



HOUSE OF LORDS

Select Committee on the Constitution

11th Report of Session 2014–15

Inter-governmental relations in the United Kingdom

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CONTENTS

	<i>Page</i>
Summary	5
Chapter 1: Introduction	7
Box 1: Why inter-governmental relations are important	8
The purpose of inter-governmental relations	9
Carrying out the inquiry	11
Chapter 2: The formal structures of inter-governmental relations	12
The existing structures	12
The Joint Ministerial Committee	12
Lessons from other examples of inter-governmental relations	15
Devolved and federal systems	15
The British-Irish Council	15
Improving the formal structures	16
The importance of a formal framework	16
The current Joint Ministerial Committee	17
Bilateral forums	20
Box 2: Complexity and inter-dependency: Welfare powers	21
Policy co-operation and co-ordination	22
Box 3: Policy and research co-operation: driver behaviour	23
Dispute resolution	24
A statutory basis for inter-governmental relations	25
The Finance Ministers' Quadrilateral	28
Independent advice on funding the devolved administrations	29
An imbalanced relationship?	29
Equal participants	30
Mutual respect	32
Chapter 3: Ministerial responsibilities	33
Territorial Offices and Secretaries of State	33
Recommendations and changes, 2002–10	33
Current ministerial and departmental responsibilities	34
Towards a merged department?	34
Arguments in favour	34
Arguments against	35
Central co-ordination and responsibility	37
Chapter 4: The Civil Service and departmental interactions	39
Formal and informal arrangements	40
An inconsistent approach	41
Guidance	43
Experience and expertise among civil servants	45
Chapter 5: Transparency and parliamentary scrutiny	47
Transparency	47
Joint Ministerial Committee and formal bilateral meetings	48
Civil service	50
Committee scrutiny	50
Current committee structures	50

Proposed new committee	51
Cross-parliamentary co-operation	51
Wider parliamentary scrutiny	53
Regular statements and debates	53
Parliamentary debates and devolved matters	54
Chapter 6: Inter-governmental relations, devolution and the future of the United Kingdom	56
Summary of Conclusions and Recommendations	57
Appendix 1: List of members and declarations of interests	62
Appendix 2: List of witnesses	63
Appendix 3: Call for Evidence	66

Evidence is published online at www.parliament.uk/inter-governmental-relations and available for inspection at the Parliamentary Archives (020 7218 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

Inter-governmental relations are integral to how the United Kingdom functions. The governance of the UK requires relationships to be built and maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive. The complexity of these relationships will increase significantly as more powers are devolved, particularly in the light of the package of powers recommended by the Smith Commission and set out in the Command Paper *Scotland in the United Kingdom: An enduring settlement*. Recent proposals for further devolution to Wales, and the devolution of corporation tax to Northern Ireland, will add to this complexity. Beyond managing this complex web of devolved and reserved powers and areas of shared or overlapping competence, good inter-governmental structures and practices should also serve to strengthen, and provide constitutional stability to, the Union.

Most inter-governmental relations are conducted informally and bilaterally, at both official and ministerial level. An effective formal underpinning is, however, essential. The operation of the Joint Ministerial Committee (JMC) structure is not well regarded—at least in the eyes of the devolved administrations. The plenary JMC meeting of heads of government is seen as ineffective while its Domestic sub-committee does not appear to serve a useful purpose. The JMC's European sub-committee is more highly thought of, as are the Finance Ministers' Quadrilateral (FMQ) and the bilateral Joint Exchequer Committees formed to implement recent proposals for the devolution of tax powers.

The JMC structure should be used to facilitate joint policy-making and co-ordination. Meanwhile, the increasingly complex, and asymmetrical, devolution settlements will require more formal bilateral mechanisms—particularly where proposals to devolve powers over tax and welfare will create increasing areas of shared competence and overlapping responsibility. These mechanisms should, however, be brought under the auspices of a revitalised JMC to create a more coherent structure and to improve accountability.

The Government should consider setting the broad framework of inter-governmental relations on a statutory basis. This need not be too prescriptive, but could set out the existence and membership of the JMC, its core sub-committees and the FMQ, along with the core principles governing relations between administrations.

The transparency and parliamentary scrutiny of inter-governmental relations requires a great deal of improvement. The current reporting of JMC meetings is bland and unilluminating; much more information could be made public in advance of and after meetings. Likewise there is a need for Government departments to detail more thoroughly their interactions with the devolved administrations. This would provide the information base necessary for effective parliamentary scrutiny.

We hope that the increasing complexity of the devolution settlements will spur greater parliamentary scrutiny of inter-governmental relations, aided by a more transparent JMC and improved departmental reporting. It may be that departmental select committees in the House of Commons are best placed to ensure regular scrutiny of relations between Government departments and the devolved administrations, but there is also scope for improved scrutiny on the floor

of the House of Lords—supported by the annual independent audits of inter-governmental relations that we recommend.

As most of the interactions between the UK Government and devolved administrations occur between civil servants, it is important that knowledge and understanding of the devolution settlements is widespread. We heard concerns about the inconsistency of performance between and within Whitehall departments. We recommend that the Government address this issue by training officials, regularly reviewing departmental concordats and guidance on dealing with devolved administrations, and increasing interactions and exchange of personnel between administrations. The welcome fact that the Home Civil Service (supporting the UK, Welsh and Scottish Governments) remains a single entity should help to facilitate such exchanges.

In order to ensure that devolution is treated as a single cohesive issue, rather than a series of issues specific to the devolved regions, ministerial responsibility for the constitution as a whole needs to be clearer. The political arguments against merging the Scotland, Wales and Northern Ireland Offices into one department (potentially with one Secretary of State) currently outweigh the potential benefits, but there is room to improve central co-ordination and oversight of the devolution settlements. We recommend that there should be a clear focus within Government for oversight of the constitution as a whole, and that a senior Cabinet minister be identified as responsible for that work.

Finally, we reiterate our view, expressed in our report *Proposals for the further devolution of powers to Scotland*, that the major UK-wide political parties need to formulate a coherent vision for the future shape of the UK as a whole, without which there cannot be constitutional stability.

Inter-governmental relations in the United Kingdom

CHAPTER 1: INTRODUCTION

1. Inter-governmental relations are necessary in a multi-level political system. As this Committee stated in our 2002 report *Devolution: Inter-institutional relations in the United Kingdom*, devolution “makes inter-governmental relations inevitable, and integral to the UK’s system of government.”¹ The governance of the United Kingdom requires relationships to be built and maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive at all levels: between leaders, ministers and officials.
2. Since our previous report there have been significant changes both in the UK’s devolution settlements and in the political parties involved in government, with a shift away from the one party dominance that characterised the early years of devolution. In 1999 the Labour Party were in office either alone or in coalition across Great Britain’s four administrations. By 2010 five parties were in power, none of them in more than one administration: Conservatives and Liberal Democrats in Westminster; Scottish National Party in Edinburgh; Labour and—until 2011—Plaid Cymru in Cardiff. Meanwhile the four parties in Northern Ireland’s power-sharing Executive between 1998 and 2002 have increased to five since the resumption of devolved power in 2007.
3. The administrations that will be formed following the 2015 UK general election and the 2016 elections to the devolved legislatures will have increasingly complex relationships with one another, whichever parties are in power. The coming years will see the further devolution of powers through the ongoing implementation of the Scotland Act 2012 and the Wales Act 2014, the devolution of corporation tax to Northern Ireland,² the new Scotland Bill embodying the Smith Commission’s recommendations for further devolution to Scotland promised by the main three UK parties,³ and potentially the further devolution of powers to Wales proposed in the UK Government’s February 2015 Command Paper.⁴

¹ Constitution Committee, *Devolution: Inter-institutional relations in the United Kingdom* (2nd Report, Session 2002–03, HL Paper 28), para 12.

² [Corporation Tax \(Northern Ireland\) Bill](#) [Bill 170 (2014–15)]

³ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014: <http://www.smith-commission.scot/wp-content/uploads/2014/11/The-Smith-Commission-Report-1.pdf>; HM Government, *Scotland in the United Kingdom: An enduring settlement*, Cm 8890, 22 January 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf [both accessed 17 March 2015]

⁴ See HM Government, *Powers for a purpose: Towards a lasting devolution settlement for Wales*, Cm 9020, February 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf [accessed 17 March 2015].

4. We were told by one witness that, in the case of Scotland in particular, “the new settlement ... increases the extent to which both parliaments will be working in concurrent jurisdictions, especially in tax and welfare, necessitating cooperation, coordination and joint decision-making.”⁵ This poses a challenge for the administrations to ensure that their relationships facilitate effective co-operation, and for Parliament and the devolved legislatures to ensure their executives are held to account as inter-governmental interactions increase. It is in the context of this extension of devolution and the additional complexities that it brings that we undertook this inquiry.

Box 1: Why inter-governmental relations are important

Inter-governmental relations are needed in any nation with a multi-level system of government, such as devolved or federal states. No matter how well-defined the distinctions between the powers of governments at different levels, there will always be some overlap or inter-dependency between them.

Interactions with EU institutions are a prime example: when the UK Government discusses policies with other European Union states relating to fisheries and agriculture, for example, they are talking about devolved matters and the views and concerns of devolved administrations must be taken into consideration.

Some issues cross borders between different jurisdictions and so need a co-ordinated response. This includes devolved domestic matters like railway lines between England and Wales or Scotland, as well as international treaties that affect devolved policy areas. Emergencies can also require a co-ordinated response across borders, as in the response to the foot and mouth disease outbreak in 2001.

The funding of the devolved administrations is another area where communication between the devolved administrations and the UK Government is vital. None of the devolved administrations raise all of the money they spend—this means that much of their funding comes from funds collected on a UK-wide basis and allocated by the UK Government. After the 2010 general election, the UK and devolved administrations worked together to agree a *Statement of Funding Policy* (the sixth since 1999), setting out “the arrangements which apply in setting devolved budgets in the 2010 Spending Review”.

The ways in which the different governments in the UK interact in these areas of common interest or dependency are the inter-governmental relations we cover in this report.

5. The structures and practices underlying inter-governmental relations have been scrutinised and commented on in numerous reports by select committees and independent commissions in recent years. After this Committee’s 2002 report, most of the formal structures underpinning inter-governmental relations fell into abeyance—partly as a result of the dominance of the Labour party in administrations across the UK. Formal relations were resumed in 2008, following the election of a Scottish National Party minority government in 2007. In 2009 the Calman Commission on Scottish devolution and the House of Commons Justice Committee made

⁵ Written evidence from Professor Nicola McEwen ([IGR0010](#))

recommendations aimed at improving inter-governmental relations,⁶ followed in 2010 by the House of Commons Scottish Affairs and Welsh Affairs Committees.⁷ In the current Parliament, the Silk Commission's second report, on legislative powers for Wales, and the Smith Commission's report on further powers for the Scottish Parliament, each assessed and suggested improvements to inter-governmental relations.⁸

6. In December 2014, the UK Government and devolved administrations acknowledged the need for change and committed to reviewing how relations between the different administrations operated. The Cabinet Office are currently leading the UK Government's part of this review.⁹ We hope that this report will help them ensure that inter-governmental relations adapt to the current devolution settlements and are robust enough to accommodate the further transfers of power currently envisaged or likely to take place.

The purpose of inter-governmental relations

7. Before considering how inter-governmental relations should operate in the UK, we first looked to clarify what they were intended to achieve. Professor Nicola McEwen, Professor of Territorial Politics at the University of Edinburgh, told us that:

“[In] any system, no matter how much you try to separate the powers of one level and the powers of another level, there will always be the need to co-ordinate and interact. There will always be overlaps and interdependence. That is the main purpose of inter-governmental relations: managing that interface and managing that inter-dependence. In our case, there is an inevitable interdependence between some of those areas that are devolved, such as social policy, and those areas that are reserved, like social security”.¹⁰

8. Professor Michael Keating, Chair in Scottish Politics at the University of Aberdeen, told us that inter-governmental relations were required for two purposes: for conflict resolution; and for joint decision-making where two or more administrations shared competences, where their separate competences were clearly inter-dependent or where there was an obvious “spillover effect from one jurisdiction to another”.¹¹
9. Other witnesses described the purpose of inter-governmental relations in less technical terms: as a means of working towards common goals. The Rt Hon Carwyn Jones AM, the First Minister of Wales, told us that, “The purpose of

⁶ Calman Commission, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009; Justice Committee, *Devolution: A Decade on*, (Fifth Report, Session 2008–09, HC 529)

⁷ Scottish Affairs Committee, *Scotland and the UK: cooperation and communication between governments*, (Fourth Report, Session 2009–10, HC 256); Welsh Affairs Committee, *Wales and Whitehall*, (Eleventh Report, Session 2009–10, HC 246)

⁸ Silk Commission, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, 2014: <https://www.gov.uk/government/publications/empowerment-and-responsibility-legislative-powers-to-strengthen-wales> [accessed 17 March 2015]; Smith Commission, *Report*.

⁹ Joint Ministerial Committee communiqué: December 2014, 15 December 2015: <https://www.gov.uk/government/news/joint-ministerial-committee-communique-december-2014> [accessed 25 February 2015]; [Q 17](#) (Dr Philip Rycroft)

¹⁰ [Q 8](#)

¹¹ Written evidence from Professor Michael Keating ([IGR0003](#))

inter-governmental relations is, in an ideal world, to work together on common issues and see whether there can be common conclusions as a result of that work.”¹² Similarly, Professor Alan Page, Professor of Public Law at the University of Dundee, told us that their purpose was “to foster good working relations between the different Governments who make up the United Kingdom, with a view to the identification, discussion and resolution of matters of common concern.”¹³

10. The Secretary of State for Scotland, the Rt Hon Alistair Carmichael MP, told us that the fundamental aim was “better government”. Inter-governmental relations should, he said, enable participants “to share experiences [and] to thrash out any difficulties”.¹⁴
11. Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs in the Scottish Government, gave a further nuance: that the purpose was both building “relationships of trust and understanding to ensure that there is continuity and co-operation in areas of mutual interest” and ensuring issues were “dealt with at official level, where at all possible, and to leave ministerial discussion for strategic interests and purposes”.¹⁵
12. Professor Keating noted that not everything needed to be “joined up”;¹⁶ indeed, part of the purpose of devolution is to allow different administrations to pursue different policies.¹⁷ Good inter-governmental relations should mean that differences in policy or major implementation decisions are made because of the active decisions of each administration, rather than through a lack of consultation and communication.
13. **In a practical sense, inter-governmental relations should enable administrations to work together in areas of mutual concern and interest, both where there are overlapping or inter-dependent competencies and on cross-border issues.** When functioning properly they should also allow issues to be dealt with in a timely manner at the most appropriate level of government, reserving ministerial involvement to strategic decisions and resolving serious disagreements.
14. Beyond this functional “plumbing” of government, Professor Richard Wyn Jones, Professor of Welsh Politics at Cardiff University, suggested that inter-governmental relations had a broader purpose: “Amongst academic observers, and more generally in the devolved territories, there is a view of [inter-governmental relations] as relating more to the nature of the union—the post devolution UK. It goes beyond the relationship on a day to day basis ... It is about what the union is for and how it is organised.”¹⁸ Professor Jim Gallagher of Nuffield College, University of Oxford, told us that the UK

¹² [Q 43](#)

¹³ [Q 8](#)

¹⁴ [Q 76](#)

¹⁵ [Q 64](#)

¹⁶ Written evidence from Professor Michael Keating ([IGR0003](#))

¹⁷ [Q 89](#) (Peter Robinson MLA)

¹⁸ [Q 1](#)

Government should develop a clear strategy for the Union and conduct inter-governmental relations in light of that strategy.¹⁹

15. David Melding AM, Chair of the Constitutional and Legislative Affairs Committee of the National Assembly for Wales, warned that the role of the UK state risked being lost in discussions of devolution,²⁰ and argued that “We need a vision for a reformed, decentralised UK constitution for a multinational union.”²¹ Similarly, the First Minister of Wales referred to the potential for inter-governmental structures to provide a catalyst for establishing stable constitutional arrangements: rather than “constitutional conversations ... [taking] place in different rooms ... Much more thought needs to be given to all four administrations being part of a process that leads to greater constitutional stability.”²²
16. **Good inter-governmental relations are vital to the effective governance of the United Kingdom. The structures and practices of inter-governmental relations should serve to strengthen, and provide constitutional stability to, the Union.**

Carrying out the inquiry

17. The Committee decided to undertake this short, focused inquiry on inter-governmental relations alongside another strand of work scrutinising the UK Government’s response to the Smith Commission’s proposals for the devolution of further powers to the Scottish Parliament. Our recent report *Proposals for the devolution of further powers to Scotland* reflects that scrutiny work.²³
18. While several of our evidence sessions covered both subjects, most were focused on the inter-governmental relations strand of the Committee’s work. We heard from academics, chairs and convenors of select committees in the House of Commons, the Scottish Parliament and the National Assembly for Wales, officials from Cabinet Office and three other UK Government departments, the First Ministers of Wales and Northern Ireland, the Scottish Government, the Secretary of State for Scotland and the Advocate General for Scotland. We also received 11 written submissions in response to our call for evidence (see Appendix 3). We are grateful to all our witnesses.

¹⁹ Written evidence from Professor Jim Gallagher ([IGR0007](#))

²⁰ [Q 37](#)

²¹ [Q 39](#)

²² [Q 45](#)

²³ Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145)

CHAPTER 2: THE FORMAL STRUCTURES OF INTER-GOVERNMENTAL RELATIONS

19. For the most part, relations between the UK Government and the devolved administrations operate informally on a bilateral basis; this is healthy and is common across nations with multi-level political structures.²⁴ However, there are formal structures, both bilateral and quadrilateral (that is, including all four administrations), underpinning and facilitating those day-to-day informal working relationships.²⁵

The existing structures

20. In the UK, the formal structures underpinning inter-governmental relations are set out in a Memorandum of Understanding (MOU) between the four administrations. The original MOU was written in 1999.²⁶ Since 2009 it has been reviewed and amended regularly—the most recent edition dating from October 2013.²⁷ The MOU also sets out key principles that should underlie inter-governmental relations: communication, consultation, co-operation and confidentiality. The document includes some departmental agreements but, on the whole, relations between individual government departments and their counterparts in the devolved administrations are governed by bilateral concordats agreed and published separately by the departments themselves (see Chapter 4).

