

HOUSE OF LORDS

Select Committee on the Constitution

1st Report of Session 2024–25

**The Governance
of the Union:
Consultation,
Co-operation and
Legislative consent**

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Select Committee on the Constitution

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Q in footnotes refers to a question in oral evidence.

SUMMARY

In 2022 this Committee published *Respect and Co-operation: Building a Stronger Union for the 21st Century*. In that report we identified a deterioration in relationships between the UK Government and the devolved administrations, driven by a perceived lack of co-operation and respect in intergovernmental relations and insufficient commitment to the process of consultation and engagement between the governments of the UK.

Mid-way through this follow-up inquiry into the Governance of the Union, the 2024 general election took place, bringing a new government to power at Westminster. The conclusions and recommendations in our report are intended as a guide to the new Government as it navigates the sometimes tense relationships between the different governments of the UK. We hope that this report will provide a reference point for the new Government to build and maintain a more effective Union, characterised by respect for, and co-operation with, the governments and legislatures of the devolved nations.

Brexit, the COVID-19 pandemic, aspirations for independence in Scotland and the repeated suspension of the devolved institutions in Northern Ireland have inevitably represented challenges to intergovernmental cooperation. However, the problems facing the governance of the Union cannot be attributed to these factors alone. Through this inquiry we examined the systemic issues facing intergovernmental co-operation. We sought to determine whether the distinct pressures caused by the events of recent years persist and whether intergovernmental relations are sufficiently robust to withstand future stresses and strains as they arise.

In doing so we placed particular focus on examining the effectiveness of the new intergovernmental relations structures introduced in January 2022 and the operation of the Sewel convention. We recommend, among other things, that a new ‘principle of positive engagement’ is added to the principles underpinning those new structures.

In our report we emphasise the central importance of constructive attitudes and culture as a means to deliver in the best interests of people throughout the Union. Without goodwill and co-operation, structures and conventions risk becoming meaningless. This is particularly important in those times when different political parties are in power in different nations of the UK—some of which aspire to the break-up of the Union.

As a Committee, we intend to return to this matter in the near future. In the meantime, we ask that the new Government undertakes to review intergovernmental relations and the operation of the Sewel convention over the coming year, with a view to implementing the recommendations in our report. We invite the Government to provide an update to the Committee on progress made by the end of September 2025.

The effectiveness of the new intergovernmental relations structures

The new intergovernmental structures are, on paper, a welcome initiative. They have the potential to remedy criticisms levelled at the previous intergovernmental structures by creating a more regular, transparent, and formal system of intergovernmental working.

However, the true test of their efficacy depends on how they operate in practice. If they are to realise their potential as genuine vehicles for collaboration and co-operation, the new Government must fully embed them into the day-to-day business of government and the devolved governments must demonstrate their commitment to engaging with the new structures.

Goodwill, attitudes and culture

While successful devolution requires goodwill on the part of all four governments, it is particularly incumbent upon the UK Government, as the most powerful body, to take account of the impact its decisions may have throughout the UK, demonstrating goodwill in its interaction with the devolved governments and sharing information in good faith.

Where different political parties are in power in different parts of the United Kingdom, underlying political differences are inevitable and unavoidable. If intergovernmental relations are to be effective and sustainable, then it is essential that all parties foster a culture of positive engagement.

The dispute resolution process

The dispute resolution process, introduced as part of the new intergovernmental relations structures in January 2022, has not yet been fully tested. It is therefore not possible, at this time, to assess its efficacy.

Nevertheless, in our view, there are many circumstances in which engagement with the dispute resolution process is unlikely to be the most practical course of action. Often, informal dialogue between governments will be more effective. Where legislation is involved, bills and substantive amendments may make it impracticable to pursue a complaint through the dispute resolution process. In addition, the reality of different political parties holding power in different parts of the UK is that publicity engendered by high-profile public disputes will at times be more appealing than resolving issues through established governance structures. For all these reasons it may be that use of the dispute resolution process will remain limited. We will keep this under review.

The role of the civil service

Throughout our inquiry witnesses emphasised the important role for civil servants in ensuring that intergovernmental relations structures were effective. However, they expressed concern at the lack of knowledge and understanding some Whitehall civil servants held about devolution.

We urge the new Government to ensure that every department has a properly equipped team—and a Ministerial lead—with the knowledge and skills necessary to address, anticipate and engage with devolution matters as they arise, providing an identified point of contact for the devolved administrations.

Common frameworks

Common frameworks exist to develop a common approach on important policy areas across the constituent nations of the UK, while also allowing for policy divergence where administrations agree to disagree. They represent a positive example of intergovernmental cooperation but have faced significant setbacks, including the collapse of the devolved institutions in Northern Ireland in February 2022 and the criticisms levelled at the Internal Market Act 2020.

The finalisation of 28 common frameworks currently operating on a provisional basis has, therefore, been delayed.

With the re-establishment of the devolved institutions in Northern Ireland, we urge the new Government to mobilise every effort to finalise and fully implement all 32 common frameworks agreed between the UK Government and the devolved governments.

The role of the territorial offices and machinery of government

We consider that the territorial offices have an important role to play in strengthening the Union by enhancing Whitehall understanding of devolution and the political context in the devolved nations, and by guiding UK Government policy accordingly. The secretaries of state for Scotland, Wales and Northern Ireland have a particular duty to engage constructively with, and demonstrate respect for, the competences of the devolved administrations. They are in a position to represent the interests of the respective nations in the Cabinet and have direct access to ministers in other Government departments.

We welcome the new Government's appointment of a new Minister for Intergovernmental Relations, based in the Cabinet Office, with responsibility for devolution. We look forward to engaging with him on the issues raised in this report.

A principle of positive engagement

In order to improve collaboration and co-operation between the nations of the UK, we recommend that a new principle of positive engagement is added to the existing principles for intergovernmental relations, currently listed in 'The Review of Intergovernmental Relations' policy document.

Such a principle would provide civil servants with a tool by which to remind ministers in the UK Government and the devolved governments of the expectation that they should engage with one another, including by working together on the development and implementation of policies of common concern.

Representation of England

The new Government made a commitment in the King's Speech to establish a Council of the Nations and Regions, which will bring together the Prime Minister, the heads of the devolved governments and the mayors of combined authorities. It also made a commitment to bring forward an English Devolution Bill.

This Committee will keep the government proposals under careful review and examine their constitutional implications in due course, including their capacity to represent parts of England not falling within combined authorities.

Commitment to the Sewel convention

We have concluded that since Brexit, the UK Government has legislated without the consent of one or more of the devolved legislatures on multiple occasions, and at times has done so on bills unrelated to Brexit. We urge the new Government to commit to respecting the Sewel convention.

We recognise that an increase in occasions on which the UK Government has legislated without consent may in part be the result of a trend since Brexit for the devolved governments to take a more expansive view of devolved competence. This has led to differences of opinion between the UK Government and the devolved governments as to whether consent is required for specific bills. In such circumstances, close and timely engagement between governments is required to address differences of opinion and, where possible, reach consensus.

Strengthening the Sewel convention

The Devolution Guidance Notes are out of date. They do not take account of significant recent developments, such as the return of powers following the UK's departure from the European Union and the development of common frameworks, or the introduction of new intergovernmental relations structures in January 2022. We recommend that the Devolution Guidance Notes should be updated as a matter of priority, and we urge the new Government to do so without delay. This should be completed alongside long overdue updates to the Cabinet Manual.

We note that there is currently no reciprocal convention requiring the devolved administrations to give notice to the UK Government of devolved legislation that could affect reserved matters. We recommend that the principle of positive engagement discussed previously includes a requirement that the UK Government and the devolved governments engage on legislative proposals that impact upon one another's areas of legislative competence.

Secondary legislation and Henry VIII powers

We recommend that the new Government develops a clear set of criteria regarding the appropriate use of delegated powers in areas of devolved competence. These criteria should be set out in guidance provided to the Office of the Parliamentary Counsel, which should be published.

Formal engagement with the devolved administrations on the use of delegated powers in areas of devolved competence should be a requirement. UK Ministers should either consult devolved ministers or seek their consent, depending on the significance of the delegated power in question. In developing the criteria referred to above, the UK Government should set out the circumstances in which it ought "not normally" to exercise a delegated power without the consent of the relevant devolved institution. For instance, where UK legislation contains powers which empower UK ministers to alter acts of the devolved legislatures, these powers should not normally be exercised without the explicit consent of the relevant legislatures.

The Governance of the Union: Consultation, Co-operation and Legislative consent

CHAPTER 1: INTRODUCTION

1. This Committee has a long history of examining the constitutional aspects of devolution. In March 2015 we published *Proposals for the devolution of further powers to Scotland*, in which we assessed recommendations by the Smith Commission,¹ and *Inter-governmental relations in the United Kingdom*, in which we examined the intergovernmental relations structures in place at that time and made recommendations for their improvement.² In May 2016, in *The Union and Devolution*, we raised concerns about a haphazard approach to devolution and urged the then Government to use intergovernmental relations structures to “engage with the devolved institutions across the whole breadth of government policy, co-operating and collaborating where possible.”³
2. In 2022 we published *Respect and Co-operation: Building a Stronger Union for the 21st Century*.⁴ In that report we identified a deterioration in relationships between the UK Government and the devolved administrations, driven by a perceived lack of co-operation and respect in intergovernmental relations and insufficient commitment to the process of consultation and engagement between the governments of the UK.
3. We emphasised this Committee’s belief in the United Kingdom as a joint endeavour and “shared asset for all our nations, regions and communities.” We recognised the strain the Union was under, having faced—among other events—the UK’s withdrawal from the EU and the COVID-19 pandemic.⁵ We also emphasised the importance of attitudes and culture, alongside structures, to help reinforce the Union, concluding that: “Improving the shared governance of the United Kingdom will require a greater degree of respect and partnership between the different layers of government”⁶
4. Since we published *Respect and Co-operation: Building a Stronger Union for the 21st Century*, new intergovernmental relations structures—established in January 2022—have been put into place. In that report we said:

“[S]trengthening the intergovernmental structures will achieve only so much. The success of the new arrangements will depend on how the Government and devolved administrations operate them and

1 Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145). The Smith Commission was appointed following the referendum on independence held in Scotland in September 2014. It was tasked with formulating recommendations for further devolution of powers to the Scottish Government.

2 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146)

3 Constitution Committee, *The Union and Devolution* (10th Report, Session 2015–16, HL Paper 149)

4 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142)

5 *Ibid.*, paras 1–11

6 *Ibid.*, paras 13 and 59

whether they are committed to using the new structures to cooperate on achieving shared objectives, rather than simply managing—or taking opportunities to accentuate—their differences.”⁷

5. The inquiry which led to this report focussed on the effectiveness or otherwise of the intergovernmental relations arrangements in place since January 2022, building as they do on incremental developments over the past two decades. It also examined respect for and observance of the Sewel convention in recent years. Now is an opportune moment to assess whether the extraordinary strain Brexit and COVID-19 placed on the Union still persist, and whether the new structures—and the attitudes and culture that accompany them—are sufficiently robust to withstand future stresses and strains as they arise.
6. In this introductory chapter we explore the history of intergovernmental relations and the Sewel convention, addressing how Brexit and the COVID-19 pandemic have affected the operation of each.

The evolution of intergovernmental relations

7. ‘Intergovernmental relations’ refers to engagement between the UK Government and the Scottish Government, the Welsh Government and the Northern Ireland Executive. The term includes all contact between ministers and officials in the UK Government and the governments of the devolved administrations.
8. In 1999 a Memorandum of Understanding (MoU) was agreed by the four administrations. Although updated in October 2013, the MoU established a framework and formal structures for intergovernmental relations⁸ which remained essentially unchanged until January 2022 when the new intergovernmental relations structures, currently in place, were introduced.⁹
9. The 1999 MoU established a forum comprising ministers from the UK and devolved governments: the Joint Ministerial Committee (JMC). This operated on three levels: plenary, functional and official. The primary forum, the JMC (Plenary), was usually attended by the heads of the four governments and the three territorial secretaries of state and other relevant ministers from each government. There were two standing sub-committees, JMC (Europe) and JMC (Domestic), as well as a series of ad hoc committees established to deliver specific objectives: JMC (Poverty), JMC (Knowledge Economy) and JMC (Health). JMC (European Negotiations) was established later to manage intergovernmental relations during the UK’s departure from the European Union. The Finance Ministers’ Quadrilateral (FMQ) and the Agriculture Quadrilateral, which were not technically sub-committees of the JMC, also met during this period.¹⁰

7 *Ibid.*, para 182

8 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146), para 20; Cabinet Office, ‘Devolution: memorandum of understanding and supplementary agreements’ (October 2013): <https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement> [accessed 16 September 2024]

9 Cabinet Office and Department for Levelling Up, Housing and Communities, ‘Policy paper: Review of intergovernmental relations’ (13 January 2022): <https://www.gov.uk/government/publications/the-review-of-intergovernmental-relations> [accessed 17 September 2024]

10 House of Commons Library, *Intergovernmental relations in the United Kingdom*, [Number CBP8371](#), 7 November 2023, p 34

10. Between 2002 and 2007 the JMC (Plenary) ceased to meet but was reconvened in June 2008 at the request of the then First Minister of Scotland, Alex Salmond.¹¹ Until December 2018 the JMC (Plenary) was routinely hosted in London by the UK Government.¹²
11. Since 1999 intergovernmental relations has also been characterised by engagement at official-level. In 2015 in *Intergovernmental Relations in the United Kingdom* we observed: “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 ... 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.”¹³

Intergovernmental relations structures introduced in January 2022

12. At a meeting of the JMC (Plenary) on 14 March 2018 ministers agreed that:

“[O]fficials should review and report to Ministers on the existing intergovernmental structures, including the Memorandum of Understanding, to ensure they are fit for purpose in light of the UK’s exit from the EU.”¹⁴
13. This became ‘The Review of Intergovernmental Relations’, undertaken jointly by the UK government and the devolved administrations. Alongside this review, Lord Dunlop—former minister in the Scotland and Northern Ireland Offices from 2015 to 2017—undertook an extensive review into UK Government Union capability. This was published on 24 March 2021, 16 months after it was completed.¹⁵
14. Following both reviews, on 13 January 2022, the Cabinet Office and Department for Levelling Up, Housing and Communities (DLUHC)¹⁶ published a policy document setting out the conclusions of ‘The Review of Intergovernmental Relations’. This outlined new intergovernmental relations structures and ways of working to “support our COVID recovery, tackle the climate change crisis and inequalities, and deliver sustainable growth”. The then Government said the new structures were:

“built on principles of mutual respect and trust, respecting the reserved powers of the UK Government and Parliament and the devolved competences of the Scottish Government, Welsh Government, Northern Ireland Executive and their legislatures. The new system will provide a

11 House of Common Justice Committee, *Devolution: A Decade On* (Fifth Report, Session 2008–09, HC 529–1), paras 110–111

12 House of Commons Library, *Intergovernmental relations in the United Kingdom*, [Number CBP8371](#), 7 November 2023, p 34

13 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146), para 135

14 No. 10 Downing Street, *Joint Ministerial Committee (Plenary)* (14 March 2018), p 2: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690527/Joint_Ministerial_Committee_communique%CC%81-14_March_2018.pdf [accessed 17 September 2024]

15 Lord Dunlop’s review was concluded in November 2019 and published by the Cabinet Office in March 2021. Cabinet Office, ‘*The Dunlop Review into UK Government Union capability*’ (24 March 2021): <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability> [accessed 17 September 2024]

16 The new Government has replaced DLUHC with the Ministry of Housing, Communities and Local Government.

positive basis for productive relations, facilitating dialogue where views are aligned and resolution mechanisms where they are not.”¹⁷

15. The new intergovernmental relations structures consist of three tiers:
- **Tier 1:** Governments are committed to regular portfolio-level engagement on areas of mutual interest through formal Interministerial Groups (IMGs). IMGs are expected to cover a number of policy areas and meet on a quadrilateral basis with established terms of reference. The intergovernmental relations review said: “It may be more appropriate in some areas for engagement to be less frequent or in a different format, for example bilaterally, with exact format determined jointly.”
 - **Middle tiers:** The Interministerial Standing Committee (IMSC) is expected to “consider issues which cannot be considered at the portfolio-level within the relevant IMG, to bring together strategic considerations affecting many different portfolios and to discuss any cross-cutting international issues.” It provides oversight of all IMGs and has a remit to consider all policy areas of mutual interest, both domestic and international, “if they have a bearing on the wider relationships between the governments.” The IMSC is expected to meet every other month “but could meet more or less frequently according to need and if agreed by consensus.” It can also consider issues that have been delegated to it and is responsible for “ensuring the effectiveness of portfolio-level engagement”.

In addition, time-limited Interministerial Committees (ICs) are expected to be established by consensus if particular issues “are identified as needing in-depth and focused consideration by ministers”.

The Finance Interministerial Standing Committee (F:ISC) consists of representatives of the Treasury and the devolved governments’ finance ministers. The F:ISC sits alongside the IMSC and has similar operating arrangements. It is supported by a joint secretariat drawn from representatives of each minister’s department. ‘The Review of Intergovernmental Relations’ stipulates, however, that “all parties acknowledge that policy decisions on funding are strictly reserved to Treasury ministers, with engagement with the devolved administrations as appropriate.”¹⁸

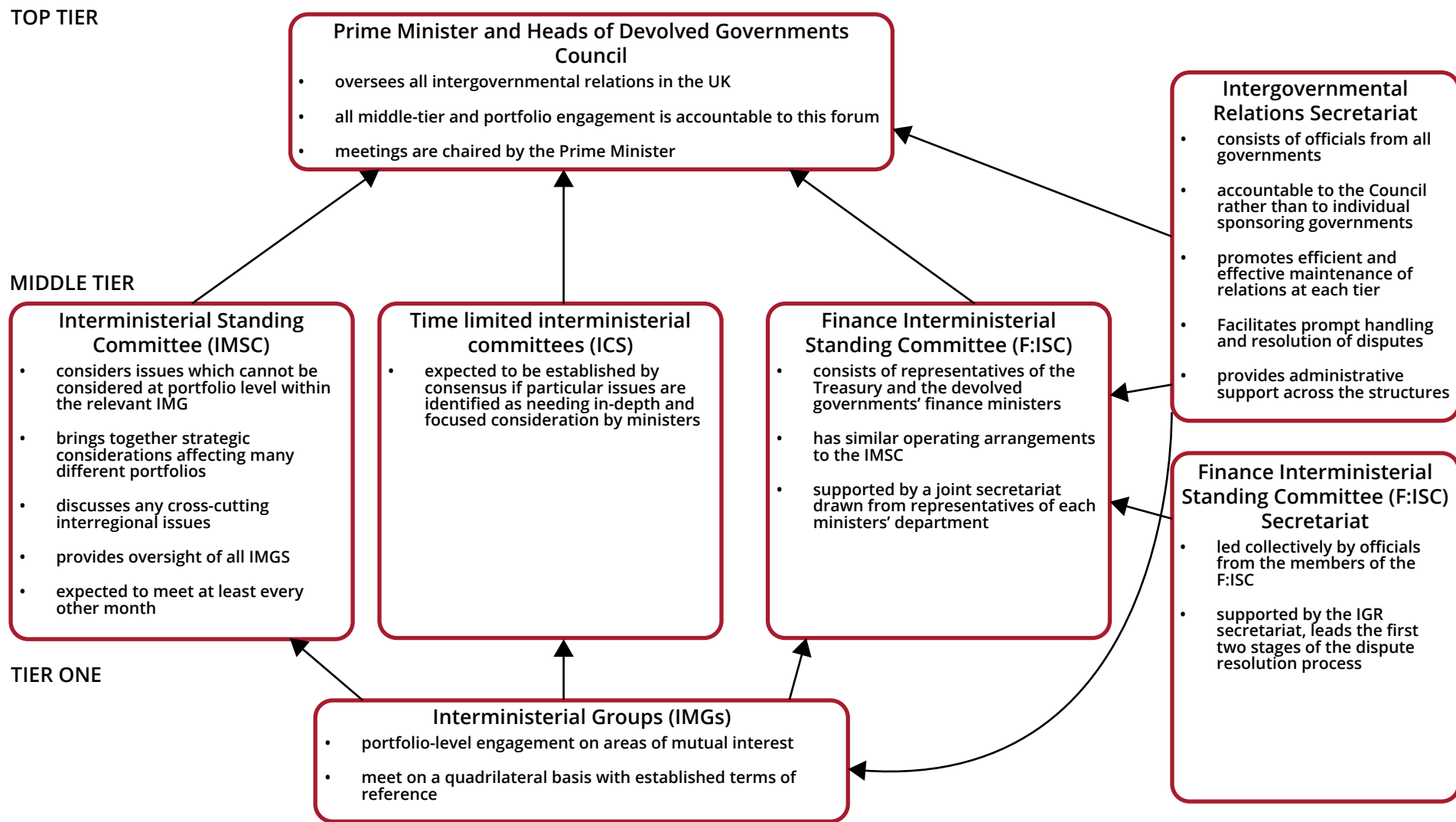
- **Top tier:** The Prime Minister and Heads of Devolved Governments Council oversees all intergovernmental relations in the UK. All middle-tier and portfolio engagement is accountable to this forum. Meetings are chaired by the Prime Minister. The intergovernmental relations review said: “In addition, it is anticipated the Prime Minister will engage with First Ministers and other parties, for example local leaders, outside of these structures.”¹⁹
16. The below graphic provides an overview of the intergovernmental relations structures:

17 Cabinet Office and Department for Levelling Up, Housing and Communities, *Policy paper: Review of intergovernmental relations* (13 January 2022): https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 18 September 2024]

18 *Ibid.*, Annex C, para 17

19 *Ibid.*, paras 11–18

Figure 1: Intergovernmental relations structures



17. Collaborative working by all four governments through the new structures is based on the following principles. In Chapter 3 we recommend that a principle of positive engagement be added to the below list of principles.
- “Maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in the governance of the UK;
 - Building and maintaining trust, based on effective communication;
 - Sharing information and respecting confidentiality;
 - Promoting understanding of, and accountability for, their intergovernmental activity;
 - Resolving disputes according to a clear and agreed process.”²⁰
18. The review of intergovernmental relations made clear that the reformed structures “provide a statement of political intent, but are not intended to create new, or override existing, legal relations or obligations, or to be justiciable.” It also said that the new structures would be kept under review.²¹
19. An Intergovernmental Relations Secretariat was established in 2023 “to provide administrative support and promote the efficient and effective maintenance of relations at each tier and for the handling and resolution of disputes.” It is expected to consist of officials from all four governments.²²
20. All four governments are “committed to promoting collaboration and the avoidance of disagreements.” Nonetheless, the new intergovernmental relations structures introduced a dispute resolution process. Where a disagreement arises which cannot be resolved following “due and full consideration” at portfolio level and has “significant implications for the relationship between two or more governments”, any of the four governments may refer it to the Intergovernmental Relations Secretariat as a dispute.²³ This process is discussed in further detail in Chapter 2.
21. Overall responsibility for intergovernmental relations sits with the Prime Minister, the First Ministers of Scotland and Wales and the First and deputy First Minister of Northern Ireland.²⁴ However, as we noted in *Respect and Co-operation: Building a Stronger Union for the 21st century*:
- “The governance of the United Kingdom requires strong relationships to be built and maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive at all levels:

20 *Ibid.*, para 1

21 *Ibid.*, para 2

22 The Intergovernmental Relations Secretariat consists of officials from the UK, Scottish and Welsh Governments. At the time of writing, it was unclear whether officials from the recently re-established Northern Ireland Executive had yet been appointed. HL Deb, 18 January 2024, [col 562](#); [Q 99](#) (Rebecca Evans MS)

23 Cabinet Office and Department for Levelling Up, Housing and Communities, *Policy paper: Review of intergovernmental relations* (13 January 2022), para 21: https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 18 September 2024]

24 *Ibid.*, para 8

between the Prime Minister, First Ministers and deputy First Minister, and other ministers, and officials from all four administrations.”²⁵

22. The efficacy of the new intergovernmental relations structures also depends on wider machinery of government choices. In particular, whether a senior cabinet position holds responsibility for the operation of intergovernmental relations and the devolution arrangements more generally. This is discussed in further detail in Chapter 3.
23. ‘The Review of Intergovernmental Relations’ policy document states that:

“The review ... introduces a new era for [intergovernmental relations] with improved reporting on intergovernmental activity, providing greater transparency, accountability and scrutiny from each government’s respective legislatures.”²⁶
24. As such, all four governments have committed to “enhanced reporting to their respective legislatures” in order to increase transparency and accountability.²⁷ We discuss this further in Chapter 2. In addition, the UK Government produces quarterly and annual reports on intergovernmental relations activity.²⁸
25. In its 2024 manifesto, the Labour party committed to deepen devolution settlements for existing Combined Authorities and widen devolution to more areas.²⁹ The Labour party also outlined plans to establish a new Council of the Nations and Regions, which will bring together the Prime Minister, the heads of the devolved governments and the mayors of combined authorities.³⁰ Although outside the scope of this inquiry, this is a development that could carry implications for the functioning of the new intergovernmental relations structures and should be examined carefully.

