



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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# Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration

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First Report of Session 2017–19

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

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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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### Committee staff

The current staff of the Committee are Dr Rebecca Davies (Clerk), Ian Bradshaw (Second Clerk), Dr Patrick Thomas (Committee Specialist), Mr Jonathan Bayliss (Committee Specialist), Ms Penny McLean (Committee Specialist), Dr Philip Larkin (Committee Specialist), Gabrielle Hill (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

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# Introduction

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1. On 12 October 2017, the Public Administration and Constitutional Affairs Committee (PACAC) launched an inquiry into *Devolution and Exiting the EU*. This report constitutes an interim paper with supporting evidence. Its purpose is to develop the themes and issues raised in our predecessor Committee's report in the previous Parliament *The Future of the Union, part two: Inter-institutional relations in the UK*.<sup>1</sup> Our inquiry is particularly focused on the long-term arrangements for devolution within the UK (and the inter-institutional relations which underpin those arrangements), following the UK's departure from the EU.

2. Many of these issues have been brought into sharp focus by the provisions in the EU (Withdrawal) Bill. While our inquiry is continuing, much of the evidence we have heard to date is pertinent to the consideration of the EU (Withdrawal) Bill - not least for the consideration of Clause 11. At this stage, we draw no conclusions and make no recommendations in this report. This short report presents the evidence we have heard on key issues relating to Clause 11, with the intention of informing the debate expected to take place on the Floor of the House on 4 December 2017.<sup>2</sup> The Committee will make a further report early in 2018. It is important to emphasise that we have not finished taking evidence on these matters at the time of publishing this report.

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1 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

2 Other select committees who have reported and take evidence on these issues include reports of the Scottish Affairs Committee, [European Union Withdrawal Bill: Implications for devolution](#) and the Exiting the European Union Committee, [European Union \(withdrawal\) Bill](#). The Committee would also highlight the Northern Ireland Affairs Committee's inquiry [The land border between Northern Ireland and Ireland](#), and the Welsh Affairs Committee inquiry [Brexit: Agriculture, Trade and the repatriation of powers inquiry](#) which have also taken evidence on these important devolution issues.

# 1 The Devolution Clause

3. The European Union (Withdrawal) Bill (EUW Bill) received its Second Reading on 7 and 11 September 2017, and is now being considered in Committee of the Whole House. Our report is particularly relevant to days 4 and 5 of the Committee stage. Day 4, on Monday 4 December, will include consideration of Clause 11 and Schedule 3. This includes the creation of UK wide frameworks, the Joint Ministerial Committee, and the powers of the devolved assemblies in relation to “retained EU law”. Day 5, on Wednesday 6 December, will be in two parts: the first to consider Clause 10 and Schedule 2 which grant the Government the power to make changes through delegated legislation in connection with devolved powers; the second to consider Clause 12 and Schedule 4 concerning financial provision in connection with these powers.

4. The UK Government’s stated intention in introducing the EUW Bill is to “provide a functioning statute book on the day the UK leaves the EU. As a rule, the same rules and laws will apply on the day after exit as on the day before”.<sup>3</sup> In order to do this, the Government has stated that the EUW Bill should perform four main functions:

- a) To repeal the European Communities Act 1972 (ECA 1972) ([Clause 1](#))
- b) To retain EU law in the UK statute book that might otherwise have been removed by the repeal of the ECA 1972. It does this through preserving domestic primary and secondary legislation that gives effect to EU law ([Clause 2](#)), through converting EU law that applies in the UK into domestic law and saving rights based on EU law ([Clause 3 and 4](#)). This converted and preserved EU law the forms a new body of UK law created by the Bill called “retained EU law”.
- c) The third function is performed by the Clauses that provide instructions for the courts ([Clause 5 and 6](#)) and creates powers for Ministers to deal with deficiencies in this new body of retained EU law that arise as a consequence of leaving the EU ([Clauses 7, 8 and 9](#)).
- d) To maintain the “current scope of devolved decision-making powers in areas currently governed by EU law”.<sup>4</sup> The EUW Bill aims to achieve this through converting EU law into a new retained EU law and creating a requirement for the devolved legislatures in Scotland, Wales and Northern Ireland to legislate in a way compatible with retained EU law.

5. The main provisions in the EUW Bill dealing with devolution are [Clauses 10 and 11](#), and [Schedules 2 and 3](#). Clause 10 has the sole function of giving effect to [Schedule 2](#), which provides for corresponding and concurrent powers for devolved authorities to those given to UK Ministers in [Clauses 7, 8 and 9](#), to correct deficiencies in domestic devolved legislation that arise from withdrawal from the EU.<sup>5</sup>

6. [Clause 11](#) makes changes to the Scotland Act 1998 (section 29), Government of Wales Act 2006 (Section 108A) and Northern Ireland Act 1998 (Section 6). These changes remove the restriction preventing devolved institutions from legislating in a way incompatible with EU law. This currently ensures the devolution Acts are in line with the Court of Justice of

3 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 10

4 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 11

5 [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 104

the European Union (CJEU) judgments that assert primacy of EU law over national law.<sup>6</sup> Clause 11 substitutes this restriction for a new restriction on devolved institutions that they cannot modify retained EU Law.

7. [Schedule 3](#) makes corresponding changes to the [Scotland Act 1998](#) (section 57), [Government of Wales Act 2006](#) (Section 80) and [Northern Ireland Act 1998](#) (Section 24), which replace the restriction on devolved authorities not to make subordinate legislation or act incompatibly with “EU Law” with a new restriction not to modify retained EU law.