The Joint Ministerial Committee

21. The MOU establishes a core quadrilateral forum, the Joint Ministerial Committee (JMC). The committee has three levels: plenary, functional and official. Its function 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 United Kingdom;
 - to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and

²⁴ Constitution Committee, *Devolution*, para 23; written evidence from Professor Nicola McEwen ([IGR0010](#))

²⁵ Written evidence from the Institute for Government ([IGR0011](#))

²⁶ Lord Chancellor, *Memorandum of understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers and the Cabinet of the National Assembly for Wales*, Cm 4444, October 1999; the first MOU to include the Northern Ireland Executive was the second iteration, dated July 2000, Cm 4806.

²⁷ Cabinet Office, *Devolution: 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 (hereafter Memorandum of Understanding): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf [accessed 17 March 2015]

- to consider disputes between the administrations.”²⁸
22. The JMC’s plenary meetings are held annually, attended by the Prime Minister, the Deputy Prime Minister, the First Ministers of the three devolved administrations, the Deputy First Minister of Northern Ireland, the territorial secretaries of state and relevant other ministers from each administration. Since 2008, they have been hosted by the UK Government in London. The most recent plenary meeting was held on 15 December 2014. A communiqué is published on all four administrations’ websites after these meetings, along with an annual report summarising the content of that meeting and any sub-committee meetings (see paragraphs 25–6 below) since the last plenary meeting. Neither document is particularly substantial, a subject we address in more detail in Chapter 5.
 23. During the early years of devolution, ad hoc sub-committees could be—and were—formed on different subjects on the domestic agenda, while a European sub-committee met more regularly. In our 2002 report, we recommended that the criteria for determining when a meeting should take place should be published and that the sub-committees should meet at least once a year.²⁹ The then Government rejected these proposals, noting that the MOU set out that the JMC plenary meets once a year.³⁰ Shortly thereafter the JMC ceased meeting even on an annual plenary basis—the European sub-committee alone continued to meet.
 24. Following the election of a Scottish National Party minority government in May 2007, the new First Minister of Scotland wrote to the Prime Minister and the Secretary of State for Scotland formally requesting the reconvening of the JMC.³¹ A plenary meeting took place on 25 June 2008 and subsequent meetings have occurred annually since.
 25. The revived JMC currently has two formal sub-committees:
 - Domestic (JMC(D))—chaired by the Deputy Prime Minister. It discusses domestic policy issues; these have included child poverty, welfare reforms, inward investment co-ordination and electricity market reforms. The sub-committee met twice in 2009, twice in 2010 and has met annually thereafter.
 - European (JMC(E))—chaired by the Foreign Secretary. It meets around five times a year, ahead of European Council meetings, and continued to meet during the hiatus in plenary sessions in 2002–08. Its meetings regularly include ‘horizon scanning’ and preparation for the European Council meetings, as well as two or three other subjects. For example, in June 2013 it considered broadband infrastructure and small and medium-sizes enterprises policy, and in October 2013 the balance of competencies review and youth unemployment.

²⁸ Memorandum of Understanding, para 24

²⁹ Constitution Committee, *Devolution*, para 33.

³⁰ Office of the Deputy Prime Minister, *Devolution: inter-institutional relations in the United Kingdom. Government response to the House of Lords Select Committee on the Constitution second report of session 2002/03 (HL Paper 28)*, paras 3–5.

³¹ Justice Committee, *Devolution*, para 111.

26. A third committee is reported on in the JMC annual report but is not technically a JMC sub-committee: the Finance Ministers' Quadrilateral (FMQ). This committee has met eight times since January 2010, but its last reported meeting was in November 2013. Lyndsey White, deputy director at HM Treasury, told us that it was:

“primarily used as a forum to bring forward finance issues that are common across the devolved administrations. That has been a useful forum in developing the *Statement of Funding Policy* which ... is the document that sets out the principles that govern the Treasury's relationship on behalf of the UK Government with the devolved administrations. We have in the past been able to use the Finance Ministers' quad to reach agreements on some quite technical issues, but very important ones—for example, around the nature of budget exchange for the devolved administrations.”³²

27. There are also officials-level meetings supporting the JMC; these meetings are not reported in the JMC annual report. Helen MacNamara, director in the Economic and Domestic Affairs Secretariat in the Cabinet Office, told us that the officials meet prior to each plenary JMC meeting to “go through the agenda and make sure we understand the issues and are able to brief our Ministers to have productive discussions. However, informally there is whole range of contact that happens underneath that.”³³
28. The revived post-2008 JMC has a formal mechanism for dispute resolution between the four administrations. The MOU sets out a process by which disputes can be raised and either resolved or escalated; efforts are made to resolve matters at working level, by officials or ministers, but they can be escalated to the JMC itself and, if not resolved, to the annual plenary session.³⁴ Four disputes have been raised (all in 2010–11), all of which were resolved without recourse to the plenary JMC.³⁵
29. The disputes dealt with by the JMC structure to date are political ones, often involving the allocation of funding. The Supreme Court is the arbiter of legal disputes over the jurisdiction of the devolved legislatures and administrations.³⁶ So far, no cases have been referred to the Supreme Court by the UK Government relating to the powers of the Scottish Parliament, but cases have been referred relating to the powers of the National Assembly for Wales. The two cases referred by the UK Attorney General confirmed the powers claimed by the Assembly. A third official referral, by the Counsel General for Wales, related to a private member's bill introduced in the Welsh Assembly on which the Court ruled that the Assembly did not have the powers claimed in the bill.³⁷

³² [Q 70](#)

³³ [Q 29](#)

³⁴ See Memorandum of Understanding, section A3

³⁵ JMC annual reports 2010–11, 2011–12 and 2012–13, available through Welsh Government, Joint Ministerial Committee: <http://gov.wales/about/organisationexplained/intergovernmental/jmcpubs1/?lang=en> [accessed 23 March 2015]; [Q 31](#) (Helen MacNamara)

³⁶ [Q 10](#) (Professor Alan Page)

³⁷ The decided cases related to the Local Government Byelaws (Wales) Bill in 2012, the Agricultural Sector (Wales) Bill in 2014, and the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill in 2015.

Lessons from other examples of inter-governmental relations

Devolved and federal systems

30. Professor Nicola McEwen provided the Committee with a summary of the inter-governmental arrangements in four other countries with multi-level structures.³⁸ She concluded that in “most, if not all, countries, these processes are far more formal and structured than the system which has emerged in the UK”; the UK’s inter-governmental relations remain “weakly institutionalised and focused more on communication than coordination”. She also drew attention to the varying levels of devolution in different regions across the UK: “I cannot think of another system that is as asymmetrical as the UK. That is always going to be the difficulty. We can take inspiration from other cases, but we will have to find the solutions internally.”³⁹
31. Professor Alan Page was similarly “wary of off-the-shelf solutions adopted or drawn from other systems ... I would be entirely confident about our ability to come up with a bespoke solution that met the needs of the United Kingdom” building on the UK’s ongoing experience of inter-governmental relations.⁴⁰
32. The lessons that Professor McEwen felt could be helpfully drawn from overseas examples were that:
- Spill-over in competencies between administrations cannot be avoided;
 - Formal inter-governmental mechanisms are more likely to generate co-operation than ad hoc ones, and to allow issues to be dealt with effectively when they arise;
 - Formal processes are more effective when they are not hierarchical and all parties “share an equal stake in the proceedings”;
 - “Formal, regular meetings can strengthen day-to-day informal interaction”; and
 - Working groups focused on particular issues can be effective, as well as set-piece ministerial meetings.⁴¹

The British-Irish Council

33. Several witnesses referred to features of the British-Irish Council as instructive for potential improvements to the structure of inter-governmental relations in the UK.
34. The Council comprises the governments of the British Isles: the UK and Irish Governments; the devolved Scottish and Welsh Governments and Northern Ireland Executive; and the Governments of the Isle of Man, Jersey and Guernsey. Its purpose is to “exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of

³⁸ Written evidence from Professor Nicola McEwen ([IGR0010](#))

³⁹ [Q 14](#)

⁴⁰ [Q 14](#)

⁴¹ Written evidence from Professor Nicola McEwen ([IGR0010](#))

mutual interest within the competence of the relevant administrations”.⁴² In 2012, a permanent secretariat for the Council was established in Edinburgh.⁴³

35. Professor Derek Birrell, Professor of Social Administration and Social Policy at the University of Ulster, told us that there are three levels of engagement within the Council: a twice yearly summit; ‘sectoral’ work involving ministers; and meetings of officials, including visits and seminars.⁴⁴ The 12 ‘work sectors’, each led by ministers from one of the eight administrations, address different areas of shared interest: creative industries; collaborative spatial planning; demography; digital inclusion; early years policy; energy; environment; housing; indigenous, minority and lesser-used languages; misuse of substances (drugs and alcohol); social inclusion; and sustainable and accessible transport.⁴⁵ They report annually on their work.
36. Professor Birrell felt the Council played a useful role:
- “Participants have clearly found some of the work and activities useful. Benefits have arisen in terms of the exchange of ideas and policy copying. In terms of practical co-operation, for example, in the recognition of driving licences, in preparing UK-wide child poverty legislation, in agreement on an accord on an all-islands approach to energy resources, and in examining integrated travel by public transport across two or more countries.”⁴⁶
37. Scottish Government minister Fiona Hyslop MSP commended the rotation of the chair of the Council among its member administrations.⁴⁷ The First Minister of Wales told us that the ‘work streams’ model used by the Council could be used by the JMC,⁴⁸ while Professor Birrell concluded that a permanent secretariat might help the JMC function more effectively.⁴⁹

Improving the formal structures

The importance of a formal framework

38. Most observers acknowledged the need for both formal and informal means of inter-governmental communication. Drawing on examples from overseas, Professor McEwen told us that:

“In all cases, a crucial component of intergovernmental relations takes place informally, in regular ad hoc communication between ministers and officials at all levels of responsibility. This informal interaction is complemented by more formal processes of intergovernmental relations ... Formal, regular meetings can strengthen day-to-day informal

⁴² British-Irish Council, ‘About’: <http://www.britishirishcouncil.org/about> [accessed 10 February 2015]

⁴³ Written evidence from Professor Derek Birrell (IGR0013)

⁴⁴ Written evidence from Professor Derek Birrell (IGR0013)

⁴⁵ British-Irish Council, *Annual Report 2013*, nd: <http://www.britishirishcouncil.org/sites/default/files/attachments/annual%20report%202013.pdf> [5 February 2015]

⁴⁶ Written evidence from Professor Derek Birrell (IGR0013)

⁴⁷ Q 66

⁴⁸ Q 49

⁴⁹ Written evidence from Professor Derek Birrell (IGR0013)

interaction by strengthening intergovernmental networks and building trust among officials. Such interaction can often enhance mutual awareness of policy interdependencies and head off disputes.”⁵⁰

39. This Committee warned in 2002 of the risks of reliance on informal mechanisms. We recommended that inter-governmental structures be improved during that period of party congruence in order to ensure that they were working well in advance of a time when different parties came into power in different administrations across the UK.⁵¹
40. The demise of the JMC plenary after 2002 was seen by many as a measure of the success of the devolution process and of the informal working relations.⁵² The JMC started meeting again in plenary form in 2008, but Professor McEwen told us that there was still “an overreliance on informality—on the ad hoc nature of inter-governmental co-ordination.”⁵³ The Scottish Government told us similarly that “Good inter-governmental machinery should be effective whatever the political make up of the 4 member administrations and should not depend on the goodwill (or otherwise) of individuals.”⁵⁴
41. Witnesses told us that a balance was needed, with both formal and informal elements playing important roles. As Ms MacNamara put it, “Too much structure gets in the way, but so does no structure at all. The best relationships work best when you are both able to work informally together and then there is an underpinning structure behind to give that some weight.”⁵⁵ **We agree with that view.**

The current Joint Ministerial Committee

42. Our witnesses were generally critical of the effectiveness of the Joint Ministerial Committee as it currently operates. We heard that the plenary and the domestic sub-committee are venues for “grandstanding”⁵⁶ and the airing of grievances.⁵⁷
43. The First Minister of Wales told us that the annual plenary committee:
- “tends to be a meeting where grievances are aired rather than constructive proposals taken forward ... There tends to be more—how shall I put it—full and frank discussion in the JMC (Plenary) than constructive discussion. That is the nature of things: in some ways, of

⁵⁰ Written evidence from Professor Nicola McEwen ([IGR0010](#))

⁵¹ Constitution Committee, *Devolution*, paras 25 and 29.

⁵² Welsh Affairs Committee, *Wales and Whitehall*, para 34; written evidence from Professor Derek Birrell ([IGR0013](#)); [Q 78](#) (Lord Wallace of Tankerness)

⁵³ [Q 8](#)

⁵⁴ Written evidence from the Scottish Government ([IGR0015](#))

⁵⁵ [Q 21](#)

⁵⁶ [Q 37](#) (David Melding AM) and [Q 87](#) (Peter Robinson MLA); written evidence from the Institute for Government ([IGR0011](#)); see also Alan Trench, *Intergovernmental relations and better devolution*, UK’s Changing Union project, December 2014, pp. 4, 11: <http://sites.cardiff.ac.uk/wgc/files/2014/12/INTERGOVERNMENTAL-RELATIONS-AND-BETTER-DEVOLUTION-FINAL-Dec-2014.pdf> [15 December 2014]

⁵⁷ [Q 66](#) (Fiona Hyslop MSP).

course, there are four different Administrations with four different parties or combinations of parties running them.”⁵⁸

44. The Rt Hon Peter Robinson MLA, the First Minister of Northern Ireland told us that the meetings worked to a strict timetable and that each item was largely a read-out of the current experience and policy of each administration. This was useful as it allowed administrations to learn from each other’s experiences and find out what policies they were pursuing, but it was “very much a tick-box exercise as opposed to really getting things done.”⁵⁹
45. The Scottish Government told us that there were only limited opportunities to raise issues of concern in the meetings:
- “In theory, the ‘current issues’ section which remains a standing item on the agenda of meetings in both Plenary and Domestic format provides the opportunity for each administration to raise issues of concern. In practice, lack of time can make this opportunity less useful, since the UK Government is generally unwilling or unable to schedule more than 60–90 minutes for each meeting and there is often no time ... left for ‘current issues’. Providing additional time might also provide the opportunity for proper discussion rather than simply [a] statement of contrary positions.”⁶⁰
46. Ms MacNamara, whose Cabinet Office team provides the UK’s part of the JMC’s joint secretariat, firmly rejected the assertion that the JMC was prone to “grandstanding”.⁶¹ The Secretary of State for Scotland gave us two answers to the same question: the official answer that “Joint Ministerial Committees and plenary have been, and are, productive and useful” and his own observation that he could see why they would be identified as grandstanding: “They occasionally generate a bit more heat than light.” Like others,⁶² he stressed that this was inevitable: “when you take a room, fill it with politicians from different parts of the country and from different parties and leave the press at the door, yes, you’re going to get a bit a bit of politics happening. That’s how it works.”⁶³
47. The Domestic sub-committee was particularly criticised. In 2010, the then First Minister of Scotland told the House of Commons Scottish Affairs Committee that, as a successful mechanism for co-operation, the sub-committee had “some distance to travel.”⁶⁴ Five years on, the First Minister of Wales said to us that it “has no real purpose as far as I can see at the moment”.⁶⁵ Ms Hyslop and the Institute for Government both noted the decreasing frequency of its meetings in recent years. The Institute also stated

⁵⁸ [QQ 44, 47](#)

⁵⁹ [Q 90](#)

⁶⁰ Written evidence from the Scottish Government ([IGR0015](#)); see also written evidence from the Institute for Government ([IGR0011](#)).

⁶¹ [Q 28](#)

⁶² For example, see [Q 50](#) (Carwyn Jones AM)

⁶³ [Q 78](#)

⁶⁴ Scottish Affairs Committee, *Scotland and the UK*, para 45

⁶⁵ [Q 44](#)

that “it seems that there is a lack of agreement about the purpose of this format” and recommended its replacement.⁶⁶

48. The European sub-committee is significantly better thought of by politicians, including participants,⁶⁷ and by observers. David Melding AM, Chairman of the National Assembly for Wales Constitutional and Legislative Affairs Committee, described it as “a very effective body”, possibly because it was run by a single department—the Foreign and Commonwealth Office—with a “culture of dealing with different Governments and people of different views”.⁶⁸ Professor Alan Page cited it as an example of how things can work well in the current inter-governmental structure, which, he explained, was a result of an “external compulsion, or necessity, by dint of the European agenda to work out what the United Kingdom’s position is in advance of meetings at the European level that involve discussion with the devolved Governments.”⁶⁹
49. There are still, however, “concerns about the representation of the devolved territories in European matters.”⁷⁰ The Institute for Government told us that there was a perception in devolved administrations “that their ministers are often listened to but then ignored, which can cause frustration, as can the reluctance of some UK departments to allow devolved ministers to participate in meetings of the EU Council of Ministers”.⁷¹ The Smith Commission recommended improving the ‘Concordat on the Co-ordination of European Union Policy Issues’ (part of the MOU), around the agreement of UK positions and allowing ministers from devolved administrations to represent the UK at the Council of Ministers.⁷² The Advocate General for Scotland, the Rt Hon the Lord Wallace of Tankerness, acknowledged this concern but highlighted the extent to which Scottish Ministers did speak at Council meetings; he also noted that there was only limited space in Council meetings, possibly restricting the participation of multiple representatives from the UK as the member state.⁷³
50. **It is clear that, while some parts of the JMC structure work better than others, in the eyes of the devolved administrations at least the way the JMC system works at present is not satisfactory. The Domestic sub-committee, in particular, does not appear to serve a useful purpose.** Throughout this report we make recommendations intended to address these concerns.
51. As more powers are devolved to each region, inter-governmental structures will need to change to accommodate the increased number of areas of policy overlap or congruence. There need to be clear structures within which

⁶⁶ [Q 66](#); written evidence from the Institute for Government ([IGR0011](#))

⁶⁷ [Q 78](#) (Lord Wallace of Tankerness)

⁶⁸ [Q 34](#); see also [Q 44](#) (Carwyn Jones AM)

⁶⁹ [Q 8](#)

⁷⁰ Written evidence from Professor Michael Keating ([IGR0003](#)); see also written evidence from Professor Alan Page ([IGR0002](#)).

