House of Commons
Scottish Affairs Committee

The relationship between the UK and Scottish Governments: Government Response to the Committee’s Eighth Report

Seventh Special Report of Session 2017–19

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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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Evidence relating to this report is published on the inquiry publications page of the Committee’s website.

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Seventh Special Report

The Scottish Affairs Committee published its Eighth Report of Session 2017–19, *The relationship between the UK and Scottish Governments*, HC 1586, on 7 June 2019. The Government response to the Report was received on 5 July 2019, and is published as an appendix to this Report.

Appendix

The Scottish Affairs Select Committee published its report on relations between the UK Government and the Scottish Government on 7 June 2019. This document sets out the UK Government’s response to the conclusions and recommendations set out in that report.

The UK Government read with interest the Committee’s report. Intergovernmental relations are vital to the effective functioning of devolution and, most importantly, to the delivery of services for all citizens across the UK. As we leave the EU, the ability of the UK Government and the devolved administrations to work constructively and effectively together for the benefit of people in the UK is more important than ever. The UK Government is fully committed to the review of intergovernmental relations which is being taken forward jointly with the devolved administrations.

We welcome Committee’s interest in intergovernmental relations and we are grateful for the recommendations the Committee has made.

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)

The UK Government is committed to constructive engagement and strong intergovernmental working with all devolved administrations. We recognise, however, that there are challenges which come with a UK Government staunchly supportive of
devolution and a Scottish Government campaigning for independence. The Committee’s recommendation implies that there has been an increase in disputes in recent years. However it must be noted that differences have only ever escalated into formal disputes on four occasions over the last two decades. There is a clear difference between political disagreement and a failure of process or a breakdown in the relationship as the Committee suggest has occurred.

There are clear structures in place for engagement and joint working and a range of evidence of how the UK Government has sought to work constructively with the Scottish Government to deliver for the people of Scotland. This can be seen through the step taken to invite devolved administration Ministers to the UK Government Cabinet sub-Committee for European Union Exit and Trade (Preparedness) (EUXT(P)), when relevant issues are on the agenda. This is in addition to the role that the Joint Ministerial Committee on EU Negotiations (JMC(EN)) plays. Representatives from the devolved administrations also participate in the Ministerial Forum on EU Negotiations and the Joint Ministerial Committee on Europe (JMC(E)) that covers current EU business.

At the March 2018 Joint Ministerial Committee Plenary session, the UK Government and devolved administrations recognised the need to review the current intergovernmental relations architecture to ensure it continues to work effectively as the UK leaves the EU. It is vital that we ensure that the governments of the UK work together effectively in a way that respects the devolution settlements and devolved institutions, and crucially that works on behalf of all citizens and businesses in the UK.

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)

We recognise the need to maintain and build upon existing machinery, acknowledging the range of views on the effectiveness of the current arrangements. The review of intergovernmental relations is a joint endeavour, and we are therefore working with
the devolved administrations to discuss all suggestions for how to practically improve intergovernmental relations, including on machinery and the way in which our joint forums are run.

The various forms of the JMC allow for a full range of issues to be considered. The meetings both in Plenary and on EU Negotiations continue to demonstrate the UK Government’s commitment to working in close collaboration with the devolved administrations. As the Committee’s report acknowledges, replacing the JMC with a UK Council of Ministers or other fundamentally different forums might not offer further benefits than could be achieved by an improved JMC structure.

The Committee has heard evidence from a range of witnesses detailing different systems of intergovernmental relations from around the world. We welcome the Committee’s recommendations and considerations on potential new structures to improve and build upon existing intergovernmental mechanisms but must remain mindful of the uniqueness of the UK’s context. A reformed JMC structure would need to deliver meaningful engagement and trust whilst respecting the constitutional relationships between our administrations.

It is also important to note that there are many more structures and forums for engagement between our administrations other than the JMC. Departments have structures in place to manage a host of other issues in the domestic space. A variety of bilateral, trilateral and Ministers Quadrilateral meetings are frequently held to discuss policy-specific issues. For example, the Inter-ministerial Group for Environment, Food and Rural Affairs meets regularly to ensure cooperation and collaboration between the four UK administrations on matters of shared interest for the EFRA sectors. In 2019, eight Ministerial Meetings have been scheduled (of which three have already been held). The Joint Ministerial Working Group on Welfare between the UK and Scottish Government is another forum which provides a space for discussion and decision-making, specifically to ensure the implementation of welfare and employment-related aspects of the Scotland Act 2016. These are but an example of a number of intergovernmental mechanisms within the domestic space. We aim to strengthen and build upon these structures as part of the review of intergovernmental relations.

