



House of Commons
Welsh Affairs Committee

**Wales and Whitehall:
Government Response
to the Committee's
Eleventh Report of
Session 2009-10**

**Second Special Report of Session
2010–11**

*Ordered by the House of Commons
to be printed on 20 July 2010*

The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales.)

Current membership

David TC Davies MP (*Conservative, Monmouth*) (Chair)
Guto Bebb MP (*Conservative, Aberconwy*)
Alun Cairns MP (*Conservative, Vale of Glamorgan*),
Geraint Davies MP (*Labour, Swansea West*)
Glyn Davies MP (*Conservative, Montgomeryshire*)
Jonathan Edwards, MP (*Plaid Cymru, Carmarthen East and Dinefwr*)
Nia Griffith MP (*Labour, Llanelli*)
Susan Elan Jones MP (*Labour, Clwyd South*)
Karen Lumley MP (*Conservative, Redditch*)
Jessica Morden MP (*Labour, Newport East*)
Owen Smith MP (*Labour, Pontypridd*)
Mr Mark Williams, MP (*Liberal Democrat, Ceredigion*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm

Committee staff

The current staff of the Committee is Adrian Jenner (Clerk), Alison Groves (Second Clerk), Anwen Rees (Inquiry Manager), Christine Randall (Senior Committee Assistant), Annabel Goddard (Committee Assistant), Mr Tes Stranger (Committee Support Assistant) and Laura Humble (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3264; and the Committee's email address is welshcom@parliament.uk.

Second Special Report

The Committee published its Eleventh Report of Session 2009-10, *Wales and Whitehall* (HC 246), on 26th March 2010. The response from the Secretary of State for Wales was received in the form of a letter and memorandum dated 15th July 2010, both are published as Appendices to this report.

Appendix 1

Letter from the Secretary of State for Wales to the Chair of the Committee

I am pleased to enclose a memorandum as the coalition Government's response to the Welsh Affairs Select Committee's report into Wales and Whitehall.

We are grateful to the Committee for the comprehensive and wide ranging report into the relationship between Government Departments in Whitehall and the devolved institutions in Wales. I attach great importance to this report, and our response, which is aimed at improving the mutual knowledge and understanding between Whitehall and the Welsh Assembly Government. This resonates with our 'Respect Agenda' as improved devolution awareness across Government will demonstrate our commitment to working with the devolved institutions on the basis of respect and show the coalition Government's commitment to a new relationship so evident through the recent JMC meetings and visits by the Prime Minister.

Our response only addresses the recommendations aimed at HMG and outlines what we are doing to strengthen our relationship with the devolved institutions and improve devolution awareness in the civil service, such as:

our 'Respect Agenda', the commitment to make every effort to work together and find common ground with the devolved institutions in Wales to benefit the people of Wales;

a firm commitment to the Joint Ministerial Committee as a forum to promote discussion and a better understanding of the different needs and priorities across the UK, demonstrated by the early meeting chaired by the Prime Minister;

the appointment of a Minister in each Department to ensure devolution is considered;

my commitment to work to ensure that cross-border services work effectively for people on both sides of the border between England and Wales; and

specific devolution training for all entrants to the Civil Service Fast Stream, which prepares future senior managers, as well as devolution training for new entrants to the Senior Civil Service.

The Committee's report also addressed the Legislative Competence Order process. We have noted the Committee's recommendations but feel it is not the right time to pursue changes to the process whilst the question of further powers for the National Assembly for Wales following a referendum remains unanswered.

Appendix 2: Government Response

The House of Commons Welsh Affairs Select Committee published its report "Wales and Whitehall" on 26 March 2010. The report was published before the coalition Government was formed, and makes use of evidence provided by the previous government. The coalition Government welcomes this comprehensive and wide ranging report into the relationship between Government Departments in Whitehall and the devolved administration in Wales, and is pleased to present this memorandum as its response to the recommendations made.

The coalition Government will engage actively with devolution, and we will look to strengthen the devolution settlement in Wales with a relationship of collaboration between Westminster and Cardiff. We respect the devolved institutions; the National Assembly for Wales and the Welsh Assembly Government, and this will be demonstrated in our approach to our relationships with them. The Welsh public have a right to expect the two governments that represent them and affect their daily lives to make efforts to work together for their benefit.