Key changes to the intergovernmental relations process

26. The true efficacy of the new intergovernmental relations structures—and the extent to which they will improve the previous structures—depends on how they are operated in practice. This is discussed in Chapter 2. However, in the paragraphs below we have outlined some of the key differences between the previous intergovernmental relations structures and those introduced in January 2022.
27. Criticisms made of the Joint Ministerial Committee structures, in place prior to January 2022, were that they lacked transparency, were overly reliant on

25 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 169

26 Cabinet Office and Department for Levelling Up, Housing and Communities, *Policy paper: Review of intergovernmental relations*, p 1 (13 January 2022), https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 18 September 2024]

27 *Ibid.*, para 22

28 Department for Levelling Up, Housing and Communities, *Intergovernmental Relations: Annual Report 2022* (March 2023): https://assets.publishing.service.gov.uk/media/64243a393d885d000fdade27/IGR_Annual_Transparency_Report_2022.pdf [accessed 18 September 2024]; Department for Levelling Up, Housing and Communities, *Intergovernmental Relations: Annual Report 2023* (April 2024): https://assets.publishing.service.gov.uk/media/6627a1e3838212a903a7e601/Intergovernmental_Relations_Annual_Report.pdf [accessed 18 September 2024]

29 Labour Party, *Change: Labour Party Manifesto 2024*, p 40: <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 18 September 2024]

30 *Ibid.*, pp 109–110

informal relationships and did not meet regularly. Meeting minutes were not always made available, and the Joint Ministerial Committee annual report was not always published annually. Where these documents were published, they lacked detail, providing little insight into the substance of discussions or disputes, and limiting the ability of legislatures or the electorate to hold governments to account for intergovernmental activity.³¹

28. In 2002 this Committee concluded that under the old system contact between the four administrations was “highly informal” and took place outside the Joint Ministerial Committee structures. We recommended greater use of formal intergovernmental relations mechanisms, which were “likely to become increasingly important when governments of different political persuasions have to deal with each other.”³² In 2018 the House of Commons Public Administration and Constitutional Affairs Committee said: “The absence of formal and effective inter-governmental relations mechanisms has been the missing part of the devolution settlement ever since devolution was established in 1998.”³³ Joint Ministerial Committee meetings were further criticised for often taking place at short notice and for long periods of unexplained inactivity.
29. The previous structures lacked a satisfactory process for resolving disputes. A ‘Protocol for Avoidance and Resolution of Disputes’ was agreed in 2010 but the Protocol was criticised for allowing dispute panels to be chaired by a UK Government minister, undermining the devolved governments’ confidence in the process.³⁴
30. On their face, the new structures introduced in January 2022 go some way to addressing these concerns. Formal groups (described under the tier system above) are now in place, with published terms of reference³⁵ and an expectation that they meet at least semi-regularly and not just “when needed”.³⁶ The UK Government’s quarterly and annual reports on intergovernmental relations provide some detail of intergovernmental working through case studies.³⁷ A more formal dispute resolution process—with a clear set of criteria for assessment and escalation and a requirement that meetings are not be chaired by a representative or minister from a government party to the dispute—is now in place (discussed in more detail in Chapter 2).

31 Nicola McEwen, Michael Kenny, Jack Sheldon and Coree Brown Swan, ‘Intergovernmental Relations in the UK: Time for a Radical Overhaul?’, *The Political Quarterly*, vol. 91, Issue 3 (June 2020): <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.12862> [accessed 24 September 2024]

32 Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom* (2nd Report, Session 2002–03, HL Paper 28), paras 23 and 29

33 House of Commons Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (Eighth Report, Session 2017–19, HC 1485), para 132

34 Nicola McEwen, Michael Kenny, Jack Sheldon and Coree Brown Swan, ‘Intergovernmental Relations in the UK: Time for a Radical Overhaul?’, *The Political Quarterly*, Vol. 91, Issue 3 (June 2020): <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.12862> [accessed 24 September 2024]

35 Cabinet Office, Foreign, Commonwealth & Development Office, Department for Levelling Up, Housing and Communities and Department for Culture, Media and Sport, ‘Collection: Intergovernmental relations’ (10 November 2020): <https://www.gov.uk/government/collections/intergovernmental-relations> [accessed 18 September 2024]

36 House of Lords Library, ‘Intergovernmental relations within the UK’ (10 January 2024): <https://lordslibrary.parliament.uk/intergovernmental-relations-within-the-uk/> [accessed 18 September 2024]

37 Senedd Research, ‘One year on: is the new UK intergovernmental agreement working?’ (February 2023): <https://research.senedd.wales/research-articles/one-year-on-is-the-new-uk-intergovernmental-agreement-working/> [accessed 18 September 2024]

The Sewel convention

31. The Sewel convention—also known as legislative consent—applies when the UK Parliament intends to legislate on a matter within the devolved competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly. Under the terms of the convention the UK Parliament will “not normally” do so without the relevant devolved legislature having passed a legislative consent motion.³⁸
32. This commitment was made by Lord Sewel—then Minister in the Scotland Office—when he led the Scotland Bill 1998 through the House of Lords. He said:

“[T]he devolution of legislative competence to the Scottish parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters ... However, as happened in Northern Ireland earlier in the century, we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament.”³⁹
33. As noted by Lord Sewel, an analogous convention operated in relation to the devolved Parliament and Government in Northern Ireland between 1921 and 1972.⁴⁰
34. The convention was incorporated into a Memorandum of Understanding agreed by the UK Government and the devolved administrations in December 2001. The most recent iteration of this Memorandum of Understanding—published in October 2013—stated:

“The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”⁴¹
35. Following this, the Cabinet Office produced a series of Devolution Guidance Notes (DGNs), which provide guidance to civil servants by setting out working arrangements between the UK Government and the devolved administrations. The DGNs stipulate that prior to submitting a bill to the Parliamentary Business and Legislation Committee, there should have been

38 UK Parliament, ‘Sewel Convention’, <https://www.parliament.uk/site-information/glossary/sewel-convention/> [accessed 19 September 2024]

39 HC Deb, 21 July 1998, [col 791](#)

40 Dr Adam Evans, ‘A tale old as (devolved) time? Sewel, Stormont and the legislative consent convention’, *Political Quarterly* 91(1), pp 165–172: https://orca.cardiff.ac.uk/id/eprint/128264/1/Evans%2BSewel%2B28_09_19%2B [accessed 19 September 2024]

41 Cabinet Office, ‘Devolution: memorandum of understanding and supplementary agreement’ (October 2013, para 14: https://assets.publishing.service.gov.uk/media/5a7e2e6ce5274a2e87db0159/MoU_between_the_UK_and_the_Devolved_Administrations.pdf [accessed 19 September 2024])

prior consultation with the devolved administrations, where relevant, and any issues should be “substantially resolved”.⁴²

36. The Sewel convention was later stated in the Scotland Act 2016, which inserted sub-section (8) into section 28 of the Scotland Act 1998.⁴³ Subsections (7) and (8) now state:

“(7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

(8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”⁴⁴

A substantially identical provision was inserted into the Government of Wales Act 2006 (section 107(6)).⁴⁵

37. However, the Sewel convention remains a convention and has no legal effects—as was confirmed by the UK Supreme Court in *R (on the application of Miller and another) v Secretary of State for Exiting the European Union*. The Court stated: “Judges ... are neither the parents nor the guardians of political conventions; they are merely observers.” The Court said that, by recognising the Sewel convention in section 28(8) of the Scotland Act 1998 the UK Parliament was not “seeking to convert the Sewel Convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it is recognising the convention for what it is, namely a political convention, and is effectively declaring that it is a permanent feature of the relevant devolution settlement.”⁴⁶
38. In our report *Respect and Co-operation: Building a Stronger Union for the 21st Century* we explained the process for seeking the consent of a devolved legislature:

“Once a bill has been introduced in either House of Parliament, a devolved legislature will indicate its consent by passing a legislative consent motion in accordance with its standing orders, after the relevant committee has considered a legislative consent memorandum from its devolved administration, which is normally lodged within two weeks of a bill’s introduction in the UK Parliament. Subsequent memorandums and motions may be required if bills are amended. The approval or refusal of a legislative consent motion is notified by the clerk of the relevant devolved legislature to the clerks of the two Houses. The letters and associated memoranda are published on the bill pages on parliament.uk. When legislative consent is refused by a devolved legislature an italic

42 Cabinet Office, ‘Devolution guidance notes’ (23 August 2011): <https://www.gov.uk/government/publications/devolution-guidance-notes> [accessed 19 September 2024]. See also *Devolution Guidance Note 8: Post – Devolution Primary Legislation affecting Northern Ireland*, *Devolution Guidance Note 10: Post – Devolution Primary Legislation affecting Scotland* and *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales*

43 Scotland Act 2016, [section 2](#)

44 Scotland Act 1998, [section 28](#)

45 Wales Act 2017, [section 2](#)

46 UK Supreme Court, *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*, [2017] UKSC 5, paras 146 and 148

note appears on the list of public bills in House of Lords Business to signify that consent has been granted or refused.”⁴⁷

39. Following our recommendations in *Brexit legislation: constitutional issues and Respect and Co-operation: Building a strong Union for the 21st Century*, a devolved legislature’s consent, or lack of consent, is now given greater prominence in the legislative process.⁴⁸ This is discussed in greater detail in Chapter 5.

Intergovernmental relations and the Sewel convention during Brexit and COVID-19

40. In our reports *Respect and Co-operation: Building a Stronger Union for the 21st Century* and *COVID-19 and the use and scrutiny of emergency powers* we examined the impact of Brexit and the COVID-19 pandemic on intergovernmental relations and the operation of the Sewel convention. We have summarised our findings from those reports below, which provides important context for this report.
41. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we noted a view held by some witnesses that Brexit and COVID-19 had “highlighted the deficiencies” in the intergovernmental relations arrangements in place at the time.⁴⁹ We also observed that “[w]hile the legislative consent procedure generally worked well from 1999, implementing Brexit placed it under strain.”⁵⁰

Brexit

42. In providing evidence for *Respect and Co-operation: Building a Stronger Union for the 21st Century* several witnesses told us that the implementation of Brexit had “undermined the Union and increased tensions between its constituent nations”. The Rt Hon Angus Robertson MSP, the Scottish Government’s Cabinet Secretary for the Constitution, External Affairs and Culture, and Mark Drakeford MS, the then First Minister of Wales, “both claimed that the UK Government was hostile to devolution and had used Brexit to recentralise powers”. Mr Robertson said the UK Government had used Brexit to “drive a coach and horses through intergovernmental relationships as they are supposed to work” and expressed regret that the initially positive approach to common frameworks had been undermined by the Internal Market Act 2020.⁵¹
43. In our report we observed:

“Brexit created the prospect that the UK and devolved legislatures would have greater discretion to exercise their existing powers, once they were no longer constrained by EU law. Following the Brexit referendum, several key bills deemed necessary by the UK Government

47 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 110

48 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), para 60; Procedure and Privileges Committee, *4th Report* (Session 2019–21, HL Paper 140), paras 40–43; Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 138; Procedure and Privileges Committee, *4th Report* (Session 2022–23, HL Paper 161), paras 1–5

49 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 164

50 *Ibid.*, para 120

51 *Ibid.*, para 167

to implement Brexit contained significant implications for the powers of the devolved institutions. The UK Government maintained that this Brexit legislation extended the reach of devolved powers or left them unaffected, but the Scottish and Welsh Governments criticised what they perceived to be new constraints on their ability to exercise these powers, particularly through the UK Internal Market Act 2020. The subsequent disagreements between the four administrations led to the UK Parliament on several occasions legislating in relation to devolved matters without the consent of one or more of the devolved legislatures.”⁵²

44. For example, the European Union (Withdrawal) Bill 2018, as introduced to Parliament, allowed the UK Government to temporarily restrict the ability of devolved administrations to modify retained EU law, and was criticised by the Scottish and Welsh Governments. In response, the UK Government introduced several amendments to address their concerns, substantially rewriting the relevant provisions and introducing a number of safeguards in relation to the exercise of powers by UK ministers in devolved areas. While the Senedd did eventually provide its consent to the Bill, the Scottish Parliament did not, and instead the Scottish Government went on ‘Sewel strike’, announcing it would not seek the Scottish Parliament’s consent for subsequent Brexit-related legislation, though it did make exceptions.⁵³
45. The European Union (Withdrawal Agreement) Act 2020⁵⁴ passed without legislative consent from the Scottish Parliament, the Senedd or the Northern Ireland Assembly. This was the first time a bill engaged the competence of all three devolved legislatures and was passed by the UK Parliament without any of those legislatures’ consent. The United Kingdom Internal Market Act 2020 was passed without the consent of the Senedd or the Scottish Parliament.⁵⁵ The Northern Ireland Assembly did not hold a formal legislative consent vote.
46. Providing evidence to this committee in July 2021, Mr Drakeford said that he could accept the UK Government’s rationale for enacting the European Union (Withdrawal Agreement) Act 2020, as a major constitutional bill, without the consent of the devolved legislatures. However, he thought that the Government’s argument that this was “exceptional” was undermined by its subsequent decision to enact the UK Internal Market Act 2020 without the consent of the Senedd or the Scottish Parliament. He said this was

52 *Ibid.*, para 104

53 *Ibid.*, para 106

54 The European Union (Withdrawal Agreement) Act 2020 implemented the Withdrawal Agreement agreed between the UK and the European Union by giving it domestic effect. The Act also created powers to make secondary legislation, where appropriate, to enable the Withdrawal Agreement to be implemented domestically and included amendments to the Belfast (Good Friday) Agreement 1998. It included provision relating to facilitating access for Northern Ireland goods to the market in Great Britain and ensured no alteration to the arrangements for North-South co-operation. [Explanatory Notes to the European Union \(Withdrawal Agreement\) Act 2020](#)

55 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 107. The UK Internal Market Act 2020 enshrined ‘market access principles’ of mutual recognition and non-discrimination. This means that while each of the four governments of the UK can regulate goods and services in their part of the UK, they cannot prohibit the sale of goods in their part of the UK that comply with the applicable regulations in the part of the UK where they are produced. They also cannot regulate to discriminate against goods from another part of the UK. House of Lords Library, ‘Strengthening the UK union’ (7 March 2024): <https://lordslibrary.parliament.uk/strengthening-the-uk-union/#heading-4> [accessed 19 September 2024]

“the single most damaging act to the Union in the whole 20-plus years of devolution”.⁵⁶

47. In 2021 the Welsh Government sought judicial review of provisions of the UK Internal Market Act 2020 which impacted on the Senedd’s legislative competence.⁵⁷ In February 2022, the Court of Appeal upheld an earlier High Court ruling that it was too soon for judicial review of the impact of the Internal Market Act 2020.⁵⁸ The Supreme Court later rejected the Welsh Government’s application for permission to appeal.⁵⁹
48. The Scottish Government has also been highly critical of the Internal Market Act 2020. In March 2021 it said:

“While the circumstances of EU exit are undoubtedly unprecedented, overriding the Sewel Convention was not justified, especially in the case of the UK Internal Market Act which was not necessary to implement an international treaty or to progress the process of EU exit. The effect is that the UK Government has shown it is willing to reshape the devolution settlement, unilaterally and in the most fundamental way, setting aside any rules of the UK constitutional system that it finds inconvenient.”⁶⁰

COVID-19

49. When the COVID-19 pandemic began, the then Government chose not to make use of the Civil Contingencies Act 2004 to introduce new laws to tackle the pandemic. Nor were COVID-19 specific lockdown powers included in the Coronavirus Act 2020. Instead, in introducing the most significant legal changes in England, the Government relied on regulation-making powers in the Public Health (Control of Disease) Act 1984.⁶¹
50. Many policy areas key to tackling the COVID-19 virus—such as health and education—are devolved to Scotland, Wales and Northern Ireland, and emergency powers to deal with the spread of infection were different in the four nations of the UK. The Welsh Government, like the UK Government, made and amended its own COVID-19 restrictions using powers in the Public Health (Control of Disease) Act 1984.⁶² The Scottish Government and Northern Ireland Executive had their own equivalent powers under

56 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 114

57 Welsh Government, *Written Statement: Legal challenge to the UK Internal Market Act 2020* (19 January 2021): <https://www.gov.wales/written-statement-legal-challenge-uk-internal-market-act-2020> [accessed 19 September 2024]

58 Court of Appeal, *Counsel General for Wales v The Secretary of State for Business, Energy and Industrial Strategy*, [2022] *EWCA Civ 118* (9 February 2022)

59 Welsh Government, *Written Statement: Legal challenge to the UK Internal Market Act 2020* (18 August 2022): <https://www.gov.wales/written-statement-legal-challenge-uk-internal-market-act-2020-0> [accessed 19 September 2024]

60 Scottish Government, *After Brexit: The UK Internal Market Act & Devolution* (March 2021), para 53: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/brexit-uk-internal-market-bill-scotlands-future/documents/brexit-uk-internal-market-act-devolution/brexit-uk-internal-market-act-devolution/govscot%3Adocument/brexit-uk-internal-market-act-devolution.pdf> [accessed 19 September 2024]

61 Constitution Committee, *COVID-19 and the use and scrutiny of emergency powers* (3rd Report, Session 2019–21, HL Paper 15), p 2 and para 26

62 Public Health (Control of Disease) Act 1984, [section 45C \(1\)](#)

Schedules 18 and 19 of the Coronavirus Act 2020,⁶³ which supplemented the Public Health etc. (Scotland) Act 2008⁶⁴ and the Public Health Act (Northern Ireland) 1967⁶⁵ respectively.⁶⁶

51. In our report *COVID-19 and the use and scrutiny of emergency powers* we noted that the Coronavirus Act 2020 was “the product of close intergovernmental collaboration and was passed with the consent of all three devolved legislatures ... Officials from each of the devolved administrations worked together from mid-February to ensure the legislation was drafted to meet their needs.”⁶⁷ We welcomed this, noting that:

“[w]hile the Civil Contingencies Act 2004 would have allowed the UK Government to adopt a more centralised response to COVID-19, Schedules 18 and 19 to the 2020 Act instead enabled the Scottish Government and the Northern Ireland Executive to determine their own response to the pandemic. This approach respected the devolution arrangements.”⁶⁸

52. However, because the Scottish Government, Welsh Government and Northern Ireland Executive were responsible for introducing and lifting their own restrictions, different restrictions arose in different parts of the UK. For example, “travel corridors” were introduced in England days before the devolved administrations made equivalent announcements, which caused confusion for the public and gave rise to potential health risks.⁶⁹

53. In *COVID-19 and the use and scrutiny of emergency powers* we reported that the JMC Plenary did not meet during the COVID-19 pandemic. Initially, meetings of the Civil Contingencies Committee (COBRA) and five new ministerial implementation groups (MIGs) took place, in which the devolved administrations were invited to participate. In our report we concluded:

“We welcome the collaborative approach adopted by the UK Government and the devolved administrations in the early stages of the pandemic. This period demonstrates that all parts of the UK are capable of working together effectively in a crisis, saving lives and sharing information.”⁷⁰

54. However, this arrangement was short-lived. A political decision was taken by the then Government that from June 2020 two Cabinet Committees, to which the devolved administrations were not invited, would replace COBRA meetings and MIGs. In our report we expressed concern about this, stating that the “breakdown in intergovernmental cooperation and UK-wide coordination during this period contributed to a lack of clarity about

63 Equivalent powers in Scotland are set out in paragraph 1(1) of schedule 19 of the Coronavirus Act 2020. Equivalent powers in Northern Ireland are set out in sections 25C(1), (3)(c), (4)(d) and 25F(2) of the [Public Health Act \(Northern Ireland\) 1967](#), as inserted by section 48 of, and Schedule 18 to, the Coronavirus Act 2020.

64 [Public Health etc. \(Scotland\) Act 2008](#). The Scottish Parliament also enacted the [Coronavirus \(Scotland\) Act 2020](#) and the [Coronavirus \(Scotland\) \(No.2\) Act 2020](#), which made similar provision as the Coronavirus Act 2020 in the Scottish context.

65 [Public Health Act \(Northern Ireland\) 1967](#)

66 Constitution Committee, *COVID-19 and the use and scrutiny of emergency powers* (3rd Report, Session 2019–21, HL Paper 15), paras 88–89

67 *Ibid.*, para 95

68 *Ibid.*, para 99

69 *Ibid.* para 107

70 *Ibid.*, paras 92–98

what rules applied where ... Divergence also exacerbated existing political tensions.”⁷¹

55. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

“It is unfortunate that greater progress on reforming intergovernmental structures was not achieved before the challenges of Brexit and COVID-19 demonstrated the inherent weaknesses in the current arrangements. Both challenges have underlined the pre-existing need to strengthen intergovernmental arrangements.”⁷²

This inquiry

56. With the COVID-19 pandemic and the implementation of Brexit now largely behind us, this inquiry sought to understand whether the extraordinary strains placed on intergovernmental relations and the Sewel convention by those events persist, and whether the new intergovernmental relations structures put in place in January 2022 are sufficiently robust to withstand future stresses and strains as they arise.
57. We began our inquiry in February 2024. We would like to thank all those who assisted our work by providing oral or written evidence. We would have liked to have heard from the then Minister for Intergovernmental Relations, the Rt Hon Michael Gove MP, and an evidence session for this purpose was due to take place on 12 June 2024. However, on 22 May 2024—during the course of our inquiry—the former Prime Minister, the Rt Hon Rishi Sunak MP, called a general election, which took place on 4 July 2024. During the dissolution period ahead of the general election, all select committees ceased to exist and no formal committee business could take place. As such, we were unable to proceed with our planned evidence session.
58. With a new Labour Government in power, we now make recommendations that we hope will help guide the new Government to build and maintain a more effective Union, characterised by respect for and co-operation between the governments and legislatures of the devolved nations.
59. **As a Committee, part of our remit is to keep under review constitutional aspects of devolution. As such, we intend to return to this matter and will seek to examine the efficacy of the intergovernmental relations arrangements and the operation of the Sewel Convention again in the near future. In addition to responding to our report within the normal two-month timeframe, we also ask that the new Government undertakes to review both the operation of intergovernmental relations and the Sewel convention over the coming year, with a view to implementing the recommendations in our report. We invite the Government to provide an update to the Committee on progress made by the end of September 2025.**

71 *Ibid.*, paras 100–113

72 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 168

CHAPTER 2: ARE THE NEW INTERGOVERNMENTAL RELATIONS STRUCTURES WORKING?

The effectiveness of the new intergovernmental relations structures

60. Since 2021, the UK Government has published quarterly and annual reports on intergovernmental relations.⁷³ The most recent annual report, published in April 2024, reports that a total of 210 intergovernmental ministerial meetings took place in 2023.⁷⁴ This was a decrease from 227 intergovernmental ministerial meetings in 2022.⁷⁵ Intergovernmental ministerial meetings in 2023 focussed on topics including: Economy and Funding, Energy and Net Zero, Environment, Health, Trade, Transport and Ukraine. These meetings were held by a range of UK Government departments, with the Department for Levelling Up, Housing and Communities, the Department for Energy Security and Net Zero and the Wales Office holding the most meetings.⁷⁶
61. We asked witnesses to assess the new structures' effectiveness in maintaining and improving relationships between the UK Government and the governments of the devolved nations. Several witnesses thought the new structures had the potential to improve relations.⁷⁷ However, a number of issues were raised, including: the consistency of meetings, sufficient notice of meetings, cancellation of meetings, attendance by the relevant secretary of state and a lack of commitment to the Prime Minister and Heads of Devolved Governments Council.
62. Dr Philip Rycroft, Former Permanent Secretary at the Department for Exiting the European Union, thought the expectation that the Prime Minister should attend the Prime Minister and Heads of Devolved Governments Council was positive because it amounted to a “baking-in of prime ministerial involvement”. He also welcomed the introduction of a reinforced dispute resolution mechanism and an impartial secretariat. However, he thought the most critical thing was “the spirit that informs the use of these structures”. He asked:
- “Are these Interministerial Groups actually meeting? Is the Prime Minister and Heads of Devolved Governments Council meeting? When they meet, are the discussions substantive? Do they seek to advance

73 Cabinet Office, Foreign, Commonwealth & Development Office, Department for Levelling Up, Housing and Communities and Department for Culture, Media and Sport, ‘Collection: Intergovernmental relations’: <https://www.gov.uk/government/collections/intergovernmental-relations#annual-transparency-reports> [accessed 19 September 2024]; Cabinet Office and Department for Levelling Up, Housing and Communities, ‘Policy paper: Quarterly reports on intergovernmental relations’: <https://www.gov.uk/government/publications/quarterly-reports-on-intergovernmental-relations> [accessed 19 September 2024]

74 Department for Levelling Up, Housing and Communities, *Intergovernmental Relations: Annual Report 2023* (April 2024), p 6: https://assets.publishing.service.gov.uk/media/6627a1e3838212a903a7e601/Intergovernmental_Relations_Annual_Report.pdf [accessed 19 September 2024]

75 Department for Levelling Up, Housing and Communities, *Intergovernmental Relations: Annual Report 2022* (March 2023), p 6: https://assets.publishing.service.gov.uk/media/64243a393d885d000fdade27/IGR_Annual_Transparency_Report_2022.pdf [accessed 19 September 2024]

76 Department for Levelling Up, Housing and Communities, *Intergovernmental Relations: Annual Report 2023* (April 2024), pp 8–9: https://assets.publishing.service.gov.uk/media/6627a1e3838212a903a7e601/Intergovernmental_Relations_Annual_Report.pdf [accessed 19 September 2024]

77 Q 2 (Prof Ciaran Martin); Q 11 (Dr Philip Rycroft and Prof Jim Gallagher); Q 39 (Dr Lisa Caire Whitten); Written evidence from Dr Paul Anderson and Dr Coree Brown Swan (GOU0001); Q 96 (Rebecca Evans MS)

policy or is it just a bit of a show and tell?” He thought the jury was still out on these questions.”⁷⁸

63. Other witnesses raised concerns about the variability of intergovernmental meetings and questioned whether they were capable of delivering consistently.⁷⁹ The Senedd Legislation, Justice and Constitution Committee said that formal structures had yet to be established for some policy areas, such as health and social care. The Committee noted Welsh ministers’ frustration at the lack of attendance by relevant Secretaries of State at Interministerial Group meetings. The regularity of meetings also varied, with, for example, the Environment, Food and Rural Affairs Interministerial Group meeting five times in 2023, while the Business and Industry Interministerial Group met once.⁸⁰
64. Rebecca Evans MS, the Welsh Government Cabinet Secretary for Finance, Constitution and Cabinet Office, described it as “telling” that the Prime Minister and Heads of Devolved Governments Council had only met once, in November 2022, at which point Northern Ireland did not have an Executive.⁸¹ This concern was shared by other witnesses.⁸²
65. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:
- “We believe the Prime Minister has a critical role to play in making the new intergovernmental structures a success and maintaining strong relationships between the four administrations. Given its importance to the working of the Union, we recommend the Prime Minister and Heads of Devolved Governments Council should meet at least twice each year.”⁸³
66. Ms Evans described the meetings of the Interministerial Standing Committee as “sporadic at best”: “The intention to have a regular, reliable rhythm of meetings has certainly not yet been fulfilled”. She added that the expectation that the Interministerial Groups would be used for “mutual discussions at portfolio level had not been fulfilled.”⁸⁴ She also said that meetings were often cancelled at late notice, which “speaks to the level of priority that is given to those meetings”. For the intergovernmental structures to work she said: “we need all parties to be energised about them and for all parties to recognise the benefit they can bring to citizens”.⁸⁵ She noted that the Finance: Interministerial Standing Committee had been more successful, though challenges had arisen as a result of the high churn of ministers involved.⁸⁶
67. Dr Lisa Claire Whitten, Research Fellow, School of History, Anthropology, Philosophy and Politics at Queen’s University Belfast, said she had noted some frustration from the Scottish and Welsh governments “at perhaps a lack

78 [Q 11](#) (Dr Philip Rycroft)

79 Written evidence from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto ([GOU0003](#)); [Q 55](#) (Prof Laura McAllister)

