened awareness across Government that when people are considering policy changes or the development or application of policy they have to take into account the possibility that the fact that some powers are reserved to Scotland may be of relevance to the development of that policy. I have a Minister of State who reminds them of that constantly at ministerial level and makes sure our officials do it at official level if they do not remember. Then we have the constant networking that goes on among officials. We have a unified Civil Service that goes all the way into Scotland and that is an enormous advantage because officials talk to each other all the time. People ask questions constantly about how often, as the Secretary of State for Scotland, I talk to Executive Ministers. I do not have formal meetings as the Secretary of State for Scotland or as the Minister of Defence with other ministers across Government very often because I rely on officials to do it at different levels, at the level that is appropriate and that is happening all the time. There are hundreds of those contacts north and south of the border going on every day and there is probably the same number of contacts going on across Whitehall. That is not intended to be exhaustive but indicative of how it happens.

Q58 Julie Morgan: Do you see your role as representing Westminster's policies to the Scottish Executive?

Des Browne: I think I have a function in that where I have responsibility for it. It was reported widely in the media on Friday that I had met the First Minister and we were discussing issues to do with the administration of elections in Scotland and, in particular, the recommendations of the Gould Inquiry. We hold responsibility for that in the Scotland Office and in terms of the Scotland Act. If necessary, there is an Order presently before the House of Commons about the administration of elections in Scotland. We have a responsibility to do that. To that degree - and

that is a very specific point - I do represent the policy position of the United Kingdom Government to the Scottish Executive and through them to the Scottish Parliament. On occasions we otherwise represent Scottish Government policy in other areas. For example, my Minister of State has developed a significant expertise in the area of climate change and energy where there needs to be discussions going on. He has expertise in other areas such as broadcasting and other areas where responsibility is reserved. There is also quite a lot of communication between departmental ministers and secretaries of state and their equivalents in Scotland. I can think of conversations which have taken place between the Minister of Justice in Scotland, the Home Secretary and Jack Straw, as the Head of the MoJ and as the Lord Chancellor. That sort of conversation goes on. Our department is not the exclusive conduit of that; there is a lot of bilateral discussion goes on. I know that the minister with responsibility for fisheries in Scotland talks regularly to the fisheries minister here in the UK Government. I cannot be exhaustive about this, but it just happens all the time, it is routine.

Q59 Chairman: I am wondering why they need you. You have told us about all these wonderful processes of discussion and that is all to the good, but why do they need you?

Des Browne: The purpose that we serve in the Scotland Office is primarily to ensure that the devolution settlement works for the people of Scotland. That does require a degree of concentrated expertise in Government here with a Scottish focus. Scotland traditionally has had a voice in the Cabinet. I do not think any party who aspires to Government in the United Kingdom has a policy not to allow Scotland to have that voice in the Cabinet. I might be wrong about that. I know from the Conservative Party's Manifesto at the last election they committed themselves to that quite explicitly. If there is any party that wants to tell the Scottish people that they want to remove that voice then it would be nice to hear it, but I have not heard it. That is part of the way in which this settlement which has led to the United Kingdom is preserved, it is part of its history and I am very much in favour of it. Our exclusive province is not to represent Westminster policy to the Scottish Executive or to the people of Scotland. As I constantly remind people, Scotland is still part of the United Kingdom and the United Kingdom's ministers' powers still run in Scotland in the reserved area unencumbered and in some of the devolved areas there is shared responsibility.

Q60 Dr Whitehead: I get the sense from our discussion that whilst there may be a number of bilateral arrangements there does not appear to be so much of what one might call the management of devolution in Whitehall. Is that a fair comment or is there an active management across the three devolved administrations of management of that process in Whitehall? If there is a management process, do you have a strategic role in that?

Des Browne: The phrase "management process" is undefined and I am not asking you to define it. There are flexible structures here in Whitehall and in the UK Government that are designed to allow devolution to work in the best interests of the people of Scotland principally but in the best interests of the United Kingdom. The process is spelled out in the provisions of the Scotland Act which has this inbuilt flexibility. There are a number of provisions - I can go through them specifically for you if you like but it would be tedious - of the Act which allows Orders to be made here to manage that process and they can be made for a number of reasons. They can be made in order to reflect the effect of legislation that is passed in Scotland where, in order for it to work properly, legislation down here needs to be changed and we make Orders to do that, to revise reserved legislation or to adjust it to make effective legislation in the Scottish Parliament. There are provisions that allow us to devolve either executively to the Executive of the Scottish Parliament or legislatively to the Parliament powers to make Orders there where we think that adjustment is appropriate. There are provisions, for example, to allow UK ministers to exercise what would otherwise be devolved powers if it is considered that that would be expedient in terms of the management, and then there

are provisions, which we all know about, which used to be known as Sewel Motions but are now known as Legislative Consent Motions, which allow effectively the Scottish Parliament to decide for expediency purposes it would be better if the legislation was carried through here at a UK level although it would affect an otherwise reserved area. That is part of the management process. There is a Cabinet committee - it is now known as the CN Committee - which has existed in one form or another to allow these issues to be administered at the high level as a sub-committee of the Cabinet by ministers who have responsibility and we meet regularly to discuss issues. Presently we meet under the chairmanship of Jack Straw in the CN Committee, but it used to be known as the Constitutional Affairs Committee and before that it had a name which was about devolution to Scotland, Wales and Northern Ireland. I cannot remember what it was called.

David Middleton: It was devolution to Scotland, Wales and the English regions.

Des Browne: Then there are Memorandums of Understanding and there are concordats. There are other bits of this structure. I am maybe giving you too detailed an answer here. There is plenty of structure there and, frankly, it works. It is tested on occasions. It has the advantage that there has never been an Executive in Scotland that has not had what you might call an opposition party in it. The Liberal Democrats have been part of it before. Presently it is an SNP-led minority government. It has stood the test of the involvement of different parties in Government here and it works. I know there is a kind of demand for an infrastructure of committees which will meet whether there is something to discuss or not. I am not sure that that would help.

Q61 Dr Whitehead: Thank you for what I might summarise as describing in detail the battleship and its parts but not necessarily whether the battleship fired any guns or not. Would you say the Cabinet committee that you have described is the management device for devolution? A number of the structures that you have described are things that could or could not be operated or implemented or done anything with. On the other hand, I imagine that the management of devolution is, or should be, an act of process, particularly in terms of the description that you have set out of part of your role being to ensure that the devolutionary process works as well as it can as far as Scotland is concerned.