8. The Acts of Parliament which established devolution in the UK were passed in the context of the UK’s membership of the EU. Consequently, many of the areas of devolved competence are governed by EU Law, regulations and common frameworks. Professor Alan Page, Professor of Public Law at the University of Dundee, explained that the restrictions in the original Acts ensure devolved administrations do not place the UK in breach of its obligations as an EU Member State.<sup>7</sup> The Government’s intention in Clause 11 is to “maintain the current parameters of devolved competence as regards retained EU law” in line with the Government’s overall intention of ensuring legal continuity by having “the same rules and laws will apply on the day after exit as on the day before”.<sup>8</sup> To ensure this legal continuity, the Bill prohibits devolved legislatures from modifying retained EU law within current devolved areas of competence, in a way which would not have been compatible with EU law immediately before exit day.<sup>9</sup>

9. In the explanatory notes to the Bill, the UK Government explains that devolution provisions in the Bill are intended as transitional arrangements, with decisions to be taken on long term common policy approaches later.<sup>10</sup> Clause 11 includes a provision to “release areas from the limit on modifying retained EU law” through an Order in Council. This enables powers to be returned to devolved institutions in areas where it is decided that the common approach existing under EU law does not need to be maintained.<sup>11</sup> For example, carbon capture and storage is currently regulated under a common framework, but could be released for devolved areas to develop their own policy. Orders in Council can also be used to release areas where new or modified common frameworks will be established, so, for example, could be used to set up or change a UK wide agriculture policy. Orders in Council, for this purpose, require approval in devolved legislatures and both Houses of Parliament.<sup>12</sup> If changes to common frameworks were to be made by statute, this would trigger the Sewel Convention and consent would be sought by UK Government from the devolved legislatures.<sup>13</sup>

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6 Court of Justice of the European Union, *Flaminio Costa v E.N.E.L*, 15 July 1964; *Factortame Ltd, R (On the Application Of) v Secretary of State for Transport* [1990] UKHL 13; [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 53–5

7 Professor Alan Page ([DEU0008](#)) para 7; Q13

8 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], paras 10, 34

9 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 130

10 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 34

11 [European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], Clause 11(1)b, 11(2)b, 11(3); [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 36

12 [European Union \(Withdrawal\) Bill](#), Briefing Paper 8079, House of Commons Library, 1 September 2017, p 104

10. While there is a clear consensus amongst our witnesses that the effect of Clause 11 is to provide legal continuity, the means by which Clause 11 will achieve this has been the focus of some concern and controversy.<sup>14</sup> These issues are crucial, as Clause 11 not only provides the statutory framework within which devolution will operate in the UK following its departure from the EU, but the debate around Clause 11 raises fundamental principles about how the relationships between central and devolved government in the UK will be conducted.

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13 The Sewel Convention applies when the UK Parliament legislates on a matter which is devolved. It holds that this will happen only if the devolved legislature has given its consent. While it was originally not included in the legislation, it is now included in the Scotland Act 2016 and the Wales Act 2017. It is also stated in the Memorandum of Understanding between the UK Government and devolved executives, first drawn up in 1999. The thinking behind the Convention is that the UK Parliament, as a sovereign body, retains full legal power to legislate on devolved matters, yet the spirit of devolution implies that political power rests with the Scottish Parliament. In order to avoid conflict, the Government undertook not to seek nor support relevant legislation in the UK Parliament without the prior consent of the Scottish Parliament. This consent is embodied in a “Sewel motion,” or, formally, a “Legislative Consent Motion”. The Sewel Convention, Standard Note SN/PC/2084, House of Commons Library

14 Professor Alan page ([DEU0008](#)); Q13; Dr Tobias Lock (0001) para 5; Rawlings, Richard, [Brexit and the Territorial Constitution](#), 2017, p 5

## 2 Concerns relating to Clause 11

### A power grab?

11. Without the inclusion of Clause 11 on the face of the EUW Bill, the powers currently held at EU level, to legislate in areas of devolved competency in Northern Ireland, Scotland and Wales, would return to the devolved legislatures and Governments.<sup>15</sup> Professor Alan Page states that concerns had been raised that the EUW Bill “was drafted without a proper understanding of devolution law”, which raises questions about the mechanisms used in Clause 11.<sup>16</sup> He explains that the requirement for devolved administrations to act compatibly with EU law is rooted in the obligation not to put the UK in a position where it is breaching its obligations as an EU Member State. But if that requirement is rooted in the UK’s membership of the EU, he adds, then when the UK has exited the EU, that requirement “ceases to have any justification”.<sup>17</sup> Professor Page therefore poses the question: “Why would you expect Scotland, Wales and Northern Ireland to be bound after the UK has left? Surely you would expect the exact opposite, and I think that was the starting point for the devolved institutions’ response to the Bill”.<sup>18</sup>

12. Immediately after the publication of the EU Withdrawal Bill on 13 July 2017, the First Minister of Wales Carwyn Jones AM, and First Minister of Scotland, Nicola Sturgeon MSP, issued a joint statement calling the Bill a “naked power grab”.<sup>19</sup> They stated that the Bill does not deliver on the promise to return powers from the EU to the devolved administrations, but rather returns them solely to the UK Government and Parliament, imposing new restrictions of devolved legislatures. This concern, Professor Richard Rawlings, Professor of Public Law at the University College London, explains, “goes to the heart of the controversy over the Bill from a devolved perspective”.<sup>20</sup>

13. Professor Page and Professor Rawlings explain that this controversy comes down to the “difference of view between what is and what is not devolved”.<sup>21</sup> The Secretary of State for Scotland David Mundell maintains that “there is no Power grab as the “Bill will maintain the scope of devolved decision making powers immediately after Exit—the Scottish Parliament and Scottish Government will not lose any of their current decision-making powers”.<sup>22</sup>

14. From the perspective of the devolved administrations, however, powers coming back from the EU in areas of devolved competence should be devolved. Instead, Scottish Minister for UK Negotiations on Scotland’s Place in Europe Michael Russell argues that the EUW Bill is:

15 [Q4 \(Page\)](#); Michael Keating, [To Devolve or Not to Devolve](#), 17 July 2017; Page, Alan, [The implications of EU withdrawal for the devolution Settlement](#), 2016, p 3

16 Professor Page ([DEU0008](#))

17 [Q13](#)

18 [Q13](#)

19 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

20 [Q4 \(Rawlings\)](#)

21 [Q4 \(Page\)](#)

22 Scottish Parliament’s Finance and Constitution Committee, [Correspondence from the Secretary of State of Scotland to the Convenor](#), 13 July 2017

a blatant power grab which would take existing competence over a wide range of devolved policy areas, including aspects of things like agriculture and fishing, away from Holyrood, giving them instead to Westminster and Whitehall.<sup>23</sup>

Professor Rawlings suggests that “the very fact... that you can give [at least] two answers... tells you a lot about the controversy surrounding this Bill, because it shows that it is possible here to have different constitutional perspectives”.<sup>24</sup>