80 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

81 [Q 96](#) (Rebecca Evans MS)

82 [Q 51](#) (Dr Rowan Williams); written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

83 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 178

84 [Q 96](#) (Rebecca Evans MS)

85 [Q 98](#) (Rebecca Evans MS)

86 [Q 96](#) (Rebecca Evans MS)

of substantive discussions within the meetings”. With reference to specific Interministerial Groups, she also noted frustration “about the speed of the meetings being organised and perhaps a lack of communication in advance”. However, she thought this had changed over time: “There may have been a bedding down of the system and arrangements, such that there is more advanced notice of meetings. The rotating chair system has started to take effect and seems to be working quite well.”⁸⁷

68. Research conducted by Dr Elin Royles, Reader at the Centre for Welsh Politics and Society at the Department of International Politics, Aberystwyth University, Dr Carolyn Rowe, Reader at the Aston Centre for Europe, Aston University and Dr Rachel Minto, Senior Lecturer at the Wales Governance Centre, Cardiff University, suggested that between February 2022 and September 2023 the UK-EU Interministerial Group was not used effectively to consult the devolved administrations:

“Examples include UK-EU Interministerial Group (IMG) being postponed, or meetings being held at very short notice (sometimes a few hours), making it difficult for devolved government ministers to attend. Furthermore, the meetings were not always well planned in advance with little opportunity for the devolved governments to inform the agenda. When they were held, they tended to be organised very close to key UK-EU meetings, thus providing limited opportunities for effective consultation or providing devolved governments with an opportunity to input into the UK’s position in those discussions. Instead, they seemed to have operated largely as an information sharing exercise on the part of the UK Government.”⁸⁸

69. However, the same research suggested that since September 2023 the UK-EU Interministerial Group had been used more effectively to “consult devolved government and promote collaboration and the avoidance of disagreements”. Interviewees reported that:

“from the 11 September 2023 meeting, communication regarding the practical details of the meeting beforehand has been more effective, including with greater prior discussion of the agenda between the different governments. In addition, the more forward-looking content of the discussion focused on forthcoming UK-EU meetings provided greater opportunity for devolved governments to share their points of view for those discussions and an exploration of different positions prior to the meetings taking place.”⁸⁹

70. In written evidence, DLUHC said that the new intergovernmental relations arrangements “provide a system through which all governments can collaboratively address shared challenges”. DLUHC said: “While there will not always be consensus, the structures provide a framework for effective engagement across administrations.”⁹⁰
71. DLUHC cited energy and household support schemes across the UK, green freeports in Scotland and updates for the devolved administrations on the situation in Israel and Gaza as examples of successful use of the

87 Q 39 (Dr Lisa Claire Whitten)

88 Written evidence from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto (GOU0003)

89 *Ibid.*

90 Written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)

new intergovernmental relations structures.⁹¹ Professor Laura McAllister, Professor of Public Policy and the Governance of Wales at the University of Cardiff and Co-chair at the Independent Commission on the Constitutional Future of Wales, also spoke positively about liaison on freeports policy. The Revd and Rt Hon Dr Rowan Williams, Co-chair of the Independent Commission on the Constitutional Future of Wales, cited positive collaboration between the Home Office and Police and Crime Commissioners in Wales.⁹²

72. The Rt Hon David TC Davies MP, former Secretary of State for Wales, told us that in addition to formal engagement with the Welsh Government through the intergovernmental relations structures, he also met ministers on “a day-to-day basis”. Mr Davies said that conversations with Welsh ministers—both formal and informal—had a positive impact on work undertaken to support the community of Port Talbot following the planned closure of Tata Steel.⁹³ This was echoed by the Rt Hon Alister Jack MP, the then Secretary of State for Scotland, who said that in addition to formal, diarised meetings with Scottish Ministers, conversations took place as need arose “whether in person, on Zoom or on the telephone”, with the civil service present. Mr Jack said this had worked well, citing as an example a seafood task force that operated from the Scotland Office following Brexit.⁹⁴
73. **As discussed in Chapter 1, the new intergovernmental relations structures are, on paper, a welcome initiative. They have the potential to remedy criticisms levelled at the previous intergovernmental structures by creating a more regular, transparent and formal system of intergovernmental working. However, the realisation of their full potential, as genuine vehicles for collaboration and co-operation, will require the new Government to fully embed them into the day-to-day business of government. The devolved administrations must also demonstrate commitment to engaging with the new structures.**
74. *We recommend that intergovernmental meetings are scheduled consistently, at intervals deemed appropriate by both the UK Government and the devolved governments. Other than in exceptional circumstances, devolved governments should be given sufficient notice of meetings, allowing them the opportunity to contribute meaningfully to the development of meeting agendas. Where appropriate, meetings should be attended by the relevant Secretary of State and the cancellation of meetings at late notice should be avoided.*
75. *We welcome the manifesto commitment made by the new Government to “renew opportunities for the Prime Minister and Heads of Devolved Government to collaborate with each other”⁹⁵ and reiterate our previous recommendation that the Prime Minister and Heads of Devolved Governments Council should meet on a regular basis, and at least twice annually.*

91 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

92 [Q 54](#) (Dr Rowan Williams and Prof Laura McAllister)

93 [Q 73](#) (Rt Hon David TC Davies MP)

94 [Q 73](#) (Rt Hon Alister Jack MP)

95 Labour Party, *Change: Labour Party Manifesto 2024*, p 109: <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 20 September 2024]

76. **As set out in paragraph 186, the effectiveness of the intergovernmental relations structures under the new government will be helped by the recent appointment of the Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations, with responsibility for devolution, and the location of this post in the Cabinet Office.**

Scrutiny of intergovernmental relations

77. As discussed in Chapter 1, one of the principles underpinning the new intergovernmental relations structures is a commitment by all four governments to “[promote] understanding of, and accountability for ... intergovernmental activity”,⁹⁶ including through “enhanced reporting to their respective legislatures.”⁹⁷
78. In written evidence the Senedd Legislation, Justice and Constitution Committee spoke of the challenges for the Committee and the Senedd more broadly in scrutinising the Welsh Government’s intergovernmental activity:

“The information being provided to legislatures after meetings is inconsistent in terms of quality and timeliness. Communiqués from meetings can sometimes take months to be published, and the detail of discussion points varies significantly. For example, the UK Government’s central communiqués and Welsh Government statements following meetings of the Net Zero, Energy and Climate Change IMG have been very brief, whilst those of the Environment, Food and Rural Affairs IMG have been more detailed. The Welsh Government publishes periodic reports on [intergovernmental relations], in line with an Inter-Institutional Relations Agreement with the Senedd. The UK Government also publishes quarterly and annual reports on IGR, however, these can often be too focused on the UK Government’s perspective and can sometimes conflate formal and informal intergovernmental meetings.”⁹⁸

79. In its report *How Devolution is Changing Post-EU*, the Scottish Parliament’s Constitution, Europe, External Affairs and Culture (CEEAC) Committee discussed the increased importance of scrutinising the Scottish Government’s intergovernmental activity since the UK’s departure from the EU:

“[T]he increased significance of intergovernmental relations within a shared governance space raises substantial challenges for parliamentary scrutiny ... the management of the regulatory environment across the UK is now dependent on effective intergovernmental relations which could involve a significant increase in UK-wide legislation in devolved areas. There is, therefore, a significant risk that laws made at a UK level in devolved areas will lessen the accountability of the Scottish Ministers to the Scottish Parliament and lessen the opportunities for the public and stakeholders to engage at a devolved level. In turn this requires the Scottish Parliament to review how it approaches the scrutiny of intergovernmental relations and scrutiny of the Scottish Ministers

96 Cabinet Office and Department for Levelling Up, Housing and Communities, *Policy paper: Review of intergovernmental relations* (13 January 2022), para 1: https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 20 September 2024]

97 *Ibid.*, para 22

98 Written evidence from the Senedd Legislation, Justice and Constitution Committee (**GOU0008**)

in their shared role in the governance of the UK alongside the UK Government and other devolved governments.”⁹⁹

80. In written evidence, the Northern Ireland Executive Office said that no formal arrangements had been put in place with regard to informing the Northern Ireland Assembly of matters related to intergovernmental relations. However, it said: “Ministers will be responsive to any requests for information and the benefits of statements to the Assembly following significant developments or significant decisions at meetings, will be considered as appropriate.”¹⁰⁰
81. **While we welcome the commitment by the governments of the United Kingdom to promote understanding of, and accountability for, intergovernmental activity through enhanced reporting to their respective legislatures, we are concerned by reports that information on intergovernmental activity is sometimes lacking. To fulfil their pledge to improve transparency and accountability, all four governments should ensure reporting on intergovernmental activity is timely and includes sufficient detail to facilitate effective scrutiny by their respective legislatures.**

Goodwill, attitudes and culture

82. Goodwill, and a constructive attitude and culture among the governments of the UK, were identified by witnesses as key to ensuring that the new intergovernmental relations mechanisms were effective.
83. Several witnesses thought that the greater responsibility for making intergovernmental relations work rested with the UK Government.¹⁰¹ Professor Gallagher commented that: “Intergovernmental relations are front of mind for the devolved Administrations but are back of the house for the UK central government and can be perceived as a nuisance.”¹⁰² Dr Rycroft noted that the UK Government was a larger administration and also held more knowledge than the devolved administrations:

“If you do not know what Whitehall is thinking about, you do not know what questions to ask. You cannot go on a constant fishing expedition to say, ‘Are you thinking of doing some more immigration legislation?’ or something else. Whitehall, as you know, can hold this stuff very tight ... So the burden of proof, in a way, rests more with Whitehall than with the devolved Governments.”¹⁰³

84. Dr Anderson and Dr Brown Swan commented that the effective suspension of ministerial intergovernmental relations due to “political turmoil within the UK Government in 2022” served to emphasise the important role of the UK Government in facilitating effective intergovernmental relations. They thought that the success of intergovernmental relations relied on “the willingness of those involved to make arrangements work”. While reforming

99 Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *How Devolution is Changing Post-EU* (October 2023), paras 203–206: <https://bprcdn.parliament.scot/published/CEEAC/2023/10/24/6692fb8e-0bf0-47cd-a1ba-cff461d9395d/CEEACS062023R5.pdf> [accessed 20 September 2024]

100 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

101 [Q 16](#) (Dr Philip Rycroft); [Q 54](#) (Prof Laura McAllister); written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#)); [Q 121](#) (Rebecca Evans MS)

102 [Q 11](#) (Prof Jim Gallagher)

103 [Q 16](#) (Dr Philip Rycroft)

structures could help, a constructive shift in attitude and political culture was also required.¹⁰⁴

85. Research conducted by Dr Royles, Dr Rowe and Dr Minto suggested that “party political tensions between different governments in the UK” combined with the “UK Government’s attitude towards devolution” had an impact on the operation of the new intergovernmental relations structures.¹⁰⁵
86. Other witnesses recognised the political tensions that arose between different political parties in power in different parts of the UK but did not consider that this should be a barrier to effective intergovernmental working. Ms Evans said that even where individuals took “radically different views” there should be efforts made to find common ground through respectful discussions.¹⁰⁶ Professor McAllister considered it important to concentrate on the framework for relationships between the governments of the UK. She said: “[W]e need to drill down into what would make good relationships function, regardless of which parties are in power”.¹⁰⁷
87. Mr Davies said it “was no secret that there are tensions at times” between the UK Government and the Welsh Government, due to the fact that there was (at the time he was providing evidence) a Conservative Government in Westminster and a Labour Government in Wales. However, there was a lot of collaborative working on issues in which the two governments were in agreement, including “the importance of encouraging investment, jobs, the growth deals and the work that is going on around Tata [Steel]”¹⁰⁸. In terms of building positive relationships, Mr Davies added that he had made it very clear to the UK Government that it was important to “show a positive attitude towards working with the Welsh Government” when it came to setting up a transition board to support the Port Talbot community. He suggested that a Welsh minister should sit on the board as deputy chair, which was implemented.¹⁰⁹
88. Mr Jack said that while there had been tensions between the UK Government, who were supportive of devolution, and the SNP-led Scottish Government who, in his view, “oppose devolution”, that friction was not evidence of devolution failing: “In fact, the evidence shows that the devolution settlement has proved sufficiently flexible to accommodate fundamental political differences.”¹¹⁰
89. Ms Evans spoke about the importance of early sharing of information: “[G]ood will is about trust, sharing information early and understanding that that information is shared with confidence.” She said: “The UK Government’s engagement, the extent of the information shared with us and the timeliness of that sharing is inconsistent and too variable at the moment. When it works well, it shows that we can make good progress.”¹¹¹

104 [Q 54](#) (Prof Laura McAllister); written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#)), para 4

105 Written evidence from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto ([GOU0003](#))

106 [Q 108](#) (Rebecca Evans MS)

107 [Q 59](#) (Prof Laura McAllister)

108 [Q 72](#) (Rt Hon David TC Davies MP)

109 [Q 73](#) (Rt Hon David TC Davies MP)

110 [Q 72](#) (Rt Hon Alister Jack MP)

111 [QQ 100](#) and [102](#) (Rebecca Evans MS)

90. By way of example, Ms Evans spoke about the UK Government’s approach to tax changes:

“Stamp duty land tax is frequently changed at a UK Government Budget, but it directly impacts the Welsh Government because it affects our block grant. As such, literally as soon as the Chancellor makes an announcement on stamp duty land tax, we are asked, “What does that mean for Wales? Will my tax change? Should I complete a purchase now or should I wait?” All those questions come through and we have no notice whatsoever. Also, it impacts on the block grant adjustment, so the UK Government’s decisions have budgetary implications for us. A bit of earlier notice of the UK Government’s thinking, absolutely confidentially, would help us to respond by understanding how we could spend that additional money, how we could respond to a Budget cut, or how we might change our own land transaction tax.”

She said the Welsh Government had tried to show goodwill in the other direction by sharing early information on its own tax policy, even though Welsh taxes do not have the same implications for the UK Government.¹¹²

91. Ms Evans continued: “The only real information we get ahead of a fiscal event is a call with the Chief Secretary to the Treasury on the morning of that event. We get the RDEL and CDEL numbers,¹¹³ the changes to our budget and literally nothing else ... Respectful sharing of information would make such a big difference to us.”¹¹⁴
92. **The UK Government is more powerful than the devolved governments and, by its nature as the government for the entire UK, possesses information about policy choices that may impact on the devolved nations. As such, while successful devolution requires goodwill on the part of every government, it is particularly incumbent upon the UK Government to take account of the impact its decisions may have throughout the UK and therefore to demonstrate goodwill in its interaction with the devolved governments and share information in good faith. Devolution also requires goodwill, constructive engagement and sharing of information by devolved governments, but where they are themselves hostile to the Union such goodwill and cooperation can be lacking.**
93. **Where different political parties are in power in different parts of the United Kingdom, underlying political differences are inevitable and unavoidable. If intergovernmental relations are to be effective and sustainable, then it is essential that all parties foster a culture of positive engagement; politicians throughout the United Kingdom, whatever their view of the current constitutional structures, must be prepared to overcome political differences in the interests of the people they serve.**

112 [Q 100](#) (Rebecca Evans MS)

113 RDEL numbers are Resource Departmental Expenditure Limits and CDEL numbers are Capital Departmental Expenditure Limits. Both are limits on departmental spending set by the Treasury during spending reviews. Office for Budget Responsibility, ‘Departmental expenditure limits (DELs)’: <https://obr.uk/forecasts-in-depth/tax-by-tax-spend-by-spend/departmental-expenditure-limits/> [accessed 20 September 2024]

114 [Q 101](#) (Rebecca Evans MS)

The dispute resolution process

94. In written evidence, DLUHC told us that the dispute resolution process had been engaged only once to date. This was with regard to a dispute between the UK Government and the Northern Ireland Executive about a scheme for the payment of pensions to persons permanently disabled as a result of Troubles-related incidents.¹¹⁵ The dispute process was paused following the Northern Ireland Executive’s collapse in February 2022.¹¹⁶ In written evidence, the Northern Ireland Executive Office informed us that “[t]he relevant NI Minister is now considering whether to re-commence the process”.¹¹⁷
95. We have set out the dispute resolution escalation process in Box 1 below. In written evidence DLUHC made clear that the intergovernmental relations system and structures “are designed to promote dispute avoidance and seek resolution at the lowest possible level.”¹¹⁸

Box 1: The dispute resolution escalation process

Stage 1: Any of the four governments has the right to raise a dispute that cannot be resolved at the relevant IMG or the F:ISC. These are to be assessed by the Intergovernmental Relations Secretariat against a jointly agreed list of criteria to determine whether they should be classified as a dispute and escalated. The criteria are:

- (a) Has the disagreement been discussed extensively at senior civil servant level for the relevant portfolio or finance matter?
- (b) Was a solution proposed at the senior civil servants’ discussion (that was not satisfactory to all parties to the disagreement)?
- (c) Has the disagreement been discussed extensively by the relevant portfolio or Finance Ministers?
- (d) Does the disagreement have implications beyond its policy area, impacting the wider relationships between the parties involved?

If the Intergovernmental Relations Secretariat is satisfied that a dispute meets all the agreed criteria, it will be escalated to the IMSC or the F:ISC, as appropriate. If the dispute does not meet the criteria, the Intergovernmental Relations Secretariat will refer it back for consideration at an earlier stage in the process.

Ahead of the IMSC or the F:ISC, the relevant secretariat will coordinate a meeting of the Senior Officials’ Group within 10 working days (unless all parties agree to an extension). The Senior Officials’ Group will consider collective recommendations to ministers for resolution. The Chair must not be a representative of a government which is party to the dispute and does not have a decision-making role.

115 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

116 HL Deb (18 January 2024), [col 563](#)

117 Written evidence from Northern Ireland Executive Office ([GOU0013](#))

118 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

Stage 2: Following the meeting of the Senior Officials’ Group, the relevant Secretariat will convene a meeting of the relevant ministers within 10 working days (unless an extension is agreed). The relevant ministers and officials will receive an agenda from the Secretariat summarising background information and the recommendations of the Senior Officials’ Group. The Chair of the meeting will be a minister from a government not party to the dispute or an independent third party, and will not have a decision-making role.

If resolution to the dispute is not reached at the IMSC or the F:ISC, it will be escalated to the Prime Minister and Heads of Devolved Governments Council (the Council), unless all parties agree not to escalate and instead to report to legislatures on the outcome of the dispute.

Impartial (non-binding) advice or mediation should be sought from a third party at the F:ISC or ahead of escalation to the Council, unless all parties to the dispute agree not to do so. Alternative means of resolution can also be sought should all parties agree.

No disagreement over the operating arrangements can prevent escalation to the Council, and it is for the relevant Secretariat to determine escalation.

Stage 3: The Council will consider the dispute and third-party advice within a month. For all disputes, the Intergovernmental Relations Secretariat will produce a paper for the Council.

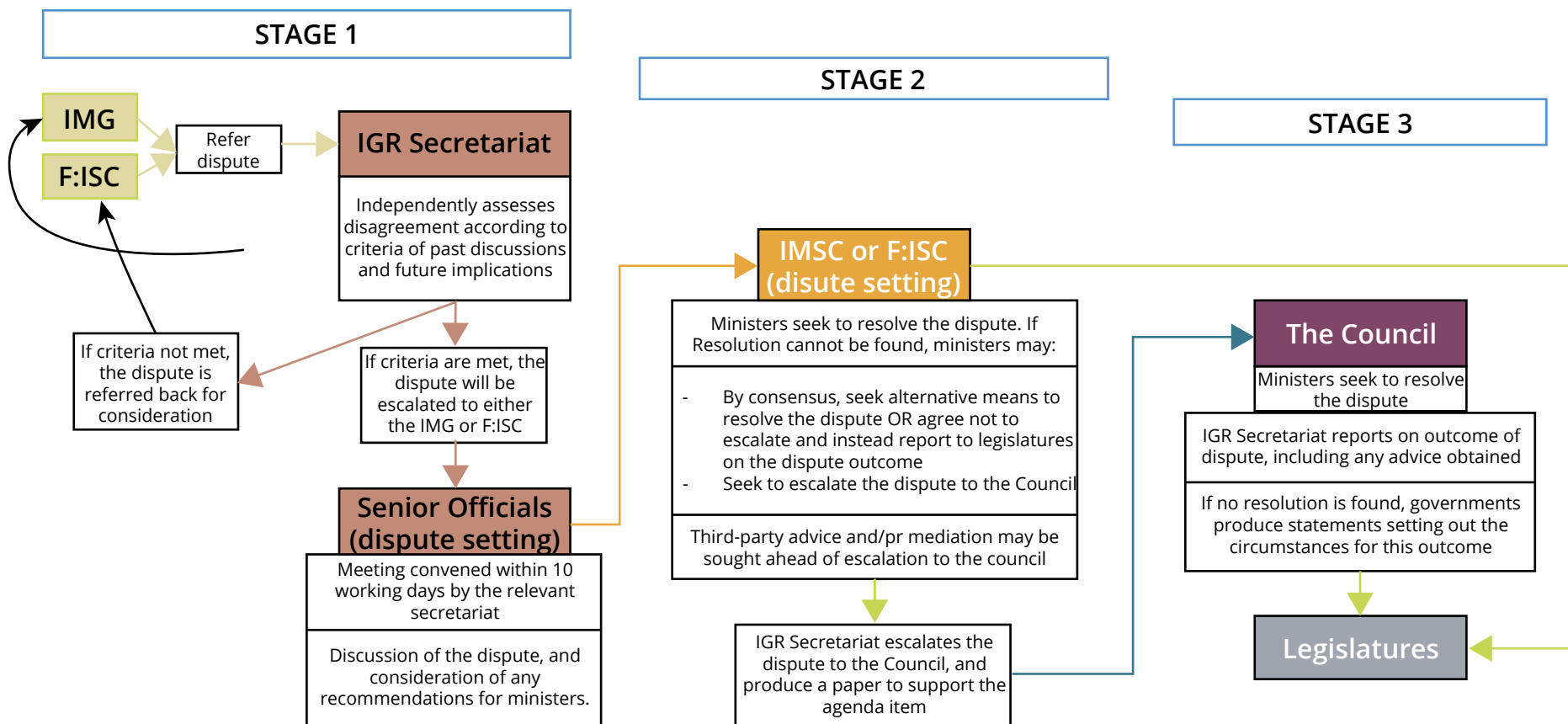
The Intergovernmental Relations Secretariat will report on the outcome of the dispute at the final escalation stage, including any third-party advice obtained. This report must be laid by each government before its legislature.

If governments reach a stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement to its respective legislature setting out the circumstances for the failure to reach a solution.