We are grateful to the Committee for its recommendations on the subject. UK Government officials will discuss them with counterparts in the devolved administrations and consider them as part of the review of intergovernmental relations.

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)
The UK Government deeply values the principles of transparency and accountability and remains fully committed to them. We therefore recognise the importance of maintaining transparent relationships, not only with the UK Parliament but with all devolved governments and legislatures. We continue to work towards this goal by ensuring meaningful engagement with relevant parliamentary committees.

The Chancellor of the Duchy of Lancaster regularly writes to UK Parliamentary Committees to provide them with updates on meetings of the Joint Ministerial Committees and the Ministerial Forum on EU Negotiations. He most recently wrote on 3 May, including information on the review of intergovernmental relations. On this occasion, he extended the updates to relevant committees of the devolved legislatures. Additionally, the Minister for the Constitution attended the Interparliamentary Forum on Brexit to discuss intergovernmental relations with Parliamentarians from across the UK on 17 January 2019 and held a Parliamentary drop-in session on 24 October 2018 to inform the review of intergovernmental relations.

With regards to providing advance notice of intergovernmental meetings, dates have been provisionally agreed with the devolved administrations for monthly meetings of JMC (EN) for the upcoming period. However, it is often not possible to confirm agendas in advance as items are subject to agreement by all administrations and often not finalised until close to the meeting itself.

To respect this space alongside the need for transparency we have joint communiques for JMC meetings. However it remains crucial that we retain a level of ‘safe space’ between our administrations to enable sufficient discussion of sensitive issues. Wherever possible we are committed to the principle of respect for the confidentiality of discussions between governments.

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)

The UK Government is committed to the principle of dispute avoidance as all administrations continue to work closely behind the scenes to resolve issues through constructive dialogue rather than detailed procedures. Differences have only ever escalated into disputes on four occasions across a two decade span, the most recent of which was in 2010. We therefore expect the principle of dispute avoidance to remain central to managing disputes in the future.

We recognise, however, that the UK’s exit from the EU requires us to look into fresh ways of supporting intergovernmental relations. Officials are working together to ensure that the existing dispute resolution mechanism can be adapted to manage the range of differences and unique circumstances that may arise as the UK leaves the EU, including those involving third parties. The existing Memorandum of Understanding also makes provision for the incorporation of independent analysis where all relevant administrations agree on the terms of reference, and we are exploring ways in which we might further incorporate expert advice in particular policy areas. The principles of good communication and consultation will remain key to managing our differences and we are currently looking at a new set of options to further strengthen them.

We are grateful for your recommendations on the subject. Officials will discuss them with counterparts in the devolved administrations and consider them as part of the review of intergovernmental relations.

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)

As previously mentioned, though we will aim to share agendas and dates of JMC meetings in advance wherever possible, it is also crucial that we ensure respect for confidentiality between our administrations.
As also mentioned above, the UK Government recognises the need to take a fresh look into the existing structures supporting intergovernmental relations, including the JMC forum. We aim to gather a wide range of views on how to build upon and improve intergovernmental machinery and dispute resolution mechanisms. We will incorporate any such views, as well as the Committee's recommendations, in to the review once they have been jointly considered with the devolved administrations. We welcome any further suggestions the Committee might have on the subject.

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 subcommittee, 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)

The UK Government welcomes the Committee's view that the two governments have cooperated well in developing common frameworks and we agree that all frameworks should be jointly agreed.

At the outset of the frameworks programme, the Scottish and Welsh Governments co–designed principles with us - agreed at the JMC(EN) on 16 October 2017 - to guide the detailed work we have been doing. We continue to work closely and constructively with the Scottish and Welsh Governments, as well as seeking the input of the Northern Ireland Civil Service. Common frameworks are formed through close collaboration between the UK Government and devolved administrations and all frameworks will be agreed by Ministers in the relevant departments across UK Government and devolved administrations. With this in mind, the agreement of common frameworks already functions as a joint project, with the dispute resolution mechanism in the Memorandum of Understanding on Devolution in place to resolve any potential disagreements.

On 4 April 2019, the UK Government published a revised frameworks analysis, which set out a detailed assessment of progress. This was the culmination of multilateral policy development in priority framework areas, through which the UK Government and devolved administration officials produced outline frameworks in the majority of priority areas. Discussions on cross-cutting issues, including the internal market and governance, continue in parallel and we have jointly developed an engagement strategy that will raise awareness, secure buy–in and increase transparency in the overall programme. This
process of co-operation and collaboration is helping shape the post-EU Exit devolution landscape and demonstrates how the Scottish and Welsh Governments, and the Northern Ireland Civil Service, together with the UK Government, are able to work together to ensure a prosperous future for the UK, outside of the European Union.