15. Professor Nicola McEwen, Professor of Territorial Politics at the University of Edinburgh, argues that while Clause 11 is clearly intended to ensure continuity and certainty, other clauses in the EUW Bill provide a functional statute book on exit day “Clause 11 is about what comes next”.<sup>25</sup> Professor McEwen identifies that Clause 11:

is fundamentally a problem of trust. The UK Government doesn’t trust the devolved Governments to refrain from using repatriated powers to create policy and regulatory divergence that may harm the UK’s internal market and create problems in trade negotiations. This rather overlooks the considerable constitutional authority that the UK Parliament already retains over market regulation, trade and the making and implementation of international treaties. For their part, the Scottish and Welsh Governments don’t trust the commitment of the UK Government to devolve repatriated powers after Brexit and/or to agree and govern UK common frameworks on a genuinely cooperative basis.<sup>26</sup>

16. Professor Page suggests that the label ‘power grab’, is unhelpful as it distracts from “understanding what the key or most important points about the legislation and the process of leaving the European Union or the implications of that [are] for the devolved institutions”.<sup>27</sup> Professor Page notes that at the heart of the debate surrounding Clause 11, is the question of “how are we going to appropriately allocate those powers [returning from the EU] around the UK constitution? [and] What is going to be the appropriate balance between the centre and the devolved administrations?”<sup>28</sup>

17. In written evidence, Nigel Smith, former Chair of Scotland Forward, the official “Yes” campaign in the 1997 Scottish devolution referendum, is no less critical of the Government for their handling of the devolution issues in the EUW Bill, but is less troubled by the substance of Clause 11:

His [Mike Russell MSP] initial remarks, as is typical of him, were very firm. He was right to say that the manner in which the Bill and Clause 11 emerged from Whitehall showed it was still rooted in pre-devolution Britain. It should have been better done. But I do not subscribe to his view that the approach of the UK Government is an ‘attack on the very foundations of

23 [Brexit Bill talks: Scottish Government to recommend consent is rejected](#), Scottish Government press release, 9 August 2017.

24 [Q4](#) (Rawlings)

25 Professor McEwen ([0020](#)) para 3

26 Professor McEwen ([0020](#)) para 15

27 [Q4](#) (Professor Page);

28 [Q16](#)

the devolution settlement’ or that the ‘reserved powers’ model solves all. Nobody who voted for the Scottish Parliament exactly twenty years ago need worry - there is no ‘power grab’ underway.<sup>29</sup>

Nigel Smith sets out how it was the Scotland Act itself which effectively reserved the 111 EU framework powers in respect of Scotland, while the UK was an EU Member State, in Section 29 (which requires the Scottish Parliament to “observe EU law”), and explains why it is the “absence of a British devolution framework” which is what needs to be addressed.<sup>30</sup>

## Constitutional balance

18. Professor Rawlings highlights that a central concern of the devolved administrations was that “Clause 11, when it comes to that negotiation... is essentially stacking the cards in favour of the centre”.<sup>31</sup> Dr Tobias Lock, Senior Lecturer, Edinburgh Law School, said that:

the European Union (Withdrawal) Bill will result in a shift in balance between the powers Westminster has in practice and the powers Holyrood has in practice with Westminster’s powers being augmented and Holyrood’s staying the same.<sup>32</sup>

19. Professor Rawlings and Professor Page raise three related concerns in relation to this unbalance. First, while there is a promise on the part of the UK Government that Clause 11 is described as a transition arrangement, there is no provision for this on the face of the Bill. As Professor Rawlings explains:

Legally-speaking, suggested ‘transitional’ elements could so easily become permanent features. Nor need one be an expert in game theory to appreciate the way in which Clause 11 stacks the cards in favour of the centre when negotiating the different design choices with common frameworks: ‘when’, ‘how’, ‘what’, etc. Though the devolved authority has a veto power, in the absence of an agreed ‘release’ plan the default position is bar on competence.<sup>33</sup>

20. Second, Professor Page highlights the suspicion within the devolved administrations “that the real purpose of Clause 11 is not to secure legal continuity but to strip the devolved institutions of any bargaining power that they might have when it comes to the discussion of common frameworks and all the rest... [and that] Whitehall Departments will find it convenient to hang on to these powers rather than to pass them on”.<sup>34</sup>

21. Third, Professor Rawlings highlights the concern over what he describes as the double hatted nature of the UK Government, meaning it is both simultaneously the UK wide Government and the government of England. This raises not only a concern of conflict of interest, but also that the subcultures, networks and assumptions of large departments like the Department for Environment, Food and Rural Affairs, which are focused on England. Professor Rawlings identifies that there is inevitably a concern in the constituent

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29 Nigel Smith ([DEU0007](#))

30 Nigel Smith ([DEU0007](#))

31 [Q16](#)

32 Dr Lock ([0001](#))

33 Rawlings, Richard, [Brexit and the Territorial Constitution](#), 2017, p 26

34 [Q13](#)

parts of the UK that their interests will tend to get lost because of that, “not necessarily because of some sort of conspiracy thing; it is just subconsciously about how institutions operate in practice”.<sup>35</sup>

## Reserved matters and conferred powers

22. The devolution statutes operate on a reserved matters model, where certain matters are listed in the devolution statutes as matters that are reserved to the UK Parliament.<sup>36</sup> This means that matters not explicitly reserved to the UK Parliament are in the competence of the devolved legislatures. The advantage of the reserved powers model, Professor Page explains, “is that it allowed the devolution of discrete, meaningful, sensible policy areas”.<sup>37</sup>

23. In its Legislative Consent Memorandum on the EUW Bill, the Scottish Government states that Clause 11 “creates further complexity in the devolution settlement by effectively grafting a “conferred powers” model, solely in retained EU law, onto, and across, the Scotland Act’s reserved powers model”.<sup>38</sup> There is a consensus in the evidence we received that Clause 11 has this effect. Professor Page suggests that trying to work out what the devolved legislatures can and cannot do is going to be “an extraordinarily difficult task”.<sup>39</sup> He also suggests that it would have the “effect of hamstringing the devolved legislatures so that they will not be able to do that which is sensible”, because instead of having discrete policy areas that belong to them, these areas will be legislated for by a mixture of the UK Parliament and the devolved legislatures.<sup>40</sup> Professor Rawlings agrees, and emphasises the importance of considering the “end user’s perspective” as it will not just be governments, but business, consumer groups and individuals that will have to work with this system.<sup>41</sup>