*Source: Department for Levelling Up, Housing and Communities, ‘The Intergovernmental Relations Secretariat: function and role’ (27 November 2023): <https://www.gov.uk/government/publications/the-intergovernmental-relations-secretariat/the-intergovernmental-relations-secretariat-function-and-role> [accessed 23 September 2024]; Department for Levelling Up, Housing and Communities, *The Review of Intergovernmental Relations* (13 January 2022): https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 23 September 2024]; written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)*

96. The below graphic, included in ‘The Review of Intergovernmental Relations’ policy document, illustrates how the dispute resolution process works:

Figure 2: Flowchart of dispute resolution process



Source: Department for Levelling Up, Housing and Communities, *The Review of Intergovernmental Relations* (13 January 2022): https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 23 September 2024]

97. In written evidence, DLUHC told us:
- “The Secretariat is also committed to publishing an annual report including any resolved disputes, an executive summary of the Secretariat report on the outcome and associated third-party reports when relevant and appropriate.”¹¹⁹
98. Witnesses were generally positive about the existence of the dispute resolution process but several pointed to potential limitations, especially when it came to particularly contentious or political issues.
99. Dr Rycroft thought the existence of the dispute resolution process was “an advance” because the UK Government could not now deny the existence of a dispute. If one party said there was a dispute, then it had to go through the system. However, he noted that parties may be reluctant to use the process if they did not think the issue would be usefully considered.¹²⁰
100. Professor Jim Gallagher, Visiting Professor at the School of Law, University of Glasgow, described the design of the dispute resolution process as “not bad”. He said “The question is: will the people involved, including the potential mediators or independent people, be of sufficient weight to be able to bring the politicians to the table and get them to do a deal? I think experiment will determine the answer to that question.”¹²¹
101. Professor Ciaran Martin, Professor of Practice in the Management of Public Organisations at Blavatnik School of Government, University of Oxford, questioned the extent to which a formal mechanism such as the dispute resolution process can be expected to “cut it” given the intensity of some of the disagreements at play. He had sympathy with the argument that politics had to be given space to take its course and did not think you could “overly systematise” the resolution of major political disputes.¹²²
102. Dr Rycroft pointed to two examples of occasions on which both the UK Government and the Scottish Government saw political opportunity in having disputes in public, rather than using the formal dispute resolution mechanism: the Gender Recognition Reform (Scotland) Bill and the deposit return scheme.¹²³
103. In December 2022 the Scottish Parliament passed the Gender Recognition Reform (Scotland) Bill, which, if enacted, would have introduced a separate process in Scotland for obtaining a Gender Recognition Certificate under the UK-wide Gender Recognition Act 2004.¹²⁴ Gender recognition is a devolved matter in Scotland. However, the Secretary of State for Scotland issued a ‘section 35 order’, which blocked the Bill from proceeding to Royal Assent. Section 35 of the Scotland Act 1998 allows the Secretary of State to prohibit the Presiding Officer from submitting a bill for Royal Assent even if the bill is within devolved competence, if the Secretary of State reasonably believes

119 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

120 [Q 20](#) (Dr Philip Rycroft)

121 [Q 20](#) (Prof Jim Gallagher)

122 [Q 4](#) (Prof Ciaran Martin)

123 [Q 19](#) (Dr Philip Rycroft)

124 The Scottish Government defined a Gender Recognition Certificate as a certificate that legally recognises that a person’s gender is not the gender that they were assigned at birth but is their ‘acquired gender’. Scottish Parliament, ‘*Gender Recognition Reform (Scotland) Bill (Overview)*’: <https://www.parliament.scot/bills-and-laws/bills/gender-recognition-reform-scotland-bill/overview> [accessed 20 September 2024]

the bill is incompatible with international obligations, national security or defence interests or where the legislation would have “an adverse effect” on reserved matters.¹²⁵

104. The Scottish Government sought a judicial review, challenging the validity of the section 35 Order, at the Outer House of the Court of Session in April 2023. The Scottish Government argued that the Gender Recognition Reform Bill did not modify the law as it applies to reserved matters, and that the UK Government improperly used section 35 to block the Gender Recognition Reform (Scotland) Bill because it disagreed with the policy behind the Bill. It also argued that the UK Government did not act in accordance with agreed processes for intergovernmental consultation, and that these channels should have been pursued before the section 35 order was issued. The UK Government responded by arguing that the Bill would have an adverse effect on reserved matters, in particular by affecting the reserved matter of ‘equal opportunities’—specifically the Equality Act 2010, which makes ‘sex’ a protected characteristic.¹²⁶ Dealing with the issue of intergovernmental consultation, the Court found that “the Memorandum of Understanding is a political agreement and compliance or otherwise therewith is not justiciable”,¹²⁷ relying upon *R (Miller) v Secretary of State*.¹²⁸
105. The Court therefore found in favour of the UK Government, concluding that there was a rational basis for the Section 35 Order and that the Scottish Government had not shown it to be unreasonable in law. The Court rejected the Lord Advocate’s submission that policy disagreement regarding gender reform lay behind the Secretary of State’s decision to make the Order. As such, the Gender Recognition Reform (Scotland) Bill could not be submitted for Royal Assent.¹²⁹ The Scottish Government has since said it would not appeal the decision.¹³⁰
106. In a different example, in August 2023, the Scottish Government expected to introduce a deposit return scheme (whereby a deposit of 20p would have been added to the price of single-use drinks containers which would have been refunded if the item was returned for recycling). However, because the deposit return scheme would have introduced trading requirements in Scotland different to those in the rest of the UK, it contravened the rules in the Internal Market Act 2020 preventing regulations that discriminate between goods originating from different parts of the UK. While the UK Government did grant an exemption to the Internal Market Act 2020 which would have allowed the Scottish deposit return scheme to proceed, it would not extend this to cover glass on the basis that planned schemes elsewhere in

125 Scotland Act 1998, [Section 35](#)

126 Institute for Government, ‘*The use of Section 35 of the Scotland Act to block the Gender Recognition Reform (Scotland) Bill*’ (9 October 2023): <https://www.instituteforgovernment.org.uk/explainer/section-35-scotland-gender-recognition-bill> [accessed 20 September 2024]

127 Outer House, Court of Session, *Opinion of Lady Haldane In the petition The Scottish Ministers* [2023] [CSOH 89](#), para 64

128 The Supreme Court, *R (on the application of Miller and another (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] [UKSC 5](#)

129 The Scottish Parliament Information Centre, ‘Court of Session decision on the use of section 35 of the Scotland Act 1998 in relation to the Gender Recognition Reform (Scotland) Bill’ (13 December 2023): <https://spice-spotlight.scot/2023/12/13/court-of-session-decision-on-the-use-of-section-35-of-the-scotland-act-1998-in-relation-to-the-gender-recognition-reform-scotland-bill/> [accessed 20 September 2024]

130 Scottish Government, ‘Section 35 judicial review’ (20 December 2023): <https://www.gov.scot/news/section-35-judicial-review/> [accessed 20 September 2024]

the UK were not intending to include glass, and because of the added cost and complexity for the businesses involved in the scheme.¹³¹

107. In response, then First Minister of Scotland, Humza Yousaf, wrote to the then Prime Minister outlining his concerns about the UK Government's refusal to include glass in the Internal Market Act 2020 exemption. Mr Yousaf said the exclusion of glass would have "a stark environmental impact and detrimentally impact businesses based in Scotland" and "fundamentally threatens the viability of Scotland's [deposit return scheme] with reduced revenue for the scheme administrator."¹³² On 5 June 2023 the UK Government said it would not reconsider the conditions attached to the Internal Market Act 2020 exclusion. On 7 June 2023 the Scottish Government published a statement announcing that the Scottish deposit return scheme would be delayed until at least October 2025 "as a consequence of the UK Government's refusal to agree a full exclusion from the Internal Market Act".¹³³
108. Discussing these examples, Dr Rycroft said:
- "[Y]ou have there two very good examples of where there was clearly a cross-border impact ... a common interest in dealing with the underlying issues, whatever route you choose to take, and where, for whatever reason, those issues were taken not into a "Let us see if we can sort this out" domain but into a "Let us have a fight about it" domain ... I saw in that both Governments, the Scottish Government and the UK Government, seeing political opportunity in having that argument. That, of course, would militate against putting it into a formal dispute resolution mechanism, because they wanted to have that argument in the public space and thereby lost sight of the underlying objectives of what they were trying to achieve."¹³⁴
109. In written evidence Dr Paul Anderson, Senior Lecturer in Politics at Liverpool John Moores University, and Dr Coree Brown Swan, Lecturer in British Politics at University of Stirling, described these incidents as "a missed opportunity to have used the [intergovernmental relations] machinery to address both UK and Scottish government concerns and priorities."¹³⁵
110. More recently, however, Shona Robison, the former Scottish Deputy First Minister, said that a disagreement between the UK and Scottish governments about the banning of sales of glue traps for rodents would be raised in Interministerial Standing Committee and Interministerial Group structures.¹³⁶

131 UK in a Changing Europe, 'The intergovernmental relations system and Scotland's deposit return scheme' (2 June 2023): <https://ukandeu.ac.uk/the-intergovernmental-relations-system-and-scotlands-deposit-return-scheme/> [accessed 20 September 2024]; House of Commons Library, 'Will glass shatter plans for UK deposit return schemes?' (28 November 2023): <https://commonslibrary.parliament.uk/will-glass-shatter-plans-for-uk-deposit-return-schemes/> [accessed 20 September 2024]

132 Scottish Government, 'First Minister writes to Prime Minister: Deadline for UK Government to rethink on deposit return scheme' (3 June 2023): <https://www.gov.scot/news/first-minister-writes-to-prime-minister/> [accessed 20 September 2024]

133 Scottish Government, 'Deposit Return' (7 June 2023): <https://www.gov.scot/news/deposit-return/> [accessed 20 September 2024]

134 Q 19 (Dr Philip Rycroft)

135 Written evidence from Dr Paul Anderson and Dr Coree Brown Swan (GOU0001), paras 5 and 8

136 Scottish Government, 'Glue traps sales ban: letter to UK Government' (31 March 2024): <https://www.gov.scot/publications/glue-traps-sales-ban-letter-uk-government/> [accessed 20 September 2024]

111. Ms Evans told us that the Welsh Government had not yet taken forward a dispute due to the impetus to resolve disputes “through discussion and collaboration”. Nonetheless, if that proved ineffective, the Welsh Government would use the dispute mechanism. She thought it more likely that it would be used on constitutional or finance matters, rather than for more minor issues.¹³⁷
112. The Senedd Legislation, Justice and Constitution Committee noted that, “[d]espite several disagreements relating to legislative consent, the Welsh Government has yet to trigger the new dispute resolution process.” The Committee recalled that the Welsh Counsel General had told them that the timetable associated with UK bills passing through parliament meant it would be difficult for the Welsh Government to use the dispute resolution process in relation to individual UK bills. The Counsel General said:

“It can sometimes be very late in a Bill’s passage before it becomes clear that agreement at intergovernmental level cannot be reached, and whilst the dispute processes can run quickly, they do not override Parliament’s ability to pursue and timetable legislative business.”

The Committee questioned how valuable the dispute resolution process was if the legislative timeline did not allow time for it to be used.¹³⁸

113. **The dispute resolution process, as a feature of the new intergovernmental relations process, has not yet been tested. As referenced in paragraph 94, it has been initiated only once—in a dispute between the Northern Ireland Executive and the UK Government that was paused following the collapse of the Northern Ireland institutions in February 2022. It is therefore not possible, at this time, to assess the efficacy of the new dispute resolution process.**
114. **Nevertheless, in many circumstances, engagement with the dispute resolution process is unlikely to be the most practical course of action. There are three particular reasons for this. Often, informal dialogue between governments will be more effective. Where legislation is involved, the speed and process by which bills and substantive amendments make their way through the legislatures may make it impracticable to pursue a complaint through the dispute resolution process. The reality of different political parties holding power in different parts of the UK—some of which support the Union and others of which aspire to independence—is that publicity engendered by high-profile public disputes will at times be more appealing than resolving issues through established governance structures. For all these reasons it may be that use of the dispute resolution process will remain limited. We will keep this under review.**

The role of the civil service

115. In our 2015 report *Inter-governmental relations in the United Kingdom* we discussed civil servants’ knowledge and experience of devolution. We said: “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

137 [Q 98](#) (Rebecca Evans MS)

138 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

and breadth of engagement between government departments and the devolved administrations will continue to expand.”¹³⁹

116. In our current inquiry, several witnesses again emphasised the important role for civil servants in ensuring that intergovernmental relations structures were effective.¹⁴⁰ Professor Gallagher said it was important that the ministerial structures and meetings that formed the new intergovernmental relations structures were shadowed by a set of official structures and meetings, which encouraged officials to work together. In his view, relationships between officials had become more distant since devolution.¹⁴¹
117. There was, however, concern among witnesses as to the level of knowledge held by Whitehall civil servants about devolution. Dr Rycroft said officials in Whitehall were not confident in understanding devolved politics, which made them “wary of engaging” with the devolved administrations.¹⁴² He told us that all departments were expected to have arrangements in place for dealing with devolution: “devolution teams, Ministers responsible for it, even these days one of the non-execs on the departmental boards with an overview of devolution.” When he worked in Government, departments were required to have devolution plans. However, as with intergovernmental relations structures, the requirements alone were insufficient unless there was a spirit of willingness to engage on devolution issues.¹⁴³
118. The Senedd Legislation, Justice and Constitution Committee told us:
- “While there may have been improvements in individual Whitehall departments, collectively we do not believe that there has been enough progress overall to improve the knowledge and understanding of devolution across Whitehall, and both aspects remain inconsistent.”¹⁴⁴
119. Dr Andrew Goodall, Permanent Secretary to the Welsh Government, said if the intergovernmental relations structures were to be discharged effectively, it was important that the civil service had “a good understanding of the devolution settlement.” He said that knowledge varied across different departments. He had spent significant time in his role describing to civil servants the responsibilities of the Welsh Government, using training and awareness programmes and platforms such as Civil Service Live.¹⁴⁵
120. Dr Anderson and Dr Brown Swan said a lack of knowledge in Whitehall about how devolution works “resulted in the preponderance of a unitary and hierarchical mindset which colours the thinking of ministers and civil servants in Whitehall and consequently impedes more effective [intergovernmental relations]”.¹⁴⁶ Dr Williams spoke about “routine incompetence” among Whitehall departments when it came to literacy about the constitutional structures that exist in the UK and the nature of devolved powers. He was in

139 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146), para 170

140 Written evidence from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto ([GOU0003](#))

141 [Q 11](#) (Prof Jim Gallagher)

142 [Q 12](#) (Dr Philip Rycroft)

143 [Q 13](#) (Dr Philip Rycroft)

144 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

145 [Q 97](#) (Dr Andrew Goodall)

146 Written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#))

favour of long-term secondments among civil servants as a means of at least partially remedying this situation.¹⁴⁷

121. In *Inter-governmental relations in the United Kingdom* we recommended that:

“[T]he 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.”¹⁴⁸

And:

“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’, but closed in 2012. We would welcome clarification from the Government as to how this training is now provided.”¹⁴⁹

122. Following our report, the Government introduced the Civil Service Devolution Capability Programme. DLUHC told us about this Programme in written evidence to our current inquiry:

“This is an ambitious programme that has been in place since 2015 to enhance devolution knowledge and intergovernmental working skills of civil servants, enabling them to deliver more effectively when designing and implementing policies. In financial year 2023/24 the programme reached 22,233 civil servants across Government, who attended centrally run devolution training. Taken together, they enable civil servants to work across the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive. There is always scope to improve engagement and understanding of these processes and it is something the UK Government works to improve ...”¹⁵⁰

123. Mr Davies, then Secretary of State for Wales, told us that although he had encountered ignorance amongst civil servants about devolution, he had never encountered hostility. In terms of ignorance, things had improved significantly over the four years he had been a minister.¹⁵¹ Mr Jack, then Secretary of State for Scotland, said officials in the Scotland Office had meetings with other civil servants across Whitehall departments “day in, day out ... to make sure that upcoming legislation is carefully checked ... that we do not make mistakes and that Whitehall departments understand the devolution settlement.”¹⁵² He also said there were now “policies coming into place to move civil servants around more” and “to have more shadowing”.¹⁵³

124. Dr Royles, Dr Rowe and Dr Minto’s research also identified efforts being made to “develop positive official working relations” and found that “value

147 [Q 62](#) (Dr Rowan Williams)

148 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146), para 170

149 *Ibid.*, para 171

150 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

151 [Q 77](#) (Rt Hon David TC Davies MP)

152 [Q 72](#) (Rt Hon Alister Jack MP)

153 [Q 76](#) (Rt Hon Alister Jack MP)

was placed on proactive, close working at these levels”.¹⁵⁴ In Dr Goodall’s assessment, the officials involved in intergovernmental relations were “effective”.¹⁵⁵

125. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we welcomed a commitment from Rt Hon Michael Gove to include devolution and intergovernmental working in civil servants’ training at all grades:¹⁵⁶

“We welcome the Government’s commitment to increasing civil servants’ knowledge of the devolution arrangements through training programmes. To have the desired impact on changing Whitehall’s mindset this will require significant take up from the most junior to the most senior civil servants.”¹⁵⁷

126. **If intergovernmental relations are to be a success, it is vital that civil servants have a comprehensive understanding of devolution and are encouraged, including by ministers, to engage effectively with their counterparts in the devolved administrations where policy proposals are likely to impact upon devolved competence. We urge the new Government to ensure that every department has a properly equipped team—and a Ministerial lead—with the knowledge and skills necessary to address, anticipate and engage with devolution matters as they arise, providing an identified point of contact for the devolved administrations.**
127. **We note that the Civil Service Devolution Capability Programme has been in place since 2015 yet concerns remain about civil servants’ knowledge of devolution. We reiterate our previous recommendation that to be effective, such training requires significant take up, from the most junior to the most senior civil servants.**

The restoration of Northern Ireland institutions

128. The new intergovernmental relations structures were introduced in January 2022—just before the devolved institutions in Northern Ireland collapsed on 3 February 2022. The Northern Ireland Executive Office told us that in the absence of a First Minister and Deputy First Minister it was officials who “engaged with their equivalent colleagues in the other governments on operational matters related to the functioning of the new machinery for Inter-Governmental Relations (IGR).”¹⁵⁸
129. The Northern Ireland institutions were re-established on 3 February 2024 following an agreement between the UK Government and the Democratic Unionist Party, in which the latter agreed to endorse a package of measures which the Government set out in the Safeguarding the Union Command Paper.¹⁵⁹

154 Written evidence from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto ([GOU0003](#))

155 [Q 97](#) (Dr Andrew Goodall)

156 Letter from Michael Gove MP to Lord Dunlop on the government response to the Dunlop Review (24 March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973001/L_Dunlop_Letter.pdf

157 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 305

158 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

159 Northern Ireland Office, Safeguarding the Union, CP 1021 (31 January 2024): https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper_1_.pdf [accessed 20 September 2024]

130. At the time at which DLUHC submitted written evidence (in April 2024), Northern Ireland Executive ministers had, since the restoration of the Executive, attended the sixth Interministerial Standing Committee, the Interministerial Group on UK-EU Relations and the Finance: Interministerial Standing Committee, all held in March 2024. The first East-West Council, established as part of the Safeguarding the Union Command Paper, took place on 26 March 2024. The Council’s focus is on trade promotion, connectivity, culture and skills.¹⁶⁰
131. Lord Caine, then Parliamentary Under-Secretary of State at the Northern Ireland Office, told us that with the restoration of the Northern Ireland Executive, he hoped to “build a much more structured relationship than we have had over the past few years”.¹⁶¹
132. Lord Caine said he had “lost count” of the number of times he had attended the Parliamentary Business and Legislation Committee and said: “In normal circumstances, this would require a [legislative consent motion] process, but as there is no Northern Ireland Executive and Assembly, we can’t engage that process”. He said that during that period the UK Government did, however, consult with the Northern Ireland Civil Service. After the Executive and Assembly had been restored, the legislative consent process was functioning again.¹⁶² Speaking on 15 May 2024, before Parliament was dissolved for the General Election, Lord Caine said: “There are currently three LCM memorandums being considered by the Assembly in relation to the Pet Abduction Bill, the Tobacco and Vapes Bill, and of course the Post Office (Horizon System) Offences Bill. One LCM has already been secured for the Pensions (Special Rules for End of Life) Bill.”¹⁶³
133. Professor Gallagher thought the restoration of the Northern Ireland institutions, and the presence of three rather than two devolved administrations, had the potential to widen the scope of intergovernmental relations. He said: “It turns into more of a territorial constitutional body for the whole United Kingdom. I hope that it will make it fuller.”¹⁶⁴
134. Dr Whitten identified some areas where the participation of Northern Ireland ministers in the intergovernmental relations structures might expand the discussion to include new dimensions. For example, the Interministerial Group for Environment, Food and Rural Affairs might have to consider Northern Ireland’s obligations under the Windsor Framework and, therefore, EU policy decisions in relevant areas. In addition, the Interministerial Group for Net Zero, Energy and Climate Change might have to consider that there is a single electricity market in Northern Ireland and Ireland, which links Northern Ireland, to a degree, to EU policy decisions in this area.¹⁶⁵
135. However, Dr Whitten also said she did not necessarily think it was realistic to expect Northern Ireland to play a very direct role in shaping the direction of the intergovernmental relations structures. This was partly due to “the challenge in many contexts of articulating a strong, unified Northern Ireland position on some of the substantive policy areas.”¹⁶⁶

160 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

161 [Q 73](#) (Lord Caine)

162 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

163 [Q 89](#) (Lord Caine)

164 [Q 24](#) (Prof Jim Gallagher)

165 [Q 42](#) (Dr Lisa Claire Whitten)

166 *Ibid.*

136. In written evidence, the Northern Ireland Assembly’s Committee for the Executive Office said consideration should be given to how the new bodies created under the Safeguarding the Union command paper complement the intergovernmental arrangements, and the effects of the intergovernmental relations arrangements on the Belfast/Good Friday Agreement.¹⁶⁷
137. **It is not yet clear how the re-establishment of Northern Ireland institutions in February 2024 will impact on the efficacy of the new intergovernmental relations structures. As such, a full assessment of the intergovernmental relations structures will require time to allow for Northern Ireland’s full participation to bed in.**

Common frameworks

138. When the UK left the European Union, powers previously exercised by the EU were returned to the UK, many of which fell within the competence of the devolved administrations. Common frameworks were developed as a means to ensure a common approach was taken on relevant policy areas.¹⁶⁸ Common frameworks are being developed in 32 policy areas.¹⁶⁹ In its final report, the Common Frameworks Scrutiny Committee explained the role of common frameworks:

“While they vary greatly, they all create the processes necessary for day-to-day cooperation across the UK between its four constituent parts. They can be used to agree public messaging and research collaboration, as within the Public Health Protection and Public Health Security framework. Or they can be used to develop single processes that are essential for the functioning of the UK internal market, such as for the authorisation of nutrition and health claims, as within the Nutrition Related Labelling, Composition and Standards framework. They also allow for policy divergence where the relevant administrations agree to disagree.”¹⁷⁰

139. In written evidence, DLUHC provided an explanation of the common frameworks programme:

“The Common Frameworks programme is grounded in the jointly-agreed Common Frameworks principles. The centrepiece of the principles is agreement to establish common approaches in certain areas where there is returning EU law in devolved competence. These common approaches consist of highly structured joint governance set out in a Framework Outline Agreement and often a concordat. In order to both deliver collaboration and manage disagreements, the Common Frameworks adhere to a standard format which requires the setting-out of the structures which provide for joint discussion, decision-making, and information sharing. Many Frameworks include a ‘no surprises’ clause which requires timely sharing of information. Each Framework also includes a dispute avoidance and resolution mechanism which is guided

167 Written evidence from the Northern Ireland Assembly Committee for the Executive Office ([GOU0009](#))

168 Common Frameworks Scrutiny Committee, *Common frameworks: an unfulfilled opportunity?* (1st Report, Session 2022–23, HL Paper 41), para 1; Department for Levelling Up, Housing and Communities, ‘UK Common Frameworks’ (22 December 2020): <https://www.gov.uk/government/collections/uk-common-frameworks> [accessed 20 September 2024]

169 Common Frameworks Scrutiny Committee, *Common frameworks: an unfulfilled opportunity?* (1st Report, Session 2022–23, HL Paper 41), Appendix 6

170 *Ibid.*, Summary

by the principle of subsidiarity and which aims to resolve disagreements before they can turn into [Intergovernmental relations]-level disputes. In practice a number of disagreements have been resolved through a Common Framework before they become an intergovernmental dispute.”¹⁷¹

140. Witnesses were generally positive about the common frameworks programme. Dr Rycroft thought common frameworks were a good example of “daily cross-border working” that takes place behind the high-profile public disputes between the governments of the UK. He said: “As far as I can see, they are working, out of sight of the political stramash ... I think they are a very important part of the mix now, and very necessary to handle the post-Brexit dispensation.”¹⁷²
141. Dr Anderson and Dr Brown Swan noted that common frameworks were “generally considered to be a good model to facilitate joint-working between the UK and devolved governments”. They thought this was partly because common frameworks were perceived by devolved ministers as being “mutually negotiated and agreed between governments, rather than imposed by the UK Government.”¹⁷³
142. This view appears to be shared by the Scottish Government, who, in evidence to the House of Commons Scottish Affairs Committee, said:
- “The Common Frameworks programme shows that there is an entirely practicable way for the governments to manage policy divergence in devolved matters on the basis of agreement. Indeed, Common Frameworks are an example of new intergovernmental mechanisms which could help embed better ways of working between the four governments, as they are underpinned by principles including respect for devolution, observing the Sewel Convention and acknowledging the legitimacy of policy divergence.”¹⁷⁴
143. The Scottish Parliament’s CEEAC Committee noted there was consensus among the UK Government and the devolved governments that common frameworks “provide the right mechanism to manage regulatory divergence within the UK internal market”.¹⁷⁵ The Senedd Legislation, Justice and Constitution Committee described common frameworks as a “key mechanism for the development and coordination of policy and legislation across governments in the UK post-Brexit.”¹⁷⁶
144. In its March 2021 report *Common frameworks: building a cooperative Union* the House of Lords Common Frameworks Scrutiny Committee concluded:
- “Common frameworks are innovative mechanisms for developing UK-wide policy by collaboration and consensus between the four administrations, taking account of the interests of each part of the UK. They strengthen the Union by acknowledging the interdependence of

171 Written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)

172 Q 22 (Dr Philip Rycroft)

173 Written evidence from Dr Paul Anderson and Dr Coree Brown Swan (GOU0001)

174 Written evidence from the Scottish Government to the Scottish Affairs Committee, p 4: <https://committees.parliament.uk/writtenevidence/124908/pdf/>

175 Written evidence from the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee (GOU0005)

176 Written evidence from the Senedd Legislation, Justice and Constitution Committee (GOU0008)

policy between administrations, while recognising the autonomy of each administration in its areas of competence through the possibility of divergence on the basis of consent.”¹⁷⁷

And:

“Common frameworks represent an example of best practice for positive cooperation across the UK and have an important role to play in an evolving devolution settlement and in strengthening the Union.”¹⁷⁸

145. However, the Committee expressed concern that common frameworks were at risk of becoming “a missed opportunity”.¹⁷⁹ This was in part due to concerns about the common frameworks programme having become process driven, rather than a vehicle for policy development or policy coordination, as originally intended,¹⁸⁰ and concern about ministerial oversight having been moved from the Cabinet Office to DLUHC.¹⁸¹

146. The Common Frameworks Scrutiny Committee also commented on the absence of finalised common frameworks, stating that:

“[This] is evidence that the Government has continually underestimated the effort, collaboration, and coordination required to successfully implement the programme. While some of this reflects the pace, preoccupations and processes of different departments, it also reflects a failure of leadership, drive and focus, at the top of Government, in recognising and optimising the contribution Common Frameworks can make to the resilience of the Union.”¹⁸²

147. In addition, the Committee noted damage done to the common frameworks programme by the Internal Market Act 2020. It said:

“The market access principles in the United Kingdom Internal Market Act 2020 could constrain the ability of the devolved administrations to regulate effectively in areas of devolved competence, as it is possible that their standards could be undercut from other parts of the UK. This would occur by the importation of goods and services from other parts of the UK that adhered to standards different from those of the administration concerned. The same also applies for the UK Government when legislating for England. This could be contrary, rather than complementary, to the approach taken in common frameworks, which can allow for intra-UK divergence as long as it is agreed by all parties to the framework.”¹⁸³

177 Common Frameworks Scrutiny Committee, *Common frameworks: building a cooperative Union* (1st Report, Session 2019–21, HL Paper 259), para 26

178 *Ibid.*, para 27

179 *Ibid.*, Summary

180 Letter from Baroness Andrews, then Chair to the House of Lords Common Frameworks Scrutiny Committee to the Rt Hon Michael Gove MP, then Secretary of State for Levelling Up, Housing and Communities (24 October 2023): <https://committees.parliament.uk/publications/41831/documents/207459/default/>. Baroness Andrews is a member of the Constitution Committee.

