



House of Commons
Public Administration
and Constitutional Affairs
Committee

**Government
Response to the
Committee's Eighth
Report: Devolution
and Exiting the EU:
reconciling differences
and building strong
relationships**

**Eighth Special Report of Session
2017–19**

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Public Administration and Constitutional Affairs Committee

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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Eighth Special Report

The Public Administration and Constitutional Affairs Committee published its Eighth Report of Session 2017–19, *Devolution and Exiting the EU: reconciling differences and building strong relationships*, as HC 1485 on 31 July 2018. The Government's response was received on 10 September 2018 and is appended to this report.

Appendix: Government Response

1. The House of Commons Public Administration and Constitutional Affairs Committee (PACAC) published a report on Devolution and Exiting the EU on 31 July 2018. The report made a number of recommendations on how to clarify the devolution and constitutional landscape of the UK and to improve and expand on existing intergovernmental processes and relations between the UK Government and the devolved administrations of Northern Ireland, Scotland and Wales.

The UK Government thanks the Committee for its report and timely recommendations for improving intergovernmental relations as we undertake our review in partnership with the devolved administrations. We remain committed to the constitutional integrity of the United Kingdom, and believe that our union is strongest when its constituent parts work together. Our partnership working with the devolved administrations on our exit from the EU continues to be a priority and we are working closely together on a number of projects as we seek a successful exit. The UK's exit marks a new phase in relations between the four administrations of the UK. The need for effective and close engagement is greater than ever before. Through extensive work at both Ministerial and official level, we are working to ensure that the devolved administrations are contributing to the UK position, that we are working together on areas of common priority and that we are closely preparing the future domestic governance of the UK together.

Since we last wrote to the Committee in November 2017, the Joint Ministerial Committee on EU Negotiations (JMC(EN)) has met six times (eleven in total) and seen notable successes. It has overseen significant progress on common frameworks, where the vast majority of the 153 policy areas where EU law intersects with devolved competence will flow directly to the devolved administrations on exit day. Discussions held at JMC(EN) have also led to the establishment of the new Ministerial Forum on EU Negotiations (MF(EN)), further increasing the depth of our engagement with the devolved administrations in the EU exit process and enabling them to contribute in detail to the UK's negotiating position.

The timing of these meetings is important. JMC(EN) met the day before Cabinet convened at Chequers in July, enabling UK Government Ministers to enter into these discussions with a clear idea of the devolved administrations' views and priorities on EU exit. We will ensure that the governments of the UK continue to meet at the right times to discuss the UK's exit. JMC(EN) will meet monthly from September to enable continued effective and constructive discussion with the devolved administrations.

We also continue to make progress in ensuring the domestic governance of the UK continues to function effectively after EU exit, not least in our development of future common frameworks. A substantive programme of 'deep dives' (or policy workshops) looking in depth at the 24 areas where legislative frameworks may be required, along with

a range of cross-cutting issues, has already taken place. Intensive multilateral discussions continue at official level, overseen by joint official level structures and JMC(EN). In some areas we are now moving towards implementation, for example in the framework proposals outlined in the recent Fisheries White Paper and development of proposals in the forthcoming Agriculture Bill.

Through the process of EU exit we also want to ensure that power sits more closely to the people in all UK nations than ever before. We have a proven track record of strengthening the devolution settlements to all parts of the United Kingdom, most recently through powers passed to Scotland and Wales through the Scotland Act 2016 and Wales Act 2017 respectively. The Secretaries of State for Scotland, Wales and Northern Ireland and their respective offices are responsible for delivering these Acts in full, and play a key role in ensuring the effective implementation of UK Government policy across the devolved nations.

In recent years we have also devolved further powers to regions across England, with 36% of people now living in an area with a directly elected city-region mayor with new powers to stimulate job creation, improve skills, build homes and make it easier to travel. We will continue to shape the development of the devolution framework for England so that English communities can manage local services and priorities like never before.

None of our work is possible without ensuring a culture of knowledge and understanding of devolution underpins all of our activity across Whitehall. To that end we continue to deliver a programme of devolution training for all civil servants across the One Civil Service, ensuring that officials are clear about the roles of the devolved administrations and how they influence their work.

The UK Government thanks the Committee for its recommendations in these areas and will consider them carefully. Our responses are set out below. We are currently carrying out a review of intergovernmental relations with the devolved administrations and the Committee's continued contributions in this area will help to inform and shape any future agreement.

