



House of Commons
Scottish Affairs Committee

The relationship between the UK and Scottish Governments

Eighth Report of Session 2017–19

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

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The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Summary

The relationship between the UK and Scottish Governments has undergone significant change in the 20 years since devolution. Policy divergence between London and Edinburgh increased significantly in 2007 as the election of a Scottish National Party Scottish Government brought an end to nearly ten years of Labour Party dominance in Westminster and Holyrood, creating a more fractious political landscape. Tensions between the two governments peaked in 2014, during the Scottish Independence referendum. This relationship has come under renewed strain, after the UK voted to leave the European Union in 2016 and has been characterised by mutual distrust and political stalemate. Indeed, former senior Scottish Government civil servants described Brexit as “the worst crisis devolution has faced to date”.

The relationship has deteriorated at a time when goodwill and cooperation are needed most. Brexit will require an unprecedented level of intergovernmental cooperation and coordination. Post-Brexit common frameworks, for example, will require both governments to reach agreement on how they should be mutually bound by highly technical regulatory rules in areas such as agriculture and the environment.

Throughout our inquiry we heard that the fundamental issue at the heart of the relationship is trust, or rather the lack of it. We call on both governments to work together to rebuild trust and recognise the need for a cooperative and constructive relationship underpinned by the principle of parity of esteem. Unless both governments summon the political will to work together to rebuild trust, the relationship will only deteriorate further.

Despite the significant changes in the relationship, and the new challenges presented by Brexit, the governmental machinery that supports intergovernmental co-operation has remained substantially unchanged since 1998. We recommend that the Joint Ministerial Committee (JMC), the main body for intergovernmental discussion and agreement, be reformed to ensure it is a forum in which all four of the UK’s governments can participate equally, supported by an independent secretariat, and with recourse to a robust dispute resolution procedure which includes input from third parties. We also recommend that a reformed JMC be used to agree, and resolve disagreements about UK-wide common frameworks, which will replace EU-wide rules in areas like agriculture and environmental policy.

Strong intergovernmental relations also require strong relations between officials. However, we believe in some areas Whitehall’s skills and knowledge of devolved institutions could be improved, particularly in departments which do not have a history of regular joint working. We recommend that the UK Government increases Whitehall’s devolution capacity by improving training, guidance and opportunities for secondments. We also call for new devolution impact assessments to be introduced to ensure that the impact of UK Government policy decisions on Scotland are properly considered during policy-making.

Finally, we recommend that the UK Government reviews the role of the Scotland Office as it is unclear to us how much value it adds to the day-to-day relationship between the UK and Scottish Governments. As part of this review we believe the UK Government should explore options including replacing the territorial offices of state with a single department responsible for managing constitutional affairs and intergovernmental relations.

1 Introduction

1. Since 1998 Scotland has had two governments—the Scottish Government in Edinburgh and the UK Government in London. The importance of a healthy and robust relationship between these two governments has been a recurring theme in our work during this Parliament. It has been raised in issues as diverse as the funding of City Deals,¹ supporting the oil and gas sector,² negotiating post-Brexit trade deals³ and deploying broadband infrastructure.⁴

2. However, the nature of this relationship has changed significantly since the early years of devolution. Initially, the Labour Party was in office on both sides of the border, meaning there was limited policy disagreement. This relationship has become more strained since a different party—with different policy objectives—came to power in 2007. Subsequently, the fundamentally divergent objectives of the SNP-controlled Scottish Government, and the Conservative/Coalition-controlled UK Governments, were fully exposed during the 2014 Scottish independence referendum. More recently, the two governments’ apparently irreconcilable differences on Brexit have further tested the relationship which has, amongst other signs of stress, resulted in political stalemate and the referral to the Supreme Court of the Scottish Government’s UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill by the UK Government, which disputed whether aspects of the Bill were part of devolved competence.

3. As well as shifting political dynamics, the devolution settlement itself has undergone considerable change. The devolution settlement was initially based on a clear divide between devolved and reserved power, in which each policy was the clear responsibility of either government. However, the 2012 and 2016 Scotland Acts changed this by introducing for the first time “shared” policy areas in relation to taxation and welfare spending, where effective intergovernmental relations have become particularly important.⁵

4. Despite this, the UK’s intergovernmental machinery and the methods of joint working have remained largely unchanged since the first years of devolution. Many academics and parliamentary committees have observed that recent developments have highlighted the weaknesses in the UK’s intergovernmental machinery.⁶ There are also new challenges on the horizon as the UK leaves the European Union and its legal systems—a constitutional arrangement upon which the current devolution settlement is predicated. This has raised important questions about how the two governments will work together in the future.

5. The Cabinet Office launched a review of intergovernmental relations in March 2018 with the agreement of the devolved governments. This review is examining whether

1 Scottish Affairs Committee, [City Region Deals](#), one-off evidence session

2 Scottish Affairs Committee, [The future of the oil and gas industry](#), Sixth Report of the Session 2107–19, HC 996

3 Scottish Affairs Committee, [Scotland, Trade and Brexit](#), Seventh Report of the Session 2107–19, HC 903

4 Scottish Affairs Committee, [Digital Connectivity in Scotland](#), Fifth Report of the Session 2107–19, HC 654

5 Scottish Parliament Information Centre, [Common UK Frameworks after Brexit, SB 18–09](#), February 2018

6 Centre on Constitutional Change, [Reforming Intergovernmental Relations](#), October 2018; House of Lords Select Committee on the Constitution, [Inter-governmental relations in the United Kingdom](#), 27 March 2015; Public Administration and Constitutional Affairs Committee, [The Future of the Union, Part two: Inter-institutional relations in the UK HC 839](#), 6 December 2016; Scottish Parliament Finance and Constitution Committee, Interim Report on the EU (Withdrawal) Bill LCM, 9 January 2018; Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017; House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: reconciling differences and building strong relationships, Eighth Report of Session 2017–19, HC1485](#), 31 July 2018

the “existing intergovernmental structures [...are] fit for purpose” in a post-Brexit context.⁷ The review will cover; the principles underpinning future intergovernmental relations, governance of common frameworks, intergovernmental dispute resolution, intergovernmental machinery, and devolved administration engagement on international matters.⁸

Our inquiry

6. In light of these developments, and to mark the 20th anniversary of devolution, we decided the time was right to take a fresh look at the relationship between the UK and Scottish Governments. We held five oral evidence sessions hearing from; academics, thinktanks, former senior ministers and officials, and the UK and Scottish Governments. We examined how intergovernmental relations operate in some other countries and heard from academics and current and former officials with knowledge of other systems. We also held an informal discussion with two former senior Scottish Government civil servants to gain some insight into the day to day realities of intergovernmental working. We are grateful to all those who contributed to our inquiry.

7. We begin this Report by examining the broad principles which should underline the relationship between the two governments. We then turn our focus, in turn, to the Joint Ministerial Committee, common frameworks, and Whitehall devolution knowledge and processes. Finally, we end this report by considering the role of the Office for the Secretary of State for Scotland and the role it plays in intergovernmental relations.

7 UK Government/JMC (P), [Minutes: JMC \(P\): 14 March 2018: No. 10 Downing Street](#), 14 March 2018

8 [Q202](#)

2 Trust and political relations

8. Central to the relationship between the UK and Scottish Governments are the relationships between the politicians of the two administrations. The UK’s constitutional settlement places great emphasis on the importance of these personal relationships. This is reflected in the Memorandum of Understanding (MoU) between the two governments, which states that intergovernmental business should be conducted informally by default, and that intergovernmental disputes should be resolved informally between officials wherever possible.⁹ Some commentators spoke positively of this arrangement, arguing that it “helped foster positive working relationships across administrations” and allows for flexibility.¹⁰ On the other hand, the Centre on Constitutional Change has noted that the lack of routinised and institutionalised engagement has meant that “we do not have an integrated set of Government-to-Government relations” to rely upon when the relationship is put under pressure.¹¹

History of the relationship

9. We heard that the reliance on informal relationships was unproblematic during the first years of devolution when the Labour Party controlled all four of the UK’s executives. Baroness Liddell, former Secretary of State for Scotland (2001–2003), told us that the fact her counterpart in Scotland was of the same party meant “there was an ease of discussion” between them. Baroness Liddell explained that these relationships fostered an informal and personalised approach to intergovernmental relations:

We had also a lot of people in the Scottish Executive in very senior positions who had been Members of Parliament [...] whose personal phone numbers you had [...] The relationships were fairly good and, when they were not good, they were frank because we all knew one another.¹²

Michael Moore, former Secretary of State for Scotland (2012–2015), agreed with this analysis, describing the “personality-driven nature of the relationships in the early days”.¹³ However, 20 years on from devolution those relationships are no longer as prevalent, with Michael Moore telling us that “after 20 years, the instinctive understanding or personal connections that Baroness Liddell talks about had disappeared to some extent”.¹⁴ Rt Hon David Mundell MP, Secretary of State for Scotland, made a similar point:

There was a very different relationship between the UK Government and the Scottish Government in the early years of devolution, based on personal relationships within the Labour Party. When the SNP came into power in 2007 that political alignment ended and there was a clear desire for the relationship between the two governments to become more formalised.¹⁵

9 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013

10 Centre on Constitutional Change, [Reforming Intergovernmental Relations](#), October 2018, p. 6

11 [Q6](#)

12 [Q177](#)

13 [Q170](#)

14 [Q172](#)

15 Secretary of State for Scotland ([IGR0011](#))

10. This loss of personal relations between politicians appears to have corresponded with a breakdown in trust between the two governments on a political level. We heard that this loss of trust began in 2007, when the SNP replaced the Labour Party in the Scottish Government.¹⁶ The House of Commons Library has noted that, upon election in 2007 the new SNP Scottish Government indicated its intention to “stand up for Scotland”¹⁷ by opposing UK Government policies rather than “being careful not to be seen arguing with London”, as it characterised the position of the previous administration.¹⁸ Alun Evans, former Director of the Scotland Office (2012–2015), described to us the contrast between the “benign relation” during the Labour-Lib Dem coalition years in Edinburgh, and the current situation “where you have two democratically-elected governments with completely opposing views”.¹⁹

11. We heard that the polarised politics of the two governments became particularly evident during the Scottish Independence referendum of 2014. Although relations between officials continued to be “extremely cordial and robust”, the political relationship became “particularly strained and tested”.²⁰ Sir Peter Housden, former Permanent Secretary to the Scottish Government (2010–2015), told us, “at senior level, [relations] could not have been tenuous on occasions”.²¹ Michael Moore—Secretary of State for Scotland at the time—likewise noted, “it was difficult [...] the politics was very hard”.²² Professor Nicola McEwen, and the former Scottish Government civil servants we spoke to in private, both told us that on a day to day level there was an atmosphere of suspicion between the two governments, which often manifested itself as a fear of sharing information.²³

12. This trend of strained personal relations and lost trust between political leaders appears to have been exacerbated by Brexit where, as with the Scottish Independence referendum, the two governments have diametrically opposed political goals. We heard from former senior Scottish Government civil servants that Brexit is the worst crisis devolution has faced to date, which has put into perspective how successfully earlier disagreements and disputes were managed and resolved.²⁴ Professor Gallagher told us, “both governments got off to a bad start” in terms of their initial approaches to the EU referendum result:

Both were obsessed with sovereignty. The Scottish Government’s immediate reaction about another independence referendum did not serve to build trust [...] The UK government’s predictable but erroneous reaction of substituting UK parliamentary sovereignty for Brussels responsibility failed to take account of the embedded nature of devolution in the UK constitution.²⁵

16 [Q133](#)

17 Neil McGarvey and Paul Cairney, *Scottish Politics: An Introduction*, Basingstoke: Palgrave, 2008, p. 162

18 House of Commons Library, [Intergovernmental Relations in the United Kingdom](#), July 2018

19 [Q188](#)

20 [Q190](#); Secretary of State for Scotland ([IGR0011](#))

21 [Q155](#); [Q169](#)

22 [Qq170–171](#)

23 [Q14](#); [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#); House of Commons Library, [Intergovernmental Relations in the United Kingdom](#), July 2018, p. 18

24 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

25 Professor Jim Gallagher ([IGR0002](#))

Baroness Liddell echoed these concerns; “you need to have an understanding and respect for where each other is coming from. Looking at it now as an observer, sometimes I do worry if that respect exists to the same extent that it needs to to make progress”.²⁶

13. We heard specific examples of Brexit-related developments which have contributed to loss of trust between the two governments.²⁷ An oft-cited example was the European Union (Withdrawal) Act, which was introduced in the UK Parliament “without substantive consultation” with the Scottish Government, thereby triggering “prolonged public arguments”.²⁸ Michael Russell MSP, Scottish Government Cabinet Secretary for Government Business and Constitutional Relations, claimed:

There was a convention that bills were shared and discussed. That broke down pretty quickly in Brexit, because I think the Withdrawal Bill was only shown to us two weeks before it was published [...] A bill of that nature, which would require legislative consent, would [previously] have been shared over a long period of time. That simply did not happen.²⁹

Professor Nicola McEwen similarly noted that the deteriorating levels of trust have resulted in a refusal to share information at an early stage of policy development, which has “contributed to the frustrations”.³⁰ Mr Russell also acknowledged that the loss of information sharing has been a two-way process, saying that the Scottish Government has also not “shared some things that they might have expected [...] I think we have grown shy of each other in doing so”.³¹

14. We also heard that relations were further strained when the UK Parliament passed the Withdrawal Act without the consent of the Scottish Parliament.³² The Scottish Government argued this was a breach of the Sewel Convention - the idea that the UK Government will “not normally” legislate in areas of Scottish Parliament competence without its consent.³³ The UK Government argued that ‘no one would dispute that these are not normal times.’³⁴ Later, the UK Government referred the Scottish Parliament’s European Union (Legal Continuity) (Scotland) Act to the Supreme Court, on the basis that the Act went beyond the Scottish Parliament’s powers. We heard that this was interpreted by the Scottish Government as “a particularly [un]friendly action”, which further tested relations.³⁵ Finally, tensions grew further when, in response to the UK Parliament passing the European Union (Withdrawal) Act without the Scottish Parliament’s consent, the Scottish Government committed to advising the Scottish Parliament to refuse consent to any of the UK Government’s Brexit bills, “until the Sewel Convention is made operable again”.³⁶ Rt Hon David Mundell MP, Secretary of State for Scotland, argued that this “polarised” response has served to “undermine” any attempt at compromise.³⁷

26 [Q189](#)

27 [Q311](#)

28 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 28

29 [Q311](#)

30 [Q14](#)

31 [Q311](#)

32 [Q311](#)

33 Scottish Government, [Scotland’s Place in Europe: Our Way Forward](#), October 2018, p. 33

34 HC Deb 14 June 2018, [column 1129](#), [Commons Chamber]

35 [Q317](#)

36 BBC News, [Agriculture bill ‘a missed opportunity’, Scots ministers say](#), 13 September 2018

37 Secretary of State for Scotland ([IGR0011](#))

15. Despite these events, the Secretary of State had a more optimistic view of the current state of the UK’s intergovernmental relations. He contrasted the current situation with the period during the Scottish Independence Referendum, saying, “I do not agree with those who claim that relations between the UK and Scottish Governments are at their lowest ebb”.³⁸ He argued that the Scottish Government has had “clear engagement and input at a ministerial and official level throughout the EU Exit process”.³⁹

Principles for the future relationship

16. Throughout our inquiry we have heard many recommendations for how to reform intergovernmental relations in the UK. These ranged from improving civil service training, to re-examining the role of the Scotland Office. However, the point made repeatedly by witnesses was that these are largely technical reforms, which can only go so far. We heard that the fundamental issue is how to develop and embed a strong relationship between the two governments where both parties trust and respect each other. As Michael Russell MSP told us:

The issue [that needs] to be addressed is: can you put together a relationship of equity? [...] I want equality[...] A system in which the component parts respected each other, were able to work together, had equal opportunities and equal says.⁴⁰

Other witnesses and commentators similarly called for a re-examination of the principles underpinning intergovernmental relations, and a concerted effort from both governments towards building trust and facilitating relationships.⁴¹ Akash Paun, Institute for Government, suggested that agreeing a “statement of the principles of the intergovernmental relationship” might reset the relationship, and help rebuild trust.⁴² The Royal Society of Edinburgh told us that the underlying principles should be “consultation, consensus and parity”.⁴³ Michael Russell MSP referenced “the principle of equality”.⁴⁴ The Law Society of Scotland argued that “cooperation” should be the underlying principle.⁴⁵ The Centre on Constitutional Change has made no specific recommendations about what the underlying principles should be, but suggested “respect for the authority of different governments”, “cooperation”, and “proportionality” might be useful starting points.⁴⁶ The Minister for the Constitution, Chloe Smith MP, told us that one of the five pillars of the ongoing Cabinet Office review was “a set of principles to provide the context of future relations”.⁴⁷ The Secretary of State for Scotland also agreed that it is important to examine the principles underpinning intergovernmental relations, and said that collaboration on post-Brexit arrangements will represent “a new era of intergovernmental relations”.⁴⁸

38 Secretary of State for Scotland ([IGR0011](#))

39 Secretary of State for Scotland ([IGR0011](#))

40 [Q304](#)

41 [Qq18–19](#); [Q47](#); The Law Society of Scotland ([IGR0006](#)); Royal Society of Edinburgh ([IGR0004](#)); Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018

42 [Q47](#)

43 Royal Society of Edinburgh ([IGR0004](#))

44 [Q302](#)

45 The Law Society of Scotland ([IGR0006](#))

46 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, pp. 15–16

47 [Q202](#)

48 Secretary of State for Scotland ([IGR0011](#))

17. A stronger relationship would not mean an end to disagreement between the two governments. As Professor Gallagher argued, effective intergovernmental relations are not the same as intergovernmental agreement and he noted that there are limitations to what compromises and resolutions intergovernmental relations can broker.⁴⁹ Professor Gallagher argued “they are allowed to disagree”, and disagreement should not, in itself, be regarded as a breakdown in intergovernmental relations.⁵⁰ This point is particularly relevant in the context of Brexit where the two governments have such divergent policy objectives that, as Professor Gallagher put it, “no system of intergovernmental relations was going to cope well with it”.⁵¹ Michael Clancy, Law Society of Scotland, noted how important it is that the intergovernmental relationship is strong enough to withstand disagreement on particular policy issues, without the broader political relationship being weakened.

18. The relationship between the UK and Scottish Governments has come under renewed strain at a time when cooperation and trust is needed most. The current system of intergovernmental relations is not able to cope with the pressure being placed on it. Whilst we recognise that disagreement between the UK and Scottish Governments is inevitable and legitimate, we believe that the frequency and nature of the disputes we have seen in recent years have been exacerbated by a fundamental—and avoidable—deficit of trust in the relationship. The two governments need to have a relationship that is strong enough to survive disagreement. In the remainder of this Report we recommend reforms which could be made to improve machinery and governance arrangements which support intergovernmental relations. However, none of these reforms will be successful unless trust is rebuilt through a fundamental change in the approaches of both governments.

19. We are encouraged by both governments’ expressions of willingness to improve intergovernmental relations and welcome the Secretary of State’s commitment to a “new era of intergovernmental relations” after Brexit. We call on both Governments to work to rebuild trust and recognise the need for a cooperative and constructive relationship underpinned by the principle of parity of esteem. This would ensure that both governments are treated as equals in their respective areas of competence, and ensure mutual respect for each other’s authority, even in the face of disagreement. Unless both governments summon the political will to work to rebuild trust the relationship will only deteriorate further.

49 [Q1](#)
 50 [Q1](#)
 51 [Q1](#)

3 Joint Ministerial Committee

20. While the personal and political relationship between the two governments is an essential part of intergovernmental relationship, it is vital they are supported by effective formal processes that can cope with issues that cannot be resolved informally. At the heart of the UK's formal system of intergovernmental relation is the Joint Ministerial Committee ('JMC') which is comprised of ministers from the UK and devolved administrations. The JMC's remit is:

- To consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- Where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the UK;
- To keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- To consider disputes between the administrations.⁵²

21. The JMC (Plenary) is the overarching committee of the JMC which is expected to meet once per year. It is chaired by the Prime Minister, and is attended by the First Ministers of Scotland, Wales, and Northern Ireland, as well as the UK Government territorial Secretaries of State. It is intended to be the primary heads of government forum in which the devolved administrations can air their views to the UK Government.⁵³ There are currently two JMC sub-committees—the JMC (Europe) and JMC (European Negotiations). The former meets roughly four or five times a year to consult on UK Government positions on EU issues which affect devolved matters ahead of European Council meetings.⁵⁴ The latter was established in late 2016, with the aim of involving the devolved administrations in the process of withdrawing the UK from the EU.⁵⁵

22. We heard that the effectiveness of the JMC format has varied over time. For example, Lord Wallace, former Deputy First Minister of Scotland (1999–2005), claimed that during his time in government, JMC (Plenary) meetings were not taken seriously, and “Tony Blair spent most of the time looking out the window. Nothing much was achieved at them and no one could understand the point of them”.⁵⁶ Professor Gallagher, who was the UK Government official responsible for the JMC in the early 2000s, claimed that less tangible outcomes of JMC meetings were arguably more understandable in the first years of devolution, because the policy agendas of the four UK executives were broadly aligned, and political parties (rather than the JMC) were the conduit through which issues were discussed and resolved.⁵⁷ Professor Gallagher said, “in practice, it had nothing to do[...]

52 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p. 12

53 [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

54 Institute for Government, [Devolution and the Joint Ministerial Committee](#), February 2018

55 JMC Joint Secretariat, [Report of the Joint Ministerial Committee: 2015–2018](#), March 2018

56 [Q132](#)

57 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 16

Frankly, filling an agenda was very difficult because[...] there were very good fences between the devolved and reserved, so there was not much overlap[...] People got on with their own business”.⁵⁸ Other witnesses made the same point.⁵⁹

23. We heard that the need for more proactive engagement through the JMC became increasingly apparent post-2007, as the political landscape was no longer dominated by the same political parties. Professor Gallagher explained that, in light of the formation of an SNP government in Edinburgh, the UK Government’s attitude to the JMC was, “The one thing we have to do is make these JMCs work because we now do have a political argument to have”.⁶⁰ Our evidence suggests that, as a result, the JMC has been used more proactively and meaningfully since 2007, after “oil was put on and the machine staggered along”.⁶¹

Parity of esteem and the JMC

24. As we argued in the previous chapter, UK intergovernmental relations should be underlined by the principle of parity of esteem. As such, this principle should also be reflected in how the JMC operates. However, throughout our inquiry we have been surprised by the consistency of the evidence we heard which suggests that the conduct, outcome and frequency of JMC meetings is predominantly determined by the UK Government’s interests and priorities, with little open-minded and meaningful engagement.⁶²

25. We heard concerns that the JMC is not always used as a meaningful forum for intergovernmental engagement. Some witnesses argued that JMC meetings are often used to simply rehearse entrenched policy positions.⁶³ For example, Michael Russell MSP, Scottish Government Cabinet Secretary for Government Business and Constitutional Relations, argued that JMC (European Negotiations) meetings have become a place where the UK Government can dictate to the devolved administrations what is *going* to happen, rather than meaningfully consult on what *should* happen,⁶⁴ and that, “at no point have the views of the Scottish Government[...] been addressed in a way that has led us to think we have been listened to, and would be taken account of”.⁶⁵

26. On the other hand, Rt Hon David Mundell MP, Secretary of State for Scotland, had a different perspective. Mr Mundell told us that the JMC (EN) has allowed the Scottish Government to engage meaningfully with the EU Exit process and has served to “strengthen relationships and information sharing”.⁶⁶ When these points were put to Chloe Smith MP, UK Government Minister for the Constitution, she said “they are not talking shops. They are highly practical meetings where business is being conducted”.⁶⁷ However, when asked to give an example of how a policy position has changed as a result of JMC meetings, the minister was unable to recall a specific example, saying “I am going to rack my brains for that example while we are talking”.⁶⁸

58 [Q6](#)

59 [Q13](#)

60 [Q6](#)

61 [Q12](#)

62 Royal Society of Edinburgh ([IGR0004](#)); Centre on Constitutional Change ([IGR0003](#)); [Qq2-8](#); [Qq192-195](#) [Q303](#)

63 [Q4](#); [Q303](#)

64 [Q263](#)

65 Michael Russell MSP, [Speech at Institute for Government](#), March 2019

66 Secretary of State for Scotland ([IGR0011](#))

67 [Q251](#)

68 [Q251](#)

27. Some witnesses proposed replacing the JMC with an altogether new intergovernmental body. For example, Lords McConnell and Wallace—a former First Minister of Scotland, and former Deputy, respectively—suggested a new “UK Council of Ministers”.⁶⁹ The Welsh Government has set out high-level proposals along similar lines,⁷⁰ and Michael Russell MSP was cautiously supportive of this approach.⁷¹ However most witnesses felt that it would be more productive to reform the existing JMC model, Akash Paun, Institute for Government—amongst others—suggested that the JMC does not need to be “completely replaced”, but that it could be significantly “strengthened”.⁷² Professor McEwen made the point there was limited value in creating an entirely new system as it would like to face similar changes to the current JMC model: “I don’t think it really matters whether you call it a JMC or a Council of Ministers[...] It is what it does and how it does it that is key”.⁷³