Des Browne: I think what I am balking at is the idea that somehow we can from here manage the powers that we have devolved either to Wales or to Scotland or to London or to Northern Ireland for that matter. They have been devolved into a political system. They were devolved because as a party fundamentally we trusted the people to make political decisions to have responsibility for the politics and the Executive that would administer those powers for them in a situation which was closer to them. I am slightly balking at the idea that somehow we sit here and manage that because clearly we do not. There are elections and people are elected to make policies. As a democrat I fundamentally respect the decisions the Scottish people made. I am constantly being reminded that I should and I do. Therefore I see my role in terms of management to ensure that this organisation that is the UK Government and its supporting administration does not thwart those decisions of the Scottish people, that that space is left and that it is not invaded accidentally, and that we do not inadvertently do things which offend that settlement. Equally well, part of my function is to recognise when that space is spreading into an area which is properly reserved. So to that extent this works because it has been successful. It has provided the Scottish people with the sort of government which they craved up until 1997 and which we promised them. Of course it has its challenges, but every part of life that involves people and people that have different views has its challenges and it is tested and it will be tested. It was tested with the previous Executive and Parliament as it will be tested with this one.

Q62 Dr Whitehead: I think I am looking to understand very much the question of what remains happening in Whitehall as a result of the devolutionary process. For example, there are five government departments that have an interest in devolution policy and strategy: we have Scotland, Wales and Northern Ireland Offices, we have the Ministry of Justice and the Cabinet Office all with an interest in that process. Do you not think perhaps there should be one centre for that or do you think that devolved interest is something that works?

Des Browne: I think it is being seen to be important for the people of Scotland, Wales and Northern Ireland that they are represented at the UK level by a Secretary of State for the reasons that we have already discussed, I will not go over them again. The manifestation of that is the Scotland, Wales and Northern Ireland Offices. I have views about Northern Ireland and less well-informed views about Wales. I have some experience of Northern Ireland, but that is not what you want to hear from me, other people can speak for them. You will see the Secretary of State for Wales after me and I am sure his views will inform you. We have already recognised that those offices, because of devolution, are entities which are much smaller than they were before and for reasons which I think are logical we have put them into a "family" with another larger department. Beyond that, decisions about the machinery of Government are matters for the Prime Minister. With only one exception that I can think of, in the time that I have been a Member of Parliament all sorts of decisions have been announced and not debated and discussed in advance. I think there are very good reasons for that.

Q63 Chairman: It is something we have criticised in the past.

Des Browne: There is accountability and if they do not work then that is the ultimate criticism, but people need to take responsibility for the decisions. I think this system works. This process has changed decisions that have been made. We have heard today, although I have not got my head round the detail of this, that there is to be a reorganisation in the Ministry of Justice. I do not know what consequences that will have, if they will be marked for us to any extent, but it is happening. In administration terms, people are constantly changing and responding to lessons that they learn, but this works. If at some stage somebody chooses to change it then I am sure they will change it to something that will work too.

Q64 Dr Whitehead: There was a full Cabinet meeting early this month which discussed devolution. Without going into what transpired in detail, what was the nature of those discussions?

Des Browne: I think there is a long-standing good tradition that Cabinet Ministers do not discuss or hint at what has been discussed in Cabinet or Cabinet sub-committees. I intend to respect that. I am sorry to disappoint you. It was a valiant attempt!

Q65 Chairman: I suppose we have to conclude that there are general issues around devolution which made it appropriate to gather together the members of the Cabinet to talk about them.

Des Browne: There are regular meetings of the CN, which is a sub-committee of Cabinet, which discuss issues to do with the constitution and devolution. Of course these are live issues.

Q66 Dr Palmer: If one looks round the world, there are plenty of examples of devolved administrations which have different political parties to the national government. What is a little unusual is that the devolved administration has a declared objective of long-term separation. Are the current mechanisms for inter-governmental relations sufficiently robust now that we have that built-in potential difference in long-term objective between the Westminster Government and the Executive of Scotland?



Des Browne: That is essentially a political question which does not lend itself to an empirical answer. I will give you a view. My view is that the devolution settlement in Scotland is robust. It has proved itself to be robust for over ten years now. All sorts of people made all sorts of predictions about what the consequences of it would be. They have not yet manifested themselves. It seems to me that it serves the Scottish people well. Has it encouraged the Scottish people to be more pro separation? No. The latest opinion poll in Scotland suggests that in fact support for independence is - certainly in my lifetime - at an historic low, it is at about 23%.

Q67 Dr Palmer: I suppose what I mean is whether you have found that, given the difference in long-term objectives, there are practical ways in which difficulties arise in day-to-day co-operation or is it all going smoothly behind the scenes?

Des Browne: I am not aware of practical difficulties in relation to co-operation. I think you can rest assured that there is a lack of shyness among those who currently make up the administration in Scotland and if there were they would point them out to us. My observation is that in the day-to-day business that needs to take place between the administration in Scotland and the administration down here people get on with the job. There are hundreds of contacts among officials every day. In another capacity a document crossed my desk in which officials from the Scottish Executive were in touch with our officials seeking advice in relation to something and we gave it to them, that is not a problem. Ministers meet each other. The Minister of State in the Scotland Office speaks to the minister who has responsibility for parliamentary affairs, I think his name is Bruce Crawford, on a bi-weekly basis. Contrary to the politics because the politics go on, at Executive level my experience is that people take their responsibilities seriously. That means the people who are charged with the responsibility of delivering for the people in Scotland have to get on with that job, and the media and other processes of scrutiny make sure that they do and they have to get on with the job and we have to get on with the job as well. Actually, despite what may surface occasionally and make people think that there is constant tension, there is nothing of the sort; people are getting on with it at bilateral levels. The GMC Europe meets regularly and does its business, fisheries ministers talk to fisheries ministers and people get on with it.

Q68 Dr Palmer: It sounds very cosy. Professor Jeffrey has said to the Committee that he feels there is a lack of understanding that conflict is a normal and healthy reality of devolution and you are telling us that this conflict is only at the top political level and otherwise there is really no creative tension.

Des Browne: No, no, I am not. Frankly, there is creative tension inside the Government here in Westminster and I would be astonished if there was not creative tension inside the Government and the Executive in Scotland. People do not always agree with each other and that is a perfectly healthy position, but by and large we have a convention that we do not surface that disagreement because people concentrate on that and that we arrive at agreements and those agreements we get on and deliver. I am not privy to these conversations, but I cannot imagine that people do not come with a position and that our officials say, "Well, we've got an alternative position, it is conflicting, but let's see where we get to."

Q69 Dr Palmer: How would you respond to the suggestion that the mechanisms for inter-governmental relations be made more transparent so that, apart from the political debate that we all see, people are actually aware of all these discussions going on?