We are moving the new respect agenda forward by delivering a referendum on the devolution of further law making powers, giving the people of Wales the choice on how they want devolution to progress. However we are committed to the Union, and the fundamental belief that as members of the United Kingdom we are far stronger standing together than we could ever be alone.

In our response to the recommendations that follow we demonstrate the steps we are taking to ensure that the relationship between Wales and Whitehall works for the people of Wales. Steps such as:

- our 'Respect Agenda', the commitment to make every effort to work together and find common ground with the devolved institutions in Wales to benefit the people of Wales;

- A firm commitment to the Joint Ministerial Committee as a forum to promote discussion and a better understanding of the different needs and priorities across the UK, demonstrated by the early meeting chaired by the Prime Minister.

The appointment of a minister in each Department to ensure devolution is given proper consideration

The Secretary of State for Wales' commitment to seek to ensure that cross-border services work effectively for people on both sides of the border.

More detail on these issues is set out in the responses that follow. The coalition Government has responded, only to those recommendations addressed to it.

Devolution

1. The way in which the United Kingdom is governed has changed profoundly over the last twelve years, in different ways in different nations of the Union. Whitehall has not fully engaged with the complex nature of the devolution settlements. There is a need for a proper understanding of the devolution settlements to be fully embedded within Whitehall departments. Whitehall must realise that the differences in constitutional arrangements have implications for policy and legislation. The National Assembly for Wales and the Welsh Assembly Government (including both politicians and civil servants) have a major role to play in that learning process which they appear not to have undertaken fully in the last decade. (Paragraph 1)

In the past twelve years devolution has fundamentally changed Wales. It has also fundamentally changed the way in which Whitehall departments address Welsh issues. The coalition Government respects devolution and the proper powers of its institutions and is committed to working with them for the common good of the people. We agree on the importance of understanding a changing devolution settlement and accept that the level of knowledge about devolution and the subsequent level of engagement can vary from department to department, and even within departments. Our responses to recommendations 17, 18 and 19 set out in more detail what we will be doing to embed good practice across Whitehall.

Memorandum of Understanding

2. The structures for inter-governmental relations with Wales were developed during a period when the same political party was in power in both Wales and Whitehall. There will be times when relationships between the Government and devolved administrations come under strain, and during periods of "cohabitation" between different parties in government at the two levels they can be at greater risk. Adequate machinery must be in place to enable extensive negotiation and conciliation to occur between the Government and the devolved administrations. It is not enough to rely solely on the strength of informal relationships. (Paragraph 2)

The coalition Government is fully committed to engaging with all three devolved administrations on the basis of mutual respect. We recognise the value that devolution

offers to people across the United Kingdom and we are committed to maintaining and supporting devolution and the devolved administrations and legislatures. The formal machinery for inter-governmental relations between HM Government and the three devolved administrations is critical for facilitating better understanding of the different needs and priorities that exist across the UK and for providing the space in which these can be debated and examined. The reinvigoration of the Joint Ministerial Committee (JMC) which began in 2008 is an important aspect of that machinery. The principles of mutual respect and regular contact underpinning these arrangements are set out in the revised Memorandum of Understanding signed off in March of this year. This machinery is even more important in the present context of political plurality across the UK.

We will treat JMC meetings with a new seriousness as a formation central to successful devolution. The recent meeting of the JMC in Plenary format which was held within a month of the general election and was chaired by the Prime Minister demonstrates the commitment of this Government to JMC as an institution. In order to improve formal relations the Plenary agreed a forward schedule of meetings for the Plenary, the Domestic and European sub-committees and the Finance Ministers' Quadrilateral.

There are other formal methods of interaction such as the Secretary of State for Wales' attendance at the Senedd to present the Government's legislative programme to the Assembly following the Queen's speech. In addition the Prime Minister has offered to attend the Senedd himself to answer questions from the Assembly, as well as the Chief Secretary to the Treasury and other Government Ministers.

Equally important to effective relationships is the myriad of different subject-specific fora that exist on a bilateral and a quadrilateral basis, for example the Four Nations group looking at ways to combat child poverty and the regular meetings between the Secretary of State for Wales and the Welsh First and Deputy First Ministers.