24. Referring to the Welsh experience of previously having a conferred powers model, Professor Rawlings and Professor McEwen highlight the lack of clarity over where the National Assembly of Wales had power or even the extent to which it has competence produces litigation.<sup>42</sup> This uncertainty has resulted in Supreme Court litigation around the conferred powers model.<sup>43</sup> Professor Rawlings explains:

The discussions about meanings in the Bill become very sharp when we get to the devolved Administrations because it is a question for them as to whether or not they actually have powers. The Government lawyers have to be able to advise, the Presiding Officers of the National Assembly and the Scottish Parliament will have to make rulings as to whether something is within competence, and again they will be open to challenge in areas where, frankly, challenge is very likely. Of course, we are talking about market

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35 [Q16](#)

36 The Wales Act 2017 made provision for a reserved matters model for Wales. In Northern Ireland it is a reserved or excepted matters. In the Northern Ireland Act reserved matters cover areas which could be devolved at a later date, such as postal services, financial services, the national minimum wage. Excepted matters covers areas not to be considered for further devolution, such as the Crown, Parliament, international relations, defence.

37 [Q20](#)

38 Legislative Consent Memorandum European Union (Withdrawal) Bill, Scottish Government, [LCM-55-10](#), Session 5 (2017)

39 [Q17](#)

40 [Q19](#); [Q21](#)

41 [Q18](#)

42 [Q23](#); Professor McEwen ([0020](#)) para 8

43 [Q23](#)

regulation, and where there is market regulation there is money involved, and where there is money involved there are lawyers involved. We have to be very aware of that.<sup>44</sup>

Professor Rawlings suggests that a clear end point in order “to avoid, or at least get past this problem” was to include in the reserved powers model, reservations covering common frameworks. Such a reservation could be worded: “the subject matter of such and such common framework”.<sup>45</sup>

## Legislative consent

25. The explanatory notes to the EUW Bill explain that several of the provisions of the Bill fall within the legislative competence of the devolved Legislatures.<sup>46</sup> Under the Sewel Convention there is a requirement for the Government to seek a Legislative Consent Motion (LCM) from each of the devolved Legislatures for the EUW Bill, and the Government has made clear its intention to seek LCMs.<sup>47</sup>

26. On 12 September 2017, the Scottish and Welsh Governments simultaneously published Legislative Consent Memoranda in relation to the EUW Bill. Both Governments made it clear that they would not present Legislative Consent Motions (LCMs) for the Bill in its current form.<sup>48</sup> The decision to state that Legislative consent will be withheld has raised speculation surrounding the Sewel Convention. As the Supreme Court’s decision in *Miller v. Secretary of State for Exiting the European Union* highlighted, the convention, even though placed in statute, is not legally enforceable. The Supreme Court, however, also emphasised that this decision does not diminish the “importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution”.<sup>49</sup>

27. It is clear from the evidence we have heard that while the Convention is not justiciable, if “Parliament were to legislate notwithstanding the opposition of devolved legislatures, the argument would undoubtedly be made that that was a constitutional outrage; it was unconstitutional”.<sup>50</sup> Professor Page says that placing the convention into statute even though it was not legally binding was a constitutionally binding commitment that is “the most solemn expression of intention that you can provide under our constitution”.<sup>51</sup>

28. While there is a consensus that discussions around legislative consent and the Sewel Convention have served to reinforce Parliamentary Sovereignty within the UK constitution, questions have been raised about how Parliamentary Sovereignty is best deployed as a legislative and political tool in the context of Clause 11. Professor Rawlings suggests that, as currently drafted, Clause 11 treats Parliamentary Sovereignty as a “legislative blunderbuss” to be waved in the faces of the devolved administrations. He states that, regardless of what the Government has said about its intention, this is not a good way

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44 [Q23](#)

45 [Q23](#)

46 [Explanatory Notes to the European Union \(Withdrawal\) Bill \[Bill5 \(2017–19\)\]](#), paras 68–70, Annex A

47 The Sewel Convention is now enshrined in statute in the [Scotland Act 2016](#) and [Wales Act 2017](#) and the mechanisms of consent set out in the Memorandum of Understanding and Supplementary Agreements.

48 Legislative Consent Memorandum European Union (Withdrawal) Bill, Scottish Government, [LCM-55–10](#), Session 5 (2017) para 25

49 [R \(on the application of Miller and another\) v Secretary of State for Exiting the European Union](#) [2017] UKSC 5, Para 151

50 [Q7](#)

51 [Q6](#); [Q7](#); [Q8](#); [Q9](#); [Q10](#)

to build trust.<sup>52</sup> Instead, Professors Rawlings and Page both suggest that Parliamentary Sovereignty be used as a “backstop or reserve power to require common frameworks and common decisions, as at the end of the day if they are not reached Parliament would have the power to pass legislation”.<sup>53</sup> Such a model would be based on negotiation, cooperation and agreement, and could serve to build trust amongst the Governments and Legislatures of the UK.

## Common frameworks

29. Following the UK’s departure from the EU, the power to make the decisions previously made at the EU level will return to the UK. Through EU common frameworks, which created and maintain the EU wide policies to support the EU internal (single) market, all parts of the UK follow the same rules and laws in areas such as the EU Common Agriculture Policy, Common Fisheries Policy or mutual recognition of professional qualifications. The UK Government’s overriding aim to have the same rules and laws apply after exit day is intended to ensure that common EU frameworks remain common UK frameworks. The concern is that, as some of these frameworks are in areas of devolved competence, differing policy focuses could lead to policy divergence, which could, unintentionally or not, threaten the UK’s internal market, and potentially lead to difficulties with conducting trade agreements with other countries.