Questions around sovereignty and the two models of devolution

2. 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)

The UK Government notes this recommendation and intends to publish a statement on the Union in due course.

The United Kingdom's constitutional arrangements have evolved over time and been adapted to reflect the unique circumstances of the world's most successful and enduring multi-nation state. The Government is clear in its support for devolution, and has brought power closer to the people of Wales, Scotland, Northern Ireland and England than ever before. The devolution settlements reflect the history and needs of each part of the UK.

The Cabinet Office, Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office each play a key role in leading engagement with the devolved administrations and overseeing and advising on the implementation of devolution policy. The Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office are also responsible for ensuring the implementation of devolution legislation, such as the Scotland Act 2016 and Wales Act 2017. Together, these Acts were the subject of intensive work between the respective administrations, bringing about increased balance and coherence to ensure fair and lasting settlements. As a result, a wide range of powers have already been transferred to the Scottish and Welsh Governments and their respective legislatures. The UK Government is committed to working constructively with the Scottish and Welsh Governments to ensure full implementation of these Acts along with the transfer of further powers to the respective devolved parliaments after the UK's exit from the EU. In Northern Ireland our priority remains the return of a devolved government.

In addition to implementing these settlements and addressing the specific needs of each of the devolved administrations, we are also in the process of developing a devolution framework for England. This is in line with the Government's manifesto commitment to provide clarity across England so all authorities operate in a common framework.

These arrangements provide the different nations of the UK with the space to pursue different domestic policies should they wish to, whilst protecting and preserving the benefits of being part of the bigger UK family of nations including maintaining the economic integrity of the UK and its common market.

3. *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)*

The UK Government supports the reserved powers model of devolution and has been pleased to support the development and implementation of the Scotland Act 2016 and the Wales Act 2017 which have seen the significant transfer of additional powers to the Scottish and Welsh Governments and provided further clarity as to what is devolved and what is reserved.

The devolution legislation, as passed by the UK Parliament and modified over the past twenty years, sets a number of limits on the competence of the devolved administrations and legislatures. One of these limits is that the devolved legislatures cannot legislate in relation to reserved matters. They also cannot legislate otherwise than in relation to their

territory, in a way that is incompatible with EU law or Convention rights or to modify protected enactments. In considering the extent of the devolved legislatures' powers, it is necessary to take account of all of these factors, not just the list of reserved matters.

The UK Government agrees with the Committee that we need to review the existing intergovernmental structures, including the Memorandum of Understanding, to ensure they are fit for purpose in light of the UK's exit from the EU. The Prime Minister led a discussion on this at the Joint Ministerial Committee (Plenary) (JMC(P)) on 14 March, attended by the First Ministers of Scotland and Wales. Ministers agreed that officials should take forward a review of the existing intergovernmental structures and report their findings to JMC(P) in due course. The review of intergovernmental relations is ongoing, and UK Government officials are working closely with counterparts in the devolved administrations to take this work forward.

This Government supports devolution and leaving the EU provides an opportunity to ensure that power sits closer to the people of the UK than ever before. The UK Government has been clear that there will be a significant increase in the decision making power of the devolved administrations as a result of the UK leaving the EU. We also need to provide the greatest level of legal and administrative certainty upon leaving the EU including actions to protect the economic integrity of the UK. We are having intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future, what these should be, and where common frameworks covering the UK are not necessary. We will work closely with the devolved administrations to deliver an approach that works for the whole and each part of the UK in line with the devolution settlements.

EU (Withdrawal) Bill and Devolved Administrations

4. *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)*

The UK Government agrees and Devolution Guidance Notes help to guide officials in UK Government departments through the process of producing primary legislation affecting Scotland, Wales and Northern Ireland. This includes guidance on engaging with the devolved administrations on matters within their competence, working closely with the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, Northern Ireland Office and other relevant departments in the UK Government.

5. *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)*

The UK Government notes this recommendation.

Government departments do produce explanatory notes for Parliament which provide the Government's analysis of devolution issues. These notes contain a section on devolution and a section on territorial extent and application which includes a clause by clause analysis of territorial application. If the application is England-only or England and Wales,

information is then provided on whether corresponding provision would be within the competence of the devolved legislatures. This information is included to help the Speaker to determine whether the English Votes process should apply to the Bill or part of the Bill. Information is also provided in the explanatory notes on whether specific clauses trigger the legislative consent process.

6. 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 Welsh 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 UK Government is fully committed to the Sewel Convention and the related practices and procedures for seeking legislative consent set out in Devolution Guidance Notes.