3. We believe that a broad review of the machinery for co-ordination of inter-governmental relationships is necessary. An updated Memorandum of Understanding between the Government and devolved administrations is long overdue. We urge the Government to publish the agreed revised version as soon as possible. We recommend that the Memorandum of Understanding be reviewed at the start of every Parliament. The status of Devolution Guidance Notes should be strengthened after appropriate consultation. (Paragraph 4)

Since the Committee published its report the four administrations have agreed a revised Memorandum of Understanding. This was presented to Parliament and the three devolved institutions between 26 and 29 March 2010 and is available on the Cabinet Office website at www.cabinetoffice.gov.uk/devolution/jmc. The coalition agreement shares the Committee's view that review of this document is important and have agreed a new commitment to keep it reviewed on an annual basis. Alongside this MOU the Cabinet Office has published updated and more accessible guidance aimed primarily,

but not exclusively, at Whitehall civil servants. This guidance sets out the practical implications of the MOU and the devolution settlements more generally.

The more detailed Devolution Guidance Notes (DGN) are also in the process of being updated, with DGN 4 on the Role of the Secretary of State for Wales in particular being strengthened. The revised DGNs are due to be published later this year.

Joint Ministerial Committee

4. We welcome the re-convening of the Joint Ministerial Committee and recommend that it continues to meet on a regular basis. We believe that as well as practical, problem-solving work the Joint Ministerial Committee has symbolic value in embedding the principle of mutual respect and the expectation of proper consultation across Whitehall and with the Welsh Assembly Government. This should not be regarded as an alternative to direct relationships between Assembly and Whitehall departments, in which best practice should be pursued. (Paragraph 5)

5. Whilst we recognise that the relationship between the UK Government and WAG is not one of constitutional equals, we urge the Cabinet Office to look at the British-Irish Council as an example of effective joint working. On appropriate occasions, consideration should be given to inviting a devolved administration to take the lead on a particular issue. (Paragraph 6)

The JMC is a body which proceeds by consensus - no decision reached can be imposed on an administration. The secretariat for the JMC is comprised of officials from all four administrations and the agenda for the JMC Plenary and Domestic sub-committee are determined by agreement. The agenda for JMC(Europe) is in part determined by that of the upcoming European Council and any other pressing EU business but the devolved administrations are always provided with the opportunity to comment on the agenda and suggest additional items for discussion. The JMC exists primarily so that in those, often complex, areas of UK policy where there is interaction between the responsibilities of national and devolved government, there is scope for coordination and avoidance of disputes, and where need be, resolution of disputes using the procedures set out for doing so. Further work is commissioned as necessary often from the joint secretariat itself. The coalition Government agrees that the Committee should not be an alternative to direct relationships.

The British-Irish Council is in many respects a quite different institution from the JMC. The BIC exchanges information with a view to co-operating on issues of mutual interest within the respective competences of the Member Administrations, which include the UK and Irish Governments, the devolved administrations and the Crown Dependencies. It is not binding on any Member Administration, and Members are not required to participate in all areas of work. The BIC has an agreed programme of eleven work streams, two of which are led by the Welsh Assembly Government; Indigenous, Minority and Lesser used Languages; and Collaborative Spatial Planning (jointly with the Scottish Government). The BIC has also unanimously agreed to establish an independent 'Standing Secretariat' in Scotland to support the work of the Council.

Ministry of Justice

6. We welcome the new level of engagement taking place between the Legal Services Commission, the Welsh Assembly Government and the Wales Office. However, we would note that this new level of engagement seems to be a direct result of our intervention in this matter, and had the matter not been raised, it is unlikely that such engagement would have been forthcoming. (Paragraph 7)

7. We are convinced that the people of Wales – and the wider interests of the people of England and Wales – would be best served by a Legal Services Commission office in Wales, particularly now that there is a growing body of distinct Welsh Legislation. We await clear answers from the Legal Services Commission on their future proposals, which must meet our concerns of the legal community and wider civil society in Wales. The office could take on work generated in England if the Welsh case load was not thought high enough. (Paragraph 8)

8. The case of the Legal Services Commission serves as a timely reminder for all government departments and arm's length bodies that awareness of the devolution settlement in an element of their work that must not be neglected. (Paragraph 9)