30. In evidence to the Committee, Professor Page makes clear that common frameworks will be required, but that “it is also important not to exaggerate the threat to the integrity of the UK single [internal] market posed by the repatriation of EU competences to devolved areas”.<sup>54</sup> While there are a few areas where powers returning from the EU intersect with devolved settlements, the reserved matters dictate that most powers fall to the UK Parliament.<sup>55</sup> Even if the former EU powers, in areas such as agriculture, were devolved, this would be unlikely to result in devolved autonomy as there are areas under strong influence of international law and agreements, a competence that rests entirely with central Government.<sup>56</sup> Former Speakers Counsel, Michael Carpenter has in this regard described Clause 11 as an unnecessary “blanket provision” that amounts to a “proverbial steam hammer”.<sup>57</sup>

31. The devolved statutes currently contain provisions which could have the effect of preserving the UK internal (single) market outside of the EU. There are already provisions for the relevant Secretary of State to require action by devolved legislatures and governments to comply with UK international obligations.<sup>58</sup> Evidence to the Committee highlights that it is in the clear mutual self-interests of Scotland, Wales, Northern Ireland and England not to take actions which may imperil a UK internal market. As Professor Page highlights, the EU is still trying to create a single (internal) market, but “we already have one. [The task in front of us is to] prevent damage to that market”.<sup>59</sup>

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52 [Q26](#)

53 [Q47](#); [Q33](#)

54 Professor Page ([DEU0008](#)); [Q22](#)

55 Page, Alan, [The implications of the EU withdrawal for the devolution settlement](#), paper prepared for the Scottish Parliament Culture Tourism, Europe and External Relations Committee, 4 October 2016

56 Dr Lock ([0001](#)) para 8–9

57 Michael Carpenter ([DEU0009](#)) para 5

58 [Q30](#) (Rawlings); Scotland Act 1998, sections 35, 58; Government of Wales Act 2006, sections 82, 114; Northern Ireland Act 1998, sections 14, 26.

59 [Q29](#)

32. The UK Government’s analysis of the existing EU competences that interact with the devolved statutes, identify 111 areas for Scotland, 64 for Wales and an estimated 149 for Northern Ireland.<sup>60</sup> (These are listed in Appendix 1). Of these areas Professor Page suggests that only a small number of areas are likely require common frameworks.<sup>61</sup> Michael Carpenter has suggested that what is required is a “compromise position whereby such modification would be lawful for so long as it did not affect, or seriously affect, other parts of the United Kingdom, or fragment the UK’s internal market”.<sup>62</sup> The first steps towards agreeing these common frameworks, were taken at the Joint Ministerial Council (European Negotiations) (JMC(EN)) on October 16 2017, where the principles that will underpin the how common frameworks will be considered, was agreed.<sup>63</sup> (As set out in Box 1 below).

**Box 1: JMC Common Frameworks: Definition and Principles**

**Definition**

As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

**Context**

The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities. Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them. The outcomes from these discussions on common frameworks will be without prejudice to the UK’s negotiations and future relationship with the EU.

**Principles**

1. Common frameworks will be established where they are necessary in order to:
  - enable the functioning of the UK internal market, while acknowledging policy divergence;
  - ensure compliance with international obligations;

60 [Q32](#) (Page)

61 [Q43](#) (Page)

62 Michael Carpenter (0009) para 5

63 Joint Ministerial Committee (EU Negotiations) Communique, 16 October 2017

- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
  - enable the management of common resources;
  - administer and provide access to justice in cases with a cross-border element;
  - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
    - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
    - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
    - lead to a significant increase in decision-making powers for the devolved administrations.
  3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

33. One suggestion made to the Committee by Professor Page was that a “standstill agreement” would maintain the EU common frameworks and would address the difficulties around the mechanism provided in Clause 11. He argues that:

... the UK Government’s ‘guiding principle’ can be more felicitously secured by a combination of the existing reservations and a ‘standstill agreement’ whereby the UK Government and the devolved administrations agree not to introduce, in the Prime Minister’s words, ‘new barriers to living and doing business within our own Union’ while the business of common frameworks - and, no less importantly, the necessary revisions to retained EU law - are being worked out. As well as preserving the integrity of the UK single market, reliance on the combination of reserved matters and a standstill agreement would avoid the undeniably damaging consequences of Clause 11.<sup>64</sup>

34. Professor McEwen notes that a number suggestions have been put forward for how to resolve the impasse between the UK Government and the devolved Administrations, including “a sunset to Clause 11, narrowing its scope to focus on the internal market or international obligations, or replacing it with extensions to reserved powers”.<sup>65</sup> She suggests that the standstill provision proposed by Professor Page is the most persuasive,

especially if given statutory underpinning in the Withdrawal Bill. Provided the form of words could be agreed, it could help to provide both parties with the reassurance they need. Standstill provisions would allow powers to lie where they fall under the existing allocations of constitutional authority, while securing the time and trust needed to negotiate, agree and implement new frameworks.<sup>66</sup>

### Inter-institutional relations in the UK

35. In the previous Parliament, our predecessor Committee published a report, *Future of the Union, part two: Inter-institutional relations in the UK*, which noted the potential of the UK’s departure from the EU to complicate and further test the current inter-institutional arrangements within the UK. The Committee concluded that Brexit “offers both risk and a fresh opportunity, and, therefore, an incentive, to develop more effective inter-governmental relations in the UK”.<sup>67</sup> The report highlighted the inadequacy of the current inter-governmental arrangements and made several key recommendations highlighting the starting points for establishing solid inter-governmental relations foundations. Our predecessor Committee highlighted the need to establish “formal inter-governmental machinery” and the importance of developing an atmosphere of trust and good-will among the four Administrations.<sup>68</sup> For this atmosphere to be established the Committee concluded, with a clear eye on the post exit constitutional settlement, that “the UK Government must show a genuine receptiveness to the concerns and suggestions put forward by the devolved administrations”.<sup>69</sup>

36. Witnesses to our inquiry agreed unanimously that “one immediate problem, starkly revealed by the return of EU powers, is the lack of adequate inter-governmental arrangements capable of dealing with the developing situation”.<sup>70</sup> Professor Page notes that there is need for a “fresh start”. He continues:

If anything comes out of this, it is the 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. That cannot simply be left to happenstance, chance or the inclination and instinct of individual Administrations. Therefore, ... the basic machinery has to be

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65 Professor McEwen (0020) para 15

66 Professor McEwen (0020) para 15

67 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. Para 4

68 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. Para 65

69 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. Para 67

70 Nigel Smith ([DEU0007](#)); Unlock Democracy ([DEU0004](#)); Professor Alan Page ([DEU0008](#))

put on a statutory footing so that the Parliaments are making it clear, “This is our expectation as to the way these relations will be conducted,” rather than leaving it to the discretion of individual Administrations.<sup>71</sup>

