



House of Commons
Public Administration
and Constitutional Affairs
Committee

**Devolution and Exiting
the EU: reconciling
differences and
building strong
relationships**

Eighth Report of Session 2017–19



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*Report, together with formal minutes relating
to the report*

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Public Administration and Constitutional Affairs

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Summary

In the twenty years since the UK Parliament introduced devolution into the UK's constitutional arrangements, devolution from Westminster to Northern Ireland, Scotland and Wales has developed and deepened. Devolution is now an established and significant part of the UK's constitutional architecture. The devolution settlements were created in the context of EU membership and leaving the EU raises questions about how the constitutional arrangements of the UK will change. The debates around the devolution clauses of the European Union (Withdrawal) Bill and wider preparations for leaving the EU have exposed disagreements.

Notions of sovereignty in the UK, some people have argued, have been altered through the establishment of devolved parliaments and assemblies, embedded through twenty years of operation. However, there are different views on where sovereignty, and therefore where ultimate authority, lies. The UK Government's position is that the sovereignty of the Westminster Parliament is a constitutional fact. Yet the range and extent of areas where Parliament can legitimately exercise its power have been altered by the devolution settlements, which has introduced political considerations that has arguably qualified sovereignty within the UK. It is the exact nature of that qualification which is contested between the devolved administrations and the UK Government. It is, therefore, important that the Government acknowledges the significance of devolution within the UK constitution and produces a "Devolution Policy for the Union" which seeks to reconcile these fundamental differences, and sets out how the government will seek to build stronger relationships between the four parts of the UK. This document should be reviewed at the start of every Parliament. It would set out the core concepts of devolution, state the UK Government's policy, review the working of interinstitutional relationships and detail any proposals for future evolution of the devolution settlements and how they work.

There have been two basic models for the devolution of power within the UK: a reserved powers model, introduced with Scottish devolution; and a conferred powers model, introduced with Welsh devolution. Under the reserved powers model, matters reserved as the exclusive competence of the UK Parliament are listed in the devolution Act, and all other matters are, by default, within the competence devolved parliament. Under the conferred powers model, specific competencies are passed to the devolved institution by the devolution Act, but all other areas are, by default, within the competence of the UK Parliament. Since April 2018, all three devolved institutions have operated on a reserved powers model (with a slight variation in the case of Northern Ireland). However, preparations for leaving the EU have exposed inconsistencies in the UK Government's conceptualisation of the devolution settlements. We urge the Government to make clear its understanding that the reserved powers model of devolution means that powers devolve by default to the devolved institutions and are not conferred by the UK Parliament.

The passage of the European Union (Withdrawal) Bill was the cause of considerable disagreement between the UK Government and devolved Governments. This disagreement was intensified by a lack of consultation on the Bill before it was published

and introduced to the House of Commons. We recommend that all legislation which falls across devolved competencies be shared in draft with the relevant devolved institutions in order to identify and work through any differences before a Bill is published.

Many of the concerns expressed by devolved institutions in relation to the European Union (Withdrawal) Bill were addressed through amendments. Even so, the Bill eventually passed into law without the legislative consent of the Scottish Parliament. This has raised questions about the Sewel Convention that the UK Parliament will not normally legislate in areas of devolved competence without consent of the devolved legislature. We note that while this convention has been entrenched in legislation, there have been no corresponding parliamentary procedures put in place to recognise the convention in the legislative process. The evidence to this inquiry also exposed considerable ambiguity and uncertainty around the interpretation and operation of the Sewel Convention. We recommend that the Government set out clear statements of the circumstances under which legislative consent from a devolved legislature is not required by the Convention.

Any discussion of devolution would be incomplete without serious consideration of the position of England within the constitutional architecture of the UK. We received evidence pointing to a significant asymmetry between the representation of the people of England within the Union when compared with the people of Scotland, Wales and Northern Ireland. We recommend that the Government sets out, as part of its statement of “Devolution Policy for the Union”, how the different parts of England are to be fairly and effectively represented. The current programme of English devolution to combined authorities and mayors should be expanded and greater powers devolved. In addition, plans should be drawn up for how devolution to more rural areas can effectively be pursued. The metropolitan mayors in England told us that they were struggling with a piecemeal delegation of powers and functions from central Government. We recommend that whole areas of competence be properly devolved to the English mayors so that their work in their local areas can be more effective.

It is widely accepted that Common Frameworks will need to be established for when the UK leaves the EU in order to harmonise policy in areas of devolved competence where a common UK approach is necessary. Extensive work has been done by the UK and devolved Governments to agree areas where legislative and non-legislative frameworks may be necessary. However, the Government told us that it does not have a unified policy for how Common Frameworks should be established, operated, monitored and amended. These structures are being left to individual departments to develop on an ad hoc basis. Given that these Common Frameworks will become an important element of the UK constitutional architecture, a coherent policy on how they should operate is urgently needed. The Government should set out proposals as soon as possible.

We heard evidence that Whitehall has a tendency to hold on to power and that there is a continued institutional lack of understanding of devolution. In individual departments, there have been some attempts to inform officials, but the structure and culture of Whitehall generally still takes little account of the realities of devolution in the UK. In line with the recognition that devolution is a fundamental feature of the UK constitutional architecture, there should be a systematic review of how Whitehall is structured, how it relates to devolved administrations as well as local and metropolitan administrations

in England, and what areas could appropriately be devolved from Whitehall to other authorities within England. Officials should also receive comprehensive training on devolution.

There is a growing consensus that the current inter-governmental relations mechanisms in the UK are not fit for purpose. The absence of formal inter-governmental relations mechanisms has been the missing part of the devolution settlement since its establishment and they should be understood to be as important to the devolution settlement as the powers held by the devolved institutions. A new system of inter-governmental relations needs to be agreed between the UK and devolved Governments and set out in statute. Any new inter-governmental apparatus should have an independent secretariat to provide a conduit for discussions. It is also vital that inter-governmental mechanisms have a clear purpose and are not just talking shops to air grievances. As such, inter-governmental bodies should be given oversight of the UK Common Frameworks. In relation to England, it became clear during the inquiry that the UK Government's dual role as Government of the whole of the UK and of England has become a problem. The Government showed a worrying lack of engagement with the issue of English representation at inter-governmental level. England must be represented separately from the UK at inter-governmental level and the Government should produce proposals for both short and long-term ways to achieve this goal.

The prospect of an increase in the amount and importance of the work carried out at the inter-governmental level raises the question of whether this work should be scrutinised through a parallel inter-parliamentary mechanism. We believe that it should. In order to facilitate this, we recommend that formal communication mechanisms between the UK's parliaments and assemblies be established. We also recommend that committees of the various legislatures should be able to meet jointly to scrutinise inter-governmental policy and separate inter-parliamentary committees should be set up for the same purpose. Finally, we recommend that proposals for an inter-parliamentary scrutiny body for Common Frameworks be produced by the Clerks of the four parliaments and assemblies.

1 Introduction and context of our report

1. The Committee launched its inquiry into the future of devolution after exiting the EU because the UK's decision to leave the EU has significant ramifications for the internal constitutional arrangements of the UK. The current distribution of powers between central and devolved governments will be altered once the UK is no longer an EU member state, potentially placing additional strain on the current constitutional arrangements. Developing processes to both manage and deliver these changes will be a key element of the UK's successful departure from the EU.

2. The inquiry focused on four main areas: the European Union (Withdrawal) Bill; the long-term mechanisms that should be put in place for the exercise and distribution of governmental power and authority throughout the UK; what the long-term future of devolution in the UK constitutional arrangements should be; and how trust and cooperation could be established and maintained among the governments and legislatures of the UK.

3. The inquiry was launched in the midst of discussions over the way the European Union (Withdrawal) Bill dealt with devolved competencies. On 29 November 2017 the Committee published a report, *Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*, based on the initial evidence received in this inquiry in order to inform the debates in the House of Commons on the clauses of the Bill that were concerned with the devolved institutions.¹

4. This inquiry also builds upon the work done by our predecessor Committee in its report published in December 2016, *The Future of the Union, part two: Inter-institutional relations in the UK*.² In particular, that report raised concerns with the current inter-governmental mechanisms, and made several important recommendations to help improve inter-governmental relations. The Government did not actively engage with these recommendations and, because of this, our inquiry has had to return to these issues.³

5. Throughout the period in which the inquiry was conducted there was no power sharing Executive in Northern Ireland and the Northern Ireland Assembly did not sit. Due to this continued absence, the Committee was not able to talk to the Northern Ireland Executive or representatives from the Northern Ireland Assembly to gather their perspectives on the issues addressed in the inquiry. We held an evidence session with three academic witnesses which greatly informed our thinking and provided context for the conclusions and recommendation we make in this report.

6. We launched our inquiry on 12 October 2017. We held ten evidence sessions with UK Government, representatives of the devolved Governments, party leaders in the devolved legislatures, and academic experts. We held an evidence session in the National Assembly for Wales in Cardiff and an evidence Session in Edinburgh City Chambers. We received 34 written submissions. We would like to thank all those who gave evidence to our inquiry.

1 First Report of the Public Administration and Constitutional Affairs Committee of Session 2017–19, *Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*, HC 484.

2 Sixth Report of the Public Administration and Constitutional Affairs Committee of Session 2016–17, *The Future of the Union, part two: Inter-institutional relations in the UK*, HC 839.

3 Second Special Report of the Public Administration and Constitutional Affairs Committee of Session 2017–19, *The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee*, Session 2016–17, HC 442

2 Constitutional Change, Europe and Devolution

7. Leaving the EU means that the UK will have to change its constitutional arrangements. As the UK Government has made clear “the current devolution settlements were created in the context of the UK’s membership of the EU”.⁴ The devolution Acts were created when the UK was an EU member state and this means that when the UK leaves the EU its constitutional arrangements will be different: a) from those it had before joining the European Economic Community in 1972, due to the subsequent establishment of devolution; and b) from the arrangements it has now, as the devolution settlements were created in the context of EU membership.

8. When the UK Parliament enacted the European Communities Act 1972, the UK could best be described as a unitary state, governed by central Government and Parliament in Westminster, under what Professor Gordon Anthony, Professor of Law Queens University Belfast, described as “Dicean Sovereignty”.⁵ The issue of devolution was a live topic at that time with the recommendations of the 1973 report of the Royal Commission on the Constitution (Kilbrandon Commission), initially rejected but ultimately leading to the Scotland Act 1978 and Wales Act 1978.⁶ However, referendums for establishing assemblies did not pass the threshold in either Scotland or Wales and devolution fell down the political agenda.⁷ In this same period, the Northern Ireland Parliament was suspended in 1972 and abolished through the Northern Ireland Constitution Act 1973.

9. By the time devolution re-emerged on the political agenda in the 1990s, the European Union had become an important feature of the UK’s constitutional arrangements. The devolution settlement established after the election of a Labour Government in 1997, was set up within the context of the UK’s EU membership. Four devolution referendums were held in 1998 in Scotland, Wales, Northern Ireland and London, but each vote was for a different system based on the peculiar circumstances of each area. Other than in London, there was no offer of devolution within England. This has established what is commonly referred to as an asymmetrical constitutional settlement.

10. The peculiar circumstances of each area have also meant that devolution has developed at different paces and in different ways in each area. Professor James Mitchell, Professor of Public Policy at the University of Edinburgh, told us that, while there are known problems with asymmetry in the political system, particularly in relation to England, it “reflects the asymmetrical demands in the different component parts of the United Kingdom”.⁸ Northern Ireland’s devolution settlement was created in a manner that implements the Belfast Agreement and creates a mechanism for a power-sharing government where both nationalists and unionists are represented.⁹ However, in general the devolution of powers has increased to all institutions and there has been a degree of harmonisation. For

4 [Cabinet Office \(DEU0025\)](#)

5 [Q142](#) [Anthony]

6 [Royal Commission on the Constitution, Report, Cm. 5460, October 1973](#)

7 In the Scottish referendum 51.6% voted in favour of the creation of a Scottish Assembly, on a turnout of 63.7%. However, this failed to meet the requirement in the legislation for 40% of total electorate to be in favour, as this only represented 32.9% of the electorate. The 1978 referendum in Wales provided a more definitive result. 79.74% of those who voted, voted against the creation of a Welsh Assembly, on a turnout of 59.01%.

8 [Q154](#)

9 [The Belfast Agreement](#)

example, under the Wales Act 2017, Welsh devolution moved from a conferred powers model of devolution to a Scottish-style reserved powers model, adding a degree of greater symmetry between the devolution settlements of Scotland, Wales and Northern Ireland.

11. The context of EU membership was important in drafting the devolution Acts, Professor Alan Page, Professor of Public Law at University of Dundee, explained. This, he explained, was because the powers which were being devolved to the institutions could potentially have been used by a devolved institution to act in a way that places the UK as a whole in breach of its obligations as an EU member state.¹⁰ In order to prevent this, a restriction was placed in the devolution Acts to make any provision that was incompatible with “convention rights or EU law” outside of the legislative competence of the devolved institutions.¹¹ This means that while a devolved institution could legislate, for example, in the area of fisheries, if it were to legislate in conflict with the EU Common Fisheries Policy this law would be quashed. This restriction has been at the heart of the disagreement between the devolved institutions and the UK Government during the recent passage of the European Union (Withdrawal) Bill and the erosion of trust between them (explored further in Chapter 3). The issues behind this disagreement reveal much deeper tensions and unanswered questions created by the introduction and development of devolution in an ad hoc and asymmetrical manner, which will need to be resolved to ensure a healthy future for devolution in the UK. At their most fundamental, these issues centre around three main areas:

- issues and conceptions of sovereignty and the two models of devolution (Chapter 3);
- the place of England in the devolved landscape of the UK (Chapter 5); and
- the lack of fully-formed mechanisms for the inter-governmental relations and the scrutiny of those mechanisms by legislatures (Chapters 8 & 9).

This Report also examines the use of Common Frameworks¹² and we examine Whitehall’s attitude towards devolution as these issues will also be critical to the future of the devolution settlement’s place in UK’s constitutional arrangements after the UK leaves the EU.