Des Browne: I think the convention that applies inside Government that by and large Government keeps these debates away from the public --- When ministers debate with others and when we have

discussions in Cabinet sub-committees these conventions which apply that we do not discuss them in public are healthy because people want to see the matured and formulated policy rather than the debate necessarily that leads up to it. Once the Government surfaces its position you can then have a debate about whether or not that is a sustainable position and it can come under the challenges that are appropriate in terms of scrutiny. It does not seem to me necessarily that governance would be improved by having all of this out in the public domain. That is not to say that other people may have a different view.

Q70 Dr Palmer: During the ten years I have been in Parliament I have only met a member of the Scottish Parliament once for five minutes. I think by and large relations between the two parties are almost non-existent. Is that a problem for you given that you have got this close relationship between the Government and the Executive? Would you like to see more joint discussions between the parliaments on issues of joint concern?

Des Browne: It may not be surprising that since 1999 you have not had a lot of exposure to members of the Scottish Parliament. I have no idea where your detailed interests have lay over those years. I know lots of them and I know lots of MPs who know lots of them and know them very well. At the heart of devolution is that we have devolved to that Parliament responsibility for certain areas of public policy and reserved to ourselves other areas of public policy. I am not sure whether we need to try and manufacture areas of common interest in order to have cross-fertilization. I have no way of knowing whether that is a good thing or a bad thing. I know that those MPs who share common geographical areas with members of the Scottish Parliament know them very well. Scotland is not that big a place to be honest.

Q71 Chairman: We talked earlier about Legislative Consent Motions or Sewel Motions. Do you think there should be a framework of principles guiding when such motions are appropriate? Is anyone trying to develop one within Government or do you think it is a bad idea?

Des Browne: I actually think constraining Legislative Consent Motions would be a bad idea because at the heart of Legislative Consent Motions is a decision by the Scottish Parliament that they think in a pragmatic and sensible way, that rather than insist on their right to exercise a devolved power it should be exercised by the UK Parliament. In an area where there is an agreement of policy and they are content as a Parliament, reflected in the motion that they pass, those provisions should apply to Scotland. I will tell you why I think constraining that would be a bad idea because it covers a really wide range. Towards the end of the last term of the Scottish Parliament there was a recognition across the United Kingdom that the law acted upon was to the disadvantage of mesothelioma sufferers. This is a disgusting and terrible disease, which is a horrible death and once you get it it is a death sentence. There was, quite rightly, I think, a consensus right across the political spectrum that something should be done about this. We agreed to do it here in the UK Parliament. Compensation is a devolved area. Quite sensibly and, I think, unanimously the Scottish Parliament took the view that if they had to go through an equivalent process it would take some months and the practical reality of that would be the people who could otherwise have benefited would be dead so they said, "This has to be done. It normally is a devolved area, but we think the UK Parliament should do it because it is ahead of us and let it get on with it". That is one set of circumstances. There are currently, I think, five Legislative Consent Motions arising out of our programme for legislation announced in the Queen's Speech. Three of them the Scottish Parliament has already passed. This used to be an issue of great contention but it is no longer. These have been passed quite quietly. They are eminently sensible. Two of them I will give you examples of. One of them is to do with climate change where there is a recognition that since there is a coherence of policy approach across the UK to the issue of climate change there is no reason for there to be two separate pieces of legislation and since the climate does not recognise the border

then it is sensible that the legislation should not. The second one that I would draw to your attention is about dormant bank accounts and releasing the ability of the Scottish Executive to take advantage of the funds that will be released from dormant bank accounts for investment. With respect, Chairman, I do not know how anybody would draw up a set of principles that applied to such a diversity. How many have there been? I cannot remember now exactly but it is quite a significant number. There used to be this really sterile debate in Scotland about whether or not the Scottish Parliament should insist on having this power when in fact this was just a practical answer to a problem. It is not giving up its reserved position, we are not taking it from them, but now all of that has quietened down. Quite interestingly, the SNP minority led Executive has five agreed Legislative Consent Motions or Sewel Motions when as a matter of principle they opposed them. I remember when the Tories as a matter of principle used to oppose timetabling motions in this parliament, but that has kind of slipped away as well now. The figure is 95 Bills since the introduction of devolution have contained clauses requiring the consent of the Scottish Parliament.

Q72 Mr Tyrie: Professor Curtice gave evidence to us and he told us that the Scotland Act was "deficient in the way it cut the number of Scottish MPs" because it did not take account of demographic changes whereby the English population was likely to rise, and continue to rise, faster than the Scottish population. Do you agree with him?

Des Browne: No. The problem does not lie in the Scotland Act. The Scotland Act did not actually cut the number of Scottish MPs. What it did was it repealed a provision which I think lay in a piece of legislation in 1986 which put a minimum on the number of Scottish MPs. I think it was 71 was the minimum number that was fixed. We know who was running the Government at that stage so it must have had the support of that party in power. They fixed the number of Scottish MPs artificially at 71. Part of the devolution deal as it were was that that would be repealed. It was in the White Paper. The people of Scotland accepted it. It was repealed. That meant that Scotland was no different with the one exception of the Shetland and Orkney Islands constituency. It may well apply to all of the Islands' constituencies for demographic and geographical reasons. Scotland was put into exactly the same position as the rest of the United Kingdom and the Boundary Commission was charged with exactly the same responsibility of fixing the size of the constituencies against the same criteria. Therefore the number of MPs in Scotland came down to 59. This is no respectable argument in my view, given the nature and the importance of the decision which the UK Parliament makes and the importance of those to the people of Scotland, that they deserve to be less well represented than the rest of the United Kingdom. They did not deserve to be better represented after devolution. I am not privy to what caused the 1986 provision to be made in the first place, but maybe those who were in Government know about that.

Q73 Mr Tyrie: As the average size of the voting population increases faster than those in Scotland will the number of Scottish seats fall below 59?

Des Browne: I think we should make these decisions about representation across the whole of the UK. At the moment this Parliament by legislation gives the Boundary Commission a set of criteria to apply. If the demography of the whole of the UK makes a mockery of those criteria then we should look at those criteria, but what we should not do is make decisions about the UK Parliament based on some prejudice or argument about the representation of a part of it as opposed to another part of it. We should make these decisions right across the whole of the UK and therefore other factors will come into play. Clearly there are factors that you would apply even now to the consideration of representation in Northern Ireland that you might not apply elsewhere.

Q74 Mr Tyrie: Would you consider that a good way of providing for what you would see as the necessary equivalent treatment right across the UK is the creation of one Boundary Commission for the whole of the United Kingdom?

Des Browne: I think the reality is that we have devolution in Scotland and we have another set of constituencies so we are going to have a separate Boundary Commission for Scotland in any event.