⁷¹ Written evidence from the Institute for Government ([IGR0011](#))

⁷² Smith Commission, *Report*, para 31.

⁷³ [Q 81](#) (Lord Wallace of Tankerness)

effective communication can take place to manage the increasingly complicated and extensive interface between different administrations.

52. We do not believe that the increasingly complex devolution settlements can be managed solely in multilateral forums like the current JMC and its sub-committees. Given the increasingly asymmetrical nature of devolution in the UK, bilateral relationships will need to develop to deal with the increasing number of areas where devolved and non-devolved powers intersect.

Bilateral forums

53. Bilateral relations between the UK Government and devolved administrations have tended to be informal at all levels. However, more formal bilateral forums have been established during this Parliament to manage the transfer of fiscal powers, first to Scotland and more recently to Wales.
54. The UK-Scotland Joint Exchequer Committee (JEC) was established while the Scotland Act 2012 was before Parliament. Its first meeting was held on 27 September 2011; it met again in 2012 and 2013, on the latter occasion in Edinburgh. The meetings were attended by HM Treasury Ministers, the Secretary of State for Scotland, the Scottish Government Cabinet Secretary for Finance, Employment and Sustainable Growth and a senior Scottish Cabinet colleague.⁷⁴ This forum is generally well-regarded, although the Scottish Government noted difficulties in reaching agreements and recommended the regular attendance of a more senior UK Minister.⁷⁵
55. A similar UK-Wales JEC was created as the Wales Act 2014 neared Royal Assent. Like the Scotland Act 2012, this Act allows for tax-raising powers for the National Assembly for Wales (in this case, only following a referendum approving the additional power). The UK-Wales JEC met on 20 October 2014, attended by HM Treasury Ministers, the Secretary of State for Wales and the Welsh Government Minister for Finance and Government Business.⁷⁶
56. Building on the success of the JEC model, the UK Government recently announced that a “joint Ministerial Working Group on Welfare has been established to provide a forum in which UK Ministers and Scottish Ministers can discuss the operation of the new arrangements—both in advance of legislation being delivered, and also to provide a forum for discussion post Royal Assent.”⁷⁷ The Group’s first meeting took place on 11 February 2015.⁷⁸

⁷⁴ For example, see Joint Exchequer Committee Communiqué, 18 June 2012: <https://www.gov.uk/government/news/joint-exchequer-committee-communicue> [accessed 2 March 2015]

⁷⁵ Written evidence from the Scottish Government (IGR0015)

⁷⁶ ‘Crucial step towards fiscal devolution’: <https://www.gov.uk/government/news/crucial-step-towards-fiscal-devolution> [accessed 10 February 2015]

⁷⁷ HM Government, *Scotland in the United Kingdom*, para 4.1.9.

⁷⁸ Joint ministerial working group on welfare: <https://www.gov.uk/government/news/joint-ministerial-working-group-on-welfare> [accessed 12 March 2015]

Box 2: Complexity and inter-dependency: Welfare powers

The Scottish Parliament is due to receive extensive new powers in relation to welfare, an area where responsibility is presently reserved almost entirely to Westminster. The result will be wide areas of shared competence between the UK and Scottish Governments—for example on Universal Credit, where Scottish Ministers will have powers shared with the UK Secretary of State and subject to the latter’s agreement, while some devolved benefits such as the Personal Independence Payment and the Attendance Allowance interact with tax credits and income-related benefits that will continue to be controlled by the UK Government. The boundaries between devolved and reserved matters will be less clear-cut than at present, and the two governments will require mechanisms for joint decision-making where their powers interconnect.

The UK Government estimates that responsibility for “one quarter of all welfare spending outside the state pension” will be devolved. One aim of the Universal Credit system is a more integrated welfare system. Inter-governmental relations will be important to ensure that this goal is not undermined by the devolution of welfare benefits and that, on the other hand, the existence of a unified system is flexible enough to allow for policy differences in Scotland.

Examples of overlapping responsibility, and hence of the need for inter-governmental management, include benefits that automatically qualify the recipient for another benefit, or, alternatively, where certain entitlements cause other services to be reduced where they overlap. Careful management will be needed to ensure that differences introduced in Scotland do not lead either to double benefits or unintended losses for individuals. An example of a cross-border issue given in *Scotland in the United Kingdom* relates to Carer’s Allowance, where the carer lives in one jurisdiction whilst caring for someone in the other jurisdiction. Again, joined-up arrangements will be needed to ensure that care for individuals in need does not suffer from gaps in coverage across jurisdictions.

Source: Scotland in the United Kingdom; written evidence from Professor Nicola McEwen (IGR0010)

57. There are strong arguments for more structured and ongoing use of formal bilateral arrangements. The Smith Commission recommended the setting up of “new bilateral governance arrangements which will be required to oversee the implementation and operation of the tax and welfare powers to be devolved” following its other recommendation.⁷⁹ The Scottish Government told us that “Any new structure, such as JMC sub-committees, should be flexible enough to allow bilateral, trilateral and quadrilateral formats, where appropriate.”⁸⁰

58. Professor McEwen told us that:

“It is not clear—and seems doubtful—whether these forums [the JEC and the Ministerial Working Group on Welfare] will outlive this transitional and implementation phase, or whether they will provide opportunities for the Scottish Government to at least be consulted on

⁷⁹ Smith Commission, *Report*, para 30(1)(a)

⁸⁰ Written evidence from the Scottish Government (IGR0015)

those reserved areas of tax policy which will shape and constrain the new devolved responsibilities.”⁸¹

Professor McEwen noted that “One of the things that was striking about both the Smith report and the Silk report was their emphasis on the need for more formal bilateral arrangements”,⁸² and called for these bodies to be used “on a more permanent basis”.⁸³

59. The Institute for Government also highlighted the complexity of the tax and welfare proposals for Scotland and the additional joint working that would be required, and called for mechanisms to be created to manage the transition and to “ensure that there is effective administration of the new more complex fiscal framework and the intersection between devolved and reserved welfare policy.”⁸⁴
60. The Silk Commission recommended the creation of a broad-ranging Welsh Intergovernmental Committee.⁸⁵ Establishing such bilateral forums risks undermining the role of the multilateral forums; formal bilateral bodies should be used for specific areas of shared interest or policy inter-dependency between administrations.
61. **There are areas where formal bilateral mechanisms are appropriate, particularly in the areas of tax and welfare where the proposed devolution of powers to the Scottish Parliament significantly increases the complexity of the devolution settlement, as would proposed income tax powers for the National Assembly for Wales.**
62. **Formal bilateral forums co-ordinating the operation of the complex fiscal devolution settlements should continue the work of the Joint Exchequer Committees and the new UK-Scotland Ministerial Working Group on Welfare. We recommend that these be brought within the auspices of the JMC structure, to ensure that their work is co-ordinated as part of a wider inter-governmental relations strategy.**

Policy co-operation and co-ordination

63. Although much of the day-to-day management of the devolution settlements will need to take place bilaterally, there is scope for greater multilateral policy co-operation between the four administrations in the UK.
64. We were told by witnesses that the JMC made no provision for joint policy-making by participants.⁸⁶ The First Minister of Wales told us that, “It certainly is not the case that the current machinery has enabled joint working and joint consideration of policy that affects the whole of the UK to be taken forward.”⁸⁷

⁸¹ Written evidence from Professor Nicola McEwen ([IGR0010](#))

⁸² [Q 12](#)

⁸³ [Q 15](#)

⁸⁴ Written evidence from the Institute for Government ([IGR0011](#))

⁸⁵ Silk Commission, *Empowerment and Responsibility*, recommendation R.6

⁸⁶ [Q 11](#) (Professor Nicola McEwen); written evidence from Professor Alan Page ([IGR0002](#))

⁸⁷ [Q 47](#)

65. We heard that joint policy-making does occur at the level of officials' interaction, but that it is underused.⁸⁸ While the short, high-level JMC plenary or sub-committee JMC meetings may not be the right venue for the collective development of policy, the structure of the JMC could be reformed to promote such policy co-operation, providing high-level ministerial support for inter-governmental work.

Box 3: Policy and research co-operation: driver behaviour

Driver behaviour is an area in which the UK and Scottish governments have recently co-operated in research on an issue of common interest. Under the Scotland Act 2012, the power to set alcohol limits for drivers on Scottish roads is devolved, as is the power to set speed limits. Transport Scotland and the UK Department for Transport worked together on research on drink-driving, as well as on other illegal driver behaviour such as failure to wear a seatbelt and the use of mobile phones while driving.

As a result of the research, the Scottish Parliament used their new power under the 2012 Act to reduce the alcohol limit for drivers in Scotland, while the limit in the rest of the UK did not change. There is now a policy difference between Scotland and the rest of the UK, but it is the result of a conscious decision based on the same research produced co-operatively between the two administrations; as a DfT official told us, "we will now see how the two systems pan out and which is the better."

Source: Q 27 (Dr Philip Rycroft) and Q 69 (Graham Pendlebury)

66. Witnesses told us that the British-Irish Council's work sectors (see paragraph 35) could also provide a model for expansion of the JMC. These sectors largely focus on cross-cutting issues rather than departmental policy areas, which suggests a way of developing the JMC and changing the way that it works. Such a development would mean an increase in the number of formal bodies in the JMC structure, but could also facilitate a different way of working: work sectors (led by different members of the Council) explore their subject areas and report back to the Council, in contrast to the 'read-out' style that we heard characterises the plenary JMC.⁸⁹
67. Creating more sub-committees, or something akin to the British-Irish Council's cross-cutting work sectors, could be a positive move for the JMC, allowing greater co-operation on shared concerns at a ministerial level. For example, the JMC(D) could take on a role of commissioning pieces of work on particular subjects, each led by different administrations but carried out jointly by all four administrations, and then act as a forum for discussion at the conclusion of that work. It would be important, however, to ensure that the work of UK equivalents did not simply duplicate the Council's work sectors,⁹⁰ particularly given that the four administrations in the JMC make up half of the membership of the British-Irish Council.

⁸⁸ [Q 27](#) (Dr Philip Rycroft) and [Q 2](#) (Professor Richard Wyn Jones)

⁸⁹ [Q 90](#) (Peter Robinson MLA)

⁹⁰ [Q 89](#) (Peter Robinson MLA)

68. The Smith Commission argued that the increased devolution of powers to Scotland meant that the JMC had to be “scaled up significantly”, and recommended that there should be:

“additional sub-committees within the strengthened JMC structure beyond the current sub-committees. New sub-committees could include, but need not be limited to, policy areas such as home affairs; rural policy, agriculture & fisheries; or social security/welfare.”⁹¹

69. Some witnesses were concerned about a possible proliferation of the JMC’s committee system. Professor Michael Keating noted that:

“Experience elsewhere suggests that if over-elaborate systems are constructed and committees proliferate, they will not be used. The success of a system should not be judged on how many committees there are or how often they meet. Busy politicians and officials will use bodies if they are needed and useful; they will not waste their time on formalities.”⁹²

70. **We recommend that the Cabinet Office, as part of its current review of inter-governmental structures, consider and report on how a revised Joint Ministerial Committee structure might best be used to facilitate joint policy-making and co-ordination. Provision should be made to ensure that policy initiatives can come from the devolved administrations, as well as from the UK Government.**
71. **The Joint Ministerial Committee should be given the flexibility to create additional sub-committees on policy areas where regular four-way discussions are required, or temporary sub-committees on cross-cutting UK-wide issues that are beyond the scope of bilateral co-operation between devolved administrations and individual UK Government departments.**
72. **The creation of such sub-committees should not be seen as an end in itself and the continued existence of each sub-committee should be regularly reviewed by the JMC plenary.**

Dispute resolution

73. The MOU sets out a formal dispute resolution mechanism within the JMC structure. There have been criticisms of its efficacy, although the system has yet to be fully tested as no disputes have gone all the way to the plenary meeting of the JMC. The Institute for Government and Ms MacNamara both told us that the threat of escalation to the JMC’s dispute resolution mechanism was an effective way of forcing a resolution of issues at official and ministerial level.⁹³ Ms MacNamara suggested that the relative lack of formal disputes was a sign that the informal mechanisms for overcoming disagreements functioned well.⁹⁴

⁹¹ Smith Commission, *Report*, para 30(1)(b)

⁹² Written evidence from Professor Michael Keating ([IGR0003](#)); see also written evidence from the Scottish Government ([IGR0015](#))

⁹³ Written evidence from the Institute for Government ([IGR0011](#)); [Q 31](#)

⁹⁴ [Q 31](#)

74. The First Minister of Northern Ireland told us the JMC was not “a very impartial court to take our case to” because, in each case “the Cabinet Office will decide whether the Treasury was right.” He confirmed that less formal means were usually sought for dispute resolution: the JMC “is not the body that I would take any serious issue to that I wanted to take up with the Government; I would deal directly with the Government.”⁹⁵ The First Minister of Wales expressed similar views: “The difficulty is that the dispute resolution process that is in place leads back inevitably to the Treasury, which will then take the final decision.”⁹⁶ Professor Michael Keating told us that the asymmetrical nature of devolution, with the UK Government sometimes acting as the Government of England, made creating a mechanism that did not favour the UK Government very difficult.⁹⁷
75. There have been suggestions that a formal dispute resolution process might allow for some form of arbitration or mediation, but our witnesses were sceptical that this could work. As Professor McEwen noted, “It is ... inevitable that politics will come into these disputes, which makes it quite difficult to conceive of a role for an impartial umpire”.⁹⁸ Ms MacNamara questioned the constitutional status of a third party presiding over the decisions of elected representatives.⁹⁹ Professor Alan Page noted that the current mechanism allows for independent advice to be sought, but in the end decisions must be resolved politically. He told us that:

“I have some sympathy with that, in the sense that, if I recall the wording of the protocol properly, it says effectively, ‘There will come a point at which we may just have to agree to disagree. No solution can be imposed upon anyone’. ... Since the UK Government hold the cards, and are the most powerful actor in the process, that must inevitably mean that the devolved Governments are left with a sense of grievance that they have somehow lost out.”¹⁰⁰

76. **The current dispute resolution procedure under the JMC has yet to be fully tested. We note, however, the concerns expressed by the devolved administrations that in the event of a dispute any decision is ultimately made by the UK Government. We do not believe that any form of external arbitration or mediation would be feasible, given that many disputes are likely to be essentially political in nature, but we recommend that the Cabinet Office, in co-operation with the devolved administrations, consider how the process of dispute resolution might be made more independent of the UK Government.**

A statutory basis for inter-governmental relations

77. As noted earlier in this chapter, a certain amount of formal structure is necessary to underpin inter-governmental relations. The JMC framework provides this structure but it has no statutory basis: it exists by virtue of an

⁹⁵ [Q 87](#)

⁹⁶ [Q 47](#); see also [Q 10](#) (Professor Alan Page).

