



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 19 March 2015



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**DEVOLUTION (FURTHER POWERS) COMMITTEE**

**9<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**COMMITTEE MEMBERS**

\*Linda Fabiani (East Kilbride) (SNP)

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Alison Johnstone (Lothian) (Green)

\*Lewis Macdonald (North East Scotland) (Lab)

\*Stewart Maxwell (West Scotland) (SNP)

Mark McDonald (Aberdeen Donside) (SNP)

\*Stuart McMillan (West Scotland) (SNP)

\*Tavish Scott (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Professor Michael Keating (Economic and Social Research Council, Centre on Constitutional Change)

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)

Professor Aileen McHarg (University of Strathclyde)

Ken Thomson (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Devolution (Further Powers) Committee

Thursday 19 March 2015

*[The Convener opened the meeting at 09:34]*

### Intergovernmental Relations

**The Convener (Bruce Crawford):** I formally open the meeting and welcome members and all present to the ninth meeting of the Devolution (Further Powers) Committee in 2015. As usual I remind everyone to switch off their mobile phones. Mark McDonald MSP will not attend today; Bill Kidd MSP is substituting on his behalf. Everyone else is here.

Agenda item 1 is an evidence session on intergovernmental relations. I welcome our witnesses, who are Ken Thomson, the director general for strategy and external affairs at the Scottish Government; Professor Michael Keating, the director of the Economic and Social Research Council's centre on constitutional change; and Professor Aileen McHarg of the school of law at the University of Strathclyde.

We have about an hour. I know that Michael Keating has to get away at about 10.20, so we might have to go a bit quicker. I would be grateful if we could keep questions and answers as succinct as possible.

Before we get into the nitty-gritty of how intergovernmental relations work, I have a general question. A structure of shared power is developing in significant policy areas. Therefore, the principles that will underpin or guide work in future will be very important. Professor Aileen McHarg reflected on those principles in her paper. It would be useful to hear from all three witnesses which principles we should ensure Governments adhere to in future in the way in which they operate. That would help us to set the context for where we are.

**Professor Michael Keating (Economic and Social Research Council, Centre on Constitutional Change):** Can I make a general comment? It is really a word of caution about the intergovernmental relations industry. We know from experience around the world that, increasingly, in federal and devolved systems, powers are shared rather than clearly divided. You cannot have a watertight division of competences. We know that, and that there is a great deal of interdependency. However, in many countries, people feel that that has gone too far and that the

division of powers is not sufficiently clear to allow Governments to make policies on their own within the constraints that are imposed by all kinds of economic and political factors. A great deal of policy making has disappeared into that intergovernmental world, which is non transparent and unaccountable. As a result, there has been a tendency to try to clarify competences a bit better.

We are in danger of going in the opposite direction. Following the Smith commission recommendations, the system is becoming too complicated, as there is an attempt to specify powers in far too much detail. Instead of just having reserved powers with everything else going to Scotland, we have exemptions to reserved powers and exceptions to exceptions to reservations. That is creating—or could create—a great deal of unnecessary difficulty.

The other point is that intergovernmental relations is essentially a political matter. We have to recognise that many things will not be taken into formal institutions but will be resolved politically. I suspect that that will become more the case as we get into multi-party politics at Westminster, which will include territorial parties from various parts of the United Kingdom. If we do not recognise that, we will set up an apparatus that will not work. There has already been a bit of that. We set up formal committees with a legal structure and they do not do anything because the real business is conducted elsewhere.

Finally, and related to that point, it is a great mistake to set up committees and institutions that do not have anything to do—that do not have a clear purpose of resolving specific problems. Talking shops do not survive. People stop coming to them.

I would restrict the concern about reforming intergovernmental relations to the areas where that really matters. I would cut down on the formal institutions, intergovernmental committees and various kinds of apparatus that are being talked about and restrict them to a few areas. I have identified three of those. One of them is Europe, where there is an intergovernmental apparatus. It is one of the few areas where there is a joint ministerial committee that really works because we have to make policy jointly in Europe as there is only one UK presence in Europe. It involves the devolved Governments but it is the single presence in the Council of Ministers.

The second area is finance. It is very important that we have some kind of machinery that at least produces a common data set for all the arguments that we are going to have about finance when the new powers come in. It will not come up with the answers, but it will provide a common factual basis upon which politicians can negotiate. As a result, it must be independent of the Treasury and the

Scottish Government—indeed, of both Governments.

The third area is welfare, where we are going to get a lot of complications and interdependencies. Frankly, I think that the Smith proposals on welfare are too complex and messy, but however we organise welfare, new challenges, new definitions and new problems are coming up that might require a lot of intergovernmental working.

Beyond that, I would focus on trying to get the competences clear and establish what people do instead of putting too much emphasis on joint working that is beyond public knowledge, that is not transparent and which raises all kinds of accountability problems.

**Professor Aileen McHarg (University of Strathclyde):** I agree with Professor Keating that it is desirable to focus on greater clarity in the division of powers, but I think that it is possible to overstate the clarity of the division in the original Scotland Act 1998, which already contains exceptions to exceptions. The Smith commission proposals certainly make the problem worse but the fact is that the division of powers is already unclear.

That said, I disagree with Professor Keating's point about formal structures. This probably reveals our different disciplinary biases, but I think that those structures matter. With the Smith commission, there was a very detailed intermeshing of powers that focused very much on existing policies with no real consistency from area to area, and one of the problems with such a structure is that it is not the "enduring settlement" that the Prime Minister spoke of setting out to achieve. Such a system cannot survive changing policies, changing priorities or power changing hands between political parties, and getting the formal structure right is important if we are to develop a system that can endure.

That is not to say that formal structures will always be used. Informality will always be there, but I do not think that that should be a reason for not trying to get the formal relationship right. It would help hugely to have a clearer understanding of how the two layers of government are supposed to relate to each other in order to set the context in which relationships take place.

**The Convener:** Before I come to Ken Thomson, I note that in your paper, you refer to principles of "Mutual respect and co-operation", "Transparency and accountability" and "shared rule". Do you want to say more about those on the record so that we can establish what they are at a high level?