10 [Q13](#)

11 See for example Scotland Act 1998, section 29(2)(d)

12 i.e. where competences must be shared over a particular matter but which are devolved and therefore there must be agreement about policy between Whitehall and the devolved administrations, to establish a UK wide framework

3 Questions around sovereignty and the two models of devolution

Sovereignty in the UK

12. Devolution in the UK must be understood in the context of the status of the UK as an EU member state when the devolution Acts were passed. The UK's forthcoming exit of the EU has raised fundamental questions around sovereignty which were hitherto cracks papered over by the context of EU membership. Professor Richard Wyn Jones, Director of the Wales Governance Centre at Cardiff University, highlighted that we now have “tension between different conceptions of sovereignty, and this is one of the things that devolution has fundamentally changed”.¹³ The use of referendums to decide questions related to Europe,¹⁴ devolution and the status of Northern Ireland within the UK has raised the profile of the notion of popular sovereignty. Professor Wyn Jones considered that the establishment of legislatures and governments in Scotland, Wales, Northern Ireland and London, underpinned by a democratic mandate, has led to fundamentally different views about the very nature of the UK. He went on to assert that if the UK Government wants to reassert Parliamentary sovereignty there will be constant conflict with the devolved level of government.¹⁵ Addressing the question of whether Parliamentary sovereignty at Westminster is now qualified, Professor Wyn Jones said that the issue is what qualification means as ultimately devolution has raised conceptions of legitimacy and sovereignty that are competing with one other, which have not been resolved.¹⁶

13. Professor Michael Keating, Director of the Centre on Constitutional Change at Edinburgh University, told us that there are both historic and contemporary questions around whether the UK “is a unitary state, in which the principle of Parliamentary sovereignty is the be all and end all of the constitution, or whether it is a union in which sovereignty is shared.”¹⁷ He said that the historic ambiguity in the UK constitution goes back at least to the Acts of Union 1707.¹⁸ This ambiguity was brought to the fore in *MacCormick v. Lord Advocate* in the Court of Session in 1953, where the Lord President's judgement said “the principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law”.¹⁹

14. The judgement went on to note that that the Act of Union 1707 extinguished the parliaments of England and Scotland and brought a new Parliament of Great Britain into existence, and the court opined that it was difficult to see why the new parliament should inherit characteristics of the English but none of the Scottish Parliament.²⁰ Professor Keating said that when the “multinational nature of the United Kingdom was given an institutional expression” with the creation of devolved institutions in 1998, this gave rise to a view of the UK constitution as one of a union of diversity where the division of power means “we must rethink what is meant by Westminster sovereignty”.²¹

13 [Q125](#) [Wyn Jones]

14 This refers to the 1975 referendum on EEC membership and the 2016 referendum on EU membership

15 [Q150](#) [Wyn Jones]

16 [Q126](#) [Wyn Jones]

17 [Q491](#) [Keating]

18 [Union with Scotland Act 1706](#); [Union with England Act 1707](#)

19 *MacCormick v Lord Advocate* 1953 SC 396

20 *MacCormick v Lord Advocate* 1953 SC 396

21 [Q491](#) [Keating]

15. The contemporary questions around sovereignty Professor Keating highlighted arise because, while the devolution Acts make clear that Westminster is supreme, most of the UK constitution hinges not on “black letter law” but upon convention.²² Professor Keating told us that there has been a practice of avoiding these questions for the last 20 years, during which time conventions have “developed and grown”.²³ According to Professor Keating, leaving the European Union is “a shock to the constitution” that makes the avoidance of these questions more difficult and “certain things will have to be written down that were not written down in the past”.²⁴

16. There is now a clear sense in the devolved institutions that notions of sovereignty have been altered by the creation and development of devolution since 1998. For example, the Rt Hon Carwyn Jones AM, First Minister of Wales, said that he was “unconvinced that the sovereignty of the UK Parliament is the way forward” and considered that, while the UK Parliament may have the legal power to override anything, politically it would now be very difficult to do.²⁵

17. Michael Russell MSP, Scottish Government Minister for UK Negotiations on Scotland’s Place in Europe, talked of devolution as an “established constitutional settlement” that is being undermined by the UK Government through the European Union (Withdrawal) Bill.²⁶ Professor Adam Tomkins MSP, Shadow Cabinet Secretary for the Constitution, Communities, Social Security and Equalities, stated that there needed to be greater understanding that the UK “is not a unitary state; it is a multi-Government state, it is a multinational state. Leaving the European Union does not mean in any way that we revert to the constitution of 1972”.²⁷ In relation to Northern Ireland, we have also heard that the “constitutional foundations” of the Belfast Agreement and subsequent Northern Ireland Act 1998 include the “principle of consent”.²⁸ This is the principle established through Belfast Agreement that Northern Ireland is part of the UK by consent of the people of Northern Ireland, and that the constitutional status of Northern Ireland (i.e. a united Ireland) could only be changed by the consent of the people of Northern Ireland, established though a vote. It is this principle of consent that “keeps Northern Ireland in the United Kingdom”.²⁹

18. The Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office (“the Minister”) told us that the UK Government’s position is that “ultimately, the ultimate sovereignty of the Westminster Parliament is a constitutional fact”.³⁰ He further stated that nothing in the devolution Acts detracts from the ultimate sovereignty of Westminster to legislate for the UK.³¹

22 [Q491](#) [Keating]

23 [Q491](#) [Keating]

24 [Q491](#) [Keating]

25 [Q233](#)

26 [Q573](#)

27 [Q553](#) [Tomkins]

28 [Q666](#) [Gormley-Heenan]; [Q142](#) [Anthony]

29 [Q666](#) [Gormley-Heenan]; [Q142](#) [Anthony]

30 [Q795](#)

31 [Q804](#)

19. UK Governments have repeatedly noted that “the current devolution settlements were created in the context of the UK’s membership of the EU”. This EU context has masked many of the key constitutional questions and ambiguities raised by the introduction and subsequent development of devolution since 1998. With the UK leaving the EU, many questions and ambiguities have now been exposed and need to be addressed.

20. The ultimate supremacy of the UK Parliament is legal fact as several witnesses, including the Minister, have recognised. However, sovereignty is a political concept that does not always obey legal direction. The introduction of popular sovereignty through the use of referendums, the establishment of devolved governments for the nations of Scotland, Northern Ireland and Wales, and the commitments made when establishing them, have introduced political considerations that have arguably qualified sovereignty within the UK and changed the balance of power.

21. *Devolution is now an established and significant feature of the UK constitutional architecture and should be treated with respect to maintain the integrity of the United Kingdom. The Government needs to bring clarity to the situation by setting out, in response to this report, its Devolution Policy for the Union. A document setting out the Government’s Devolution Policy for the Union should be issued at the start of every Parliament. This policy should outline where the constitutional architecture of devolution needs to be buttressed or amended and should, where necessary, provide justification for asymmetry within the devolution settlement. While we accept that asymmetry may be necessary and even preferable within the UK context, the Government should explicitly recognise and be held accountable for representational and institutional asymmetries within the UK political system.*

Two models of devolution: the reserved powers model and the conferred powers model

22. To understand devolution in the UK in 2018, as the UK prepares to exit the European Union, it is important to understand the two models of devolution that have been used in different parts of the UK: the reserved powers model and the conferred powers model.

23. The differences between these two constitutional positions can be understood by considering a hypothetical devolution of powers to choose sweets. Under the reserved powers model, all legislative power is devolved except those matters expressly reserved under the devolution legislation. If sweets selection is a devolved matter, a devolved legislature has the power to choose whatever sweets it wants. However, while the UK is an EU Member State, a devolved legislature’s selection is limited by the range of sweets determined at the EU level. These same EU selection constraints apply equally to the UK Parliament when it selects sweets for England. Leaving the EU removes the EU constraints over sweet selection. Under the reserved powers model, sweet selection is a devolved matter and so, after leaving the EU, a devolved legislature’s existing powers allow it to choose sweets without constraint. Similarly, from EU exit day, the UK Parliament would have the same power to exercise wider sweet selection for England. On this view, all legislatures continue to exercise the same sweet selection powers, but over a wider range of sweets.

24. Under the conferred powers model, only a particular set of powers to select sweets within EU constraints is devolved. After leaving the EU, the devolved legislature would retain the power to select sweets from the same restricted selection and its powers would, therefore, be unchanged. Under this model any powers not conferred to the devolved institution by default flow to the UK Parliament. On this view, taking back the power to the UK Parliament to maintain the EU restriction on sweet selection is in line with the devolution settlement for all areas of the UK. In other words, if a devolved legislature became able to choose from a wider selection of sweets than before, this would be viewed as an increase in the scope of its devolved powers, not a continuation of the status quo.

25. Professor Page told us that “the Scottish settlement from day one has been a reserved powers model”.³² The Scotland Act 1998 lists in Schedule 5 matters which are reserved to the UK Parliament, which means that “the Scottish Parliament has the power to legislate in all areas save for those reserved”.³³ Professor Nicola McEwen, Professor of Politics at Edinburgh University, told us that the way to understand the devolution settlement, which she has been teaching to students in relation to Scotland for two decades, is that there is a defined set of reserved powers and, by default, everything else is devolved.³⁴ Having previously operated under a conferred powers model, Wales moved to a reserved powers model in the Wales Act 2017, which came into force in Wales from April 2018.³⁵ Professor Keating told us that the model of devolution in Scotland, Northern Ireland and now Wales “is a pretty clear division of powers between the two levels because of the reserved model—that everything is devolved if it is not explicitly reserved”.³⁶

26. The logic of the devolution model in Northern Ireland is that “anything that is not listed as reserved or excepted is automatically devolved”.³⁷ While this is similar to the devolved model which applies in Scotland and now Wales, there are key differences. Northern Ireland has an excepted, reserved and transferred (devolved) matters model.

27. Excepted matters are those viewed as matters of national importance such as international relations and are the responsibility of the UK Parliament and are outside the competence of the Northern Irish Assembly and cannot be transferred (devolved).³⁸ These are listed in Schedule 2 of the Northern Ireland Act 1998. Reserved matters are matters which are considered UK-wide issues, for example broadcasting and genetic research; these are also the responsibility of the UK parliament but could be transferred later with cross party support.³⁹ These are listed in Schedule 3 of the Northern Ireland Act 1998. Policing and criminal justice were reserved but these matters were devolved and therefore moved to the transferred field on 12 April 2010. Transferred matters are anything that is not excepted or reserved and, as the Government’s Devolution Guidance sets out, transferred matters are considered devolved.⁴⁰

32 [Q17](#) [Page]

33 [Q17](#) [Page]

34 [Q103](#) [McEwen]

35 [‘A process, not an event’: Devolution in Wales, 1998–2018](#), House of Commons Library Briefing paper 08318, 11 July 2018

36 [Q498](#)

37 [Q678](#)

38 Cabinet Office / Northern Ireland Office, [Devolution settlement: Northern Ireland](#), 20 February 2013

39 Cabinet Office / Northern Ireland Office, [Devolution settlement: Northern Ireland](#), 20 February 2013

40 Cabinet Office / Northern Ireland Office, [Devolution settlement: Northern Ireland](#), 20 February 2013

The contradictory views of devolution

28. The preparations for the act of the UK leaving the EU has brought out contradictory views of how the UK's devolution settlement will operate in the future. The reserved powers model of devolution has been in place since devolution was first introduced in Scotland, and the model has now been extended to Wales. The previous system of devolution in Wales was a conferred powers system, and was altered following the first recommendation of the Commission on Devolution in Wales report ("the Silk Commission"), *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*.⁴¹ In reaching its conclusions, the Silk Commission explicitly set out in its report that, under the conferred powers model, any issues not considered at the time the legislation was passed would rest with the UK Parliament, whereas under the reserved powers model any such powers would default to the devolved institutions.⁴²

29. Professor Page explained that the model of devolution implied by the UK Government in the drafting of the European Union (Withdrawal) Bill was that the devolved institutions' powers were limited while in the EU by EU law and "therefore, they should continue to be bound after exit day", meaning legislative authority on those matters would lie in Westminster.⁴³ This view mirrors the conferred powers model so that the devolved institutions would, in effect, have the same powers over the same areas of competence on the day of exit from the EU as they had the day before exit. The position expressed by the devolved institutions themselves was that, because the devolution settlement is based on a reserved powers model, anything not stated as a reserved power in the devolution Acts is by definition a devolved power. Therefore, when EU constraints in areas not reserved to Westminster under the devolution Acts are removed on leaving the EU, these powers should flow back to come under the immediate competence of the devolved administrations.

30. The Minister told us in evidence that "more than 80 new competencies" will transfer to the devolved level immediately the UK exits the EU, and no competence that devolved institutions currently exercise is being removed.⁴⁴ The Minister said that that the allocation of powers in the Scotland Act 1998, as debated in 1997 and 1998, was based on the "assumption by everybody ... that there were certain things where authority would be exercised at European level".⁴⁵ This statement makes clear the Government's understanding of devolution as a set of devolved powers limited by the EU-level authority. He further explained that for the UK Government to say that a matter is devolved:

It means that powers have been conferred by this Parliament upon a democratically elected body and an Executive in part of the kingdom, together with either a complete or fair degree of autonomy in how those powers should be exercised.⁴⁶

41 [Empowerment and Responsibility: Legislative Powers to Strengthen Wales](#), Commission on Devolution in Wales, March 2014, R1

42 [Empowerment and Responsibility: Legislative Powers to Strengthen Wales](#), Commission on Devolution in Wales, March 2014, 4.3.3

43 [Q13](#) [Page]

44 [Q789](#) [Lidington]

45 [Q788](#)

46 [Q787](#)

31. The UK's withdrawal from the European Union was an eventuality not contemplated at the time of the establishment of the various devolution settlements. Brexit has exposed problems arising under those settlements, most particularly the need to ensure UK-wide regulatory consistency where necessary to preserve the integrity of the UK's internal market and to ensure that the ability of the UK Government to conclude international agreements, especially free trade agreements, is not constrained. **Although, there remains some variation in the different devolution settlements, the shifting of Wales from a conferred to a reserved powers model indicates that the reserved powers model is now the constitutionally preferred model for devolution within the UK. Powers are not conferred by the UK Parliament onto the devolved legislatures, rather particular matters are reserved to the UK Parliament and all other areas devolved.**

32. *The Government must recognise that the reserved powers model of devolution means that powers are devolved by default and not conferred by the UK Parliament. This should be set out as the first item of an expanded Memorandum of Understanding on Devolution. Nevertheless, we acknowledge the practical difficulties that arise from Brexit, and the Government's need to find practical solutions to address them (see Chapter 6).*

4 European Union (Withdrawal) Bill and the devolved Administrations

The purpose of the European Union (Withdrawal) Bill

33. The European Union (Withdrawal) Bill was published and received its First Reading in the House of Commons on 13 July 2017. Eleven months and 13 days later it received Royal Assent on 26 June 2018. The Government's stated purpose for the Bill and, subsequently, the Act is "to provide a functioning statute book on the day the UK leaves the EU" with the intention that "the same rules and laws will apply on the day after exit as on the day before".⁴⁷

34. When the Bill was introduced, the devolved institutions recognised the need to provide clarity and certainty and to preserve a functioning legal system after leaving the EU. In their initial Legislative Consent Memorandums, both the Scottish and Welsh Governments supported the purpose and intent of the Bill, although they declined to give legislative consent to it at that early stage.⁴⁸ It soon became clear, however, that there was a difference of opinion over where the legislative authority over certain areas of policy previously held at EU level ("retained EU law") would lie within the existing UK constitutional arrangement, for example, who would have the authority to change laws and regulations in relation to areas of devolved competence such as fisheries. In brief, the UK Government position, shown through the drafting of the original Clause 11 of the Bill, was to return legislative authority to Westminster by default, while the position of the Scottish and Welsh Governments was for legislative authority on non-reserved matters to return to Holyrood and Cardiff Bay.

Devolved Governments' concerns surface

35. Only a fortnight before the European Union (Withdrawal) Bill's publication, the devolved administrations in Scotland and Wales were shown the Bill. Michael Russell MSP, Scottish Government Minister for UK Negotiations on Scotland's Place in Europe, said that this was not a draft of the Bill for consultation, but rather the finalised Bill.⁴⁹ There was no consultation prior to this on the Bill.⁵⁰ Ken Thomson, Scottish Government Director General for Constitution and External Affairs, said this lack of consultation was not in line with the established convention that when the UK Government is contemplating legislation that impacts a devolved area, it will share the legislation in draft and work through any issues over a period of many months. This process is designed to ensure that, by the time a Bill is published, the Westminster and devolved Governments have reached agreement, and devolved Ministers are in a position to recommend legislative consent.⁵¹

47 [EUROPEAN UNION \(WITHDRAWAL\) ACT 2018 EXPLANATORY NOTES](#), Para 10

48 Legislative Consent Memorandum European Union (Withdrawal) Bill, Scottish Government, LCM-55-10, Session 5 (2017); Legislative Consent Memorandum European Union (Withdrawal) Bill, Welsh Government, September 2017

49 [Qq563-564](#)

50 [Qq563-564](#); [Q565](#) [Thomson]

51 [Q565](#) [Thomson]

36. As soon as the European Union (Withdrawal) Bill was published, the Scottish and Welsh Governments expressed their concern about the Bill to the UK Government. The First Minister of Wales, Rt Hon Carwyn Jones AM, and First Minister of Scotland, Rt Hon Nicola Sturgeon MSP, issued a joint statement calling the Bill a “naked power grab”.⁵² They stated that the Bill did not deliver on the UK Government promise to return legislative powers from the EU to the devolved administrations, but rather returned those powers to the UK Government and Parliament, imposing new restrictions on the devolved legislatures.⁵³

37. Professor Richard Rawlings, Professor of Public Law at the University College London, told us that this accusation of a “power grab” went to the very heart of the controversy over the Bill because there are (at least) two different constitutional perspectives on how devolution is conceived.⁵⁴ Professor Alan Page, Professor of Public Law at the University of Dundee, asserted that this comes down to a difference in view as to what is and is not devolved (discussed above in Chapter 3).⁵⁵

38. Under the original Clause 11 of the Bill, legislative competence would automatically revert to Westminster in those areas of EU law retained in UK law under the Bill. From exit day, these areas of retained EU law could only be modified by devolved legislatures if expressly allowed either through the European Union (Withdrawal) Bill itself or through an Order in Council. In our report *Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*, published in November 2017, we highlighted the serious concerns that had been raised in relation to this approach in the Bill to the devolution settlements.⁵⁶ In particular we commented on the “constitutionally insensitive” nature of the Government’s approach.⁵⁷

The Sewel Convention

39. As it became clear that there had been a significant erosion of trust between the UK Government and the devolved administrations (which we examine at the end of this chapter), it began to look as though the UK Government and the devolved administrations would be unable to resolve their differences through “mature political debate”, as had been envisaged by Lord Sewel during the passage of the Scotland Act 1998.⁵⁸ At that point, the spotlight turned to examination of the Sewel Convention and its provisions.