⁹⁷ Oral evidence taken on 4 February 2015 (Session 2014–15), [Q 10](#)

⁹⁸ [Q 9](#)

⁹⁹ [Q 31](#)

¹⁰⁰ [Q 10](#)

inter-governmental agreement encapsulated in the MOU. The cessation of meetings of the JMC from 2002 to 2008, despite a requirement under the MOU for annual meetings, demonstrates how easily such agreements can be set aside. Indeed, the MOU states that it “should not be interpreted as a binding agreement.”¹⁰¹ Witnesses from all three devolved administrations supported, to varying degrees, some measure of statutory underpinning.¹⁰² Other witnesses were divided on the balance of the benefits and risks of such a move. Legislation setting inter-governmental relations on a statutory footing would, the First Minister of Wales told us, give the arrangements added “teeth”.¹⁰³ Part of this would be through additional scrutiny; a statutory underpinning would increase the extent to which the administrations could be held to account for their interactions.¹⁰⁴ It could also include specific measures designed to increase transparency; as Professor Jim Gallagher noted: “there may be benefit in statutory requirements to produce and present information to Parliament about how this system is working.”¹⁰⁵

78. The Scottish Government suggested that a statutory basis could ensure the principles and terms of the MOU would be adhered to. They said that there was currently “no mechanism to enforce” these principles. As an example, they told us of a joint request in December 2011 from the Scottish and Welsh administrations for a JMC plenary meeting which “did not happen despite the fact that under the MOU the UK Government cannot refuse such a request and that the MOU sets out the timescale in which this should happen.”¹⁰⁶
79. As noted in the Introduction, inter-governmental structures and relations should serve to strengthen and stabilise the Union.¹⁰⁷ A statutory articulation of how those relations function—openly debated in Parliament and providing for greater parliamentary accountability—could provide a more solid basis for a stable constitutional settlement than arrangements agreed behind closed doors between executives with no parliamentary involvement.
80. Another benefit, albeit not a reason in and of itself to pass legislation, would be the symbolism of the action. A statutory requirement for each administration to meet the others regularly would signal the importance of inter-governmental relations at the top levels of UK politics.¹⁰⁸ While it seems unlikely at present that there will be a repeat of the disappearance between 2002 and 2008 of the JMC’s plenary meetings and its non-EU sub-committees, there may be value in reaffirming the importance of inter-governmental relations through giving its structures a statutory basis.
81. Also of symbolic—as well as practical—importance would be the role of the UK Parliament, and potentially the devolved legislatures, in passing the

¹⁰¹ Memorandum of Understanding, para 2

¹⁰² [Q 46](#) (Carwyn Jones AM); [Q 65](#) (Fiona Hyslop MSP); [Q 88](#) (Peter Robinson MLA)

¹⁰³ [QQ 46](#) and [49](#)

¹⁰⁴ See [Q 34](#) (David Melding AM)

¹⁰⁵ Written evidence from Professor Jim Gallagher ([IGR0007](#))

¹⁰⁶ Written evidence from the Scottish Government ([IGR0015](#))

¹⁰⁷ See paragraph 16

¹⁰⁸ Written evidence from Professor Alan Page ([IGR0002](#))

legislation required. This could, Professor Page told us, make the inter-governmental arrangements something with “popular sanction” rather than “just something dreamt up between Governments”. The legislation itself would set out “the expectation of the legislatures of the United Kingdom of the way in which relationships will be conducted.”¹⁰⁹

82. The main arguments given by witnesses against providing a statutory basis for inter-governmental relations are twofold. The first is a potential loss of flexibility. Professor Gallagher told us he could “see no advantage in making these arrangements statutory, as there is a risk of introducing inflexibility into a system subject to change”.¹¹⁰ Similarly, Ms Hyslop told us that a statutory basis—although desirable—should not come at the expense of relations being “prompt and proactive”, while the First Minister of Northern Ireland warned of creating ‘hoops’ that participants had to jump through, slowing down interaction.¹¹¹ Graham Pendlebury, Director of Local Transport in the Department for Transport, warned that “the more you formalise it, the more you fossilise the relationship” and that a more formal structure could lead to ministers simply arriving with “prepared positions” rather than having a conversation. He argued that this could actually make for a less open relationship.¹¹²
83. The second criticism is that it could lead to inter-governmental relations being subject to judicial review.¹¹³ Professor Page told us that the current arrangements were designed to avoid legal commitments and judicial intervention, although he noted that “it has to be questioned whether the deep seated fear that executive effectiveness would somehow be compromised by judicial intervention ... is still warranted.”¹¹⁴ Professor Richard Wyn Jones was also optimistic on this front, saying that “the judges have a pretty good record on devolution.”¹¹⁵
84. The effect of any statutory underpinning of inter-governmental relations depends on the type and extent of that legislation. The more detailed and complex the legislation, the greater the risk of inflexibility. Too vague an underpinning may not have a significant effect and could restrict the capacity of the legislatures to hold their executives to account.
85. There may be a middle ground, however, whereby the framework and core principles are set out in statute, but the detail of the relationships remains flexible to enable administrations and individual departments to react to new developments without feeling encumbered by formal statutory requirements. As Mr Melding put it, the new arrangements should “reduce that element of random variability” of interactions.¹¹⁶ The First Minister of Northern Ireland told us that, although “it would be difficult to legislate for good relations”, it would be possible to legislate for “minimum requirements on the number of

¹⁰⁹ [Q 13](#) (Professor Alan Page)

¹¹⁰ Written evidence from Professor Jim Gallagher ([IGR0007](#))

¹¹¹ [Q 65](#) and [Q 88](#); see also written evidence from the Scottish Government ([IGR0015](#)).

¹¹² [Q 70](#)

¹¹³ Written evidence by Professor Derek Birrell ([IGR0013](#))

¹¹⁴ Written evidence by Professor Alan Page ([IGR0002](#))

¹¹⁵ [Q 6](#)

¹¹⁶ [Q 34](#)

occasions each of the bodies and sub-bodies met. You could place a duty on UK departments either to take into account or to consult the devolved regions when they are dealing with matters that have an impact there.”¹¹⁷

86. **The Government should consider whether the framework of inter-governmental relations should be set out in statute. Such a statute could set out the existence and membership of the Joint Ministerial Committee and its core sub-committees, along with the core principles governing relations between administrations. This legislation could provide a basic framework, within which the Memorandum of Understanding and departmental concordats would continue to detail how inter-governmental interactions would function in practice.**

The Finance Ministers’ Quadrilateral

87. Like the JMC(E), which is also led by a single department, the Finance Ministers’ Quadrilateral is relatively well-regarded. Professor Jim Gallagher told us that the FMQ was an element of inter-governmental relations that has “real business to do”.¹¹⁸ The First Minister of Northern Ireland told us that, as a former participant, he had always found the FMQ “to be a useful body. There was much more interaction at those meetings than you would get at a JMC ... You certainly have a much better opportunity to raise issues and deal with particular problems.”¹¹⁹
88. It has been suggested that the FMQ should be included in the JMC structure. Indeed, the annual reports of the JMC already include a list of the agenda items covered at each meeting of the FMQ.¹²⁰ The Calman Commission recommended that it be subsumed as a JMC (Finance) sub-committee,¹²¹ a change the then Government rejected on the slightly disingenuous grounds that “there is no compelling case for an additional forum”.¹²² The Institute for Government echoed the Calman Commission’s recommendation.¹²³
89. As it appears to function well in its current form, we see no particular reason why the FMQ should not continue to operate as a separate body. Given its importance, however, it needs to be more transparent and accountable. Should the JMC structure be underpinned by a statutory framework, we would expect the FMQ to follow suit. **Whether or not it becomes a sub-committee of the Joint Ministerial Committee, the FMQ should be included as a permanent fixture in any statute setting out the framework of inter-governmental relations, with the added exposure to scrutiny that this should bring.**

¹¹⁷ [Q 88](#)

¹¹⁸ Written evidence from Professor Jim Gallagher ([IGR0007](#))

¹¹⁹ [Q 91](#)

¹²⁰ House of Commons Written Answer [216856](#), Session 2014–15

¹²¹ Calman Commission, *Serving Scotland Better*, recommendation 4.13

¹²² Scotland Office, *Scotland’s Future in the United Kingdom*, Cm 7738, November 2009, p. 22: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228529/7738.pdf [accessed 12 February 2015]

¹²³ Written evidence from the Institute for Government ([IGR0011](#))

Independent advice on funding the devolved administrations

90. Professor Keating told us that finance and welfare were areas where “inter-governmental relations really are critical,”¹²⁴ and noted that “Federal states with resource-sharing will usually have some intergovernmental forum for discussing this, often with an independent body to advise on facts and figures. In the UK, the Barnett Formula is entirely at the discretion of the centre.”¹²⁵ He felt such a body should be established in the UK given the increasing devolution of fiscal, tax and welfare policy:

“It would be very important, if we are going to get into things like detriments and the implications of mansion taxes or whatever, to have some independent body that does the homework and produces the statistics, just as the OBR does with regard to public spending ... The Treasury just deciding this unilaterally is going to get us into political rows and political arguments that will be settled by political haggling. It is important that there is some kind of inter-governmental ministerial committee that can be convened to consider this evidence and then come to a political decision. Quite rightly, the politicians take the decision at the end of the day, but they should do it in a way that is informed by the evidence and that is transparent and accountable.”¹²⁶

91. **We recommend that the Government consider tasking an independent body to provide the statistics and evidence on which to base decisions about the allocation of funding to the devolved administrations.**

An imbalanced relationship?

92. Witnesses told us there was a prevailing view that the JMC structure—and inter-governmental relations more generally—were dominated by the UK Government to the detriment of the devolved administrations. Professor Alan Page told us that:

“At its most general, the complaint, which long pre-dates devolution, is that the devolved administrations are forgotten about or ignored. Included within this general complaint are a number of more specific complaints—about the unwillingness of the UK Government to discuss matters the devolved administrations want to discuss and about its failure to consult the devolved administrations or to take account of their views.”¹²⁷

93. The First Minister of Wales told us bluntly that:

“The JMC in its present form is basically a Westminster creation that is designed to allow Westminster to discuss issues with the devolved administrations. It is not jointly owned in that sense; the meetings always take place in London and it is not a proper forum of four

¹²⁴ Oral evidence taken on 4 February 2015 (Session 2014–15), [Q 10](#)

¹²⁵ Written evidence from Professor Keating ([IGR0003](#))

¹²⁶ Oral evidence taken on 4 February 2015 (Session 2014–15), [Q 10](#)

¹²⁷ Written evidence from Professor Alan Page ([IGR0002](#))

Administrations coming together to discuss issues of mutual interest in that way.”¹²⁸

94. Scottish Government minister Fiona Hyslop MSP highlighted the fact “that the time and the agenda are quite often controlled by the chair, who is always a UK Government Minister”.¹²⁹ The Scottish Government also told us that while any administration might remove an item from the agenda, this was mainly done by the UK Government: “The UK Government in recent years has sometimes chosen not to expose topics to discussion at JMC until their policy position—and often draft legislation—has been finalised. This of course means that the views of the [devolved administrations] cannot readily be taken into account.”¹³⁰
95. The devolved administrations, the First Minister of Northern Ireland told us, felt that they were “being brought in as opposed to being a full part of any structure.”¹³¹
96. Ms MacNamara rejected the claim that the UK Government dominates the JMC agenda. She told us that “In order to put the agenda together for any JMC meeting, officials will meet and discuss and come up with ideas and talk about what might be appropriate ... All JMC agendas are agreed by all Ministers, so we as officials put joint advice to Ministers and then it is the Ministers together who decide the agenda items.”¹³² Whatever the mechanism used to compile the agenda, there is clearly a perception among academics and the devolved administrations that JMC meetings are dominated by the UK Government. Professor Nicola McEwen told us that, with the increasingly complex devolution settlements, unless “joint working can be conducted on the basis of equality of status and mutual respect, the complexities and interdependencies are likely to create new sources of tension and dissatisfaction, and lead to growing pressure for a further revision of the devolution settlement”.¹³³
97. We note the Scottish Government’s concern, previously quoted (see paragraph 45), about the limited time made available for JMC meetings. The First Minister of Northern Ireland also told us that meetings were run on a tight timetable: “You have a starting time and a finishing time and you get the impression that some people want to get on to the next meeting and that it is more something that they feel compelled to do.”¹³⁴

Equal participants

98. Professor Derek Birrell told us that the revival of the JMC in 2008 aimed, in part, to “confer parity of esteem on the devolved governments.”¹³⁵ This principle must take account, however, of the difference in constitutional

¹²⁸ [Q 46](#)

¹²⁹ [Q 66](#)

¹³⁰ Written evidence from the Scottish Government ([IGR0015](#)); see also written evidence from Professor Alan Page ([IGR0002](#)).

¹³¹ [Q 87](#) (Peter Robinson MLA)

¹³² [Q 28](#)

¹³³ Written evidence from Professor Nicola McEwen ([IGR0010](#))

¹³⁴ [Q 90](#) (Peter Robinson MLA)

¹³⁵ Written evidence from Professor Derek Birrell ([IGR0013](#))

status between, on the one hand, the three devolved administrations which have acquired their varied levels of devolved power from the sovereign UK Parliament and, on the other, the UK Government which stems from and is responsible to that Parliament.¹³⁶

99. Officials from HM Treasury and the Department for Environment, Food and Rural Affairs (Defra) told us that their colleagues' relationships with devolved administrations depended to some degree on the extent of devolution in their policy areas.¹³⁷ John Robbs, director of Marine and Fisheries at Defra, said that department's interaction with the devolved administrations could be divided into "two broad categories":
- "One is EU and national business, which of course is reserved in the case of Defra" but with "a wide-ranging agenda in which the devolved administrations have a very strong interest. On those dossiers, where we are negotiating, Defra is the lead UK department but with full and detailed involvement with the devolved administrations."
 - The second "is domestic business, where responsibilities are devolved. However, that does not mean to say that we stop talking to each other. We ensure that we take account of knock-on effects on each other, so we do not cause each other problems."¹³⁸
100. In reserved policy areas, therefore, the UK Government retains responsibility but consults and discusses with devolved administrations. In fully devolved policy areas, the four administrations are all responsible within their jurisdictions (the UK Government acting for England) and so their interactions are different,¹³⁹ focussing more on sharing experiences and best practice and taking account of possible spill-over effects of policies. This means that in areas with extensive devolution the four administrations are acting as equal partners, while in others the UK Government is ultimately responsible for decisions, and other administrations may be seeking to influence policy decisions that affect the devolved regions.¹⁴⁰ Inter-governmental mechanisms need to be flexible enough to cater for both types of interaction.
101. We recognise, therefore, that the UK Government plays a dual role in inter-governmental relations, where it is both the ultimate authority on some issues and more like an equal participant in others. Given this role, **the UK Government should continue to chair JMC meetings. However, to mitigate the perception of UK Government dominance the hosting of the JMC plenary and sub-committee meetings should be shared on a rotating basis**, like the British-Irish Council's plenary meetings—and, indeed, as was the case for the first three JMC plenary meetings in 2000–02.

¹³⁶ See [Q 87](#) (Peter Robinson MLA)

¹³⁷ [Q 67](#) (Lindsey Whyte) and [Q 68](#) (John Robbs).

¹³⁸ [Q 68](#)

¹³⁹ See written evidence from the Scottish Government ([IGR0015](#))

¹⁴⁰ [Q 89](#) (Peter Robinson MLA); written evidence from the Scottish Government ([IGR0015](#))

Mutual respect

102. The Secretary of State for Scotland and the Advocate General for Scotland argued that equality of status was less important than mutual respect.¹⁴¹ This echoed the view of the Calman Commission which recommended that “In all circumstances there should be mutual respect between the Parliaments and the Governments, and this should be the guiding principle in their relations.” The Silk Commission made a similar recommendation.¹⁴² We concur: mutual respect is a vital element of good inter-governmental relations.
103. This mutual respect, of course, applies to all administrations in their attitudes towards one another. But if inter-governmental relations are to be a stabilising force for the Union, there must also be respect for the respective roles of the different administrations.
104. The First Minister of Northern Ireland told us that he had witnessed the JMC becoming more adversarial in recent years with a change in the self-perception of the Scottish Government: “To some extent, there are two devolved institutions, which recognise that they are devolved institutions, and one devolved institution that believes that it is a sovereign state and has the standing of the Government”.¹⁴³ Similarly the Secretary of State for Scotland suggested that a desire for secession led the current Scottish Government to use inter-governmental mechanisms to attempt to undermine the Union.¹⁴⁴ Such behaviour goes against the spirit of mutual respect. The need for better understanding and co-operation in this strained relationship was also highlighted for us by Professor Michael Keating in relation to constitutional debates on Scottish devolution: “The yes side in the referendum campaign has to accept that they lost and therefore say, ‘Let us join in a realistic settlement for what Scotland can do within the United Kingdom’. On the no side there has to be willingness to recognise that there is going to be a compromise.”¹⁴⁵
105. **Although different administrations may hold different views about the future shape of the UK, all governments share an interest in ensuring that the current system of inter-governmental relations operates as effectively and fairly as possible.**

¹⁴¹ [Q 77](#)

¹⁴² Written evidence from Professor Alan Page ([IGR0002](#)); Calman Commission, *Serving Scotland Better*, recommendation 4.1; Silk Commission, *Empowerment and Responsibility*, para 5.2.6

¹⁴³ [Q 87](#)

¹⁴⁴ [Q 77](#)

¹⁴⁵ Oral evidence taken on 4 February 2015 (Session 2014–15), [Q 3](#)

CHAPTER 3: MINISTERIAL RESPONSIBILITIES

106. The UK Government's structures for dealing with the devolved administrations evolved from pre-1998 inter-departmental relations.¹⁴⁶ There have been, and continue to be, calls for a merger of departmental and ministerial responsibilities for devolution.
107. Professor Richard Wyn Jones told us that, while institutions had evolved in the devolved regions, "if you look at the central institutions of the state, almost nothing, frankly, has changed. We still have the territorial offices. We still have ... the territorial Select Committees. There has been very little change at the centre, and you have had this fundamental change in the devolved territories."¹⁴⁷

Territorial Offices and Secretaries of State

Recommendations and changes, 2002–10

108. In our 2002 report, this Committee noted the dispersal of responsibilities across many departments. We recommended that the Government should consider merging the Scotland and Wales Offices and the Devolution and English Regions team into a single department, with a single Cabinet Minister with responsibility for inter-governmental relations overall and with the possibility of appointing Ministers of State to deal with particular policy issues or devolved areas.
109. The Government responded that they felt that the existing machinery worked well, but that it would be kept under review.¹⁴⁸ In 2003 the machinery changed, with the Scotland and Wales Offices being subsumed into the new Department for Constitutional Affairs (and in 2007 its successor, the Ministry of Justice), along with responsibility for devolution strategy. By 2003, devolution to Northern Ireland had been suspended; the Northern Ireland Office kept its position as an independent department, taking over the powers of the Northern Ireland Assembly during the period of suspension, from 2002–07.
110. The new arrangements retained some autonomy for the Scotland and Wales Offices, however, as well as their Cabinet posts, as the Commons Justice Committee found in 2009.¹⁴⁹ That Committee also noted that, even with that set-up, "responsibility for different aspects of what could be considered as devolution issues is currently located in five separate government departments: the Ministry of Justice, the Scotland and Wales Offices, the Cabinet Office and the Department for Communities and Local Government." They concluded that:

"What is lacking is any one department which is clearly charged with taking a holistic view of the infrastructure of government across the

¹⁴⁶ Justice Committee, *Devolution*, para 104; written evidence from Professor Alan Page ([IGR0002](#)) and from Professor Jim Gallagher ([IGR0007](#))

¹⁴⁷ [Q 1](#)

¹⁴⁸ Deputy Prime Minister, *Government Response*, paras 10–13

¹⁴⁹ Justice Committee, *Devolution*, para 29

United Kingdom and the constitutional and policy issues involved. This role basically belongs to the department with lead responsibility for the constitution, which is the Ministry of Justice, and we recommend that the lead responsibility should be clearly recognised and developed.”¹⁵⁰

111. In 2003–08, the Secretaries of State for Wales and Scotland also held other positions in Government—the Scotland Secretary also having responsibility for Transport and later Defence, for example. The Justice Committee concluded in 2009 that “the direction of travel” was towards having a single Secretary of State for the constitution.¹⁵¹

Current ministerial and departmental responsibilities

112. The formation of the current Government in 2010 saw the restoration of stand-alone Scotland and Wales Offices; the Secretaries of State have also been free of other ministerial responsibilities during the current Parliament. Meanwhile, more departments have become more directly involved in dealing with the devolved administrations as a result of the legislated-for and planned devolution of tax and welfare powers.
113. The Deputy Prime Minister is responsible for inter-governmental relations¹⁵² and has “overall policy responsibility for devolution”,¹⁵³ although this did not appear in a list of his responsibilities that was supplied to this Committee in July 2010 (other than responsibility for “considering the ‘West Lothian question.’”).¹⁵⁴ The Deputy Prime Minister is supported by the Cabinet Office’s Constitution Group; this inherited many of the Ministry of Justice’s constitutional responsibilities and includes the Devolution Strategy Team, which “maintains an overview of the position of the devolved administrations within the constitution and works to sustain good relations between the devolved administrations, the Scotland Office, Wales Office and Northern Ireland Office, and Whitehall more widely.”¹⁵⁵

Towards a merged department?