**Professor McHarg:** With regard to mutual respect and co-operation, a system of intergovernmental relations that is likely to work is one in which the parties recognise each other's

legitimate interests in achieving their own policy goals and seek to co-operate on that instead of seeking to be obstructive or pull rank and not caring about the potential spillover effects. Of course, spillovers cannot be completely avoided, but where it is possible to avoid interfering with the legitimate goals of another layer of government, such an approach is desirable. Obviously, it is not desirable to have a system of intergovernmental relations that purely involves the ability to go to court to sort out disputes.

As for transparency and accountability, I agree with Professor Keating that a problem with intergovernmental relations is the ability to secure adequate accountability. One answer to that is his approach of limiting the areas of intergovernmental working, but another is to improve accountability and transparency, and I think that certain things can be done to improve matters in that respect.

The point about shared rule is a more general one about the constitutional context in which this all takes place. It is about moving towards a constitutional system that puts the devolved Parliaments and the United Kingdom Parliament on a more equal footing rather than a hierarchical footing. We have developed our institutions for devolution in a typically incremental and partial manner. The shared rule aspect has been rather neglected in the development of the institutions.

09:45

**The Convener:** Just for clarity in the record, I point out that Ken Thomson is appearing on behalf of the Scottish Government.

**Ken Thomson (Scottish Government):** Unlike the other two witnesses, I am a practitioner rather than a commentator. I speak from experience of working with the system, between Governments and within Governments. Many but not all of the problems that arise in co-ordinating and co-operating between ministries within a Government are similar to the problems that arise in co-ordinating and co-operating between Governments.

To reflect on what Michael Keating and Aileen McHarg have said, the principles need to include mutual esteem, trust and understanding. The issue is about structures, but it is also about culture and behaviour. A great deal of what we call IGR in this context actually happens below the waterline, in day-to-day contacts between ministers and officials. That is where a lot of the co-operation happens. As is the case within a Government, most issues between Governments can be dealt with in that space. Other things will come to the surface and be escalated to ministerial or intergovernmental level. I agree that

clarity is needed there. The world and the challenges that Governments face are getting more complicated, which is another factor that interacts with the division of powers.

The present system of intergovernmental relations was devised before devolution happened or shortly afterwards—that is when the first version of the memorandum of understanding was written. The system has evolved since then, and it has evolved notably faster since 2010, when we have not had the same party in power in London and Edinburgh. It will need to continue to evolve, partly because of the Smith process and partly because of that difference in political colour in Administrations. Sorry, I should have said that it has evolved faster since 2007—I saw some surprised looks round the table.

Michael Keating said that a lot of the process is political. I am saying that quite a lot of things happen in the official space, and that probably more of that needs to happen because, when we do not have the same party in power in London and Edinburgh, as has been the case for quite a long time, less tends to happen in political channels and more tends to happen in the more formal channels of intergovernmental relationships, below and above the waterline.

**The Convener:** As Michael Keating started off that discussion, I ask whether he wants to reflect on what has been said.

**Professor Keating:** Ken Thomson is absolutely right to emphasise the role of officials. We often put a lot of emphasis on big high-profile issues of conflict, although they are sometimes not even the most important or the biggest issues. Many of them are resolved in day-to-day practice. Those working relationships are critical and they have undergone change over time. As civil servants in Scotland have worked only within the Scottish system, in some cases the old contacts have tended to be lost, because people do not go to London so much or mix with people from other departments. That informal level is absolutely critical.

One point about intergovernmental relations generally in the UK that underpins the whole devolution settlement is about the degree of asymmetry. We do not have a centre and then devolved or federated units; we have a centre that is also the Government of England, and we have devolution in only parts of the United Kingdom. In any negotiation, that will always give an advantage to the central Government and departments, notably the Treasury, which still has an extraordinarily strong role in government right across the United Kingdom. We need to be aware of that in setting up institutions to ensure that the process does not just become a form of recentralisation whereby the centre calls the shots.

As Aileen McHarg said, the approach should not involve hierarchy. It requires change at the centre, and the acceptance of some kind of federal spirit. I do not mean that the UK could become a federation—I am talking about the federal principle that power should be shared horizontally rather than vertically.

There is a lot of talk about esteem, trust and understanding. That sounds wonderful, but where do they come from, and how are they generated politically? That is what we must ask.

**The Convener:** I know that Ken Thomson has something to say about travelling to London—I will let him back in later on that point. Duncan McNeil can ask his question first.

**Duncan McNeil (Greenock and Inverclyde (Lab)):** Good morning, everyone. I have a couple of quick points on what I have heard up until now. Although there has been progress, and there have—I think everyone understands this—been working relationships where those have been necessary, we are going into a new phase. To run our health service, we did not need to develop relationships or get permission from the Department of Health or the Department for Education down south; we could get on with much of the work. That situation will change dramatically with the new powers—I will leave it at that.

My other point concerns whether process trumps politics. We do not all agree—around this table, in the Government or more widely—on the Smith commission outcomes. Some of us agree that Smith is the answer, or partly the answer, and some of us do not. How do we make progress in that context?

The elephant in the room is the fact that some people do not accept what is currently on offer in the Smith recommendations and want to go further within Smith—ultimately, they want to go further with the legitimate political ambition that they do not want devolution at all. In that context, how do we create the trust and transparency that everybody says are necessary?

I will leave those points and come back to the political process; I just wanted to put them out there.

**Ken Thomson:** I might have a go. There is a difference between how we decide which powers should lie where and how we operate within that system. In the context in which I am speaking, it is mostly perfectly clear where the powers lie, and what we have to do is make that work.

In response to Duncan McNeil's point, I note that changes have already happened in one area—taxation—through the Scotland Act 2012. We do not tend to label those changes as IGR, but there has been joint governance of the project to

deliver them and to implement the Scottish rate of income tax, which has involved my colleagues in the finance department of the Scottish Government and their counterparts in HM Revenue and Customs.

We think that that process has worked well. It has been jointly chaired, so there has been equality and not hierarchy in the process. It is still obviously a work in progress, but it will provide the model for how we approach the interaction between the Scottish welfare powers and the wider UK welfare powers.

We already have some experience in that respect, but I do not want to underplay the point that the situation now is more complex. Duncan McNeil gave the example of the health service, in which there is, by and large, very little need for contact. There are some issues on which there is formal co-ordination, but most of health is devolved, which is pretty clear.

The principle of clarity in the settlement is important, but the realm of intergovernmental relationships is, in my view as a practitioner, about making whatever is decided for us work.