28. Several reforms to the JMC were suggested to us, which were intended to redress the UK Government’s perceived dominance of the forum and ensure parity of esteem between all parties involved. These focused on introducing a more routinised and structured approach to the JMC.⁷⁴ For example, many witnesses suggested that JMC meetings should be held more regularly, and to a set schedule.⁷⁵ The UK Government is responsible for arranging meetings of the JMC. According to the MoU, meetings of the JMC (Plenary) should be held at least once a year.⁷⁶ However, the JMC (Plenary) failed to meet at all between 2003 and 2008, and again between late 2014 and late 2016. Meetings of the JMC (European Negotiations) have also not taken place on a regular basis. For example the forum did not meet at all between February and October 2017, despite this being the period in which the Article 50 notification letter was sent.⁷⁷

29. Akash Paun, Institute for Government, argued that the infrequency of meeting had damaged intergovernmental relations but acknowledged that “things seem to have improved in recent months”.⁷⁸ Mr Paun also argued that the JMC (Plenary) serves an important “symbolic purpose” and therefore:

It is quite important that that body does meet, and that it meets more regularly and is taken seriously, because it sends out the signal that this is a Union of four nations, with usually four Governments, who can come together and have that summit-level meeting.⁷⁹

The Centre on Constitutional Change has argued that holding more regular meetings “can ease scheduling challenges and contribute to building trust and empathy among

69 [Q138](#); [Q145](#)

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

71 [Qq271–272](#)

72 [Q15](#)

73 [Q15](#)

74 [Q75](#)

75 Royal Society of Edinburgh ([IGR0004](#)); Dr Coree Brown Swan, Centre on Constitutional Change, University of Edinburgh ([IGR0010](#)); [Q20](#); [Q192](#); [Q303](#); [Q179](#); Centre on Constitutional Change ([IGR0003](#)); Professor Colin Reid ([FSA0020](#))

76 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p. 12

77 [Q2](#)

78 [Q2](#)

79 [Q9](#)

ministerial representatives, as well as the officials who support them”.⁸⁰ For the same reason, many witnesses recommended that the location and Chair of JMC meetings should rotate between each of the four administrations.⁸¹

30. Another frequent concern was that agendas for JMC meetings are often not circulated until the last minute. Professor Nicola McEwen told us, “sharing papers and agendas[...] in advance is the sort of organisational issue that can become a political issue”.⁸² Many witnesses recommended that circulating agendas further in advance of meetings would enable more meaningful engagement and more productive outcomes.⁸³ However, the UK Minister for the Constitution, argued that this was “perhaps a mischaracterisation” and that information was shared.⁸⁴

31. We believe that, as the UK’s highest-level intergovernmental forum, the JMC should be a productive forum which is robust enough to cope with different governments with divergent policy objectives. The existing set up and organisation of the JMC has resulted in it being predominantly controlled by the UK Government. This has limited its effectiveness as a forum for meaningful engagement between the UK’s four governments. The JMC therefore urgently requires reform.

32. The effectiveness of the JMC will hinge on how it works in practice, rather than what it is called. We were not persuaded by the any of the alternatives to the current JMC format. Although proponents of more fundamental reform tended to coalesce around the idea of a UK Council of Ministers, we are not convinced that this proposal offers benefits which cannot be delivered through the reforms to the JMC.

33. *Instead there are several reforms we think that the Government could make to the JMC to ensure it embodies the principle of parity of esteem and becomes a forum where all four governments can engage as equals. We recommend that:*

- a) ***JMC meetings should be hosted and chaired by each of the UK’s administrations on a rotating basis.***
- b) ***JMC meetings should be held frequently, and to a set schedule.***
- c) ***JMC agendas should be agreed in advance between all parties.***

In the rest of the chapter we discuss other ways the JMC could be improved and how those reforms could be embedded in the UK’s constitutional framework.

80 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018

81 Royal Society of Edinburgh ([IGR0004](#)); Centre on Constitutional Change ([IGR0003](#))

82 [Q31](#)

83 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019; Q148; Q159](#); Centre on Constitutional Change ([IGR0003](#))

84 [Q253](#)

Transparency and accountability

34. Previous parliamentary inquiries have raised concerns about the lack of accountability and transparency in the current JMC set up.⁸⁵ The Centre on Constitutional Change told us that the UK’s intergovernmental system has a particular problem with a lack of accountability and transparency, arguing that, although transparency of intergovernmental relations is a frequent issue in other countries, “nowhere is the problem more pronounced than in the UK”.⁸⁶ The Centre argued that these transparency issues are a product of the “absence of more routine and formalised intergovernmental machinery”.⁸⁷

35. The most common complaints were that JMC agendas are not published in advance of meetings, and the communiqués published after the meetings lack detail. Speaking about the detail provided after JMC meetings, Michael Clancy, Law Society of Scotland, told us that, “it is a misnomer to call the communiqués that are issued by the JMCs communiqués, because effectively they just tell who was there and that somebody spoke and someone replied”.⁸⁸ This lack of information and transparency about the JMC and its outcomes then poses problems for the accountability of the JMC as it is difficult for the respective parliaments to hold the governments to account for this performance or conduct at these meetings. We heard that if the JMC was made more transparent, the quality of all governments’ engagement in the process would also likely improve, as their performance at meetings would come under greater public and parliamentary scrutiny.⁸⁹

36. Dr Coree Brown Swan, University of Edinburgh, told us that intergovernmental forums can increase transparency by publicising meetings and publishing details of the forums function, structure, meeting details, and intergovernmental agreements. The Centre on Constitutional Change suggested we look to Belgium and Spain for examples of how to improve transparency.⁹⁰ In Belgium, meetings of the Concertation Committee—the country’s JMC equivalent—take place on a regular monthly basis, and a report is subsequently filed with each parliament. In Spain, agendas for intergovernmental forums are published in advance, and a comprehensive communiqué is published afterwards.⁹¹

37. Mr Clancy suggested that the UK Government could mirror the approach taken in Scotland, where the Scottish Government has committed to giving advanced notice (at least one month) of JMC meetings and their agendas, as well as a written summary of its participation.⁹² The Scottish Government also agreed to maintain a record of all formal agreements and prepare an annual report on intergovernmental relations.⁹³ Professor Nicola McEwen, Dr Coree Brown Swan, and the Law Society of Scotland also suggested this model might work well at Westminster.⁹⁴ Lord Wallace agreed and suggested a

85 Scottish Parliament Devolution (Further Powers) Committee, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations, 8th Report](#), October 2014; 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, p. 40

86 Centre on Constitutional Change ([IGR0003](#))

87 Centre on Constitutional Change ([IGR0003](#))

88 [Q19](#)

89 [Q148](#)

90 Centre on Constitutional Change ([IGR0003](#))

91 Centre on Constitutional Change ([IGR0003](#))

92 [Q19](#)

93 [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government](#), March 2016; Dr Coree Brown Swan, Centre on Constitutional Change, University of Edinburgh ([IGR0010](#))

94 [Q20](#); Dr Coree Brown Swan, Centre on Constitutional Change, University of Edinburgh ([IGR0010](#)); The Law Society of Scotland ([IGR0006](#))

Minister be required to make an oral statement in Parliament after a JMC meeting similar to the statements currently made by the Prime Minister after a meeting of the European Council.⁹⁵

38. The level of transparency in the UK’s intergovernmental relations is poor. This lack of transparency has made it less likely that governments will engage cooperatively, because it is difficult for the public and the respective parliaments to hold their governments to account for the quality of their engagement without clear information about meetings and their outcomes.

39. We recommend that the UK Government provides the UK Parliament with advance notice of meetings and agendas for JMC meetings and maintains a formal and publicly accessible record of JMC discussions and outcomes. We also recommend that after every meeting of the JMC (Plenary), an oral statement be made in Parliament by the responsible minister, to allow for proper parliamentary scrutiny of intergovernmental relations.

JMC Dispute Resolution

40. As well as being a forum for discussion and consultation, the JMC is part of the formal dispute resolution process which is used when official-level negotiations have failed, and “an impasse” has presented itself.⁹⁶ The Protocol for Avoidance and Resolution of Disputes also makes that clear that, since the JMC is not a decision-making body, the dispute resolution process is designed only to facilitate agreement between parties in a dispute, rather than “impose” any solution.⁹⁷ The Protocol also recognises the limitations of this arrangement:

There may be circumstances, particularly those arising from differences in political outlook, where the UK Government and one or more of the devolved administrations are unlikely to be able to agree. In these cases the parties to this agreement recognise that the JMC machinery is unlikely to offer any prospect of resolution.⁹⁸

41. The Protocol outlines a multi-step process for escalating disputes. The steps are:

- i) Informal discussion at official-level;
- ii) Issue brought to attention of JMC officials;
- iii) Informal discussions amongst ministers;
- iv) Further talks convened at ministerial and/or official level;
- v) Formal referral to JMC as ‘disagreement’;

95 [Q159](#)

96 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p. 13; Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018

97 Cabinet Office, [Protocol for Avoidance and Resolution of Disputes](#), June 2011

98 Cabinet Office, [Protocol for Avoidance and Resolution of Disputes](#), June 2011

- vi) JMC disputes meeting chaired by UK minister without direct departmental interest.⁹⁹

Ultimately, if a dispute reaches the final stage, it is the UK Government which has the final say on the outcome.¹⁰⁰

42. Lord McConnell, former First Minister of Scotland, suggested that the underlying political nature of the UK's devolution settlement has meant that there is an inherent incentive for the UK Government to address disagreements through the JMC before they become disputes:

I think a UK Minister has to always be aware of all the negatives that would be involved in overruling a decision by one of the devolved Governments. In practice, people [...] understood how bad it would be for that settlement if there was ever any question of one level overruling the other level [...] What happened in the first decade, I would say that there was an understanding of a political pressure on the UK Ministers to not overstate their role.¹⁰¹

Sir Peter Housden, former Permanent Secretary to the Scottish Government (2010–2015), shared this view, arguing that the UK Government's exercise of power in relation to dispute resolution has been "very wisely constrained" because the UK Government "do not want to be saying no".¹⁰² We also heard that the JMC dispute resolution has been successful in some instances. For example, Sir Peter recalled the resolution of a dispute regarding 2012 Olympic Games consequential funding as an example of a relatively successful outcome of the existing process. The dispute had been ongoing since 2007 and was resolved in June 2011 in a meeting of the JMC (P).¹⁰³

43. On the other hand, most witnesses highlighted concerns with the existing dispute resolution protocol—particularly the final stage of the process. Professor McEwen told us "the UK Government are essentially the accused and the judge and jury and that has been problematic. It has certainly given rise to a feeling of dissatisfaction[...] on the part of all of the devolved administrations".¹⁰⁴ In written evidence Jack Sheldon, University of Cambridge, told us that "it has become clear that the devolved governments do not have confidence in the process [...] It seems likely that this mistrust has contributed to the devolved governments being reluctant to make use of the Protocol where disagreements occur".¹⁰⁵

44. Michael Russell MSP, told us on behalf of the Scottish Government that the current process is "absolutely not" fit for purpose.¹⁰⁶ Mr Russell went on to reference the most recent JMC dispute, in which the Welsh and Scottish Governments sought to initiate formal dispute resolution proceedings in relation to the Northern Irish public spending commitments in the Conservative-DUP confidence and supply deal. There has been no public response from the UK Government on this matter to date.¹⁰⁷ Mr Russell said the UK Government's approach has been:

99 Cabinet Office, [Protocol for Avoidance and Resolution of Disputes](#), June 2011, p. 3

100 [Q9](#); Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

101 [Q157](#)

102 [Q159](#)

103 UK Government, [JMC agreement on 2012 Olympics consequential funding](#), December 2011

104 [Q9](#)

105 Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

106 [Q306](#)

107 Institute for Government, [Devolution and the Joint Ministerial Committee](#), February 2018

‘Nothing to see here. Move along. There is no reason to consider this as a complaint’. It is farcical and that is why it is not used—because there is no point in using it.¹⁰⁸

Lords Wallace and McConnell, Michael Clancy, Professor McEwen, and the Royal Society of Edinburgh all expressed support for reforming the existing dispute resolution provisions.¹⁰⁹ The Centre on Constitutional Change argued that “having a robust [dispute resolution] system in place can help to ensure that disputes do not lead to polarisation, stalemate or disengagement from, and mistrust in, the IGR system”, and would be likely to deliver broader benefits for IGR beyond simply increasing confidence in the dispute resolution process itself.¹¹⁰ When the Committee put these criticisms to the UK minister, she told us that the UK Government is looking at dispute resolution as part of the Cabinet Office’s review of intergovernmental relations and acknowledged “it is very important that we get that right in this review”.¹¹¹