Throughout the passage of the EU (Withdrawal) Act, we followed the Sewel Convention and related practices and processes for seeking legislative consent, in both letter and spirit at every stage of the process. When the UK Government committed to amend clause 11 (now section 12) we began a period of intensive working with the Scottish and Welsh Governments, and on a technical level the Northern Ireland Civil Service, to ensure that we could deliver maximum legal certainty with a functioning statute book on exit day, while also protecting the constitutional fabric of the UK.

The culmination of this collaboration was the substantive amendments tabled to the Bill during its Lords stages and the Intergovernmental Agreement signed by the UK and Welsh Governments to govern how we would work together under the EU (Withdrawal) Act and in relation to common frameworks. This meant that the Welsh Government was able to recommend consent be given to the Bill, and consent was granted by the National Assembly for Wales.

It is disappointing that the Scottish Government declined to join the Agreement between the Welsh Government and the UK Government, or to recommend consent be given by the Scottish Parliament to the Bill. The Agreement and the amendments built on extensive work between the UK, Scottish, and Welsh Governments and reflected considerable, constructive policy development.

But it has never been the case that devolution means that the Scottish Parliament, or any devolved legislature, has a veto over the ability of the UK Parliament's ability to make laws for each of the devolved nations. This position is set out in each of the of the devolution statutes - the Scotland Act 1998, Government of Wales Act 2006 and Northern Ireland Act 1998 - and has been since their passage. For example, section 28(8) of the Scotland Act 1998 states that the devolution of powers to the Scottish Parliament to make laws 'does not affect the power of the Parliament of the United Kingdom to make laws for Scotland'.

The Sewel Convention (as set out by Lord Sewel in 1998 and as now recognised in the Scotland Act 1998 and Government of Wales Act 2006) is made in reference to this general rule on the ability of the UK Parliament to legislate within areas of devolved competence.

In addition, both the Convention and the related practices of seeking legislative consent make clear that the UK Parliament will 'not normally' legislate without consent. This use of 'not normally' envisages situations where the UK Parliament may be required to legislate without the consent of a devolved legislature and it is clear from the Sewel Convention in each instance where it is set out that the UK Parliament maintains the right to do so.

These situations are the exception, not the rule, and the circumstances of the EU (Withdrawal) Act were not normal. This was recognised by Michael Russell MSP, the Cabinet Secretary for Government Business and Constitutional Relations, who said that "these are not normal times" and by Lord Sewel himself at the time the Bill was being considered by Parliament. The passing of the Act was critical to the preparedness of the UK's statute books after the UK exits the EU, and so it was necessary for the UK Government to legislate for the whole of the United Kingdom on this occasion.

It is regrettable that the Scottish Parliament did not consent to the EU (Withdrawal) Act. The devolution provisions of the EU (Withdrawal) Act are not about reducing the power of the devolved institutions, but about managing the return of decision making powers from the EU in otherwise devolved areas. The majority of these powers will flow directly to Edinburgh, Cardiff and Belfast after EU exit whilst recognising that some common frameworks will be necessary. The UK Government welcomes and values the views of the devolved administrations. We will of course continue to seek legislative consent, take on board views and work with the devolved administrations on future Bills in accordance with the established practices and conventions that have been in place since the advent of devolution.

The English Question

7. 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)

The UK Government notes this recommendation. Through the introduction of a parliamentary process which provides English MPs a stronger voice with regards to policy that applies only to England and the devolution of a significant range of powers to Mayors and combined authorities, the interests of England are better represented than ever before. The Government remains focussed on implementing the existing devolution deals and undertaking detailed monitoring and evaluation in order to be able to assess the impact of devolution as we consider further decentralisation.

The introduction of English Votes for English Laws in 2015 has embedded fairness and balance into Parliament's law making process and strengthened England's voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within our Union. The UK Government thinks it right and fair that English MPs should have a decisive role to play in the passage of legislation that affects England. This mechanism has been introduced to address the perceived power imbalance between England and

the devolved administrations. During the legislative process, all parts of England have the right to be represented by their MPs during an England-only Committee, should the legislation be deemed to affect England-only in its entirety.