**The Convener:** Aileen McHarg does not have to answer, but she should feel free to do so if she wants.

**Professor McHarg:** I have one point. Do institutions trump politics? Well, no—they obviously do not. However, I think that institutions and formal relationships can shape politics and the way in which decisions can be made. They can affect the relative bargaining power of parties and the resources that they can rely on.

Going back to my previous point, we cannot say that the formal structures are irrelevant because everything will be a matter of politics or informal relations. Those things are interlinked.

**Duncan McNeil:** But only if people want to make the process work. That is the point that I was trying to make.

We were told recently that there are already broad talks under way, involving the Scottish and UK Governments at Cabinet level, on bringing about intergovernmental machinery and a new way of working. What is the Scottish Government taking into that discussion? What are the principles that it wants to establish through those talks with the UK Government and with representatives from Wales and Northern Ireland?

**Ken Thomson:** The work that you are referring was mandated by the JMC plenary meeting in December. It involves the joint secretariat to the JMC—the word “joint” is important.

The secretariat to the JMC is provided by officials from all four Administrations: Scotland, the

UK, Northern Ireland and Wales. There has been a long history of those officials working closely together to support the process. We have trained together and have undertaken exchange visits.

That goes back to the point that I wanted to make to the convener earlier in response to the comment about going up and down to London. There is a great deal of such interchange. Michael Keating said that it is less common now for senior civil servants to move between Scotland and London than it was when there was a single Administration. That is true, broadly speaking, but there are other kinds of interchange, and I am doing some separate work on that.

Coming back to the point about the current work on the MOU, the recent meeting that I chaired involved officials from all four Administrations. We looked at the existing MOU and our experience of working with it; we looked ahead to what Smith will bring; and we began the work on evolving the system—it is about evolving the system rather than sweeping it away and replacing it with something new.

The two features of a new system would be flexibility and the ability to evolve in response to the experience of implementing whatever comes out of Smith, and probably following the UK election. “Evolutionary” and “flexible” are the two key words.

**The Convener:** Three members want to ask supplementaries: Tavish Scott, Linda Fabiani and Lewis Macdonald.

**Tavish Scott (Shetland Islands) (LD):** Mr Thomson, you pointed out in your opening remarks that the world is more complex for all Governments. Do you include in that what is now happening in Greater Manchester? You mentioned health. The UK Government is going to devolve the complete health budget for the Greater Manchester area to that area and to the 12 authorities within it. That will presumably have implications for Scotland, Wales and Northern Ireland.

If we start with the Greater Manchester area, I guess that there is no way that the process will stop there. Next it will be Newcastle, and then other parts of England. I think that the process will carry on whoever the Government is in London after May. Will that have implications for Scotland?

**Ken Thomson:** The short answer in the case of Manchester is that any impact will probably not be as great as you might think, but the longer answer is that it is part of a process of finding the right level at which to engage with communities to deliver public services. That debate is very much live in Scotland, as all the committee members—especially those from the islands—will know.



We are seeing the working out of that process in England. It will affect the relationships that my counterparts in London have with the Treasury and others, including in Manchester. We are experiencing similar evolution in Scotland through the city deals and the initiative that was taken by the islands in the run-up to the referendum. There is a pattern, and Manchester is one example of that pattern being worked out.

**Tavish Scott:** I am thinking about health and health budgets. Michael Keating said that finance is one of the stable principles of IGR. If health budgets are devolved to Manchester, it may just take a different view on how to do health budgets in the future, and that might have financial implications down the line.

**Ken Thomson:** I preface my comments by saying that I am no expert on finance budgets. My working assumption would be that such devolution to Manchester would be within UK health expenditure and would therefore be covered by the arrangements that we have for Barnett formula consequentials.

**The Convener:** Does anyone want to reflect on that, or shall I move on?

**Professor Keating:** What is being devolved to Manchester in health and other areas appears to be very much a management and administrative responsibility rather than a policy-making responsibility. There is no proposal for financial or fiscal devolution for the English regions at all. If we look at the details, the process seems to be less about devolution and more about administrative reorganisation. That may result in better delivery of services, but it is not comparable to what has been happening in Scotland.

**Linda Fabiani (East Kilbride) (SNP):** I am interested in the top-line stuff and the balance between formality and informality. We all talk strongly about transparency and everything else in all aspects of Government and Parliament, but it is difficult to get the balance right with regard to where transparency and formality can impede progress. Ultimately, if it came to dispute resolution, we might end up with a very formal process when, had we been able to be informal about it, we might well have solved the dispute before it got that far. I would like to hear your views on the balance between formality and informality and the level of transparency that is acceptable between Government and Parliament, between Government and the public, and between Parliament and the public.

10:00

**Ken Thomson:** I will answer that by drawing on my experience as the lead Scottish Government negotiator in a dispute and in an agreement. The

dispute was on the formula consequences of expenditure on the Olympics and the agreement was the Edinburgh agreement on the referendum. In both cases, there was a formal and an informal element.

The informal element was the relationship that I built with my counterparts in the UK Government and the relationship that ministers built with their counterparts. That informal aspect is necessary. I agree with the implication of your question, which is that that relationship needs to be built in a private space—somewhere safe where possibilities and options can be explored.

That leads to a formal process within Government, with reporting to Parliament. In the case of the Olympics, it was the formal resolution of the dispute and, in the case of the Edinburgh agreement, it was the agreement. We could certainly look at how that reporting to Parliament is done. In the case of the Edinburgh agreement, it led to the section 30 order, so both Parliaments had an opportunity to become engaged.

To summarise my answer, we need both the informal private space and the formality of an agreement that sticks, with the ability to report that to Parliament.

**The Convener:** I invite Lewis Macdonald to ask his question and to move on to parliamentary scrutiny, which emerged in Ken Thomson's answer.

**Lewis Macdonald (North East Scotland) (Lab):** Certainly. In fact, my interest in parliamentary scrutiny is heightened by some of what we have heard, particularly on processes of negotiation that are already under way but which are taking place out of public sight. Aileen McHarg had some interesting things to say about the deficiencies of the current system from the point of view of transparency and visibility, but Ken Thomson gave as a good example the work that is going on at official and ministerial level on the Scottish rate of income tax.