Q75 Mr Tyrie: I am talking about for the Westminster Parliament.

Des Browne: There are a number of reasons why it makes sense to have a separate Boundary Commission for Scotland. One is that they have another Parliament. We would have to have a separate Boundary Commission for that in any event. So we are going to have a separate Boundary Commission for Scotland. The second is the point that we started on, which is that Scotland is a different legal jurisdiction and it always has been. The interaction between the Boundary Commission and the justice system in Scotland is quite well known to the people of Scotland. If I recollect correctly, the Boundary Commission in Scotland is chaired by a Senator of the College of Justice, a Scottish High Court judge. The appeals system goes into the Sheriff Court process. I think it makes sense to leave it where it is because that works.

Q76 Mr Tyrie: So you want decisions to be taken right across the UK as a whole but you do not want a Boundary Commission that is empowered to do that?

Des Browne: If we are going to change the criteria that we ask the Boundary Commissions to apply to the size of constituencies then we should make those decisions across the whole of the UK and not niche decisions in relation to England. That is exactly what we agreed to do at the point of legislating for the Scottish Parliament. We said this minimum number, which no doubt had been imposed for very good reasons, no longer is relevant and we will remove it.

Q77 Chairman: In order to achieve that is it not necessary that at least the two Boundary Commissions should be able to meet together and decide what the quota for any constituency in the United Kingdom is, even if it is a separate Scottish Boundary Commission goes on to work out how you divide the actual boundaries to achieve whatever number it turns out to be for Scotland on this population, 57, 58 or 59?

Des Browne: I am afraid, Chairman, you bring me into an area where my knowledge base is not informed. I do not have the factual information to engage in that. I do not know whether Boundary Commissions do meet with each other and discuss. I have no idea if there is any statutory impediment to them doing that. I do not know whether they do it on an informal basis. Secondly, I do not think the criteria that they apply north and south of the border are different. I do not accept that this coherence is there. Finally, I do not know if the Boundary Commission has the authority to determine by law how many constituencies there should be in Wales, Northern Ireland or wherever. I suspect they do not. I suspect that we probably preserve that to this Parliament. I suspect there is nobody round about this table, with the honourable exception of the clerks who might have a view about this but keep it to themselves, who would dispute that that should stay here.

Q78 Mr Tyrie: Could you say something about the West Lothian question and whether you think that the current asymmetric arrangements between England and Scotland are sustainable without some accommodation of what is becoming known as the "English question"?

Des Browne: I think it is 25 Bills in the Queen's Speech. As far as I can see more than 20 of them apply to Scotland and some of them completely in the sense that they are climate change and we

have discussed the Sewel Motion in relation to that. I cannot give you the break down of this as I do not have it off the top of my head, but the degree to which this whole legislative programme applies to the whole of the United Kingdom and in quite significant parts to Scotland is actually quite impressive. Even those celebrated cases that exercise people such as the legislation in relation to student fees had significant implications for Scotland. It is quite illuminating that those who were espousing this overt argument about votes for English laws now seem manifestly to be rolling back from it as they try to work out the practical implications of dividing up bits of legislation so that you can have specific votes about the bits that only apply to England or England and Wales and the bits that apply to Scotland because it is almost impossible to do.

Q79 Mr Tyrie: I was not asking you whether some other solution was sustainable, I was asking whether you think the current arrangements are unsustainable.

Des Browne: If all you want is a one word answer then I am quite happy to give it to you rather than explain to you why I have come to the conclusion. I was trying to explain to you why I have come to the conclusion I have come to. The conclusion I have come to is it is sustainable and it is sustainable because all of those people who attack it discover as they get into the detail of it that life is never as straightforward and does not divide along the lines that they would want it to in order for them to produce some sort of clear cut solution so they end up with a degree of asymmetry. I think what you do is you end up with asymmetry right across the United Kingdom. I remember once being asked this question at the height of another furore about it in the Scottish media, "How can you vote on these matters when they don't affect your constituents?" I gave the answer that Parliament decided. That is how I can vote, because Parliament decided. The UK Parliament in the majority made this decision. I remember people thinking that that was a ridiculous answer, but it is not a ridiculous answer. Parliament makes lots of decisions that generate asymmetry for very good reasons. London enjoys a degree of devolution, so people in London and people who represent people in London have another decision-making process that is not accountable through this Parliament. Wales has devolution and it has been progressive and changing and it serves the purpose of the people of Wales. I know that devolution in Northern Ireland, which we reinstated after a long period of suspension and which none of us really wanted to see, has generated another asymmetry there, but that has served the people of Northern Ireland very well and there are hundreds of them alive today who would not have been if we had not been able to do that. Life is diverse. The United Kingdom is diverse. It is its strength. Its diversity generates an asymmetry. You will only end up replacing one asymmetry with another and somebody will say, "There's unfairness in that asymmetry. How about we change it again to suit that?" I think, frankly, the answer is that the diversity of the United Kingdom is its strength and that it will survive.

Q80 Mr Tyrie: Your answer to the question that you were posed in that TV interview was that the UK Parliament made that decision. If the UK Parliament comes to some other decision at some subsequent time on this issue this must mean that you will be prepared to accept that, does it not?

Des Browne: We are into the area of speculation now. I do not anticipate - I used this word in the media over the weekend and everybody interpreted it as meaning "expect" but it does not mean that - that change because I think that people will come to the conclusion I have come to when they start to look at this in detail. The legislative process here, the complexity of the United Kingdom, the effect decisions that are made by the UK Parliament have on the people of Scotland and to some degree vice versa does not lend itself to those clean cut lines and we will end up with a degree of asymmetry. I think this Parliament consistently will come to the view that the asymmetry that we have at the moment is preferable to the mess that we would get into. I also fundamentally believe that if you generate an English Parliament inside the UK Parliament then you would need to do that in the confident knowledge that eventually that would lead to the break up of the United Kingdom.

Q81 Mr Tyrie: What about the Barnett Formula? Do you think that the Barnett Formula is sustainable indefinitely?

Des Browne: The Barnett Formula has not existed forever. It is a temporal measure like most measures are so it goes back about 30 years or thereabouts to 1978. I think it has served us well in those years. I think it has been transparent. People understand it. It lends itself to an incremental increase in a proportionate fashion. I think it is for those people who think we should change it to come up with an alternative.

Q82 Chairman: They certainly understand it in the north of England where it gives Scotland a lot more money than we get.