40. The Sewel Convention derives from a commitment made on behalf of the Government by Lord Sewel during the passage through Parliament of the Scotland Bill, “that Westminster would not normally legislate with regard to devolved matters in

52 Scottish Government, [EU \(withdrawal\) Bill](#), 13 July 2017; Welsh Government, [Joint statement from First Ministers of Wales and Scotland in reaction to the EU \(Withdrawal\) Bill](#), 13 July 2017

53 Scottish Government, [EU \(withdrawal\) Bill](#), 13 July 2017; Welsh Government, [Joint statement from First Ministers of Wales and Scotland in reaction to the EU \(Withdrawal\) Bill](#), 13 July 2017

54 [Q4](#) [Rawlings]

55 [Q4](#) [Page]

56 First Report of the Public Administration and Constitutional Affairs Committee Session 2017–19, [Devolution and Exiting the EU and Clause 11 of the European Union \(Withdrawal\) Bill: Issues for Consideration](#), HC484, 28 November 2017

57 First Report of the Public Administration and Constitutional Affairs Committee Session 2017–19, [Devolution and Exiting the EU and Clause 11 of the European Union \(Withdrawal\) Bill: Issues for Consideration](#), HC484, 28 November 2017, para 41

58 HL Deb 21 Jul 1998 Vol 592 c [791](#)

Scotland without the consent of the Scottish parliament”.⁵⁹ If problems did arise between the Scottish Executive (Government) and the UK Government the intention would be to resolve such matters through mature political dialogue. Only at a point of total impasse should the “ultimate route” be taken, with the UK Parliament enacting primary legislation to change the reserved matters listed in Schedule 5 of the Scotland Act 1998.⁶⁰

41. The Sewel Convention had been considered a constitutional convention and an important feature of the devolution settlement since devolution to Scotland in 1998. The Convention was set out in the *Memorandum of Understanding (MoU)* with the devolved institutions first in 2001 and included in every updated MoU since.⁶¹ In 2014, the Smith Commission recommended that the Sewel Convention be placed on a statutory footing.⁶² This recommendation was adopted in the Scotland Act 2016 which amended the Scotland Act 1998 to set out the Sewel Convention in section 28(8).⁶³ The Wales Act 2017 also set out the Sewel Convention, amending the Government of Wales Act 2006 to set out the Sewel Convention in section 107(6).

Case law and the Sewel Convention

42. Case law surrounding the Sewel Convention, as set out below, has clarified that it has no justiciable status in law, but in doing so has created ambiguity over the Convention’s status in the UK. The justiciability of the Sewel Convention was considered by the UK Supreme Court in *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Miller)*.⁶⁴ The Majority judgement found that “the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary, which is to protect the rule of law”.⁶⁵ The judgement made clear that political conventions, regardless of their potentially fundamental constitutional importance, are not enforceable at law. Nevertheless, the Supreme Court also said that its judgement does not diminish the standing of political conventions and, with particular reference to the Sewel Convention, its “important role in facilitating harmonious relationships between the UK Parliament and the devolved legislatures”.⁶⁶

59 HL Deb 21 Jul 1998 Vol 592 c [791](#)

60 HL Deb 21 Jul 1998 Vol 592 c [791](#)

61 Memorandum of understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee, Cm 5240 18 December 2001

Devolution: memorandum of understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee, Cm 7864, 29 March 2010

Memorandum of Understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, 30 June 2011

Memorandum of understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee. September 2012

Memorandum of Understanding and supplementary agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, October 2013

62 The Smith Commission: Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014, para 22

63 Scotland Act 2016, section 2

64 *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union* [2017] UKSC 5

65 *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union* [2017] UKSC 5, para 151

66 *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union* [2017] UKSC 5, para 151

43. The Supreme Court was not silent on the significance of the Scotland Act 2016. The Court held that the insertion of section 63A into the Scotland Act 1998 which made the Scottish Parliament and Scottish Government a permanent part of the UK's constitutional arrangements, "signifies a commitment of the UK Parliament and government to those devolved institutions".⁶⁷ In this context, the judgement of the Supreme Court is that the purpose of legislative recognition of the Sewel Convention "was to entrench it as a convention".⁶⁸

44. Professor Gordon Anthony, Professor of Law at Queens University Belfast, said that the *Miller* judgement was a "very strong reassertion of Parliamentary Sovereignty", after "a series of very important statements within the House of Lords and then the Supreme Court that moved towards an idea of divided sovereignty".⁶⁹ Both Professor Page and Professor Anthony told us that the implication of the *Miller* case is that the courts will not police or even discuss the application of the Sewel Convention, because it is not legally enforceable. The consequences and implications of the convention are a matter for politicians, not the judiciary.⁷⁰ Professor Page, commenting on the Supreme Court's ruling, considered that placing the convention into primary legislation "represents a solemn and binding commitment. It is the most solemn expression of intention that you can provide under our constitution."⁷¹

45. To summarise, the *Miller* judgements in effect recognised that the Sewel Convention had been set out in legislation to entrench the convention, but this had not made it legally enforceable, clarifying that it was a matter for politicians, not the judiciary. Despite explicitly avoiding commenting on the Sewel convention, this decision was seen by many as a strong reassertion of Parliamentary sovereignty after the idea of shared sovereignty had been seen to be gaining some traction. This gives context to the UK Government's view of Parliamentary sovereignty and its assertion of that in the original clause 11 of the European Union (Withdrawal) Bill.

The compromise and the impasse

46. After extensive negotiations with the devolved administrations in Scotland and Wales, through the formal mechanism of the Joint Ministerial Council (European Negotiations) (JMC(EN)) and through informal bilateral discussions. The UK Government introduced amendments to the European Union (Withdrawal) Bill and parallel assurances, in the form of an inter-governmental agreement, which were sufficient to reassure the Welsh Government, and the National Assembly for Wales gave legislative consent.⁷² These amendments and assurances were, however, not sufficient for the Scottish Government and the Scottish Parliament declined to give legislative consent to the Bill. This meant that

67 R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union [2017] UKSC 5, para 149

68 R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union [2017] UKSC 5, para 149

69 [Qq142–145](#) [Anthony]

70 [Q7](#) [Page]; [Q182](#)

71 [Q9](#) [Page]

72 Cabinet Office, [Government Amendments to Clause 11 of the EU Withdrawal Bill](#), 25 April 2018; Cabinet Office, [Intergovernmental Agreement on the European Union \(Withdrawal\) Bill](#), 25 April 2018; Cabinet office, [Letter from Mark Drakeford to the Chancellor of the Duchy of Lancaster](#), 25 April 2018; Cabinet Office, [Letter from the Chancellor of the Duchy of Lancaster to Mark Drakeford](#), 25 April 2018

when the European Union (Withdrawal) Act 2018 received Royal Assent on 26 June 2018, it became the first Act of the UK Parliament to be passed without the Legislative Consent of a devolved legislature.

47. Professor Adam Tomkins MSP, Shadow Cabinet Secretary for the Constitution, Communities, Social Security and Equalities, argued that the amendments tabled at Lords Report Stage had effectively reversed the constitutional presumption in the original Clause 11. He stated that:

It is one of the founding principles of devolution in Scotland, and has been since 1999—and now also in Wales—is that everything is devolved apart from that which is expressly reserved under the schedules to the Scotland Act 1998. The effect of the original clause 11 was unfortunately to turn that around. The amendments published by the Government last week reverse that.⁷³

48. The Government’s amended Clause 11 ended up renumbered as Clause 15 and then became section 12 of the Act. Under the new Clause 15, devolved legislatures could modify retained EU law within their areas of competence, unless the UK Government specified a restriction by regulation under affirmative procedure. The new Clause 15 strengthened the requirement for the UK Government to “consult” with relevant devolved legislatures before passing regulations. Rather than just a duty to consult, UK Ministers would have to share draft regulations with the devolved Governments and would not be able to lay regulations in the UK Parliament until the devolved legislatures had made a decision on whether to give consent, or 40 days had lapsed.

49. A failure to provide consent, either via a motion refusing consent or not passing a motion at all would not, however, be fatal to the regulation. If a UK Minister laid a draft without the consent of a devolved legislature, an explanatory statement would be required. Therefore, in effect this is a power to delay and highlight the disagreement, not to veto.

50. Clause 15 also included a sunset provision that allowed regulations to be made for a period of two years after exit day (the same sunset provision as in clauses 7 and 8 of the Bill). Regulations made under the Bill cannot be modified by devolved institutions for a period of five years from the date they are made. After a five-year period, an Act of a devolved legislature can revoke regulations. Alongside the Government’s amendments to the Bill described above, the UK Government published an Intergovernmental Agreement on the European Union (Withdrawal) Bill.⁷⁴ This was agreed between the UK and Welsh Governments and provides further explanation of the amendments and commitments on the establishment of Common Frameworks.

51. The contradictory nature of the situation was not lost on Professor Keating who, when discussing the Sewel Convention in evidence to the inquiry, argued that, while a convention is not, as *Miller* made clear, binding in law, “it is not just a political agreement either. Conventions are the basis for our constitution”.⁷⁵ He said that, on the one hand, the UK Government has accepted the Sewel Convention and extended its application to secondary legislation under the European Union (Withdrawal) Act 2018; but, on the other

73 [Q530](#) [Tomkins]

74 Cabinet Office, [Intergovernmental Agreement on the European Union \(Withdrawal\) Bill](#), 25 April 2018

75 [Q503](#)

hand, one could also argue that “the Sewel Convention post the Scotland Act 2016 and the Wales Act 2017 has failed its first test because ... just when it really matters ... the UK Government says ultimately it does not make any difference.”⁷⁶

52. The Minister said to us that he had taken part in “extensive” discussions with the devolved Governments which resulted in what he described as “radical changes” to the Bill in regards the clauses concerning the devolved institutions.⁷⁷ The Minister also said, “I have been unable to accept ... that the Sewel convention should be interpreted as meaning something that it does not”, and should not be interpreted as giving a devolved Government or Parliament a right of veto over a UK-wide framework.⁷⁸

53. We are pleased that the European Union (Withdrawal) Act goes some way towards addressing the concerns raised in our 28 November 2017 report on Clause 11, and we believe it is unfortunate that an agreement acceptable to each of the UK, Welsh and Scottish Governments was not ultimately reached on that basis. However, we note that while the mechanisms for providing a functioning statute book on exit day in relation to the devolved institutions have been altered to account for many of the original concerns expressed by the devolved institutions, the underlying UK Government approach to the issue has not changed.

The Sewel Convention and the erosion of trust

54. As detailed above the Welsh and Scottish Governments were unhappy with UK Government’s initial approach under the original Clause 11, and the Scottish Government was still not content after that clause had been amended (and had become Clause 15). This led the Scottish Government and Parliament to withhold legislative consent for the European Union (Withdrawal) Bill, a further breakdown of trust between the two Governments and has resulted in much discussion about the effectiveness and future use of the Sewel Convention.

55. Rt Hon Carwyn Jones AM, First Minister of Wales, told us in oral evidence before the Bill received Royal Assent that he and the Welsh Government were working hard with the UK Government to reach an agreement on amendments to the European Union (Withdrawal) Bill. He also considered, however, that were the UK Parliament to override the National Assembly for Wales, though it would be legally correct, it would also be “wholly undemocratic”.⁷⁹ Ultimately, the Welsh Government and the UK Government reached an agreement, through the intensive negotiations the Minister referred to, and this led to the National Assembly for Wales passing a Legislative Consent Motion by 46 votes to 9.⁸⁰

56. It was different in Scotland, however, as an agreement was not reached. Michael Russell MSP, Scottish Government Minister for UK Negotiations on Scotland’s Place in Europe, said that it was the Scottish Government’s first preference to give legislative consent to the European Union (Withdrawal) Bill, but that it had been unable to reach an agreement with the UK Government. The Scottish Parliament voted 93 to 30 against a

76 [Q506](#)

77 [Q777](#)

78 [Q777](#)

79 [Q200](#)

80 The Welsh motion [NDM6722](#); see also [Legislative Consent and the European Union \(Withdrawal Bill \(2017–19\)\)](#), House of Commons Library Briefing paper 08275, 23 May 2018

Legislative Consent Motion.⁸¹ When the UK Parliament continued to pass the European Union (Withdrawal) Act 2018, without the consent of the Scottish Parliament, Michael Russell MSP described it as a “direct breach of the Sewel Convention”.⁸² He argued that the Sewel Convention was intended to ensure that Scotland could not be ignored and that the concerns of the Scottish Parliament would be heeded. He continued

... the convention is there to prevent Westminster from legislating without our consent in areas that are within our competence, or from changing our powers, which is essential to the security and stability of devolution.⁸³

57. Michael Russell MSP also drew attention to the words of Rt Hon David Mundell MP, Secretary of State for Scotland, who said:

While the devolution settlements did not predict EU exit, they did explicitly provide that in situations of disagreement the UK Parliament may be required to legislate without the consent of devolved legislatures.⁸⁴

58. Michael Russell MSP argued that the position expressed by the Secretary of State for Scotland directly contradicted the point of the Sewel Convention, which was that, in cases of disagreement, the UK Parliament should not legislate without the consent of the relevant devolved legislature.⁸⁵

59. The Secretary of State for Scotland stated the UK Government’s view that, throughout the Bill’s passage, the Government demonstrated its “commitment to the Sewel Convention and the principles that underpin our constitution. We have followed the spirit and letter of the devolution settlement at every stage.”⁸⁶ As evidence of this, the Minister referred to intense negotiations and work done by all sides, leading to what he described as “radical changes” to the Bill made by the UK Government.⁸⁷

60. When we questioned the Minister about the apparent breakdown of trust, he acknowledged that lessons could be learned from the handling of the European Union (Withdrawal) Bill, but emphasised the need for urgency with the Bill given the two-year Article 50 deadline, which had left little time for reflection and consultation. He told us that:

Looking back, a lesson I would draw is that of the need for intense and frequent consultation after a Bill is published and, obviously, ideally, one would want to know beforehand what the question was.⁸⁸

He emphasised the big difference in positions at the start of the Bill process and the intensive work on all sides to reach a position that he thought respected the interests of all parties.⁸⁹

81 The Scottish motion ([S5M-12223](#))

82 SP OR June 19 2018 col [14](#)

83 SP OR June 19 2018 col [14](#)

84 HC Deb 14 Jun 2018 Vol [642](#) col [1122](#)

85 SP OR June 19 2018 col [14](#)

86 HC Deb 14 Jun 2018 Vol [642](#) col [1120](#)

87 [Q777](#)

88 [Q770](#)

89 [Q770](#)

Definition of “not normally”

61. Ultimately, much of the disagreement over the Sewel Convention came down to the definition of the term “not normally” in the convention: “Westminster would *not normally* legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament” [emphasis added].⁹⁰ The Minister told us that leaving the EU creates “a quite exceptional circumstance” and as such these “are not normal times”.⁹¹ Both the Minister and the Secretary of State for Scotland were quick to point out that Michael Russell MSP himself and also, subsequently, Lord Sewel had acknowledged that “these are not normal times”.⁹² The Minister was also very clear that the UK Government was not willing to give the Scottish or any devolved government what he described as “a veto”.⁹³

62. Michael Russell MSP had an alternative view of the use of the term “not normally” in the convention:

“Not normally” has not been defined, but has been understood to mean extreme circumstances that would be clear and obvious to all. However, the current UK Government is changing that definition, too. Now it means whenever it wants to get its way on whatever subject it chooses—nothing more or less. “Normal” is what the UK Government says it is, and disagreement with the UK Government is “not normal”. That is not how devolution was designed, or how it is meant to operate.⁹⁴

63. The difficulties caused by the term “not normally” were considered by our predecessor Committee in its report *Constitutional implications of the Government’s draft Scotland clauses*.⁹⁵ The report described the term as “clearly problematic”.⁹⁶ It recommended that, either the circumstances under which the UK Parliament could legislate on matters covered by the Convention without the consent of the Scottish Parliament be set out in detail; or that a requirement be made for a minister to set out the reasons for legislating without consent of the Scottish Parliament.⁹⁷

64. It is highly regrettable that there was little consultation with devolved Governments in advance of the publication of the European Union (Withdrawal) Bill, as earlier consultation could have possibly avoided much of the acrimony that was created between the UK Government and the devolved Governments. When the UK Government is considering legislation that falls within a devolved competence, draft legislation should preferably be shared far enough in advance for a devolved government to identify and work through any issues in the legislation with the UK Government.