Other than a witness telling us about it in committee, what processes should we have so that Parliaments are aware of what Governments are doing on our behalf in such areas? If we are talking about the Scottish rate of income tax, is that a matter for the Public Audit Committee here and the Public Accounts Committee at Westminster to hold Governments accountable on, either jointly or severally?

**Professor McHarg:** I will make two points. First, parliamentary scrutiny has been one of the areas in which the current system has not worked. Neither the Scottish Parliament nor the UK Parliament has taken any consistent interest in scrutiny of intergovernmental relations. There have been some ad hoc inquiries, but that is all.

That is a real problem. There should be a committee in both Parliaments that has scrutiny of intergovernmental relations within its remit so that there is a regular calling to account of ministers in both Parliaments on what has been going on.

There are interesting precedents in the Northern Ireland Act 1998, under which there is much more formal genuinely intergovernmental working—we are talking about north-south intergovernmental machinery, which perhaps has stronger executive powers. The First Minister and Deputy First Minister of Northern Ireland are obliged to report to the Northern Ireland Assembly about when meetings are coming up, and they are obliged to report to it after meetings to explain what has happened. That provides a regular focus for parliamentary scrutiny.

Those two things are worth doing. The idea of joint committee inquiries is also interesting. We have seen little, if any, interparliamentary working.

To go back to Linda Fabiani's question, the issue of confidentiality is important. I completely accept the need for some degree of confidentiality, whether that is tied to particularly sensitive subjects or, more generally, to enabling things to be said that people might not want to say in public, but there is an overemphasis on confidentiality, and that comes at the expense of transparency. For example, the minutes of JMC meetings are banal in the extreme and the annual report is incredibly short and uninformative.

Similarly, the idea in the memorandum of understanding that confidentiality is to be expected across the whole relationship between the two Governments is also inappropriate. That seems to me to be a hangover from the pre-devolution arrangements, which involved relationships between departments in the one Government, which were subject to collective responsibility. The principle of confidentiality supports collective responsibility. However, we are not in that position now. We are now talking about two separate Governments with separate accountability requirements. That has to be recognised in the relationship between them.

**Lewis Macdonald:** Earlier, you said that there should be a committee of both Parliaments to achieve scrutiny.

**Professor McHarg:** I think that there should be a committee in each Parliament—sorry.

**Lewis Macdonald:** That is what I suspected you meant.

Five years ago, the Calman commission recommended that there should be greater parliamentary scrutiny, and the Standards, Procedures and Public Appointments Committee of this Parliament considered that and found that

the establishment of joint committees of any sort would require a change in the terms of the Scotland Act 1998 with regard to who can be a member of parliamentary committees. I am not sure whether that was a show-stopper, but it certainly added another layer of difficulty.

Your suggestion is that a parliamentary committee of the Scottish Parliament, a parliamentary committee of the Westminster Parliament and similar arrangements elsewhere would have a formal duty of scrutiny across the range of intergovernmental working.

**Professor McHarg:** Yes.

**Professor Keating:** I agree with what Aileen McHarg has said on that. Whenever there is intergovernmental working, things disappear into rather opaque arenas. That is really not necessary. It is a peculiarly British habit that we like to have our arguments in private before presenting things to the public, and Governments will sometimes exploit that in order to stay away from the public gaze. I have argued in the past that that is particularly problematic in relation to European Union issues. Although the UK has to go to the EU with a single position, we do not have to pretend that we did not have any arguments in arriving at that position. That is really quite unnecessary, because everybody knows that there are differences. It would therefore be healthy to have some of those discussions in the open.

The point about parliamentary scrutiny is absolutely right. We have very poor parliamentary scrutiny of intergovernmental relations. There might be a case for a special committee, but I think that the main subject committees should probably take the lead on particular issues that have intergovernmental dimensions and where things are being negotiated intergovernmentally. That is something that committees should know a lot more about.

The point about the various Parliaments and Assemblies working together is an interesting one, in relation not only to the devolved Administrations working with Westminster but to them working with each other in order to exchange experiences, think about problems in common, create new policy ideas and hold the whole system to account by getting more public exposure of what is going on.

**The Convener:** I believe that Stuart McMillan has some questions on parliamentary scrutiny, too.

**Stuart McMillan (West Scotland) (SNP):** Ken Thomson's facial expressions were really interesting when Professor Keating was speaking there.

**Alex Johnstone (North East Scotland) (Con):** His mind was wandering.

**Stuart McMillan:** Mr Thomson, as a civil servant, there are no doubt things that you would like to say but which you would probably not want to say on the record.

**Ken Thomson:** There are some things that I was going to say, but I will say them in a moment.

**Stuart McMillan:** I will give you the opportunity now, if you wish.

**The Convener:** Ask your question, Stuart.

**Stuart McMillan:** We have heard about Northern Ireland. Are there any other countries or territories from which we could learn positive or negative lessons in relation to IGR?

**Ken Thomson:** I am sure that we will give a panel answer to that one, because Aileen McHarg and Michael Keating will have a lot to say on it.

Linking the previous question to this one, perhaps my face was betraying the fact that we should not see the question as black and white. The system is evolving. The fact that we are here, that you have asked us here and that your committee has the issue within its remit tells us that there is an emerging degree of greater scrutiny of IGR and their importance.

To go back to Mr Macdonald's question, scrutiny of the work on the Scottish rate of income tax has been done through the legislative process, which has been a feature of that particular policy development. The point about trying not to see things in black and white also applies to confidentiality. We need to think of it as a spectrum. The early stages of a sensitive discussion between Governments will need confidentiality. In other contexts, we would call it diplomacy, and a lot of diplomacy requires confidentiality but it can also happen with public scrutiny. We need to get the right blend and find the right mechanisms and structures that encourage that blend. The degree of parliamentary scrutiny that would help that is a matter for the Parliaments themselves.

As for where we could learn from, I am going to throw a ball that Michael Keating might like to catch. There is a lot to learn from how intergovernmental relations are handled in systems that have a more formal federal or quasi-federal structure, although I am not advocating that structure. I am thinking of places where the process works according to a different model, such as Australia, Canada and, in a slightly different way, Spain. To pick up an earlier point, Britain has been through a more evolutionary and incremental process, so we can learn from looking at experience overseas.