Des Browne: You get into very interesting debates about what is public spending. If you only look at it in certain areas and compare it in certain areas then there is an apparent unfairness. How do you take into account the size of Scotland and its spread of population and the fact that a lot of people live on islands? I say a lot of people, but it is a fact that small numbers of people live in these remote communities and generate a level of expense. That is another debate. The Barnett Formula itself has served us well and is a transparent way of dividing up increases in public spending.

Q83 Mr Tyrie: And your message to the English on the Barnett Formula, your message to the Chairman's constituents as to why they are getting less than just across the border where there is not some huge disparity in density of population, which is what you were referring to a moment ago?

Des Browne: I do not know the Chairman's constituency well enough to know about the spread of population. I know Scotland really well.

Q84 Chairman: It is the most thinly populated in England.

Des Browne: As a comparative measure, I suspect that even the Chairman is not arguing that to live in the Shetland Islands is the equivalent of living in his constituency.

Q85 Mr Tyrie: What is your answer to my question? What response do you give to the English people?

Des Browne: We have seen significant increases in public spending in every part of the United Kingdom and all of our communities have benefited greatly from them and that is as a result of the economic stability that this Government has generated and they should be thankful they have a Labour Government.

Chairman: On that more partisan note than the rest of the contribution we thank you very much.

Witnesses: Rt Hon Paul Murphy MP, Secretary of State for Wales, and Alan Cogbill, Director, Wales Office, gave evidence.

Chairman: Secretary of State and Mr Cogbill, welcome. When you and I were together towards the end of last week I was not expecting to be pressing you in this new capacity, nor you to be sitting

there! On one of your very first outings we welcome you very much. I think we have a couple of interests to mention.

Julie Morgan: I am married to the First Minister in Wales.

Jessica Morden: I am Paul's PPS and so will be remaining silent!

Q86 Chairman: You have found yourself suddenly in the job of Secretary of State for Wales. Is there a job?

Mr Murphy: First of all, Chairman, and members of the Committee, I am delighted to be here. If you were shocked about what happened last week then you can imagine what I must have felt like! It is a great pleasure to be back in a job that I did from 1999 to 2002. It is a considerable pleasure to come before this Committee. You and I have talked over the years about how significant a Committee this is and this is the first time that I have had the opportunity to contribute towards your deliberations. Yes, there is a job. It is a question, incidentally, that I was asked constantly in 1999 all the way to 2002. The fact that there was a job then and there is a job now and there has been a job in between indicates yes there is. I think it is an integral part of the devolution settlement. When people voted for devolution in 1997 they voted for the package, which included the position of the Secretary of State for Wales, enshrined as it is, as few others are, in legislation by name. In addition to that, the Wales Office has been an integral part of the settlement too. I think the first important point to make is that when people voted for devolution they did not vote for separation, they voted for devolution within the United Kingdom and in Wales they only just voted for it at all in 1997 so they saw it as part of the settlement. I think the chief role of the Secretary of State post-devolution is in a sense a personal one, it is about relationships, it is about ensuring that the devolution settlement develops, but also that it is as smooth as it possibly could be between Cardiff and London. It is representing Welsh interests within the Cabinet of the United Kingdom Government, it is representing Wales and its interests throughout all the Whitehall departments, but it is also representing the United Kingdom Government in Wales too. A lot of the job that I did when I held the position before and I am sure I will do as well now is to ensure that the policies of the United Kingdom Government are explained in Wales and it is also a symbol of the partnership between ourselves and the Welsh Assembly. I am convinced that the awareness of Welsh matters in Whitehall is the job of the Welsh Secretary. It also means that we give proper scrutiny through the Wales Office to legislation which affects Wales, but we will probably come on to that in future. I am convinced that the job is a part of the settlement and is an important part of it.

Q87 Chairman: This job was done as a part-time activity by the Secretary of State for Work and Pensions until last Thursday. Does your appointment to it in a different way, with sole responsibility, mean that the job is now going to change?

Mr Murphy: The job has changed since the second Government of Wales Act anyway in that the methods of Orders in Council, LCOs as they are termed, which will incrementally transfer power to the National Assembly, mean that there is a different type of role for the Secretary of State compared to when I was in the job so far as the legislation is concerned. Your question revolves more around times rather than the functions of the job. Peter Hain was a very assiduous minister, very hard working. He held my job initially on its own, but at that stage I believe he was dealing with European matters too. He then held a number of Cabinet posts together with the post of Secretary of State for Wales and undoubtedly it was a very hard job because of having to do all that. In my own case, I am not doing this job as a standalone because the Prime Minister has asked me to do other things. Perhaps I can take this opportunity to outline it to the Committee so your question is answered more fully. In addition to the job of Secretary of State for Wales I have now been

appointed the Minister for Digital Inclusion, which involves a lot of cross-departmental work, and in addition to that I have been asked to chair the Cabinet committee on data security, which is something that of course is of enormous interest to Members of Parliament after what happened before Christmas.

Q88 Chairman: This Committee has reported on it recently.

Mr Murphy: I shall look forward to reading the report. In addition to that, I have to chair the Cabinet Committee on Local Government and the Regions, which is very interesting in a comparative sense, to look at how regional activities and possible government might occur in England. It is still a job which is important, but you can combine, as the Prime Minister has asked me to do, other jobs with it within Government.

Q89 Chairman: Mr Cogbill, you are described as Director of the Wales Office but of course you are part of the Ministry of Justice. What does that mean in practice about the role and status and your relationship with the rest of the Ministry of Justice?

Alan Cogbill: I suppose the first thing to say is that I am accountable exclusively to the Secretary of State for Wales in all matters which ministers will take an interest in. What it means is that the Wales Office as an associated office of the Ministry of Justice comes within a much bigger administrative pool, which means that, for example, we can look more broadly at bringing people into the Wales Office and we can look to the Ministry of Justice for all kinds of corporate services which it would be very difficult to sustain for an office of fewer than 60 people, ie the IT, financial systems and that kind of thing.

Q90 Chairman: What are your current staff numbers and budgeting in broad terms, so we can understand?

Alan Cogbill: In broad terms, we have currently 55 people. We are looking to recruit just a couple more at the moment.

Q91 Chairman: So almost exactly the same size as the Scotland Office?

Alan Cogbill: Yes, and the spend is about 5.5 million a year.

Q92 Chairman: Do you have many dealings with the Scotland Office part of the Ministry of Justice on matters of common interest? Do you ever find yourselves engaged in discussions with them?

Alan Cogbill: Yes, quite a bit. Since last year the Ministry of Justice has had a new Director General looking at handling devolution and strategy across all the devolved countries of the UK and we have periodic meetings which involve both the head of the Scotland Office and me so that we can see how developments are running in the different countries, and before that we used to come together on a fairly frequent basis, more or less formal basis, just to share the problems, see the trends and see if there were any common factors that we wanted to have in mind.