181 Common Frameworks Scrutiny Committee, *Common frameworks: an unfulfilled opportunity?* (1st Report, Session 2022–23, HL Paper 41), para 132

182 Letter from Baroness Andrews, then Chair to the House of Lords Common Frameworks Scrutiny Committee to the Rt Hon Michael Gove MP, then Secretary of State for Levelling Up, Housing and Communities (24 October 2023): <https://committees.parliament.uk/publications/41831/documents/207459/default/>

183 Common Frameworks Scrutiny Committee, *Common frameworks: building a cooperative Union* (1st Report, Session 2019–21, HL Paper 259), para 97

148. The Scottish Government took a similar view in evidence to the House of Commons Scottish Affairs Committee:

“[T]he Common Frameworks programme has been put under strain by the unilateral—and wholly unnecessary—imposition of the Internal Market Act in 2020, and then by UK Ministers’ failure to honour assurances offered in both Houses of Parliament to follow agreed processes, and allow policy divergence agreed through a Common Framework to be excluded from the Act’s effects. The Internal Market Act 2020 embodies many of the wider challenges we face in establishing more equitable and sustainable [intergovernmental relations] ... it undermined preceding collaborative efforts to establish agreed ways of working through common frameworks”¹⁸⁴

149. With regard to the exclusion process, the Common Frameworks Scrutiny Committee said:

“The UK Internal Market Act 2020 has damaged intergovernmental relations. This means it is all the more important that the exclusions process, which is essential for mitigating the effects of the Act, is made explicit in all relevant frameworks.”¹⁸⁵

150. The Common Frameworks Scrutiny Committee also expressed concern that common frameworks could “become a casualty of political fall-out in Northern Ireland”, where the absence of devolved institutions between February 2022 and February 2024 meant limited engagement in common frameworks by the Northern Ireland Executive and Assembly.¹⁸⁶

151. On 5 March 2024, following the fifth meeting of the Interparliamentary Forum in February 2024, the Chair of this Committee, Baroness Drake, wrote to Rt Hon Michael Gove MP, then Secretary of State for Levelling Up, Housing and Communities, in his capacity as Minister for Intergovernmental Relations. Baroness Drake communicated the view of the Interparliamentary Forum that, with the re-establishment of the Northern Ireland Executive on 3 February 2024 “it may now be possible for some further progress to be made towards finalising the 28 Common Frameworks that are currently operating on a provisional basis”.¹⁸⁷ In responding to the letter, Michael Gove agreed that “the restoration of devolved institutions in Northern Ireland will make it possible to make substantial progress in implementing Common Frameworks.”¹⁸⁸

152. In written evidence, the Northern Ireland Executive Office told us that following the return of the Northern Ireland Executive and Assembly: “Executive Office officials have been working jointly with their Scottish, Welsh

184 Written evidence from the Scottish Government to the Scottish Affairs Committee, p 4: <https://committees.parliament.uk/writtenevidence/124908/pdf/>

185 Common Frameworks Scrutiny Committee, *Common frameworks: an unfulfilled opportunity?* (1st Report, Session 2022–23, HL Paper 41), para 69

186 *Ibid.*, para 96

187 Letter from Baroness Drake, Chair of the Constitution Committee, to Rt Hon Michael Gove MP, then Secretary of State for Levelling Up, Housing and Communities (5 March 2024): <https://www.parliament.uk/contentassets/d5367328de4a49379de99d02d908f94a/baroness-drake-to-rt-hon-michael-gove-mp-5-march-2024.pdf>

188 Letter from the Rt Hon Michael Gove MP, then Secretary of State for Levelling Up, Housing and Communities, to Baroness Drake, Chair of the Constitution Committee (21 March 2024): <https://www.parliament.uk/contentassets/d5367328de4a49379de99d02d908f94a/2024-03-21---sos-to-baroness-drake.pdf>

and UK Government counterparts on the processes to finalise Common Frameworks once all relevant legislatures, including the NI Assembly, have had the opportunity to provide scrutiny of the recommendations.” It continued: “Finalisation will take place once recommendations from legislatures have been taken into account and the Common Frameworks have undergone a quality assurance check.”¹⁸⁹

153. **Despite significant setbacks—not least the collapse of devolved institutions in Northern Ireland in February 2022 and the criticisms levelled at the Internal Market Act 2020—common frameworks represent a positive example of intergovernmental cooperation, using a collaborative and consensus-driven approach.**
154. **When fully implemented common frameworks have the potential to develop UK-wide policy through collaboration and consensus, while also acknowledging the autonomy of each of the devolved administrations in their area of competence and allowing for policy divergence on the basis of consent. In the words of the Common Frameworks Scrutiny Committee “[t]hey therefore have singular potential to strengthen cooperation between the administrations which is essential to maintaining the Union.”¹⁹⁰**
155. **As part of our remit to keep under review constitutional aspects of devolution, this Committee maintains a watching brief on the operation of common frameworks. *With the re-establishment of the devolved institutions in Northern Ireland, we urge the new Government to mobilise every effort to finalise and fully implement all 32 common frameworks agreed between the UK Government and the devolved governments.***

189 Written evidence from Northern Ireland Executive Office ([GOU0013](#))

190 Common Frameworks Scrutiny Committee, *Common frameworks: an unfulfilled opportunity?* (1st Report, Session 2022–23, HL Paper 41), para 20

CHAPTER 3: HOW CAN INTERGOVERNMENTAL RELATIONS BE IMPROVED?

The role of the territorial offices

156. The territorial offices consist of the Scotland Office, the Wales Office and the Northern Ireland Office. The civil service document ‘Introduction to Devolution’ describes the territorial offices as “invaluable in helping the UK Government to understand the detail of the devolution settlements, and how to take forward policies with another administration ... They represent the UK Government in the devolved nations and the devolved nations in the UK Government.”¹⁹¹
157. In written evidence, DLUHC described the role of the territorial offices:
- “Ministers and officials within the Territorial Offices encourage and support early engagement between UK Government departments and the devolved administrations, helping to ensure that departments consider the whole of the UK in their work throughout the policy development process. The Territorial Offices also engage directly with the devolved administrations on specific issues.”¹⁹²
158. During our inquiry it was acknowledged that the Northern Ireland Office was in a different position to the Scotland Office and the Wales Office due to its much larger size and the unique political situation in Northern Ireland. The Northern Ireland Office was regularly required to adopt strategic and administrative oversight in Northern Ireland due to the suspension of the devolved institutions in Northern Ireland.¹⁹³ As such, in this part of the report we focus more closely, though not exclusively, on the role of the Scotland and Wales Offices.
159. Taking evidence before a general election was called in May 2024, we asked then Secretary of State for Scotland, the Rt Hon Alister Jack MP, then Secretary of State for Wales, the Rt Hon David TC Davies MP and then Parliamentary Under-Secretary of State at the Northern Ireland Office, Lord Caine to provide examples of the role played by the territorial offices in maintaining and improving relationships between the UK Government and the governments of the devolved nations.
160. Mr Jack said that every Quarter he chaired the “Delivering for Scotland” board, which involved meeting with senior civil servants in every department across Whitehall to discuss what was being done to strengthen the Union. The Scotland Office assisted Government departments facing problems related to devolution and helped departments to understand the devolution settlement.¹⁹⁴ He said this had been effective because the Scotland Office brought “knowledge of the issues, both legal and policy-wise, that those Whitehall departments would not necessarily have.”¹⁹⁵
161. Mr Jack offered the Post Office (Horizon System) Offences Bill as an example of an occasion on which the Scotland Office had bought its influence to bear

191 Civil Service, *Introduction to Devolution*, p 7: <https://assets.publishing.service.gov.uk/media/5c37319aed915d731281fe13/IntroductionToDevolution.pdf> [accessed 20 September 2024]

192 Written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)

193 Q 6 (Prof Ciaran Martin)

194 Q 72 (Rt Hon Alister Jack MP)

195 Q 75 (Rt Hon Alister Jack MP)

on UK Government policy. In this instance he worked with the Department for Business and Trade to ensure that what the Lord Advocate wanted to deliver was delivered in the Bill. He made sure the Department for Business and Trade “understood that we should respect what the law officers in Scotland wanted to do, so that they could then deal with the justice issues correctly.”¹⁹⁶

162. Mr Davies said the role of the Wales Office was to “represent Wales around the Cabinet table”.¹⁹⁷ He cited the development of the floating offshore wind industry in the Celtic Sea as an example of where the Wales Office had “been very good for the development of an important industry in Wales”. He had held meetings with the Crown Estate and several government departments “each of which has had problems or issues that require resolving”. He explained that as a Cabinet Minister and member of Government, he was able to meet with ministers in the relevant departments “whenever [he needed] to”.¹⁹⁸
163. Mr Davies also spoke about the decision by the UK Government and the Indian company Tata to close Tata’s blast furnaces at Port Talbot in Wales. He said the Wales Office had played a role in supporting the proposal to replace the blast furnaces with an electric arc furnace, which would save 5,000 jobs. The Wales Office acknowledged that there would be 2,800 job losses and was undertaking work to ensure other government departments were “stepping up” and that training and other support was provided to people who lost their jobs. The Wales Office was seeking to ensure that freeport status was quickly allocated to Port Talbot, so the town could attract other industries. He said this work required him “to be able to get through the door of numerous government departments around Whitehall and beyond to support the town and the community”.¹⁹⁹
164. Lord Caine said that in addition to representing Northern Ireland’s interests around the Cabinet table, the Northern Ireland Office represented the UK Government’s interests in Northern Ireland. This involved ensuring that various political agreements made over the years, including, most recently, the commitments made in the Safeguarding the Union command paper in February 2024 were “properly and faithfully implemented”. He also said the Office worked closely with the Northern Ireland Executive on issues of economic prosperity, including by working together “to encourage inward investment into Northern Ireland.” In terms of a concrete example, Lord Caine also spoke about the Post Office (Horizon System) Offences Bill where conversations between the Northern Ireland Office, the Northern Ireland Executive and the Department for Business and Trade had resulted in amendments to the Bill to ensure that Northern Ireland was included within its scope.²⁰⁰

Engagement with the devolved administrations

165. Notwithstanding the above examples provided by ministers, several witnesses described the role of the territorial offices as limited. One reason for this was that much of the interaction between governments took place

196 Q 72 (Rt Hon Alister Jack MP)

197 Q 72 (Rt Hon David TC Davies MP)

198 *Ibid.*

199 *Ibid.*

200 Q 72 (Lord Caine)

bilaterally between the devolved administrations and the relevant Whitehall department.²⁰¹

166. Ms Evans told us the Welsh Government’s “normal day-to-day engagement route with the UK Government was the decision-making portfolio Minister in the area in question”. She continued: “We do not have a day-to-day relationship with the Secretary of State for Wales, purely because he does not take decisions in the areas that we are particularly concerned about.”²⁰² She said there was no coordinating influence from the Secretary of State for Wales and she did not think there should be as it would create additional bureaucracy: “The Secretary of State is not a gateway to the UK Government.” By speaking directly to the individual who was responsible for specific policy decisions, progress could be made “as speedily as possible”.²⁰³ She added that the Welsh Government had a “long history” of working well with particular UK Government departments, in particular when it came to coordination on agriculture.²⁰⁴
167. Dr Goodall said officials in the Welsh Government would also approach the individual departments that mirror their own responsibilities.²⁰⁵ He said contact with colleagues in the Wales office tended to be less regular than with some of the other departments²⁰⁶ and “more routine”.²⁰⁷ He said that more so than with the Wales Office, “constitutional contact” and engagement on intergovernmental relations tended to take place with the then Secretary of State for Levelling Up, Housing and Communities.²⁰⁸
168. In written evidence the Scottish Government said it “believes that most contact should be carried out on a bilateral or multilateral basis, between departments which deal on a day-to-day basis with the issues at stake, as is currently the case.”²⁰⁹
169. The Northern Ireland Executive Office said that the Northern Ireland Office was not “the sole route through which the Executive engages the UKG”. It said: “[M]ost departments will have direct links with their Whitehall counterparts - these links will reflect relationships built up over time on policy or legislative issues”.²¹⁰
170. However, Mr Jack argued that the territorial offices were involved in discussions between UK Government departments and the governments of the devolved administrations. He gave an example of an occasion on which the Department for Health and Social Care had discussed with the Scottish Government the possibility of health data being shared across the United Kingdom. Mr Jack said he became involved in the discussions because he felt they were “going in the wrong direction”: the NHS in Scotland was being given the option to opt out of data sharing. He felt that improving standards of health care in Scotland and the sharing of best practice meant there

201 [Q 6](#) (Prof Ciaran Martin); written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#))

202 [Q 105](#) (Rebecca Evans MS)

203 [QQ 105–106](#) (Rebecca Evans MS)

204 [Q 97](#) (Rebecca Evans MS)

205 [Q 107](#) (Dr Andrew Goodall)

206 [Q 97](#) (Dr Andrew Goodall)

207 [Q 108](#) (Dr Andrew Goodall)

208 *Ibid.*

209 Written evidence from the Scottish Government ([GOU0004](#))

210 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

should not be an opt-out.²¹¹ In his view, it worked better when officials from the Scottish Government engaged the Scotland Office in the first instance on a policy matter: “If they went to the Department of Health first, the Department of Health would get in touch with us and we would advise it on where there may be pitfalls or issues, and give it that expertise, which would, hopefully, solve the problem. That works 90% of the time.”²¹²

171. Lord Caine summarised the role of the Northern Ireland Office when it came to the devolved administrations engaging with UK Government departments:

“The Northern Ireland Office does not have great expertise in agriculture and rural affairs or the health service specifically, but [the Department for Environment, Food and Rural Affairs] does not have great expertise in the politics of Northern Ireland, so we work collaboratively. They can deal with the technical side of things. We generally act as the department that will alert other parts of Whitehall as to particular issues or nuances.”²¹³

172. Other witnesses recognised that there was an important role for the territorial offices. The offices had a role in providing expertise and looking strategically at the situation in the devolved nations. There was also some value in the secretaries of state having a voice in Cabinet and being a single point of contact for the devolved administrations, particularly when it came to the UK’s legislative agenda.²¹⁴
173. While Professor Gallagher said it was inevitable that the agriculture departments in Edinburgh or Cardiff would want to build a relationship with the Department for Environment, Food and Rural Affairs, he emphasised that not all policy areas had a clear government department with which to liaise (for example an official working on gender equality issues). One of the purposes of the territorial offices was to spot absences and problems.²¹⁵
174. Professor Gallagher also thought the territorial offices were a way of signalling that the UK Government had not simply devolved powers and forgotten about them: “they have been remembered at the centre as well and they have a voice there too.”²¹⁶ He thought the territorial offices were potentially an ally for the devolved administrations. In respect to Scotland, he said: “If we had not spent the last 15 years arguing about independence, it is conceivable that the devolved Administration and the Secretary of State could have been close chums in pushing domestic interests.”²¹⁷
175. Dr Rycroft thought the territorial offices should be both facilitating relationships and getting involved in the substance of policy. While they may not be in the room the whole time, they should know what is going on. They hold the expertise on the devolution settlements and ought to understand what is happening politically in the devolved nations. This was critical in

211 [Q 78](#) (Rt Hon Alister Jack MP)

212 [Q 80](#) (Rt Hon Alister Jack MP)

213 [Q 79](#) (Lord Caine)

214 [Q 6](#) (Prof Ciaran Martin); written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#)); [Q 108](#) (Dr Andrew Goodall)

215 [Q 25](#) (Prof Jim Gallagher)

216 [Q 26](#) (Prof Jim Gallagher)

217 [Q 28](#) (Prof Jim Gallagher)

guiding Whitehall in its policy responses “when they were doing the Scotland Act and the Wales Act ... [and] throughout Brexit”.²¹⁸

176. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

“We believe that retaining separate territorial secretaries of state helps to maintain the prominence that the Union and intergovernmental relations demand in the Cabinet and across Whitehall.”²¹⁹

Resources and spending power

177. Some witnesses thought the territorial offices’ limited role was due to resource constraints.²²⁰ Dr Rycroft commented on how few people were employed by the territorial offices, which made it more difficult for them to make their presence felt.²²¹ Professor Martin said that for as long as the Scotland and Wales Offices were retained in their current size, their role was going to be limited.²²²

178. Mr Jack and Mr Davies challenged this view. Mr Jack said that as territorial departments “we punch above our weight in what we achieve.”²²³ Mr Davies said he believed the Wales Office had “perfectly adequate resources to do the job that we need to do” and praised the high quality of civil servants who worked in the Office.²²⁴

179. Professor Martin told us the currency of Whitehall departments was “money and activity” and the Scotland and Wales offices were not set up to “play in that space”.²²⁵ Mr Jack expressed a similar view: he said the one thing he would change about the territorial offices would be to make Scotland and Wales spending departments again. He said: “At the moment, we work with other departments on our spending, but the time has now come to go back to where we were prior to joining the EU—this is not a pre-devolution thing but a pre-EU thing—and for structural funds to be spent by the territorial offices.” Mr Davies echoed this sentiment.²²⁶

180. **The territorial offices have an important role to play in strengthening the Union by enhancing Whitehall understanding of devolution and the political context in the devolved nations, and by guiding UK Government policy accordingly. The secretaries of state for Scotland, Wales and Northern Ireland have a particular duty to engage constructively with, and demonstrate respect for, the competences of the devolved administrations. They are in a position to represent the interests of the respective nations in the Cabinet and have direct access to ministers in other Government departments. We look forward to further clarity as to the respective roles of the territorial secretaries of state and the new Minister for Intergovernmental Relations.**

218 [Q 25](#) (Dr Philip Rycroft)

219 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), paras 286 and 287

220 [Q 16](#) (Prof Jim Gallagher)

221 [Q 26](#) (Dr Philip Rycroft)

222 [Q 6](#) (Prof Ciaran Martin)

223 [Q 75](#) (Rt Hon Alister Jack MP)

224 [Q 75](#) (Rt Hon David TC Davies MP)

225 [Q 6](#) (Prof Ciaran Martin)

226 [Q 77](#) (Rt Hon Alister Jack MP and Rt Hon David TC Davies MP)

Machinery of Government

181. The efficacy of the new intergovernmental relations structures depends in part on the new Government's choices regarding machinery of government. This was an issue raised by Dr Rycroft, who expressed concern about where responsibility for the territorial constitution lay within the UK Government. He told us that during his time in office, he had, along with then Prime Minister David Cameron and then Cabinet Secretary Jeremy Heywood, set up the UK Governance Group in the Cabinet Office, which included the Constitution Group, the Scotland Office, the Wales Office and the Office of the Advocate General for Scotland. Dr Rycroft said: "Our very deliberate intention there was to give the territorial departments the heft of the centre, to give them the authority of the Cabinet Office in their dealings with Whitehall, and that worked quite well ... The other deeper thing was to build up the capability and understanding in Whitehall of the expertise in devolution and constitution issues."²²⁷

182. Dr Rycroft compared this to the setup under the Conservative Government in power prior to the July 2024 general election:

"Some of the Constitution Group stuff now sits in DLUHC and some of the responsibilities are still in the Cabinet Office, but that sense of a unity of purpose, the centrality of constitutional issues to the governance of the United Kingdom, has dissipated, which is very symptomatic of the short-term nature of Whitehall consideration of some of the important issues that the country faces."

He hoped that the new Government would carefully consider what arrangements to put in place "to ensure that constitutional issues get due attention, with the right expertise behind them, at the heart of government."²²⁸

183. Dr Rycroft advocated for a new post of First Secretary of State:

"With the First Secretary of State and the territorial Secretaries of State, you then have a powerhouse of political authority within the system to think about and to manage both constitutional and devolution issues. In a way, nothing is more important, at the end of the day, in thinking about running the country."²²⁹

Professor Gallagher also thought there should be "a powerful central constitutional Minister who would do devolution and other constitutional things." He thought a Cabinet Committee chaired by that minister and attended by the territorial ministers and relevant departments should steer the Government's constitutional policy.²³⁰

184. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

"We endorse the Dunlop review's recommendation that a senior Cabinet position—at present the Secretary of State for Levelling Up, Housing and Communities—should have a duty to uphold the integrity of the

227 [Q 25](#) (Dr Philip Rycroft)

228 *Ibid.*

229 [Q 26](#) (Dr Philip Rycroft)

230 [Q 29](#) (Prof Jim Gallagher)

constitution, including the operation of intergovernmental relations and the devolution arrangements more generally.”

185. In September 2024 the Prime Minister announced, with immediate effect, that:

“Responsibility for Union and devolution policy across Scotland, Wales and Northern Ireland will move from the Ministry of Housing, Communities and Local Government to the Cabinet Office. This change will support cross-government coordination and engagement with the devolved governments which will be led by the Chancellor for the Duchy of Lancaster as Minister for Intergovernmental Relations. Responsibility for devolution policy in England and engagement with Mayors and local government will remain with the Deputy Prime Minister and Ministry of Housing, Communities and Local Government.”²³¹

186. **We welcome the new Government’s appointment of a Minister for Intergovernmental Relations, based in the Cabinet Office, with responsibility for devolution. It will be important for the new Minister for Intergovernmental Relations and the Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) to work effectively together to ensure a common understanding of the devolution settlement and the constitution more broadly, including any implications for the integrity of intergovernmental relations. We look forward to engaging the ministers on the issues raised in this report.**

Placing intergovernmental relations on a statutory basis

187. Several witnesses supported the possibility of placing intergovernmental relations structures on a statutory footing. Dr Rycroft thought doing so would raise the bar and make “the price of poor behaviour higher”. He said Whitehall was “attuned to statute” and that trust had been so eroded between the governments of the UK that a future UK Government might like to consider placing intergovernmental relations on a statutory basis to rebuild trust.²³²
188. The Independent Commission on the Constitutional Future of Wales recommended “putting into statute and making justiciable some key principles of inter-governmental relations and structures”.²³³ Ms Evans supported this recommendation: “The structures in the [intergovernmental relations] review, as we have talked about, go a long way, but they cannot compel good behaviour as a statutory duty might.”²³⁴ She was concerned that it should not be left to “individual ministers who might be particularly sympathetic to this and want to work cooperatively” to make intergovernmental relations work.²³⁵ However, she acknowledged that the details of such a duty and the

231 Written Statement [UIN HCWS71](#), Session 2024–25

232 [Q 15](#) (Dr Philip Rycroft)

233 [Q 59](#) (Prof Laura McAllister and Dr Rowan Williams); Independent Commission on the Constitutional Future of Wales, *Final Report*, (January 2024) p 53: <https://www.gov.wales/sites/default/files/publications/2024-07/independent-commission-on-the-constitutional-future-of-wales-final-report.pdf> [accessed 20 September 2024]

234 [Q 119](#) (Rebecca Evans MS)

235 [Q 120](#) (Rebecca Evans MS)

implications of legislating for one would need to be carefully considered before it was introduced.²³⁶

189. Witnesses were aware of the limitations involved in placing intergovernmental relations on a statutory footing. Dr Rycroft said statutory obligations would have to be “quite high level”. For example, the structures themselves could be put on a statutory footing with legislation for an independent secretariat and sufficient funding to ensure the arrangements could function over time. He also thought a statutory expectation could be put in place that the Prime Minister and Heads of Devolved Governments Council would meet once a year.²³⁷ Professor Gallagher thought there was scope for a statutory framework for intergovernmental arrangements with “a minimalist requirement that they exist and that they meet and a role for a secretariat that is a bit more active than the rather passive one we have had historically.”²³⁸ Professor McAllister also recognised a need to keep any statutory principles “fairly high level”.²³⁹
190. Dr Whitten said that, from a Northern Ireland point of view, if intergovernmental relations arrangements were placed on a statutory footing, provisions would need to be made about what to do in the event of the collapse of the Northern Ireland Executive, and the extent to which that would impact on the functioning of the entire system.
191. Professor Martin was sceptical about putting the intergovernmental relations arrangements on a statutory footing for two reasons. Firstly, it would create a lack of flexibility and secondly, it would inevitably lead to ‘judicial contests’ between the administrations. He did not think this would be beneficial as the issues at hand were fundamentally political differences.²⁴⁰ Professor Derek Birrell, Professor of Social Policy at the University of Ulster, also thought the danger of “forcing the intergovernmental relations structures into a formal or rigid structure” was that any resulting dispute would be for the courts and not Parliament to resolve.²⁴¹
192. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we concluded:
- “Attitudes and behaviours need to change to make the new intergovernmental arrangements a success. If this does not happen, there may be a stronger argument for placing intergovernmental relations on a statutory footing. However, we are alive to the potential downsides of detailed statutory provisions resulting in political disagreements being settled in court rather than through political dialogue.”²⁴²
193. **While intergovernmental co-operation through the new intergovernmental relations structures requires improvement, we do not believe they have been operational long enough to take a conclusive view as to whether such structures should be underpinned by a statutory framework. We reiterate our previous conclusion**

236 [Q 119](#) (Rebecca Evans MS)

237 [Q 15](#) (Dr Philip Rycroft)

238 [Q 17](#) (Prof Jim Gallagher)

239 [Q 63](#) (Prof Laura McAllister)

240 [Q 2](#) (Prof Ciaran Martin)

241 [Q 41](#) (Prof Derek Birrell)

242 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 199

that attitudes and behaviours are key to making the new structures work effectively. We welcome the new Government’s commitment in its manifesto to “ensure the structures and institutions of intergovernmental working improve relationships and collaboration on policy”.²⁴³

A principle of positive engagement

194. Throughout our inquiry a theme emerged about lack of engagement by both the UK Government and the governments of the devolved nations when it came to policy development and implementation.
195. Dr Rycroft said that one of the concerns Whitehall had when consulting the devolved administrations was that both ministers and officials did not always know exactly where a policy was going in the early stages of development. He explained that it was therefore “quite risky” to expose policy in its infancy to the devolved governments because “you are showing your workings”. He said: “That becomes an excuse to leave it late in the process, and of course the later you leave it in the process, the more annoyed the devolved Governments are likely to be and the more difficult the whole thing gets.”²⁴⁴
196. Other witnesses were concerned that the UK Government did not afford the devolved governments the respect they were owed as democratically elected governments with their own mandates and accountability mechanisms. Professor Gallagher did not think UK Government departments and ministers understood that power had been distributed across the UK. He said: “They instinctively assume that it resides in the centre.”²⁴⁵ Professor McAllister said the Welsh Government was seen “as just being another stakeholder instead of being the Government from an elected legislature by the people of Wales, one of the nations of the United Kingdom.”²⁴⁶
197. Dr Williams described devolution in its current form as “a model that is entirely about rather grudging concession and delegation rather than respect for a democratically elected Government.”²⁴⁷
198. Witnesses also acknowledged a lack of sufficient engagement by the devolved governments with the UK Government.²⁴⁸ When it came to the deposit return scheme (discussed in Chapter 2), Mr Jack said he was “very clear in interministerial government meetings from quite an early stage that [the Scottish Government] would require an exclusion from the United Kingdom Internal Market Act”. However, the Scottish Government “thought differently” and thought that if they “kept going, [the Secretary of State] would back down”.²⁴⁹
199. Several witnesses thought the introduction of a formal requirement that the UK Government and the devolved governments ‘co-operate’ or ‘engage’ with one another would be an effective means by which to encourage better quality, earlier engagement between governments. Professor Martin thought

243 Labour Party, *Change: Labour Party Manifesto 2024*, (2024), p 109: <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 20 September 2024]

244 [Q 12](#) (Dr Philip Rycroft)

245 [Q 14](#) (Prof Jim Gallagher)

246 [Q 54](#) (Prof Laura McAllister)

247 [Q 59](#) (Dr Rowan Williams)

248 [Q 60](#) (Prof Laura McAllister)

249 [Q 76](#) (Rt Hon Alister Jack MP)

it would be an easy concept for a civil servant to remember and raise with ministers.²⁵⁰ Professor Birrell thought it would be a ‘helpful’ innovation and should be incorporated into the Devolution Guidance Notes.²⁵¹