90 HL Deb 21 Jul 1998 Vol 592 c [791](#)

91 [Q788](#)

92 [Q788](#); HC Deb 14 Jun 2018 Vol 642 [col 1120](#)

93 [Q778](#); [Q784](#)

94 SP OR June 19 2018 col 14

95 The ninth report of the Political and Constitutional Reform Committee session 2014–15, [Constitutional implications of the Government’s draft Scotland clauses](#), HC1022, 22 March 2015

96 The ninth report of the Political and Constitutional Reform Committee session 2014–15, [Constitutional implications of the Government’s draft Scotland clauses](#), HC1022, 22 March 2015, para 70

97 The ninth report of the Political and Constitutional Reform Committee session 2014–15, [Constitutional implications of the Government’s draft Scotland clauses](#), HC1022, 22 March 2015, para 70

65. It is clear that, while the Sewel Convention was entrenched in statute by the UK Parliament through the Scotland Act 2016 and the Wales Act 2017, no corresponding parliamentary procedures have been established to recognise the Convention in the legislative process. Nor has thought been given to how the devolved legislatures might more effectively communicate their legislative consent decisions and have these officially taken account of as a Bill progresses through the UK Parliament.

66. *The House of Commons and the House of Lords should consider establishing a procedure to acknowledge more clearly that a Bill is in an area that requires legislative consent and whether that consent has been given by a devolved legislature; and where such consent cannot be obtained, what procedures should follow.”*

67. It is clear from the evidence to our inquiry that there is a considerable level of ambiguity surrounding the Sewel Convention. It is unclear whether Lord Sewel’s commitment on the floor of the House of Lords is to be taken as the definitive statement of the Convention and exceptions to it, or whether the Convention through the practice of this commitment developed and grew into a convention that the UK Government should never legislate without consent of a devolved legislature, notwithstanding the supremacy of the UK Parliament and its ability to legislate in an abnormal situation. Such ambiguity is apparent from the divergent views of the UK Government and the devolved administrations, as well as those of academic commentators.

68. In the case of the European Union (Withdrawal) Bill, the Government chose to interpret the Sewel Convention in such a way that legislative consent from the Scottish Parliament was deemed unnecessary because of the very particular circumstances of the Bill. That interpretation of the Sewel Convention was contested by the Scottish and Wales Governments. *We recommend that the Government sets out a clear statement of circumstances under which legislative consent is not required by the Sewel Convention in future in both the Devolution Policy for the Union that we have recommended it should state and in the Memorandum of Understanding between the UK Government and the devolved institutions.*

5 The English Question

69. Where does England fit into the UK’s constitutional arrangements? How should England be governed now that there has been significant devolution of power to Scotland, Wales and Northern Ireland? The issue underlying these questions has become known as the “English Question”.⁹⁸ Professor James Mitchell, Professor of Public Policy at University of Edinburgh, told us that by far the biggest asymmetry in the devolution settlement relates to England.⁹⁹ The position of England within the UK constitution, as Professor Wyn Jones put it, “is the elephant in the room that we constantly ignore”.¹⁰⁰

70. Professor Richard Rawlings, Professor of Public Law at University College London, referred to the conclusion of the Report of Kilbrandon Commission, which rejected devolution to both England as a whole and to any English region.¹⁰¹ The Kilbrandon Commission found no advocate of UK federalism that “succeeded in producing a federal scheme satisfactorily tailored to fit the circumstances of England”.¹⁰² The report also found that federalism would require either a dominant English Parliament or English regional assemblies, which raise their own questions of powers and imbalance.¹⁰³ Professor McEwen, noted that the UK is unusual in its asymmetric distribution of power and “the absence of devolution within England is a barrier to developing the processes of co-decision that you sometimes see in federal states or more uniformly decentralised states.”¹⁰⁴

71. By population, England is much larger than the other nations that make up the Union. Rt Hon Carwyn Jones AM, First Minister of Wales, acknowledged the issue of England’s size in relation to inter-governmental decision-making mechanisms. He said that it would not be right to have a situation where the sheer size of England is ignored.¹⁰⁵ The House of Lords Constitution Committee reported in 2016 that the disproportionate size of England would be likely to become a major obstacle and source of instability and that there was no comparable federal system worldwide.¹⁰⁶

Brexit and devolution in England

72. In this report, the term “devolution” is used in its broadest sense, as it is widely used, not just to include the devolution of legislative powers, but also to include what would more precisely be described as “decentralisation”, through the increased delegation of powers and functions to local government.

73. Dr Sarah Ayres, Reader in Public Policy and Governance, University of Bristol, told us that the questions arising from what has been described as the “unfinished business of English devolution”, including the lack of a clear constitutional settlement for England, are likely to come to the surface post-Brexit and the answers to those questions could yet

98 [Q438](#) [Ayres]

99 [Q155](#)

100 [Q151](#)

101 The Report of the Royal Commission on the Constitution 1969–73

102 The Report of the Royal Commission on the Constitution 1969–73

103 The Report of the Royal Commission on the Constitution 1969–73

104 [Q79](#)

105 [Q232–3](#)

106 Tenth Report of the House of Lords Constitution Committee 2015–16, [The Union and Devolution](#), HL149, 25 May 2016

go either way.¹⁰⁷ She considered that the UK withdrawal from the EU has the potential to either “further marginalise or, by contrast, appease an increasingly disenfranchised ‘English political community’”.¹⁰⁸

74. While there has been progress in English devolution with the introduction of metropolitan mayors and combined authorities, Dr Ayres argued that the danger was that the momentum would be lost due to the focus on Brexit. She did, however, think that Brexit could be viewed as an opportunity to deal with the long-standing English Question.¹⁰⁹

75. Councillor Kevin Bentley, Chair of the Local Government Association (LGA) Brexit Task and Finish Group, also considered that leaving the EU presents England with new challenges but also new opportunities.¹¹⁰ He said that Brexit is a “golden opportunity to change things ... it is a chance to write a new chapter in the unwritten constitution”.¹¹¹ On this basis, he thought that greater powers and funding should be devolved or, at least, decentralised, to local government.¹¹² Rebecca Lowe, Director of FREER, also told us that Brexit represents an opportunity to address important normative questions about the idiosyncratic nature of representation in the UK. She thought that much could be done to give real power to local authorities within the existing decentralised system and she advocated fiscal decentralisation and taxing powers.¹¹³

76. Dr Joanie Willet, Lecturer in Politics University of Exeter, told us about research that shows that a desire to take back control from Brussels underpinned the vote for Brexit but that this feeling was rooted in people’s overall desire to take back control of their local areas and have a meaningful say in the governance of their local areas.¹¹⁴ Ed Cox, Director of IPPR North, also told us that in many areas of England there is a strong sense that people are being ignored, not only by Brussels, but also by Westminster, and that “Brexit was a cry of disempowerment”.¹¹⁵

77. These expectations of empowerment in England following Brexit would, however, need to be managed carefully. Dr Willet told us that the language of devolution was important. In most people’s minds, devolution means something which looks like the legislative and executive devolution to Scotland, Wales and Northern Ireland. She argued that calling the executive decentralisation to the city regions (in the shape of new mayors and combined authorities) “devolution deals” could lead ordinary people to think that these new city regions would be able to do more than they actually have the power to do. This mismatch in expectations could have profound consequences for the momentum of devolution to the English cities and regions unless a clearer understanding of this decentralisation is set out.¹¹⁶

107 [Q438](#)

108 Sarah Ayres ([DEU0031](#))

109 [Q438](#) [Ayres]

110 [Q362](#)

111 [Q366](#)

112 [Q366](#)

113 [Q438](#) [Lowe]

114 [Q438](#)[Willet]

115 [Q438](#) [Cox]

116 [Q447](#)

Devolution or decentralisation in England

78. The extent of “English devolution” is very limited in comparison with devolution to Scotland, Wales and Northern Ireland.¹¹⁷ In 1998, a referendum was held in London, the result of which was a 72% vote in favour of the creation of the Greater London Authority (GLA) and an elected Mayor of London.¹¹⁸ As part of the then Labour Government’s constitutional project for England, regional assemblies were planned in North East England, North West England and Yorkshire and Humber. While referendums were planned in all three regions, only the one for North East England took place. This was defeated by a majority of nearly 78%, stalling devolution within England for over a decade.

79. Immediately after the ‘No’ vote in the Scottish Independence referendum in 2014, the then Prime Minister, Rt Hon David Cameron, announced, that in addition to the devolution of further powers to Scotland, Wales and Northern Ireland, his Government would look to “empower our great cities”.¹¹⁹ “Devolution deals” were negotiated between the UK Government and local authorities around England, with the first being announced for the Greater Manchester Combined Authority in November 2014.¹²⁰ The Rt Hon George Osborne, then Chancellor of the Exchequer, outlined the purpose of the deals saying,

We will hand power from the centre to cities to give you greater control over your local transport, housing, skills and healthcare. And we’ll give [you] the levers you need to grow your local economy and make sure local people keep the rewards. But it’s right people have a single point of accountability: someone they elect, who takes the decisions and carries the can. So, with these new powers for cities must come new city-wide elected mayors who work with local councils. I will not impose this model on anyone. But nor will I settle for less.¹²¹

The uneven devolution of power in England

80. The powers and funding that are part of the “devolution” deals are agreed on a case by case basis between the UK Government and the devolved authority.¹²² The core powers that have been delegated to areas such as the Greater Manchester Combined Authority and the West Midlands Combined Authority include: restructuring the further education system; business support; the Work Programme; EU structural funds; fiscal powers; integrated transport systems; and planning and land use. These “deals” are conditional upon Treasury approval. They transfer substantial responsibility for spending and delivery, but not legislative or financial autonomy.

117 [The Greater London Authority](#), Commons Library briefing paper 05817

118 The result was: Yes – 1,230,715 (72.0%); No – 478,413 (28.0%). Turnout was 34.1%.

119 BBC, [David Cameron’s statement on the UK’s future](#), 19 September 2014

120 As of 2016 13 deals were agreed, but three of them subsequently collapsed. Greater Manchester, Sheffield City Region, West Yorkshire, Cornwall, North East (rejected), Tees Valley, West Midlands, Liverpool City Region, Cambridgeshire / Peterborough, Norfolk / Suffolk (rejected), West of England, Greater Lincolnshire (rejected).

121 HM Treasury, [“Chancellor on building a Northern powerhouse”](#), 14 May 2015

122 [Devolution to local government in England](#), Commons Library paper 07029

81. The evidence we have heard on “English devolution” has shown that the landscape of local government in England is very complex. The LGA pointed out that with combined authorities, mayors, counties, districts, boroughs and cities as well as unitary councils, there is no standard model across England.¹²³

82. Andy Street, Mayor of the West Midlands Combined Authority, Rt Hon Andy Burnham, Mayor of the Greater Manchester Combined Authority and Rt Hon Sadiq Kahn, Mayor of London, all agreed that there had been progress towards devolving power over some policy areas such as transport. In other areas, however, the competence and powers were more decentralised than devolved, the difference being that while execution was the responsibility of a lower tier of government, power and policy direction was still retained by central Government. Moreover, Rt Hon Sadiq Khan told us that devolution was usually effected through an Act of Parliament and brought proper resources and proper autonomy, whereas decentralisation usually involved no legislation—the central Government could simply change its mind and take power back at a later date.¹²⁴

The push for further devolution in England

83. Andy Street advocated adoption of the model of English devolution described by Rt Hon Michael Heseltine, Rt Hon George Osborne and Rt Hon David Cameron, involving financial devolution that would give English regions a single fund which they could spend as they wish.¹²⁵ Rt Hon Andy Burnham also argued for a single fund for discretionary spending, rather than funding streams decided by the Government. He argued this would allow funding to be allocated according to local priorities rather than the priorities of central Government, and stressed that “it is not devolution if it is imposed”.¹²⁶

84. This process of decentralisation allows lower tiers of Government to focus on policies that are a priority for the local area but may be a low priority for national Government. Both the LGA and all three mayors who gave oral evidence to us identified powers relating to skills and training as an area ripe for immediate decentralisation.¹²⁷ Andy Street told us that these powers were necessary for the West Midlands properly to pursue their local industrial strategy responsibilities.¹²⁸ Rt Hon Andy Burnham said that skills may be quite a low priority for central Government, but local business places it at the top of the list at the local level.¹²⁹ Rt Hon Sadiq Kahn told us that in Greater London he was able to coordinate local employers and local education providers so that young people were getting the skills they needed to get jobs in their local area.¹³⁰ He argued that the metropolitan mayors are in a far better position to understand the needs and requirements of local employers than an education provider talking only to the Department for Education.¹³¹

123 [Q390](#)

124 [Q852](#)

125 [Q610](#) [Street]

126 [Qq742–743](#) [Burnham]

127 [Q613](#); [Qq696–699](#); [Q855](#); [Q362](#)

128 [Q613](#)

129 [Q696](#)

130 [Q854](#)

131 [Q855](#)

85. The Minister said:

It is not a question that I have personally considered and, in fairness, that would be a matter primarily for the Secretary of State for Education and the Secretary of State for BEIS to decide whether and how to take forward.¹³²

The UK Government's two hats and the representation of English regions

86. The difficulty of the position of the UK Government as having to represent the interests of England (and its regions) as well as the UK as a whole was an issue raised throughout the inquiry. Professor Charlotte Burns, Professorial Fellow University of Sheffield, said that leaving the EU would highlight the asymmetries inherent in the constitutional settlement, and in particular emphasised that “there is no formal representation for England in the devolution settlement, which can lead to English and UK interests being conflated”.¹³³ Professor Rawlings described this situation as the UK Government’s “two hats”, as it wears at the same time the hat of the UK-wide Government and the hat of the Government of England. This dual role also creates dual concerns: on the one hand that the UK Government will prefer the interests of England over those of the other constituent nations of the UK;¹³⁴ and on the other hand, that the different regional and local interests in England will be ignored by a UK Government acting for the whole of England.