Q93 Chairman: Do you make common calls?

Alan Cogbill: Well, yes, to this extent. I have as my main building a listed heritage building, which is a bit of a headache in some respects. The maintenance and refurbishment of that is a little project for which, as it happens, I have been able to arrange for some people in the Scotland Office to help



us. They happen to have someone who has the necessary skills and we can use that, and those kind of working arrangements happen quite a lot.

Q94 Julie Morgan: My questions are to the Secretary of State. You mentioned the changes to the jobs since the 2006 Act, and one of the Wales Office's stated main objectives is to ensure that the changes to the constitutional settlement which flow from the Government of Wales Act are implemented and operate smoothly. How do you propose to do that?

Mr Murphy: I think it is back to relationships again in the first instance. I think one of the important jobs of a Secretary of State is to be able to have a good relationship, we are necessarily a part of them, because, as you know, we are in coalition in Wales at the moment, but a good relationship in Wales with all ministers in the Assembly Government in dealing with these new proposals of how we deal with the transfer of powers incrementally. The first thing to do is to ensure that when the Welsh Assembly Government decides to ask for a transfer of functions that there is a good ability to be able to talk about those things between ministers here in London and ministers in Cardiff. Secondly, I think, the process itself is now beginning to bed in. It had a bit of a bumpy start, but all processes do. It is not the easiest process to understand, but I think it has really got going over the last number of months. I think it is working rather smoothly in terms of relationships between the ministers, in terms of the Welsh Select Committee, which has a responsibility to give prelegislative scrutiny to these new orders, to its equivalent committee in Cardiff. What we have not tested yet, of course, is how the matters will be debated here in the House of Commons and the House of Lords, because it has not yet come to that stage, but I think that the initial teething troubles that were experienced on that process of devolving these different functions are gone and I think things have improved quite a lot on that.

Q95 Julie Morgan: So you are confident that this can go forward smoothly?

Mr Murphy: I have no doubt that the process will be one that people will get used to and that it will be smooth. It is also a question, of course, of dealing with the other government departments in Whitehall, some of whom, of course, were not in the past used to dealing with a devolved administration. I think that is getting much, much better than it used to be when I was a minister in the Wales Office before. People are understanding the role of devolved administrations differently, they understand it is a very important role that they have, and in our case, of course, because English and Welsh matters are more linked than Scottish and English are for all sorts of reasons, it is important that those relationships do flourish, and that again is part of my job. When Mr Beith asked me about what my role is, it is also a role in liaising with other Cabinet ministers in the United Kingdom Government on matters such as the ones you have just described: handling the process of transfer, for example, is one of them.

Q96 Julie Morgan: You have only been in the job a few days, I think, but has it struck you as being different from when you were in the job the last time?

Mr Murphy: Yes, it is different, first of all, in the sense that the processes are different. When I was dealing with legislation from 1999 to 2002 there were perhaps one or two, at the most, Welsh bills going through the legislative process in Parliament. They would be bid for by the Welsh Assembly Government through me, through the system, and that is all we would deal with, except perhaps some parts of bills which had Welsh matters in them as well. Now it is very different. It has resulted in the second Government of Wales Act. The other thing, of course, is that we have a different political landscape in Wales than we did when I was Secretary of State before, obviously, with the advent of coalition politics that we have now got in Cardiff, and so that clearly is different as well. People have not changed an awful lot; most of the main players are the same. Wales is a relatively

small place and I think, in many ways, one of the great advantages of devolution has been the accessibility of government - people know each other in a different way - something I experienced when I was the Northern Ireland Minister well. I think that that is beneficial and it means that you can talk to people in perhaps a different way than in an English context because England is so very big.

Q97 Julie Morgan: We have just seen the Secretary of State for Scotland, Des Browne. How do you think your relationship with the Welsh Assembly Government and the Welsh Assembly would be different than the relationship in the Scottish context?

Mr Murphy: I think the roles were different anyway, as it were, from the beginning. The perception of people in Scotland about devolution has always been different, but in Wales there was a much bigger majority. In the referendum in Scotland for devolution, it had its own Parliament in the past, it has got a separate legal and judicial system, a different educational system, different police forces and so it is a different place altogether, and the relationship between a First Minister in Scotland and then in Wales is different for those reasons alone. I also think there is a question of size. Scotland is bigger and it has more politicians. I do not think there are really good comparisons to be made between the two places, because these are different devolution settlements, just in the same as Northern Ireland. We have that type of devolution, asymmetrical devolution, in this country, and I think actually we benefit from it, and there is no reason, in my personal view, for example, why eventually we cannot have regional government in England which, like in Spain, is different from place to place.

Q98 Dr Whitehead: Do you have a sense of the management of devolution from Whitehall in addition to the bilateral arrangements you have described between Whitehall and Wales? Is there a strategic overview of devolution which is on-going as a result of the process and do you have a role in this, or will perhaps you have a role in this in the future?

Mr Murphy: There would be trouble if I did not. I think certainly that the change I have seen since I have come back is that from an official's point of view particularly, of course within the Ministry of Justice there has been established this new unit, so to speak, which deals with the overall policy of management of devolution, which I think is a good thing because it gives an extra reason why it is that Whitehall departments must now understand devolution generally and understand the differences between Scottish, Welsh and, indeed, Northern Ireland devolution, and I think that is a good development. I do not think it can ever replace the bilateral arrangements, though. Because I am a Welshman representing a Welsh seat, I go home to my constituency and I am going home to the area that I am responsible for in government here in Westminster, and also (the point I made to Mrs Morgan just now when we were talking about the need for personal relationships between politicians) to soothe things through. In a way all my ministerial life for the last nearly nine years now, on and off, has been about that type of politics, about dealing with people personally to overcome difficult areas and problems that we might have, and I think that is as much applicable to Scotland, Wales and Northern Ireland in different ways. So, as important as the central unit is in the MoJ, and I do think it is very important and I will be having meetings with the relevant officials over the next few days, it will not replace, nor can it replace, the political bilateral relations which the Wales Office, Scotland Office and Northern Ireland Office actually represent.

Q99 Dr Whitehead: Do you think the Secretary to the MoJ and perhaps the Cabinet Office, which also has a role in this, and, of course, the individual offices for Scotland Wales and Northern Ireland, do have, or should have, a collective view of reviewing how the machinery of devolution works and whether it works well or less well apart from the particular devolved administrations and governments that it is dealing with? Is there, in your view, as it were, a Whitehall barometer of

success of devolution which needs to be managed and do you think, perhaps, that might be managed in one centre rather than the different centres there are at present altogether?