200. Dr Rycroft thought that creating such a requirement would raise the bar in terms of expectation on all four governments.²⁵² Professor Gallagher was in favour of a “very general statement that says that the law and the constitution expect the Governments to co-operate and that they will be held to account in some very broad way”.²⁵³
201. *We recommend a principle of positive engagement to be included among the principles for intergovernmental relations, currently listed in ‘The Review of Intergovernmental Relations’ policy document. Such a principle would provide civil servants with a tool by which to remind ministers in the UK Government and the devolved governments of the expectation that they should engage with one another, including by working together on the development and implementation of policies of common concern.*
202. *We welcome the new Government’s commitment to work collaboratively with the governments in Scotland, Wales and Northern Ireland,²⁵⁴ and urge it to ensure that it fully respects the powers of the devolved governments under the devolution settlement. There is a reciprocal responsibility on behalf of the devolved governments to engage and work collaboratively with the UK Government.*

Representation of England

203. In *Respect and Co-operation: Building a Stronger Union for the 21st century* we examined in detail the governance of England, including the representation of England within the Union and the devolution or decentralisation of power within England. We said:
- “England’s place in the Union should not be overlooked, but there are no obvious governance changes to provide England with a distinctive voice that command political and public support. Establishing an English parliament would crystallise England’s relative strength—in population and economic terms—vis a vis the existing devolved legislatures. This would destabilise the Union. It would also do little to address the need for greater decentralisation within England, which we believe has the greatest potential to resolve concerns about the governance of England.”²⁵⁵
204. In that report we also concluded:
- “England is highly centralised, with greater regional economic inequalities, compared to most other Western European countries. The English regions—as do Scotland, Wales and Northern Ireland—feel remote from central decision making in the United Kingdom. We strongly support the development of devolution within England, noting

250 Q 9 (Prof Ciaran Martin)

251 Q 47 (Prof Derek Birrell)

252 Q 32 (Dr Philip Rycroft)

253 Q 32 (Prof Jim Gallagher)

254 Labour Party, *Change: Labour Party Manifesto 2024*, (2024), pp 110–113: <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 20 September 2024]

255 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 230

that a highly centralised state can have a negative impact on democratic culture and economic prosperity. Greater devolution within England can help improve economic performance, address regional inequalities and improve service delivery.”²⁵⁶

205. Though we did not examine this issue in detail in the inquiry leading to this report, some witnesses expressed a view on the matter. Mr Davies wondered whether there was an argument for including English metro mayors in Interministerial Groups, so that they are represented in the same way as the First Ministers of Scotland, Wales and Northern Ireland.²⁵⁷
206. Dr Rycroft expressed a similar view, suggesting that if, for example, skills policy was devolved to combined authorities or their equivalents across England, it might make sense to invite mayors to intergovernmental meetings discussing skills policy. He cautioned that the devolved governments would be “very jealous ... because they will not want to be seen to be demoted to the level of a combined authority”. However, he thought such a proposal could work with “goodwill ... and a bit of flexibility”.²⁵⁸
207. *We note the new Government’s commitment in the King’s Speech to establish a Council of the Nations and Regions, which will bring together the Prime Minister, the heads of the devolved governments and the mayors of combined authorities. We also note the intention to bring forward an English Devolution Bill.*²⁵⁹ *This Committee will keep the government proposals under careful review and examine their constitutional implications in due course, including their capacity to represent parts of England that do not fall within a Combined Authority.*

256 *Ibid.*, para 240

257 [Q 79](#) (Rt Hon David TC Davies MP)

258 [Q 27](#) (Dr Philip Rycroft)

259 Prime Minister’s Office, *The King’s Speech 2024*, pp 7-9: https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf [accessed 22 September 2024]

CHAPTER 4: OBSERVANCE OF THE SEWEL CONVENTION

208. In Chapter 1 we outlined the impact of COVID-19 and, in particular, Brexit on the functioning of the Sewel convention. During this inquiry we sought to understand the extent to which the Sewel convention has been observed prior to and since Brexit and whether a longer-term weakening of the convention has occurred.
209. It is important to note that, following the UK's departure from the EU, a significant number of powers that were largely exercised at the EU level were returned to Westminster and the devolved institutions.²⁶⁰ As a result, devolved competence has expanded since Brexit. This has led to an increase in the number of policy areas in which the boundary between reserved and devolved competence is less than clear and the question of legislative consent may arise. On occasion the devolved governments have taken a more expansive view than the UK Government regarding whether consent is required for a particular bill. In some instances, the UK Government has disagreed with the devolved government's view and proceeded to legislate without consent.²⁶¹ These instances are listed later in this chapter.

Commitment to the Sewel convention

210. Witnesses had different views as to the UK Government's commitment to the Sewel convention.
211. Dr Anderson and Dr Brown Swan said: “[T]he Sewel Convention can no longer be considered a viable self-denying ordinance, and instead appears to be increasingly viewed by the UK Government as merely optional.”²⁶²
212. The Scottish Parliament's CEEAC Committee considered the Sewel convention to be “under strain” since the UK's departure from the EU. It identified a “fundamental difference of viewpoint” between the UK Government and the devolved governments regarding the effectiveness of the convention, which had led to a deterioration in relations. The Committee did not consider such fundamental disagreement on a key constitutional matter to be sustainable, particularly in the context of “an increasingly shared space at the intergovernmental level”.²⁶³
213. The same Committee noted that UK Ministers had expressed a view that “it is sometimes necessary for the UK Government to act in its role as the government for the whole of the UK” and that “it is necessary that the UK Government can fulfil the role of the UK's national government”. However, it was unclear what the UK Government meant by “necessary” in this context and how it related to the “not normally” threshold contained in the Sewel convention.²⁶⁴
214. In written evidence, DLUHC offered a different perspective:

260 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), para 54

261 For example, the Welsh Government considered that consent was required for the Genetic Technology (Precision Breeding) Act 2023 but the UK Government disagreed. Welsh Government, *Legislative consent memorandum: The Genetic Technology (Precision Breeding) Bill*, paras 9–19: <https://senedd.wales/media/yh3dmqgk/lcm-ld15526-e.pdf> [accessed 22 September 2024]

262 Written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#))

263 Written evidence from the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee ([GOU0005](#))

264 *Ibid.*

“The UK Government is committed to the Sewel Convention and continues to work with the devolved administrations on all bills that engage the legislative consent process. We have legislated with the consent of the devolved legislatures on hundreds of occasions. Whilst the Government has reluctantly had to proceed without consent on occasion, we do not consider this indicates an erosion of respect for the Convention. Indeed the Convention allows for this—not normally does not mean never. The occasions where the UK Government has proceeded without consent are few and far between though and we do not take them lightly. The UK Government pursues this course of action only as a last resort following significant efforts to find agreement with the devolved administrations. Finding that agreement can only be achieved through committed, pragmatic and timely collaborative working between all four administrations.”²⁶⁵

215. Mr Jack, then Secretary of State for Scotland, told us that since the beginning of devolution, the UK Government had legislated in areas of Scottish Government competence over 200 times and on only ten of those occasions had this been without the consent of the Scottish Parliament. He said that on each occasion legislation was passed without the consent of the Scottish Parliament it “was critical for the whole of the United Kingdom”. For example, it was to implement Brexit or deliver on trade deals. Mr Jack said that in these circumstances the UK Government had only legislated “after engaging with the Scottish Government, hearing their concerns and offering to make changes to the legislation.”²⁶⁶
216. Mr Davies, then Secretary of State for Wales, said there had been eight occasions on which the UK Parliament had legislated without the consent of the Senedd and these had been in relation to legislation regarding the UK’s departure from the EU and the UK Internal Market. He said: “The figures that we have would suggest that, on the vast majority of occasions, the system works well. On the rare occasions when it does not, there is usually some strong political motive on both sides.”²⁶⁷
217. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we concluded:

“Where the UK Parliament legislates in devolved areas without consent it should demonstrate that the particular circumstances require it to do so. In any event, the UK Government should always demonstrate that it has taken all reasonable steps to secure consent. Other than in exceptional circumstances, the UK Government ought not to seek to legislate in devolved areas without consent.”²⁶⁸

Legislation passed without the consent of the devolved legislatures

218. In this chapter we have sought to provide lists of occasions on which the UK Parliament has legislated without the consent of each of the devolved legislatures. As legislative consent motions are lodged and recorded according to the different procedures of each of the individual devolved legislatures, and because bills can—as they pass through the UK Parliament and are

265 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

266 [Q 72](#) (Rt Hon Alister Jack MP)

267 [Q 83](#) (Rt Hon David TC Davies MP)

268 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 124

subject to amendment—evolve to gain or lose consent from the devolved legislatures, it is difficult to provide definitive data on consent decisions. Sometimes devolved legislatures grant consent to some provisions in a bill but not others, in which case it is not as simple as saying that the devolved legislature has granted or withheld its consent on a particular bill. In addition, as discussed above, there is sometimes disagreement between the UK Government and the devolved governments as to whether particular bills, or particular provisions within bills, require legislative consent.

Legislation passed without the consent of the Scottish Parliament

219. In written evidence the Scottish Government provided a list of instances in which it considered that the UK Parliament had legislated without the consent of the Scottish Parliament. These occasions were as follows:

- (1) European Union (Withdrawal) Act 2018
- (2) European Union (Withdrawal Agreement) Act 2020
- (3) United Kingdom Internal Market 2020
- (4) European Union (Future Relationship) Act 2020
- (5) Elections Act 2022²⁶⁹
- (6) Professional Qualifications Act 2022
- (7) Nationality and Borders Act 2022
- (8) Subsidy Control Act 2022
- (9) Trade (Australia and New Zealand) Act 2023
- (10) Genetic Technology (Precision Breeding) Act 2023
- (11) Retained EU Law (Revocation and Reform) Act 2023
- (12) Northern Ireland Troubles (Legacy and Reconciliation) Act 2023²⁷⁰

220. By contrast, the UK Government considers that there are 10 bills with regard to which the UK Parliament legislated without the consent of the Scottish Parliament. These occasions were as follows:

- (1) European Union (Withdrawal Act) 2018
- (2) European Union (Withdrawal Agreement) Act 2020

269 Legislative consent was initially sought from the Scottish Parliament for the Elections Act 2022, but the Scottish Government recommended against consent in their legislative consent memorandum. To address the Scottish Government's concerns, the UK Government committed to bringing forward amendments to the Bill during its Lords stages to remove all aspects which related to devolved matters. The UK Government was, therefore, no longer seeking legislative consent from the Scottish Parliament. The Scottish Government, however, disagreed with this devolution analysis. Scottish Government, *Legislative Consent Memorandum* (September 2021): <https://www.parliament.scot/-/media/files/legislation/bills/lcms/elections-bill/splcms068.pdf> [accessed 22 September 2024]; House of Commons Library, *Elections Bill 2021–22: Progress of the Bill*, Research Briefing, CBP 9421, May 2022; Letter from David McGill, Clerk/Chief Executive Scottish Parliament to Dr John Benger, Clerk of the House of Commons (1 February 2022): <https://bills.parliament.uk/publications/45053/documents/1341>

270 Written evidence from Angus Robertson, Cabinet Secretary for Constitution, External Affairs and Culture, Scottish Government ([GOU0011](https://www.scottish.gov.uk/government/uploads/system/uploads/attachment_data/file/60011/GOU0011))

- (3) European Union (Future Relationship) Act 2020
- (4) United Kingdom Internal Market Act 2020
- (5) Professional Qualifications Act 2022
- (6) Subsidy Control Act 2022
- (7) Northern Ireland Troubles (Legacy and Reconciliation) Act 2023
- (8) Procurement Act 2023
- (9) Retained EU Law (Revocation and Reform) Act 2023
- (10) Trade (Australia and New Zealand) Act 2023²⁷¹

Legislation passed without the consent of the Senedd

221. In written evidence the Welsh Government provided a list of instances since 2020 in which it considered that the UK Parliament had legislated without the consent of the Senedd. We have supplemented this with our own research to add instances prior to 2020 where the Senedd withheld consent to bills that went on to receive Royal Assent.

- (1) Enterprise and Regulatory Reform Act 2013²⁷²
- (2) Anti-social Behaviour, Crime and Policing Act 2014²⁷³
- (3) Housing and Planning Act 2016²⁷⁴
- (4) Trade Union Act 2016²⁷⁵
- (5) European Union (Withdrawal Agreement) Act 2020
- (6) Agriculture Act 2020
- (7) United Kingdom Internal Market Act 2020
- (8) European Union (Future Relationship) Act 2020
- (9) Animal Welfare (Sentencing) Act 2021
- (10) Nationality and Borders Act 2022
- (11) Police, Crime, Sentencing and Courts Act 2022²⁷⁶
- (12) Professional Qualifications Act 2022

271 Written evidence from the Ministry of Housing, Communities & Local Government ([GOU0012](#))

272 House of Commons Library, *Devolution: The Sewel Convention*, Briefing Paper, [CBP-8883](#), May 2020

273 *Ibid.*

274 *Ibid.*

275 *Ibid.*

276 The UK Government sought the legislative consent of the Senedd for some clauses in this bill, and consent for these clauses was granted by the Senedd. However, legislative consent was separately withheld for additional clauses for which the UK Government had not sought consent. Letter from Manon Antoniazzi, Chief Executive and Clerk of the Senedd to Simon Burton, Clerk of the Parliaments and Dr John Benger, Clerk of the House of Commons (19 January 2022): <https://bills.parliament.uk/publications/44756/documents/1266>; Letter from Manon Antoniazzi, Chief Executive and Clerk of the Senedd to Simon Burton, Clerk of the Parliaments and Dr John Benger, Clerk of the House of Commons (2 March 2022): <https://bills.parliament.uk/publications/45495/documents/1515>; [Explanatory Notes to the Police, Crime, Sentencing and Courts Bill](#) [Bill 268 (2021–22)-EN], p 149

- (13) Subsidy Control Act 2022
- (14) Genetic Technology (Precision Breeding) Act 2023
- (15) Retained EU Law (Revocation and Reform) Act 2023
- (16) Trade (Australia and New Zealand) Act 2023
- (17) Energy Act 2023
- (18) Illegal Migration Act 2023
- (19) Strikes (Minimum Service Levels) Act 2023
- (20) Procurement Act 2023
- (21) Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024²⁷⁷
- (22) Leasehold and Freehold Reform Act 2024
- (23) Victims and Prisoners Act 2024²⁷⁸

222. By contrast, the UK Government considers that there are 12 bills, all in the 2019–24 Parliament, with regard to which the UK Parliament legislated without the consent of the Senedd. These occasions were as follows:

- (1) European Union (Withdrawal Agreement) Act 2020
- (2) European Union (Future Relationship) Act 2020
- (3) United Kingdom Internal Market Act 2020
- (4) Animal Welfare (Sentencing) Act 2021
- (5) Professional Qualifications Act 2022
- (6) Subsidy Control Act 2022
- (7) Energy Act 2023
- (8) Procurement Act 2023
- (9) Retained EU Law (Revocation and Reform) Act 2023
- (10) Trade (Australia and New Zealand) Act 2023
- (11) Leasehold and Freehold Reform Act 2024
- (12) Victims and Prisoners Act 2024²⁷⁹

277 The UK Government sought the legislative consent of the Senedd for clause 3 in this bill, for which consent was granted by the Senedd. However, legislative consent was separately withheld for clause 2 for which the UK Government had not sought consent. Letter from Manon Antoniazzi, Chief Executive and Clerk of the Senedd to Simon Burton, Clerk of the Parliaments and Tom Goldsmith, Clerk of the House of Commons (26 March 2024): <https://bills.parliament.uk/publications/54921/documents/4632>; Welsh Government, *Legislative Consent Memorandum* (8 December 2023): <https://senedd.wales/media/kgtp1ev4/lcm-ld16203-e.pdf> [accessed 22 September 2024]

278 Written evidence from Rebecca Evans MS, Cabinet Secretary for Finance, Constitution & Cabinet Office, Welsh Government ([GOU0010](#))

279 Written evidence from the Ministry of Housing, Communities & Local Government ([GOU0012](#))

Legislation passed without the consent of the Northern Ireland Assembly

223. During the periods in which it has not been sitting, the Northern Ireland Assembly has been unable to participate in the legislative consent process. Therefore, there are many bills that the Assembly has not been able to consider and, as a result, the UK Parliament has legislated without its consent.²⁸⁰ However, taking into account only those instances in which the Assembly was convened, according to written evidence provided by the UK Government, there have been 10 occasions where the UK Parliament legislated without the consent of the Northern Ireland Assembly. These were as follows:

- (1) European Union (Withdrawal Agreement) Act 2020
- (2) European Union (Future Relationship) Act 2020
- (3) United Kingdom Internal Market Act 2020
- (4) Trade (Disclosure of Information) Act 2020
- (5) Counter-Terrorism and Sentencing Act 2021
- (6) Trade Act 2021²⁸¹
- (7) Digital Markets, Competition and Consumers Act 2024
- (8) Post Office (Horizon System) Offences Act 2024
- (9) Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024
- (10) Victims and Prisoners Act 2024

224. In their written evidence, the UK Government distinguishes the final four bills listed above from the preceding six as follows: “Four Acts passed immediately following the Northern Ireland Assembly being reconvened [in February 2024] with no time for legislative consent to be considered prior to the UK Parliament being prorogued [in May 2024].”²⁸²

Legislation amended to address the concerns of the devolved institutions

225. There are also examples of instances where the devolved legislatures have withheld consent or the devolved governments have recommended against consent and changes were made to the Bill to address their concerns.
226. During the passage of what became the Health and Care Act 2022 both the Welsh and Scottish Governments initially recommended against consent.²⁸³ Both governments were, however, ultimately able to recommend consent following several UK Government amendments to the Bill to address their

280 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

281 Written evidence from the Ministry of Housing, Communities & Local Government ([GOU0012](#))

282 *Ibid.*

283 Welsh Government, *Legislative Consent Memorandum* (September 2021): <https://senedd.wales/media/t0jpnfx3/lcm-ld14510-e.pdf> [accessed 23 September 2024]; Scottish Government, *Legislative Consent Memorandum* (September 2021): <https://www.parliament.scot/-/media/files/legislation/bills/lcms/health-and-care-bill/splcms065.pdf> [accessed 23 September 2024]

concerns.²⁸⁴ For example, amendments were made to require UK Government consultation with the Welsh and Scottish Ministers before making any regulations or directions relating to Medicine Information Systems. Concurrent powers were also granted to the devolved administrations to allow them to make their own regulations on the implementation of reciprocal healthcare arrangements.²⁸⁵

227. On some occasions a devolved administration's concerns have been addressed by removing from the Bill provisions which engage devolved competence. For example, there were two iterations of the Bill that became the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020—one introduced in 2018 and a second introduced in 2020. For both bills the Scottish Government recommended against consent. As a result, to avoid a refusal of legislative consent, the UK Government removed the provisions relating to Scotland from the Bill.²⁸⁶
228. **The Sewel convention generally operated well from 1999 until it was put under strain by the implementation of Brexit. Since Brexit, the UK Government has legislated without the consent of one or more of the devolved legislatures on multiple occasions, and at times has done so on bills unrelated to Brexit. *We urge the new Government to commit to respecting the Sewel convention, namely by proceeding in accordance with the principle that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.***
229. **However, we also recognise that the increased occasions on which the UK Government has legislated without consent may in part be the result of a trend since Brexit for the devolved governments to take a more expansive view of devolved competence. This has led to differences of opinion between the UK Government and the devolved government as to whether consent is required with regard to specific bills. In such circumstances, close and timely engagement between governments is required to address differences of opinion and, where possible, reach consensus. Occasions on which amendments have been made to bills to address the concerns of the devolved legislatures and ultimately secure their consent demonstrate the benefits of such engagement.**

284 Letter from David McGill, Clerk/Chief Executive Scottish Parliament to Dr John Benger, Clerk of the House of Commons (10 February 2022): <https://bills.parliament.uk/publications/45228/documents/1407>; Letter from Manon Antoniazzi, Chief Executive and Clerk of the Senedd to Simon Burton, Clerk of the Parliaments and Dr John Benger, Clerk of the House of Commons (16 February 2022): <https://bills.parliament.uk/publications/45261/documents/1421>

285 Scottish Government, *Supplementary Legislative Consent Memorandum* (December 2021): <https://www.parliament.scot/-/media/files/legislation/bills/lcms/health-and-care-bill/supplementary-splcms065a.pdf> [accessed 23 September 2024]

286 Constitution Committee, *Immigration and Social Security Co-ordination (EU Withdrawal) Bill* (11th Report, Session 2019–21, HL Paper 120), para 32

CHAPTER 5: STRENGTHENING THE SEWEL CONVENTION

Replacing the Sewel convention with a legally binding rule

230. We asked witnesses whether there was a case for replacing the Sewel convention with an express statutory provision that the UK Parliament will not legislate in areas of devolved competence without the consent of the relevant devolved legislature.
231. Ms Evans supported this idea. She thought there could be an exception “when required for reasons to be agreed”, such as when it came to international obligations, defence, national security and macroeconomic policy.²⁸⁷
232. In written evidence the Senedd Legislation, Justice and Constitution Committee said “a more robust constitutional footing for the Sewel convention, built around a clearly defined and universally understood process” could improve understanding of devolution in Whitehall and provide a greater incentive to ensure legislative consent “is factored into work planning in UK Government departments and the UK Parliament.”²⁸⁸
233. Professor McAllister thought that if the Sewel convention were cast in a statutory framework, “it might create greater opportunities to consult effectively before it went into a court environment”. Ultimately, the sanction of going to court would have to be present because otherwise the situation would not be different to that which we have now.²⁸⁹
234. In written evidence to the Scottish Parliament’s CEEAC Committee, the Scottish Government said:
- “The Scottish Government’s view is that a convention which can be observed or not by the UK Government, as it chooses, cannot provide any security to the Scottish Parliament that its responsibilities or views will be respected. The Scottish Government also notes that the convention has been set aside in areas where there are disagreements between the Scottish and UK Governments, and the powers and responsibilities of the Scottish Parliament are being adversely affected (notably the [UK Internal Market Act 2020]): that is, precisely the circumstances in which the convention was intended to protect devolution.”²⁹⁰
235. Other witnesses were more sceptical. Professor Martin described the proposition of abolishing the Sewel convention altogether and replacing it with an express statutory provision that Westminster will not legislate in areas of devolved competence as “a fundamental re-organisation of the state”. He said it would not be “the hardest form of quasi-federalism that the UK could come up with” but would require detailed and fulsome debate and would be “a significant limitation of the practical sovereignty of the Westminster Parliament”. He did not think it should be presented as a minor, technical modification—it would be a “big deal”.²⁹¹

287 [Q 120](#) (Rebecca Evans MS)

288 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

289 [Q 70](#) (Prof Laura McAllister)

290 Written evidence from the Scottish Government to the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee, p 4: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2023/scottish-government-response-to-the-committees-letter-of-25-may-2023.pdf>

291 [Q 8](#) (Prof Ciaran Martin)

236. Professor Gallagher thought it unrealistic to replace the Sewel convention with an express statutory provision that Westminster will not legislate in areas of devolved competence. Firstly, because the statute book remains interconnected and “it often makes practical sense ... to have a bit of devolved and bit of reserved in the same legislation and you are just giving people extra work if you do not do that.” And secondly, because such a provision would be unenforceable: “the legislation that wished to trespass upon devolved matters would merely say, ‘Notwithstanding the provisions of the Scottish devolved independence Act of 2025, we propose to legislate for the following devolved matters’. Given the doctrine of parliamentary sovereignty or supremacy, that legislation would override the previous legislation.”²⁹² Dr Anderson and Dr Brown Swan were also dubious: “So long as Westminster is sovereign and supreme, any attempts to strengthen the Sewel Convention could be repealed by any future amendment.”²⁹³
237. Mr Jack said it would be a “profound mistake” to make the Sewel convention legally binding: “It would fundamentally alter the devolution settlement and gravely weaken the union by preventing the UK Parliament from legislating on behalf of the whole country where necessary.” He said that the Sewel convention was “never intended to give devolved Administrations a veto over UK-wide legislation”.²⁹⁴
238. Mr Davies said that if the Sewel convention were made statutory “we could have a situation in years to come where, if people voted again in a referendum to rejoin the European Union but one of the devolved Administrations did not like the idea much, it could theoretically put a block on that happening. That would be completely wrong.”²⁹⁵
239. In written evidence DLUHC said:
- “The UK Government is committed to the Sewel Convention and will always seek consent from the devolved legislatures when the process is engaged. The Sewel Convention is a Parliamentary Convention and there are no plans to alter its status.”²⁹⁶
240. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:
- “If the operation of the Sewel convention is strengthened and mutual respect between the UK Government and devolved administrations restored, this will obviate any need to consider transforming the convention’s status into a legal rule. We do not believe it would be desirable to involve the courts in adjudicating disputes on the meaning and application of the convention, which are best resolved through political deliberation. A rigid approach to the convention could also limit the ability of the UK Parliament to legislate in devolved areas when it would be appropriate to do so and beneficial to all parties. However, it will be important to keep the new process under review, with the option

292 Q 34 (Prof Jim Gallagher)

293 Written evidence from Dr Paul Anderson and Dr Coree Brown Swan (GOU0001)

294 Q 72 (Rt Hon Alister Jack MP)

295 Q 75 (Rt Hon David TC Davies MP)

296 Written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)

of considering more substantive procedural changes if the circumstances demand it.”²⁹⁷

241. **While improving respect for the Sewel convention is essential, replacing the convention with an express legal duty that the UK Parliament will not legislate in areas of devolved competence without the consent of the relevant devolved legislature would be excessively rigid and would potentially involve the courts in what is fundamentally a political matter between the UK Government and the devolved governments.**

Updating the Devolution Guidance Notes

242. As discussed in Chapter 1, the Devolution Guidance Notes (DGNs) were produced by the Cabinet Office to provide guidance to civil servants on working arrangements between the UK Government and the devolved administrations. Several DGNs are severely out of date; for example, the DGN ‘Post-devolution primary legislation affecting Scotland’ was published in November 2005.²⁹⁸
243. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we recommended that the DGNs “should be updated as a priority”.²⁹⁹ In its response to that report the previous Government said it would consider updating the DGNs alongside its updates to the Cabinet Manual.³⁰⁰ Though the then Government committed on various occasions to produce an updated Cabinet Manual by the end of the last Parliament—including in correspondence to this committee from the Cabinet Secretary, Simon Case,³⁰¹ and in a statement made by the leader of the House³⁰²—this was not forthcoming.
244. In written evidence to this inquiry DLUHC said it did not think there was a case for updating the DGNs:

“[W]hile the devolution guidance notes (DGNs) set out valuable advice on working relations with the devolved administrations, they should also be read as part of a wide spectrum of guidance and publications on intergovernmental working, such as the review of intergovernmental relations. They are supplemented by the extensive Civil Service wide devolution capability programme ... it is not currently a priority to update the DGNs.”³⁰³

297 Constitution Committee, *Respect and Cooperation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 140

298 House of Commons Scottish Affairs Committee, *The relationship between the UK and Scottish Governments* (8th Report, Session 2017–19, HC 1586), para 99

299 Constitution Committee, *Respect and Cooperation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 141

300 Department for Levelling Up, Housing & Communities, ‘Government Response to the House of Lords Select Committee on the Constitution report Respect and Cooperation: Building a Stronger Union for the 21st Century’ (2 September 2022), p 6: <https://committees.parliament.uk/publications/28473/documents/171574/default/> [accessed 22 September 2024]

301 Letter from Simon Case, Cabinet Secretary, to Baroness Drake CBE, Chair of the Constitution Committee and William Wragg MP, former Chair of the Public Administration and Constitutional Affairs Committee (13 June 2023): <https://committees.parliament.uk/publications/40335/documents/196977/default/>

302 HL Deb, 16 December 2022, col 936

303 Written evidence from the Department for Levelling Up, Housing and Communities (GOU0006)

245. Other witnesses were in favour of updating the DGNs. The Northern Ireland Executive Office said: “There would be merit in updating the Guidance Notes to reflect the new [intergovernmental relations] arrangements and to provide amendments to reflect updated circumstances, for example, the devolution of policy and justice in Northern Ireland.”³⁰⁴
246. Dr Rycroft told us updating the DGNs was “on the to-do list” during his time as a senior civil servant but was never done. He thought updates to the DGNs should be done in collaboration with the devolved governments.³⁰⁵ Dr Goodall noted that much had changed since the DGNs were last updated, including the UK’s exit from the European Union and the COVID-19 pandemic.³⁰⁶ Professor Martin questioned the prominence of the DGNs in their current form and wondered how many Whitehall civil servants were aware of their existence and content.³⁰⁷
247. The Senedd Legislation, Justice and Constitution Committee said:
- “[T]here should be a clear engagement timetable published and followed for all UK Bills that include devolved provision. In our view such requirements should be covered and set out in revisions to the DGN. This would provide a more transparent process so that legislatures, governments and stakeholders know what deadlines are being worked to.”³⁰⁸
248. The Committee provided a list of potential updates to the DGNs:
- Agreed timetables between governments on “pre-legislative engagement” before a Bill is introduced;
 - If appropriate, deadlines for decisions on consent by the Senedd, including for amendments tabled and passed after a consent decision has been made;
 - Statements required to be made by the UK Government where it proposes to act against the wishes of the Senedd;
 - UK Government required to provide information about amendments to Bills that make provision in devolved areas, particularly where devolved provision was not originally included;
 - An explanation of the dispute/arbitration mechanism on whether consent is required in the first instance, given that this can often be a matter of dispute between governments.³⁰⁹
249. The Senedd Legislation, Justice and Constitution Committee also noted that the DGNs had not been updated to reflect the new intergovernmental relations structures or developments around common frameworks.³¹⁰
- 250. The Devolution Guidance Notes are out of date. They do not take account of significant developments such as the return of powers**

304 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

305 [Q 31](#) (Dr Philip Rycroft)

306 [Q 118](#) (Dr Andrew Goodall)

307 [Q 9](#) (Prof Ciaran Martin)

308 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

309 *Ibid.*

310 *Ibid.*

following the UK's departure from the European Union and the development of common frameworks, or the introduction of new intergovernmental relations structures in January 2022. They also make outdated references; for example, they refer to the "Scottish Executive" instead of the Scottish Government and the "National Assembly for Wales" instead of the Senedd.³¹¹ *We reiterate our previous recommendation that the Devolution Guidance Notes should be updated as a matter of priority, and we urge the new Government to do so without delay. This should be completed alongside long overdue updates to the Cabinet Manual.*

251. *In updating to the Devolution Guidance Notes, the UK Government should consider the proposals made by the Senedd Legislation, Justice and Constitution Committee, and how these could be expanded to include the Scottish and Northern Irish institutions.*

A principle of positive engagement on legislation

252. While witnesses generally agreed that the DGNs needed to be updated, some thought the first step would be adherence to the Guidance Notes as they currently stand, including provisions on early engagement and collaborative working, which were "not seen consistently enough".³¹² This led us to consider whether there was a case for expanding the principle of positive engagement (discussed in Chapter 3) to include the process of seeking and obtaining legislative consent.

253. Professor Martin said consultation and discussion does take place where legislation impacts on devolved competences. However, the courtesy and timeliness can vary quite significantly.³¹³ Professor McAllister echoed this by saying that consultation—particularly around legislative consent—often came late in the process by which point "it was almost impossible for the devolved Government to influence any real change. It felt as if that was a gesture rather than a meaningful intervention."³¹⁴ Reflecting on his time as a civil servant, Professor Gallagher said:

"Good practice would be for the UK Government to share in confidence their legislative intentions at the centre with the Scottish Government. We used to do this and it has fallen into disuse now."³¹⁵

254. The Northern Ireland Executive Office said experience had been "variable" when it came to the UK Government consulting the Northern Ireland Executive prior to legislation being introduced in the UK Parliament that alters its executive competences. It noted that "[T]here have been instances where significant legislation has been introduced with short periods of notice to the devolved administrations, despite evident implications for them."³¹⁶

311 See, for example: Cabinet Office, *Devolution Guidance Note 3: The Role of the Secretary of State for Scotland*, (October 2006): https://assets.publishing.service.gov.uk/media/5a78994ae5274a2acd188515/role-secretary-state-scotland_20.pdf [accessed 22 September 2024] and Cabinet Office, *Devolution Guidance Note 4: The Role of the Secretary of State for Wales*: <https://assets.publishing.service.gov.uk/media/5a79630840f0b63d72fc565a/role-secretary-state-wales.pdf> [accessed 22 September 2024]

312 [Q 118](#) (Rebecca Evans MS); Written evidence from the Scottish Government ([GOU0004](#))

313 [Q 7](#) (Prof Ciaran Martin)

314 [Q 54](#) (Prof Laura McAllister)

315 [Q 31](#) (Prof Jim Gallagher)

316 Written evidence from the Northern Ireland Executive Office ([GOU0013](#))

255. Ms Evans said that lack of consultation from the UK Government prior to introducing legislation altering the executive competence of Welsh ministers had become worse “since about 2022” and this was partly due to “the UK Government becoming increasingly hostile to devolution”.³¹⁷ She said that where engagement on legislation took place “late in the day” it made it difficult for the Welsh Government “to pursue [its] own legislative solutions to areas that might benefit from alignment between the UK Government and the Welsh Government”. She added that early discussions between the UK Government and the Welsh Government about the UK’s Government’s programme of primary legislation would be helpful,³¹⁸ and the interministerial groups were a forum in which these earlier discussions could be facilitated.³¹⁹
256. Ms Evans also told us that when it came to UK legislation, the UK Government could often make “relatively minor” amendments that would enable the Welsh Government to recommend the Senedd grants consent. However, this required a lot of discussion at official and ministerial level and engagement did not always take place in enough time. For example, when it came to the Data Protection and Digital Information Bill, she said the previous UK Government introduced “substantive amendments to Welsh Ministers’ functions without any meaningful prior engagement”. When the Welsh Government said they could not support the legislation, the Government proceeded regardless.³²⁰
257. By contrast, DLUHC said the intergovernmental relations structures regularly involve engagement on legislation. All six Interministerial Standing Committees (IMSC) had discussed legislation to date. These discussions also took place at portfolio level. For example, in January 2024 the Interministerial Group for Justice discussed the Post Office (Horizon System) Offences Bill and in May 2023 the Interministerial Group for Environment, Food and Rural Affairs discussed the UK Government’s Retained EU Law Bill.³²¹
258. DLUHC also said:
- “For any bills which engage the legislative consent process, including those which alter devolved executive competence, UK Government officials work closely with their counterparts in the devolved administrations to discuss a bill’s content along with the bill’s devolution analysis prior to introduction ... The time available for engagement on different bills can obviously vary given the urgency or complexity of legislation.”³²²
259. Mr Jack told us the UK Government engaged the Scottish Government “very early on, particularly at official level” but the Scottish Government did not do the same when it came to their legislation.³²³ He spoke about his experience raising concerns with the Scottish Government about its United Nations Convention on the Rights of the Child (Incorporation) Bill, which was passed by the Scottish Parliament in 2021.³²⁴ In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we provided an account of what happened:

317 [Q 117](#) (Rebecca Evans MS)

318 [Q 114](#) (Rebecca Evans MS)

319 [Q 116](#) (Rebecca Evans MS)

320 [Q 114](#) (Rebecca Evans MS)

321 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

322 *Ibid.*

323 [Q 80](#) (Rt Hon Alister Jack MP)

324 [Q 76](#) (Rt Hon Alister Jack MP)

“The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill were both passed by the Scottish Parliament, despite early requests by the Secretary of State for Scotland to make changes to specific provisions in those bills on the basis that they were ultra vires. After these requests were rejected the UK Government’s decision to make a referral to the Supreme Court was criticised by the First Minister of Scotland, Rt Hon Nicola Sturgeon MSP, as “morally repugnant”. The Supreme Court subsequently ruled that the provisions in both bills were ultra vires. Lord Reed, the president of the court, observed: “Counsel for the Lord Advocate explained to the court that [an] approach to the drafting of [the relevant section], taking no account of limitations on legislative competence, had been adopted as a matter of policy.”³²⁵

260. Mr Jack said there was an existing obligation under the Sewel convention for both the UK Government and the devolved governments to consult. He did not think the Scottish Government would pay any particular attention to an additional requirement to engage³²⁶ and it would not stop it “ploughing on” when it came to its own legislation.³²⁷ He said: “Either they get their legislation over the finishing line or they have a fight. They do not mind which, because they are not of the United Kingdom.”³²⁸
261. The Devolution Guidance Notes specify that when a bill alters the executive competences of the devolved ministers, the devolved ministers should be adequately consulted. Where a bill has a significant effect on devolved matters, the papers accompanying the bill before the Parliamentary Business and Legislation Committee should indicate what consultations have taken place with the relevant devolved governments.³²⁹
262. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

“The Devolution Guidance Notes require early consultation with the devolved legislatures on the devolved aspects of UK bills, to address any significant issues in good time. During Brexit, it is clear this guidance was not always followed but subsequently there is evidence that it is again being followed. We welcome this and recommend the guidance should be followed as a matter of course from now on. We believe it would be desirable for all efforts to be taken to resolve any substantive disagreements before a bill is introduced to Parliament. This could be achieved through the more robust arrangements for joint working

325 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 118

326 [Q 90](#) (Rt Hon Alister Jack MP)

327 [Q 91](#) (Rt Hon Alister Jack MP)

328 *Ibid.*

329 Cabinet Office, *Devolution Guidance Note 8: Post-Devolution Primary Legislation affecting Northern Ireland*: <https://assets.publishing.service.gov.uk/media/5a797df740f0b63d72fc6480/post-devolution-primary-ni.pdf> [accessed 22 September 2025]; Cabinet Office, *Devolution Guidance Note 10: Post-Devolution Primary Legislation affecting Scotland*: <https://assets.publishing.service.gov.uk/media/5a79c7efe5274a18ba50ec92/post-devolution-primary-scotland.pdf> [accessed 22 September 2024] and Cabinet Office, *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales*: https://assets.publishing.service.gov.uk/media/5ad9edd4ed915d32a3a7100a/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf [accessed 22 September 2024]

(including the new dispute resolution process) agreed as part of the review of intergovernmental relations.”³³⁰

263. We have since expressed concern again in our legislative scrutiny reports about lack of consultation by the UK Government with the devolved governments. For example, in our report on the *Economic Activity of Public Bodies (Overseas Matters) Bill* we said:

“We are concerned by reports from the Scottish and Welsh governments that they were not specifically consulted about the Bill despite it altering the powers of devolved ministers. We cannot conceive of a reason why consultation could not have taken place on this Bill. *We recommend the Government informs the House, by way of a statement during the Bill’s passage through the House, why consultation did not take place. The House should be kept informed of any ensuing consultation with the devolved administrations.*”³³¹

264. In response to that report, the Government said:

“The Government has consulted with the Scotland and Wales Government and with Northern Ireland officials on this Bill. Officials engaged with the devolved administrations prior to the Bill’s introduction in the other place through the Common Framework working group process. Senior official engagement on the Bill dates back to 2022. Additionally, Minister Felicity Buchan MP has engaged with Scottish and Welsh Ministers on the Bill’s provisions. We intend to engage with Ministers in Northern Ireland to seek their support now that power has been restored to the Executive and the Assembly.”³³²

265. In supplementary written evidence the new Government told us:

“The UK Government is committed to resetting the relationship with devolved governments and looks forward to working collaboratively with them, as demonstrated by the Prime Minister’s visits to the UK nations soon after taking office. The UK Government also intends to agree with the devolved governments a new memorandum of understanding regarding the Sewel Convention and outlining how the nations will work together for the common good.”³³³

- 266. For UK Government consultation with the devolved administrations on UK legislation to be meaningful and effectively resolve differences, it must be timely. We recognise that the legislative timetable in the UK Parliament can make early engagement a challenge and that there are, at times, conflicting accounts from the UK Government and the devolved administrations regarding the timing and quality of consultation. We nonetheless reiterate our previous recommendation that instructions in the Devolution Guidance Notes regarding early consultation should be followed as a matter of course.**

330 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 136

331 Constitution Committee, *Economic Activity of Public Bodies (Overseas Matters) Bill* (4th Report, Session 2023–24, HL Paper 66) para 18

332 Letter from Baroness Neville-Rolfe DBE CMG, Minister of State at the Cabinet Office to Baroness Drake CBE, Chair of the Constitution Committee (15 March 2024), para 15: <https://committees.parliament.uk/publications/44366/documents/220646/default/>

333 Written evidence from the Ministry of Housing, Communities & Local Government ([GOU0012](#))

267. **We note that there is currently no reciprocal convention requiring the devolved administrations to give notice to the UK Government of devolved legislation that could affect reserved matters. We recommend the principle of positive engagement, discussed in paragraph 201, includes a requirement that the UK Government and the devolved governments engage on legislative proposals that impact upon one another’s areas of legislative competence. This should be a feature of the new Government’s manifesto commitment to strengthen the Sewel convention “by setting out a new memorandum of understanding outlining how the nations will work together for the common good.”**³³⁴
268. **This memorandum of understanding could include a requirement that a decision by a devolved legislature to withhold consent to a bill be pre-conditioned by meaningful engagement on the part of the devolved government with the UK Government, with both parties having an obligation to make every effort to resolve any concerns raised.**
269. **Early consultation via a principle of positive engagement would also help resolve differences of view between the UK Government and the devolved governments as to whether legislative consent is required for particular bills.**

The devolved legislatures’ scrutiny function

270. Each of the devolved legislatures’ standing orders stipulate the process for obtaining legislative consent from the legislature. In short, each of the devolved governments is required to submit to their legislature a ‘legislative consent memorandum’, which sets out provisions in the bill that engage the Sewel convention in the view of the devolved government, explains the effects of those provisions on areas of devolved competence and makes a recommendation as to whether the legislature should grant or withhold consent. A designated committee within the legislature is then given responsibility for scrutinising the government’s memorandum and recommending whether consent should be granted or withheld. A ‘legislative consent motion’ can then be tabled, debated and voted on by members of the legislature.³³⁵
271. Concerns were raised by witnesses about the effects that late engagement had on the capacity of the devolved legislatures to effectively fulfil their scrutiny function.³³⁶
272. The Northern Ireland Assembly Committee for the Executive Office said consideration should be given “in relation to timescales and opportunities” for the devolved administrations to consider legislative consent motions “so Departments can present impacts that Committees can consider”.³³⁷

334 Labour Party, *Change: Labour Party Manifesto 2024*, (13 June 2024), p 109: <https://labour.org.uk/updates/stories/labour-manifesto-2024-sign-up/> [accessed 22 September 2024]; written evidence from the Senedd Legislation, Justice and Constitution Committee (GOU0008), para 30

335 House of Commons Library, ‘Legislative consent: what, why and how?’ (13 April 2018): <https://commonslibrary.parliament.uk/legislative-consent-what-why-and-how/> [accessed 22 September 2024]

336 Q 114 (Rebecca Evans MS)

337 Written evidence from the Northern Ireland Assembly Committee for the Executive Office (GOU0009)

273. Dr Goodall said that five years ago approximately 45 legislative consent motions would be requested from the Senedd in a parliamentary term. This number is now requested in individual years, which has an impact on the Senedd's capacity to consider them.³³⁸ He thought it important that the Senedd's own timetable and requirements be respected and gave an example of a time when consent was sought by the UK Government when the Senedd was not sitting. Earlier engagement could have avoided this.³³⁹
274. This was echoed by the Senedd Legislation, Justice and Constitution Committee, who identified a “democratic deficit” arising from an increase during the Sixth Senedd of UK bills including provisions within devolved competence. The Committee said changes were being made to Welsh primary legislation without full scrutiny from the Senedd.³⁴⁰
275. **Late consultation by the UK Government on legislation which potentially impacts upon devolved competence diminishes the devolved legislatures' and their committees' capacity to effectively scrutinise legislative consent motions. The UK Government should note the time required to consider adequately the increased number of legislative consent motions which are now being put before the devolved legislatures and should take account of the devolved legislatures' timetables to help ensure in as far as possible that sufficient time for scrutiny is available.**

The role of the House of Lords

276. Several witnesses advocated a greater role for the UK Parliament, and in particular, the House of Lords, in strengthening respect for the Sewel convention.³⁴¹
277. The role of the House of Lords in monitoring respect for the Sewel convention has grown in recent years. In *Brexit legislation: constitutional issues* we recommended the Procedure and Privileges Committee should consider “how legislative consent could be given greater prominence in the legislative process at Westminster”.³⁴² As a result, that Committee recommended that:

“when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the minister should set out the efforts that were made to secure consent and the reasons for the disagreement.”³⁴³

The House agreed to this recommendation, which is now part of the legislative process in the House of Lords.³⁴⁴

338 [Q 114](#) (Dr Andrew Goodall)

339 [Q 116](#) (Dr Andrew Goodall)

340 Written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#))

341 [Q 34](#) (Prof Jim Gallagher and Dr Philip Rycroft); written evidence from the Senedd Legislation, Justice and Constitution Committee ([GOU0008](#)); written evidence from Dr Paul Anderson and Dr Coree Brown Swan ([GOU0001](#))

342 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), para 60

343 Procedure and Privileges Committee, *4th Report* (Session 2019–21, HL Paper 140), paras 40–43

344 This procedure has applied to several recent bills. For example, see the Trade (Australia and New Zealand) Bill, HL Deb, 20 March 2023, [col 1547](#), see also Automated Vehicles Bill, HL Deb, 19 February 2024, [col 377](#) and Digital Markets, Competition and Consumers Bill, HL Deb, 26 March 2024, [col 582–583](#)

278. In addition, following a recommendation by this Committee in *Respect and Co-operation: Building a strong Union for the 21st Century*, all consent decisions by the devolved legislatures are now notified both on the order paper and in the list of bills in progress in House of Lords Business.³⁴⁵ Instances where the UK Government has not sought consent from the devolved legislatures, but they have nevertheless granted or withheld consent, are notified in the list of bills in progress in the House of Lords Business by referring to the ‘correspondence published’ by the relevant devolved legislature.³⁴⁶ If consent from a devolved legislature is pending this is also notified in the list of bills in progress.³⁴⁷
279. In *Respect and Cooperation: Building a Stronger Union for the 21st Century* we also recommended:

“On introduction of a bill to the House of Lords which engages the Sewel convention, the Government should submit a memorandum to the House about the devolution implications, explain[ing] what engagement has taken place with the relevant devolved administrations.

In our scrutiny of the bill, the Committee will take into account the Government’s memorandum, progress in securing legislative consent and any further evidence or materials, including the view of a committee of a relevant devolved legislature, we consider necessary. As the Committee has done previously, we may occasionally advise the House on the wisdom of proceeding with a bill in the absence of legislative consent. Depending on the timing of each devolved legislature’s consideration of a legislative consent memorandum and motion, including the possibility of amendments requiring the consideration of supplementary memorandums and motions, we might have to issue a report at a later stage.”³⁴⁸

And:

“At present when the Government considers consent is not required from a devolved legislature and proceed to give effect to that view, there is no parliamentary scrutiny of this determination. In future we recommend that the Government should justify its approach to the House at the beginning of a Bill’s consideration.”³⁴⁹

280. In its response to these recommendations the then Government said:

“The Government sets out its understanding of the territorial extent of a bill when it is introduced to Parliament, as part of the bill’s explanatory

345 See, for example: House of Lords, ‘Order Paper’ (8 May 2024): <https://lordsbusiness.parliament.uk/?businessPaperDate=2024-05-08> [accessed 22 September 2024] and House of Lords, ‘House of Lords Business’ (8 May 2024): <https://lordsbusiness.parliament.uk/?businessPaperDate=2024-05-08> [accessed 22 September 2024]

346 See, for example: House of Lords, ‘House of Lords Business’ (29 March 2022): <https://lordsbusiness.parliament.uk/?businessPaperDate=2022-03-29§ionId=40> [accessed 22 September 2024]

347 See, for example: House of Lords, ‘House of Lords Business’ (19 March 2024): <https://lordsbusiness.parliament.uk/?businessPaperDate=2024-03-19§ionId=40> [accessed 22 September 2024]; Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 138; Procedure and Privileges Committee, *4th Report* (Session 2022–23, HL Paper 161), paras 1–5

348 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st century* (10th Report, Session 2021–22, HL Paper 142), para 138

349 *Ibid.*, para 139

notes. This generally includes a dedicated chapter explaining our reasoning on the bill’s territorial extent, as well as a clause-by-clause summary of where we consider the legislative consent process is engaged.

We are engaging in discussions with devolved counterparts on principles for future working on legislation, including our approach to engagement on legislative consent. We will carefully consider the Committee’s recommendations in the context of this work.”³⁵⁰

281. **We recognise that the Explanatory Notes accompanying a bill set out the Government’s understanding of the territorial extent of the bill. However, they do not provide the House of Lords with an explanation of what engagement has taken place to date to secure the consent of the relevant devolved legislatures. We reiterate our previous recommendation and urge the new Government—on introduction of a bill to the House of Lords that engages the Sewel convention—to submit a memorandum to the House about the devolution implications of the bill and explain what engagement has taken place with the relevant devolved administrations.**
282. *Where the UK Government considers consent is not required from a devolved legislature and proceeds to give effect to that view, we reiterate our previous recommendation that the Government should justify its approach to the House at the beginning of the bill’s consideration.*

350 Department for Levelling Up, Housing & Communities, ‘Government Response to the House of Lords Select Committee on the Constitution report Respect and Cooperation: Building a Stronger Union for the 21st Century’ (2 September 2022), p 5: <https://committees.parliament.uk/publications/28473/documents/171574/default/>

CHAPTER 6: SECONDARY LEGISLATION AND HENRY VIII POWERS

Background

283. Secondary legislation is law created by ministers (or other bodies) under powers given to them by primary legislation.³⁵¹ It is also known as ‘delegated legislation’ or ‘subordinate legislation’.³⁵² ‘Statutory Instruments’ are the most common form of secondary legislation.³⁵³ It is generally accepted that the Sewel convention does not apply to secondary legislation.³⁵⁴

284. In written evidence DLUHC said:

“Powers for the UK Government to make statutory instruments in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution.

This is because it is often appropriate for the UK Government to amend existing or introduce new UK-wide regulations, including in devolved areas, as it can be more efficient, or to ensure coherence across the UK and make it easier for our stakeholders. In some cases, it benefits businesses and citizens to have consistency and coherence across the UK. Henry VIII powers should only be used when absolutely necessary.

The UK Government seeks the agreement of devolved administration Ministers for Statutory Instruments in devolved areas when there is a statutory requirement or an existing political commitment to do so. Whether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context.

It is sometimes necessary to make consequential amendments to acts of the devolved legislatures to ensure that laws work appropriately (and vice versa).³⁵⁵

285. The Scottish Parliament’s CEEAC Committee noted “a significant step change” in the use of delegated powers during preparations for the UK’s departure from the EU and after its departure. The Committee said that prior to EU-exit “the UK Government rarely used delegated powers in devolved areas other than in relation to complying with EU law”.³⁵⁶ It was concerned that UK Ministers were being accorded new delegated powers in devolved areas, and that this was occurring “on an ad hoc and iterative basis without any overarching consideration of the impact on how devolution works.”³⁵⁷

351 UK Parliament, ‘What is Secondary Legislation?’: <https://www.parliament.uk/about/how/laws/secondary-legislation/> [accessed 22 September 2024]

352 UK Government, ‘Understanding legislation’: <https://www.legislation.gov.uk/understanding-legislation>. [accessed 22 September 2024]

353 UK Parliament, ‘Statutory Instruments’: <https://www.parliament.uk/site-information/glossary/statutory-instruments-sis/> [accessed 22 September 2024]

354 Constitution Committee, *The ‘Great Repeal Bill’ and delegated powers* (9th Report, Session 2016–17, HL Paper 123), para 118

355 Written evidence from the Department for Levelling Up, Housing and Communities ([GOU0006](#))

356 Written evidence from the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee ([GOU0005](#))

357 *Ibid.*

286. In written evidence to the same Committee, the Scottish Government said:

“The Scottish Government recognises that there can be pragmatic arguments for powers to provide an option for a UK wide approach to secondary legislation where that is justified, for example when a mix of reserved and devolved matters is involved, provided there are adequate safeguards for devolved interests ...

However, the Scottish Government shares the concerns expressed by the Scottish Parliament (and the Welsh Government and the Senedd) about an apparent tendency for the UK Government to routinely propose to take such powers, and without proper safeguards for devolved interests, such as a statutory requirement for consent from Scottish Ministers. The UK Government has also been prepared to breach the Sewel Convention specifically to confer powers on UK Ministers to act in devolved areas against the explicit views of the Scottish Parliament, compounding the disregard of the devolution settlement.”³⁵⁸

287. In our own legislative scrutiny work we have observed in recent years an increase in UK primary legislation that:

- empowers UK Ministers to make secondary legislation in areas of devolved competence; and
- introduces Henry VIII powers to alter acts of the devolved legislatures.³⁵⁹

We have repeatedly commented on both practices in our legislative scrutiny reports.