Since the Cities and Local Government Devolution Act 2016 came into force, the UK Government has taken major steps to decentralise governance in England through Devolution Deals and combined authorities headed up by elected mayors in seven city regions. As well as Devolution Deals with these seven city regions, we have also agreed a deal with the North of Tyne combined authority to be confirmed when its establishment is approved by Parliament. The UK Government has conferred a specific range of powers for each mayoral combined authority tailored to local circumstances. They all have powers around transport, economic development and regeneration, a number have further powers around housing and strategic planning, and almost all are to receive more skills powers in the autumn, subject to Parliament's approval. Many have also taken on local authority functions including around finance, environment, planning and waste to provide more strategic oversight and the Mayor of Greater Manchester is also the Police and Crime Commissioner.

The UK Government has also arranged for particular combined authorities to assume the delivery of central government programmes such as the Work and Health programme and Life Chances fund and develop new innovative ways of working with local public services such as health and justice. We have also provided them with control over long term committed funding through gain share and the ability to raise more funds locally for example through the Mayoral precept and 100% business rates retention pilots.

The Localism Act, introduced in 2011, has also afforded communities the power and opportunity to shape planning and development in their neighbourhoods. This opportunity to think about how local services are delivered and community assets used was a step change in how communities engaged with their local authority. The Localism Act also grants communities the right to be directly involved in neighbourhood planning. Communities are able to shape development in their areas through the production of Neighbourhood Development Plans (often referred to simply as Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders.

8. *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)

The UK Government notes the Committee's recommendations and is focussed on implementing the existing devolution deals, which were negotiated with each area individually, and undertaking detailed monitoring and evaluation in order to be able to assess the impact of devolution.

The UK Government is also in the process of developing a devolution framework for England, in line with the Government's manifesto commitment to provide "clarity across England on what devolution means for different administrations so all authorities operate in a common framework". We aim to be able to provide local areas, including rural areas, with clarity on how best to take forward their devolution and local growth ambitions

over the coming months, and recognise that mayoral governance will not be suitable in all areas. This work is being lead by the Ministry for Housing, Communities and Local Government.

9. *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)*

The UK Government notes the Committee's recommendation and is committed to ensuring local areas have an active role in shaping the skills provision that is available in their area, in order to meet their specific, local economic challenges. From 2019/20, the Government will undertake the necessary statutory measures to devolve some 50% of the £1.5bn Adult Education Budget to six mayoral combined authorities and the Greater London Authority.

Devolving the Adult Education Budget is the most significant step forward in devolving skills policy to date, and will provide local areas with real control over adult education provision in their areas. We are also establishing Skills Advisory Panels, in partnership with mayoral combined authorities and local enterprise partnerships, to help identify the skills needs and employer demands at a local level.

As set out previously, the UK Government is focussed on implementing the existing devolution deals and undertaking detailed monitoring and evaluation in order to be able to assess the impact of devolution so far.

10. *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)*

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) (under the Intergovernmental Relations recommendations)

The current structures of the JMC are agreed in the Memorandum of Understanding (MoU) for devolution that exists between the governments of the United Kingdom. They provide for executive-to-executive engagement, rather than a mixture of national, regional and local representation. England has never had regional government and such regional institutions as existed, based on the old administrative Government Office Regions, were abolished by the Coalition Government. Therefore, the JMC would not be an effective method of representing English interests.

There already exist many ways in which the Government interacts with local authorities in England so that the many varied and diverse interests of England are represented in our decision making. For example, the Department for Exiting the EU, the Ministry for Housing, Communities and Local Government and departments across Whitehall have regular dialogue with local government across a range of EU exit as well as business-as-usual policy areas. Bodies such as the Local Government Association (as well as their counterparts in Scotland and Wales) are being consulted on how the consultative rights and responsibilities they currently have at European level through the Committee of the Regions might be replicated domestically, in a non-statutory way, for when the UK has left the EU. The UK Government has also engaged with English city region mayors on the issue of EU exit through regular mayoral forum discussions and official-level working groups, and we have found their feedback and local perspectives valuable.

Common Frameworks

11. 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. [...] 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)

The Government disagrees with the Committee's conclusion. There is strong central oversight of the common frameworks workstream, where our strategy and approach has been developed in close collaboration with the devolved administrations, overseen by JMC(EN).

This is exemplified in the principles agreed by the UK, Scottish and Welsh Governments at JMC(EN) in October last year, which set out the way we are approaching the establishment of common frameworks. These continue to guide all the discussions that are taking place at official level between individual departments and their counterparts in the devolved administrations. Ongoing work is also being coordinated centrally through joint official level structures. For example, officials from the UK Government and the devolved administrations have issued jointly agreed guidance to all policy officials participating in these discussions to ensure a greater degree of consistency when considering issues such as operational detail and structures of future frameworks. Within Whitehall, continued input and monitoring by the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office is ensuring that common approaches are being taken across departments to developing common frameworks.