Arguments in favour

114. As was reflected in the recommendations of this Committee in 2002 and the Justice Committee in 2009, there is a strong case for greater co-ordination of inter-governmental relations and the devolution settlements within Government. Several of our witnesses advocated such a change.¹⁵⁶ Professor Alan Page felt that the case for a single department “would seem overwhelming”: it would provide a focus for inter-governmental relations,

¹⁵⁰ Justice Committee, *Devolution*, paras 31 and 63

¹⁵¹ Justice Committee, *Devolution*, para 66

¹⁵² [Q 22](#) (Dr Philip Rycroft)

¹⁵³ Cabinet Office, *List of Ministerial Responsibilities*, (January 2015): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396578/Final_LMR_JAN_2015.pdf [accessed 13 February 2015]

¹⁵⁴ Memorandum by the Deputy Prime Minister and the Minister for Political and Constitutional Reform, published in Constitution Committee, *The Government’s Constitutional Reform Programme* (5th Report, Session 2010–12, HL Paper 43)

¹⁵⁵ National Audit Office, *Cabinet Office Constitution Group*, April 2012, p. 5: http://www.nao.org.uk/wp-content/uploads/2012/05/NAO_briefing_Constitution_Group.pdf [8 January 2015]

¹⁵⁶ See [Q 5](#) (Professor Richard Wyn Jones)

remove duplication across Whitehall and could monitor compliance with the Memorandum of Understanding across government.¹⁵⁷

115. The Institute for Government told us they

“favour the creation of a stronger and more joined-up single centre for devolution policy and strategy in Whitehall—perhaps along the lines of past proposals for a single ‘Department for Devolution’ or ‘Department for the Nations and Regions’. This could bring together the different units with responsibility for devolution issues across the Cabinet Office and Treasury along with the three territorial offices.”

It could, they said, improve joined-up working across Government and potentially save money.¹⁵⁸

116. Professor Jim Gallagher argued that the small size of the Scotland and Wales Offices and low status of their Secretaries of State indicated the lack of priority accorded to devolved matters in Whitehall: “Instead of three Secretaries of State, and three tiny departments, the United Kingdom should have one substantial department, and one powerful Secretary of State whose job it is to manage the territorial constitution.”¹⁵⁹ He suggested that a Secretary of State for the Union could be supported by Ministers of State for each devolved region, recognising the need for separate voices and departmental expertise relating to each region.¹⁶⁰

Arguments against

117. There was very little support amongst politicians for merging the Territorial Offices.¹⁶¹ The most common argument was that each devolved region needed its own voice at the Cabinet table.¹⁶² More junior territorial ministers could retain a position attending Cabinet, but Professor Wyn Jones was sceptical that having four ministers responsible for elements of devolution at Cabinet, in place of the present three, was likely to happen.¹⁶³

118. David T.C. Davies MP, Chairman of the House of Commons Welsh Affairs Committee, was concerned that there would be challenging conflicts of interests in such a merged role given the different concerns of the devolved regions.¹⁶⁴ This difficulty was also stressed by the First Ministers of Northern Ireland and Wales, the latter of whom cited the differing attitudes towards the Barnett Formula in Wales and Scotland as an example.¹⁶⁵

¹⁵⁷ Written evidence from Professor Alan Page ([IGR0002](#)) and [Q 12](#) (Professor Alan Page)

¹⁵⁸ Written evidence from the Institute for Government ([IGR0011](#)); Professor Richard Wyn Jones also commented on the junior rank of the territorial Secretaries of State ([Q 3](#)).

¹⁵⁹ Written from Professor Jim Gallagher ([IGR0007](#))

¹⁶⁰ Written from Professor Jim Gallagher ([IGR0007](#)); see also written evidence from the Institute for Government ([IGR0011](#)) and [Q 37](#) (David Melding AM)

¹⁶¹ The only politician in favour was Mr Melding, who told us that he could see such a merger working ([Q 37](#)).

¹⁶² [Q 53](#) (Carwyn Jones AM), [QQ 37–38](#) (David TC Davies MP), and [Q 60](#) (Ian Davidson MP, Laurence Robertson MP, Bruce Crawford MSP)

¹⁶³ [Q 5](#)

¹⁶⁴ [Q 37](#)

¹⁶⁵ [Q 94](#) (Peter Robinson MLA) and [Q 53](#) (Carwyn Jones AM)

119. Carwyn Jones AM was also concerned that Wales would be a low priority for a joint Secretary of State: “My fear would be that if you had a Secretary of State who was responsible for the three devolved administrations, the emphasis would be very strongly on Scotland and issues that arise now and again on Northern Ireland, and Wales would just go off the agenda.”¹⁶⁶
120. The First Minister of Northern Ireland stressed the differences between the administrative case and the political:
- “I think there is an unanswerable case [for a merged role] if the determining factor is that this is the most cost-effective way of dealing with the devolved institutions ... For me the key issue is the benefit that it has for the devolved regions. I think there is a very strong case for that direct connection between a devolved administration and the Cabinet. If we are talking about inter-governmental relations, that is one of the conduits that is used to connect the two. I am strongly in favour of it. If one wants to look at a spreadsheet, it might not be the best option, but I think that politically it is the best option.”¹⁶⁷
121. Similarly, Bruce Crawford MSP, convenor of the Devolution (Further Powers) Committee of the Scottish Parliament, felt that the creation of a single Territorial Office and Cabinet position might be an impediment to the bilateral relations that predominate in inter-governmental relations in the UK.¹⁶⁸ This was echoed by the Scottish Government, who feared the dilution of knowledge of devolution across Whitehall and the creation of a new “bottleneck” in their relations with UK Government departments.¹⁶⁹
122. There is also a political and presentational risk in that the removal of their dedicated Secretaries of State could be seen as the Government downgrading or diminishing the importance of Scotland, Wales or Northern Ireland. Mr Davies felt that there would be a “very strong” political reaction; David Melding AM stressed that a consensus would be needed for such a move.¹⁷⁰
123. The Secretary of State for Scotland felt that any such change to the structure of Whitehall departments would need to follow a thorough look at the constitutional settlement across the UK: “For the moment, talk of a department for the nations and regions is inappropriate until you have a constitutional settlement, when we know that so much other change is coming.”¹⁷¹
124. Alan Trench, former Professor of Politics at the University of Ulster, in his paper ‘Intergovernmental relations and better devolution’, wrote that:
- “Whatever merits [merging the Secretaries of State into one post] might offer, the best time to implement it was during the period of relatively easy relations in the early 2000s. The Scottish independence referendum

¹⁶⁶ [Q 53](#)

¹⁶⁷ [Q 95](#)

¹⁶⁸ [Q 60](#)

¹⁶⁹ Written evidence from the Scottish Government ([IGR0015](#))

¹⁷⁰ [Q 37](#)

¹⁷¹ [Q 81](#)

and its likely after-effects mean it will be hard to implement it for the foreseeable future even if there were the political will to do so.”¹⁷²

125. **We heard arguments from an administrative perspective in favour of creating a single Department and Secretary of State for Devolution, or for the Union. However, there are political reasons for retaining separate Secretaries of State and so long as the devolution settlements in the UK are asymmetrical there will need to be strong bilateral relationships between the UK Government and the devolved administrations, with a Secretary of State as a key conduit and voice for each relationship.**

Central co-ordination and responsibility

126. If the separate Territorial Offices are to be retained, there needs to be greater clarity within Government about the central co-ordination of inter-governmental relations and oversight of devolution.
127. As noted above, the minister responsible for both inter-governmental relations and “overall policy responsibility for devolution” is the Deputy Prime Minister. He chairs the JMC Domestic sub-committee; however, he is not on Cabinet’s Devolution Committee, the purpose of which is to “consider matters relating to the devolution of powers within the United Kingdom.”¹⁷³ **It is extraordinary that the Cabinet Minister stated to be responsible for devolution is not a member of the Cabinet Committee on that very subject.**
128. This chimes with what appears to be a lack of effective co-ordination and oversight of devolution in general. The Secretary of State for Scotland told a committee in the Scottish Parliament that Cabinet had not discussed the wider implications for the rest of the UK of the Smith Commission’s recommendations for further devolution to Scotland, other than the West Lothian Question.¹⁷⁴ Mr Carmichael told us that this monitoring of wider constitutional implications was “part of the assessment that we make all the time”.¹⁷⁵ He did not, however, seem to recognise a need to have a UK-wide perspective when considering devolution: rather it was up to each part of the UK to call for and receive further devolved powers.¹⁷⁶
129. This piecemeal approach, with conversations taking place separately about each devolved region, was severely criticised by the First Minister of Wales. He told us that “the view that is taken by some in the UK Government is that [the Smith Commission and Draft Clauses] is a wholly separate process with no effect at all on the other devolved administrations. That is naive. There is inevitably an effect”.¹⁷⁷

¹⁷² Trench, ‘Intergovernmental relations and better devolution’, p. 16

¹⁷³ Cabinet Office, *List of Cabinet Committees and their members as at 2 December 2014*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/391889/CabinetCommittee_MembershipLists_Tables.pdf [accessed 13 February 2015]

¹⁷⁴ Oral evidence taken before the Devolution (Further Powers) Committee of the Scottish Parliament, [4 December 2014](#)

¹⁷⁵ [Q 84](#)

¹⁷⁶ [Q 84](#); see also Constitution Committee, *Proposals for the devolution of further powers to Scotland*

¹⁷⁷ [Q 53](#). See also [Q 45](#)

130. Similarly, the Institute for Government noted that:

“devolution is at present proceeding on separate tracks for each part of the UK, with important decisions being taken in response to political pressures in each territory, without much consideration of the implications for the rest of the country. This may lead to what Professor Charlie Jeffery has termed a ‘constitutional chain reaction’, as developments relating to one territory then spill over in unexpected ways into debates elsewhere in the country.”¹⁷⁸

131. This has continued since the Smith Commission’s report was published. In February 2015 the Prime Minister and Deputy Prime Minister announced a “new devolution package” for Wales,¹⁷⁹ outlining further fiscal devolution and funding in Wales and “building on the Wales Act 2014”.¹⁸⁰ The Command Paper published by the Secretary of State for Wales setting out this package addresses a range of the proposals made by the Smith Commission and those conclusions of the Silk Commission that are not reflected in the Wales Act 2014 and considers whether there is a political consensus for making those changes in Wales. This appears to have been done without reflection on the wider constitutional settlement.

132. Professor Jim Gallagher told us that “Governments, and Parliaments, have tended to treat the territorial nature of the UK as an afterthought or oddity—not core to its nature, even though it is there in lights in the name.”¹⁸¹

133. **The UK’s devolution settlements are of the highest constitutional significance. We are deeply concerned by the lack of central co-ordination and oversight of the devolution settlements and of the minimal consideration given to the effect of devolution in one area of the UK on other areas, and on the Union as a whole.**

134. Without a single Devolution or Union department, it is important that ministerial responsibilities for the devolution settlements and inter-governmental relations are clearly set out. This is not the case at present. We noted a similar lack of oversight of the UK’s constitution as a whole in our report on the office of Lord Chancellor.¹⁸² We note that the Government insisted that the Deputy Prime Minister plays this role, but were unable to articulate it beyond a list of constitutional reforms.¹⁸³ **We repeat our recommendation that there should be a clear focus within Government for oversight of the constitution as a whole, beyond individual constitutional reform proposals, with a senior Cabinet minister identified as responsible for that work.**

¹⁷⁸ Written evidence from the Institution for Government ([IGR0011](#))

¹⁷⁹ “No barriers” to income tax referendum says Cameron’, *BBC News*, (27 February 2015): <http://www.bbc.co.uk/news/uk-wales-politics-31646407> [accessed on 2 March 2015]

¹⁸⁰ *Powers for a Purpose*, p 6.

¹⁸¹ Written evidence from Professor Jim Gallagher ([IGR0007](#))

¹⁸² Constitution Committee, *The Office of Lord Chancellor*, (6th Report, Session 2014–15, HL Paper 75), para 101.

¹⁸³ Ministry of Justice, *Government Response to the Report of the Lords Constitution Committee on The Office of Lord Chancellor*, 26 February 2015: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/CC56GovtresponseOLC260215.pdf> [accessed 17 March 2015]

CHAPTER 4: THE CIVIL SERVICE AND DEPARTMENTAL INTERACTIONS

135. The majority of inter-governmental interactions take place between ministers and officials in UK Government departments and devolved administrations, outside the formal structures of the JMC and other bodies addressed above. Relations between officials and ministers in UK Government departments and in the devolved administrations are thus a vital part of the inter-governmental relations in the UK.
136. The UK, Welsh and Scottish Governments are all supported by a unified Home Civil Service. The Northern Ireland Civil Service has been separate since 1921 but closely resembles the Home Civil Service in its organisation and principles. Concerns have been expressed over the impartiality of civil servants during the Scottish independence referendum, which is currently the subject of an inquiry by the House of Commons Public Administration Select Committee.¹⁸⁴ We did not address the issue of the structure of the Civil Service for this inquiry, but note that the Silk and Calman Commissions echoed our 2002 conclusion that the unified Home Civil Service should be retained.¹⁸⁵
137. Professor McEwen, from the University of Edinburgh, told us that, “a crucial component of intergovernmental relations takes place informally, in regular ad hoc communication between ministers and officials at all levels of responsibility.”¹⁸⁶ Dr Philip Rycroft, Director General in the Deputy Prime Minister’s Office and the UK Government’s lead official on inter-governmental relations, stressed the importance of “the quality of the relationships” between officials and ministers, a sentiment echoed by the Institute for Government.¹⁸⁷ It is worth noting that these relationships and the day-to-day interactions were maintained through the Scottish independence referendum campaign and the political tensions that it aroused.¹⁸⁸
138. The experience of inter-governmental relations for officials varies considerably between and within departments, depending on whether a policy area is entirely devolved, entirely reserved or somewhere between the two.¹⁸⁹ With the implementation of Smith Commission’s recommendations, there will be an increasing number of policy areas where the boundary between devolved and reserved matters will become harder to define.
139. Dr Rycroft described a “hierarchy” of communication with the devolved administrations. The “vast majority of communication and interaction

¹⁸⁴ Civil Service impartiality and referendums inquiry: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/inquiries/parliament-2010/civil-service-impartiality-and-referendums> [accessed 11 March 2015]

¹⁸⁵ Constitution Committee, *Devolution*, para 169; see Silk Commission, *Empowerment and Responsibility*, recommendation R.57 and Calman Commission, *Serving Scotland Better*, para 4.91.

¹⁸⁶ Written evidence from Professor McEwan ([IGR0010](#))

¹⁸⁷ [QQ 21, 23 and 27](#); written evidence from the Institution for Government ([IGR0011](#))

¹⁸⁸ Written evidence from Lord Empey ([IGR0012](#)); [Q 11](#) (Professor Nicola McEwen) and [Q 17](#) (Dr Philip Rycroft)

¹⁸⁹ [Q 68](#) (John Robbs and Lindsey Whyte)

between the UK Government departments and the devolved administrations takes place without direct Cabinet Office or territorial office oversight or involvement”.¹⁹⁰ The advantages of the majority of inter-governmental interactions being conducted at this level were stressed by the Scottish Government and by former Scottish Minister Bruce Crawford MSP.¹⁹¹ Professor Richard Wyn Jones, from the University of Cardiff, told us that, at some points, the Welsh Government had sought to by-pass the Wales Office in order to get things done.¹⁹²

140. These direct interactions between departments and devolved administrations are predominantly between policy teams at a working level: Graham Pendlebury told us that, speaking as the head of a devolution unit in the Department for Transport (DfT), he “would very much expect the individual policy and modal teams within the department to have their own bilateral relations with their counterparts in the different devolved administrations. Indeed, I would see it as a failure if everything came through me, because that would suggest that the bilateral relationship was not really working”.¹⁹³
141. Dr Rycroft told us that, above the individual departments, the territorial offices are involved on specific issues—such as on the industrial dispute at Grangemouth oil refinery or over the electrification of the Welsh Valley railways—particularly if they were cross-cutting or involved legislation. Finally, the Cabinet Office “would usually only get involved if there was a particular need to do so—for example, if an issue was proving particularly difficult to resolve and get a common position on in Whitehall, or if it had implications for the wider constitutional settlement.”¹⁹⁴

Formal and informal arrangements

142. As with the higher-level, more political structures of the JMC, a balance needs to be found between informal interactions and formal structures at the level of the civil service. Lindsey Whyte, Deputy Director in charge of Devolution at HM Treasury, said that: “I would characterise the current situation by saying that the vast majority of our interaction is informal, and also bilateral with individual devolved administrations.”¹⁹⁵
143. This echoes what we found in our 2002 report: that inter-governmental interactions at all levels were frequent, bilateral and “highly informal”, and that they relied on goodwill between administrations.¹⁹⁶
144. As with ministerial and head-of-government relationships, contact between civil servants through formal forums can help to foster and maintain good inter-personal relationships. The Institute for Government told us that:

¹⁹⁰ [Q 20](#) (Dr Philip Rycroft)

¹⁹¹ Written evidence from the Scottish Government ([IGR0015](#)); [Q 60](#)

¹⁹² [Q 2](#) and [Q 4](#)

¹⁹³ [Q 68](#)

¹⁹⁴ [Q 20](#)

¹⁹⁵ [Q 70](#)

¹⁹⁶ Constitution Committee, *Devolution*, para 23

“while good relationships are vital, our research also found that the existence of regular forums for discussion of particular policy issues can be a useful way to build such relationships. ... So our conclusion is that well-designed formal mechanisms in areas where there is a clear need for intergovernmental cooperation or consultation can help to build the informal relationships and networks that bring wider benefits.”¹⁹⁷

145. Mr Pendlebury gave an example of the form such formal structures could take, and the extent to which the UK Government and devolved administrations also work with regional and local authorities for effective delivery:

“I chair the UK Roads Liaison Group, which sounds a bit boring but it sets common standards of best practice for maintaining bridges, dealing with winter resilience and so forth. That has a series of structures and involves not just the devolved administrations but Scottish, Welsh and English local government, Transport for London, the Highways Agency et cetera. Two of the four boards are chaired by devolved administration personnel. Our delegate to the World Road Association is from Transport Scotland, and we meet about quarterly. That is a very fertile exchange. We say, ‘This is what we are doing in our different areas’.”¹⁹⁸

146. **We welcome this and other examples of formal structures¹⁹⁹ which lead to regular and defined engagement between UK government departments and the devolved administrations. These are useful means by which to build relationships between departments which are not dependent on individuals who may move jobs or retire.**
147. **As we have previously noted, the changing devolution settlements will result in a more complex arrangement of devolved and reserved policy areas, particularly in areas such as welfare and tax policy. In the light of these changes, we recommend that the Government consider whether more formal structures are needed at a civil service level to manage these increasingly complex inter-governmental relations—particularly in the context of those departments which are most affected by the changes.**

An inconsistent approach

148. One of the common concerns we heard was that UK Government departments were inconsistent in their knowledge of, and interactions with, the devolved administrations.²⁰⁰ Professor Alan Page told us that:

“The essential weakness of the current arrangements lies not so much in the framework within which intergovernmental relations are conducted, although that stands in need of revision, as in the fact intergovernmental

¹⁹⁷ Written evidence from the Institute for Government ([IGR0011](#)); see also [Q 57](#) (Bruce Crawford MSP).