45. During this inquiry we looked at how dispute resolution works in other countries, and whether these provide models for reform of the UK’s processes. We heard that it is common, in similar multi-level systems, for dispute resolution processes to provide for mediation or arbitration by an independent third-party body. For example, Mr Jan Bayart, Deputy Head of Mission of the Embassy of Belgium in the UK, explained that competence disputes in Belgium are settled through judicial arbitration.¹¹² This is an ad hoc tribunal chaired by a professional judge which can be established to hear and settle the dispute.¹¹³ Jack Sheldon, University of Cambridge, noted that:

These procedures are rarely used in practice but serve a useful purpose in reassuring signatories to agreements that recourse to independent dispute resolution is available if needed, while incentivising governments to resolve differences before ceding authority to a third party.¹¹⁴

46. The Centre on Constitutional Change has argued that mediation, rather than arbitration, would be more appropriate in the UK’s context, because “it preserves the dispute parties’ autonomy in deciding whether or not to accept any proposed resolution”.¹¹⁵ Professor Gallagher similarly noted that it would be difficult to square an authoritative dispute resolution process with the fact that each of the parties have their own democratic mandate.¹¹⁶ Jack Sheldon outlined how independent third party involvement in the JMC dispute resolution process could work:

The role of mediator could potentially be performed by a government not party to the dispute, or another independent and suitably qualified person appointed on a case-by-case basis. The mediator would be empowered to facilitate meetings between the disputing parties and to present compromise

108 [Q306](#)

109 [Q145](#); [Q160](#); [Q27](#); [Q9](#); Royal Society of Edinburgh ([IGR0004](#))

110 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 28

111 [Q202](#)

112 [Q87](#)

113 Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

114 Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

115 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 33

116 [Q18](#)

proposals for the parties to consider. The disputing parties would each have to consent to the identity of the mediator as this would be essential to ensuring that each party had confidence in the process.¹¹⁷

47. **The current dispute resolution process does not command the confidence of the Scottish Government and is not fit for purpose. We believe that adoption of our earlier recommendations regarding early engagement, trust-building, and cooperation would help mitigate the need to seek recourse to dispute resolution processes in the first instance. However, some disputes are inevitable. We therefore believe there is a clear need to reform the JMC dispute resolution process to ensure that it is trusted by all parties, and that it is robust enough to deal with the calibre of disagreements which have arisen in recent years.**

48. *We do not believe the UK Government should have the unilateral right to prevent the devolved administrations from invoking dispute resolution proceedings, as it has done recently. If a reformed dispute resolution process is to be fair and trusted, it must be unconditionally accessible to both parties to a disagreement. We therefore recommend that the UK Government seeks to amend the dispute resolution protocol to ensure all governments have the right to unilaterally initiate dispute resolution proceedings.*

49. *We were interested to hear of how independent third parties are involved in efforts to resolve intergovernmental disputes in other countries. We recommend that the UK Government explores with the devolved governments how a form of independent mediation might be introduced in the UK. One approach it may wish to consider is referral of a dispute to a third party for mediation—at the penultimate stage of the dispute resolution process. We believe it would be beneficial if, at the end of the mediation process, the mediator could be required to publish some non-binding recommendations outlining possible ways forward. This would help both parties progress towards a resolution, whilst maintaining the UK Government’s final say over the dispute.*

Embedding reforms to the JMC

50. As we saw earlier, there are currently some commitments about how the JMC should operate which, despite being agreed by all four governments, are not happening in practice. During our inquiry we heard two main suggestions about how the JMC could be more formalised so that these commitments, and any reforms to the JMC, were delivered: creating an independent secretariat and placing elements of the JMC set-up on a statutory basis.

An independent secretariat

51. The Memorandum of Understanding explains that the “lead role” in the existing Secretariat to the JMC “will fall upon the UK Cabinet Office”.¹¹⁸ Although the MoU stipulates that it may be possible for civil servants from the devolved administrations to be seconded to the JMC Secretariat, there is no requirement for this to be the case. In its report on inter-governmental relations the Public Administration and Constitutional Affairs Select Committee called for this set up to be replaced with an independent secretariat

117 Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

118 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p. 15

to “schedule and organise intergovernmental meetings” and “provide an independent conduit for discussions among administrations at official and ministerial level in between formal inter-governmental meetings”.¹¹⁹

52. The overwhelming consensus amongst our witnesses was that intergovernmental relations would benefit from a more formalised and fully independent secretariat.¹²⁰ The Centre on Constitutional Change said that creating an independent secretariat would address concerns raised about the current secretariat’s lack of capacity to prepare all parties for JMC meetings—for example, by handling the organisational burden, sharing agendas, and producing and publishing communiques.¹²¹ The Royal Society of Edinburgh,¹²² amongst others,¹²³ suggested that an independent secretariat would also help address the JMC’s lack of transparency, as did the former senior Scottish Government civil servants we spoke to.

53. Looking at international examples, Dr Sandra León, York University, said that, “[intergovernmental] bodies that are supported by a secretariat or technical bodies tend to work better”.¹²⁴ We heard from George Anderson, former Deputy Minister of Intergovernmental Affairs in the Privy Council Office of the Canadian Government, that intergovernmental meetings in Canada are supported by the Canadian Intergovernmental Conference Secretariat (CICS).¹²⁵ The remit of CICS is to “relieve client departments of the numerous technical and administrative tasks associated with the planning and conducting of multilateral conferences, thereby enabling participants to concentrate on substantive intergovernmental policy issues”.¹²⁶ Mr Anderson noted that CICS “has no policy role whatsoever”, but that it provides a “very useful” service by organising meetings.¹²⁷ The consensus we heard was that a similar system in the UK would help improve the effectiveness of the JMC.

54. We agree with our witnesses and the Public Administration and Constitutional Affairs Committee that the JMC would benefit from being supported by an independent secretariat with staff drawn from all four administrations of the UK. This would help ensure meetings are regularly arranged, agendas are agreed and shared in advance, and that the outcomes are communicated in a timely and transparent manner. This would reflect the principle of parity of esteem by ending the situation whereby one government has complete control over the resources that support the JMC.

119 House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: reconciling differences and building strong relationships](#), Eighth Report of Session 2017–19, HC1485, 31 July 2018

120 [Q15; Q31; Q159; Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

121 [Q15; Q31; Q159; Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

122 [Royal Society of Edinburgh \(IGR0004\)](#)

123 [Q31 Centre on Constitutional Change \(IGR0003\)](#)

124 [Q70](#)

125 [Qq120–121](#)

126 Canadian Intergovernmental Conference Secretariat, [Quarterly Financial Report for CICS for the Quarter Ending June 30 2014](#)

127 [Q121](#)

A statutory JMC

55. The JMC is currently underpinned by the Memorandum of Understanding.¹²⁸ The Memorandum is not a “binding agreement”, but a “statement of intent” between the UK’s four governments.¹²⁹ The MoU sets out how frequently the JMC should meet, in which formats, its dispute resolution process, and how it should be supported. However, since it is non-binding, there is a degree of flexibility around these arrangements. Professor McEwen argued that this is one of the reasons why “intergovernmental relations in the UK are very ad hoc. They are used when there is the perceived need to use them”.¹³⁰

56. The most oft-cited consequence of the non-binding nature of the JMC’s arrangements, is that various commitments about how it should function—most notably, the frequency of meetings—are not met. Some witnesses told us that part of the problem is that those commitments about meeting frequency are not binding.¹³¹ Putting some of the JMC’s arrangements on a statutory footing would make them legal requirements, rather than non-binding commitments.¹³² Michael Clancy, Professor McEwen, Akash Paun, Professor Gallagher, the Royal Society of Edinburgh, the Law Society of Scotland, and Michael Russell MSP all endorsed proposals for a statutory footing, arguing that it would help ensure commitments to maintaining effective intergovernmental relations are met.¹³³ This recommendation has also been supported by the Commons Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.¹³⁴

57. When asked by the Committee whether the UK Government would support proposals for a statutory footing, Chloe Smith MP, Minister for the Constitution, said:

I am not personally convinced of the argument for statutory footing because I think it would reduce flexibility. Self-evidently, if you put something on the face of legislation it takes longer to amend it or update it if you wanted to do so in the future.¹³⁵

These concerns regarding flexibility were also raised by other witnesses. Akash Paun said that putting the MoU in its entirety on a statutory footing “would be going too far”.¹³⁶ Professor McEwen cautioned that “what I would be careful of is putting too much in the statute because then you lose the strength of the flexibility to respond to needs as they arise”.¹³⁷ Professor McEwen explained that a balance can be struck whereby what is put on a statutory footing is merely a minimum requirement- for example, requiring that the JMC (P) should meet *at least* once per year. This would still allow for additional meetings to be held as circumstances dictate, whilst also ensuring a minimum requirement is met. Akash Paun, Institute for Government, told us:

128 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013

129 House of Commons Library, [Intergovernmental relations in the United Kingdom](#), July 2018

130 [Q4](#)

131 Royal Society of Edinburgh ([IGR0004](#)); [Q2 Q20](#)

132 [Q20](#)

133 [Q19](#); [Q20](#); [Q46](#); Royal Society of Edinburgh ([IGR0004](#)); The Law Society of Scotland ([IGR0006](#)); [Q265](#); Michael Russell MSP, [Speech at Institute for Government](#), March 2019

134 House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: reconciling differences and building strong relationships](#), Eighth Report of Session 2017–19, HC1485, 31 July 2018; House of Lords, Select Committee on the Constitution, [Inter-governmental relations in the United Kingdom](#), 27 March 2015

135 [Q229](#)

136 [Q20](#)

137 [Q20](#)

I am convinced that there would be benefits in a limited statutory underpinning, but without a huge amount of detail about the particular forums and membership and regularity of meetings. Something along the lines of specifying that, “There shall be a body called the Joint Ministerial Committee, with the Prime Minister and First Ministers, which should be expected to meet at least annually,” or something like that would be fine and would be helpful.¹³⁸

Dr Bettina Petersohn, Swansea University, made the same point; “it can work and still allow for flexibility [...] I would say that there is an argument to be made for a certain formalisation, regularity, continuity, giving certain administrative support to organise these things, and leaving the rest within the definition of each of those intergovernmental bodies”.¹³⁹

58. However, we also heard a note of caution that, although a statutory footing for intergovernmental relations is common in other countries, for example, in Spain and Belgium, it does not necessarily always guarantee more effective intergovernmental relations.¹⁴⁰ Professor César Colino argued that although the frequency of intergovernmental meetings in Spain have been formalised, this has not necessarily improved the *quality* of engagement.¹⁴¹

59. We believe that setting out the basic requirements of the JMC in statute would ensure that it operates in the way envisaged by the Memorandum of Understanding. We therefore recommend that the JMC format, the frequency of JMC meetings, and the right to seek recourse through the dispute resolution process, are set out in statute. This would ensure that a minimum number of JMC meetings are held each year and that the right to invoke dispute resolution proceedings is inalienable. We are not convinced by the UK Government’s argument that placing these requirements on statutory footing would reduce flexibility, as there would be nothing to stop the Government going beyond those minimum requirements, and this would not place any obligation on the UK Government which it has not already signed up to in existing intergovernmental agreements.

138 [Q20](#)

139 [Q61](#)

140 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 17

141 [Q61](#)

4 Common Frameworks

60. The UK’s future relationship with the EU will require the two governments to work together in ways not foreseen in the original devolution settlement, as they will need to agree high level rules in areas like agriculture and the environment—something previously done at EU level. These are devolved policy areas where, because of the UK’s membership of the EU, some or all of the policy was set by EU law. This means that, despite those policy areas being devolved, there was a limit to how different policies could be in different parts of the UK. Both the UK and Scottish Governments have agreed that post-Brexit there will be a need to maintain some alignment in some policy areas where this is currently achieved by the existence of EU law and have agreed to sign up to UK-wide common frameworks to achieve this.