37. Nigel Smith, argued that the absence of a strong inter-governmental devolution framework is the major weakness of the otherwise “excellent” Scotland Act 1998.<sup>72</sup> He argues that after the UK has left the EU there will be a third important area of shared policy in addition to the reserved and devolved competencies. Such shared areas, he argues, will require an inter-governmental institutional framework. This “is integral to the success of the return of EU powers - not an optional addition”.<sup>73</sup>

38. There appears to be a consensus in the evidence we received of the desirability to place the UK’s inter-governmental machinery on a statutory footing. The current inter-governmental system relies on a series of ad hoc meetings between Ministers, and on central Government to adhere to the agreements set out in the Memorandum of Understanding, to convene JMC meetings when requested, which recently it has failed to do.<sup>74</sup> At the most basic level, placing inter-governmental machinery on a statutory footing would make clear the “expectation as to the way these relations will be conducted, rather than leaving it to the discretion of individual administrations”.<sup>75</sup> This would have the effect of guaranteeing a basic level of communication and dialogue, by getting people in a room they will be “talking about common frameworks, and what can work for them or what may be their sticking points”.<sup>76</sup> This would mark a very important step forward as it would help generate the trust that has been hitherto lacking in inter-governmental relations in the UK.

39. It has also been suggested to the Committee that the relations between the four Legislatures in the UK should be supported by more formal machinery. The Committee’s previous report, *Future of the Union, part two: Inter-institutional relations in the UK*, suggested that steps should be taken to allow committees of the House of Commons to meet jointly with committees of the devolved legislatures; that written notice and summaries of the Speakers and Presiding Officers quadrilaterals are published; and that there be greater interworking and training of the staff of both the Houses of Parliament and the devolved legislatures.<sup>77</sup>

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71 [Q56](#) (Page)

72 Nigel Smith ([DEU0007](#)) para 19

73 Nigel Smith ([DEU0007](#)) para 9

74 [Q56](#) (Rawlings)

75 [Q56](#) (Page)

76 [Q58](#)

77 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 95–98

### 3 Conclusion

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40. The UK Government's stated intention and guiding principle in the EUW Bill is to ensure legal continuity through ensuring "the same rules and laws will apply on the day after exit as on the day before".<sup>78</sup> While this is clearly a sensible guiding principle, several concerns have been raised, from the devolved Administrations and others, about the mechanism the Government has chosen to implement this principle in Clause 11 of the EUW Bill.

41. The key technical concern raised about Clause 11 is the potential complexity it could create in the UK statute book, due to a conferred powers model being overlaid onto the reserved matters model of devolution. The overall concerns regarding the devolution aspects of the EUW Bill arise from the constitutionally insensitive nature of the UK Government's approach in Clause 11. While the intention of Clause 11 may be simply to maintain legal continuity, it has been interpreted by the devolved Administrations as an attempt to reverse some elements of the devolution settlements.

42. Our witnesses noted that there was a clear lack of understanding of the territorial aspects of the UK's constitution, both in the design of, and debate around Clause 11. However, the main source of disquiet and disagreement between central and devolved Government, derives from the lack of communication and established mechanisms for both proper consultation and shared decision making between governments.

43. The predecessor Committee's report *Future of the Union, part two: Inter-institutional relations in the UK*, highlighted the importance of investing in stronger inter-institutional relations. The Committee recommended several achievable first steps in resuscitating these relations, which would have aided these relations in the year following the publication of that report. An effective system of inter-governmental relations is the missing aspect of the current UK constitutional arrangements and the dispute around Clause 11 brings this issue into sharp focus. A set of effective relationships based on mutual trust and effective communication and consultation are essential for the internal governance of the UK, following its departure from the European Union.

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78 [Explanatory Notes to the European Union \(Withdrawal\) Bill](#) [Bill5 (2017–19)], para 10

# Appendix 1: Powers Returning from the EU that Intersect with the Devolution Settlements

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## **Powers returning from the EU that intersect with the devolution settlement in Scotland**

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Criminal offences minimum standards measures - Combating Child Sexual Exploitation Directive
16. Control of major accident hazards
17. Cross border mediation
18. Data sharing - (EU fingerprint database (EuroDac))
19. Data sharing - European Criminal Records Information System (ECRIS)
20. Data sharing - False and Authentic Documents Online (FADO)
21. Data sharing - passenger name records
22. Data sharing - Prüm framework

23. Data sharing - Schengen Information System (SIS II)
24. Efficiency in energy use
25. Elements of Reciprocal Healthcare
26. Elements of the Network and Information Security (NIS) Directive
27. Elements of Tobacco Regulation
28. Energy Performance of Buildings Directive
29. Environmental Impact Assessment (EIA) Directive
30. Environmental law concerning energy planning consents
31. Environmental law concerning offshore oil & gas installations within territorial waters
32. Environmental quality - Air Quality
33. Environmental quality - Chemicals
34. Environmental quality - Flood Risk Management
35. Environmental quality - International timber trade (EUTR and FLEGT)
36. Environmental quality - Marine environment
37. Environmental quality - Natural Environment and Biodiversity
38. Environmental quality - Ozone depleting substances and F-gases
39. Environmental quality - Pesticides
40. Environmental quality - Spatial Data Infrastructure Standards
41. Environmental quality - Waste Packaging & Product Regulations
42. Environmental quality - Waste Producer Responsibility Regulations
43. Environmental quality - Water Quality
44. Environmental quality - Water Resources
45. Environmental quality - Biodiversity - access and benefit sharing of genetic resources
46. Equal Treatment Legislation
47. EU agencies - EU-LISA
48. EU agencies - Eurojust
49. EU agencies - Europol
50. EU Social Security Coordination