Mr Murphy: It depends what you mean by the success of devolution, I think. In terms of the machinery of government and how the British Government deals with the devolved administration, I think there is a very important need constantly to monitor that. There is no problem at all with that. I think when it comes down to assessing the political advantages and disadvantages of devolution, they are essentially political questions and people have different views, obviously, about that, very diverging views, but devolution is also about allowing the devolved administrations to get on with governing Wales, Scotland and Northern Ireland and sometimes it is quite difficult to let go, I guess, over the years, if you have been dealing with government. It is particularly difficult for members of Parliament to understand that; it is difficult for me. I have been a member of Parliament for 21 years and certainly for the first half of that it was the old Welsh Office system where you could go to the House of Commons, ask the Welsh Secretary questions, have an input into the health and education service and all the rest of it, and that has changed and we have to accept that. In the same way, incidentally, I think that colleagues in the Assembly and in the Scottish Parliament have to accept that these, too, as MPs, still have a role in the governance of Wales. But that is a political question which, I think, in a sense, is different from the point that you were making, which is the machinery of dealing with devolved administrations constantly needs looking at because it is changing all the time - the landscape is changing. I think, certainly initially, in the late 1990s Whitehall was not really ready for devolution in the way that it should have been and there was sometimes a constant battle with Whitehall departments to get them to understand the significance of what was happening in Cardiff and Edinburgh and, indeed, to understand and appreciate that sometimes, even in the same party, that they might be going down different roads. I think that has changed a lot and, I suppose, in answer to the question you asked about what has changed the last few years, the awareness within government departments about that still needs attention but it is different from what it used to be.

Q100 Dr Palmer: You have touched on this several times, but one of the tests of the success of devolution is whether it is able to work effectively when the devolved government has a different political complexion to the Westminster Government. I realise that you cannot really speak for the Welsh Office before last week, but is it your feeling as a close observer that the structures are sufficiently robust or is there anything further to accommodate potential differences, objectives and beliefs?

Mr Murphy: In a way, I suppose, time is going to tell over the next couple of years how the new arrangements are going to work, because they are very new. Not one of these new orders has yet come to the floor of the House, but they are in the process of so doing. My own feeling is that the vast bulk of the functions which we asked to transfer - "we" by which I mean the British Parliament - I cannot see will be hugely controversial, because the real test of all this is how people's lives are improved because of the governance of the places we are talking about. If I as a Welsh person feel that my life is better because of devolution, then devolution will have succeeded. Better in a number of ways: obviously the democratic deficit that was there before, but also, more significantly, my school is better, my hospital has improved, is it a better place to work in, is the environment good, and all the rest of it, and that is the real test. I think also that the very sensible Orders in Council we have seen coming through so far - for example, I will give you one on domiciliary care, additional earning - go easily with the functions that the Assembly now has and have been passed in order to make those education and social services functions be more effective in Wales so that people's lives are improved as a consequence. That is the real test, it seems to me.

Q101 Dr Palmer: The person in the street probably does not have a very clear picture of how the Government in London and the administration in Cardiff actually work together. Do you think there is scope for it to become more transparent or do you think it is better that it goes on quietly without too much trouble?

Mr Murphy: It is part of my job really, and certainly my colleagues who represent Welsh constituencies, to be able to show that it is a genuine partnership in government, that we do certain things and the Assembly does others but that we do work together. It is easier, of course, when it is the same party, but every settlement has to be based on the assumption that there could be different parties governing in different parts, as there now are, of course, in Scotland and the United Kingdom, or, slightly different again, in Wales and completely different in Northern Ireland; but I do think that people in Wales are beginning to understand the constitutional differences too. Your constituent, for example, is likely to go now to an Assembly member, in my case, in Wales, to deal with health issues and they will come to me to deal with employment, welfare or tax issues, whatever it might be, and that did not at the beginning work like that, people would not understand it, but they are beginning to, more than beginning to, in fact they have understood that, and it is shown by the very basic business of where my constituents go to, to the Assembly member or to me and, of course, some of them go to both to see if they can get a very good deal out of both of us, but that is another issue.

Q102 Dr Palmer: Do you think the intergovernmental relations are also transparent, not just different roles of the two Parliaments?

Mr Murphy: Yes, I think so, but I am not sure that the precise workings of how Orders in Council devolving these functions would be a matter of concern in the stock market on a Friday. No, I do not think they would necessarily, but I think that if our friends in the media, for example, explain, as they do, what is happening in Wales, people would understand those issues, but it is not something naturally that would be of interest. What is of interest to them, of course, are the subjects that we are dealing with. I have given you two just now: domiciliary care and additional learning needs. They are of importance to the people in the markets because they are not usually important issues, and because they will see on the television and read in the newspapers who does what, I think the awareness is improving there as well, but some of the things that you and I, inevitably, as constitutionalists and politicians have to talk about are a bit more esoteric. It does not mean to say they are less important, but they necessarily are not going to be that popular as a means of communication with each other.

Q103 Dr Palmer: Would you like to see greater co-operation between Parliament and the Assembly? For instance, the Health Select Committee talking to their counterparts in Wales, or do you basically feel that they have got their own departments to deal with?

Mr Murphy: No, I think it is a very good idea. One of the issues that I have been dealing with in the last few days is to say how important it is that members of Parliament and Assembly members physically meet more often to talk about issues.

Q104 Dr Palmer: But not that much.

Mr Murphy: It is very difficult. Of course they meet in the constituencies, but if you are in one part or another and there is 150 miles between you, it is logistically very difficult sometimes for those meetings to take place, but I think there is a case for AMs understanding more about what we do and vice versa, and I think that is happening. I also think your suggestion, for example, about the work of Select Committees, typically Select Committees, is very important now that the Assembly

has changed the way it is organised through the Government of Wales. That is a long and corporate body, just like us, with a separate Executive and Parliament, and so, therefore, the scrutiny role of the Assembly is now much more significant than it was and, frankly, I think that it will be very useful for members of the Assembly to see how Select Committees operate and see whether any best practice could be used in Cardiff. That applies, incidentally, to policies as well, but that is another issue. I know Edwina Hart, for example, recently went to Bristol to look at our National Health Service drop-in centre's work. So, you learn by best practice from each other, but in terms of Parliamentary work, I think that is an excellent idea and one that ought to be encouraged.

Q105 Chairman: You mentioned health and education a moment ago. At the next General Election you could find yourself leading for the Government on Wales, as a member of the election campaign, arguing for policies which might be diametrically opposed to some of the policies in that field of the Assembly, which has powers in that field on something like, say, prescription charges, to take one example. You will be campaigning in support of the policies of the Westminster Government, and your party is part of the Westminster Government, and seeking to be elected to carry out those policies, while at the same time being (a) responsible for relations with the Welsh Assembly and (b) fighting a constituency in Wales; so we come to the Welsh version of the West Lothian question, if you like.