61. A ‘common framework’ is an intergovernmental commitment to abide by common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition of standards.¹⁴² The UK and devolved governments have agreed that new ‘common frameworks’ will be needed in some areas in order to: support the UK internal market, ensure the UK meets international agreements, manage common resources and deal with cross-border issues.¹⁴³

62. The UK Government published its most recent assessment of where common frameworks might be needed in April 2019. This assessment suggests that of 160 areas where EU law intersects with devolved competence, statutory common frameworks may be needed in 21 areas (mostly in agriculture and environment), and that in 78 areas non-legislative frameworks (non-statutory agreements like concordats or Memorandums of Understanding) may be needed.¹⁴⁴

63. The UK Government has said the process for agreeing common frameworks would respect the devolution settlements and would be based on existing conventions and practices, including not normally legislating in devolved competence without the consent of the devolved administrations.¹⁴⁵ However, the European Union (Withdrawal) Act 2018 contains powers for the UK Government to temporarily freeze devolved competence and maintain the current limits mandated by EU law (so-called “section 12 powers”), which could be used to prevent the devolved administrations legislating in these devolved policy areas if no agreement on common frameworks can be reached.

64. We heard that there has been a high degree of cooperation between the two Governments in agreeing common frameworks to date. Professors McEwen and Gallagher told us that officials have been working well together, and that there is a high degree of consensus on which policy areas will require common frameworks.¹⁴⁶ Akash Paun, Institute for Government, likewise explained that both sides are “trying very hard to avoid having to use those powers to freeze the devolved powers”.¹⁴⁷ When we discussed common

142 Institute for Government, [Brexit, devolution and common frameworks](#), November 2017

143 UK Government Cabinet Office, [Revised Frameworks Analysis: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#), 4 April 2019

144 UK Government Cabinet Office, [Revised Frameworks Analysis: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#), 4 April 2019

145 UK Government Cabinet Office, [Revised Frameworks Analysis: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#), 4 April 2019

146 [Q25](#); [Q36](#)

147 [Q39](#)

frameworks during our evidence sessions on the Fisheries Bill and the Agriculture Bill, we heard that there is “a very good close working relationship” between the two governments, and that it had been agreed that legislation will not be needed in all of the areas initially thought.¹⁴⁸ Professor Gallagher went as far as to say that it now seems unlikely that these temporary powers will be used, and that the once-feared “constitutional crisis” seems likely to fizzle out.¹⁴⁹ Michael Russell MSP told us that agreement on common frameworks has so far been reached through productive negotiation and discussion:

I think the frameworks are a rare example of something that we have been able [...] to get ourselves at least to an equilibrium. There have been two periodic reports [...] Both of those have concluded that there is no need to move forward with a section 12 order in any area[...] I think that has been an area where we have been able to prove that it is negotiation and discussion that will work not imposition.¹⁵⁰

The UK Government has similarly claimed, the fact that freezing powers have not been used thus far, is evidence that the “cooperative approach on frameworks so far demonstrates the progress that can be achieved through proceeding collaboratively”.¹⁵¹

65. We are encouraged that the two governments have cooperated well on developing common frameworks, and that there currently appears to be little prospect of the UK Government using its powers to “freeze” the powers of the devolved administrations. This demonstrates that both Governments can reach agreement through discussion and consultation.

Principles and processes for agreeing common frameworks

66. Although the two governments have broadly agreed where common frameworks are needed, there is less clarity about how the content of these frameworks will be agreed and how disputes that arise will be resolved. The Royal Society of Edinburgh told us that “currently there is no clear institutional body or arrangement which could effectively facilitate the development and implementation of common frameworks”.¹⁵² The Secretary of State for Scotland agreed that new structures will be needed to manage the UK’s post-Brexit regulatory frameworks and said that the Cabinet Office’s ongoing review of intergovernmental relations is considering this issue.¹⁵³

67. Several witnesses suggest that the Joint Ministerial Committee (JMC)—or a very similar forum—could be used to agree and manage common frameworks. For example, Akash Paun noted that “there is going to be a need for additional JMC-type bodies, whether we call them that or not”.¹⁵⁴ The Royal Society of Edinburgh have suggested that “new JMC type committees” and sub-committee structures should be used to manage

148 Scottish Affairs Committee, [Oral Evidence: The Future of Scottish Agriculture post-Brexit, HC1637](#); Scottish Affairs Committee, [Oral Evidence: Fisheries Bill, HC1787](#), 9 January 2019, Q101

149 Professor Jim Gallagher ([IGR0002](#))

150 [Q283](#)

151 UK Government Cabinet Office, [Revised Frameworks Analysis: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#), 4 April 2019

152 Royal Society of Edinburgh ([IGR0004](#))

153 Secretary of State for Scotland ([IGR0011](#))

154 [Q47](#)

and agree common frameworks.¹⁵⁵ These recommendations were supported by Professor Nicola McEwen and in the Centre on Constitutional Change’s 2018 report on reforming intergovernmental relations.¹⁵⁶

68. Michael Russell MSP, explained that, in its current format, the JMC could not “manage” dealing with common frameworks—for the reasons we outlined in chapter two.¹⁵⁷ However, he felt that the JMC might cope if it were reformed.¹⁵⁸ Chloe Smith MP, Minister for the Constitution, stressed that the UK Government were looking at common frameworks as part of the Cabinet Office’s review of intergovernmental relations; “I would anticipate that that work in turn strengthens intergovernmental relations across quite a significant number of policy areas”.¹⁵⁹

JMC Decision-making remit

69. Akash Paun and Professor Nicola McEwen told us that if the JMC format is to be used to reach agreement on common frameworks, it would need to become a decision-making body.¹⁶⁰ However, Professor Jim Gallagher and Michael Clancy noted this would involve “straying quite far away” from the JMC’s original purpose as a forum for communication, consultation and information exchange.¹⁶¹ The Memorandum of Understanding, states that the JMC is “a consultative body rather than an executive body” which reaches agreements rather than decisions.¹⁶²

70. Concerns were also raised that reaching agreement on common frameworks will be difficult, because the UK does not have a strong history of joint decision making between central and devolved governments, meaning there is no “culture of or institutions for ‘shared rule’ between central and devolved levels”.¹⁶³ This problem was first identified following the creation of areas of shared competence in taxation and welfare powers after the 2012 and 2016 Scotland Acts, but we were told the issue had become even more problematic in the context of common frameworks, which will create many more shared policy areas.¹⁶⁴

71. The Public Administration and Constitutional Affairs Committee has suggested that the JMC could be an appropriate forum for agreeing common frameworks.¹⁶⁵ However, a key point of concern for some of our witnesses was how to introduce a model of decision-making which allows for binding decisions to be reached, but which also respects the democratic mandate and competences of all governments. Professor Jim Gallagher argued:

155 Royal Society of Edinburgh ([IGR0004](#))

156 [Q18](#); Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018

157 [Q294](#)

158 [Q294](#)

159 [Q202](#)

160 [Q9](#); [Q15](#)

161 [Q18](#); [Q19](#)

162 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p. 13

163 Scottish Parliament Information Centre, [Common UK Frameworks after Brexit](#), SB 18–09, February 2018

164 [Q138](#); Royal Society of Edinburgh ([IGR0004](#))

165 House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: reconciling differences and building strong relationships](#), Eighth Report of Session 2017–19, HC1485, 31 July 2018, p. 32; Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 8

If we are going to re-engineer [the JMC...] taking the point about the democratic mandate of the parties around the table, it is quite difficult to square that with decision-making[...] The governments may agree to do this or that, but it is not and cannot be an authoritative decision-making body, because each of the Governments have their own democratic mandate[...] I think it would be an error to say that we can set up an intergovernmental machinery that can force one or other of the administrations to do something that they do not want to do.¹⁶⁶

Michael Clancy, Law Society of Scotland, raised similar concerns about the extent to which binding decisions could be reached:

The worrying thing would be if we got to the point where everything had to have an absolute resolution because then it could just break down in tears all the time, and we do not want the relationships between the UK Government and the devolved Administrations to break down in tears.¹⁶⁷

72. On the other hand, some witnesses suggested that the solution to this challenge is a relationship whereby both parties are equally invested in the issue and outcome, and both have a “meaningful role to play”, and where decisions are reached by consensus.¹⁶⁸ We heard that overlapping areas of competence are not an uncommon feature of similarly devolved and federal systems around the world.¹⁶⁹ In these examples, this tension is resolved by ensuring co-ownership of the issues at stake, and engaging and negotiating until a joint-decision can be reached—as the Centre on Constitutional Change notes, “comparative examples suggest that co-decision by consensus is not an impediment to agreement being successfully concluded, even among governments with deeply-held divergent territorial interests”.¹⁷⁰

73. We believe that common frameworks must be agreed through co-decision and by consensus and that disagreements over common frameworks are less likely to arise if a culture of cooperation and trust between the two governments is developed. However, should disagreements arise, we believe recourse to a reformed dispute resolution process of the type we have recommended would help reduce the risk of common frameworks being imposed.

74. We recommend that a new JMC sub-committee on Common Frameworks is established to facilitate the agreement of common frameworks. Within the JMC sub-committee, common frameworks must be co-owned, and decisions in relation to them must be reached by co-decision and by consensus. Where disagreements prove irreconcilable, recourse to the reformed dispute resolution process should be available.

166 [Q18](#)

167 [Q19](#)

168 [Q5](#)

169 [Q33](#); [Qq50–52](#); [Q64](#) [Q71](#); [Q99](#)

170 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, p. 25

5 Devolution understanding and relations in Whitehall

Informal relationships and institutional memory

75. As we saw in chapter 1, informal and personal relationship between politicians are essential to the good functioning of intergovernmental relations in the UK. This is also true of the relationship between civil servants, with the Memorandum of Understanding stating that intergovernmental business should be conducted informally through officials “wherever possible”.¹⁷¹ These official-level relationships have changed over time; we heard that when the Scottish Government was established, many of the civil servants who set up and ran it were drawn from Whitehall, which meant the pre-existing relationships between officials were carried over.¹⁷² However, these informal routes of communication have been lost with the appointment of newer generations of civil servants, who have less knowledge and experience of their colleagues in other UK governments.¹⁷³ As Lord McConnell put it, “one of the things I worry about 20 years on is that I am not convinced at all that there are enough civil servants in the UK Government departments who have experience and knowledge of devolution in Scotland”.¹⁷⁴

76. We also heard that Brexit posed new challenges for official-level intergovernmental relations, with Michael Russell MSP, Scottish Government Cabinet Secretary for Government Business and Constitutional Relations, telling us that Brexit has reduced Whitehall’s capacity to build relationships with the devolved administrations as the “pressure on the UK civil service as a result of Brexit, [has caused a] deterioration in the relationship”.¹⁷⁵ Professor Colin Reid told us that the Brexit workload creates the risk that:

In the rush to get new arrangements in place, and with the significance of international trade matters [...] the tendency to overlook the devolution dimension will become more pronounced, just as its significance is increased.¹⁷⁶

Chloe Smith MP, UK Government Minister for the Constitution, accepted that the unprecedented Brexit workload has impacted the extent and quality of information sharing and consultation.¹⁷⁷

77. The quality of Whitehall’s devolution knowledge also varies considerably between departments. We heard that departments whose policy areas interact significantly with devolved competence tend to have well-established relationships with their Scottish Government counterparts—with DEFRA being cited as a department with strong relationships with the devolved administrations.¹⁷⁸ On the other hand, other departments

171 [Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, October 2013](#)

172 [Q172](#); [Q177](#); [Qq129–133](#)

173 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

174 [Q152](#)

175 [Q321](#)

176 Professor Colin Reid ([FSA0020](#))

177 [Q203](#)

178 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

which have few policy areas which overlap with devolved responsibilities often have little or no understanding of devolution.¹⁷⁹ However, Brexit is likely to increase the number of policy areas which intersect with devolved competence,¹⁸⁰ and as Professor McEwen said, “there will be some Whitehall departments that are entering into the intergovernmental space that have not previously engaged that much with devolution issues”.¹⁸¹

78. Strong official-level relationships are as important to effective intergovernmental relations as strong political relationships. However, the relationships between civil servants that were established at the time of devolution are no longer in place, and while the Brexit process is requiring more Whitehall departments to work collaboratively with the devolved institutions, it is also reducing their capacity to do so effectively.

In the rest of this chapter we consider how official level relationships between the UK and Scottish Governments can be strengthened.

Early engagement and consideration of devolution implications

79. The Centre on Constitutional Change notes that early engagement between governments is an important part of effective intergovernmental relations, because it helps both governments identify potential areas of policy conflict before policy positions become entrenched at a political level.¹⁸² Throughout our inquiry witnesses expressed concerns about the extent to which Whitehall officials actively engage with their counterparts in Edinburgh, and the extent to which they fully consider the implications their policy has on the devolved administrations.