87. As evidence of the first concern about preferential treatment, Rt Hon Carwyn Jones AM, First Minister of Wales, gave the example of fishing quotas skewed by Whitehall, intentionally or unintentionally, in favour of England.¹³⁵ Referring to the second concern about regional and local interests in England, Andy Street, said that the English regions’ voice has not been heard as loudly as Scottish and Welsh voices in discussions with the UK Government.¹³⁶ He pointed to the absence of institutions representing the English regions to match the institutions of the Scottish Parliament, Welsh Assembly and offices of First Ministers. He did, however, express optimism that, while Mayors do not have the same formal powers as other devolved administrations, they are starting to be viewed as champions and spokespersons, representing the English regions at the national government level.¹³⁷ The Minister said that his ministerial colleagues and their teams hold meetings with local government and Mayors, and it is their role to factor in English considerations to the overall UK position.¹³⁸

88. Andy Burnham agreed that Mayors and Combined Authorities have started to strengthen regional voices in England.¹³⁹ He stated that the UK Government does not represent the interests of the different parts of England effectively due to a London-centric approach. The voices of Wales, Scotland, Northern Ireland and London had all clearly got stronger through devolution, but “as those voices have become louder, the people in the rest of England are saying, ‘What about us?’”.¹⁴⁰ Devolution, he said, “clearly works”, so

132 [Q831](#)

133 Professor Charlotte Burns ([DEU0014](#))

134 Q16 [Rawlings]

135 [Q202](#) [Jones]

136 Q625

137 Q625

138 [Q830](#)

139 Q706 [Burnham]

140 Q726 [Burnham]

the next move should be to extend devolution in England so that “more areas have more have more power to write their own stories” and the governance of England could be rebalanced in favour of cities outside of London.¹⁴¹ The Minister said the UK Government was open to proposals and that cities have presented themselves as the most obvious candidates for devolution so far. However, he said the “real challenge is what devolution means outside the cities.”¹⁴²

89. However, Rt Hon Sadiq Khan, Mayor of London, argued that there is a mistaken assumption that London gets everything, which stems from a confusion between London and Whitehall.¹⁴³ He agreed with Rt Hon Andy Burnham that the democratic deficit in England has given rise to an increasing number of people looking at the devolved administrations in Scotland, Wales and Northern Ireland and wanting the same quality of representation.¹⁴⁴ Rt Hon Sadiq Khan did not think that the UK Government could fairly represent the UK and England at the same time, and argued that there needed to be English representation on bodies like the JMC to advocate for England and its regions at times where the interests of the UK and England were not identical.¹⁴⁵ The Minister said:

It is the responsibility of the Secretary of State and his or her ministerial team to make sure that English interests in the round are properly factored into their consideration of what the overall balance of the UK approach ought to be. It is exactly the same as currently applies when any Department is devising and then framing its approach to a particular piece of EU legislation.¹⁴⁶

90. We heard a substantial amount of evidence on the need to find a fairer and more effective way of representing England within the constitutional apparatus.¹⁴⁷ Andy Street was unsure about exactly what the appropriate format for this would be, but argued strongly that English regions need a seat at the table.¹⁴⁸ Rt Hon Andy Burnham advocated for English representation on bodies like the JMC, but also said “there should be a permanent committee of the English regions”.¹⁴⁹ Rt Hon Sadiq Khan was open to the idea of a committee of the English regions, saying:

The key thing is to make sure that the Government are hearing what our needs and aspirations are, but also for us to meet regularly ... The frustration that the Metro Mayors and I have is that it is almost like we are sometimes treated like a voluntary group going to the Government with a begging bowl, and we want to move away from that to have a relationship where the Government realise that any big decision they take should have Metro Mayors around the table, because it affects our communities as well, on whatever area.¹⁵⁰

141 [Q726](#) [Burnham]

142 [Q833](#)

143 [Q853](#)

144 [Q855](#)

145 [Qq889–891](#)

146 [Q830](#) [Lidington]

147 [Q391](#); [Qq487–490](#);

148 [Qq640–641](#)

149 [Q716](#) [Q748](#)

150 [Q893](#)

91. **At a time when devolution has become an established feature of the UK constitution, the question of England's place in the constitution needs urgently to be addressed. A failure to do so risks a sense of increasing disconnection of the English people from the political system. As part of the Government's devolution policy, there must be a clear statement of how the different parts of England are fairly and effectively being represented. Consideration should be given to extending the existing decentralisation of powers and funding to combined authorities and mayors to a greater number of areas. Moreover, the Government should draw up plans for how decentralisation to more rural areas of England might effectively be pursued.**

92. **The Government should consider whether devolution for England should mean the devolution of whole areas of competence and not piecemeal powers and functions. While a reserved powers model may not be appropriate for England, powers might be conferred on lower tiers of government in discrete areas that can clearly be identified.**

93. **Devolution of areas of competence should also include the devolution of the administrative responsibilities and funding for these areas. By devolving powers, the Government could ease the pressure on Whitehall capacity by allowing decisions in appropriate areas to be made and functions carried out at the most appropriate possible level of government. The Government should start by considering devolving the issue of skills and training away from Whitehall to the local level, with the requisite budgets.**

94. **The problems caused by the dual role of the UK Government as the Government of both the UK and England could be eased by including separate English representation in inter-governmental mechanisms such as the Joint Ministerial Committee Structures. Representation of the English regions on the Joint Ministerial Committee should be given except in specific circumstances when a meeting at national-only level is necessary and appropriate.**

6 Common Frameworks

95. Common Frameworks are required where competences must be shared over a particular matter which is devolved and therefore there must be agreement about policy between Whitehall and the devolved administrations in this area. As an EU member state, the UK as a whole and its component parts individually are subject to EU laws in areas of competence are ceded to or shared with the EU. These laws create EU Common Frameworks establishing common practices across the UK and help maintain a single market throughout the EU. When the UK leaves the EU, the UK will have exclusive competence over these areas and EU law will cease to be applicable within the UK. In order to provide legislative and regulatory continuity as the UK leaves the EU, the European Union (Withdrawal) Act 2018 will import the relevant EU laws into domestic law and preserve EU-related domestic law so that, as far as possible, “the same rules and laws will apply on the day after exit as on the day before”.¹⁵¹

96. The effect of the European Union (Withdrawal) Act 2018 will be that, on the first day after the UK’s exit from the EU, in the areas of competence formerly held by the EU, the law and regulations will be perfectly aligned across the UK. However, according to an assessment carried out by the UK and devolved Governments, 153 areas of EU law intersect with areas of devolved competence.¹⁵² In these areas of intersection, it is clearly open to the devolved nations of the UK to legislate differently and, therefore, diverge if they so choose. While divergence in many of these areas will not necessarily be problematic, in other areas it has been recognised that a common approach or a common framework will be required for the whole of the UK or Great Britain, for example in the areas of food safety and hygiene law and food labelling.

97. Through the Joint Ministerial Committee (European Negotiations) (JMC(EN)), supported by inter-working of officials from all four UK administrations, a series of what have been termed “deep dives” have been carried out. The aims were, first, to identify the 153 intersections between EU law and devolved competence; and, second, to assess where common frameworks will be required. The outcome of this work was the identification of 24 policy areas where legislative frameworks may be required; 82 areas where non-legislative frameworks are being explored; and 49 areas where no further action is considered necessary.¹⁵³

98. The evidence to this inquiry has clearly shown that Common Frameworks in some areas were always going to be necessary after leaving the EU.¹⁵⁴ The key questions around Common Frameworks have been, who will determine when they are necessary; how will the Common Frameworks be decided and agreed upon; and what systems will be put in place to regulate the Common Frameworks for the future? Professor McEwen told us that, for Common Frameworks to be effective, it would be necessary to establish a common language and understanding of what the Frameworks, and the systems and the rules relating to them, mean.¹⁵⁵ We were also told that any Common Framework regime

151 [EUROPEAN UNION \(WITHDRAWAL\) ACT 2018 EXPLANATORY NOTES](#), Para 10

152 [FRAMEWORKS ANALYSIS: BREAKDOWN OF AREAS OF EU LAW THAT INTERSECT WITH DEVOLVED COMPETENCE IN SCOTLAND, WALES AND NORTHERN IRELAND](#)

153 [Memorandum on the European Union \(Withdrawal\) Bill and the Establishment of Common Frameworks](#);

154 [Q22](#) [Page]; [Qq25–26](#) [Rawlings]

155 [Q92](#)

would have to be able to take account of the potential need in Northern Ireland to be able to maintain not only east-west but also north-south Common Frameworks in areas such as energy supply.¹⁵⁶

99. We heard evidence that the appropriate forum for managing Common Frameworks would be the JMC system or whatever inter-governmental system might replace it.¹⁵⁷ Elin Jones, Llywydd (Presiding Officer) of the National Assembly for Wales, argued that if the JMCs take on a more prominent role in shaping Common Frameworks, there will be a need to enhance parliamentary scrutiny of these inter-governmental processes.¹⁵⁸

100. A point of contention which arose around the European Union (Withdrawal) Bill as it was making its passage through Parliament was whether the UK Government alone would create UK Common Frameworks in areas of devolved competence, or whether they would be mutually agreed with the devolved administrations. The concern expressed by the UK Government was that it had to be able “to protect the UK common market [and] to meet our international obligations”.¹⁵⁹ As discussed in Chapter 3, Section 13 of the European Union (Withdrawal) Act allows a UK Minister to make regulations to enable the UK Government to set up Common Frameworks in 24 identified areas. This mechanism was granted legislative consent by the Welsh Assembly, but not the Scottish Parliament. The continued concern of the Scottish Government is that there is nothing in the legislation to prevent the UK Government extending the 24 identified areas, nor to prevent it amending the Frameworks in any way it sees fit.

101. Both the Minister and Lucy Smith, Director General of the UK Governance Group in the Cabinet Office, told us that the Section 12 mechanism would only be used to freeze the regulations for a 5-year period while negotiations on long-term Common Frameworks take place. New, long-term Frameworks would be enshrined in primary legislation, and both this primary legislation and any secondary legislation flowing from it would be subject to the Sewel convention.¹⁶⁰ If current EU rules are frozen as UK Common Frameworks through Section 12 regulations, and if after the 5 year period no new Framework or extension has been agreed, then the restriction on the devolved parliaments and assemblies not to legislate in those areas will lapse, as will the UK Government’s commitment not to legislate in these areas for England.

102. The Minister and Lucy Smith told us that there is currently no plan to publish a white paper on Common Frameworks, nor for there to be a coordinated policy for how Common Frameworks will operate.¹⁶¹ Instead, Common Frameworks will be developed on an issue by issue basis and are likely to differ from one competence to another and from one department to another.¹⁶²

156 [Q150](#); [Q676](#)

157 [Q46](#); [Q79](#); [Q168](#) [Mitchell]; [Q249](#)

158 [Q333](#) [Jones]

159 David Lidington, [United at home Stronger abroad](#), Speech

160 [Q794](#)

161 [Qq809–814](#)

162 [Qq810–813](#)

103. **Common Frameworks, where competences over a particular matter are devolved and therefore there must be agreement about policy between Whitehall and the devolved administrations, will be an important element of our constitutional architecture once the UK has left the EU. We are pleased to note that there is wide acceptance of the necessity and importance of Common Frameworks. The extensive work done by the UK and devolved Governments in collaboration to identify areas where Common Frameworks will be required is a promising sign of future cooperation.**

104. We are, however, concerned that the UK Government does not have a common strategy or policy for how Common Frameworks should operate, and is instead leaving it to different Whitehall departments to develop their own strategies and models. This runs the risk of creating a disparate set of Frameworks with no consistent or coherent rational or operational logic. As these are new systems, it will be challenging enough for civil servants, legislators and end users to come to terms quickly with how Common Frameworks operate. The Government is adding to this challenge by permitting the creation of multiple different systems by different departments and this appears to us to be deeply unhelpful.

105. *The Government should seek to develop a coherent policy for the establishment, operation and monitoring of Common Frameworks, which acknowledges the need for parliamentary scrutiny of these frameworks. This should have been set out in a white paper, for members of all the UK's parliaments and assemblies to examine, but it may now be too late. Instead, the Committee recommends the Government set out a clear set of principles for the governance and operation of Common Frameworks in its Response, or alongside its Response, to this Report.*

106. *We note the five-year sunset provision in relation to the frozen EU Frameworks. The new systems for discussing, agreeing, monitoring and amending Common Frameworks should be set up as soon as possible so that they will be fully operational before the five-year period is ended. In the short-term, we recommend that either a Joint Ministerial Committee for Common Frameworks be set up or individual Joint Ministerial Committees for departmental areas be established in order that experience of joint decision-making can be built up.*

7 Whitehall's attitude towards devolution

107. A persistent theme in the evidence to the inquiry has been that Whitehall has a tendency to hold on to power and resists devolving or passing powers to other institutions and levels of government within the UK political system. Professor Rawlings and Professor Page told us for example that the devolved institutions' experience of interacting with Whitehall added to their concerns over the European Union (Withdrawal) Bill (see Chapter 4).¹⁶³ Professor Page worried that if Whitehall were to take even temporary control of powers flowing back from the EU that "Whitehall departments will find it convenient to hang on to these powers rather than to pass them on".¹⁶⁴ Professor Rawlings recounted the history of what he described as "innate capacities of individual Whitehall departments for power-hoarding through hard-edged legal expressions of institutional self-interest".¹⁶⁵ He also told us that some Whitehall departments have developed particular ways of working which has subconsciously led to some parts of the country being given preferential treatment over others.¹⁶⁶

108. This view of Whitehall was not exclusive to the devolved institutions in Scotland and Wales. Councillor Kevin Bentley, Chair of the Local Government Association (LGA) Brexit Task and Finish Group, said that the LGA's experience was that Whitehall "absolutely" holds on to power and this has been the experience regardless of the party in power. In general, he argued, there had been a tendency towards centralisation in the UK, and it is time for this to be reversed. He brought to our attention the number of services that are directly delivered by local authorities but which are actually controlled by central government from Whitehall.¹⁶⁷

109. Dr Sarah Ayres, Reader in Public Policy and Governance at Bristol University, said that there is considerable variation and inconsistency across Whitehall departments about whether, what and how to devolve power.¹⁶⁸ She noted parallel findings in two of her studies: a 2002 study of Whitehall's response to devolution and her current research.¹⁶⁹ In 2002, she found some departments had embraced devolution, some were starting to warm to the idea, and some were digging in their heels. Similarly, her recent study has shown that some departments have embraced devolution within England, but the big departments such as Health, Education, and Work and Pensions, are still reluctant to cede power.¹⁷⁰

110. Three of the English metropolitan mayors - Andy Street, Mayor of the West Midlands Combined Authority, Rt Hon Andy Burnham, Mayor of the Greater Manchester Combined Authority, and Rt Hon Sadiq Kahn, Mayor of London - all agreed that, in their experience, there was that a tendency for Whitehall to hold on to power and control.¹⁷¹ However, they also noted that their experiences were variable, with a constructive approach to devolution

163 [Q13](#) [Page]

164 [Q13](#) [Page]

165 Richard Rawlings, [Brexit and the Territorial Constitution: Devolution, Reregulation and Inter-governmental Relations](#), Constitution Society, October 2017

166 [Q16](#) [Rawlings]

167 [Q393](#)

168 [Q442](#) [Ayres]

169 [Q465](#) [Ayres]

170 [Q465](#) [Ayres]

171 [Q628](#); [Q695](#); [Q876](#)

of power being taken by some departments on some issues, but a reluctance to engage by other departments on other issues.¹⁷² The area that was identified most clearly by all three mayors, as well as the LGA, was the tendency of Whitehall to retain control in relation to skills. These witnesses all emphasised skills and training as a key area in which power, authority and funding needed to be devolved to the local areas.¹⁷³

111. Our predecessor Committee's Report, *Future of the Union part two: interinstitutional relations in the UK*, noted a lack of understanding of devolution in Whitehall, finding that the views and interests of devolved administrations were often considered as an afterthought.¹⁷⁴ Our predecessor Committee welcomed the fact that this problem was beginning to be recognised, and that some steps were being taken to address the issue.¹⁷⁵ In evidence to this Committee, Ken Thomson, Scottish Government Director General for Constitution and External Affairs, told us that the lack of understanding and knowledge of devolution was still an issue encountered by officials from the Scottish Government when working with colleagues in Whitehall. However, he was also quick to acknowledge that this had been identified as a problem by Whitehall and steps to improve this understanding through initiatives like the Cabinet Office's "Devolution and You" programme, were making a difference.¹⁷⁶

112. Ken Thomson added that, given the size of Whitehall, he thought "expecting everybody in it to be fully conversant with all the detail of the devolution settlement or the issues that arise between Governments would be unrealistic".¹⁷⁷ However, he did emphasise

it is important for the system as a whole to have the capacity and the understanding within it to be able to focus on these issues where they do arise and make sure that we do not start from the wrong place, because that makes it harder to get to the right place.¹⁷⁸

113. The Committee heard from the UK, Scottish and Welsh administrations that the planning around Common Frameworks (see further Chapter 6) and the European Union (Withdrawal) Bill had resulted in closer working between officials in the different administrations. Shan Morgan, Permanent Secretary and Head of the Welsh Government Civil Service, told us that the Welsh Government were engaging with the UK and other devolved government officials in four different ways:

- at the permanent secretary level;
- through the Welsh Brexit transition teams' engagement with Department for Exiting the EU and the Cabinet Office;
- through direct discussions between individual departments; and
- through the Welsh Government Brussels Office, which is in contact with UKRep.¹⁷⁹

172 [Q628](#); [Q695](#); [Q876](#)

173 [Q613](#); [Qq696–699](#); [Q855](#); [Q362](#)

174 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Paras 106–10

175 Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016. Paras 111–2

176 [Q583](#)

177 [Q582](#)

178 [Q582](#)

179 [Q194](#)

Shan Morgan did, however, consider that the quality of engagement had been severely constrained at times by a lack of transparency from the UK Government.

