



House of Commons
Scottish Affairs Committee

European Union (Withdrawal) Bill: Implications for devolution

First 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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Publication

Committee reports are published on the [Committee's website](#) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Ben Williams (Clerk), Laura-Jane Tiley (Second Clerk), Edward Faulkner (Committee Specialist), Pansy Barrett (Senior Committee Assistant), Chloe Freeman (Committee Assistant), and George Perry (Media Officer).

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1 Introduction

The European Union (Withdrawal) Bill

1. The UK Government has introduced the European Union (Withdrawal) Bill to give effect to the UK's decision to leave the EU. The Bill would:

- Repeal the European Communities Act 1972, which gives legal authority for EU law to have effect as national law in the UK, and
- Convert EU law, as it stands at the moment of the UK's departure from the EU, into domestic law.¹

2. The Bill includes several provisions which would either directly affect Scotland's devolution settlement or create delegated powers which could be used by UK ministers to amend legislation in devolved areas of responsibility. These provisions are:

- The conversion of EU law, at the point of Brexit, into UK law (creating a body of law known as "retained EU law"). [Clause 3]
- The creation of a restriction on the Scottish Parliament preventing it from legislating contrary to retained EU law. [Clause 11]
- The process for creating exemptions to the above restriction (by passing Orders in Council). [Clause 11]
- The creation of delegated powers for UK and Scottish ministers to:
 - "Correct" retained EU law, [Clauses 7 and 10] and
 - Make legislative changes necessary to implement any withdrawal agreement. [Clauses 9 and 10]

These provisions reflect the intentions set out in the UK Government's White Paper, *Legislating for the United Kingdom's withdrawal from the European Union*,² which was published on 30 March 2017.

3. The Bill was introduced in the House of Commons on 13 July 2017 and received its Second Reading on 11 September 2017. The House agreed that Committee stage of the Bill will last eight days, and this commenced on Tuesday 14 November.

This Report

4. Given the significant implications this Bill has for Scotland's devolution settlement, we have produced this short Report to inform the House's consideration of the Bill. Our Report is informed by evidence from academics, a representative of the Law Society of Scotland, the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe, and the Secretary of State for Scotland. We would like to thank all of those who gave evidence to us on this subject.

5. There are a wide range of views on the Committee regarding the content of this Bill. This Report focuses on those areas where we are in agreement, but some Members feel that there should be more substantial changes to this Bill.

1 [European Union \(Withdrawal\) Bill](#) [Bill 005 (2017–19)]

2 Department for Exiting the European Union, *Legislating for the United Kingdom's withdrawal from the European Union*, [Cm 9446](#), March 2017

2 Repatriated powers and common frameworks

6. When the UK leaves the EU responsibility for all decision-making which previously happened at an EU level will return to the UK. This will cover decision-making in areas which are reserved to the UK Parliament—such as customs, movement of EU citizens and consumer protection—as well as in areas which are devolved to the Scottish Parliament—such as agriculture, fisheries and environmental standards.

7. The European Union (Withdrawal) Bill, as introduced, would convert existing EU law into UK law on the date of the UK’s exit from the EU, and restrict the Scottish Parliament from legislating contrary to this body of law. This would give the UK Parliament exclusive competence over retained EU law, which would cover all areas of decision-making being repatriated from Brussels. The UK Government has stated that the restriction on the Scottish Parliament’s competence is intended to be a transitional arrangement,³ and the Bill includes a process for releasing policy areas from the restriction, which requires the approval of both Houses of Parliament and the Scottish Parliament.

8. These provisions would effectively maintain the current powers of the Scottish Parliament, replacing the restriction on the Scottish Parliament legislating contrary to EU law with a restriction on legislating contrary to retained EU law, until the restriction was lifted for specific policy areas by way of an Order in Council.