The Legal Services Commission (LSC) is grateful for the Committee's recognition of the significant increase in its stakeholder consultations and engagement that has taken place to ensure it complies with not only the requirements, but also the spirit of the devolution settlement in Wales. The LSC is committed to Wales, and has been clear that it would retain a presence in Cardiff. The LSC remains acutely aware of the growing body of Welsh law and will be liaising with the Ministry of Justice in relation to the Magee Report recommendations to ensure that this aspect of its work remains a priority. The LSC also has a robust Welsh Language Scheme in place that has been approved by the Welsh Language Board, and is alive to the needs of clients in Wales to be able to use their language of choice when dealing with matters affecting legal aid. With regards to the processing operations in Cardiff, and across its offices in England, no changes will be made until the LSC assess the implications of Magee, its budgets, and its current workloads. However, it will ensure that suitable and appropriate consultation will take place once the situation becomes clearer to give interested parties an opportunity to feed into the decision making process before any final decisions are made.

A missing centre?

9. In the period since the devolution settlements of 1999, departmental responsibility for devolution strategy and policy has moved around between different departments. It has involved the Cabinet Office, 10 Downing Street, the Ministry of Justice, the former Department of Constitutional Affairs, the former Office of the Deputy Prime Minister, the Wales Office and the Ministry of Justice. This development has been historically contingent and has taken place in a haphazard fashion. (Paragraph 10)

10. There is an absence of a strong centre in relation to devolution within the UK Government. Currently the co-ordination of government business for Wales is shared

between three departments—the Ministry of Justice, the Cabinet Office and the Wales Office. The lack of a single office prevents the UK from taking a coordinated view of devolution. An effective hub is needed in central government for it to manage effectively the devolution settlement. We considered the merits of locating the central responsibility for devolution within the Ministry of Justice because of the constitutional role of that department, but concluded that this was too removed from the centre for day-to-day co-ordination, and we were also unconvinced that the department has a strong understanding of the devolution settlement embedded in its ethos. We therefore believe that the role belongs to the Cabinet Office and we recommend that this should be recognised and developed and appropriate resources allocated for this purpose. (Paragraph 11)

The Committee rightly identifies that there have historically been a number of departments with a key interest and role to play in relation to Welsh devolution primarily the Wales Office, the Cabinet Office and the Ministry of Justice. However these departments performed functions which, while they needed to be responsive to each other, were discrete: The Wales Office had, and continues to have, a unique role in pursuing the interests of Wales within HM Government and in representing the views of HM Government to Wales; the Cabinet Office was, and is, responsible for ensuring effective and transparent collective decision-making as it affects devolution (as is its role in relation to many other policy areas); and the Ministry of Justice was responsible for devolution strategy. Strong relationships between the key officials in the three departments have helped ensure the clear and important links between these roles were identified and managed on an ongoing basis. These relationships were supported by weekly meetings chaired by the Director-General responsible for devolution.

The formation of the new coalition government in Westminster has seen the agreement of a clear set of policy priorities that directly affect devolution including support for a referendum in Wales on further law-making powers, the preparations for which are being led by the Wales Office. These priorities will shape clear and accountable cross-government activity for managing the devolution settlement. The Wales Office will continue to lead on these policies as they affect Wales.

11. We recognise that there are arguments for a single Department of the Nations and Regions although we make no specific recommendation on this. As the devolution settlement matures, the role of the Secretary of State for Wales may decrease. This would certainly be the case if the outcome of a referendum on primary legislative powers for the National Assembly for Wales proved in favour of such powers. The Government of Wales Act 2006 gave the Secretary of State for Wales a role in legislating for Wales and any proposals under the current settlement would need to take this into consideration. However, Wales would still need a strong voice in Whitehall to represent its interests across a range of policy areas and any new arrangements should ensure that this includes Cabinet-level representation. (Paragraph 12)

The coalition Government is pleased that the Committee recognises the need for the strong voice for Wales at Cabinet level which is provided by the Secretary of State for Wales. As the devolution settlement matures the role of the Secretary of State for Wales

or the Wales Office will invariably change, although not necessarily decrease; both would still have a key role to play. If the people of Wales indicate that they want more powers for the Assembly in a referendum there will remain a myriad of non-devolved areas that are crucial to Wales, such as policing and justice; welfare, benefits and pensions; large scale energy developments; taxation, and funding and national infrastructure. The Secretary of State for Wales will have a key role in securing Wales' interests in these areas.