114. The Joint Ministerial Committee (JMC) meetings seem to have enabled good communication to take place, Ken Thomson said that there has been fairly constant contact between Scottish government officials and officials from the other administrations, especially in these meetings. Lucy Smith, Director General of the UK Governance Group in the Cabinet Office, told us that “the political contact through the JMC meetings and the bilaterals that the Minister has is all underpinned by a really significant programme of work now at official level”.¹⁸⁰ She considered that, from her point of view, the work of the last 12 to 25 months had deepened the relationships between devolved administrations and various Whitehall departments.¹⁸¹

115. Whilst the process of exiting the EU has appeared to stimulate greater contact between officials, we heard evidence that, while these initiatives to improve understanding of devolution in Whitehall are effective to a certain extent, there are more systemic problems with the culture and structure of Whitehall in the era of devolution. Professor Tomkins MSP thought that it was important to change the culture in Whitehall and develop an understanding that the UK is not a unitary state but it is a multi-government state and a multi-national state. Professor Gormley-Heenan, Pro-Vice Chancellor of Ulster University, was concerned about the lack of understanding of the nuances of the Northern Ireland question within Whitehall. In particular, she worried about the lack of understanding of the Belfast Agreement which she warned could cause real problems in the long term.¹⁸²

116. Professor Wyn Jones argued that Whitehall and Westminster had not yet adapted to the changes to the UK’s constitutional architecture brought about by devolution in 1997.¹⁸³ Studies of Whitehall had shown the territorial offices - the Office of the Secretary of State for Scotland, the Office of the Secretary of State for Wales and the Northern Ireland Office - to be relatively weak; and that devolved governments tried as far as possible to deal directly with the corresponding Whitehall department.¹⁸⁴ Professor Wyn Jones thought that Whitehall needed fundamental reorganisation to address its relationships with the devolved administrations.¹⁸⁵ Professor Page also considered that the separate territorial offices and Secretaries of State may now be outdated and argued that a single department and cabinet minister should be responsible for relations between the UK Government and the devolved administrations.¹⁸⁶ Professor Rawlings generally agreed with this proposal, but warned that there would need to be contingency arrangements for situations like that in Northern Ireland where there is currently no Executive or Assembly.¹⁸⁷

180 [Q774](#) [Smith]

181 [Q775](#) [Smith]

182 [Q667](#)

183 [Q160](#) [Wyn Jones]

184 [Q160](#) [Wyn Jones]

185 [Q160](#), [Q168](#) [Wyn Jones]

186 [Q60](#)

187 [Q61](#)

117. The Committee welcomes the continued work within Whitehall to improve knowledge and understanding of devolution. However, we are concerned that so much work still needs to be done 20 years on from the establishment of devolution in 1998. It is clear from the evidence to this inquiry that Whitehall still operates extensively on the basis of a structure and culture which take little account of the realities of devolution in the UK. This is inimical to the principles of devolution and good governance in UK.

118. Programmes such as the Cabinet Office ‘Devolution and You’ programme should be extended across Whitehall. All relevant civil servants should have training to establish a sufficient level of understanding of the devolution settlement. Officials in departments that have contact with the devolved administrations should have comprehensive training on the detail of the devolution settlements before or immediately upon taking up a such a position.

119. We welcome the fact that work on the Common Frameworks by officials from different administrations has enabled Whitehall, Holyrood and Cardiff bay to build successful relationships and has led to officials working closely together. *This model of working together should be adopted more widely across Whitehall and the devolved administrations in order to establish and entrench relationships and ways of working together towards a common purpose.*

120. *In line with the recognition that devolution is an established and fundamental feature of the UK’s constitutional architecture, the Government should commit to a systematic review, in the year following the UK’s exit from the EU, of how Whitehall is structured and how it relates to the devolved administrations in Scotland, Wales and Northern Ireland. This review should also consider whether the role of the territorial offices in Whitehall and corresponding Secretaries of State are still necessary and, if they are, whether they might be reformed to promote better relations across Whitehall with the devolved administrations.*

121. We note the evidence we have heard about the tendency in Whitehall to hold onto power and control in areas which might more effectively be administered at lower levels of government in England. *We further recommend that the review called for above should also consider Whitehall’s relationships with local government and the metropolitan administrations in England. The review should aim to identify those areas where power might appropriately be devolved from Whitehall to local authorities and metropolitan mayors in England.*

8 Inter-governmental relations: the missing part of devolution?

122. There is a growing consensus that the current UK inter-governmental relations mechanisms are not fit for purpose. We have expressed this view in a previous report, but similar views have been expressed by the House of Lords Constitution Committee; the House of Lords EU Committee; the Constitutional and Legislative Affairs Committee of the National Assembly for Wales; and the Finance and Constitution Committee of the Scottish Parliament.¹⁸⁸ The Interparliamentary Forum on Brexit, where the Chairs of Committees from the UK and devolved legislatures meet to share and coordinate their work on Brexit related issues, has also stated that the current inter-governmental mechanisms are “not fit for purpose”.¹⁸⁹ Now even the UK and devolved Governments appear to have accepted that the current mechanisms need an overhaul after agreeing to a review of “existing inter-governmental structures and the MoU, to ensure that they are fit for purpose”.¹⁹⁰

123. The evidence to this inquiry has overwhelmingly called for extensive reform or replacement of the current inter-governmental relations mechanisms as the UK leaves the EU. Nigel Smith, former chairman of Scotland FORward, which led the ‘Yes Yes’ campaign in the 1997 Scottish devolution referendum, told us that a major weakness of the devolution settlement since its establishment in 1998 had been the lack of attention given to inter-governmental relations.¹⁹¹

124. Professor Page identified one of the main weaknesses of the current inter-governmental machinery as being that “too much is left to the uncoordinated activities of individual departments” and there is a lack of central coordination and control.¹⁹² He considered that a completely new structure might be a step too far, but a “fresh start” was required and a “recognition that inter-governmental relations is every bit as important a part of the devolution settlements as the powers possessed by the individual devolved Administrations.”¹⁹³ He argued that, in order for these relations not to be based on “happenstance, chance or the inclination and instinct of individual administrations ... the basic machinery needs to be put on a statutory footing”.¹⁹⁴ Professor Rawlings agreed that inter-governmental machinery should be set out in statute, adding that it should also be given an independent secretariat that could take over some of the functions which currently rest with the Cabinet Office for setting and organising meetings.¹⁹⁵

188 First Report of the Public Administration and Constitutional Affairs Committee Session 2017–19, [Devolution and Exiting the EU and Clause 11 of the European Union \(Withdrawal\) Bill: Issues for Consideration](#), HC484, 28 November 2017; Sixth Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, [The Future of the Union, part two: Inter-institutional relations in the UK](#), HC 839, 8 December 2016; Eleventh Report of the House of Lords Constitution Committee Session 2014–15, [Inter-governmental relations in the United Kingdom](#), HL146, 27 March 2015; Fourth Report of the House of Lords EU Committee session 2017–19, [Brexit: devolution](#), HL9, 19 July 2017; National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK governance post-Brexit](#), February 2018; Scottish Parliament Finance and Constitution Committee [Interim Report on the EU \(Withdrawal\) Bill LCM](#), 9 January 2018

189 Press release Interparliamentary forum on Brexit, 21 June 2018

190 [Letter to the Chair from Lucy Smith MP regarding Civil Service work on Devolution and Brexit, 10 July 2018](#)

191 Nigel Smith ([DEU0007](#))

192 [Q55](#)

193 [Q56](#) [Page]

194 [Q56](#) [Page]

195 [Q56](#) [Rawlings]

125. Both Professor Nicola McEwen, Professor of Politics at Edinburgh University and Professor James Mitchell, Professor of Politics at Edinburgh University, agreed that by far the most successful iteration of the Joint Ministerial Committee (JMC) is JMC (Europe) (JMC(E)), which is, coincidentally, about to become redundant.¹⁹⁶ Professor McEwen argued that the JMC(E) worked well because it had a regular timetable dictated by the meetings of the European Council and Council of the European Union; and its role necessitated a high degree of communication and cooperation between its members to deal with overlapping competences to produce an agreed UK negotiating position.¹⁹⁷ Professor McEwen noted that a clear common focus and purpose are essential to successful inter-governmental relations, as this then takes the political heat out of some of the more contentious issues.¹⁹⁸

126. The Welsh Government has been at the forefront of raising concerns about the JMC system and inter-governmental relations in the UK in general. In its 2017 *Brexit and Devolution* paper, the Welsh Government called for deeper cooperation between the Governments of the UK, Scotland, Wales and Northern Ireland; and significant constitutional changes to deal with the challenges brought about by Brexit.¹⁹⁹ The paper branded the current JMC arrangements a “talking shop” and argued for a structure capable of taking forward negotiations and reaching binding decisions, supported by a “dispute resolution mechanism”.²⁰⁰ In order to provide this, the Welsh Government proposed a UK Council of Ministers run along the same lines as the EU Council of Ministers, with an independent secretariat drawn from all four administrations but independent of any ties to those administrations. On matters within devolved competence, where necessary, binding UK frameworks should be drawn up and agreed by all four administrations.²⁰¹ Rt Hon Carwyn Jones, First Minister of Wales, argued that while these proposals would involve significant change, they are not as radical as they seem and reflect his experience of being in JMC(E), with the four agriculture Ministers getting together and agreeing a position.²⁰²

127. Michael Russell MSP, Scottish Government Minister for UK Negotiations on Scotland’s Place in Europe, praised the Welsh proposals, and called for reform of the JMC process. He told us that, although both the Welsh and Scottish Governments wanted reform, he had not yet seen an equivalent desire from the UK Government.²⁰³

128. During this inquiry, we also heard calls from party leaders and spokespersons in both Cardiff Bay and Holyrood for improved inter-governmental relations mechanisms and several ideas were put forward.²⁰⁴ Andrew RT Davies AM, Leader of the Welsh Conservatives, argued that inter-governmental structures should reflect the constitutional shape of modern Britain.²⁰⁵ Leanne Wood AM, Leader of Plaid Cymru, declared herself in favour of a UK Council of Ministers where sessions would rotate around the capital cities.²⁰⁶ Willie Rennie MSP, Leader of Scottish Liberal Democrats, advocated a statutory footing

196 [Q70](#) [McEwen]; [Q136](#) [Mitchell]

197 [Q70](#) [McEwen]; [Q157](#) [Mitchell]

198 [Q71](#) [McEwen]

199 [Securing Wales Future: Brexit and Devolution](#), Welsh Government, 2017

200 [Securing Wales Future: Brexit and Devolution](#), Welsh Government, 2017

201 [Securing Wales Future: Brexit and Devolution](#), Welsh Government, 2017, p 10

202 [Q231](#)

203 [Q593](#)

204 [Qq263–322](#); Plaid Cymru ([DEU0028](#)); [Qq530–553](#)

205 [Q291](#) [Davies]

206 Plaid Cymru ([DEU0028](#))

and a more central role for inter-governmental relations.²⁰⁷ Richard Leonard MSP, leader of Scottish Labour, proposed a council of ministers similar to that advocated by Wales, but with qualified majority voting.²⁰⁸ Professor Adam Tomkins MSP, Shadow Cabinet Secretary for the Constitution, Communities, Social Security and Equalities, supported reform, but argued that the key point was not whether inter-governmental relations were given a statutory footing, but whether any new arrangements were effective. After all, he said, some informal mechanisms might work brilliantly, while other formal mechanisms might miss the mark and not work at all.²⁰⁹

129. The Minister told us that, in his experience, the JMCs are useful but only work if there are other mechanisms for consultation and discussion to support them. He argued that, regardless of precise format, the JMCs work best when underpinned by regular professional contact between officials to support the work of the ministers; and when there is a “culture of consultation and working together across the United Kingdom”.²¹⁰ The Minister considered that it would be a mistake to focus entirely on formal JMCs as the way forward, as JMCs can only work well when there is constant contact between the different administrations at ministerial and official level to deal with issues as they arise, rather than waiting for the next JMC meeting.²¹¹

130. Lucy Smith told the Committee about the detailed work that had been carried out between officials to identify areas for common frameworks to support the work of ministers at the JMC(EN) meetings.²¹² She detailed 25 areas where deep dive workshops had taken place between since the beginning of 2018.²¹³ Following the agreement of the 24 areas that may require legislative common frameworks, she said that under a mandate from the JMC(EN) further work on these 24 areas will be done by officials over the Summer of 2018.²¹⁴ These proposals will then be presented for consideration by Ministers of the UK Government and devolved administrations.²¹⁵

131. We asked the Minister about representation of the different interests within England through the JMC system. The Minister told us that the JMC was set up for a clearly defined purpose, to “provide a mechanism for formal engagement at ministerial level between the Government of the United Kingdom and the Government of the three devolved areas”.²¹⁶ He argued that, outside the JMC mechanism, the LGA had been consulted through the

207 [Q546](#) [Rennie]

208 [Q540](#) [Leonard]

209 [Q547](#) [Tomkins]

210 [Q818](#)

211 [Q818](#)

212 [Letter to the Chair from Lucy Smith MP regarding Civil Service work on Devolution and Brexit, 10 July 2018](#)

213 The deep dive workshops were: Agricultural support (8–9 January), Fisheries (17–18, 23–24 January and 6–7 February), State aid (29 January), Animal health and welfare (29–30 January), Environmental quality - chemicals and pesticides (29–30 January), Environmental quality - ozone depleting substances and F-gases (31 January), Plant health (2 February and 9 March), Public procurement (5 February), Non-CAP agriculture (5–6 February), Food and feed (7–8 February), Air quality (8 February), Mutual recognition of professional qualifications (14 February), Production of statistics (15 February), EU citizens' voting rights (15 February), Hazardous substances planning (19 February), Environmental quality - waste (20 February), Radioactive waste management and shipment (20 February), Civil use of explosives (NI only) (21 February), UK internal market (23 February and 13 June), Vehicle standards (NI only) (26 February), Implementation of EU emissions trading system (26 February and 19 June), Trade (6 March), International obligations (6 March), Governance (7 March), Elements of reciprocal healthcare (21 March). [Letter to the Chair from Lucy Smith MP regarding Civil Service work on Devolution and Brexit, 10 July 2018](#)

214 [Letter to the Chair from Lucy Smith MP regarding Civil Service work on Devolution and Brexit, 10 July 2018](#)

215 [Letter to the Chair from Lucy Smith MP regarding Civil Service work on Devolution and Brexit, 10 July 2018](#)

216 [Q829](#)

Department for Housing, Communities and Local Government and the Department for Exiting the EU; and that there had been “regional sounding boards” around England, as well as meetings with mayors and regional leaders.²¹⁷ The Minister further stated that, when dealing with Scotland, Wales and Northern Ireland, there were properly constituted authorities to deal with. On the other hand, the interests of the English regions may be more divergent. The Minister said

For example, in looking at what we do about the future of agricultural policy, it is quite conceivable that, in some respects, the interests of upland areas, the Lake District, parts of the south-west in England, may align more closely with some of the interests expressed in Scotland and Wales than with those interests of, say, East Anglia.²¹⁸

He argued that it was the responsibility of the individual Secretaries of State to make sure that English interests are factored into “their consideration of what the overall balance of the UK approach ought to be”.²¹⁹

132. The absence of formal and effective inter-governmental relations mechanisms has been the missing part of the devolution settlement ever since devolution was established in 1998. The process of the UK leaving the EU has provided the opportunity for the Government to re-think and redesign inter-governmental relations in order to put them on a better footing. Once the UK has left the EU, and UK Common Frameworks are established, the present lack of intergovernmental institutions for the underpinning of trusting relationships and consent will no longer be sustainable. We recommend that the Government take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved Administrations, a new system of inter-governmental machinery and ensure it is given a statutory footing. Doing this will make clear that inter-governmental relations are as important a part of the devolution settlement as the powers held by the devolved institutions.

133. We agree with those who gave evidence to the inquiry recommending that the JMC must be reformed. The new inter-governmental apparatus that emerges from this reform should ideally have an independent secretariat to schedule and organise inter-governmental meetings. The secretariat should also provide an independent conduit for discussions among administrations at official and ministerial level in between formal inter-governmental meetings.

134. We note the evidence that the JMC(E) has been the most successful and effective form of the JMC. We further note a replication of this success in recent meetings of the JMC(EN) to discuss UK Common Frameworks. It is clear to us that the success of these JMCs is due in large part to the important and well-defined roles that they carry out which focus minds on a common purpose and remove the heat from political debates.

135. It is important that inter-governmental relations mechanisms have a clearly-defined purpose and are not just arrangements for the airing of grievances. Common Frameworks should if possible be agreed by consensus and, if a consensus cannot be reached, each government should report the reasons for the failure to agree to their respective legislatures.