Furthermore, work on policy specific areas has been supplemented by discussions on 'cross-cutting' issues including the approach to the internal market, governance, trade and international obligations to ensure a consistent approach is being taken in these areas. In relation to governance issues specifically, outputs are being fed into and considered in tandem with the ongoing review of intergovernmental relations.

These discussions have continued over the summer and in due course the resulting proposals will be submitted for consideration by Ministers from the UK Government

and the devolved administrations, with the intention of informing further stakeholder engagement prior to implementation. As part of that process, the coherence of proposals across the range of areas under consideration will be reviewed and scrutinised.

12. *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)*

The existing principles on common frameworks, agreed by the UK, Scottish and Welsh Governments, set out our joint approach to the establishment of common frameworks. As noted above, discussions on the operational detail and monitoring of future frameworks are under active consideration. We are open to the Committee's recommendation that a further set of principles outlining our approach in these areas should be set out and will ensure this is considered jointly with the devolved administrations.

The UK Government has been clear it welcomes the scrutiny of Parliament and the devolved legislatures as well as wider stakeholders as proposals for future frameworks move towards implementation. The reporting requirement contained in the EU (Withdrawal) Act provides a mechanism for regular updates to Parliament on progress on common frameworks; the first of these is due in October, with subsequent reports due every three months.

13. *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)*

The UK Government has been absolutely clear in placing a sunset on regulations to 'freeze' current EU law frameworks while we work with the devolved administrations to design and implement our own future framework arrangements, that five years is the maximum period for which these regulations can apply. We will work to establish those new arrangements as soon as possible and we expect that in practice the majority of these will be in place before the end of the full five year period. Where we have implemented the future framework arrangements before the 'freeze' expires, then the regulations can be revoked.

Currently, the work on future common frameworks is overseen by JMC(EN). The UK Government agrees with the Committee that future governance structures to monitor and implement these frameworks will be key. This is why, in line with the commission received from the Joint Ministerial Committee (Plenary) on 14 March, we are carrying out the review into the existing intergovernmental structures and the underpinning MoU. UK Government officials are currently working with their counterparts in the devolved administrations on this review which will include the development of the

intergovernmental structures needed to govern common frameworks in the future. The Committee's recommendations in this space will provide important evidence for the UK Government and devolved administrations to consider as the review progresses.

Whitehall's attitude towards devolution

14. 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 such a position. (Paragraph 118)

The *Devolution and You* programme is already a cross-administration and cross-Whitehall campaign. It is led by Cabinet Office, supported by the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office, and run in partnership with the Scottish and Welsh Governments, offering learning opportunities that are open to civil servants across the four administrations. Each UK Government department leads their own department's devolution capability, working in collaboration with the *Devolution and You* campaign. The campaign aims to upskill civil servants across the One Civil Service by strengthening understanding of the devolution settlements through bespoke training, communications and interchange programmes.

The UK Government agrees with the need for comprehensive training for officials that regularly engage with the devolved administrations. We also recognise that in light of EU exit, the continued implementation of the Scotland Act 2016 and Wales Act 2017 and increased engagement with the Northern Ireland Civil Service in the absence of an Executive, the scope of engagement with the devolved administrations across Whitehall is greater than ever before. The *Devolution and You* programme is working closely with all UK Government departments to rapidly upskill new starters and joiners, with the aim of targeting training to teams engaging with the devolved administrations and developing induction programmes to suit the needs of each department.

The Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office also deliver and support bespoke training on specific changes to the constitutional and devolution landscape and provide tailored engagement sessions to raise awareness across Whitehall of wider devolution matters. The Office of the Secretary of State for Wales has recently delivered training to key Whitehall departments on the Wales Act 2017 and bespoke staff training and communications on the Scotland Act 2016 continue to support UK Government departments in implementation on the ground. For example, DWP work coaches in the Jobcentre Plus network in Scotland will be able to deal with queries relating to benefits which are transferring to the Scottish Government's new Social Security Agency.

The *Devolution and You* programme works in partnership with Civil Service Learning to provide a range of learning opportunities accessible to all UK Government civil servants. These include: introductory online learning and face-to-face workshops; induction programmes and bespoke workshops in departments; and fast stream induction workshops. The campaign also runs training in collaboration with the Scottish and Welsh

Governments, such as masterclasses for senior civil servants; a roadshow at Civil Service Live; Devolution Discovery workshops with Civil Service Local; and a range of written resources, including a *Devolution and You* Factsheet.