Further, the Secretary of State for Wales and the Wales Office have a crucial role in ensuring that services in Wales and England dovetail as seamlessly as possible, especially for people living or working in the extensive and well populated border areas. The Committee in its thorough reports following inquiries into cross border services identified gaps in the interaction of some services that could leave the citizen at a disadvantage. We are committed to working with Welsh Assembly Government Ministers and others to ensure that these wrinkles in the system are identified and eradicated.

Current awareness of the devolution settlement

12. The Government, in conjunction with WAG, needs to make consultation exercises more sensitive to the facts of devolution and the limited resources of key organisations. It should, for instance, not be the responsibility of Welsh interest groups-some of them small voluntary bodies-to work out for themselves whether a policy proposal in a green paper relates to reserved or devolved matters. (Paragraph 14)

The coalition Government agrees. It is important that all government publications outlining policies are clear about their territorial extent. The primary responsibility for establishing and communicating the territorial extent of policy proposals lies with the Whitehall Department concerned. The Report of the Committee has identified a gap in the online devolution guidance and we have amended it to include guidance on consultation exercises.

The repackaged Devolution Guidance sets out what is reserved and what is devolved under each devolution settlement. This is a publicly available resource, and interest groups are able to access this information. It can be accessed at www.cabinetoffice.gov.uk/devolution/guidance.

The Wales Office will provide help and support to interest groups who are unsure about the territorial extent of a policy if necessary. The Wales Office will also provide Other Government Departments advice on the territorial extent of proposals that they propose to consult on.

In addition, to help ensure that our consultations are more sensitive to devolution, Wales Office officials will present a devolution awareness session to the Consultation Co-ordinators Group at its next quarterly meeting. Consultation Co-ordinators oversee their department's consultations and are named in the documents as a point of contact.

Each Whitehall department is represented in the Co-ordinators group which is designed to provide a forum to discuss best practice for conducting consultations and to share experiences of consultation exercises.

We would also like to direct the Committee to the work detailed in our responses to Recommendations 17, 18 and 19 on improving devolution awareness and sensitivity amongst all civil servants.

13. Civil Servants cannot absolve themselves of responsibility for awareness of, and sensitivity to, devolution issues in both policy-making and service delivery. Whilst we fully acknowledge the principle of ministerial responsibility we must observe that, practically speaking, Ministers cannot be expected to monitor everything their departments do. We also note the value of strong links between Assembly Ministers and Regional Ministers, who are often closer to local cross-border issues. (Paragraph 15)

We are committed to improving the awareness of, and sensitivity towards, devolution amongst Civil Servants. More detail is set out in our responses to Recommendations 17, 18 and 19.

14. We recommend that the Cabinet Office oversees the development of Welsh Language Schemes for all government departments. (Paragraph 16)

The coalition Government shares the Committees view on the importance of Welsh Language Schemes. It is vital that citizens dealing with Government Departments should have the opportunity to do so in either English or Welsh. Over two thirds of departments now have Welsh Language Schemes in operation, which shows the renewed commitment among Whitehall Departments to support Welsh language speakers. The Cabinet Office, working with the Wales Office, is happy further to promote the development of Welsh Language Schemes, primarily through regular meetings of the Whitehall Contacts Group and, if necessary, meetings of Devolution Champions.

Current Review

15. We welcome the preliminary work of the review of departmental awareness of devolution. We expect its findings will be discussed by all Permanent Secretaries and looked at collectively and we expect to be informed of what actions are being taken to deal with any deficiencies. We urge both governments to ensure that WAG is fully involved in implementing actions arising from the current review of Whitehall's awareness and performance on devolution. (Paragraph 17)

In March of this year Permanent Secretaries agreed a series of recommendations to improve the awareness of and sensitivity to devolution across Whitehall. These recommendations were drawn up on the basis of self-assessments conducted by each of the departments based on a common assessment tool. A summary of these recommendations and the actions underway to fulfil them is attached as an annex. The

Welsh Assembly Government is already involved in implementing a number of these recommendations where they require cross-administration activity, for example to increase the practice and utility of secondments between administrations.