¹⁹⁸ [Q 69](#)

¹⁹⁹ [Q 68](#) (John Robbs)

²⁰⁰ See [Q 1](#) (Professor Richard Wyn Jones)

relations are for the most part left to the uncoordinated efforts of Whitehall departments.”²⁰¹

149. The Institute for Government told us that “There is also a wider frustration at the devolved level about the variable performance of Whitehall in consulting and engaging the devolved governments when developing policy that affects devolved areas.”²⁰² Professor Nicola McEwen described the variation between departments as “probably the biggest hindrance to positive working relations”.²⁰³

150. The First Minister of Wales told us that his experience of UK government departments was “variable”. He explained:

“With some departments the relationship is very good and we are able to have open communications without difficulty. With others, we are not. The Department of Health is the biggest problem from our point of view. We have been the subject of leaks from that department on more than one occasion. I think it is fair to say that there is no level of trust at all with it at the moment. It would not be fair to say that about other Whitehall departments at all. They take an entirely different and professional view on this.”²⁰⁴

151. He added that UK departments sometimes failed to recognise the differences between the devolved administrations:

“There is also a difference in the perception of devolution in Scotland and in Northern Ireland as compared to Wales. It is not always case—and the Home Office ... is an example of this—that there are different devolved structures in Wales. Again, it is not a Whitehall failing collectively; it is an issue with some departments, not so much with others. Their awareness of Scottish devolution and its structures tends to be far better than their awareness of Wales.”²⁰⁵

152. This inconsistency was recognised by Dr Rycroft, who noted that “The referendum campaign shone a very harsh light, if you like, on the understanding of devolution and the relationship between different parts of the UK and Whitehall.”²⁰⁶ He said:

“For a lot of departments, doing devolved business is absolutely essential and mainstream for operations, and you will find there is a very good, deep understanding across those departments of how to manage that business with the devolved administrations. For other departments and for bits of other departments, their interaction with the devolved administrations may be more ad hoc and more infrequent.”²⁰⁷

²⁰¹ Written evidence from Professor Alan Page ([IGR0002](#))

²⁰² Written evidence from the Institute for Government ([IGR0011](#))

²⁰³ [Q 11](#)

²⁰⁴ [Q 51](#)

²⁰⁵ [Q 51](#)

²⁰⁶ [Q 24](#)

²⁰⁷ [Q 20](#)

153. Amongst the general inconsistency of knowledge and behaviour of UK departments, the First Ministers of Wales and Northern Ireland both highlighted the lack of consultation around reforms to secondary-school qualifications. The First Minister of Northern Ireland also told us that his administration had first heard about the changes to GCSEs when they were reported in the press,²⁰⁸ while Mr Jones referred to it as one example of “where we have had to adapt our policies as a result of a sudden announcement that is made in England.”²⁰⁹
154. There are a number of factors that may influence the spread of knowledge and experience across Whitehall. We take these in turn.

Guidance

155. The day-to-day relationships between individual government departments and agencies and the devolved administrations are governed by the Memorandum of Understanding, an array of concordats and a series of UK Government ‘devolution guidance notes’.²¹⁰ As described above, the MOU is the key inter-governmental relationship agreement between the UK Government and the three devolved administrations and has been updated several times since the resumption of JMC plenary meetings in 2008.
156. At a departmental level, the concordats serve a similar purpose, setting out in a non-legally-binding way how the signatory UK Government department and devolved administration will interact. This Committee, in our 2002 report, recommended that “concordats be made for a fixed term only” and should be renegotiated at the end of that term.²¹¹ The then Government stated that the concordats were “already reviewed on a regular basis”.²¹² This assertion has not been borne out in the long term.
157. Many of the concordats with the Scottish Government date from the early years of devolution, despite departmental restructuring and the passage of the Scotland Act 2012.²¹³ The Welsh Government’s concordats, by contrast, have been updated since the passage of the Government of Wales Act 2006.²¹⁴
158. Professor Page, from the University of Dundee, was concerned about how the lack of attention to the Scottish concordats reflected on inter-governmental relations more generally:

“The revision of the framework needs to extend to bilateral concordats between individual Whitehall departments and the devolved administrations, which in the Scottish case are seriously out of date,

²⁰⁸ [Q 88](#)

²⁰⁹ [Q 43](#)

²¹⁰ The latter are available on the UK Government website: Devolution guidance notes, <https://www.gov.uk/government/publications/devolution-guidance-notes> [accessed 12 March 2015]

²¹¹ Constitution Committee, *Devolution*, para 43

²¹² Deputy Prime Minister, *Government Response*, para 8

²¹³ Concordats between Scottish Ministers, United Kingdom Government and the Cabinet of the National Assembly of Wales: <http://www.gov.scot/About/Government/concordats> [accessed 23 February 2015]

²¹⁴ Concordats: <http://wales.gov.uk/about/organisationexplained/intergovernmental/concordats?lang=en> [accessed 23 February 2015]

many of them not having been revised since they were first entered into. ... The fact that they have not been ‘regularly reviewed’ ... speaks to a more general neglect of intergovernmental relations since the current arrangements were first put in place.”²¹⁵

159. Mr Pendlebury told us that:

“the DfT concordats are a bit long in the tooth ... we ought to engage with our colleagues around the UK, particularly in the light of the changes that are happening, and refresh them a little. The fact that they have not been refreshed probably signifies that there is quite a bit of dust gathering on them.”²¹⁶

160. Concordats should be kept up to date in case they are needed to facilitate good relations.²¹⁷ Moreover, the act of reviewing them can be constructive in itself. As Defra official John Robbs told us,

“The process of clarifying areas of different interpretation can be very useful, and every now and again they need to be reviewed to make sure that they are working. Once you have written them and got that in your head, the vital thing, of course, is the working relationships and practice, not constantly referring to what is written down on paper.”²¹⁸

161. The same principle applies to the UK Government’s devolution guidance notes. These have been referred to as “rather important parts of the knitting that make the devolved UK work”.²¹⁹ Mr Pendlebury told us that, for an official looking to understand his or her department’s relationships with devolved administrations:

“the Cabinet Office devolution guidance is better [than the concordats]. It is written in plain English and has handy hints on how to do some fairly common-sense things, so I would guide people towards that. In DfT, we have on our own departmental intranet guidance on relations with the devolved administrations”.²²⁰

Mr Robbs also told us that Defra have their own guidance available to staff.²²¹

162. We recommend that the concordats setting out relations between UK government departments and the devolved administrations be reviewed at least once during each Parliament and, in particular, each time there is a change in the devolution settlements. Devolution guidance notes should also be reviewed and updated regularly.²²²

²¹⁵ Written evidence from Professor Alan Page ([IGR0002](#))

²¹⁶ [Q 74](#)

²¹⁷ See Constitution Committee, *Devolution*, para 39.

²¹⁸ [Q 74](#)

²¹⁹ Alan Trench, ‘New Welsh Devolution Guidance Notes’, Devolution Matters blog, 11 June 2012: <https://devolutionmatters.wordpress.com/2012/06/11/new-welsh-devolution-guidance-notes/> [accessed 23 February 2015]

²²⁰ [Q 74](#)

²²¹ [Q 74](#)

²²² See written evidence from the Institute for Government ([IGR0011](#))

163. As noted above (paragraph 153), the devolved administrations have expressed concerns about occasions on which there was no previous consultation or advance warning of UK Government policy changes which had an impact on the devolved administrations. **Departmental concordats should set out clearly how the devolved administrations should be consulted on, and alerted to, forthcoming changes to UK Government policy that might have an effect on the devolved administrations.**

Experience and expertise among civil servants

164. While experience and expertise is liable to vary among civil servants depending on whether their policy or delivery areas are devolved or reserved, we also heard from Professor Wyn Jones that there was a “quite striking lack of expertise at a senior level in Whitehall in terms of the devolved territories.”²²³ The First Minister of Wales agreed that this was a problem: the situation was not as bad as it once was, he said, but was “still far from perfect”. He also felt that awareness in Whitehall of Scottish devolution was better than of the Welsh settlement and institutions.²²⁴ This expertise may come from day-to-day working with devolved administrations, but direct experience of working in those administrations can be invaluable.
165. We heard that direct experience of working in devolved administrations is rare among Whitehall civil servants: Dr Rycroft (who previously worked in the then Scottish Executive) told us that it had decreased in the years since 1999.²²⁵ The First Minister of Wales agreed,²²⁶ while the First Minister of Northern Ireland noted that “it is true that there will be relatively few of those in officialdom who have sojourned in Northern Ireland or other devolved regions, so their knowledge comes from reading a brief, which can never pick up the nuances of issues in the same way.”²²⁷
166. Officials from other UK Government departments described a varied picture. Mr Pendlebury said that none of his director-level colleagues at the Department for Transport had worked in the devolved administrations, but there were secondments for specific projects. Similarly Mr Robbs told us that there were a “relatively small number” of secondments in Defra and its arm’s length bodies, primarily at a working level. Lindsey Whyte told us that secondments out of HM Treasury to devolved administrations, as well as to other departments, the private sector and international institutions, were encouraged.²²⁸
167. Dr Rycroft told that the benefits of this kind of experience went beyond an understanding of the interactions of devolved and central government:

“there is enormous value in people understanding how work is transacted in those different environments [the devolved administrations]. ... Whitehall has a huge amount to learn from how the

²²³ [Q 3](#)

²²⁴ [Q 51](#)

²²⁵ [Q 25](#)

²²⁶ [Q 51](#)

²²⁷ [Q 93](#)

²²⁸ [Q 75](#)

devolved administrations operate. It is a different sort of challenge. Par for par, officials in devolved administrations are dealing with a far wider span of policy than their counterparts in Whitehall, and that has enormous benefits for the way they think and deal with policy and relate to the world out there. Whitehall has a huge amount to learn about that.”²²⁹

168. Given the importance of building up good relationships, Dr Rycroft also stressed the benefits of “finding opportunities for officials [from UK departments and devolved administrations] to learn together”, such as on training courses.²³⁰
169. Each government department has a senior official responsible for devolution. Dr Rycroft chairs a monthly meeting of these director-level officials to share best practice in day-to-day engagement with devolved administrations.²³¹
170. It is already the case that a lack of experience of the devolved administrations is affecting inter-governmental relations in the UK. This problem will only grow as further powers are devolved. Over time, the level and breadth of engagement between government departments and the devolved administrations will continue to expand. To prepare for this, **we recommend that the Government sets out a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations.** Any work to improve exchanges of officials should include the Northern Ireland Civil Service, as well as taking place within the Home Civil Service that supports the UK, Welsh and Scottish Governments.
171. It is important that effective training on dealing with devolved administrations is available for civil servants. The National School of Government ran courses for officials on ‘Devolution in action’ and ‘Working with devolved administrations’,²³² but closed in 2012. **We would welcome clarification from the Government as to how this training is now provided.**

²²⁹ [Q 25](#)

²³⁰ [Q 25](#)

²³¹ [Q 24](#); see also [Q 74](#) (Graham Pendlebury)

²³² Letter from Principal and Chief Executive, National School of Government, to Lord Norton of Louth, 30 January 2007: <http://www.publications.parliament.uk/pa/ld200607/ldlwa/070129wa1.pdf> [accessed 24 February 2015]

CHAPTER 5: TRANSPARENCY AND PARLIAMENTARY SCRUTINY

172. At present, parliamentary scrutiny of inter-governmental relations is sporadic and ineffective. This is concerning. As Professor Michael Keating told us, inter-governmental relations “tends to downgrade the role of parliaments and enhance the power of the executive.”²³³ This makes it all the more important that there is effective, and consistent, scrutiny of the interactions between governments in the UK. As the Commons Scottish Affairs Committee noted before the 2010 general election, “it is of great importance for the wellbeing of the people of Scotland that there is constructive and effective communication between the Scottish Executive and the United Kingdom Government”; they recommended “that our successor Committee in the new Parliament continue to scrutinise relations between the two governments”.²³⁴
173. Effective scrutiny of inter-governmental relations requires both greater transparency than currently exists, and the necessary structures and desire in Parliament and the devolved legislatures to scrutinise those relationships.

Transparency

174. The greatest challenge faced by parliamentarians wishing to scrutinise inter-governmental relations is a lack of transparency. As Professor Page told us, “intergovernmental relations are typically conducted behind a veil of secrecy which is inimical to effective parliamentary scrutiny.”²³⁵ This view was echoed by other witnesses: Mr Crawford said, “Another question is whether the current system of intergovernmental relations is transparent. Does it allow people to understand what is going on? I do not think it does.”²³⁶ Mr Melding agreed that the system was “fairly murky”,²³⁷ while Professor McEwen stated that the system was “so hidden and lacking in transparency just now that it will be very difficult for the parliaments and the electorate to be able to understand who is responsible for what.”²³⁸
175. Alan Trench argued:
- “Accountability when it comes to intergovernmental relations remains problematic. Legislators know little about what goes on between governments, and their limited knowledge makes it hard if not impossible for them to scrutinise their government effectively or hold it to account.”²³⁹
176. If parliaments and assemblies across the UK are to scrutinise inter-governmental relations effectively, there needs to be greater transparency of interactions at both ministerial and official level.

²³³ Written evidence from Professor Michael Keating ([IGR0003](#))

²³⁴ Scottish Affairs Committee, *Scotland and the UK*, para 8

²³⁵ Written evidence from Professor Alan Page ([IGR0002](#))

²³⁶ [Q 58](#)

²³⁷ [Q 35](#)

²³⁸ [Q 15](#)

²³⁹ Alan Trench ‘Intergovernmental relations and better devolution’, p. 18

Joint Ministerial Committee and formal bilateral meetings

177. Little is currently made public about the meetings of the JMC or reported to Parliament. There is little information made available ahead of JMC meetings, even at the plenary level. The date of the next meeting is not announced after a plenary JMC meeting, although there seems to be a convention that they are held in the last quarter of the year, while JMC(E) meets prior to European Council meetings. When a JMC plenary meeting is announced, usually shortly before the meeting, very little is officially announced about what is on the agenda.
178. The Secretary of State for Scotland told us that “if I really want to know what is going to be discussed at a Joint Ministerial Committee I make sure that I listen to ‘Good Morning Scotland’ at eight o’clock on the day of the meeting. That is where I will generally find out.”²⁴⁰ The absence of any official notice of the agenda is concerning and this lack of transparency makes subsequent scrutiny of the meeting difficult. Mr Carmichael acknowledged that “some of the structures need to catch up with the reality”.²⁴¹
179. Once the meeting is over, openness is still lacking.²⁴² The communiqués published after plenary JMC meetings are bland and uninformative,²⁴³ giving headline topics of discussion and broad agreements on the benefits of co-operation. The JMC’s annual reports similarly contain relatively little information, comprising “about a page and a half of very generously spaced text that says nothing at all, other than the items that were on the agenda.”²⁴⁴ For example, the 2013–14 annual report tells us that, “Major cultural and sporting events were reviewed with Ministers acknowledging the benefits of joint working to ensure the continued success of such events.”²⁴⁵ The reports also give the dates of European and Domestic sub-committee meetings and the Finance Ministers’ Quadrilaterals held since the last plenary meeting. Similarly bland communiqués are published after meetings of formal bilateral forums, although the minutes of the first UK-Scottish Joint Exchequer Committee, and the agenda of the second, were published through a Scottish Parliament committee.²⁴⁶
180. These reports do very little to improve the openness, transparency and accountability of inter-governmental relations. There is a balance to be struck between openness and the confidentiality required to undertake effective inter-governmental discussions. Indeed, while the First Minister of Wales agreed that the communiqués were “bland”, he noted that “the reality is, of course, that once all of us leave JMC (Plenary) we tell people what was discussed in there anyway”. He thought that “a balance can be struck ... I

²⁴⁰ [Q 80](#)

²⁴¹ [Q 80](#)

²⁴² See Smith Commission, *Report*, para 30(2).