The One Civil Service Interchange programme is a key strand of *Devolution and You*. It offers all civil servants the unique opportunity to shadow their counterparts across the UK and to experience first-hand the different structures of another administration. The programme runs three times a year, with the UK, Scottish and Welsh Governments each hosting a shadowing week. Since 2017, the Northern Ireland Civil Service has also participated by providing delegates to the events. In the last twelve months, Interchange has provided the opportunity for over 250 civil servants from the Northern Ireland Executive, Scottish Government, Welsh Government and UK Government to take part in work shadowing and shared learning. The Interchange programme has expanded year on year and the next work shadowing week will be hosted by Scottish Government in November 2018 with participation expected from all administrations.

The *Devolution and You* campaign is subject to regular review through a cross-administration steering board and has already begun work to scope further opportunities to support civil servants, including through specialist interchange schemes.

15. 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)

As the Committee notes, the work undertaken by all officials on common frameworks amounts to a substantive and positive programme of intergovernmental engagement that has enabled us to make significant progress and strengthen official level relationships and ways of working between UK Government and the devolved administrations. The nature of this cooperative, cross-administration working is not exclusive to common frameworks, though it does serve as a positive example. This kind of engagement has helped to shape positive relations between the UK Government and the devolved administrations since the advent of devolution. Other examples exist across a range of business, including, for example, in managing the transfer of new powers to the Scottish and Welsh legislatures in the areas of tax and welfare powers.

The ongoing programme of multilateral 'deep dives' has been the primary mechanism for taking forward discussions between the four administrations at official level, overseen by JMC(EN). Since December of last year, over 30 deep dive workshops have taken place across the range of issues under discussion, with multiple sessions occurring in some areas over several days. These workshops have generally involved officials from all administrations and been led by independent facilitators. Where the devolution intersect is only relevant to one administration, discussions have sometimes been conducted bilaterally.

This format has already been drawn on in other workstreams including operational readiness planning. We will continue to work with the devolved administrations to ensure that our commitments to collaborative working made in the common frameworks principles and the Intergovernmental Agreement relating to the EU (Withdrawal) Act

are fulfilled. We are grateful for the ongoing engagement of officials from the Northern Ireland Civil Service in the establishment of common frameworks. We will continue this collaboration with officials as we continue to prioritise the reestablishment of the Executive.

16. *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)*

The UK Government agrees that devolution is an established and fundamental feature of the UK's constitutional architecture. The completion of the Scotland Act 2016 and the Wales Act 2017 demonstrates that. The UK Government also believes that intergovernmental working and the structures in place to manage engagement between the UK Government and the devolved administrations must remain adaptable to future change, not least in the light of the UK's exit from the EU. This is why we are working closely with the devolved administrations to carry out the review of intergovernmental structures commissioned by the Joint Ministerial Committee (Plenary) on 14 March.

The UK Government has taken steps to ensure changes to the constitutional landscape are reflected and supported across Whitehall and will remain adaptable to future change. The UK Governance Group was established in 2015, bringing together officials from the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, Office of the Advocate General for Scotland and the Cabinet Office's Constitution Group to lead the UK Government's work on constitutional and devolution issues. The principal objective of the Group is to provide support to the Cabinet Office, Secretaries of State for Scotland, Wales and Northern Ireland and the Advocate General for Scotland to ensure that strengthening the Union is a shared responsibility across all Whitehall departments.

The Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office are integral to the functioning of Government and the Secretaries of State play a leading role in ensuring the interests of Scotland, Wales and Northern Ireland are fully represented both at Cabinet and in departments across Whitehall. The Secretaries of State for Scotland, Wales and Northern Ireland also engage with relevant Ministers within the devolved administrations and stakeholders across the devolved nations to ensure UK Government policies are implemented effectively in their respective nations. They are also responsible for delivering the Scotland Act 2016 and Wales Act 2017 and the transfer of further powers to the respective devolved parliaments.

The Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office lead the devolution settlements across Whitehall, working with the rest of the UK Governance Group to increase devolution capability and promote the devolution settlements. The Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office also work with all UK Government departments to champion the interests of the respective devolved nations within a stronger United Kingdom.