Way forward for the Civil Service

16. It is clear that awareness of the Welsh devolution settlement is not uniform across Whitehall. An attempt was made to educate Whitehall after the establishment of NAFW but after an initial burst of activity, there was no concerted effort to ensure that a satisfactory level of knowledge was maintained. We welcome an acknowledgement of Whitehall's failings in the area and the importance of a concerted training programme. We recommend that devolution awareness should form a core part of the training of senior civil servants. (Paragraph 18)

The coalition Government shares the Committee's assessment of the issue and recognises the importance of support for raising the sensitivity of all civil servants to the importance of devolution. The Cabinet Office and Ministry of Justice have together ensured that specific devolution training has been provided to entrants of the civil service Fast Stream over the last 18 months. These Fast Stream entrants will work at a number of departments during their accelerated career development programmes, allowing them to bring their devolution knowledge to a wide set of situations and ensuring that future senior managers know about devolution at the start of their careers. As the Committee rightly identifies, targeting senior civil servants is vital to securing heightened awareness across the civil service as a whole. The National School of Government (NSG) has already ensured that its 'Base Camp' programme for all new senior civil servants contains messages and information on devolution. Officials are also working with the NSG to ensure devolution is similarly built into its new Core Learning Programme the development of which is being steered by Permanent Secretaries and which will be available to all civil servants from September 2010.

17. We recommend that devolution experts, or “senior champions”, are established in relevant departments, and are expected to have an up-to-date understanding of the devolution settlement in Wales. Their role must be clearly defined and they must not be or become a substitute for ministerial support. (Paragraph 19)

Permanent Secretaries have now agreed that all departments will identify a senior devolution champion. There is now at least one named individual in each department, supported by a team or co-ordinator at working level. Following representations from the Secretary of State for Wales, each department is also in the process of nominating a lead minister to be responsible for ensuring that devolved interests are properly considered in their work as part of a general drive to ensure that all levels of Whitehall departments help deliver the right outcomes that reflect devolution (see annex for a summary of the commitments agreed by Permanent Secretaries to increase devolution capabilities). This will not change the direct relationship between Cabinet Ministers and Welsh Assembly Government Ministers but will compliment these existing arrangements.

18. Secondments provide valuable knowledge and experience to individuals and to the institutions where they are placed. We recommend that a formal mechanism for secondments between Wales and Whitehall and other devolved administrations is established. We believe it should be seen as a positive benefit to the development of a career in the Civil Service. However, this should not detract from efforts to ensure that devolution awareness is mainstreamed throughout the Civil Service. (Paragraph 20)

The coalition Government agrees that secondments and loans are an excellent means of promoting mutual understanding between institutions and ensuring knowledge of how they work. Permanent Secretaries have agreed that it is critical to promote increased secondments between the four administrations, in particular that the mutual benefits of secondments should be promoted and more systematically realised. The Cabinet Office was tasked with leading this work. An initial meeting of the four administrations and a selection of Whitehall departments took place on 21st April and agreed a work programme to achieve this objective (see annex).

19. It is important to avoid failures of organisational memory which are always a danger in a service where staff move on frequently from job to job. This problem was highlighted in the Communities and Local Government Committee's inquiry into the 2009 Departmental Annual Report, which suggests that on average, an official in the department can expect to have been in his or her particular post for just 0.8 years (about 9 months). We believe that this is an example of poor management of service delivery which is wide-spread in Whitehall. The culture needs to change. (Paragraph 22)

The figure is not one we recognise and across Whitehall generally we assume the figure would be much higher. For example in the Wales Office the average length of time an official is in post would far exceed this figure.

20. Although ministers in both London and Cardiff take the leading roles on devolution, a key official player in making the devolution settlement work is, and will continue to be, the Cabinet Secretary and Head of the Home Civil Service. We welcome Sir Gus O'Donnell's leadership in this matter and his clear commitment to making devolution work, as demonstrated for example by the review of departmental arrangements he has put in hand. But more is needed to ensure that continuity is not lost, and we therefore recommend that the Cabinet Secretary should give evidence to this Committee annually, perhaps at the same time as the Committee's autumn evidence session on the Wales Office annual report. This would be an opportunity for the Cabinet Secretary for example to set out what progress has been made in raising awareness of the devolution across Whitehall and in WAG and to answer questions on the development of the Welsh devolution settlement. We also believe that the Permanent Secretary at WAG needs to take a proactive role in explaining developments in Wales to her colleagues across Whitehall. We commend the way that Dame Gillian Morgan has described her role and we recommend that she too should give evidence to the committee annually in addition to the regular evidence from the First Minister which has become an established part of the Committee's work. (Paragraph 25)

The Government recognises the continued importance and legitimacy of the Welsh Affairs Select Committee. This commitment was demonstrated by the Cabinet Secretary's attendance at the Committee in the run-up to its preparation of this report. The Cabinet Secretary is personally committed to ensuring that Whitehall continually improves its dealings with the realities of the Welsh settlement and devolution in general. As such he has led the work recently undergone by Permanent Secretaries to increase devolution capabilities. As part of his personal commitment he now chairs the JMC(Officials) committee which met in support of the JMC Plenary on 2nd June. The Cabinet Secretary would be willing to participate in future evidence sessions if the new committee saw good reason for his attendance.