The repatriation of powers and discussions about common frameworks

9. A number of witnesses expressed concerns about the approach of the Bill to powers returning from the EU to the UK.⁴ These centred around the restriction of the Scottish Parliament’s competence to legislate on areas of decision-making being repatriated from Brussels. The Scottish Government has described the Bill as a “naked power grab”,⁵ and Michael Russell MSP, the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, objected to the “asymmetrical” approach the Bill takes, by lifting from the UK Government and Parliament the requirement to comply with EU law, but doing the opposite for the devolved legislatures, which he said made “no sense” in the context of the UK leaving the EU.⁶ Mr Russell argued that any powers not currently reserved to Westminster should be repatriated to Holyrood.⁷ Professor Jim Gallagher told us that “where the Bill goes wrong is in failing to respect the assumption that, unless there is a good reason to reserve something, it should be devolved”,⁸ and Professor Michael Keating, Director of the Centre on Constitutional Change, stated that the Bill raised problems “about the assumption that powers should be devolved if they are not expressly reserved”.⁹

3 Q10, Oral evidence taken on 24 October 2017, Work of the Scotland Office, [HC 376](#), [References to this transcript hereafter state the question number, followed by “Work of the Scotland Office”]

4 Qq3, 5

5 Scottish Government, [Defending devolution](#), 19 September 2017

6 Scottish Government, [EU Bill ‘doesn’t reflect reality of devolution’](#), 16 July 2017

7 Scottish Government, [EU \(Withdrawal\) Bill: letter to Finance and Constitution Committee](#), 19 September 2017

8 Q3

9 Q5

10. The UK Government has stated that the approach taken by the Bill is intended to allow for discussions to take place about where common UK frameworks might need to apply to policy areas being repatriated from the EU.¹⁰ The UK’s membership of the EU has meant that common frameworks have applied across the UK because of EU policy in several areas—including agriculture, competition, consumer protection, environmental standards and fisheries—which harmonise standards and policy across the EU. The UK Government has said that it will be important to ensure that the “stability and certainty” created by these frameworks is not compromised following the UK’s withdrawal from the EU, and that new UK-wide frameworks may be required to protect the freedom of businesses to operate across the UK single market and to enable the UK to strike free trade deals with other countries.¹¹ To achieve this, the UK Government has stated that it will:

- Replicate the current frameworks provided by EU rules through UK legislation, and
- Begin intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future, what these should be, and where common frameworks covering the UK are not necessary.¹²

The UK Government does not accept the suggestion that this Bill represents a “power grab.” The Secretary of State for Scotland told us that he was “disappointed by the repeated power grab suggestion”,¹³ and has stated that the Bill will “maintain the scope of devolved decision making powers immediately after Exit” and that “the Scottish Parliament and Scottish Government will not lose any of their current decision-making powers”,¹⁴ but that significant new powers would go to the Scottish Parliament.¹⁵ The UK Government’s White Paper, *Legislating for the UK’s withdrawal from the EU*, said it expected that the outcome of this process would be “a significant increase in the decision making power of each devolved administration”,¹⁶ and the UK Government has stated that it hopes to “rapidly identify [...] areas that do not need a common framework and which could therefore be released from the transitional arrangement”.¹⁷ This indicates that the UK Government believes decisions on which powers to devolve cannot be taken until it has been decided which areas will be covered by a UK framework.

11. There is broad agreement that, following the UK’s withdrawal from the EU, there will be a need for common approaches across the UK in some policy areas being repatriated from the EU.¹⁸ Professor Jim Gallagher told us that “There is a good case for saying that many of the things that are currently uniform across the UK, because of EU law, should continue to be uniform across the UK for similar reasons”,¹⁹ and both Michael Russell MSP and David Mundell MP, Secretary of State for Scotland, agreed that there should be

10 [Explanatory notes to the European Union \(Withdrawal\) Bill](#) [Bill 005 (2017–19) EN] para 34

11 Department for Exiting the European Union, *Legislating for the United Kingdom’s withdrawal from the European Union*, [Cm 9446](#), March 2017

12 Department for Exiting the European Union, *Legislating for the United Kingdom’s withdrawal from the European Union*, [Cm 9446](#), March 2017

13 Q10, Work of the Scotland Office

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

15 Q7, Work of the Scotland Office

16 Department for Exiting the European Union, *Legislating for the United Kingdom’s withdrawal from the European Union*, [Cm 9446](#), March 2017

17 [Explanatory notes to the European Union \(Withdrawal\) Bill](#) [Bill 005 (2017–19) EN] para 36

18 Q17, Q46, Scottish Government, [The European Union \(Withdrawal\) Bill](#), 12 September 2017

19 Q17

frameworks to govern some areas of policy being repatriated from Brussels.²⁰ A Report by the Lords EU Committee on the devolution aspects of Brexit similarly concluded that “certain ‘common standards and frameworks’ will be needed to maintain the integrity of the UK internal market post-Brexit”.²¹

12. There was not, however, universal acceptance that the desirability of common UK frameworks justified the approach the Bill takes to powers being repatriated from Brussels. Responding to the UK Government’s rationale for the approach to repatriated powers—that it will enable decisions to be made about where common UK frameworks will and will not be required, and therefore which powers can be released to the devolved legislatures—Professor Gallagher stated that even where there is a strong case for coordination of policy, “There is no need, and no constitutional case, to reserve EU retained law in relation to these matters.”²² He has argued that in areas of devolved policy the UK Government is acting as the government of England on these issues, and that “It is not proper for the government of England to direct the other UK government over matters within devolved responsibility”.