**The Convener:** Professor Keating, the ball was passed to you, I think.

**Professor Keating:** There is a broad negative experience, which is that, whenever things are taken into intergovernmental relations, there is a loss of parliamentary accountability. Political scientists are very good at telling people how things do not work, so I had better give some positive examples.

In Canada, there has been an evolution of IGR with the federal provincial conferences and then, more recently, interprovincial conferences, where provincial premiers get together to provide the horizontal as well as the vertical dimension of intergovernmental relations. In many respects, that may strengthen the position of the provinces when they meet the federal Government, because they have come to some common positions. That would be difficult here, because we do not have a federal system.

There is a lot of experience in Germany of rather formal intergovernmental relationships, but it is difficult to translate that to the UK, because the legal culture is quite different.

There is an evolving experience in Spain with what are called the sectoral conferences, which took a long time to become established. Because finance and taxation are being devolved to the autonomous communities and, at the same time, there are European regulations about budget deficits and debts, the process has become very serious. Some serious negotiation is taking place about the distribution of debt, deficit targets and financing. It is very political, of course, and very conflictual, but the negotiation is taking place through that machinery.

Those systems are evolving in a way that leads to greater transparency, greater equality, less hierarchy and a recognition of the horizontal as well as the vertical dimension of intergovernmental relations.

**The Convener:** Professor McHarg, do you want to reflect further?

**Professor McHarg:** The only thing that I would add is that, in terms of parliamentary scrutiny, we might look to the relationship between national Parliaments and European lawmaking institutions, where there is a similar quasi-federal division of powers. We have the principle of subsidiarity, which attempts to manage shared competences, and an attempt has been made to develop mechanisms for ensuring that national Parliaments can have a say before decisions are taken at the European level.

In the UK Parliament, for instance, there is a European Scrutiny Committee. It is rather overburdened but it exists. There is something called the European scrutiny reserve, which prevents ministers committing themselves before Parliament reviews the issues. We could think of

mechanisms along those lines that try to preserve the position of Parliament vis-à-vis ministers precisely to prevent the shift of decision-making power from Parliaments to Governments.

10:15

**The Convener:** Stuart, will you make your supplementary question a short one? I want to get Michael Keating's thoughts on the memorandum of understanding.

**Stuart McMillan:** How broad or narrow should the scope of IGR be in terms of parliamentary scrutiny, bearing in mind that this place is going to get more powers on the likes of tax and borrowing? Should there be opportunities for non-Government bodies such as the Bank of England to come to talk to the likes of the Finance Committee in this Parliament either before or after decisions are taken?

**Professor McHarg:** The Smith commission proposals provide for examples of that in certain areas. The Office of Gas and Electricity Markets is to be made accountable to this Parliament even though what it does is reserved, and similarly for the Office of Communications. That kind of thing is desirable in principle, but how much influence it achieves at the end of the day if the Parliament has no formal powers in that regard is a different question. However, it is certainly hard to object to it in principle.

**The Convener:** Bill Kidd wants to come in, but we need to move on to the memorandum of understanding. I will try to bring you in later, Bill.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** It is obvious that we need to find a route map to better IGR. We seem to start with the pre-devolution memorandum of understanding, which was created at a time when there was only one Parliament. Is the memorandum of understanding—or the observance of its principles—a problem and do we need to begin to remove it or change it? Ken Thomson talked about discussions about how to evolve it, but is it actually the best starting point for us on this journey?

**The Convener:** Michael, do you want to reflect on that? I know that you have only a few minutes left here.

**Professor Keating:** Yes. I do not have much to say on the memorandum of understanding. Ken Thomson has a great deal more experience of it than I have. However, it strikes me that it is always useful to review the memorandum of understanding in the light of political experience and change. I think that the basic principles of mutual respect and no surprises are sound, but it is important to review how it is working in practice.

A memorandum of understanding is only as good as the willingness of the parties to stick to it, so the issue is the spirit that underlies it rather than its wording. I respect Aileen McHarg's point that formal structures matter, but the way in which they are interpreted is absolutely critical. It becomes a question of the political balance among the various Governments and getting away from the idea of hierarchy towards a system in which they are all seen as having their own roles, powers and competences to bring to the process.

**The Convener:** I will bring in Aileen McHarg and Ken Thomson in a moment, but as you have to go in a few minutes, Michael, is there any reflection that you want to put on the record that goes beyond your very useful paper?

**Professor Keating:** I would just take up again Aileen McHarg's point about looking at the relationship between Europe and member states as a useful analogy. In some of the Scandinavian countries, notably Denmark, there are much more effective systems of parliamentary scrutiny of intergovernmental relations, and all sorts of things that we are told would be impossible here seem to work pretty well there. That is a very instructive case.

**The Convener:** Is the memorandum of understanding fit for purpose and does it need to change? That is really the question that Rob Gibson asked.

**Ken Thomson:** Can I take that one?

**The Convener:** Yes.

**Ken Thomson:** The version that I have in front of me is dated October 2013, which tells us that it has evolved and there have been several revisions of it.

The contents page shows that the MOU includes a section A3, on an agreement on dispute avoidance and resolution. That is a fairly significant new section that was added and—I would say this, wouldn't I, because I wrote some of it—we think that it was a benefit at the time that I referred to, in 2007. We no longer had political channels that were able to take some of the negotiation, so more of it came into the formal channels.

That was an opportunity to review the memorandum of understanding with the incoming Government here and with my counterparts in London. I think that that served its purpose and it gave us a set of principles that supported a culture in which we were able to resolve big, significant disputes such as the one on the Olympics. Although the Edinburgh agreement is not formally a part of the current MOU, it was very much done in the same way.

To go back to my earlier point, I think that the MOU needs to evolve further. There are views among some of the devolved Administrations that the dispute resolution procedure, for example, would benefit from having a greater independent element in it, and we will be looking at that in our work on the MOU. However, I do not want to leave the impression that the MOU is the problem. It is a base from which we have evolved and from which we can evolve further.

**Rob Gibson:** Is there anything that should be included in the MOU that you have not already mentioned?

**Ken Thomson:** I mentioned whether there should be a more independent element in dispute resolution. To give you a concise answer, I agree with Michael Keating that the main areas that require good IGR, which are going to change under the Smith process, are finance and welfare, because of the interdependence of those systems, and Europe, because—as Michael said—there is one UK line but four Administrations contribute to it.