Civil Service Code

21. Civil Servants throughout the UK need to be aware of the implications of devolution for their work which must be seen in the context of its relationship with outside bodies more generally. This principle should be in the context of its relationship with outside bodies more generally. This principle should be enshrined in core guidance issued to Civil Service. We welcome the Cabinet Secretary's agreement to consider including an awareness of devolution as part of the Civil Service Code next time it is reviewed. (Paragraph 26)

The Cabinet Office is reviewing the *Civil Service Code* to take account of the Constitutional Reform and Governance Act. As part of this work, it will consider how best to raise awareness of devolution in order to meet the Committee's concern

Legislative Competence Orders

22. We continue to have concerns about the time it takes for LCOs to receive Whitehall clearance. They are frequently not given priority within Whitehall departments, which may affect the delivery of the Welsh Assembly Government's legislative timetable. In contrast, the House of Commons has shown an ability to deal expeditiously with such proposals. (Paragraph 27)

The Committee is correct that initially the LCO procedure created real challenges for all parties involved. Early LCOs lacked precision, and were not underpinned by a clear purpose. Consultation with Government departments before some LCOs were launched had been practically non-existent. Though some improvements were subsequently evident in how LCOs were handled, we will be looking at how we can deal with future LCOs more effectively and expeditiously.

23. As we recommended in our earlier report, *Review of the LCO Process*, we believe that there is a strong case for a more formal reporting system on the Whitehall clearance system. This Committee has made clear its intention to scrutinise the process from the point when a LCO is sent by WAG to Whitehall. The Wales Office has now agreed to provide this Committee with a monthly update on progress of all the proposed Orders together with an explanation of any delays. In the event of this Committee being dissatisfied with progress, we intend to call ministers and officials

from Whitehall departments to attend a meeting of the committee along with a minister or official of the Wales Office in order to identify the issues that remain unsolved, and to provide transparency about the process. (Paragraph 28)

We note the recommendation and are confident that the regular updates and dialogue will address the shortcomings the Committee identified in its report. We intend to update the Committee regularly on any new LCOs the Welsh Assembly Government proposes in its forthcoming legislative programme. This should obviate the need for the Committee to call Ministers and officials from Whitehall departments to explain any delays in the process. The coalition Government will of course review the situation regularly as part of the agreed reporting system.

24. We are concerned about the lack of transparency of the role of the Secretary of State in determining whether or not he would lay a draft Order before both Houses of Parliament. We recommend that the Secretary of State produce a protocol outlining the principles that would inform such a decision, and to present it early in the new Parliament. This should not omit consideration of the status of backbench LCOs. (Paragraph 29)

The coalition Government would expect to lay any draft LCO before Parliament which had been approved by the National Assembly, provided it had been subject to prior agreement between the coalition Government and the Welsh Assembly Government on its scope and content, and to pre-legislative scrutiny in Parliament, by the Welsh Affairs Committee, and in the National Assembly.

The coalition Government does not therefore believe that a protocol is necessary. We will however review the position in the event that further LCOs come forward from the Welsh Assembly Government, backbench Assembly members or committees of the National Assembly.

Framework Powers

25. We are concerned that framework powers are not scrutinised to the same degree as proposed LCOs, either within Parliament or NAFW. We suggest that it is appropriate for this Committee to provide more parliamentary oversight of such powers and will investigate the most effective way of doing this. It is not appropriate for two legislatures to be entirely beholden to their executives in order to converse formally, and NAFW should have the opportunity to make observations on any proposal to legislate at Westminster in relation to devolved matters. It is our intention to explore the development of practice in this area. (Paragraph 30)

26. We recommend that the Standing Orders of the House provide for the Speaker to lay before it any formal communication conveyed to him or her from NAFW. (Paragraph 31)

The coalition Government is firm in its belief that thorough and effective scrutiny makes for better legislation, and we welcome any proposals from the Committee on strengthening parliamentary oversight of framework powers. We are ourselves

considering how the parliamentary scrutiny of framework powers could be enhanced, and would be happy to share our thinking on this with the members of the Committee.