13. The Secretary of State for Scotland told us that he thought Brexit would result in significant new powers going to the Scottish Parliament,²³ and that he hoped the process for determining which areas of decision-making being repatriated from Brussels would go directly to the Scottish Parliament and which will be the subject of a UK-wide framework could be “as expeditious as possible”.²⁴ He stated that his position was to come from a “presumption of devolution” and would look to “persuade others that matters should be devolved unless there is a good reason”.²⁵

14. Although Mr Mundell said he did not want to pre-empt the discussions which were currently taking place, he was confident that “there will be areas where we all agree that these powers should come directly to the Scottish Parliament”,²⁶ and that he hoped that “a range of powers” could be transferred at the point the UK leaves the EU.²⁷ Mr Mundell told us he believed there had been significant progress on discussions regarding how powers and responsibilities currently exercised in Brussels would be returned to the United Kingdom and on to Scotland.²⁸

15. It has been suggested that the Bill could include a schedule of which powers are going to be devolved to the Scottish Parliament on the day the UK leaves the EU, and which are not. The Secretary of State for Scotland told us that he did not think it was the Government’s position to have a schedule attached to the Bill, but that the Government would want to be as clear as possible about what would be happening with powers being repatriated from Brussels.²⁹ Giving evidence to the Scottish Parliament’s Finance and Constitution Committee on 8 November 2017, Robin Walker MP, Parliamentary Under

20 Q46, Work of the Scotland Office

21 House of Lords European Union Committee, 4th Report of Session 2017–19, [Brexit: devolution](#), HL Paper 9, para 267

22 Scottish Parliament’s Finance and Constitution Committee, [Written evidence from Professor Jim Gallagher](#)

23 Q7

24 Q3

25 Q14

26 Q7, Work of the Scotland Office

27 Q11, Work of the Scotland Office

28 Q3, Work of the Scotland Office

29 Q15, Work of the Scotland Office

Secretary of State for Exiting the EU, stated that it was “quite possible” that the clause restricting the Scottish Parliament competency would be “substantially reduced through agreement between the governments”.³⁰

16. We note the concerns which have been raised about the approach this Bill takes to devolved areas of responsibility, and welcome the Secretary of State for Scotland’s evidence that he is “coming from a presumption of devolution position” and that he hopes “a range of powers” can be transferred directly to the Scottish Parliament at the point the UK leaves the EU. We agree with the Secretary of State for Scotland that discussions to identify where common frameworks need to be retained in the future and where common frameworks covering the UK are not necessary should be “as expeditious as possible”.

17. *We recommend that the UK Government agrees with the devolved administrations what areas should be subject to common frameworks and which ones can be devolved. These discussions should be based on the premise, set out by the Secretary of State for Scotland, that all powers should be devolved unless there is good reason to reserve them. The outcome of these discussions should be published in time for Third Reading, so that Members have clarity about how provisions regarding Scotland’s devolution settlement will apply in practice, before the Bill finishes its Commons stages. Once agreement has been reached the UK Government should bring forward a plan to devolve all powers not covered by those frameworks to the Scottish Parliament.*

Agreement of common frameworks

18. Although there is a general consensus that common frameworks will be required in some areas of policy being repatriated from the EU, it is not yet clear how these frameworks will operate or how they will be agreed. We heard that there are a number of mechanisms by which a common framework could be established, including memoranda of understanding, joint legislation or an Act of the UK Parliament agreed by the devolved administrations.³¹

19. A central point emphasised in our evidence was that common frameworks should be agreed between the UK Government and devolved administrations, rather than imposed. Mr Russell, the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, was clear that any frameworks “should be agreed between the parties”, and that governance of them should be “on the basis of co-decision making”,³² and Professor Nicola McEwen, Professor of Politics at the University of Edinburgh, told us that however common frameworks were established, she thought that the Bill should include a requirement for the consent of the devolved administrations in relation to any frameworks.³³