**The Convener:** Michael, please feel free to leave when you need to.

Before we move on from the MOU, it is obvious that there has been a fair bit of evolution, and it would be useful to get a note of what that evolutionary process has looked like over the years so that we can understand how the MOU has got to where it is.

I have a general question. I am not aware of the MOU having come before the Scottish Parliament in any way for transparency purposes. Should there be a role for the Parliament to be involved in the MOU?

**Professor McHarg:** Rob Gibson asked whether the MOU is a problem. There are two aspects to that, as the convener has just indicated. One is whether the content is a problem and the other is whether the fact of the MOU is a problem given that it is an informal, non-legally-binding document rather than having a statutory basis. I am inclined to think that that is a problem.

What difference would it make if the MOU was legally binding? One difference might be that it could open up the possibility of legal enforcement, although I do not think that that is terribly likely in practice, or terribly important. The more important element is the point that the convener raises about transparency and parliamentary involvement. My understanding is that the original MOU was debated and voted on in this Parliament but not in the UK Parliament. However, I do not know whether that happened with subsequent iterations. That is a problem.

The objection to putting the MOU on a statutory footing would probably be that it would then be inflexible and it could not evolve. However, that is not necessarily true. We can imagine an approach that makes a fairly general, open-ended commitment in statute requiring there to be some machinery for intergovernmental working subject to certain general principles of consultation, information sharing and so on. The details could then be filled in through negotiation and the MOU could evolve, subject to some sort of formal endorsement by the two Parliaments.

**The Convener:** Ken, you mentioned a greater element of independent dispute resolution. What might that look like? Will you cover that as well as responding to the previous question?

**Ken Thomson:** I will cover that in my answer. You asked for a note outlining the evolution of the MOU, and we will be happy to provide that.

The title page of the current memorandum says, at the bottom:

“Presented to Parliament by Command of Her Majesty and presented to the Scottish Parliament and the Northern Ireland Assembly and laid before the National Assembly for Wales.”

Therefore, the opportunity was there for the Parliaments to look at it. I do not know the answer, but it would be interesting to see whether those four Parliaments took the opportunity to debate the memorandum. The process has been that the agreement has been revised and then presented to the Parliaments to make the revisions clear and transparent.

Aileen McHarg spoke about whether the MOU should be on a statutory footing. There are arguments both ways on that, and she alluded to some of them. The parallel that I would offer the committee is the Sewel convention, which is merely a convention. It is not currently in statute, although there are, as you know, proposals to change that. My point is that the Sewel convention has worked well despite not being in statute, but the process has evolved and we have reached a point where people think that now is the time to change that.

Will you remind me what your other point was?

**The Convener:** You mentioned that there could be some sort of independent process for dispute resolution. What would that look like?

**Ken Thomson:** At one level, it could be the process becoming justiciable in the courts. I agree with Aileen McHarg that there are quite a lot of disadvantages to that. There is a parallel in the experience of the relationship between the Welsh Assembly Government and the UK Government over the competence of legislative proposals,

which has been the subject of that kind of formal dispute.

There are other options. There is a provision in the dispute resolution process that allows independent input into a dispute to enable the Governments to take the benefit of independent expert advice. A step beyond that would be to think in terms of some kind of mediation or arbitration. There are lots of models for how you might do that short of going to a full court process, but I do not think that there is a consensus on where on that spectrum the process will land.

**The Convener:** If Aileen McHarg has no further reflections, we will move on, as we still have three topics to get through. I do not know whether we will manage to do that by 10.30 as I hoped. We might have to extend the meeting a little to get through all the work.

Alison Johnstone is interested in issues around no detriment and competency.

**Alison Johnstone (Lothian) (Green):** I would be grateful if the witnesses could tell us whether there is an equivalent to the no-detriment principle in other countries with devolved or federal systems.

**Professor McHarg:** I do not know. I am sorry.

**Ken Thomson:** I am afraid that I do not know either.

**The Convener:** We should ask Michael Keating to come back.

**Ken Thomson:** Can we text him?

**Alison Johnstone:** It would be good for the committee to understand that.

**The Convener:** We can ask the Scottish Parliament information centre to examine whether such equivalents exist. You also wanted to ask about competency.

**Alison Johnstone:** There are areas outside Scottish Parliament competence to which the Smith commission extends intergovernmental working, such as energy market systems, renewables incentives, broadcasting and even areas such as the coastguard and lighthouse services. I wonder how much influence we might have in those areas where no formal powers are suggested. Where the competency remains reserved but we have a formal consultative role, how do you see that relationship developing?

**Ken Thomson:** That is an interesting area, because it takes us to the question of how the Parliament and the Scottish Government deal with issues in which they have an interest but over which they do not have competence.

As you all know better than I do, the Parliament can debate any matter. Similarly, Governments can express views on any matter, whether it is reserved or devolved. Quite a lot of the content of day-to-day intergovernmental relations is just that—it is people such as me and my colleagues making points to our counterparts in London about the spillover effect for Scotland of a proposal that they have before them, as we seek to come to some agreement about how that can be managed. Such issues are within the scope of IGR.

The other part of your question was about how the Parliament could influence that, and that takes me a bit beyond my remit. You mentioned lighthouses. I actually used to be a light keeper, so I have a personal interest in that. To take that as an example, it offers the opportunity for the Parliament to hear evidence from the Northern Lighthouse Board, to comment on its proposals and to draw them to the attention of the relevant UK ministers. That is a different kind of influence and scrutiny than you would give to me and my ministers if we were responsible for lighthouses in Scotland, but it is nevertheless a valuable form of influence and scrutiny.

**Professor McHarg:** I want to say something about the energy powers. I have provided separate evidence on the energy provisions. That is an area where the Smith commission proposals are inching towards shared competence, but they are not there yet. It is one of the areas in which there is excessive ad hocery. For instance, as you mentioned, the Scottish Government—and, supposedly, the Scottish Parliament, although it does not appear in the clauses—is supposed to get a general right to be consulted in relation to the development of renewables policies, but there is no equivalent right to be consulted in relation to energy efficiency or fuel poverty, where the Parliament and the Scottish Government also have competence.

Greater attention to the general principles that should inform areas where there are shared mutual interests but no powers could be valuable. That would involve taking a broader view, rather than tying rights to be consulted to specific narrow areas, which is not a desirable approach.