²⁴³ [Q 50](#) (Carwyn Jones AM)

²⁴⁴ [Q 15](#) (Professor Nicola McEwen)

²⁴⁵ Joint Ministerial Committee annual report 2013–14, 5 February 2015: <http://www.northernireland.gov.uk/joint-ministerial-committee-annual-report-2013-2014> [accessed 24 February 2015]

²⁴⁶ See attachment to letter from John Swinney MSP to Kenneth Gibson MSP, 4 September 2012: http://www.scottish.parliament.uk/S4_PublicAuditCommittee/Meeting%20Papers/Joint_Exchequer.pdf [accessed 25 February 2015]

think that transparency would be helpful certainly not just for the legislatures but for the public understanding of what happens in JMC.”²⁴⁷

181. One improvement would be to publish more detail about the discussions in JMC meetings. The balance of openness and confidentiality is most pertinent here, with greater reporting potentially risking either greater grandstanding in order to get an administration’s position on the record or a reluctance to put forward potentially controversial views or information.²⁴⁸ The First Minister of Wales suggested that minutes of meetings of the JMC could be published, along the lines of Welsh Cabinet minutes, which are made publicly available.²⁴⁹ These minutes list the topics and key points of Cabinet discussions and, where relevant, occasionally include papers considered in those meetings.²⁵⁰
182. Even in its current form, the JMC annual report does not appear to be a priority for publication: the 2013–14 annual report was agreed at the December 2014 plenary meeting but appears to have only been published in February 2015.²⁵¹ At the time of writing it was not available through the UK Government website.²⁵² Annual reports are not placed before Parliament as a matter of course; any information given to Parliament about JMC meetings tends to come as a result of questions from MPs and peers. While the annual report for 2011–12 was deposited in the House of Commons library at the time,²⁵³ the 2009–10 and 2012–13 reports were not deposited until December 2014, and then only in response to a written question; the 2010–11 report was omitted without any reason given.²⁵⁴
183. The communiqué for the December 2014 meeting of the JMC notes that “Ministers also discussed ways in which their respective Parliaments and Assemblies could be kept informed of the work of the Joint Ministerial Committee”. That there are no details of any practical measures discussed or agreed is indicative of the paucity of information made available from these meetings, but we welcome this sign that the issue is receiving the consideration it deserves.
184. **Greater transparency around the Joint Ministerial Committee is vital. A balance needs to be maintained between confidentiality and openness, but the current lack of information is not acceptable. We recommend that the dates, venues and headline agenda items of Joint Ministerial Committee meetings be announced further in advance.**
185. **We recommend that the Government consider what additional information could be published following Joint Ministerial Committee**

²⁴⁷ [Q 50](#)

²⁴⁸ [Q 58](#) (Bruce Crawford MSP)

²⁴⁹ [Q 50](#)

²⁵⁰ See examples at Cabinet Meetings: <http://gov.wales/about/cabinet/cabinet-meetings/?lang=en> [accessed 24 February 2015]

²⁵¹ Joint Ministerial Committee annual report 2013–14, 5 February 2015: <http://www.northernireland.gov.uk/joint-ministerial-committee-annual-report-2013-2014> [accessed 24 February 2015]

²⁵² As of the date on which this report was ordered to be printed, 18 March 2015

²⁵³ House of Commons Deposited Paper ([DEP2012-1646](#))

²⁵⁴ House of Commons Written Answer [216858](#), Session 2014–15

meetings and meetings of bilateral forums such as the Joint Exchequer Committee, and in the Joint Ministerial Committee annual report. This information should, at the very least, be published promptly and laid in the libraries of both Houses of Parliament.

186. **Were the Joint Ministerial Committee framework to be placed on a statutory footing, Parliament should ensure that the legislation requires adequate information to be published to enable effective parliamentary scrutiny of inter-governmental relations.**

Civil service

187. We have already recommended that government departments regularly update their guidance for dealing with the devolved administrations. As the Institute for Government noted, this would “enable external scrutiny”.²⁵⁵ Yet appropriate guidance is only part of what is necessary. If Parliament is to scrutinise the effectiveness of inter-governmental relations at a departmental level, departments must in addition be clear about their performance and report at regular intervals on their interactions with the devolved administrations.
188. **In addition to ensuring that formal guidance notes are regularly updated, we recommend that UK Government departments detail in their annual reports which areas of their work are devolved and which are reserved. They should also set out the forums and bodies through which they engage with the devolved administrations, reporting at a high level on their activity over the past year. This would provide a solid base on which parliamentary scrutiny of bilateral relations between government departments and the devolved administrations might take place.**

Committee scrutiny

Current committee structures

189. There does not appear to be any consistent scrutiny of inter-governmental relations by the committees of the UK Parliament.²⁵⁶ Mr Davies told us that although the Welsh Affairs Committee “will try to scrutinise how well the relationships are working, it is something that often tends to come out in the course of other inquiries that we are doing.”²⁵⁷ While the Welsh Affairs and Scottish Affairs Committees both scrutinised inter-governmental relations in reports published in early 2010,²⁵⁸ Mr Davidson told us the Scottish Affairs Committee, which he chairs, was “focused on outputs and outcomes and particular issues rather than examining the entrails of the machinery just for its own sake”.²⁵⁹ Meanwhile the Northern Ireland Affairs Committee’s chair, Laurence Robertson MP, told us they had “never scrutinised the process, we

²⁵⁵ Written evidence from the Institute for Government ([IGR0011](#))

²⁵⁶ Professor Alan Page told us there was also little scrutiny in the Scottish Parliament: written evidence ([IGR0002](#))

²⁵⁷ [Q 35](#)

²⁵⁸ Welsh Affairs Committee, *Wales and Whitehall*; Scottish Affairs Committee, *Scotland and the UK*.

²⁵⁹ [Q 57](#)

have never scrutinised inter-governmental relations”, but that other scrutiny had “detected questionable relations” between the UK Government and the Northern Ireland Executive and Assembly.²⁶⁰

190. As we have previously noted, the vast majority of inter-governmental relations take place between individual governments departments and the devolved administrations, so any process of scrutiny also needs to focus on UK Government departments other than the territorial offices. Mr Davies told us that his committee sometimes struggled to scrutinise those interactions: “there are some Ministers who, as the chair of the Welsh Affairs Select Committee, we can go and talk to about issues that might be partially devolved. There are others who will have absolutely nothing to do with us at all and, in fact, will routinely refuse to appear before Select Committees”.²⁶¹
191. It may be that departmental select committees in the House of Commons are best placed to ensure regular scrutiny of these relationships, complementing the work of their colleagues scrutinising the territorial offices.²⁶² Earlier recommendations in this report should help increase the transparency of those relationships to aid that scrutiny.

Proposed new committee

192. Other suggestions have been made to improve parliamentary scrutiny of inter-governmental relations. The Commission on the consequences of devolution for the House of Commons, also known as the McKay Commission, concluded that a Devolution Committee of the House of Commons could hold “UK ministers to account for their responsibilities in connection with devolution and their relations with the devolved administrations.”²⁶³ Some of our witnesses supported such a proposal,²⁶⁴ while Mr Davies told us that “I am slightly going to come down against it, but if it were set up I have no doubt that I would be first in the queue to try to get involved and take part in it. It could have some advantages, I will say that.”²⁶⁵ Professor Nicola McEwen was sceptical of such a move, suggesting that the creation of a single specialist committee looking at devolution could mean that other committees were less inclined to scrutinise inter-governmental relations as part of their work.²⁶⁶

Cross-parliamentary co-operation

193. Inter-governmental relations do not, of course, only involve the UK Government and Parliament. The committees and commissions which have scrutinised devolution and inter-governmental relations in recent years have promoted increased co-operation between the UK’s legislatures. The

²⁶⁰ [Q 57](#)

²⁶¹ [Q 32](#)

²⁶² [Q 15](#) (Professor Nicola McEwen)

²⁶³ The McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons*, March 2013, para 275: <http://www.futureukandscotland.ac.uk/sites/default/files/papers/McKay%20Commission.pdf> [15 January 2015]

²⁶⁴ [Q 15](#) (Professor Alan Page) and [Q 42](#) (David Melding AM); written evidence from the Institute for Government ([IGR0011](#))

²⁶⁵ [Q 42](#)

²⁶⁶ [Q 15](#) (Professor Nicola McEwen)

Calman Commission recommended that, “A standing joint liaison committee of the UK Parliament and Scottish Parliament should be established to oversee relations and to consider the establishment of subject-specific ad hoc joint committees.” The Commission also recommended measures to improve the capacity for committees in the two parliaments to work together.²⁶⁷

194. We note that House of Commons Standing Orders already allow the Welsh Affairs Committee to have “members of any specified committee of the National Assembly for Wales ... attend and participate in its proceedings”.²⁶⁸ This has resulted in some co-operative working but no regular use is made of this facility.²⁶⁹ There is no such provision for the Scottish Affairs or Northern Ireland Affairs Committees.
195. In addition to increasing bilateral co-operation, a committee comprising members of all four legislatures could also be considered as a mechanism for scrutinising the quadrilateral elements of the current devolution settlements.²⁷⁰
196. There may be ways to do something similar without creating new formal structures. Mr Robertson told us that he was already hoping to make the British-Irish Parliamentary Assembly, which he chairs, more “analytical and politically active”.²⁷¹ In the absence of a full joint committee, there may be room for multilateral engagement by the chairs and convenors of the existing committees concerned with devolution and inter-governmental relations. Mr Melding suggested the cross-parliamentary European Chairs of the United Kingdom as a precedent; this is a “very effective” biannual meeting of chairs of European Union scrutiny committees from across the UK.²⁷²
197. We recognise that relations between UK parliamentary committees and the devolved legislatures vary; like inter-governmental relations the level of co-operation depends on personal and institutional goodwill. Mr Davies and Mr Melding were clear that they felt they could “work together” to perform a joint scrutiny role, and Mr Davies said he found it “perfectly easy enough to go and visit the Welsh Assembly and do so on a regular basis.”²⁷³ Mr Davidson, in contrast, told us that while on a committee visit to Scotland, “The Scottish Parliament would not allow us [the Scottish Affairs Committee] in the building”.²⁷⁴ The committee chairmen to whom we spoke told us that the staff of committees in the UK Parliament and devolved legislatures work well together.²⁷⁵ Despite the different relationships,

²⁶⁷ Calman Commission, *Serving Scotland better*, recommendations 4.5–4.6; see also Smith Commission, *Report*, para 29

²⁶⁸ Standing Orders of the House of Commons (2013), [standing order 137A\(3\)](#)

²⁶⁹ [Q 42](#)

²⁷⁰ Justice Committee, *Devolution*, paragraph 124; see also written evidence from the Institute for Government ([IGR0011](#))

²⁷¹ [Q 63](#)

²⁷² [Q 34](#)

²⁷³ [QQ 41 and 32](#)

²⁷⁴ [Q 57](#)

²⁷⁵ [Q 41](#) (David TC Davies MP and David Melding AM) and [Q 62](#) (Bruce Crawford MSP and Laurence Robertson MP)

however, all parliaments and assemblies in the UK share a common need to ensure that there are effective relations between the different administrations across of the UK.

198. **We hope that common ground can be found on which to base some form of cross-parliamentary scrutiny of inter-governmental relations, although we make no specific recommendations as to how this might best be achieved. That is a matter for each parliament or assembly and its relevant committees.**

Wider parliamentary scrutiny

199. Earlier in this report we referred to the importance of inter-governmental relations to strengthening and providing constitutional stability to the Union. As part of this process, it is essential that Parliament scrutinise these relationships on a regular basis. Mr Melding told us that:

“I think at Westminster you need to take control again of where the UK constitution is going. ... We need a vision for a reformed, decentralised UK constitution for a multinational union. We have always been that, but it has now become political as well as cultural.”²⁷⁶

To take on this role, Parliament should be prepared to discuss devolution and inter-governmental relations on a UK-wide scale, beyond the scrutiny of individual committees.

Regular statements and debates

200. There have been a number of suggestions to improve parliamentary scrutiny. The Calman Commission recommended an annual ‘State of Scotland’ debate.²⁷⁷ Alternatively a single debate could be held on the Union and relations between the four administrations.²⁷⁸ Mr Davies felt “there is an argument for perhaps having one session per year for Wales, Scotland and Northern Ireland, perhaps even for England as well, or one session just to discuss relationships overall, or all four regions together”.²⁷⁹
201. Improved reporting of the JMC and other formal structures of inter-governmental relations would assist Parliament in holding any such debate. The publication of a more substantial JMC annual report following its plenary meeting would provide a suitable time and related material for an annual debate. In our previous report on the subject, we recommended a statement by the Prime Minister after each JMC plenary meeting. The then Government felt this was unnecessary because a press release was issued—they did, however, commit to written statements after plenary meetings.²⁸⁰
202. **We repeat the recommendation we made in 2002: the Prime Minister should make an annual statement to the House of Commons after the plenary meeting of the Joint Ministerial Committee regarding that**

²⁷⁶ [Q 39](#)

²⁷⁷ Calman Commission, *Serving Scotland better*, recommendation 4.4

²⁷⁸ [Q 36](#) (David Melding AM)

²⁷⁹ [Q 39](#)

²⁸⁰ Constitution Committee, *Devolution*, para 37; Office of the Deputy Prime Minister, *Government response*, para 7

meeting and the conduct of inter-governmental relations in the United Kingdom generally over the previous 12 months.

203. Another innovation that could aid scrutiny and debate is an annual ‘audit’ of inter-governmental relations. The Silk Commission recommended that the National Audit Office and the Wales Audit Office jointly produce an audit on relations between the UK and Welsh governments.²⁸¹ This idea was welcomed by some of our witnesses: Professor Wyn Jones thought it was “a very simple suggestion that I think has a lot of merit”.²⁸² Similarly, Mr Melding thought this might be a helpful way “of getting information that does not necessarily come from one of the Governments,” since “nearly all the information comes from one of the Governments, and it is not in their interest to present things that shed light on some things that have not perhaps been satisfactorily dealt with.”²⁸³ **We support proposals for an independent annual audit of inter-governmental relations.**

Parliamentary debates and devolved matters

204. In order to enable Parliament to hold a wide-ranging debate on inter-governmental relations, it may be necessary for it to reconsider its self-denying ordinance not to debate matters within the competence of the devolved administrations.²⁸⁴ This was recommended by the Calman Commission, alongside the holding of an annual Scotland debate.²⁸⁵
205. Several of our witnesses supported ending the ordinance. Mr Davidson told us that:

“Now, in Westminster, we should move away from our self-denying ordinance, which arose for understandable reasons. There was a feeling at the beginning that if Westminster continued to debate devolved issues, we would perhaps subordinate or undermine the Scottish Parliament ... Therefore we had to allow the Scottish Parliament to grow and develop free of advice from what would be seen as big brother or sister. I think that day is passed.”²⁸⁶

206. Mr Robertson concurred: Parliament, he said “should debate devolved issues, because they affect the whole of the United Kingdom.”²⁸⁷ Mr Davies told us that “within Parliament itself I am absolutely unable to raise issues about the health service or education or anything that is devolved. I feel that that sometimes lets down my constituents”.²⁸⁸
207. Former Northern Ireland Executive minister the Rt Hon the Lord Emye noted that the devolved administrations were not held accountable by the UK Parliament for their funding: “There seems to me to be no

²⁸¹ Silk Commission, *Empowerment and Responsibility*, recommendation R.5

²⁸² [Q 2](#)

²⁸³ [Q 40](#)

²⁸⁴ House of Lords, *Companion to the Standing Orders* (2013), [paragraph 6.18](#); House of Commons [Resolution of 25 October 1999](#), published in *Standing Orders of the House of Commons* (2013)

²⁸⁵ Calman Commission, *Serving Scotland better*, recommendation 4.4

²⁸⁶ [Q 61](#)

²⁸⁷ [Q 61](#)

²⁸⁸ [Q 35](#)

accountability for these funds and Parliament gets no feedback on where this money goes or what the outcomes of the expenditures are. This is a mistake.”²⁸⁹

208. We recognise that removing the self-denying ordinance may raise other issues, in particular that a debate on a devolved matter would have to be responded to by a Minister who had no responsibility for the matter under discussion, or left without a front-bench response. **We recognise these administrative difficulties, but in view of the increasing range of policy areas currently devolved and due to be devolved and given the likely expansion of shared or concurrent powers, the prohibition on debating matters for which responsibility has been devolved may no longer be appropriate.**

²⁸⁹ Written evidence from Lord Empey ([IGR0012](#))

CHAPTER 6: INTER-GOVERNMENTAL RELATIONS, DEVOLUTION AND THE FUTURE OF THE UNITED KINGDOM

209. As we stated at the start of the Introduction to this report, inter-governmental relations are a necessary part of multi-level governance, such as we have in the UK. The shape of these relations is dependent on the shape of the different devolution settlements, and therefore needs to adapt to significant changes in those settlements.
210. Through the UK Parliament, successive governments have created and shaped the devolution settlements. They are now in a state of flux. They need to be stabilized and given a coherent rationale. It is for the UK Government to find and commit to a way forward to achieve that stability and coherence, within a strong United Kingdom. We believe that, as the Smith Commission emphasised, inter-governmental relations have an important contribution to make to that objective. This Report seeks to help define that contribution. Until the current process of devolution reaches, if not a permanently settled state, at least a period of greater stability, the system of inter-governmental relations will need to keep on adapting to changes in the devolution settlements.
211. **As we note in our recent report *Proposals for the devolution of further powers to Scotland*, we consider that the Government, and the major UK-wide parties, need to devise and articulate a vision for the future of the state and its devolution settlements. An overarching vision for the future shape of the United Kingdom should be a stabilising force in its own right and would also allow for inter-governmental arrangements to be organised on a more stable basis.**
212. **In September 2014 the people of Scotland voted for the continuation of a devolved Scotland within the UK; the people of the UK as a whole need now to establish how the Union will work in future. An overarching strategy should reinforce the central position of the Union in our country's constitutional architecture, while recognising the benefits that devolution can bring. A comprehensive, pan-UK strategy is needed to provide a coherent basis for any discussions of further devolution and afford greater constitutional stability to the United Kingdom.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Introduction