20. The Lords EU Committee’s recent Report on Brexit and devolution similarly concluded that “Any durable solution will need the consent of all the nations of the United Kingdom, and of their elected representatives”,³⁴ and added that “A successful settlement cannot be imposed by the UK Government: it must be developed in partnership with the devolved

30 Scottish Parliament’s Finance and Constitution Committee, [Oral evidence on Wednesday 8 November 2017](#)

31 Qq59–60

32 Q46

33 Q29

34 House of Lords European Union Committee, 4th Report of Session 2017–19, [Brexit: devolution](#), HL Paper 9, para 268

Governments”.³⁵ The Welsh Government has suggested that a UK Council of Ministers could be established, operating along lines similar to the EU Council of Ministers, to negotiate common rules and frameworks where it is agreed that these are desirable.³⁶

21. The Secretary of State for Scotland agreed that any common frameworks should be agreed with the devolved administrations, stating:

A UK framework is not a framework that the UK Government imposes; it is a framework that is agreed across the United Kingdom.³⁷

This reflects the agreement by the Joint Ministerial Committee on European Negotiations—which brings together UK ministers and ministers of the devolved administrations—that common frameworks “will respect the devolution settlements and the democratic accountability of the devolved legislatures” and that it “will be the aim of all parties to agree where there is a need for common frameworks and the content of them.”³⁸ Mr Mundell noted the importance of having a “rule book” which would set out how common frameworks would be developed and how they would work in the future,³⁹ adding that what common frameworks might look like and how they would operate would depend on any transitional deal between the UK and the EU, as well as the UK’s future relationship with the EU.⁴⁰

22. We agree with both the Secretary of State for Scotland and the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe that UK-wide common frameworks in currently devolved policy areas should be reached by agreement between the UK Government and the governments of Scotland, Wales and Northern Ireland, where relevant, and not imposed by Westminster. We recommend that the UK Government work with the devolved administrations to agree these common frameworks, and what new intergovernmental machinery will be needed to support them. Any common framework must require the consent of the governments of Scotland, Wales and Northern Ireland, where relevant, with discussions taking place on the basis that all parties are equal partners. This would reflect the Secretary of State for Scotland’s statement that “A UK framework is not a framework that the UK Government imposes; it is a framework that is agreed across the United Kingdom”. We also recommend that the UK Government and the devolved administrations agree a mechanism by which disputes can be resolved in the event that common frameworks cannot be agreed.

35 House of Lords European Union Committee, 4th Report of Session 2017–19, [Brexit: devolution](#), HL Paper 9, para 272

36 Welsh Government, [Brexit and Devolution](#), June 2017

37 Q46, Work of the Scotland Office

38 Cabinet Office, [Joint Ministerial Committee communiqué: 16 October 2017](#), October 2017

39 Q16, Work of the Scotland Office

40 Q31, Work of the Scotland Office

3 Delegated powers

23. Following the conversion of EU law into UK law, the UK Government has stated that there will be a need to revise retained EU law to tidy up any anomalies (such as redundant references to EU agencies or other provisions that will no longer be relevant post-Brexit), and to make legislative changes to implement any withdrawal deal agreed by the UK and EU. The European Union (Withdrawal) Bill provides for this by creating delegated powers for UK and Scottish ministers to “correct” retained EU law, and make changes to give effect to any withdrawal deal. The powers for correcting retained EU law are subject to a sunset clause, meaning they would lapse two years after exit day, while the powers for implementing any withdrawal deal would expire on exit day.

24. The delegated powers for Scottish Ministers differ substantially from those delegated to UK ministers. The main differences are:

- Only UK ministers can exercise delegated powers in relation to directly applicable EU law.
- Scottish ministers cannot amend retained EU law in a way which is inconsistent with changes made by UK ministers.
- Scottish ministers must, in certain circumstances, seek consent from UK ministers before exercising delegated powers.