80. Former Scottish Government officials told us that during policy development meetings with their UK Government counterparts, they often felt they had to “wave the Scottish flag” to remind Whitehall that policy changes could affect Scotland.¹⁸³ Professor Colin Reid told us that “problems often arise unconsciously because of a lack of awareness in UK departments of the workings of the devolution settlements”.¹⁸⁴ Similarly, Lord Wallace said that during his time “as a law officer, I had to regularly remind UK Government departments that there could be Scottish law implications and they could not just cut and paste”.¹⁸⁵ Michael Moore, former Secretary of State for Scotland, agreed, saying that “you would find bits of Whitehall departments that just did not realise that what they were doing had consequences in Scotland”.¹⁸⁶ The Scottish Government Cabinet Secretary for Government Business and Constitutional Relations, believed that this is still an issue today; “we have had to deal in recent months with documents, issued by the UK Government, which [for example] did not recognise that there was a separate Scottish legal system. That is pretty incredible to me”.¹⁸⁷

179 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

180 [Q18](#)

181 [Q25](#)

182 Centre on Constitutional Change, [Reforming Intergovernmental Relations in the United Kingdom](#), October 2018, pp. 22–23; Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge (IGR0009).

183 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

184 Professor Colin Reid ([FSA0020](#))

185 [Q154](#)

186 [Q172](#)

187 [Q322](#)

81. Some witnesses explained that these difficulties are exacerbated by the difference in scale between the two Governments. The former senior Scottish Government officials we spoke to explained that this asymmetry in size means that, where one or two individuals may be responsible for a particular policy area within the Scottish Government, responsibility for that same issue may be split between many more people in Whitehall.¹⁸⁸ They said that this creates communication difficulties, and trouble locating the most appropriate individual.¹⁸⁹

82. Current guidance for UK Government civil servants encourages officials to ask themselves whether policy changes impact upon the devolved administrations. For example, the ‘Devolution–proof your policy’ guidance document contains a long list of the questions policy officials should ask themselves in order to understand devolution impacts, including:

- Does the policy relate to a devolved or non-devolved matter?
- Does the new policy cut across areas for which the DAs are primarily responsible?
- Have I considered all the practical impacts of the policy, for example, the political, social, legal and economic effects in Scotland, Wales and Northern Ireland?
- What is the territorial extent of the policy?
- Will the DAs face a disproportionate or unexpected budgeting request?
- Have I particularly considered the DAs’ views / comments?¹⁹⁰

However, the former senior Scottish Government civil servants suggested these resources are not proving effective, since Whitehall continues to produce policy without adequately considering the devolution implications.¹⁹¹ When asked what systems are in place to monitor whether officials are asking themselves these question properly, the UK Government minister was unable to point to any specific systems.¹⁹² We did not get a response to our written follow-up requesting further information on this point.¹⁹³

83. Professor Colin Reid told us that normalising contact between officials early in the policy–making process would help improve intergovernmental cooperation.¹⁹⁴ To help facilitate this engagement, the former senior Scottish Government civil servants recommended that UK Government departments should produce devolution impact assessments. Currently, departments must conduct impact assessments when government action is of a “regulatory nature” (meaning the measure “affects” the private sector, civil society or public services—for example, by imposing or reducing costs).¹⁹⁵ Similarly, Whitehall departments often produce and publish Equality Impact Assessments

188 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019; Q153](#)

189 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019; Q153](#)

190 UK Civil Service, [Devolution Toolkit](#), September 2015

191 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

192 [Q230](#)

193 [Letter from the Minister for the Constitution, to the Chair of the Scottish Affairs Committee, regarding devolution capability, interchange and the UK Government hub in Edinburgh, 21.03.19](#)

194 [Professor Colin Reid \(FSA0020\)](#)

195 Cabinet Office, [Guide to making legislation](#), July 2017

or Environmental Impact Assessments to demonstrate their compliance with the requirements of the Equality Act 2010, and relevant construction and development planning laws.¹⁹⁶

84. It was proposed that—to avoid imposing an unnecessary burden—a two-step assessment could be used. This could consist of a preliminary assessment which would only be followed by a comprehensive and published devolution impact assessment where that initial assessment warrants it. It was suggested that such assessments would help Whitehall officials identify overlapping areas of competence, and the impact changes could have on Scotland, and thereby ensure devolution is “hardwired” into the policy development process.¹⁹⁷

85. These proposals were supported by Sir Peter Housden, Lords Wallace and McConnell, and Michael Russell MSP.¹⁹⁸ When asked whether the UK Government would support such a proposal, Chloe Smith MP expressed concerns that such assessments would risk becoming “a hoop that should be jumped through”.¹⁹⁹ The minister said that, instead, “what you want fundamentally is for this understanding to be there and for it to be done as a matter of course[...] At the moment I would not say it is necessary to have a special type of impact assessment because I would rather that training did a fuller job more effectively”.²⁰⁰

86. Guidance for Whitehall civil servants encourages them to think about devolution. However, it is clear from our evidence that the effectiveness of this approach has been limited as UK Government officials regularly produce policy changes which have failed to properly think through the implications their policies could have on the devolved administrations.

87. We recommend that Whitehall departments should publish devolution impact assessments on UK Government policies could impact the devolved institutions. This should be a two-stage process, with a full impact assessment only being undertaken when a preliminary assessment suggests a policy change touches on devolved competence. As policy officials should already be thinking through devolution implications, this process should not pose a significant additional burden. We believe routinely publishing these assessments would ensure they are completed to a high standard and encourage civil servants to engage with their devolved counterparts at an early stage in the process, thereby helping to identify potential conflicts before they become politicised disputes.

196 [Equality Act 2010; Town and Country Planning \(Environmental Impact Assessment\) \(England and Wales\) Regulations 1999](#)

197 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

198 [Q154](#); [Q323](#)

199 [Q231](#)

200 [Q231](#)

Whitehall training and guidance

Civil service training

88. We heard that another way to improve Whitehall’s capacity to engage meaningfully with the devolved institutions is providing UK civil servants with high quality training on devolution.²⁰¹ There is currently a range of devolution training and resources available to UK Government civil servants, most of which come under the ‘Devolution and You’ programme.²⁰² The programme is cross-administration and cross-Whitehall, and led by the Cabinet Office in partnership with the Scottish and Welsh Governments.²⁰³ Training opportunities available through the programme include:

- introductory online learning and face-to-face workshops;
- induction programmes and bespoke workshops in departments;
- annual conferences for Senior Civil Servants, aimed at exchanging experiences and best practice in devolution-related policy-making;
- and induction workshops for those on the Civil Service Fast Stream graduate scheme, as well as three-day training opportunities for Fast Streamers.²⁰⁴

89. However, we heard a number of concerns about the extent to which the current training is adequately equipping officials with the knowledge and understanding necessary to work effectively with the Scottish Government.²⁰⁵ Michael Moore, former Secretary of State for Scotland, raised concerns about the number of training opportunities.²⁰⁶ According to the UK Government’s own Devolution Knowledge Survey (conducted in summer 2018), only 20% of respondents across the UK Government and devolved administrations are familiar with the Devolution and You programme, and only a third of civil servants across all four administrations feel they have a good level of knowledge about devolution.²⁰⁷ The UK Government told us that they “regularly assess” the effectiveness of training opportunities.²⁰⁸

90. We were alarmed that only a third of civil servants feel they have a good level of knowledge about devolution. These figures show that much more needs to be done to train officials. Effective training will be particularly important in the coming years as Brexit requires departments and officials with little previous experience of devolution engage with their devolved counterparts much more frequently, and in a more complex devolution setting.

201 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019; Qq152–153; Qq319–320](#)

202 UK Government, [Civil Service Blog: Celebrating a year of ‘Devolution and You’](#), August 2016

203 [HC Deb, 6 September 2018, cW](#)

204 [Letter from the Minister for the Constitution, to the Chair of the Scottish Affairs Committee, regarding devolution capability, interchange and the UK Government hub in Edinburgh, 21.03.19](#)

205 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019; Qq152–153; Qq319–320](#)

206 [Q186](#)

207 [Letter from the Minister for the Constitution to the Chair of the Scottish Affairs Committee, regarding devolution knowledge among UK Government civil servants, 12 April 2019](#)

208 [Letter from the Minister for the Constitution, to the Chair of the Scottish Affairs Committee, regarding devolution capability, interchange and the UK Government hub in Edinburgh, 21.03.19](#)

91. *We recommend that the UK Government reviews the content of training, to ensure that it keeps up with the rapidly changing devolution landscape, and that it provides officials with the skills and knowledge needed to work effectively with the devolved administrations. We also recommend the UK Government reviews the uptake of training across departments, to identify potential gaps in coverage, and call on it to publish the findings of this review.*

Secondment and interchange opportunities

92. In addition to formal training, we also heard that the exchange of staff between the two governments can be an effective means of improving understanding of devolution amongst Whitehall officials, and Scottish Government officials' understanding of how Whitehall operates. As discussed earlier in this report, the relationship between the two governments in the early years of devolution was helped by both politicians and officials alike having strong informal relations with their counterparts (and understanding how each other operates).

93. Alun Evans, Baroness Liddell, Sir Peter Housden, and Lord McConnell all expressed support for the value of secondment opportunities, and supported expansion of these opportunities.²⁰⁹ Lord McConnell said “I would have significantly more interchange at a younger level between the civil servants, so that they understand how the different levels of Government work and they can anticipate problems better because of that experience”.²¹⁰ Baroness Liddell similarly noted that interchanges and secondments are “an important way of getting an understanding of what happens in departments”, and of encouraging Whitehall officials to see moving “into the Scottish Executive or the Scotland Office as career progression”.²¹¹ The Royal Society of Edinburgh also supported these proposals, as did the former Scottish Government senior officials.²¹² It was suggested that such an approach would help foster empirical understanding of devolution amongst officials, as well as personal relationships between politicians.²¹³

94. Sir Peter Housden explained the value of existing schemes for intergovernmental exchanges:

One of the good things that have happened—probably over almost a decade—is that the people deemed in the UK Civil Service to have the highest potential to succeed to Director General and other senior posts have spent two days in Scotland as part of their overall programme.[...] So suddenly you have a couple of hundred people who know some of the personalities and who have felt it on the ground.²¹⁴

Michael Moore similarly noted the value of interchange opportunities, but raised concerns about the number of opportunities currently available:

209 [Q188](#); [Q167](#); [Q162](#); [Qq152–153](#)

210 [Q152](#)

211 [Q186](#)

212 [Royal Society of Edinburgh \(IGR0004\); Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

213 [Summary notes from informal roundtable discussion with former Scottish Government senior civil servants, 29/01/2019](#)

214 [Q188](#); [Q186](#); [Q152](#); [Q162](#)

there were suggestions earlier on about people meeting for induction courses and spending two days in Scotland. That is great, but I would suggest that perhaps longer term, given the complexity of the developing devolution settlement, a greater understanding and more structure to that would be required.²¹⁵

95. In follow-up correspondence, the UK Government said that since it began in 2016, over 400 civil servants have participated in the Interchange Week programme, and that they are hoping to increase the number of opportunities through an expanded programme.²¹⁶ Michael Moore noted that the number of civil servants participating in interchanges across Whitehall remains a “challenge”, because “they are just a tiny number of people”.²¹⁷

96. We believe that interchange, secondment and exchange opportunities between the UK and Scottish Governments are an effective means of improving devolution knowledge and understanding. However, despite gradually expanding the availability of secondment, exchange and interchange opportunities, the number of officials participating in these programmes remains relatively small—at around 400 officials over 3 years. We are concerned that the number of secondment opportunities are insufficient compared to the scale of the devolution knowledge deficit.

97. We therefore recommend that the UK Government expands interchange opportunities for policy officials. Civil servants in policy areas which deal with devolved issues should be given priority access to intergovernmental exchange or secondment programmes. We further recommend that all senior civil servants, and those on fast-tracked development pathways, such as those on the Fast-Stream and apprenticeship schemes, should be offered exchange or secondment opportunities.