In addition, significant steps have been taken to enhance engagement between the centre of UK Government and the Scottish and Welsh Governments, as well as the Northern Ireland Civil Service in the current absence of a Northern Ireland Executive. Since June 2017, under the Chancellor of the Duchy of Lancaster (and the former First Secretary of State), the Cabinet Office, supported by the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office, has taken a leading role in overseeing intergovernmental relations and coordinating central engagement with the devolved administrations. The Chancellor of the Duchy of Lancaster continues to chair meetings of JMC(EN), convening five meetings since January 2018 that have provided the opportunity to discuss the progress of EU negotiations as well as domestic issues arising from the UK's departure from the EU. We have offered and agreed to convene monthly committees from September to ensure the devolved administrations' views are helping to shape the UK's negotiating position. The establishment of the Ministerial Forum on EU Negotiations (MF(EN)) provides further opportunity for the devolved administrations to contribute. The Chancellor of the Duchy of Lancaster remains in close contact with counterparts in the devolved administrations through regular bilaterals and phone calls and the Secretaries of State for Scotland, Wales and Northern Ireland continue to engage bilaterally with ministers across the devolved administrations.

17. 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)

The UK Government notes this recommendation. This Government has overseen significant devolution of power to England and now 36% of England has a directly elected city-region mayor with new powers to stimulate job creation, improve skills, build homes and make it easier to travel. The devolution framework for England that is currently under development will provide other local areas with clarity on how best to take forward their devolution and local growth ambitions.

The UK Government is exploring further ways to bring decision making power and influence closer to local communities. Communities are best placed to identify the local issues, provided they are informed, equipped and trusted to do so. Several local authorities have demonstrated a clear desire to shift power, influence and responsibility away from existing centres of power and into the hands of parish councils, communities and individual citizens. 'Onward' or 'Double' devolution provides an opportunity for communities to help shape, and in some cases manage, public services in the places where they live. Onward devolution involves the transfer of responsibility and decision making from a principal authority to a town or parish council where they work collaboratively with partners and local people in delivering services. The Ministry of Housing, Communities and Local Government is currently in the process of mapping examples of onward devolution in local authority areas across England to determine effective practice.

We will continue to closely monitor and evaluate transfers of power at all levels of government to assess the impact of devolution.

Intergovernmental Relations

18. *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)*

19. *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 intergovernmental 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)*

The UK Government recognises the need to review the existing intergovernmental structures, including the MoU, to ensure they are fit for purpose in light of the UK's exit from the EU. The Prime Minister led a discussion on this at the Joint Ministerial Committee (Plenary) on 14 March, attended by the First Ministers of Scotland and Wales. Ministers agreed that officials should take forward a review of the existing intergovernmental structures and report their findings to JMC in due course.

The UK Government notes and welcomes the Committee's reflections on the future of intergovernmental relations. We recognise the importance of consulting with wider stakeholders and therefore, alongside the devolved administrations, we will be working closely with academics and commentators to ensure we explore the full range of options. We remain open to new suggestions for the effective conduct of intergovernmental relations.

We note that the suggestion for intergovernmental relations to be placed on a statutory footing would require the UK Parliament to agree any changes that the four administrations wish to make to the agreements underpinning our relationship. Placing the MoU in statute may therefore limit the participating administrations' ability to adapt its function in what is a rapidly changing political landscape. This could include for example the creation or removal of additional committee structures. We remain of the view that the intergovernmental structures must remain adaptable enough to address the four governments' interests at any given time, not least at present to deal with the UK's exit from the EU.

20. *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)*

The principles agreed by the UK, Scottish and Welsh Governments make clear that all parties will seek to agree common frameworks. As a result of this, we are working collaboratively with the devolved administrations across the whole range of policy areas in scope to design arrangements that work for all parts of the UK. As part of this, we are also looking specifically at the governance arrangements that will be required to ensure

frameworks function effectively in the long term. The EU (Withdrawal) Act requires the UK Government to report regularly to Parliament on the progress made to implement common frameworks with the first of these updates due in the autumn.

We have shown through the EU (Withdrawal) Act that we are considering new and innovative ways to manage disagreements, for example in the procedures for the use of the 'freezing' powers in section 12 of the Act. These recognise that the final decision on preserving an existing framework is a matter for the UK Parliament, but where this does not have the consent of the devolved legislatures, the UK Government must explain why it is appropriate to proceed without agreement. The devolved administrations also have the opportunity to provide their own statements to explain why agreement was not forthcoming.