Consent for use of powers in devolved areas

25. The provisions in the Bill grant powers to both Scottish and UK ministers to make delegated legislation affecting devolved policy areas, but UK ministers are not required to seek consent from the devolved administrations before doing so. Mr Russell, the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, suggested that delegated powers should not be used in any circumstances to amend certain legislation—such as the devolution settlements—and that the consent of Scottish ministers should be required where UK ministers used delegated powers in devolved areas.⁴¹ Professor McEwen agreed that UK ministers should seek consent from the devolved administrations when exercising delegated powers in devolved areas of responsibility,⁴² and evidence from the Institute for Government stated that they agree with the Scottish Government that “the consent of Scottish ministers should be sought before UK ministers act in devolved areas”.⁴³ The Secretary of State for Scotland agreed that the devolved administrations should be consulted if delegated powers were being used in devolved areas of responsibility.⁴⁴

26. We welcome the Secretary of State for Scotland’s agreement that the UK Government should consult the devolved administrations before using delegated powers granted by this Bill in devolved areas of responsibility, but believe that consultation is not sufficient. We recommend that UK ministers seek the consent of Scottish ministers before exercising delegated powers in devolved areas of responsibility. We would expect Scottish ministers to seek the consent of the Scottish Parliament before giving their consent.

41 Q67

42 Q39

43 Institute for Government ([EUB0001](#))

44 Q24

4 Legislative consent

27. Because the European Union (Withdrawal) Bill directly affects the powers of the Scottish Parliament, as well as legislation which relates to devolved areas of responsibility, the UK Government has stated that it will seek consent for the legislation from the Scottish Parliament.⁴⁵ This is in line with the Sewel Convention, which states that the UK Parliament will not normally legislate on matters which have been devolved without seeking the consent of the Scottish Parliament. As confirmed by the Supreme Court in the Miller case,⁴⁶ the convention is a political consideration and does not prevent the UK Parliament from legislating in devolved areas if not consent has been given. The Court did however note the importance of the Convention in “facilitating harmonious relationships between the UK Parliament and the devolved legislatures”.

28. The Scottish Government has stated that it cannot recommend legislative consent be given to the Bill as it is currently drafted. Mr Russell told us that “The Bill contains two principal defects, to which we cannot agree”,⁴⁷ which were:

- The restriction of devolved competence in Clause 11, and
- The delegated powers which would enable UK ministers to make alterations to legislation in devolved policy areas without scrutiny by the Scottish Parliament.⁴⁸

The Scottish Government has published suggested amendments to the Bill to address its concerns. These amendments would:

- Prevent delegated powers being used to modify the Scotland Act 1998 or the Government of Wales Act 2006;
- Require UK ministers to seek the consent of Scottish ministers if they intend to amend laws in devolved areas;
- Remove amendments to the devolution settlements which would place restrictions on the devolved administrations with regard to modifying retained EU law in devolved areas, and
- Remove restrictions placed on the delegated powers of devolved ministers, bringing them into line with the powers granted to UK ministers.⁴⁹

Mr Russell has said that “if people suggest that there is a different way to achieve the objectives that we have set out” he would be happy to discuss these.⁵⁰

29. A number of witnesses highlighted the importance of the Sewel Convention, and the desirability of this Bill proceeding on the basis of consent.⁵¹ Professor Gallagher told us that the prospect of the Bill going ahead without the consent of the Scottish Government

45 Department for Exiting the European Union, [Exiting the EU with certainty](#), 13 July 2017

46 Supreme Court, [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#), January 2017

47 Q42

48 Q43

49 Scottish Government, [Defending devolution](#), 19 September 2017

50 Scottish Parliament’s Finance and Constitution Committee, Official Report, [20 September 2017](#)

51 Qq31, 35

was “highly undesirable”.⁵² Mr Russell stated that if consent was not given he thought that the UK Government should withdraw the parts of the Bill for which consent has not been granted.⁵³ While acknowledging the possibility of the Bill proceeding without legislative consent, Mr Russell told us that this would “be a unique circumstance” which would “create a great difficulty between the Governments and the Parliaments”.⁵⁴ Future Brexit legislation which is likely to be subject to legislative consent includes Bills, announced in the 2017 Queen’s Speech, on Fisheries and Agriculture, as well as any legislation which implements a transitional arrangement between the UK and EU.

30. The Secretary of State for Scotland told us that the UK Government wanted legislative consent for this Bill, and that he was confident it would be secured.⁵⁵ He told us that the UK Government would look at all amendments which had been tabled, and that an “amendments forum” of UK and Scottish officials would be meeting in October to discuss amendments to the Bill.⁵⁶ Mr Mundell stated that, by the time the House of Commons considered the Bill in Committee, the UK Government would be able to set out their clear position in relation to the amendments put forward by the Scottish Government.⁵⁷

31. The principle underlying the Sewel Convention—that the UK Parliament will not normally legislate on devolved areas without the consent of the Scottish Parliament—is an essential element of the UK’s constitution, and we welcome the recognition of its importance by both governments. We welcome the work already being undertaken by the UK and Scottish governments to come to an agreement on the content of this Bill. We recommend that the UK and Scottish governments continue their efforts to secure agreement on those clauses of the Bill which affect devolved areas of responsibility.