217 [Q829](#)

218 [Q830](#) [Lidington]

219 [Q830](#) [Lidington]

136. The UK Government exhibits a lack of engagement with the issue of England's representation at inter-governmental level. As the UK leaves the EU, this lack of engagement is increasingly unacceptable and must be addressed. The Minister told us that different parts of England have different and potentially conflicting interests. Yet his answer to this problem was to identify the Secretaries of State as the individuals responsible for both identifying and taking account of the differing views of the English regions; and for establishing the overall balance of the UK-wide approach. This is an excellent example of the problem with the dual role of the UK Government which we set out in Chapter 5. The Minister's observation that there are properly constituted authorities to deal with in Scotland, Wales and Northern Ireland but not in England only underlines further the need for England and regions of England to be more effectively represented.

137. We agree that England should be better represented at inter-governmental meetings. In the short-term, the Government should develop proposals for including the metropolitan mayors and other local leaders in reformed inter-governmental mechanisms. For the long-term, the Government should consider establishing a committee which would represent English cities and counties and would have representation on JMCs (or their replacement) to advocate the interests of all parts of England.

9 Inter-parliamentary scrutiny

138. The prospect of an increase both in the amount and importance of the work carried out at the inter-governmental level, raises the question of how inter-governmental work should be scrutinised and whether there needs to be a parallel mechanism for inter-parliamentary work to perform this scrutiny function.

139. Professor McEwen told us that her research into parliamentary scrutiny and oversight of inter-governmental relations in countries around the world demonstrated a tendency towards executive dominance in the process and a lack of transparency; nowhere in the world were these problems more evident than in the UK.²²⁰ Professor McEwen said that there was certainly scope for more formalised arrangements for inter-parliamentary scrutiny of inter-governmental work in the UK. However, she thought that it was important to build into any such scrutiny process an appreciation and respect for the different mandates, interests and perspectives of members of each parliament or assembly.²²¹

140. Professor Wyn Jones noted the success of the joint scrutiny of the Wales Bill in 2015 by the Constitutional and Legislative Affairs Committee of the National Assembly for Wales and the House of Commons Welsh Affairs Committee. He thought that this could provide a model for future inter-parliamentary working.²²² However both Professor Wyn Jones and Professor Mitchell cautioned that, without a clear purpose to such relationships, there was a danger that inter-parliamentary working could descend into battles along party lines rather than leading to productive cooperation.²²³

141. Professor Keating also took the view that, with the anticipated increase in the need for inter-governmental relations after the UK's exit from the EU, parliamentary scrutiny of these relations should be taken seriously. He told us that, in countries around the world where inter-governmental relations were a major feature, there had been a tendency for parliaments to be marginalised.²²⁴ He argued that inter-parliamentary working would be "extremely useful" as it would allow parliamentarians to engage in the common shared interest of scrutinising executives in a way which transcends partisan political divisions.²²⁵

142. When asked about a more formalised mechanism for inter-parliamentary scrutiny, the Welsh and Scottish Governments were generally supportive. Rt Hon Carwyn Jones AM told us that the Welsh Government was wrestling with the question of how an inter-governmental structure could be made sufficiently accountable. However, he recognised that this was ultimately a matter for legislatures to resolve.²²⁶ Michael Russell MSP said that the Scottish Government had already made a commitment to the Scottish Parliament to report meetings at an inter-governmental level to the relevant Scottish Parliamentary committee; and the Scottish Government is already often questioned on inter-governmental work in the Scottish Parliament. He agreed that scrutiny of this inter-governmental work was important and he would be interested to see how current informal inter-parliamentary working could be formalised and developed.²²⁷

220 [Q77](#)

221 [Q80](#)

222 [Q177](#) {Wyn Jones}

223 [Qq176–177](#) [Mitchell] [Q178](#) [Wyn Jones]

224 [Q524](#)

225 [Q524](#)

226 [Qq236–242](#)

227 [Q596](#)

143. Michael Russell MSP referred to the *Inter-Governmental Relations: Written Agreement between the Scottish Parliament and Scottish Government* which sets out a number of commitments from the Scottish Government to provide the Scottish Parliament with a range of information, including:

- written notice and the agenda of JMC meetings, giving enough notice for the relevant committee to have time to comment in advance of the meeting;
- a written summary of issues discussed at the JMC meeting;
- the text of any inter-governmental agreements; and
- an annual report on inter-governmental relations.²²⁸

144. When asked about whether the UK Government would be willing to make a similar commitment to the UK Parliament, the Minister was reluctant. He thought that it was important for ministers to have a safe space to discuss controversial matters, and noted that agendas would often change at short notice.²²⁹ However, when we pointed out that there is at least some parliamentary scrutiny in advance of meetings of the EU Council of Ministers, the Minister accepted the analogy and committed to reflect on what the UK Government could usefully offer Parliament.²³⁰

145. Within the devolved legislatures there was very strong support for inter-parliamentary working and increased scrutiny of inter-governmental relations. In Wales, Leanne Wood AM, Leader of Plaid Cymru, Andrew RT Davies AM, former Leader of the Welsh Conservatives, and Jane Dodds, Leader of the Welsh Liberal Democrats, all supported a system of inter-parliamentary working.²³¹ The Llywydd (Presiding Officer) of the National Assembly for Wales, Elin Jones AM, also told us that it was important to consider how inter-governmental relations are made accountable, first to individual parliaments, and second to inter-parliamentary scrutiny bodies. This sort of scrutiny had never before been formalised and so a great deal of thought was required in order to decide whether or not such relations should be placed on a statutory footing.²³²

146. The Presiding Officer of the Scottish Parliament, Ken Macintosh MSP, wrote to us to express his strong support for inter-parliamentary cooperation. He referred to the “shared parliamentary common cause of effective scrutiny, a function which affords every Member the opportunity to expose all views and opinions.”²³³

147. Support for a greater inter-parliamentary working among the parties in the Scottish Parliament was also very strong. Patrick Harvie MSP, Co-Convenor of the Scottish Green Party, argued that inter-parliamentary relations should become the norm, highlighting his good experiences of informal working taking place on an ad hoc basis.²³⁴ Richard Leonard MSP, Leader of Scottish Labour, argued that inter-parliamentary relations and working were important, and thought that the key to it succeeding would be the extent to which inter-parliamentary scrutiny would be able to adapt to hold to account multilateral

228 [Inter-Governmental Relations: Written Agreement between the Scottish Parliament and Scottish Government](#)

229 [Q822](#)

230 [Q823](#)

231 [Qq292–295; Plaid Cymru \(DEU0028\)](#)

232 [Q324](#)

233 [Scottish Parliament \(DEU0033\)](#)

234 [Q533](#) [Harvie]

discussions.²³⁵ Professor Tomkins MSP, Scottish Conservative, welcomed the good work that has been done in the Interparliamentary Forum on Brexit, arguing that it was a very useful start. He also noted the importance of committees from the different legislatures being able to meet on one another's parliamentary estates, and mutual recognition of parliamentary passes was an issue in this context. He argued that the "easier we make it for ourselves to do business with each other, the more likely we are to do business with each other".²³⁶ Professor Tomkins MSP was joined by Richard Leonard MSP, Patrick Harvie MSP and Willie Rennie MSP in suggesting that the mutual recognition of passes would aid interparliamentary working and cooperation.²³⁷

148. It is regrettable that the UK Government had previously not considered providing the UK Parliament with the same level of information related to Joint Ministerial Committee meetings as the Scottish Government provides the Scottish Parliament. We note, however, the Minister's commitment given in evidence to this inquiry to reflect on what information related to JMC meetings the UK Government could usefully offer the UK Parliament. *We recommend that the UK Government should consider the merits of replicating the commitment made by the Scottish Government to the Scottish Parliament and, providing notice and advanced sight of agendas for all intergovernmental meetings to the UK Parliament. This is no more than a courtesy to Parliament and its committees. It does not deprive ministers of a safe space for other private meetings or discussions.*

149. One of the central constitutional roles of parliaments and assemblies in the UK political system is to scrutinise the work of government. With the increase in the extent of inter-governmental relations which must inevitably follow the UK's exit from the EU, it is imperative that mechanisms be developed to scrutinise properly the work done at the inter-governmental level. *The importance of devolution within the UK's constitutional architecture should be recognised by developing mechanisms and procedures for the different parliaments and assemblies of the UK to communicate formally with one another. This is essential in order to build understanding and friendships between parliamentarians from all UK legislatures, as well as strengthening public trust and confidence in the way that the four parliaments and assemblies can work together.*

150. *In order to allow for effective scrutiny, the Governments of the UK should support changes to Standing Orders and, where necessary, bring forward legislation to allow committees of the UK's parliaments and assemblies to meet jointly and establish inter-parliamentary committees. To help facilitate joint working and the work of inter-parliamentary committees, members of these committees from across the UK should have easy access to one another's parliamentary estates for the purposes of committee meetings, assured through the mutual recognition of parliamentary passes. For the Houses of Parliament in Westminster we refer this issue to the Administration Committee.*

235 [Q543](#) [Leonard]

236 [Q543](#) {Tomkins}

237 [Qq540-553](#)

151. As we highlighted above, Common Frameworks will form a key part of the UK constitutional architecture after the UK leaves the EU which will require scrutiny to prevent a democratic deficit. *We therefore invite the Clerks of the four parliaments and assemblies to instruct parliamentary officials to work up a joint proposal for an inter-parliamentary body to scrutinise UK Common Frameworks. These proposals should address issues such as the size and composition of the body, how frequently it should meet, what its main objectives and terms of references should be and what the potential cost of the body would be. We suggest the proposals should be presented to the Interparliamentary Forum on Brexit which would then seek the endorsement of the Speakers and Presiding officers of the UK Parliaments.*

Conclusions and recommendations

Questions around sovereignty and the two models of devolution

1. UK Governments have repeatedly noted that “the current devolution settlements were created in the context of the UK’s membership of the EU”. This EU context has masked many of the key constitutional questions and ambiguities raised by the introduction and subsequent development of devolution since 1998. With the UK leaving the EU, many questions and ambiguities have now been exposed and need to be addressed. (Paragraph 19)
2. The ultimate supremacy of the UK Parliament is legal fact as several witnesses, including the Minister, have recognised. However, sovereignty is a political concept that does not always obey legal direction. The introduction of popular sovereignty through the use of referendums, the establishment of devolved governments for the nations of Scotland, Northern Ireland and Wales, and the commitments made when establishing them, have introduced political considerations that have arguably qualified sovereignty within the UK and changed the balance of power. (Paragraph 20)
3. *Devolution is now an established and significant feature of the UK constitutional architecture and should be treated with respect to maintain the integrity of the United Kingdom. The Government needs to bring clarity to the situation by setting out, in response to this report, its Devolution Policy for the Union. A document setting out the Government’s Devolution Policy for the Union should be issued at the start of every Parliament. This policy should outline where the constitutional architecture of devolution needs to be buttressed or amended and should, where necessary, provide justification for asymmetry within the devolution settlement. While we accept that asymmetry may be necessary and even preferable within the UK context, the Government should explicitly recognise and be held accountable for representational and institutional asymmetries within the UK political system.* (Paragraph 21)
4. Although, there remains some variation in the different devolution settlements, the shifting of Wales from a conferred to a reserved powers model indicates that the reserved powers model is now the constitutionally preferred model for devolution within the UK. Powers are not conferred by the UK Parliament onto the devolved legislatures, rather particular matters are reserved to the UK Parliament and all other areas devolved. (Paragraph 31)
5. *The Government must recognise that the reserved powers model of devolution means that powers are devolved by default and not conferred by the UK Parliament. This should be set out as the first item of an expanded Memorandum of Understanding on Devolution. Nevertheless, we acknowledge the practical difficulties that arise from Brexit, and the Government’s need to find practical solutions to address them (see Chapter 6).* (Paragraph 32)

European Union (Withdrawal) Bill and the devolved Administrations

6. We are pleased that the European Union (Withdrawal) Act goes some way towards addressing the concerns raised in our 28 November 2017 report on Clause 11, and we believe it is unfortunate that an agreement acceptable to each of the UK, Welsh and Scottish Governments was not ultimately reached on that basis. However, we note that while the mechanisms for providing a functioning statute book on exit day in relation to the devolved institutions have been altered to account for many of the original concerns expressed by the devolved institutions, the underlying UK Government approach to the issue has not changed. (Paragraph 53)
7. It is highly regrettable that there was little consultation with devolved Governments in advance of the publication of the European Union (Withdrawal) Bill, as earlier consultation could have possibly avoided much of the acrimony that was created between the UK Government and the devolved Governments. *When the UK Government is considering legislation that falls within a devolved competence, draft legislation should preferably be shared far enough in advance for a devolved government to identify and work through any issues in the legislation with the UK Government.* (Paragraph 64)
8. It is clear that, while the Sewel Convention was entrenched in statute by the UK Parliament through the Scotland Act 2016 and the Wales Act 2017, no corresponding parliamentary procedures have been established to recognise the Convention in the legislative process. Nor has thought been given to how the devolved legislatures might more effectively communicate their legislative consent decisions and have these officially taken account of as a Bill progresses through the UK Parliament. (Paragraph 65)
9. *The House of Commons and the House of Lords should consider establishing a procedure to acknowledge more clearly that a Bill is in an area that requires legislative consent and whether that consent has been given by a devolved legislature; and where such consent cannot be obtained, what procedures should follow.*” (Paragraph 66)
10. It is clear from the evidence to our inquiry that there is a considerable level of ambiguity surrounding the Sewel Convention. It is unclear whether Lord Sewel’s commitment on the floor of the House of Lords is to be taken as the definitive statement of the Convention and exceptions to it, or whether the Convention through the practice of this commitment developed and grew into a convention that the UK Government should never legislate without consent of a devolved legislature, notwithstanding the supremacy of the UK Parliament and its ability to legislate in an abnormal situation. Such ambiguity is apparent from the divergent views of the UK Government and the devolved administrations, as well as those of academic commentators. (Paragraph 67)
11. In the case of the European Union (Withdrawal) Bill, the Government chose to interpret the Sewel Convention in such a way that legislative consent from the Scottish Parliament was deemed unnecessary because of the very particular circumstances of the Bill. That interpretation of the Sewel Convention was contested by the Scottish and Wales Governments. *We recommend that the Government sets out a clear statement of circumstances under which legislative consent is not required*

by the Sewel Convention in future in both the Devolution Policy for the Union that we have recommended it should state and in the Memorandum of Understanding between the UK Government and the devolved institutions. (Paragraph 68)

The English Question

12. *At a time when devolution has become an established feature of the UK constitution, the question of England's place in the constitution needs urgently to be addressed. A failure to do so risks a sense of increasing disconnection of the English people from the political system. As part of the Government's devolution policy, there must be a clear statement of how the different parts of England are fairly and effectively being represented. Consideration should be given to extending the existing decentralisation of powers and funding to combined authorities and mayors to a greater number of areas. Moreover, the Government should draw up plans for how decentralisation to more rural areas of England might effectively be pursued. (Paragraph 91)*
13. *The Government should consider whether devolution for England should mean the devolution of whole areas of competence and not piecemeal powers and functions. While a reserved powers model may not be appropriate for England, powers might be conferred on lower tiers of government in discrete areas that can clearly be identified. (Paragraph 92)*
14. *Devolution of areas of competence should also include the devolution of the administrative responsibilities and funding for these areas. By devolving powers, the Government could ease the pressure on Whitehall capacity by allowing decisions in appropriate areas to be made and functions carried out at the most appropriate possible level of government. The Government should start by considering devolving the issue of skills and training away from Whitehall to the local level, with the requisite budgets. (Paragraph 93)*
15. *The problems caused by the dual role of the UK Government as the Government of both the UK and England could be eased by including separate English representation in inter-governmental mechanisms such as the Joint Ministerial Committee Structures. Representation of the English regions on the Joint Ministerial Committee should be given except in specific circumstances when a meeting at national-only level is necessary and appropriate. (Paragraph 94)*

Common Frameworks

16. *Common Frameworks, where competences over a particular matter are devolved and therefore there must be agreement about policy between Whitehall and the devolved administrations, will be an important element of our constitutional architecture once the UK has left the EU. We are pleased to note that there is wide acceptance of the necessity and importance of Common Frameworks. The extensive work done by the UK and devolved Governments in collaboration to identify areas where Common Frameworks will be required is a promising sign of future cooperation. (Paragraph 103)*