**Alison Johnstone:** Thank you.

10:30

**The Convener:** Was the evidence that you mentioned on energy provided to the Smith commission in general or—

**Professor McHarg:** No. I provided written evidence to this Parliament.

**The Convener:** To this committee?

**Professor McHarg:** Yes.

**The Convener:** Okay. That is helpful to know. I will look further into that.

Alex Johnstone is next.

**Alex Johnstone:** My questions are on money. The calculation of tax, spend, no detriment and block grant adjustments is going to be a big annual process and it will have to fit in with the budget process. Given that the budget processes in the two Parliaments are very different, is there a problem with a mismatch of process?

**Ken Thomson:** That is a very good question. I preface my answer by saying that I am not an expert on the budget process, so I ask you to bear that in mind.

There is a good example in the operation of the new Joint Exchequer Committee of how the principle of mutual esteem can be made to work, in that that committee operates on that basis and its decisions are taken by agreement. There is no hierarchy involved in that, because each of the two Governments is responsible for its own finances.

Your point about the interaction of the two budget processes is a good one. That is exactly the kind of issue that we are already working through—because of the provisions in the Scotland Act 2012—to ensure that we have a system that works for both Westminster and Holyrood in allowing the Government to calculate its finances and set out its budget, and allowing both Parliaments to engage in proper scrutiny of that.

The further provisions in Smith will impact on that, and my colleagues will be working to ensure that the legislation that comes forward from the UK Government takes account of the requirements of the Scottish Government and the Scottish Parliament in terms of scrutinising that. Obviously, he would speak for himself, but I think that Paul Grice is involved in some of those discussions, too, to ensure that the Parliament's interests are represented in what the UK brings forward.

**Alex Johnstone:** Intergovernmental agreement will be essential to having a complete budget process on both sides. Is it possible to run intergovernmental structures in parallel with the budget process or will we have to work ahead of that process? Will we, in effect, have to agree the figures and relationships between the two Governments a year ahead of the budget process?

**Ken Thomson:** There was a lot of discussion of that point in the negotiations that led to the 2012 act. As I said, I am no expert on the detail, but we need a way of estimating ahead of time what the impact of revenue generation will be on the block grant adjustment and a way of adjusting to take account of the difference between estimate and

outturn. Principles of that sort will be involved in the evolution of the new system, but I could not pretend to be an expert on how it will be done.

**Alex Johnstone:** Finally, I seek opinions from both of you on a different matter. We spoke earlier about the rigidity of structures and the flexibility that politicians can achieve. How rigid does the structure need to be to make budgets work and to be predictable? Do we have to build in the opportunity for gifted politicians, should we ever come across any, to influence the process positively?

**Professor McHarg:** I am going to pass on budgets, I am afraid.

**Ken Thomson:** I was keeping my face very straight there. *[Laughter.]*

There are two elements to that, and we need both. We need a clear structure and process in relation to budget setting so that we know what the rules of the game are, what the deadlines are and how the scrutiny will happen. All of that can be recognised in the process that currently works—and, I would say, works well—for the Scottish budget. That needs to evolve to take account of the interaction between the budget processes here and at Westminster.

It is not possible to prescribe in a process the need for co-operation and skilful negotiation, and the closest that I am going to come to responding to your point about gifted politicians is that that is the process that I have observed in the Scottish budget process ever since the creation of the Parliament. A lot of skilful politicking happens before the budget is presented, but others will know more about that than I do.

**Alex Johnstone:** When John Swinney described the process of negotiating the figures for the land and buildings transaction tax before it was devolved, he seemed to suggest that he spent two years talking about it and at the end of the day the parties simply shook hands and split the difference. I presume that that is not a basis for future negotiation.

**The Convener:** So let us move on to the basis for future negotiation. I think that that leads us nicely into the fiscal framework issues that Stewart Maxwell is interested in.

**Stewart Maxwell (West Scotland) (SNP):** It does, convener.

I want to take us back to the principles of the new fiscal framework as set out by the Smith commission, which quite clearly suggested the need for more intergovernmental relations with regard to finance and tax issues. Are the finance quadrilaterals that have already been established sufficient for that purpose? Can they be expanded to take on the new stuff, or does there need to be

a finance JMC or something else? What are your views on the principles of the new fiscal framework as described by Smith? How do we meet those principles, assuming that they come forward?

**The Convener:** I am afraid that you are still in the hot seat, Ken.

**Ken Thomson:** Your question allows me to make an important point about quadrilateral or multilateral and bilateral relationships. The JMC is a quadrilateral institution, but quite often the issues that come up in intergovernmental relations are better suited to bilateral discussion. That is particularly true with regard to budget setting, given that the devolution settlement for each of the three Administrations is different. You need to have co-ordination across that, so again it is a case of both/and. The finance quad, as it is known, operates very effectively in that respect. I am not saying that there is always agreement and harmony or—to go back to Mr Johnstone's point—that the discussions could not have been shorter, but it provides a forum in which those discussions can happen.

Historians will correct me on this point, but I do not think that the finance quad is provided for in the MOU. Instead, it is part of the system that has evolved through need, so it meets my test of flexibility and the test that I think Michael Keating and Aileen McHarg set of not creating committees just for the sake of it. The Joint Exchequer Committee, which is the bilateral expression of the finance quad, provides us with the forum in which we can work through those issues and take the fiscal framework that Smith has given us and turn it into an agreed outcome. We will also be able to draw on our learning from the Scotland Act 2012 experience and, indeed, the general finance quad experience. I am not saying that the existing process is all fine—it is always something that we would want to improve—but it gives us a basis on which we can evolve.

**Stewart Maxwell:** Are you in effect saying that the quadrilaterals work and that the Joint Exchequer Committee gives you a place to carry out some bilateral discussions, or are you saying that there needs to be more bilateral work?

**Ken Thomson:** That goes back to my point about flexibility at the outset. You have to decide whether an issue would be best resolved bilaterally or whether there is a common Administration interest in it that would require it to be discussed trilaterally or multilaterally. You suit the process to the substance within the kind of broad structure set out in the MOU.

How will that change? I think that there will need to be more bandwidth in the bilateral relationship between the Scottish and UK Governments, because of the interdependence on tax and, in

particular, welfare. That point will be as true with regard to the settlements in Wales and Northern Ireland, but obviously I cannot speak with first-hand knowledge of that.