Mr Murphy: It is something that we have not experienced to any extent yet, probably for the obvious reasons that there has been a Labour administration and now there is a labour-led administration and a Labour Government. The issue, as you rightly say, Chairman, comes down to whether there are diametrically opposed parties in government.

Q106 Chairman: No, it is not that, actually, it is that even within the same party you could find yourself having to argue for Westminster Government policy in a General Election even though that policy, in this particular case carried out by a government led by your own party but shared with another, is diametrically opposed to the one you are arguing for.

Mr Murphy: As I said, I have not yet come across such a robust and stark example of that. The thing is that, if you are within the same party, the chances are that a manifesto being, for example, drawn up for the United Kingdom election would have a Welsh element to it and there would be lots and lots of discussion between the United Kingdom ministers politically and the Assembly ministers politically on what goes on that and vice versa. In other words, if an Assembly election was to held, then the chances of the, for the sake of argument, Welsh Labour Party putting something in there which would be so starkly and dramatically different from the United Kingdom Government, I think, would be quite rare, but not impossible. There are differences. You mentioned one - prescription charges is the classic one, I suppose - student fees is another, but there are a number of them which are different, but they are not differences which would bring down the end of government in either place. They are not that dramatic. I think also we have to accept that devolution is about devolution; that devolution is about the devolved administrations making their own decisions and being accountable to the people of Wales when their elections come up, and we have to accept that there will be differences like that, but they have been, and I am sure they will continue to be, manageable. The point which you quite rightly said was not the point you were making is another issue altogether.

Q107 Chairman: But what about the fact that then you and your colleagues and Scottish members as well will be voting for a different set of priorities in England, confident in the knowledge that your own constituents will not have to live with those priorities. For example, removing prescription charges is not on the English priority list - your constituency in Wales do not have to suffer that;

they get their free prescriptions - and then you come along and vote to assert the priorities of the Westminster Government?

Mr Murphy: I suppose the technical answer to that is that when someone votes for Paul Murphy in Torfaen, they vote for the party, whose manifesto is UK-wide, and although it does not necessarily apply in my constituency, they will have seen what has been argued for on television day in and day out and, if they felt diametrically opposed to that, they would vote for another party. Whether they think those things quite so deeply as that is another matter. They vote Labour, or whatever it is that they vote for, because they believe that is their party, but, technically, it could be argued that in the manifesto which has been presented to the whole of the United Kingdom there is a bit on English health and you will have voted for it even if you are a Welsh voter.

Q108 Dr Whitehead: Do you think there is a case for retaining the current levels of Welsh representation at Westminster when, post devolution in Scotland, the number of Scottish representatives in the UK Parliament overall has been reduced?

Mr Murphy: It is a funny old thing to argue for less representation for your country in the national parliament. Let us have 20 fewer and let us have less influence, shall we? No, I think it is bonkers, to be honest, to want to do that as a Welsh person, to have less influence in the British Parliament by reducing your numbers. Others, undoubtedly, would argue the case, but a lot of people in Wales would not. No, I think the Scottish situation is different anyway because of the nature of the Parliament. It is a much different Parliament, it is historically very different, as I have said earlier on, the powers that they have over criminal justice and so on are very different from ours, and that is the reason, of course, that Scottish representation was reduced, but Wales has no tax-raising powers, it has not got primary powers in the way that Scotland has, it has not got the historical Parliament that Scotland inherited, and so, for all those reasons, it is different. My argument is let others argue the reduction of Welsh members of Parliament, but not the Welsh Secretary of State.

Q109 Dr Whitehead: Scotland now has a quota equivalent to the rest of the UK. Wales does not, so Wales, as you might say, has had devolution and has retained an additional number of MPs in the UK Parliament over and above the quota. If you were a disinterested observer rather than the Secretary of State for Wales, would you not accept that that view might have some force?

Mr Murphy: Only, I think, if tax-raising powers were given to a Welsh Parliament, because, as a lot of us know, the purpose of Parliament is to raise money, and so long as there is no such power in Cardiff in the way that we have got that power, then I think the case for the representation for Wales---. I think we represent slightly fewer than an English member of Parliament, but nothing like the Scots MPs did, and we are a country in our own right, a nation in our own right but without those parliaments that Scotland has, and so I think until you get to that situation of a Scottish Parliament with tax-raising powers, then I do not think there is an argument at all, to be honest, and even then I am not sure it is for me to argue it.

Q110 Dr Whitehead: Seven extra MPs compared with the English quota is the price for tax-raising powers?

Mr Murphy: Yes, it is not going to break the bank though, is it, really?

Q111 Dr Whitehead: Have you had discussions with the First Minister and the First Minister's Deputy with regard to the potential referendum on further powers for the Assembly, given that in the Government of Wales Act there was a commitment to proceed to a successful outcome of a referendum before law-powers, I think before the end of the Assembly term.

Mr Murphy: I am not sure that was in the Government of Wales Act. I think the commitment in the Government of Wales Act would have been before powers had been given.

Q112 Dr Whitehead: I am sorry, the referendum itself is outlined. The possibility of a referendum was outlined in the Government of Wales Act. The commitment was part of the arrangement between---

Mr Murphy: The answer, Dr Whitehead, to the first question is that I have had discussions with the First and Deputy First Ministers, but not in detail, in the last six or seven days, on the referendum. I have talked to them again about other issues but not in detail on that, no. I undoubtedly will do, but the first point about having a referendum in principle before law-making powers of the nature you have described are given is something I was particularly keen on. When I was in government last I thought it was a very important part of the Government of Wales Bill because of the very narrow majority that devolution obtained in 1997 and that, in order to change the fundamental settlement, the people of Wales needed to agree to such a change. So I think the referendum principle is absolutely vital on that. The other part of the question was about the "One Wales" settlement, which goes a bit further than that and, as you know, is separate from the Convention, to test the waters, if you like, as to whether there is any appetite in Wales for a referendum for law-making powers to be completely given to the Welsh Assembly, and that is rather different.

Q113 Chairman: Secretary of State, thank you very much indeed. We much appreciate your evidence this afternoon and it will help us form our views.

Mr Murphy: Thank you. Chairman, can I thank you particularly for chairing this session. As you said earlier, I did not think that this was going to happen but I have very much enjoyed my session with you and, if I might put on public record, I have enjoyed two and a half years on the ISC with you as well.

Chairman: Thank you very much.