52 Q35

53 Q62

54 Q62

55 Q35, Work of the Scotland Office

56 Q4, Work of the Scotland Office

57 Q29, Work of the Scotland Office

Conclusions and recommendations

Repatriated powers and common frameworks

1. We note the concerns which have been raised about the approach this Bill takes to devolved areas of responsibility, and welcome the Secretary of State for Scotland's evidence that he is "coming from a presumption of devolution position" and that he hopes "a range of powers" can be transferred directly to the Scottish Parliament at the point the UK leaves the EU. We agree with the Secretary of State for Scotland that discussions to identify where common frameworks need to be retained in the future and where common frameworks covering the UK are not necessary should be "as expeditious as possible". (Paragraph 16)
2. *We recommend that the UK Government agrees with the devolved administrations what areas should be subject to common frameworks and which ones can be devolved. These discussions should be based on the premise, set out by the Secretary of State for Scotland, that all powers should be devolved unless there is good reason to reserve them. The outcome of these discussions should be published in time for Third Reading, so that Members have clarity about how provisions regarding Scotland's devolution settlement will apply in practice, before the Bill finishes its Commons stages. Once agreement has been reached the UK Government should bring forward a plan to devolve all powers not covered by those frameworks to the Scottish Parliament.* (Paragraph 17)
3. We agree with both the Secretary of State for Scotland and the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe that UK-wide common frameworks in currently devolved policy areas should be reached by agreement between the UK Government and the governments of Scotland, Wales and Northern Ireland, where relevant, and not imposed by Westminster. *We recommend that the UK Government work with the devolved administrations to agree these common frameworks, and what new intergovernmental machinery will be needed to support them. Any common framework must require the consent of the governments of Scotland, Wales and Northern Ireland, where relevant, with discussions taking place on the basis that all parties are equal partners. This would reflect the Secretary of State for Scotland's statement that "A UK framework is not a framework that the UK Government imposes; it is a framework that is agreed across the United Kingdom". We also recommend that the UK Government and the devolved administrations agree a mechanism by which disputes can be resolved in the event that common frameworks cannot be agreed.* (Paragraph 22)

Delegated powers

4. We welcome the Secretary of State for Scotland's agreement that the UK Government should consult the devolved administrations before using delegated powers granted by this Bill in devolved areas of responsibility, but believe that consultation is not sufficient. *We recommend that UK ministers seek the consent of Scottish ministers*

before exercising delegated powers in devolved areas of responsibility. We would expect Scottish ministers to seek the consent of the Scottish Parliament before giving their consent. (Paragraph 26)

Legislative consent

5. The principle underlying the Sewel Convention—that the UK Parliament will not normally legislate on devolved areas without the consent of the Scottish Parliament—is an essential element of the UK’s constitution, and we welcome the recognition of its importance by both governments. We welcome the work already being undertaken by the UK and Scottish governments to come to an agreement on the content of this Bill. *We recommend that the UK and Scottish governments continue their efforts to secure agreement on those clauses of the Bill which affect devolved areas of responsibility.* (Paragraph 31)

Formal Minutes

Tuesday 14 November 2017

Members present:

Pete Wishart, in the Chair

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

Draft Report (*European Union (Withdrawal) Bill: Implications for devolution*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 31 read and agreed to.

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

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

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

[Adjourned till Monday 27 November at a time to be fixed by the Chair.]

Witnesses

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

Wednesday 11 November 2017

Question number

Professor Michael Keating, Director, Centre on Constitutional Change and Professor of Politics at the University of Aberdeen, **Professor Jim Gallagher**, Visiting Professor, University of Glasgow, **Charles Livingstone**, Constitutional Law Sub Committee, Law Society of Scotland, and **Professor Nicola McEwen**, Associate Director, Centre on Constitutional Change, Professor of Politics at the University of Edinburgh and Research Leader of the Economic and Social Research Council's UK in a Changing Europe programme

[Q1–41](#)

Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, and **David Rogers**, Director for Strategy and Constitution, Scottish Government

[Q42–85](#)

Published written evidence

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

- 1 Institute for Government ([EUB0001](#))