Interparliamentary Scrutiny

21. 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)

The UK Government is committed to maintaining open and transparent relations with UK Parliament. Since January 2018, the Chancellor of the Duchy of Lancaster has taken steps to improve transparency with Parliament with regards to intergovernmental relations and continues to seek ways to enhance communication further. In July, the Chancellor of the Duchy of Lancaster released a written ministerial statement to both Houses, detailing the level and scope of recent and ongoing engagement with the devolved administrations (written statements HCWS905¹ and HLWS878²). He concurrently wrote to all Members of Parliament, detailing this engagement and his intentions for taking this forward.

In recent correspondence with this Committee as well as the Lords EU Select Committee and the Inter-parliamentary Forum on Brexit, the Chancellor of the Duchy of Lancaster has also committed to providing regular updates to interested parliamentary committees on intergovernmental activity, including meetings of the Joint Ministerial Committee on EU Negotiations (JMC(EN)) and the Ministerial Forum on EU Negotiations (MF(EN)). An update was last provided at the end of July and the Chancellor of the Duchy of Lancaster intends to write to committees again in the autumn.

With regards to providing advance notice of intergovernmental meetings, dates have been provisionally agreed with the devolved administrations for monthly meetings of JMC(EN)

1 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-23/HCWS905/>

2 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-07-23/HLWS878/>

from September. As demonstrated in the letters between Scottish Government and Scottish Parliament giving notice of intergovernmental meetings, it is often not possible to confirm agendas in advance as items are subject to agreement by all administrations and often not finalised until close to the meeting itself. The Chancellor of the Duchy of Lancaster will endeavour to write to the Committee in advance of each of these meetings to confirm the agreed date and offer insight wherever possible, whilst continuing to respect the required levels of confidentiality for discussions.

Joint communiqués continue to be published following meetings of each JMC (in Plenary, on EU Negotiations and on Europe) and MF(EN). The UK Government would be happy to include these communiqués in future updates provided to committees on intergovernmental activity for reference.

22. 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)

The UK Government supports the Committee's proposal to develop procedures for all parliaments and assemblies of the UK to communicate formally with one another with regards to intergovernmental relations. We suggest it would be for UK Parliament and devolved legislatures to explore options for doing so.

Current inter-parliamentary cooperation and scrutiny is well demonstrated in the form of the Inter-parliamentary Forum on Brexit. This forum has met four times since its establishment in 2017, led by the Lords EU Select Committee, and provides a valuable opportunity for each of the legislatures of the UK to learn about the work of their counterparts and share experiences and information with one another. The UK Government supports the work of the Forum and sees its formation as a positive step to further inter-parliamentary cooperation. The Chancellor for the Duchy of Lancaster has committed to providing regular updates to the Forum on intergovernmental activity.

UK Government Ministers also continue to appear before various committees of the devolved legislatures. Most recently, the Secretary of State for Scotland gave evidence before both the Scottish Parliament's Finance and Constitution Committee and Justice Committee on 6 September. Further recent examples include the Secretary of State for Wales giving evidence to the Welsh Assembly's Constitutional and Legislative Affairs Committee on the EU (Withdrawal) Bill on 16 April, the Secretary of State for Business, Energy and Industrial Strategy appearing before the Scottish Parliament's Economy, Jobs and Fair Work Committee on 19 April, the Minister for the Constitution giving evidence before the Scottish Parliament's Finance and Constitution Committee on 3 May and the

Secretary of State for the Environment, Food and Rural Affairs appearing before both the Scottish Parliament's Environment, Climate Change and Land Reform Committee and Rural Economy and Connectivity Committee on 27 June.

The UK Government is also in support of UK Parliament committees strengthening relationships with their counterpart committees in the devolved legislatures through informal communication as well as formal procedures, such as directly sharing reports and evidence where appropriate.

23. 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)

The UK Government notes the Committee's recommendation. The UK Government and devolved administrations are working together to review the existing intergovernmental structures of the UK, including parliamentary processes, and we remain open to new ideas for supporting strengthened joint working between the UK Parliament and devolved legislatures.

24. 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)

The UK Government notes the Committee's recommendation and agrees that this would be a matter for UK Parliament and the devolved legislatures to comment on and, if of interest, take forward. The UK Government welcomes the scrutiny of the UK Parliament and the devolved legislatures in relation to the ongoing work on common frameworks. The EU (Withdrawal) Act places the UK Government under an obligation to make regular reports to Parliament setting out progress on common frameworks; the first of these is due in October, with subsequent reports due every three months.