Devolution guidance notes

98. Devolution Guidance Notes (DGNs) are civil service documents which advise officials on working arrangements between the UK Government and devolved administrations.²¹⁸ They are an introduction to the main principles involved in the management of the devolution settlements, bilateral relations, correspondence, parliamentary business, legislation and concordats.²¹⁹ Devolution Guidance Notes are frequently referred to in written guidance and advice documents for civil servants. For example, the Civil Service’s ‘Devolution Toolkit’ encourages policy officials to review the relevant guidance notes before, during and after policy development.²²⁰

215 [Q186](#)

216 [Letter from the Minister for the Constitution, to the Chair of the Scottish Affairs Committee, regarding devolution capability, interchange and the UK Government hub in Edinburgh, 21.03.19; Q237](#)

217 [Q186](#)

218 UK Government, Guidance: [Devolution guidance notes](#), March 2019

219 UK Government, Guidance: [Devolution guidance notes](#), March 2019

220 UK Government, [Devolution Toolkit](#), 10 September 2015

99. However, many of the guidance documents are out of date.²²¹ For example, DGN 3 ('The Role of Secretary of State for Scotland') refers to the Department for Constitutional Affairs, which was abolished in 2007.²²² The outdated nature of most of the DGNs also means the fundamental guidance documents available to civil servants do not account for the two most recent rounds of devolution (the 2012 and 2016 Scotland Acts), and therefore the current context of the relationship between the UK and Scottish Governments. A complete list of the existing DGNs, and the date they were last modified, is below.²²³

DGN number	DGN title	Last updated
1	Common working arrangements	Nov 2011
2	Handling correspondence under devolution	Nov 2011
3	The role of the Secretary of State for Scotland	October 2006
4	The role of the Secretary of State for Wales	November 2005
5	The role of the Secretary of State for Northern Ireland	Unclear
6	Circulation of inter-ministerial and inter-departmental correspondence	November 2005
7	Court proceedings regarding devolution issues	Not yet published
8	Post-devolution legislation affecting Northern Ireland	Unclear
9	Post-primary legislation affecting Wales	Missing from website
10	Post-devolution primary legislation affecting Scotland	November 2005
11	Ministerial accountability after devolution	November 2011
12	Attendance of UK Ministers and officials at Committees of the Devolved Legislatures	Unclear
13	Handling of Parliamentary Business in the House of Lords	November 2011
14	Orders made under Section 30(2) of the Scotland Act (Alterations to Legislative Competence)	November 2011
15	Scottish Legislative proposals giving devolved powers and functions to UK bodies	November 2011
16	Superseded by DGN17	
17	Parliamentary and Assembly Primary Legislation Affecting Wales	Unclear

100. When we raised this with the UK Government minister, Chloe Smith MP, she implied that the UK Government are looking at these documents to ensure they are up to date, as part of the broader review of intergovernmental relations.²²⁴ We note that the

221 [Q228](#)

222 UK Government, [Devolution Guidance Note 3: The Role of the Secretary of State for Scotland](#), October 2006; [Q233](#)

223 UK Government, Guidance: [Devolution guidance notes](#), [accessed April 2019]

224 [Q228](#)

Devolution Guidance Note webpage was updated shortly after we raised these issues with the minister. Nonetheless, we also note that the substantive content of many individual notes remains out of date.

101. Devolution Guidance Notes, which are the fundamental and authoritative devolution guidance documents, are acutely out of date. It is unacceptable that some Devolution Guidance Notes have not been updated since 2005 and do not reflect the passage of the last two Scotland Acts. This is inadequate and undermines the UK Government's commitment to fostering effective working relationships between officials. We therefore recommend that Devolution Guidance Notes are updated as a matter of urgency. We believe the UK Government should therefore take this task forward independently of its ongoing review into intergovernmental relations.

6 The Scotland Office

102. The Scotland Office (formally the Office of the Secretary of State for Scotland) is a department of the UK Government responsible for ensuring “Scottish interests are fully and effectively represented at the heart of the UK Government, and the UK Government’s responsibilities are fully and effectively represented in Scotland”.²²⁵ It has three main objectives:

- **Strengthening and Sustaining the Union:** By acting as custodians of constitutional arrangements and in particular the devolution settlement;
- **Scotland’s Voice in Whitehall:** By representing distinct Scottish interests within Government and supporting the rest of the Government on Scottish matters, and
- **Championing the UK Government in Scotland:** By representing and advocating for the UK Government’s policies and achievements in Scotland.²²⁶

103. The department’s role has changed significantly since devolution. Originally the department dealt with most aspects of the domestic governance of Scotland.²²⁷ However, since devolution, its responsibilities have been limited to representing Scotland at the UK Government level on reserved matters, such as foreign policy and employment, and representing the work of UK Government within the Scottish Government.²²⁸ This role includes facilitating the smooth operation of devolution, and administering certain reserved matters of government relating to Scotland.²²⁹

104. During this inquiry we heard mixed evidence about whether the Scotland Office adds value to the relationship between the UK and Scottish Governments. Some witnesses felt the Scotland Office still serves a useful purpose. For example, Sir Peter Housden, former Permanent Secretary to the Scottish Government (2010–2015), told us the Office played an important role during his time in office by drawing Whitehall officials’ attention to potential devolution implications of policy changes.²³⁰

105. Michael Moore, former Secretary of State for Scotland (2010–2013), argued that the Scotland Office was also a key player during the Scottish independence referendum and further devolution of powers to the Scottish Parliament in the 2012 and 2016 Scotland Acts.²³¹ The UK Government made the same point in written evidence.²³² Similarly, Alun Evans, former Director of the Scotland Office (2012–2015), also highlighted the important role played by the Scotland Office during the independence referendum, alongside three other key departments - No. 10, the Cabinet Office, and the Treasury:

We had two things that none of the other departments had. One was the expertise in Scottish issues, particularly constitutional issues, and secondly[...] expertise and knowledge on media and communications in

225 Office of the Secretary of State for Scotland and Office of the Advocate General for Scotland, [Annual Report and Accounts 2017–18](#), July 2019

226 Office of the Secretary of State for Scotland, [About us](#), [accessed April 2019]

227 House of Commons Library, [Scotland and Devolution, Research Paper 97/92](#), July 1997

228 House of Commons Library, [“The settled will”? Devolution in Scotland, 1998–2018](#), November 2018

229 UK Government, Office of the Secretary of State for Scotland, [About us](#)

230 [Q152](#)

231 [Q170](#)

232 Secretary of State for Scotland ([IGR0011](#))

Scotland, which, for all they might think, No. 10, the Cabinet Office and Treasury could not do.[...] I would say during the period when I was Head of the Scotland Office, there was a clear role for the Office, clearly, and I would say it worked quite well.²³³

Michael Moore also argued that, during his time in office, the Scotland Office played an important role as “front of house” for representing the UK Government in Scotland, and the Scottish Government in London:

The challenge is: how does the United Kingdom Government wish to be represented in Scotland?[...] As Scottish Secretary, that was very much my role and I went around the country talking about great subjects, like welfare reform and other things that were challenging and needed to be worked through.²³⁴

106. Rt Hon David Mundell MP, Secretary of State for Scotland, did not give oral evidence to our inquiry, instead writing to us to set out the UK Government’s position. Using the Scottish City and Growth Deals programme as an example of effective collaboration, the Secretary of State noted that the Scotland Office plays an important role in “engag[ing] and represent[ing] Scottish stakeholders in the work of the UK Government and communicat[ing] the work of the UK Government in Scotland”.²³⁵ UK Government Minister for the Constitution, Chloe Smith MP, made a similar point, claiming that the territorial offices “support and strengthen the union, they stand up for the interests for that part of the United Kingdom, and they[...] champion the work of the UK Government in that part of the United Kingdom”.²³⁶ The minister added that the current territorial offices ensure “the interests of the people of those areas, [are] at the heart of Cabinet”.²³⁷

107. Other witnesses were less convinced that there remains a meaningful role for the Office. Lord Wallace, former Deputy First Minister of Scotland (1999–2005), argued that the role of the Secretary of State for Scotland added little value during his time in Government, because most UK–Scottish Government working was carried out on a department–to–department and official-to-official basis, rather than through the territorial offices:

My experience as a Scottish Minister was not that I needed the clout of the [...] Scotland Office to try to get anything done or get arrangements. It was done on a departmental–to–departmental level, at both ministerial level and, quite crucially, an official level. That informed my view as to why I don’t think we would have been any worse off if [...] the Scotland Office had disappeared.²³⁸

Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations, made a similar point, arguing that the department’s role in supporting the UK–Scottish Government relationship is “no longer relevant”.²³⁹ He agreed with other witnesses that most intergovernmental working occurs on a department–to–department basis, and described the Scotland Office as “this other appendage hanging on, [...] there is not really much point in it”.²⁴⁰

233 [Q174](#)

234 [Q172](#)

235 Secretary of State for Scotland ([IGR0011](#))

236 [Q260](#)

237 [Q256](#)

238 [Q149](#)

239 [Q266](#)

240 [Q267](#)

108. Professor Jim Gallagher argued that the Scotland Office could be abolished and replaced by a single, powerful department at the centre of government”.²⁴¹ Similarly, Lord McConnell recommended that the Scotland Office could be replaced by a “Department of Constitutional Affairs” or a “Department of the Nations and Regions”.²⁴² He suggested that this could be “headed up by a powerful Secretary of State who was a senior figure—one of the top four positions in the Cabinet—and you could retain offices within that department that were responsible for some of the liaison on helping to resolve disputes and so on”.²⁴³ Lord Wallace supported this proposition, adding that this more accurately reflects the way government currently works. He said this approach also notes the role that David Lidington—the minister responsible for constitutional affairs and the integrity of the Union²⁴⁴—plays in managing the relationship with the devolved administrations; “I suspect he carries more clout for Scotland’s interests, if I dare say so, than Mr Mundell does”.²⁴⁵ This point was echoed by Michael Russell MSP, who claimed that “David Lidington has the responsibility for devolution”.²⁴⁶

109. However, Rt Hon David Mundell MP, Secretary of State for Scotland told us that he “strongly disagreed” that a single department responsible for intergovernmental relations would be better placed to represent the interests of the devolved administrations.²⁴⁷ Mr Mundell argued, instead, that the Scotland Office plays a key role in ensuring “that Scotland’s interests are reflected in the policy work of the UK Government”, and that this is best achieved by having Scotland’s interests represented by a dedicated Secretary of State in the Cabinet.²⁴⁸

110. The Scotland Office has played an important role during high profile, Scotland-specific political developments in recent years—such as the passage of Scotland Acts. However, outside of these major events it is clear that the majority of most intergovernmental relations are conducted directly between the Scottish Government and the relevant Whitehall departments. The Scotland Office needs to adapt to the reality of how devolution is working on the ground. We do, however, recognise that there is a legitimate role to be played in terms of the Office representing the work of the UK Government in Edinburgh.

111. We have not heard any evidence to suggest that the Scotland Office’s representative role, or its handling of devolution matters, could not be dealt with by an altogether different model of devolved representation in Whitehall, such as a single department responsible for devolution and constitutional affairs. *We recommend that the UK Government reviews the role of the Scotland Office and the Secretary of State for Scotland. As part of this review, the UK Government should explore options including replacing the territorial offices of state with a single department responsible for managing constitutional affairs and intergovernmental relations. The review must ensure that any changes do not reduce the quality of how Scotland is represented in the UK Government nor reduce the ability of the UK and Scottish Governments to work together.*

241 Professor Jim Gallagher ([IGR0002](#))

242 [Q162](#); [Q141](#)

243 [Q141](#)

244 UK Government, [Chancellor of the Duchy of Lancaster](#)

245 [Q149](#)

246 [Q267](#)

247 Secretary of State for Scotland ([IGR0011](#))

248 Secretary of State for Scotland ([IGR0011](#))

Conclusions and recommendations

Trust and political relations

1. The relationship between the UK and Scottish Governments has come under renewed strain at a time when cooperation and trust is needed most. The current system of intergovernmental relations is not able to cope with the pressure being placed on it. Whilst we recognise that disagreement between the UK and Scottish Governments is inevitable and legitimate, we believe that the frequency and nature of the disputes we have seen in recent years have been exacerbated by a fundamental—and avoidable—deficit of trust in the relationship. The two governments need to have a relationship that is strong enough to survive disagreement. In the remainder of this Report we recommend reforms which could be made to improve machinery and governance arrangements which support intergovernmental relations. However, none of these reforms will be successful unless trust is rebuilt through a fundamental change in the approaches of both governments. (Paragraph 18)
2. *We are encouraged by both governments' expressions of willingness to improve intergovernmental relations and welcome the Secretary of State's commitment to a "new era of intergovernmental relations" after Brexit. We call on both Governments to work to rebuild trust and recognise the need for a cooperative and constructive relationship underpinned by the principle of parity of esteem. This would ensure that both governments are treated as equals in their respective areas of competence, and ensure mutual respect for each other's authority, even in the face of disagreement. Unless both governments summon the political will to work to rebuild trust the relationship will only deteriorate further.* (Paragraph 19)