Closer working between the Committee and the National Assembly for Wales is to be welcomed and encouraged. There is a great deal of scope for scrutiny in Parliament and the National Assembly for Wales to be complementary, and to avoid unnecessary duplication. The coalition Government notes that the Welsh Affairs Committee has forged strong working relationships with the National Assembly for Wales, and has indeed drawn on evidence obtained by the National Assembly for Wales during its scrutiny of LCOs.

Future arrangements for communication between Parliament and the National Assembly are clearly a matter for each legislature.

Welsh Statute Book

27. The accessibility of the law in relation to Wales and the creation of a single comprehensive reference of legislation impacting on Wales is important. We encourage the Government to support WAG to achieve this objective. (Paragraph 32)

We note this recommendation. The coalition Government agrees that the public should be able to access clear and simple information as to what powers are held by the Assembly and the Welsh Assembly Government.

Finance

28. The Barnett Formula is overdue for reform. Recent reviews have highlighted its deficiencies, and the Holtham Commission has put forward a needs-based formula. Whilst we recognise the commitment given to the Secretary of State for Wales from HM Treasury that Wales will not be disadvantaged by convergence under the Barnett Formula, we urge the Government to review the current arrangements and to adopt a needs-based approach to a new financial settlement. As well as bringing about a formula which is fairer to Wales, the need for predictability for sometime ahead is of enormous importance and we strongly recommend that any such formula should not be subject to year-on-year or even the three year variations which depend on a contemporary interpretation of statistical information. This should be treated as a priority. (Paragraph 33)

The coalition Government notes the Committee's recommendation. The coalition Government recognises the concerns expressed by the Holtham Commission on Welsh funding and other commentators on the system of devolution funding. However, as set out in the Coalition programme for government, at this time the priority must be to reduce the deficit and therefore any change to the system must await the stabilisation of the public finances.

29. That such a central department as the Treasury has been criticised for a lack of awareness of and engagement with the devolution settlement is worrying. We

recommend that the Treasury actively seeks to increase its awareness of the devolution settlement and its own role in that settlement. Given the concern expressed by various organisations, we support the recommendation for an independent body to administer the Barnett formula. (Paragraph 34)

The coalition Government notes the Committee's recommendation but does not recognise the description of Her Majesty's Treasury, which engages regularly on devolution issues both through a dedicated devolution team and more widely. The Treasury is fully committed to working in partnership with the Welsh Assembly Government to promote economic recovery and tackle the deficit on the basis of a relationship of mutual respect. The devolved funding arrangements are set out in the Statement of Funding Policy, published by the Treasury, which is updated in each spending review in consultation with the Welsh Assembly Government.

Annex A

Summary of commitments agreed by Permanent Secretaries to increase devolution capabilities and actions taken to date

Commitment	Action to date
Enhanced training and improved availability of information	Updated devolution guidance published on the Cabinet Office website (this includes tailored guidance for officials working in bill teams, private office, press office etc) Individual departments improving their induction, guidance and training offers to give devolution greater prominence
More systematic and early identification of policy issues that have devolution implications	Cross-cutting briefing on devolution issues provided to all incoming ministers Senior devolution champions met in run-up to the election to discuss preparedness and likely issues A number of departments are improving their own ability to identify early possible areas of interest to the devolved administrations
Periodic (roughly annual) review of devolution capability	No action yet required. Departments to consider their devolution capabilities, possibly as part of a wider review of departmental capabilities in Spring 2011
More systematic secondments between Whitehall and the devolved administrations.	HR directors of the four administrations together with a number of Whitehall departments met to consider how best to promote secondments and ensure the maximum benefits are derived from them for each administration. It agreed a broad programme of action which is now being

	developed
<p>All departments (who have not already done so) to nominate at least one individual to provide senior leadership to oversee the devolution capability; to act as a core point of contact with the devolved administrations; and to act as a contact point within Whitehall</p> <p>These senior devolution leaders to form a network to pool learning and look collectively at the key upcoming issues.</p>	<p>All departments now have a named senior lead and a first meeting of the network took place in April. We expect the network to come together again this summer</p>