The UK Government notes the Committee’s suggestion for a new JMC sub-committee to ensure common frameworks are ‘co-owned’ and ‘reached by co-decision’. We will consider the suggestion as we continue working closely with the devolved administrations on both governance of common frameworks and the broader question of dispute resolution, both forming parts of the current review of intergovernmental relations. UK Government and devolved administration officials continue working together to ensure the existing dispute resolution mechanism can be adapted to manage the range of differences and unique circumstances that may arise as the UK leaves the EU, including those involving third parties. We are committed to the principle of dispute avoidance and expect the principles of dispute avoidance to remain central to managing disagreements in the future.

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)

The UK Government agrees that strong official level relationships are vital to intergovernmental relations and these relationships provide a strong foundation as the UK Government works to deliver for people in Scotland and across all of the UK. We encourage civil servants to establish relationships with their colleagues across the four administrations of the UK to increase their understanding and awareness of devolution. Our partnership working with the devolved administrations on our exit from the EU is a priority. Ensuring a culture of knowledge and understanding of devolution underpins work across Whitehall and the Cabinet Office has a specific programme, Devolution and You, to support this. Since January 2019, 1,600 civil servants have been trained on devolution and intergovernmental working.
The UK Government agrees with the need for comprehensive training for officials that regularly engage with the devolved administrations. The Devolution and You programme in Cabinet Office leads this work as a priority, supported by the Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales and Northern Ireland Office, in partnership with the Scottish and Welsh Governments. The programme also works closely with the Northern Ireland Civil Service.

Whitehall engagement with the devolved administrations is greater than ever before and the programme is refreshing its content and scale in response. The Devolution and You programme is working closely with all UK Government departments to prioritise upskilling for new starters and joiners, to target those officials who are prominently engaging with the devolved administrations, and to adapt induction programmes to the specific policy needs of individual departments.

We agree it is important that policy officials consider the devolution implications of their work. All UK Government Bills legislating in the devolved space conduct analysis to identify whether or not the Bill and its provisions or clauses engage any of the Legislative Consent Motion processes in the devolved legislatures. Cabinet Office guidance highlights the need for teams to consider devolution at an early stage and to engage early with counterparts in the devolved administrations where needed. This allows us to test our devolution analysis and identify areas of agreement and disagreement to prevent conflict over the Bill’s devolution status later on. Even where the devolved administrations have competence to pass their own legislation, the UK Government has reached out with the offer to legislate on behalf of the devolved administrations when introducing similar legislation, which is in line with our devolution approach.

We are assessing our internal procedures to ensure that there is early engagement when developing policies. However, given the two stage process proposed in the Committee’s recommendation, we would want to carefully consider the added value of any further requirements on departments.

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)**

As stated earlier, we agree that comprehensive devolution training is important for all civil servants, and particularly for those officials that regularly engage with the devolved administrations. Devolution and You is a cross-administration campaign, run in conjunction with the Scottish and Welsh Governments, to upskill all civil servants. Each UK Government department also leads their own department’s devolution capability
training, working in collaboration with the Devolution and You campaign run by the Cabinet Office. This allows targeted training according to the needs of individual teams and departments. The Devolution Capability Team in the Cabinet Office works closely with departments to ensure this training continues to meet the needs of civil servants and to adjust the content, depth and frequency of training on the basis of feedback and evaluation.

Although only a third of civil servants who responded to the survey said they had a good level of devolution knowledge, 45% said they had a basic level of understanding. Testing devolution knowledge as part of the survey showed that devolution knowledge increased with seniority. The survey is representative of the entire One Civil Service, but we are unable to provide individual administration level data due to representivity of the response rate.

We are also looking ahead and developing programmes to support devolution practitioners to ensure they can maintain and expand their knowledge throughout their careers, particularly as the frequency and range of engagement grows as we leave the EU. This work is a priority for the Devolution and You campaign.

We have recently reviewed and updated the content of our Devolution and Intergovernmental Working module which is promoted to all civil servants on the Civil Service Learning platform. This update reflects the changes to the devolution settlements now that the Scotland Act 2016 and Wales Act 2017 have taken effect, as well as the way EU Exit affects devolution. This e-learning is open to civil servants from the Scottish and Welsh Governments as understanding devolution is important for all civil servants. We also run frequent interactive workshops which allow civil servants to put theoretical knowledge into practice and we regularly refresh the scenarios in this training to include recent policy challenges. Civil servants are encouraged to give feedback after these workshops and other sessions to ensure that training is relevant to their job roles and to improve future sessions.

The Devolution Knowledge Survey will be run again in September 2019 to improve our understanding of the impact of our learning offer as well as other devolution training provided by departments and professions. This will be run in conjunction with departmental evaluation to gain better insight into the capability needs of individual departments. The survey is intended to provide an indicative view of areas to prioritise and, as such, we do not intend to publish the findings of this survey.