Joint Ministerial Committee

3. We believe that, as the UK's highest-level intergovernmental forum, the JMC should be a productive forum which is robust enough to cope with different governments with divergent policy objectives. The existing set up and organisation of the JMC has resulted in it being predominantly controlled by the UK Government. This has limited its effectiveness as a forum for meaningful engagement between the UK's four governments. The JMC therefore urgently requires reform. (Paragraph 31)
4. The effectiveness of the JMC will hinge on how it works in practice, rather than what it is called. We were not persuaded by any of the alternatives to the current JMC format. Although proponents of more fundamental reform tended to coalesce around the idea of a UK Council of Ministers, we are not convinced that this proposal offers benefits which cannot be delivered through the reforms to the JMC. (Paragraph 32)
5. *Instead there are several reforms we think that the Government could make to the JMC to ensure it embodies the principle of parity of esteem and becomes a forum where all four governments can engage as equals. We recommend that:*
 - a) *JMC meetings should be hosted and chaired by each of the UK's administrations on a rotating basis.*

- b) *JMC meetings should be held frequently, and to a set schedule.*
 - c) *JMC agendas should be agreed in advance between all parties.* (Paragraph 33)
6. The level of transparency in the UK's intergovernmental relations is poor. This lack of transparency has made it less likely that governments will engage cooperatively, because it is difficult for the public and the respective parliaments to hold their governments to account for the quality of their engagement without clear information about meetings and their outcomes. (Paragraph 38)
 7. *We recommend that the UK Government provides the UK Parliament with advance notice of meetings and agendas for JMC meetings and maintains a formal and publicly accessible record of JMC discussions and outcomes. We also recommend that after every meeting of the JMC (Plenary), an oral statement be made in Parliament by the responsible minister, to allow for proper parliamentary scrutiny of intergovernmental relations.* (Paragraph 39)
 8. The current dispute resolution process does not command the confidence of the Scottish Government and is not fit for purpose. We believe that adoption of our earlier recommendations regarding early engagement, trust-building, and cooperation would help mitigate the need to seek recourse to dispute resolution processes in the first instance. However, some disputes are inevitable. We therefore believe there is a clear need to reform the JMC dispute resolution process to ensure that it is trusted by all parties, and that it is robust enough to deal with the calibre of disagreements which have arisen in recent years. (Paragraph 47)
 9. *We do not believe the UK Government should have the unilateral right to prevent the devolved administrations from invoking dispute resolution proceedings, as it has done recently. If a reformed dispute resolution process is to be fair and trusted, it must be unconditionally accessible to both parties to a disagreement. We therefore recommend that the UK Government seeks to amend the dispute resolution protocol to ensure all governments have the right to unilaterally initiate dispute resolution proceedings.* (Paragraph 48)
 10. *We were interested to hear of how independent third parties are involved in efforts to resolve intergovernmental disputes in other countries. We recommend that the UK Government explores with the devolved governments how a form of independent mediation might be introduced in the UK. One approach it may wish to consider is referral of a dispute to a third party for mediation—at the penultimate stage of the dispute resolution process. We believe it would be beneficial if, at the end of the mediation process, the mediator could be required to publish some non-binding recommendations outlining possible ways forward. This would help both parties progress towards a resolution, whilst maintaining the UK Government's final say over the dispute.* (Paragraph 49)
 11. *We agree with our witnesses and the Public Administration and Constitutional Affairs Committee that the JMC would benefit from being supported by an independent secretariat with staff drawn from all four administrations of the UK. This would help ensure meetings are regularly arranged, agendas are agreed and shared in advance, and that the outcomes are communicated in a timely and transparent manner.*

This would reflect the principle of parity of esteem by ending the situation whereby one government has complete control over the resources that support the JMC. (Paragraph 54)

12. We believe that setting out the basic requirements of the JMC in statute would ensure that it operates in the way envisaged by the Memorandum of Understanding. *We therefore recommend that the JMC format, the frequency of JMC meetings, and the right to seek recourse through the dispute resolution process, are set out in statute. This would ensure that a minimum number of JMC meetings are held each year and that the right to invoke dispute resolution proceedings is inalienable.* We are not convinced by the UK Government’s argument that placing these requirements on statutory footing would reduce flexibility, as there would be nothing to stop the Government going beyond those minimum requirements, and this would not place any obligation on the UK Government which it has not already signed up to in existing intergovernmental agreements. (Paragraph 59)

Common Frameworks

13. We are encouraged that the two governments have cooperated well on developing common frameworks, and that there currently appears to be little prospect of the UK Government using its powers to “freeze” the powers of the devolved administrations. This demonstrates that both Governments can reach agreement through discussion and consultation. (Paragraph 65)
14. We believe that common frameworks must be agreed through co–decision and by consensus and that disagreements over common frameworks are less likely to arise if a culture of cooperation and trust between the two governments is developed. However, should disagreements arise, we believe recourse to a reformed dispute resolution process of the type we have recommended would help reduce the risk of common frameworks being imposed. (Paragraph 73)
15. *We recommend that a new JMC sub–committee on Common Frameworks is established to facilitate the agreement of common frameworks. Within the JMC sub–committee, common frameworks must be co–owned, and decisions in relation to them must be reached by co–decision and by consensus. Where disagreements prove irreconcilable, recourse to the reformed dispute resolution process should be available.* (Paragraph 74)

Devolution understanding and relations in Whitehall

16. Strong official–level relationships are as important to effective intergovernmental relations as strong political relationships. However, the relationships between civil servants that were established at the time of devolution are no longer in place, and while the Brexit process is requiring more Whitehall departments to work collaboratively with the devolved institutions, it is also reducing their capacity to do so effectively. (Paragraph 78)

17. Guidance for Whitehall civil servants encourages them to think about devolution. However, it is clear from our evidence that the effectiveness of this approach has been limited as UK Government officials regularly produce policy changes which have failed to properly think through the implications their policies could have on the devolved administrations. (Paragraph 86)
18. *We recommend that Whitehall departments should publish devolution impact assessments on UK Government policies could impact the devolved institutions. This should be a two-stage process, with a full impact assessment only being undertaken when a preliminary assessment suggests a policy change touches on devolved competence. As policy officials should already be thinking through devolution implications, this process should not pose a significant additional burden. We believe routinely publishing these assessments would ensure they are completed to a high standard and encourage civil servants to engage with their devolved counterparts at an early stage in the process, thereby helping to identify potential conflicts before they become politicised disputes.* (Paragraph 87)
19. We were alarmed that only a third of civil servants feel they have a good level of knowledge about devolution. These figures show that much more needs to be done to train officials. Effective training will be particularly important in the coming years as Brexit requires departments and officials with little previous experience of devolution engage with their devolved counterparts much more frequently, and in a more complex devolution setting. (Paragraph 90)
20. *We recommend that the UK Government reviews the content of training, to ensure that it keeps up with the rapidly changing devolution landscape, and that it provides officials with the skills and knowledge needed to work effectively with the devolved administrations. We also recommend the UK Government reviews the uptake of training across departments, to identify potential gaps in coverage, and call on it to publish the findings of this review.* (Paragraph 91)
21. We believe that interchange, secondment and exchange opportunities between the UK and Scottish Governments are an effective means of improving devolution knowledge and understanding. However, despite gradually expanding the availability of secondment, exchange and interchange opportunities, the number of officials participating in these programmes remains relatively small—at around 400 officials over 3 years. We are concerned that the number of secondment opportunities are insufficient compared to the scale of the devolution knowledge deficit. (Paragraph 96)
22. *We therefore recommend that the UK Government expands interchange opportunities for policy officials. Civil servants in policy areas which deal with devolved issues should be given priority access to intergovernmental exchange or secondment programmes. We further recommend that all senior civil servants, and those on fast-tracked development pathways, such as those on the Fast-Stream and apprenticeship schemes, should be offered exchange or secondment opportunities.* (Paragraph 97)

23. Devolution Guidance Notes, which are the fundamental and authoritative devolution guidance documents, are acutely out of date. It is unacceptable that some Devolution Guidance Notes have not been updated since 2005 and do not reflect the passage of the last two Scotland Acts. This is inadequate and undermines the UK Government's commitment to fostering effective working relationships between officials. *We therefore recommend that Devolution Guidance Notes are updated as a matter of urgency. We believe the UK Government should therefore take this task forward independently of its ongoing review into intergovernmental relations.* (Paragraph 101)

The Scotland Office

24. The Scotland Office has played an important role during high profile, Scotland-specific political developments in recent years—such as the passage of Scotland Acts. However, outside of these major events it is clear that the majority of most intergovernmental relations are conducted directly between the Scottish Government and the relevant Whitehall departments. The Scotland Office needs to adapt to the reality of how devolution is working on the ground. We do, however, recognise that there is a legitimate role to be played in terms of the Office representing the work of the UK Government in Edinburgh. (Paragraph 110)
25. We have not heard any evidence to suggest that the Scotland Office's representative role, or its handling of devolution matters, could not be dealt with by an altogether different model of devolved representation in Whitehall, such as a single department responsible for devolution and constitutional affairs. *We recommend that the UK Government reviews the role of the Scotland Office and the Secretary of State for Scotland. As part of this review, the UK Government should explore options including replacing the territorial offices of state with a single department responsible for managing constitutional affairs and intergovernmental relations. The review must ensure that any changes do not reduce the quality of how Scotland is represented in the UK Government nor reduce the ability of the UK and Scottish Governments to work together.* (Paragraph 111)

Formal minutes

Wednesday 22 May 2019

Members present:

Pete Wishart, in the Chair

Deidre Brock	Paul Masterton
David Duguid	John Lamont
Hugh Gaffney	Tommy Sheppard
Christine Jardine	Ross Thomson
Ged Killen	

Draft Report (*The relationship between the UK and Scottish Governments*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 111 read and agreed to.

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

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

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 4 June at 2.00 p.m.]

Witnesses

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

Tuesday 20 November 2018

Professor Nicola McEwen, University of Edinburgh, **Akash Paun**, Institute for Government, **Professor Jim Gallagher**, University of Glasgow, Centre on Constitutional Change, **Michael Clancy**, Law Society of Scotland

[Q1–48](#)

Tuesday 15 January 2019

Dr Bettina Petersohn, Swansea University, **Dr César Colino**, National University of Distance Education, Madrid, and **Dr Sandra León**, York University; **Jan Bayart**, Deputy Head of Mission, Embassy of Belgium in the UK; **George Anderson**, former Deputy Minister of Intergovernmental Affairs, Privy Council Office, Canadian Government—via video link

[Q49–127](#)

Tuesday 5 February 2019

Lord Wallace, former Deputy First Minister of Scotland, **Sir Peter Housden**, former Permanent Secretary to the Scottish Government, **Lord McConnell**, former First Minister of Scotland, **Baroness Liddell**, former Secretary of State for Scotland, **Alun Evans**, former Director of the Scotland Office, **Michael Moore**, former Secretary of State for Scotland

[Q128–195](#)

Tuesday 5 March 2019

Chloe Smith MP, Minister for the Constitution, UK Government

[Q196–260](#)

Tuesday 12 March 2019

Michael Russell MSP, Cabinet Secretary for Government, Business and Constitutional Relations, Scottish Government

[Q261–326](#)

Published written evidence

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

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

- 1 Dr Coree Brown Swan, Centre on Constitutional Change, University of Edinburgh ([IGR0010](#))
- 2 Centre on Constitutional Change ([IGR0003](#))
- 3 Mr David Eiser, Fraser of Allander Institute ([IGR0007](#))
- 4 Secretary of State for Scotland ([IGR0011](#))
- 5 Professor Jim Gallagher ([IGR0002](#))
- 6 ICAS ([IGR0005](#))
- 7 The Law Society of Scotland ([IGR0006](#))
- 8 Royal Society of Edinburgh ([IGR0004](#))
- 9 Scotland's Futures Forum ([IGR0008](#))
- 10 Jack Sheldon, Bennett Institute for Public Policy, University of Cambridge ([IGR0009](#))

List of Reports from the Committee during the current Parliament

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

Session 2017–19

First Report	European Union (Withdrawal) Bill: Implications for devolution	HC 375
Second Report	The future of working practices in Scotland	HC 449 (HC 1067)
Third Report	Royal Bank of Scotland branch closures	HC 682 (HC 1529)
Fourth Report	Immigration and Scotland	HC 488
Fifth Report	Digital Connectivity in Scotland	HC 654 (HC 1612)
Sixth Report	The future of the oil and gas industry	HC 996 (HC 2177)
Seventh Report	Scotland, Trade and Brexit	HC 903
First Special Report	Jobcentre Plus closures in Scotland: Government Response to the Committee's Third Report of Session 2016–17	HC 432
Second Special Report	The future of working practices in Scotland: Government Response to the Committee's Second Report	HC 1067
Third Special Report	Royal Bank of Scotland branch closures: Government Response to the Committee's Third Report	HC 1529
Fourth Special Report	Digital Connectivity in Scotland: Government Response to the Committee's Fifth Report	HC 1612
Fifth Special Report	The future of the oil and gas industry: Government response to the Committee's Sixth Report	HC 2177