**Stewart Maxwell:** I have a couple of questions about the no-detriment principle, convener.

**The Convener:** I am not sure whether Aileen McHarg wants to come in on your previous question.

**Stewart Maxwell:** I assumed that she did not.

**Professor McHarg:** I am fine, convener.

**Stewart Maxwell:** Are you optimists or pessimists about whether the no-detriment principle in Smith can be implemented in a way that suits both Governments?

**Ken Thomson:** I am by temperament an optimist and by experience a realist. The no-detriment principle is simple and clear, but working it through will be complex, because Government finance is complex. With good will on both sides, and with the ingenuity that officials and ministers can bring to this, there is no reason why it cannot be done, but I am not going to say that it is going to be easy.

**Professor McHarg:** I agree with that.

**The Convener:** I have a quick question. Given what you have said, will a common database not be crucial to ensuring that the no-detriment principle applies properly, as it will ensure that everyone has a common understanding and shared information and is starting on the same page? I guess that that is not always there at the moment. How much of a requirement will that be?

**Ken Thomson:** Before you can have a proper discussion about how you are going to apply the no-detriment principle or indeed how you are going to resolve any financial issue, you need a common understanding of the numbers. That is easier said than done, because often we are talking about the interpretation of numbers or estimates. However, that is probably as far as my experience takes me—my finance colleagues will be better able to help you with that.

That said, I can draw on my experience of the dispute over the finances of the Olympics. An early step in that process was to be absolutely clear that we understood what numbers we were in dispute about to allow us to work through the principles by which we might be able to reach an agreement, which we eventually did.

**The Convener:** I am sorry for interrupting, Stewart.

**Stewart Maxwell:** No, convener. That was useful.



I suppose that my next question is based on a slightly pessimistic view. Assuming that there might well be disputes in future, I take it that you see some need for arbitration in the process if it is based on mutual respect and equivalence instead of a hierarchical structure. How do you see that operating? If there are disagreements about whether there has been a detriment because of the policy of one Government or the other, how would we resolve that, and how would we resolve the area of recompense one way or the other?

**Ken Thomson:** Again, let me use the Olympics dispute as my example. An important point is that the Governments must be equals in their own spheres of competence to ensure that, technically speaking, there is no hierarchy. The process by which agreement was reached on the Olympics included taking it through the JMC dispute resolution process. Because agreement was not reached as part of that, the dispute was referred back to a group of officials for further work, as a result of which a result was achieved. It is possible to resolve a big and complex financial dispute within the current system, although the numbers involved in that case—some hundreds of millions of pounds—were relatively small compared with the sorts of tax and welfare sums that we might be talking about in future.

Again, I come back to my previous point that we have experience, structures and processes from which we can evolve something that will stand a chance of working. I think that between my optimism and your pessimism, we can probably settle on being realistic in that respect.

**Professor McHarg:** I want to make a very general point on the question of formality versus informality. One of the key questions about the use of dispute resolution mechanisms or when you move between bilateral and multilateral forums is: who gets to choose which route is taken? An important principle that I want to see is for both Governments to have the same powers to choose a different forum or to trigger a dispute resolution mechanism.

**Ken Thomson:** That is the case in the current dispute resolution process. The access to the process is the same for all four Administrations.

**Stewart Maxwell:** I have one very small final question, convener.

**The Convener:** It will have to be very, very small, Stewart.

**Stewart Maxwell:** I accept what you have said about the Olympics and the fact that the dispute resolution process ended up in agreement, but there is at least the scope for that not to occur in future. Should there be some system of arbitration that is external to or above and beyond that and

which is independent of both Governments? If so, who should be the arbiter?

**Ken Thomson:** I will be very brief, because I am conscious of the time. I indicated in my previous answer the range of options for a greater independent element in the dispute resolution process, but I do not think that there is as yet any consensus on what the outcome will be.

**The Convener:** Do you have a view on that, Aileen?

**Professor McHarg:** Only that I do not think that courts will be particularly keen to get involved in those kinds of disputes.

10:45

**The Convener:** I believe that Linda Fabiani has a question about the JMC, too.

**Linda Fabiani:** Yes, I want to get something on the record about the JMCs. I know that they have evolved since 2007—in a rather piecemeal fashion, I imagine—but for the purposes of this question I want to talk about the plenary committee. Is there space to strengthen or change its operation? As far as I am aware, it is still always chaired by a UK minister, which, as Michael Keating said earlier, can give rise to issues, given that that minister also represents the largest part of the nations of the UK. Might there be room for having more equality in the way that these committees are run? Instead of their being just a communication forum, could they also be a joint decision-making forum?

**The Convener:** I will let Aileen McHarg kick off on that.

**Professor McHarg:** One of the problems is that we do not know very much about how the JMC operates. Perhaps I can draw a contrast with the British-Irish Council, which has a rotating chair. I know that the devolved Administrations prefer that approach, because they feel that it gives them a more equal status in that institution. Those are some of the respects in which the informal evolution of the JMC machinery has been betrayed, because not much open attention has been given to the appropriate principles that should underpin it.

**Ken Thomson:** The JMC plenary is chaired by the Prime Minister and I think that on every occasion it has met it has done so in Downing Street. In her recent evidence to a House of Lords committee, Fiona Hyslop made the point that the BIC provides an example of how things could be done differently, in that the chair and, indeed, the location of the meeting rotate around the council members. I should say, convener, that I think that Mr Swinney plans to write to you, enclosing Ms Hyslop's evidence to that House of Lords

committee, because many of her answers are relevant to the questions that the committee has been asking this morning. You will find that point in the evidence when it reaches you.

**The Convener:** I thank Ken Thomson and Aileen McHarg for their evidence today—and I should probably thank Michael Keating, too. I do not think that I thanked him properly before he left, so I will thank him in absentia. We are very grateful to you all.

## **Decision on Taking Business in Private**

10:47

**The Convener:** Agenda item 2 is a decision on whether to take in private at this and future meetings consideration of the draft report on the UK Government's draft legislative clauses. Do members agree to do that?

**Members** *indicated agreement.*

**The Convener:** The committee's next meeting will be on Wednesday 25 March, at which we will take evidence from the Secretary of State for Scotland, Alistair Carmichael, on the draft legislative clauses. We now move into private session.

10:48

*Meeting continued in private until 11:27.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

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