1. In a practical sense, inter-governmental relations should enable administrations to work together in areas of mutual concern and interest, both where there are overlapping or inter-dependent competencies and on cross-border issues. (Paragraph 13)
2. Good inter-governmental relations are vital to the effective governance of the United Kingdom. The structures and practices of inter-governmental relations should serve to strengthen, and provide constitutional stability to, the Union. (Paragraph 16)

The formal structures of inter-governmental relations

3. We agree that the best relationships strike a balance between formal and informal elements. (Paragraph 41)
4. It is clear that, while some parts of the JMC structure work better than others, in the eyes of the devolved administrations at least the way the JMC system works at present is not satisfactory. The Domestic sub-committee, in particular, does not appear to serve a useful purpose. (Paragraph 50)
5. There are areas where formal bilateral mechanisms are appropriate, particularly in the areas of tax and welfare where the proposed devolution of powers to the Scottish Parliament significantly increases the complexity of the devolution settlement, as would proposed income tax powers for the National Assembly for Wales. (Paragraph 61)
6. Formal bilateral forums co-ordinating the operation of the complex fiscal devolution settlements should continue the work of the Joint Exchequer Committees and the new UK-Scotland Ministerial Working Group on Welfare. We recommend that these be brought within the auspices of the JMC structure, to ensure that their work is co-ordinated as part of a wider inter-governmental relations strategy. (Paragraph 62)
7. We recommend that the Cabinet Office, as part of its current review of inter-governmental structures, consider and report on how a revised Joint Ministerial Committee structure might best be used to facilitate joint policy-making and co-ordination. Provision should be made to ensure that policy initiatives can come from the devolved administrations, as well as from the UK Government. (Paragraph 70)
8. The Joint Ministerial Committee should be given the flexibility to create additional sub-committees on policy areas where regular four-way discussions are required, or temporary sub-committees on cross-cutting UK-wide issues that are beyond the scope of bilateral co-operation between devolved administrations and individual UK Government departments. (Paragraph 71)
9. The creation of such sub-committees should not be seen as an end in itself and the continued existence of each sub-committee should be regularly reviewed by the JMC plenary. (Paragraph 72)

10. The current dispute resolution procedure under the JMC has yet to be fully tested. We note, however, the concerns expressed by the devolved administrations that in the event of a dispute any decision is ultimately made by the UK Government. We do not believe that any form of external arbitration or mediation would be feasible, given that many disputes are likely to be essentially political in nature, but we recommend that the Cabinet Office, in co-operation with the devolved administrations, consider how the process of dispute resolution might be made more independent of the UK Government. (Paragraph 76)
11. The Government should consider whether the framework of inter-governmental relations should be set out in statute. Such a statute could set out the existence and membership of the Joint Ministerial Committee and its core sub-committees, along with the core principles governing relations between administrations. This legislation could provide a basic framework, within which the Memorandum of Understanding and departmental concordats would continue to detail how inter-governmental interactions would function in practice. (Paragraph 86)
12. Whether or not it becomes a sub-committee of the Joint Ministerial Committee, the Finance Ministers' Quadrilateral should be included as a permanent fixture in any statute setting out the framework of inter-governmental relations, with the added exposure to scrutiny that this should bring. (Paragraph 89)
13. We recommend that the Government consider tasking an independent body to provide the statistics and evidence on which to base decisions about the allocation of funding to the devolved administrations. (Paragraph 91)
14. The UK Government should continue to chair JMC meetings. However, to mitigate the perception of UK Government dominance the hosting of the JMC plenary and sub-committee meetings should be shared on a rotating basis. (Paragraph 101)
15. Although different administrations may hold different views about the future shape of the UK, all governments share an interest in ensuring that the current system of inter-governmental relations operates as effectively and fairly as possible. (Paragraph 105)

Ministerial responsibilities

16. We heard arguments from an administrative perspective in favour of creating a single Department and Secretary of State for Devolution, or for the Union. However, there are political reasons for retaining separate Secretaries of State and so long as the devolution settlements in the UK are asymmetrical there will need to be strong bilateral relationships between the UK Government and the devolved administrations with a Secretary of State as a key conduit and voice for each relationship. (Paragraph 125)
17. It is extraordinary that the Cabinet Minister stated to be responsible for devolution is not a member of the Cabinet Committee on that very subject. (Paragraph 127)
18. The UK's devolution settlements are of the highest constitutional significance. We are deeply concerned by the lack of central co-ordination

and oversight of the devolution settlements and of the minimal consideration given to the effect of devolution in one area of the UK on other areas, and on the Union as a whole. (Paragraph 133)

19. We repeat our recommendation that there should be a clear focus within Government for oversight of the constitution as a whole, beyond individual constitutional reform proposals, with a senior Cabinet minister identified as responsible for that work. (Paragraph 134)

The Civil Service and departmental interactions

20. We welcome examples of formal structures which lead to regular and defined engagement between UK government departments and the devolved administrations. These are useful means by which to build relationships between departments which are not dependent on individuals who may move jobs or retire. (Paragraph 146)
21. As we have previously noted, the changing devolution settlements will result in a more complex arrangement of devolved and reserved policy areas, particularly in areas such as welfare and tax policy. In the light of these changes, we recommend that the Government consider whether more formal structures are needed at a civil service level to manage these increasingly complex inter-governmental relations—particularly in the context of those departments which are most affected by the changes. (Paragraph 147)
22. We recommend that the concordats setting out relations between UK government departments and the devolved administrations be reviewed at least once during each Parliament and, in particular, each time there is a change in the devolution settlements. Devolution guidance notes should also be reviewed and updated regularly. (Paragraph 162)
23. Departmental concordats should set out clearly how the devolved administrations should be consulted on, and alerted to, forthcoming changes to UK Government policy that might have an effect on the devolved administrations. (Paragraph 163)
24. We recommend that the Government sets out a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations. (Paragraph 170)
25. We would welcome clarification from the Government as to how training on dealing with devolved administrations is now provided, following the closure of the National School of Government in 2012. (Paragraph 171)

Transparency and parliamentary scrutiny

26. Greater transparency around the Joint Ministerial Committee is vital. A balance needs to be maintained between confidentiality and openness, but the current lack of information is not acceptable. We recommend that the dates, venues and headline agenda items of Joint Ministerial Committee meetings be announced further in advance. (Paragraph 184)
27. We recommend that the Government consider what additional information could be published following Joint Ministerial Committee meetings and meetings of bilateral forums such as the Joint Exchequer Committee, and in the Joint Ministerial Committee annual report. This information should, at

the very least, be published promptly and laid in the libraries of both Houses of Parliament. (Paragraph 185)

28. Were the Joint Ministerial Committee framework to be placed on a statutory footing, Parliament should ensure that the legislation requires adequate information to be published to enable effective parliamentary scrutiny of inter-governmental relations. (Paragraph 186)
29. In addition to ensuring that formal guidance notes are regularly updated, we recommend that UK Government departments detail in their annual reports which areas of their work are devolved and which are reserved. They should also set out the forums and bodies through which they engage with the devolved administrations, reporting at a high level on their activity over the past year. This would provide a solid base on which parliamentary scrutiny of bilateral relations between government departments and the devolved administrations might take place. (Paragraph 188)
30. We hope that common ground can be found on which to base some form of cross-parliamentary scrutiny of inter-governmental relations, although we make no specific recommendations as to how this might best be achieved. That is a matter for each parliament or assembly and its relevant committees. (Paragraph 198)
31. We repeat the recommendation we made in 2002: the Prime Minister should make an annual statement to the House of Commons after the plenary meeting of the Joint Ministerial Committee regarding that meeting and the conduct of inter-governmental relations in the United Kingdom generally over the previous 12 months. (Paragraph 202)
32. We support proposals for an independent annual audit of inter-governmental relations. (Paragraph 203)
33. We recognise these administrative difficulties, but in view of the increasing range of policy areas currently devolved and due to be devolved and given the likely expansion of shared or concurrent powers, the prohibition on Parliament debating matters for which responsibility has been devolved may no longer be appropriate. (Paragraph 208)

Inter-governmental relations, devolution and the future of the United Kingdom

34. As we note in our recent report *Proposals for the devolution of further powers to Scotland*, we consider that the Government, and the major UK-wide parties, need to devise and articulate a vision for the future of the state and its devolution settlements. An overarching vision for the future shape of the United Kingdom should be a stabilising force in its own right and would also allow for inter-governmental arrangements to be organised on a more stable basis. (Paragraph 211)
35. In September 2014 the people of Scotland voted for the continuation of a devolved Scotland within the UK; the people of the UK as a whole need now to establish how the Union will work in future. An overarching strategy should reinforce the central position of the Union in our country's constitutional architecture, while recognising the benefits that devolution can bring. A comprehensive, pan-UK strategy is needed to provide a coherent

basis for any discussions of further devolution and afford greater constitutional stability to the United Kingdom. (Paragraph 212)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTERESTS

Members

Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Baroness Falkner of Margravine
Lord Goldsmith
Lord Lang of Monkton (Chairman)
Lord Lester of Herne Hill *
Lord Lexden
Lord Powell of Bayswater
Baroness Taylor of Bolton

* Lord Lester of Herne Hill was absent from the Committee for much of the inquiry and took no part in consideration of the report.

Declarations of interest

No interests relevant to the subject-matter of the report were declared by Members of the Committee.

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

Professor Stephen Tierney, Professor of Constitutional Theory at the University of Edinburgh, acted as specialist adviser for the inquiry. He declared no relevant interests.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/inter-governmental-relations> and available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Professor Richard Wyn Jones, University of Cardiff	<u>QQ 1–7</u>
**	Professor Nicola McEwen, University of Edinburgh	<u>QQ 8–16</u>
**	Professor Alan Page, University of Dundee	
*	Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office	<u>QQ 17–31</u>
*	Ms Helen MacNamara, Director, Economic and Domestic Affairs Secretariat, Cabinet Office	
*	Mr David Davies MP, Chairman of the House of Commons Welsh Affairs Committee	<u>QQ 32–42</u>
*	Mr David Melding AM, Chairman of the Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister	
*	Rt Hon. Carwyn Jones AM, First Minister of Wales	<u>QQ 43–54</u>
*	Dr Hugh Rawlings, Director, Constitutional Affairs, Assembly of Wales	
*	Mr Ian Davidson MP, Chairman of the House of Commons Scottish Affairs Committee	<u>QQ 55–63</u>
*	Mr Laurence Robertson MP, Chairman of the House of Commons Northern Ireland Affairs Committee	
*	Mr Bruce Crawford MSP, Convenor of the Devolution (Further Powers) Committee, Scottish Parliament	
**	Ms Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government	<u>QQ 64–66</u>
*	Mr Graham Pendlebury, Director of Local Transport, Department for Transport	<u>QQ 67–75</u>
*	Mr John Robbs, Director, Marine and Fisheries, Department for Environment, Food and Rural Affairs	
*	Ms Lindsey Whyte, Deputy Director in charge of Devolution, HM Treasury	
*	Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland	<u>QQ 76–86</u>

- * Rt Hon. Lord Wallace of Tankerness, Advocate-General for Scotland
- * Rt Hon. Peter Robinson MLA, First Minister of Northern Ireland [QQ 87–97](#)

Alphabetical list of all witnesses

- Professor Derek Birrell, Professor of Social Administration and Social Policy, University of Ulster [IGR0013](#)
- Dr Andrew Blick, Institute of Contemporary British History, King’s College London [IGR0006](#)
- * Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland (QQ 76–86)
- * Mr Bruce Crawford MSP, Convenor of the Devolution (Further Powers) Committee, Scottish Parliament (QQ 55–63)
- * Mr Ian Davidson MP, Chairman of the House of Commons Scottish Affairs Committee (QQ 55–63)
- * Mr David Davies MP, Chairman of the House of Commons Welsh Affairs Committee (QQ 32–42)
- Rt Hon. Lord Empey [IGR0012](#)
- Professor Jim D Gallagher, Nuffield College, University of Oxford [IGR0007](#)
- ** Ms Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government (QQ 64–66) [IGR0015](#)
- Institute for Government [IGR0011](#)
- * Rt Hon. Carwyn Jones AM, First Minister of Wales (QQ 43–54)
- Professor Michael Keating, University of Aberdeen [IGR0003](#)
- Mr Christopher Luke [IGR0005](#)
- * Ms Helen MacNamara, Director, Economic and Domestic Affairs Secretariat, Cabinet Office (QQ 17–31)
- ** Professor Nicola McEwen, University of Edinburgh (QQ 8–16) [IGR0010](#)
- * Mr David Melding AM, Chairman of the Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32–42)
- ** Professor Alan Page, University of Dundee (QQ 8–16) [IGR0002](#)
- * Mr Graham Pendlebury, Director of Local Transport, Department for Transport (QQ 67–75)
- * Dr Hugh Rawlings, Director, Constitutional Affairs, Assembly of Wales (QQ 43–54)

- * Mr John Robbs, Director, Marine and Fisheries,
Department for Environment, Food and Rural Affairs
(QQ 67–75)
- * Mr Laurence Robertson MP, Chairman of the House of
Commons Northern Ireland Affairs Committee
(QQ 55–63)
- * Rt Hon. Peter Robinson MLA, First Minister of Northern
Ireland (QQ 87–97)
- * Dr Philip Rycroft, Director General, Deputy Prime
Minister’s Office (QQ 17–31)
United Against Separation
- * Rt Hon. Lord Wallace of Tankerness, Advocate-General for
Scotland (QQ 76–86)
- * Ms Lindsey Whyte, Deputy Director in charge of
Devolution, HM Treasury (QQ 67–75)
- * Professor Richard Wyn Jones, University of Cardiff
(QQ 1–7)

IGR0009

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Constitution Committee, chaired by Lord Lang of Monkton, is conducting an inquiry on inter-governmental relations between the United Kingdom Government and the devolved administrations.

The Committee invites interested organisations and individuals to submit written evidence to the inquiry.

The deadline for written evidence submissions is 5pm on Thursday 15 January 2015. Public hearings will be held in January and early February 2015. The Committee will report to the House in spring 2015, prior to the dissolution of Parliament.

Background

Following the Scottish electorate's vote to remain part of the United Kingdom, the UK Government established the Smith Commission to produce cross-party agreement on further devolution of powers to the Scottish Parliament. The Smith Commission's proposals were published on 27 November 2014 and are expected to be reflected in a new Scotland Bill after the 2015 general election. Draft clauses for that bill are due to be published by the Government by the end of January 2015.

The proposals of the Smith Commission raise a number of important constitutional issues. Given the limited time available before Parliament is dissolved on 30 March 2015 in preparation for the general election, the Committee has decided to focus in this inquiry on inter-governmental relations between the UK Government and the devolved administrations. The Committee hopes to consider and comment upon the draft clauses due to be published by the Government implementing the recommendations of the Smith Commission when these are available, and expects to return to the subject of devolution in greater depth in the next Parliament.

The relationship between the UK Government and the devolved administrations is currently maintained through a mixture of formal mechanisms (set out in a Memorandum of Understanding) and informal contact. Some of these mechanisms are quadrilateral with representatives from the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland; others are bilateral and governed by a series of concordats between UK Government departments and each devolved administration.

Inquiries by parliamentary select committees (including our own²⁹⁰) and independent commissions have highlighted deficiencies in current inter-governmental arrangements. The Smith Commission stated that "the current inter-governmental machinery between the Scottish and UK Governments, must be reformed as a matter of urgency". It recommended a new Memorandum of Understanding between the UK Government and the devolved administrations, new sub-committees for the quadrilateral Joint Ministerial Committee, and improvements to dispute-resolution arrangements. The Smith Commission also

²⁹⁰ Constitution Committee, *Devolution: Inter-institutional relations in the United Kingdom* (2nd Report; Session 2002–03, HL Paper 28)

echoed earlier calls for greater transparency and parliamentary scrutiny of these arrangements.

Scope

The Committee invites evidence on how inter-governmental relations in the UK can be improved. While our primary focus will be on Scotland, in light of the proposed new powers for the Scottish Parliament, we also welcome evidence on UK-wide quadrilateral arrangements and the UK Government's relations with the Welsh Government and Northern Ireland Executive. The Committee is also interested in whether and how the UK Parliament can best scrutinise and hold ministers to account over these inter-governmental relationships.

The focus of the Committee's inquiry is inter-governmental relations between the UK Government and the devolved administrations: the Committee is not seeking to address the issue of which powers should or should not be devolved.

The committee welcomes written submissions on any aspect of this topic, and particularly on the following questions:

1. How can existing arrangements for inter-governmental relations be improved, particularly in light of the further devolution of powers (under the Scotland Act 2012, the Wales Bill and the further commitments made by the Government during its passage, and the recommendations of the Smith Commission)? Are new inter-governmental mechanisms required, particularly in the light of further fiscal devolution, including tax-raising powers?
2. To what extent do the current inter-governmental structures promote proactive co-operation, rather than simply acting as a means of dispute resolution? How could they be improved in this regard? To what extent is the scope for cooperation limited by policy and party differences between the devolved administrations, and between those administrations and the United Kingdom Government?
3. What is the appropriate balance between formal mechanisms and informal relationships?
4. To what extent should inter-governmental mechanisms comprise bilateral arrangements, as opposed to those including all four administrations?
5. How should inter-governmental mechanisms cope with the asymmetrical development of devolution within the UK?
6. Should any elements of inter-governmental relations be set out in legislation, or should they remain non-statutory? What are the advantages and risks of statutory mechanisms?
7. How can the UK Parliament best scrutinise and hold to account both formal and informal inter-governmental relations between the UK Government and devolved administrations? Are there lessons to be learned from the devolved legislatures?
8. Should the role of the territorial Secretaries of State and their departments be altered in light of the further devolution of powers? If so, how?

You need not address all the questions. The Committee would welcome other relevant views of which you think the Committee should be aware, and in particular examples of good and bad practice in this area.