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)

The most recent UK Government Interchange Week took place between the 10–14 June with 87 participants. Of these, 32 participants were from the Northern Ireland Civil Service, 21 from the Welsh Government and 34 from the Scottish Government. 514 people have now participated in the interchange programme since it began in 2016. However, interchange has a much broader reach than the 514 participants who have taken part to date: during the course of their interchange programme, each participant meets many civil servants in their host organisation alongside fellow attendees from other administrations and will disseminate knowledge and strengthen cross-governmental networks across a much wider pool of civil servants.

Year on year, the interchange weeks have been oversubscribed from civil servants in the UK, Scottish and Welsh Governments and the Northern Ireland Executive. We welcome the Committee’s acknowledgement that the interchange programme is one of the most important ways of improving devolution capability. As such, Cabinet Office is working with the devolved administrations, the cross-government professions and Civil Service HR to increase the overall capacity of the interchange programme.

This includes plans to expand the scheme to support longer loans and secondments between administrations, to significantly strengthen civil servants’ practical experience of other administrations and their skills at operating across all parts of the UK. These longer placements would deepen links between civil servants, encouraging better dialogue and intergovernmental relations, and promote constructive and collaborative working across the UK’s four administrations. These opportunities would be particularly targeted at senior civil servants and future leaders, including through cross-government talent programmes.

The Fast Stream currently includes postings both in UK Government departments based in Scotland and Wales, and in the Scottish and Welsh Governments, and we will work with the devolved administrations to establish how we can increase the scale of these placements. We fully support the suggestion of interchange opportunities for policy apprentices and would welcome joint working with our colleagues from the devolved administrations to investigate how these could operate.

Cabinet Office is also working to develop specialist interchanges between parallel policy teams in administrations and across government professions to cater to the demand for the interchange programme. This work is targeted at the needs of each department or profession to help support civil servants who most need devolution knowledge and training, regardless of their grade.

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)

Devolution Guidance Notes set out advice on working arrangements between the UK Government and devolved administrations. The principles of common working set out in the Devolution Guidance Notes which were agreed between the devolved administrations and UK Government are still as relevant today as they were when they were written.

Alongside the Devolution Guidance Notes, the Office for the Secretary of State for Scotland and the wider Territorial Offices work closely with all UK Government departments when considering Legislative Consent Motions and engagement with the devolved administrations.

Devolution Guidance Notes underpin the Memorandum of Understanding, which is being reviewed as part of the intergovernmental relations review. As a result of the review the Devolution Guidance Notes may need changing in the future to reflect any changes made to the Memorandum of Understanding or wider intergovernmental relations guidance and principles. The UK Government will look to undertake a factual review of the Devolution Guidance Notes, in collaboration with devolved administration officials. Further changes may be needed in the future, as such we will reconsider a wider review of the Devolution Guidance Notes once the review has concluded.

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)

We are pleased that the Committee’s report recognises the important role the Office of the Secretary of State for Scotland has played in recent years. However, it is important to recognise the breadth of work the Office is engaged in and the way the Office’s function and role has developed and adapted over the first twenty years of devolution to Scotland.

As the Secretary of State for Scotland set out in written evidence on 11 April 2019, the Office of the Secretary of State for Scotland, and the other Territorial Offices, play a key
role at the heart of the UK Government to ensure the UK’s constitutional settlements function properly. The Office has extensive specialist knowledge of Scotland’s distinct constitutional settlement and has, for example, driven the devolution of further powers to the Scottish Parliament through the Scotland Act 2016. The Office has also been at the centre of the City and Growth deals programme and ensured the interests of Scotland and the devolution settlement are fully considered as we leave the EU. The Office also continues to engage and represent Scottish stakeholders in the work of the UK Government and communicates the work of the UK Government in Scotland.

It is right that, in parallel, UK Government departments engage directly with the Scottish Government as well. The breadth of engagement between the UK Government and Scottish Government makes this essential but it does not diminish the important role the Office of the Secretary of State for Scotland plays. The Office has strong relationships across Whitehall and supports and advises other departments to ensure that Scotland’s interests are reflected in the range of policy work across UK Government which impacts Scotland.

The Prime Minister announced in Stirling on 4 July an independent review into the structures of the UK Government. Lord Dunlop will lead this review, looking into whether the structures of the UK Government are set up to realise fully all the benefits of being a United Kingdom. The terms of reference states that the review will look at ‘the importance of Scotland, Wales and Northern Ireland retaining their own Secretaries of State who are members of Cabinet and Territorial Offices that represent the interests of the devolved nations in Westminster.’