51. Fisheries Management & Support
52. Food and Feed Law
53. Food Compositional Standards
54. Food Geographical Indications (Protected Food Names)
55. Food Labelling
56. Forestry (domestic)
57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)
58. Genetically modified micro-organisms contained use
59. Good laboratory practice
60. Harbours
61. Hazardous Substances Planning
62. Heat metering and billing information
63. High Efficiency Cogeneration
64. Implementation of EU Emissions Trading System
65. Ionising radiation
66. Land use
67. Late payment (commercial transactions)
68. Legal aid in cross-border cases
69. Migrant Access to benefits
70. Minimum standards -housing & care: regulation of the use of animals
71. Minimum standards legislation - child sexual exploitation
72. Minimum standards legislation - cybercrime
73. Minimum standards legislation - football disorder
74. Minimum standards legislation - human trafficking
75. Mutual recognition of professional qualifications
76. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
77. Nutrition health claims, composition and labelling

78. Onshore hydrocarbons licensing
79. Organs
80. Plant Health, Seeds and Propagating Material
81. Practical cooperation in law enforcement - Asset Recovery Offices
82. Practical cooperation in law enforcement - European Investigation Order
83. Practical cooperation in law enforcement - Joint Action on Organised Crime
84. Practical cooperation in law enforcement - Joint investigation teams
85. Practical cooperation in law enforcement - mutual legal assistance
86. Practical cooperation in law enforcement - mutual recognition of asset freezing orders
87. Practical cooperation in law enforcement - mutual recognition of confiscation orders
88. Practical cooperation in law enforcement - Schengen Article 40
89. Practical cooperation in law enforcement - Swedish initiative
90. Practical cooperation in law enforcement - European judicial network
91. Practical cooperation in law enforcement - implementation of European Arrest Warrant
92. Procedural rights (criminal cases) - minimum standards measures
93. Provision of legal services
94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
95. Public sector procurement
96. Public health (serious cross-border threats to health)
97. Radioactive Source Notifications–Trans-frontier shipments
98. Radioactive waste treatment and disposal
99. Rail franchising rules
100. Rail markets and operator licensing
101. Recognition of insolvency proceedings in EU Member States
102. Renewable Energy Directive
103. Rules on applicable law in civil & commercial cross border claims

104. Sentencing - taking convictions into account
105. State Aid
106. Statistics
107. Strategic Environmental Assessment (SEA) Directive
108. Tissues and cells
109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)
110. Victims rights measures (criminal cases)
111. Voting rights and candidacy rules for EU citizens in local government elections

### **Powers returning from the EU that intersects with the devolution settlement in Wales**

#### *Department for Business, Energy and Industrial Strategy*

1. Carbon Capture & Storage
2. Efficiency in energy use
3. Environmental law concerning energy planning consents
4. Environmental law concerning offshore oil & gas installations within territorial waters
5. Implementation of EU Emissions Trading System
6. Mutual recognition of professional qualifications
7. Onshore hydrocarbons licensing
8. Radioactive Source Notifications - Transfrontier shipments
9. Radioactive waste treatment and disposal
10. State Aid

#### *Cabinet Office*

1. Public sector procurement
2. Statistics
3. Voting rights and candidacy rules for EU citizens in local government elections

#### *Department for Communities and Local Government*

1. Environmental Impact Assessment (EIA) Directive

2. Energy Performance of Buildings Directive
3. Hazardous Substances Planning
4. Strategic Environmental Assessment (SEA) Directive

### *Department for Digital, Culture, Media and Sport*

1. Elements of the Network and Information Security (NIS) Directive
2. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state

### *Department for the Environment, Food and Rural Affairs*

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation (not food/feed law, see FSA return)
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Environmental quality - Air Quality
9. Environmental quality - Biodiversity - access and benefit sharing of genetic
10. resources (ABS)
11. Environmental quality - Chemicals
12. Environmental quality - Flood Risk Management
13. Environmental quality - International timber trade (EUTR and FLEGT)
14. Environmental quality - Marine environment
15. Environmental quality - Natural Environment and Biodiversity
16. Environmental quality - Ozone depleting substances and F-gases
17. Environmental quality - Pesticides
18. Environmental quality - Spatial Data Infrastructure Standards
19. Environmental quality - Waste Packaging & Product Regulations
20. Environmental quality - Waste Producer Responsibility Regulations

21. Environmental quality - Water Quality
22. Environmental quality - Water Resources
23. Fisheries Management & Support
24. Food Compositional Standards (not hygiene / safety - see FSA return)
25. Food Geographical Indications (Protected Food Names)
26. Food Labelling
27. Forestry (domestic)
28. Land use
29. Plant Health, Seeds and Propagating Material

### *Department for Health*

1. Blood Safety and Quality
2. Elements of Reciprocal Healthcare
3. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another MS)
4. Good laboratory practice
5. Nutrition health claims, composition and labeling
6. Organs
7. Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)
8. Tissues and cells (apart from embryos and gametes)
9. Elements of Tobacco Regulation

### *Department for Transport*

1. Harbours
2. Rail franchising rules

### *Food Standards Agency*

1. Food and Feed Law (Food and feed safety and hygiene; food and feed law enforcement (official controls); food labelling (Defra, DH and FSA all have responsibilities for different parts); Commission consents.

### *Government Equalities Office*

1. Equal Treatment Legislation

### *Health and Safety Executive*

1. Chemicals regulation (including pesticides)
2. Control of major accident hazards
3. Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)
4. Ionising radiation

### **Policy Areas/Powers returning from the EU which intersect with the devolution settlement in Northern Ireland (141)**

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Civil use of explosives
16. Clinical trials of medicinal products for human use
17. Company Law
18. Consumer law including protection and enforcement

19. Control of major accident hazards
20. Criminal offences minimum standards measures - Combatting Child Sexual Exploitation Directive
21. Cross border mediation
22. Data sharing - Eurodac
23. Data sharing - European Criminal Records Information System (ECRIS)
24. Data sharing - False and Authentic Documents Online (FADO)
25. Data sharing - passenger name records
26. Data sharing - Prüm framework
27. Data sharing - Schengen Information System (SIS II)
28. Driver Licensing Directive (roads). Also Driver Certificates of Professional Competence
29. Efficiency in energy use
30. Elements of Employment Law, including health and safety at work
31. Elements of reciprocal healthcare
32. Elements of the Network and Information Security (NIS) Directive
33. Elements of tobacco regulation
34. Energy Performance of Buildings Directive
35. Environmental Impact Assessment (EIA) Directive
36. Environmental law concerning energy planning consents
37. Environmental law concerning offshore oil & gas installations within territorial waters
38. Environmental quality - Air Quality
39. Environmental quality - Biodiversity - access and benefit sharing of genetic resources (ABS)
40. Environmental quality - Chemicals
41. Environmental quality - Flood Risk Management
42. Environmental quality - International timber trade (EUTR and FLEGT)
43. Environmental quality - Marine environment
44. Environmental quality - Natural Environment and Biodiversity