17. We are, however, concerned that the UK Government does not have a common strategy or policy for how Common Frameworks should operate, and is instead leaving it to different Whitehall departments to develop their own strategies and models. This runs the risk of creating a disparate set of Frameworks with no consistent or coherent rational or operational logic. As these are new systems, it will be challenging enough for civil servants, legislators and end users to come to terms quickly with how Common Frameworks operate. The Government is adding to this challenge by permitting the creation of multiple different systems by different departments and this appears to us to be deeply unhelpful. (Paragraph 104)
18. *The Government should seek to develop a coherent policy for the establishment, operation and monitoring of Common Frameworks, which acknowledges the need for parliamentary scrutiny of these frameworks. This should have been set out in a white paper, for members of all the UK's parliaments and assemblies to examine, but it may now be too late. Instead, the Committee recommends the Government set out a clear set of principles for the governance and operation of Common Frameworks in its Response, or alongside its Response, to this Report.* (Paragraph 105)
19. *We note the five-year sunset provision in relation to the frozen EU Frameworks. The new systems for discussing, agreeing, monitoring and amending Common Frameworks should be set up as soon as possible so that they will be fully operational before the five-year period is ended. In the short-term, we recommend that either a Joint Ministerial Committee for Common Frameworks be set up or individual Joint Ministerial Committees for departmental areas be established in order that experience of joint decision-making can be built up.* (Paragraph 106)

Whitehall's attitude towards devolution

20. The Committee welcomes the continued work within Whitehall to improve knowledge and understanding of devolution. However, we are concerned that so much work still needs to be done 20 years on from the establishment of devolution in 1998. It is clear from the evidence to this inquiry that Whitehall still operates extensively on the basis of a structure and culture which take little account of the realities of devolution in the UK. This is inimical to the principles of devolution and good governance in UK. (Paragraph 117)
21. Programmes such as the Cabinet Office 'Devolution and You' programme should be extended across Whitehall. All relevant civil servants should have training to establish a sufficient level of understanding of the devolution settlement. Officials in departments that have contact with the devolved administrations should have comprehensive training on the detail of the devolution settlements before or immediately upon taking up a such a position. (Paragraph 118)
22. We welcome the fact that work on the Common Frameworks by officials from different administrations has enabled Whitehall, Holyrood and Cardiff bay to build successful relationships and has led to officials working closely together. *This model of working together should be adopted more widely across Whitehall and the devolved administrations in order to establish and entrench relationships and ways of working together towards a common purpose.* (Paragraph 119)

23. *In line with the recognition that devolution is an established and fundamental feature of the UK's constitutional architecture, the Government should commit to a systematic review, in the year following the UK's exit from the EU, of how Whitehall is structured and how it relates to the devolved administrations in Scotland, Wales and Northern Ireland. This review should also consider whether the role of the territorial offices in Whitehall and corresponding Secretaries of State are still necessary and, if they are, whether they might be reformed to promote better relations across Whitehall with the devolved administrations. (Paragraph 120)*
24. We note the evidence we have heard about the tendency in Whitehall to hold onto power and control in areas which might more effectively be administered at lower levels of government in England. *We further recommend that the review called for above should also consider Whitehall's relationships with local government and the metropolitan administrations in England. The review should aim to identify those areas where power might appropriately be devolved from Whitehall to local authorities and metropolitan mayors in England. (Paragraph 121)*

Inter-governmental relations: the missing part of devolution?

25. The absence of formal and effective inter-governmental relations mechanisms has been the missing part of the devolution settlement ever since devolution was established in 1998. The process of the UK leaving the EU has provided the opportunity for the Government to re-think and redesign inter-governmental relations in order to put them on a better footing. Once the UK has left the EU, and UK Common Frameworks are established, the present lack of intergovernmental institutions for the underpinning of trusting relationships and consent will no longer be sustainable. *We recommend that the Government take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved Administrations, a new system of inter-governmental machinery and ensure it is given a statutory footing. Doing this will make clear that inter-governmental relations are as important a part of the devolution settlement as the powers held by the devolved institutions. (Paragraph 132)*
26. *We agree with those who gave evidence to the inquiry recommending that the JMC must be reformed. The new inter-governmental apparatus that emerges from this reform should ideally have an independent secretariat to schedule and organise inter-governmental meetings. The secretariat should also provide an independent conduit for discussions among administrations at official and ministerial level in between formal inter-governmental meetings. (Paragraph 133)*
27. We note the evidence that the JMC(E) has been the most successful and effective form of the JMC. We further note a replication of this success in recent meetings of the JMC(EN) to discuss UK Common Frameworks. It is clear to us that the success of these JMCs is due in large part to the important and well-defined roles that they carry out which focus minds on a common purpose and remove the heat from political debates. (Paragraph 134)

28. *It is important that inter-governmental relations mechanisms have a clearly-defined purpose and are not just arrangements for the airing of grievances. Common Frameworks should if possible be agreed by consensus and, if a consensus cannot be reached, each government should report the reasons for the failure to agree to their respective legislatures. (Paragraph 135)*
29. The UK Government exhibits a lack of engagement with the issue of England's representation at inter-governmental level. As the UK leaves the EU, this lack of engagement is increasingly unacceptable and must be addressed. The Minister told us that different parts of England have different and potentially conflicting interests. Yet his answer to this problem was to identify the Secretaries of State as the individuals responsible for both identifying and taking account of the differing views of the English regions; and for establishing the overall balance of the UK-wide approach. This is an excellent example of the problem with the dual role of the UK Government which we set out in Chapter 5. The Minister's observation that there are properly constituted authorities to deal with in Scotland, Wales and Northern Ireland but not in England only underlines further the need for England and regions of England to be more effectively represented. (Paragraph 136)
30. *We agree that England should be better represented at inter-governmental meetings. In the short-term, the Government should develop proposals for including the metropolitan mayors and other local leaders in reformed inter-governmental mechanisms. For the long-term, the Government should consider establishing a committee which would represent English cities and counties and would have representation on JMCs (or their replacement) to advocate the interests of all parts of England. (Paragraph 137)*

Inter-parliamentary scrutiny

31. It is regrettable that the UK Government had previously not considered providing the UK Parliament with the same level of information related to Joint Ministerial Committee meetings as the Scottish Government provides the Scottish Parliament. We note, however, the Minister's commitment given in evidence to this inquiry to reflect on what information related to JMC meetings the UK Government could usefully offer the UK Parliament. *We recommend that the UK Government should consider the merits of replicating the commitment made by the Scottish Government to the Scottish Parliament and, providing notice and advanced sight of agendas for all intergovernmental meetings to the UK Parliament. This is no more than a courtesy to Parliament and its committees. It does not deprive ministers of a safe space for other private meetings or discussions. (Paragraph 148)*
32. One of the central constitutional roles of parliaments and assemblies in the UK political system is to scrutinise the work of government. With the increase in the extent of inter-governmental relations which must inevitably follow the UK's exit from the EU, it is imperative that mechanisms be developed to scrutinise properly the work done at the inter-governmental level. *The importance of devolution within the UK's constitutional architecture should be recognised by developing mechanisms and procedures for the different parliaments and assemblies of the UK to communicate formally with one another. This is essential in order to build understanding and*

friendships between parliamentarians from all UK legislatures, as well as strengthening public trust and confidence in the way that the four parliaments and assemblies can work together. (Paragraph 149)

33. *In order to allow for effective scrutiny, the Governments of the UK should support changes to Standing Orders and, where necessary, bring forward legislation to allow committees of the UK's parliaments and assemblies to meet jointly and establish inter-parliamentary committees. To help facilitate joint working and the work of inter-parliamentary committees, members of these committees from across the UK should have easy access to one another's parliamentary estates for the purposes of committee meetings, assured through the mutual recognition of parliamentary passes. For the Houses of Parliament in Westminster we refer this issue to the Administration Committee. (Paragraph 150)*

34. *As we highlighted above, Common Frameworks will form a key part of the UK constitutional architecture after the UK leaves the EU which will require scrutiny to prevent a democratic deficit. We therefore invite the Clerks of the four parliaments and assemblies to instruct parliamentary officials to work up a joint proposal for an inter-parliamentary body to scrutinise UK Common Frameworks. These proposals should address issues such as the size and composition of the body, how frequently it should meet, what its main objectives and terms of references should be and what the potential cost of the body would be. We suggest the proposals should be presented to the Interparliamentary Forum on Brexit which would then seek the endorsement of the Speakers and Presiding officers of the UK Parliaments. (Paragraph 151)*

Formal minutes

Tuesday 24 July 2018

Sir Bernard Jenkin, in the Chair

Ronnie Cowan	Mr David Jones
Mr Marcus Fysh	Sandy Martin
Dame Cheryl Gillan	David Morris
Kelvin Hopkins	

Draft Report (*Devolution and exiting the EU: reconciling differences and building strong relationships*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 33 read, and agreed to.

Paragraph 34 read.

When the Bill was introduced, the devolved institutions recognised the need to provide clarity and certainty and to preserve a functioning legal system after leaving the EU. In their initial Legislative Consent Memorandums, both the Scottish and Welsh Governments supported the purpose and intent of the Bill, although they declined to give legislative consent to it at that early stage. It soon became clear, however, that there was a difference of opinion over where the legislative authority over certain areas of policy previously held at EU level (“retained EU law”) would lie within the existing UK constitutional arrangement, for example, who would have the authority to change laws and regulations in relation to areas of devolved competence such as fisheries. This exposed the fact that the UK Government and the devolved institutions had clear conceptual differences in their understanding of the devolution settlements (as discussed above in Chapter 2). In brief, the UK Government position, shown through the drafting of the original Clause 11 of the Bill, was to return legislative authority to Westminster by default, while the position of the Scottish and Welsh Governments was for legislative authority on non-reserved matters to return to Holyrood and Cardiff bay.

Amendment proposed, in line 10, leave out from “fisheries.” to “In brief” in line 13 – (Mr David Jones)

The Committee Divided

Ayes, 3	Noes, 1
Dame Cheryl Gillan	Ronnie Cowan
Kelvin Hopkins	
Mr David Jones	

Question accordingly agreed to.

Paragraph 34, as amended, agreed to.

Paragraphs 35 to 151 read, and agreed to.

Summary agreed to.

Resolved, That the Report, as amended, be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 4 September 2018 at 09.30am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 31 October 2017

Question number

Professor Richard Rawlings, Professor of Public Law, University College London, and **Professor Alan Page**, Professor of Public Law, University of Dundee

[Q1–68](#)

Tuesday 28 November 2017

Professor Nicola McEwen, Professor of Politics, University of Edinburgh and **Michael Carpenter**, former Speaker's Counsel

[Q69–121](#)

Tuesday 23 January 2018

Professor James Mitchell, Professor of Public Policy, Academy of Government, Edinburgh University, **Professor Richard Wyn Jones**, Director of Wales Governance Centre, Cardiff University, **Professor Gordon Anthony**, Professor in Law, The Senator George J Mitchell Institute for Global Peace, Security and Justice

[Q122–194](#)

Monday 5 February 2018

Rt Hon Carwyn Jones AM, First Minister of Wales, Leader of Welsh Labour, **Shan Morgan**, Permanent Secretary, Head of the Welsh Civil Service, and **Piers Bisson**, Director for European Transition in the Welsh Government

[Q185–262](#)

Andrew RT Davies AM, Leader of Welsh Conservatives; and **Jane Dodds**, Leader of Welsh Liberal Democrats

[Q263–322](#)

Elin Jones AM, Presiding Officer, National Assembly for Wales; **Manon Antoniazzi**, Clerk and Chief Executive, National Assembly for Wales, and **Mick Antoniw AM**, Chair, Constitutional and Legislative Affairs Committee, National Assembly for Wales

[Q323–342](#)

Dr Jo Hunt, Reader in Law, Cardiff University; and **Dr Elin Royles**, Senior Lecturer, Aberystwyth University

[Q343–359](#)

Tuesday 20 March 2018

Councillor Kevin Bentley, Chair, Local Government Association Brexit Task and Finish Group, **Councillor Huw Thomas**, Leader, Cardiff City Council and Board Member, Core Cities UK, and **Alex Conway**, Director, Greater London Authority European Programmes and Lead City Hall Officer for Brexit

[Q360–436](#)

Ed Cox, Director, IPPR North, **Dr Joanie Willet**, University of Exeter, **Dr Sarah Ayres**, University of Bristol, and **Rebecca Lowe**, Independent political consultant

[Q437–490](#)

Monday 30 April 2018

Professor Michael Keating, Professor of Politics, Aberdeen University, Director of Centre on Constitutional Change [Q491–529](#)

Adam Tomkins MSP, Scottish Conservatives, **Richard Leonard MSP**, Leader of Scottish Labour, **Willie Rennie MSP**, Leader of Scottish Liberal Democrats, and **Patrick Harvie MSP**, Co-convenor of the Scottish Green Party [Q530–553](#)

Mike Russell MSP, Minister for UK Negotiations of Scotland’s Place in Europe, and **Ken Thomson**, Director General for Constitution and External Affairs [Q554–606](#)

Tuesday 22 May 2018

Andy Street, Mayor of the West Midlands Combined Authority [Q607–651](#)

Dr Katy Hayward, Queens University Belfast, **Professor Cathy Gormley-Heenan**, Ulster University, and **Professor Jonathan Tonge**, University of Liverpool [Q652–690](#)

Monday 4 June 2018

Rt Hon Andy Burnham, Mayor of the Greater Manchester Combined Authority [Q691–768](#)

Wednesday 20 June 2018

Rt Hon David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, **Lucy Smith**, Director General of the UK Governance Group [Q769–849](#)

Tuesday 26 June 2018

Rt Hon Sadiq Khan, Mayor of London [Q850–894](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DEU numbers are generated by the evidence processing system and so may not be complete.

- 1 Alan Page ([DEU0008](#))
- 2 Ayres, Sarah ([DEU0031](#))
- 3 Blick, Dr Andrew ([DEU0010](#))
- 4 Bradbury, Professor Jonathan ([DEU0027](#))
- 5 Burns, Professor Charlotte ([DEU0014](#))
- 6 Cabinet Office ([DEU0025](#))
- 7 Carpenter, Michael ([DEU0009](#))
- 8 Centre for Cities ([DEU0032](#))
- 9 Edward, Sir David ([DEU0023](#))
- 10 Faculty of Advocates ([DEU0015](#))
- 11 Greener UK and Environment Links UK ([DEU0011](#))
- 12 Henderson, Professor Ailsa ([DEU0021](#))
- 13 Howe, Martin ([DEU0022](#))
- 14 Jones AM, Elin ([DEU0024](#))
- 15 Law Society of Scotland ([DEU0018](#))
- 16 The Learned Society of Wales ([DEU0017](#))
- 17 Lock, Dr Tobias ([DEU0001](#))
- 18 McCrudden, Professor Christopher ([DEU0013](#))
- 19 McEwen, Professor Nicola ([DEU0020](#))
- 20 O'Connor, Nat ([DEU0006](#))
- 21 Plaid Cymru ([DEU0028](#))
- 22 The Royal Society of Edinburgh ([DEU0016](#))
- 23 Royal Town Planning Institute ([DEU0012](#))
- 24 Royles, Dr Elin ([DEU0029](#))
- 25 Royles, Dr Elin ([DEU0030](#))
- 26 Scottish Parliament ([DEU0033](#))
- 27 Smith, Nigel ([DEU0007](#))
- 28 University of Aberdeen ([DEU0019](#))
- 29 Unlock Democracy ([DEU0004](#))
- 30 Willett, Dr Joanie ([DEU0003](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration	HC 484
Second Report	Parliamentary Boundary Reviews: What Next?	HC 559 (HC 1072)
Third Report	PHSO Annual Scrutiny 2016–17	HC 492 (HC 1479)
Fourth Report	Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report	HC 854
Fifth Report	The Minister and the Official: The Fulcrum of Whitehall Effectiveness	HC 497
Sixth Report	Accounting for Democracy Revisited: The Government Response and Proposed Review	HC 1197
Seventh Report	After Carillion: Public sector outsourcing and contracting	HC 748
First Special Report	Will the NHS never learn? Follow-up to PHSO report 'Learning from Mistakes' on the NHS in England: Government Response to the Committee's Seventh Report of Session 2016–17	HC 441
Second Special Report	The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee, Session 2016–17	HC 442
Third Special Report	Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016–17	HC 708
Fourth Special Report	Government Response to the Committee's Thirteenth Report of Session 2016–7: Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action	HC 731
Fifth Special Report	Parliamentary Boundary Reviews: What Next?: Government Response to the Committee's Second Report	HC 1072
Sixth Special Report	PHSO Annual Scrutiny 2016–17: Government and PHSO Response to the Committee's Third Report	HC 1479