45. Environmental quality - Ozone depleting substances and F-gases
46. Environmental quality - Pesticides
47. Environmental quality - Spatial Data Infrastructure Standards
48. Environmental quality - Waste Packaging & Product Regulations
49. Environmental quality - Waste Producer Responsibility Regulations
50. Environmental quality - Water Quality
51. Environmental quality - Water Resources
52. Equal Treatment Legislation
53. EU agencies - EU-LISA
54. EU agencies - Eurojust
55. EU agencies - Europol
56. EU social security coordination
57. Fisheries Management & Support
58. Food and Feed Law (Food and feed safety and hygiene; food and feed law enforcement (official controls); food labelling; Commission consents.
59. Food Compositional Standards
60. Food Geographical Indications (Protected Food Names)
61. Food Labelling
62. Forestry (domestic)
63. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another MS)
64. Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)
65. Good laboratory practice
66. Harbours
67. Hazardous Substances Planning (Seveso III Directive)
68. Health and safety at work
69. Heat metering and billing information
70. High Efficiency Cogeneration
71. Implementation of EU Emissions Trading System

72. Inland transport of dangerous goods and transportable pressure equipment
73. Ionising radiation
74. Land use
75. Late payment (commercial transactions)
76. Legal aid in cross border cases
77. Maritime Employment and Social Rights
78. Medical devices
79. Medicinal products for human use
80. Medicine prices
81. Migrant access to benefits
82. Minimum standards -housing & care, regulates the use of animals
83. Minimum standards legislation - child sexual exploitation
84. Minimum standards legislation - cybercrime
85. Minimum standards legislation - football disorder
86. Minimum standards legislation - human trafficking
87. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
88. Mutual recognition of professional qualifications
89. Non-food product design and labelling
90. Nutrition health claims, composition and labelling
91. Onshore hydrocarbons licensing
92. Operator licensing (roads)
93. Organs
94. Passenger Rights (rail)
95. Plant Health, Seeds and Propagating Material
96. Practical cooperation - Asset Recovery Offices
97. Practical cooperation - European Investigation Order
98. Practical cooperation - implementation of European Arrest Warrant (dealing with requests etc.)

99. Practical cooperation - Joint Action on Organised Crime
100. Practical cooperation - Joint investigation teams
101. Practical cooperation - mutual legal assistance
102. Practical cooperation - mutual recognition of asset freezing orders
103. Practical cooperation - mutual recognition of confiscation orders
104. Practical cooperation - Schengen Article 40
105. Practical cooperation - Swedish initiative
106. Practical cooperation- European judicial network
107. Private cross border pensions
108. Procedural rights (criminal cases) - minimum standards measures
109. Product safety and standards
110. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
111. Provision of legal services (temporary and permanent basis)
112. Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)
113. Public Sector Procurement
114. Radioactive Source Notifications - Transfrontier shipments
115. Radioactive waste treatment and disposal
116. Rail franchising rules
117. Rail markets and operator licensing (governance, structure, track access & charging)
118. Rail Markets: safety rules and régimes
119. Rail Markets: technical standards
120. Rail Markets: Train driving licenses and other certificates directive
121. Rail Workers Rights Directive
122. Recognition of insolvency proceedings in EU Member States
123. Renewable Energy Directive
124. Roads - Motor Insurance (minimum required levels of insurance and various compensation schemes, not insurance, financial and prudential regulation, which is reserved)

125. Roadworthiness Directive
126. Rules on applicable law in civil & commercial cross border claims (includes RI and II Regs)
127. Security of supply (emergency stocks of oil)
128. Security of supply (gas)
129. Sentencing - taking convictions into account
130. Single energy market/ Third Energy Package
131. State Aid
132. Statistics (where production is devolved)
133. Strategic Environmental Assessment (SEA) Directive
134. The Rental and Lending Directive (concerning library lending)
135. Tissues and cells (apart from embryos and gametes)
136. Transporting dangerous goods by rail, road and inland waterway Directive
137. Uniform fast track procedures for certain civil and commercial claims (uncontested debts, small claims)
138. Vehicle registration (roads)
139. Vehicle standards - various type approval Directives (roads)
140. Victims rights measures (criminal cases) - minimum standards
141. Working Time Rules and Harmonisation of Hours Directive and regulations on tachographs

# Formal Minutes

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**Tuesday 28 November 2017**

Members present:

Mr Bernard Jenkin, in the Chair

Ronnie Cowan	Dr Rupa Huq
Paul Flynn	Mr David Jones
Kelvin Hopkins	Sandy Martin

Draft Report (*Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*), proposed by the Chair, brought up, and read.

Motion made, and Question proposed, That the draft Report be read a second time, paragraph by paragraph.—(*The Chair*.)

The Committee Divided

<b>Ayes, 6</b>	<b>Noes, 1</b>
Ronnie Cowan	Paul Flynn
Paul Flynn	
Kelvin Hopkins	
Dr Rupa Huq	
Mr David Jones	
Sandy Martin	

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

Paragraphs 1 to 43 read and agreed to.

*Resolved*, That the Report be the First 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 until 9.30am on Tuesday 5 December 2017]

## Witnesses

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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

**Sir Michael Carpenter**, Former Speakers Counsel, and **Professor Nicola McEwen**, Professor of Territorial Politics, University of Edinburgh

[Q69–](#)

## Published written evidence

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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 Professor Alan Page ([DEU0008](#))
- 2 Dr Joanie Willett ([DEU0003](#))
- 3 Dr Tobias Lock ([DEU0001](#))
- 4 Martin Howe ([DEU0022](#))
- 5 Michael Carpenter ([DEU0009](#))
- 6 Nat O'Connor ([DEU0006](#))
- 7 Nigel Smith ([DEU0007](#))
- 8 Professor Nicola McEwen ([DEU0020](#))
- 9 Unlock Democracy ([DEU0004](#))

# List of Reports from the Committee during the current Parliament

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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 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