288. Where UK legislation empowers UK ministers to make secondary legislation in areas of devolved competence, we have supported the inclusion of a requirement to consult relevant devolved ministers. However, we have also recommended that in such circumstances the UK Government should commit to “not normally” using delegated powers in areas of devolved competence without the consent of the relevant devolved administrations.³⁶⁰

289. Where UK legislation introduces Henry VIII powers which empower UK ministers to alter acts or secondary legislation of the devolved legislatures, we have said it would be “constitutionally questionable” for Parliament

358 Written evidence from the Scottish Government to the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee, p 5: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2023/scottish-government-response-to-the-committees-letter-of-25-may-2023.pdf> [accessed 22 September 2024]

359 Prof Aileen McHarg, Policy Exchange, ‘Ministerial powers and devolved competence’ (17 March 2023): <https://policyexchange.org.uk/blogs/ministerial-powers-and-devolved-competence/> [accessed 22 September 2024]

360 For example, when we scrutinised the Levelling-up and Regeneration Bill we welcomed “the requirement in the Bill to consult relevant devolved ministers when making regulations containing provision within devolved competence.” We also urged the Government “to replicate for the Levelling Up and Regeneration Bill its commitment on the Trade (Australia and New Zealand) Bill “not normally” to use delegated powers in areas of devolved competence without the consent of the relevant devolved administrations.” Similarly, in our report on the Retained EU Law (Revocation and Reform) Bill we recommended the Bill was amended “to require UK ministers to consult the relevant devolved administration before making regulations that affect areas of devolved competence.” We also said: “it would be welcome if the Government were to commit not normally to use the powers under the Bill in areas of devolved competence without having obtained the consent of the relevant devolved administration.” Constitution Committee, *Levelling-up and Regeneration Bill* (12th Report, Session 2022–23, HL Paper 140), paras 23–24; Constitution Committee, *Retained EU Law (Revocation and Reform) Bill* (13th Report, Session 2022–23, HL Paper 141), paras 39–40

to circumvent the Sewel convention “by legislating in a way that foresees or intends delegated legislation to change devolved legislation in areas of devolved competence”. We have therefore recommended that such legislation be amended “to the effect that the power to amend those provisions may not be exercised without the consent of those legislatures”.³⁶¹

290. In *Brexit legislation: constitutional issues* we said:

“While the legislative consent convention—that the UK Parliament will not normally legislate in areas of devolved competence without consent—does not apply to delegated legislation, we believe formal engagement with the devolved institutions on the use of such powers should be a requirement.”

And:

“We recommend that powers for UK ministers to make delegated legislation in devolved areas, including the power to supersede law made by devolved legislatures, should include a requirement either to consult devolved ministers or to seek their consent, depending on the significance of the power in question. The more significant the power, the greater the need for consent to be sought. We note that this approach has been adopted in the Fisheries Bill and we encourage the Government to follow this precedent in future legislation.”³⁶²

291. In *Respect and Co-operation: Building a Stronger Union for the 21st Century* we said:

“While the [Sewel] convention does not technically apply to secondary legislation, the UK Government should still seek consent before acting in this area.”³⁶³

Consultation vs consent

292. We raised our concerns about the use of delegated legislation in areas of devolved competence with the then Secretary of State for Scotland, Secretary of State for Wales and the Parliamentary Under-Secretary of State at the Northern Ireland Office. In a letter to the Chair of this Committee the ministers said:

“[T]he inclusion of a consult or consent obligation is assessed on a case by case basis. It is important to note that each policy area has a different legislative context so in our view it is appropriate to consider and include such powers on that individual basis. There have been instances where the UK Government has included these obligations but that is following careful policy consideration and where there is strong rationale for doing so.”³⁶⁴

361 Constitution Committee, *Nationality and Borders Bill* (11th Report, Session 2021–22, HL Paper 149), Constitution Committee, *Energy Bill* (4th Report, Session 2022–23, HL Paper 60), paras 103–104

362 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), paras 64–65

363 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21st Century* (10th Report, Session 2021–22, HL Paper 142), para 124

364 Letter from Rt Hon Alister Jack MP, Secretary of State for Scotland, Rt Hon David TC Davies MP, Secretary of State for Wales and Lord Caine, Parliamentary Under-Secretary of State for Northern Ireland to Baroness Drake, Chair of the Constitution Committee (30 May 2024): <https://committees.parliament.uk/publications/45296/documents/224375/default/> [

293. Mr Jack said it was the role of Parliamentary Counsel to bring to the attention of the Parliamentary Business and Legislation Committee the use of delegated legislation in areas of devolved competence and the use of Henry VIII powers to alter acts of the devolved legislatures.³⁶⁵ At that point the territorial offices would stress that engagement with the devolved administrations must take place. He thought there should always be a responsibility to consult in these circumstances but was not in favour of introducing an explicit consent mechanism for the use of these powers because it would allow the UK Government to have its “feet held to the fire” down the line.³⁶⁶
294. In the case of Wales, the Devolution Guidance Notes do provide that “the consent of the [Senedd] is normally required where subordinate legislation introduced by the UK Government amends primary legislation for which the [Senedd] has legislative competence.” This is achieved through the Senedd’s Statutory Instrument Consent Mechanism. It requires that a member of the Welsh Government must lay before the Senedd a Statutory Instrument Consent Memorandum in relation to a “relevant statutory instrument” laid before the UK Parliament.³⁶⁷ In a letter to the Chair of this Committee, Ms Evans listed three recent occasions on which Statutory Instrument Consent Memoranda had been laid by the Welsh Government:
- In October 2023, the Welsh Government laid before the Senedd a Statutory Instrument Consent Memorandum on the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 and consent was granted;
 - In January 2024 the Welsh Government laid before the Senedd a Statutory Instrument Consent Memorandum on the Social Housing (Regulation) Act 2023 (Consequential and Miscellaneous Amendments) Regulations 2024 and consent was granted;
 - In May 2024 the Welsh Government laid before the Senedd a Statutory Instrument Consent Memorandum on the Energy Act 2023 (Consequential Amendments) Regulations 2024. However, the statutory instrument was expedited through the UK Parliament due to

365 This is reflected in the Devolution Guidance Notes which state, for example in relation to Wales: “Devolution issues form an important part of the memorandum presented to Parliamentary Business and Legislation (PBL) Committee to inform its consideration of whether a Bill is ready to be introduced in Parliament ... Devolution issues should be substantively resolved by the time the Committee considers whether a Bill should be introduced ... “ Cabinet Office, *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales*, para 62: https://assets.publishing.service.gov.uk/media/5ad9edd4ed915d32a3a7100a/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf [accessed 22 September 2024]; Cabinet Office, *Post-Devolution Legislation Affecting Northern Ireland*, paras 4 and 7: <https://assets.publishing.service.gov.uk/media/5a797df740f0b63d72fc6480/post-devolution-primary-ni.pdf> [accessed 22 September 2024] and Cabinet Office, *Post-Devolution Primary Legislation affecting Scotland*, paras 3 and 8: <https://assets.publishing.service.gov.uk/media/5a79c7efe5274a18ba50ec92/post-devolution-primary-scotland.pdf> [accessed 22 September 2024]

366 QQ 83 and 86 (Rt Hon Alister Jack MP)

367 Letter from Rebecca Evans MS, Welsh Cabinet Secretary for Finance, Constitution & Cabinet Office to Baroness Drake, Chair of the Constitution Committee (31 July 2024): <https://committees.parliament.uk/publications/45297/documents/224376/default/>. A “relevant statutory instrument” is “a statutory instrument or draft statutory instrument laid before the UK Parliament by UK Ministers which makes provision (“relevant provision”) in relation to Wales amending primary legislation within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd).” Welsh Parliament, *Standing Orders of the Welsh Parliament* (January 2024), pp 186–187: <https://senedd.wales/media/ue1dqdmg/so-eng.pdf> [accessed 22 September 2024]

the calling of a general election on 22 May 2024, which meant it was approved without the opportunity for the Senedd to consider legislative consent.³⁶⁸

295. Ms Evans said the Welsh Government position was that “subordinate legislation made by the UK Government in Wales on devolved matters should be made only with the consent of Welsh Ministers”.³⁶⁹ However, she noted that the Statutory Instrument Consent Mechanism had “no legal effect on the UK Government.”³⁷⁰ Nonetheless, in a letter to the Chair of this Committee, the then Secretary of State for Wales acknowledged the Mechanism and the expectation in the Devolution Guidance Notes that the consent of the Senedd is normally required in these circumstances.³⁷¹
296. The Devolution Guidance Notes for Wales state that there are exceptions to this general rule; for example, legislation related to Brexit enabled UK Ministers to make Statutory Instruments modifying Senedd legislation without the need for formal consent from the Senedd. The Guidance Notes also specify that while UK primary legislation can be amended if a legislative consent motion is not passed by the Senedd, “statutory instruments usually cannot”.³⁷²
297. With regard to Northern Ireland, the Devolution Guidance Notes specify that while the Sewel convention relates to primary legislation, “departments should approach the Devolved Administration on the same basis for ... subordinate legislation which extends to NI in the transferred field, even though ... there is no formal requirement for agreement by the Northern Ireland Assembly.”³⁷³
298. The Devolution Guidance Notes for Scotland are silent on this issue.³⁷⁴ However, in written evidence to the Constitution, Europe, External Affairs and Culture Committee, the Scottish Government said:

“The Scottish Government believes the normal preference should be that Scottish Ministers have powers to act in devolved areas, and that any concurrent powers should require the consent of Scottish Ministers for which they can be scrutinised by the Scottish Parliament. Any exceptions, for example that UK Ministers can exercise such powers after consulting Scottish Ministers, should be carefully justified to the Scottish Parliament, and the UK Government should include a

368 Letter from Rebecca Evans MS, Welsh Cabinet Secretary for Finance, Constitution & Cabinet Office to Baroness Drake, Chair of the Constitution Committee (31 July 2024): <https://committees.parliament.uk/publications/45297/documents/224376/default/>

369 Q 114 (Rebecca Evans MS)

370 *Ibid.*

371 Letter from Rt Hon Alister Jack MP, Secretary of State for Scotland, Rt Hon David TC Davies MP, Secretary of State for Wales and Lord Caine, Parliamentary Under-Secretary of State for Northern Ireland to Baroness Drake, Chair of the Constitution Committee (30 May 2024): <https://committees.parliament.uk/publications/45296/documents/224375/default/>

372 Cabinet Office, *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales*, paras 108–110: https://assets.publishing.service.gov.uk/media/5ad9edd4ed915d32a3a7100a/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf [accessed 22 September 2024]

373 Cabinet Office, *Post-Devolution Legislation Affecting Northern Ireland*: <https://assets.publishing.service.gov.uk/media/5a797df740f0b63d72fc6480/post-devolution-primary-ni.pdf> [accessed 22 September 2024]

374 Cabinet Office, *Post-Devolution Primary Legislation affecting Scotland*: <https://assets.publishing.service.gov.uk/media/5a79c7efe5274a18ba50ec92/post-devolution-primary-scotland.pdf> [accessed 22 September 2024]

requirement for statutory consent if the Scottish Parliament does not agree to its proposals.”³⁷⁵

299. Witnesses thought altering the powers of the devolved administrations by way of secondary legislation without consent was “a bad idea”, and that ways should be found to have a more consultative and deliberative process.³⁷⁶ Dr Rycroft commented that “[t]here may be times when there is agreement to use delegated powers to change things, but it ought to be done properly with the agreement of the devolved Governments.”³⁷⁷ In written evidence the Northern Ireland Executive said:

“It is recognised that using delegated legislation in areas of devolved competence **with consent** can ensure consistency of provision and entitlement across jurisdictions, and that any issues specific to each devolved government can be addressed before implementation.”³⁷⁸

300. Professor Gallagher said: “It is outrageous to think that something that Parliament should not do a Minister can nevertheless do ... This use of delegated powers to legislate in matters that Parliament itself should not be legislating in is a very good example of the poisonous notion that the person who is sovereign is the Minister.”³⁷⁹
301. Professor McAllister thought the Sewel convention should include delegated legislation. She said: “[C]learly if Parliament cannot do something then Ministers should not be allowed to do it. Ministers are not sovereign in any sense.”³⁸⁰ She also said: “[I]t is often some of the most meaningful and impactful changes to citizens’ lives that come through delegated legislation”. She did not think Henry VIII powers should be used to alter acts of the devolved legislatures without agreement from all governments.³⁸¹
302. We asked how it would work practically to extend the Sewel convention to delegated legislation given the volume of delegated legislation, some of which is more consequential than others. Dr Williams suggested that there might be a case to be made that certain pieces of delegated legislation did not require the full legislative consent procedure. Professor McAllister said that if there were a “better programme of legislation which the devolved governments were consulted on early in the process, maybe there could be some distinction between the areas that would be of import to devolved Governments and those that are of less consequence to them.”³⁸²
303. Mr Jack made clear that the then Government’s position was that “the Sewel convention should not apply to secondary legislation”. He elaborated: “I suspect that the view is that it has gone through primary legislation with the Sewel convention. Therefore, having gone through primary legislation,

375 Written evidence from the Scottish Government to the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee, p 5: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2023/scottish-government-response-to-the-committees-letter-of-25-may-2023.pdf> [accessed 23 September 2024]

376 Q 10 (Prof Ciaran Martin); written evidence from Dr Paul Anderson and Dr Coree Brown Swan (GOU0001)

377 Q 35 (Dr Philip Rycroft)

378 Written evidence from the Northern Ireland Executive Office (GOU0013)

379 Q 35 (Prof Jim Gallagher)

380 Q 70 (Prof Laura McAllister)

381 Q 71 (Prof Laura McAllister)

382 *Ibid.*

it should not go through secondary legislation”.³⁸³ Mr Davies made a similar point, using the Tobacco and Vapes Bill³⁸⁴ as an example. He said:

“We have the support of the Welsh Government in passing this bit of legislation. I am absolutely certain, although I cannot give you examples, that within that there will probably be secondary legislation. There will be powers probably given to UK Ministers to legislate in what will effectively be health areas. The fact that we have already discussed the main legislation with the Senedd and got its agreement to it means that it is reasonable to assume that it will be happy with a UK Government Minister having the power to pass secondary legislation over a period of time into the future.”³⁸⁵

304. The Scottish Parliament’s CEEAC Committee recommended there should be a supplementary agreement on the use of delegated powers by UK ministers in devolved areas including:

- “A list of the delegated powers available (updated as appropriate) and reasoning for the level of consent/consultation being applied to each;
- The criteria for their use;
- The process for engagement between UK and devolved officials;
- The process for engagement at Ministerial level;
- How this works within the context of the Review of Intergovernmental Relations;
- A recognition of the constitutional principle that devolved Ministers are accountable to their respective legislatures for the use of powers within devolved competence; and
- The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.”³⁸⁶

305. *We recommend the new Government develops a clear set of criteria regarding the appropriate use of delegated powers in areas of devolved competence. These criteria should be set out in guidance provided to the Office of the Parliamentary Counsel, which should be published.*

306. *We reiterate our previous recommendation that formal engagement with the devolved administrations on the use of delegated powers in areas of devolved competence should be a requirement. UK Ministers should either consult devolved ministers or seek their consent, depending on the significance of the delegated power in*

383 **Q 85** (Rt Hon Alister Jack MP); Letter from Rt Hon Alister Jack MP, Secretary of State for Scotland, Rt Hon David TC Davies MP, Secretary of State for Wales and Lord Caine, Parliamentary Under-Secretary of State for Northern Ireland to Baroness Drake, Chair of the Constitution Committee (30 May 2024): <https://committees.parliament.uk/publications/45296/documents/224375/default/>

384 The Tobacco and Vapes Bill subsequently ‘fell’ following the calling of a general election on 22 May 2024.

385 **Q 88** (Rt Hon David TC Davies MP)

386 Written evidence from the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee (**GOU0005**)

question. In developing the criteria referred to in paragraph 305, the UK Government should set out the circumstances in which it ought “not normally” to exercise a delegated power without the consent of the relevant devolved institution. For instance, where UK legislation contains powers which empower UK ministers to alter acts of the devolved legislatures, these powers should not normally be exercised without the explicit consent of the relevant legislatures.

307. *The process for consulting and seeking the consent of the devolved institutions on the use of delegated powers in areas of devolved competence should be set out in writing and should include recognition of the role of the devolved legislatures in scrutinising such powers. The Senedd’s Statutory Instrument Consent Mechanism provides a useful model for achieving this. The process of consulting and seeking the consent of the devolved institutions on the use of such powers should form part of the principle of positive engagement discussed in Chapters 3 and 5.*

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Introduction

1. As a Committee, part of our remit is to keep under review constitutional aspects of devolution. As such, we intend to return to this matter and will seek to examine the efficacy of the intergovernmental relations arrangements and the operation of the Sewel Convention again in the near future. (Paragraph 59)
2. *In addition to responding to our report within the normal two-month timeframe, we also ask that the new Government undertakes to review both the operation of intergovernmental relations and the Sewel convention over the coming year, with a view to implementing the recommendations in our report. We invite the Government to provide an update to the Committee on progress made by the end of September 2025.* (Paragraph 59)

Are the new intergovernmental relations structures working?

3. As discussed in Chapter 1, the new intergovernmental relations structures are, on paper, a welcome initiative. They have the potential to remedy criticisms levelled at the previous intergovernmental structures by creating a more regular, transparent and formal system of intergovernmental working. However, the realisation of their full potential, as genuine vehicles for collaboration and co-operation, will require the new Government to fully embed them into the day-to-day business of government. The devolved administrations must also demonstrate commitment to engaging with the new structures. (Paragraph 73)
4. *We recommend that intergovernmental meetings are scheduled consistently, at intervals deemed appropriate by both the UK Government and the devolved governments. Other than in exceptional circumstances, devolved governments should be given sufficient notice of meetings, allowing them the opportunity to contribute meaningfully to the development of meeting agendas. Where appropriate, meetings should be attended by the relevant Secretary of State and the cancellation of meetings at late notice should be avoided.* (Paragraph 74)
5. *We welcome the manifesto commitment made by the new Government to “renew opportunities for the Prime Minister and Heads of Devolved Government to collaborate with each other” and reiterate our previous recommendation that the Prime Minister and Heads of Devolved Governments Council should meet on a regular basis, and at least twice annually.* (Paragraph 75)
6. As set out in paragraph 186, the effectiveness of the intergovernmental relations structures under the new government will be helped by the recent appointment of the Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations, with responsibility for devolution, and the location of this post in the Cabinet Office. (Paragraph 76)
7. While we welcome the commitment by the governments of the United Kingdom to promote understanding of, and accountability for, intergovernmental activity through enhanced reporting to their respective legislatures, we are concerned by reports that information on intergovernmental activity is sometimes lacking. (Paragraph 81)
8. *To fulfil their pledge to improve transparency and accountability, all four governments should ensure reporting on intergovernmental activity is timely and*

includes sufficient detail to facilitate effective scrutiny by their respective legislatures. (Paragraph 81)

9. The UK Government is more powerful than the devolved governments and, by its nature as the government for the entire UK, possesses information about policy choices that may impact on the devolved nations. As such, while successful devolution requires goodwill on the part of every government, it is particularly incumbent upon the UK Government to take account of the impact its decisions may have throughout the UK and therefore to demonstrate goodwill in its interaction with the devolved governments and share information in good faith. Devolution also requires goodwill, constructive engagement and sharing of information by devolved governments, but where they are themselves hostile to the Union such goodwill and cooperation can be lacking. (Paragraph 92)
10. Where different political parties are in power in different parts of the United Kingdom, underlying political differences are inevitable and unavoidable. If intergovernmental relations are to be effective and sustainable, then it is essential that all parties foster a culture of positive engagement; politicians throughout the United Kingdom, whatever their view of the current constitutional structures, must be prepared to overcome political differences in the interests of the people they serve. (Paragraph 93)
11. The dispute resolution process, as a feature of the new intergovernmental relations process, has not yet been tested. As referenced in paragraph 94, it has been initiated only once—in a dispute between the Northern Ireland Executive and the UK Government that was paused following the collapse of the Northern Ireland institutions in February 2022. It is therefore not possible, at this time, to assess the efficacy of the new dispute resolution process. (Paragraph 113)
12. Nevertheless, in many circumstances, engagement with the dispute resolution process is unlikely to be the most practical course of action. There are three particular reasons for this. Often, informal dialogue between governments will be more effective. Where legislation is involved, the speed and process by which bills and substantive amendments make their way through the legislatures may make it impracticable to pursue a complaint through the dispute resolution process. The reality of different political parties holding power in different parts of the UK—some of which support the Union and others of which aspire to independence—is that publicity engendered by high-profile public disputes will at times be more appealing than resolving issues through established governance structures. For all these reasons it may be that use of the dispute resolution process will remain limited. We will keep this under review. (Paragraph 114)
13. If intergovernmental relations are to be a success, it is vital that civil servants have a comprehensive understanding of devolution and are encouraged, including by ministers, to engage effectively with their counterparts in the devolved administrations where policy proposals are likely to impact upon devolved competence. (Paragraph 126)
14. *We urge the new Government to ensure that every department has a properly equipped team—and a Ministerial lead—with the knowledge and skills necessary to address, anticipate and engage with devolution matters as they arise, providing an identified point of contact for the devolved administrations.* (Paragraph 126)

15. We note that the Civil Service Devolution Capability Programme has been in place since 2015 yet concerns remain about civil servants' knowledge of devolution. (Paragraph 127)
16. *We reiterate our previous recommendation that to be effective, such training requires significant take up, from the most junior to the most senior civil servants.* (Paragraph 127)
17. It is not yet clear how the re-establishment of Northern Ireland institutions in February 2024 will impact on the efficacy of the new intergovernmental relations structures. As such, a full assessment of the intergovernmental relations structures will require time to allow for Northern Ireland's full participation to bed in. (Paragraph 137)
18. Despite significant setbacks—not least the collapse of devolved institutions in Northern Ireland in February 2022 and the criticisms levelled at the Internal Market Act 2020—common frameworks represent a positive example of intergovernmental cooperation, using a collaborative and consensus-driven approach. (Paragraph 153)
19. When fully implemented common frameworks have the potential to develop UK-wide policy through collaboration and consensus, while also acknowledging the autonomy of each of the devolved administrations in their area of competence and allowing for policy divergence on the basis of consent. In the words of the Common Frameworks Scrutiny Committee “[t]hey therefore have singular potential to strengthen cooperation between the administrations which is essential to maintaining the Union.” (Paragraph 154)
20. As part of our remit to keep under review constitutional aspects of devolution, this Committee maintains a watching brief on the operation of common frameworks. (Paragraph 155)
21. *With the re-establishment of the devolved institutions in Northern Ireland, we urge the new Government to mobilise every effort to finalise and fully implement all 32 common frameworks agreed between the UK Government and the devolved governments.* (Paragraph 155)

How can intergovernmental relations be improved?

22. The territorial offices have an important role to play in strengthening the Union by enhancing Whitehall understanding of devolution and the political context in the devolved nations, and by guiding UK Government policy accordingly. The secretaries of state for Scotland, Wales and Northern Ireland have a particular duty to engage constructively with, and demonstrate respect for, the competences of the devolved administrations. They are in a position to represent the interests of the respective nations in the Cabinet and have direct access to ministers in other Government departments. We look forward to further clarity as to the respective roles of the territorial secretaries of state and the new Minister for Intergovernmental Relations. (Paragraph 180)
23. We welcome the new Government's appointment of a Minister for Intergovernmental Relations, based in the Cabinet Office, with responsibility for devolution. It will be important for the new Minister for Intergovernmental Relations and the Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) to work effectively together

to ensure a common understanding of the devolution settlement and the constitution more broadly, including any implications for the integrity of intergovernmental relations. We look forward to engaging the ministers on the issues raised in this report. (Paragraph 186)

24. While intergovernmental co-operation through the new intergovernmental relations structures requires improvement, we do not believe they have been operational long enough to take a conclusive view as to whether such structures should be underpinned by a statutory framework. We reiterate our previous conclusion that attitudes and behaviours are key to making the new structures work effectively. (Paragraph 193)
25. *We welcome the new Government's commitment in its manifesto to "ensure the structures and institutions of intergovernmental working improve relationships and collaboration on policy".* (Paragraph 193)
26. *We recommend a principle of positive engagement to be included among the principles for intergovernmental relations, currently listed in 'The Review of Intergovernmental Relations' policy document. Such a principle would provide civil servants with a tool by which to remind ministers in the UK Government and the devolved governments of the expectation that they should engage with one another, including by working together on the development and implementation of policies of common concern.* (Paragraph 201)
27. *We welcome the new Government's commitment to work collaboratively with the governments in Scotland, Wales and Northern Ireland, and urge it to ensure that it fully respects the powers of the devolved governments under the devolution settlement. There is a reciprocal responsibility on behalf of the devolved governments to engage and work collaboratively with the UK Government.* (Paragraph 202)
28. *We note the new Government's commitment in the King's Speech to establish a Council of the Nations and Regions, which will bring together the Prime Minister, the heads of the devolved governments and the mayors of combined authorities. We also note the intention to bring forward an English Devolution Bill. This Committee will keep the government proposals under careful review and examine their constitutional implications in due course, including their capacity to represent parts of England that do not fall within a Combined Authority.* (Paragraph 207)

Observance of the Sewel convention

29. The Sewel convention generally operated well from 1999 until it was put under strain by the implementation of Brexit. Since Brexit, the UK Government has legislated without the consent of one or more of the devolved legislatures on multiple occasions, and at times has done so on bills unrelated to Brexit. (Paragraph 228)
30. *We urge the new Government to commit to respecting the Sewel convention, namely by proceeding in accordance with the principle that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.* (Paragraph 228)
31. However, we also recognise that the increased occasions on which the UK Government has legislated without consent may in part be the result of a trend since Brexit for the devolved governments to take a more expansive view of devolved competence. This has led to differences of opinion between the UK Government and the devolved government as to whether consent is required with regard to specific bills. In such circumstances, close and

timely engagement between governments is required to address differences of opinion and, where possible, reach consensus. Occasions on which amendments have been made to bills to address the concerns of the devolved legislatures and ultimately secure their consent demonstrate the benefits of such engagement. (Paragraph 229)

Strengthening the Sewel convention

32. While improving respect for the Sewel convention is essential, replacing the convention with an express legal duty that the UK Parliament will not legislate in areas of devolved competence without the consent of the relevant devolved legislature would be excessively rigid and would potentially involve the courts in what is fundamentally a political matter between the UK Government and the devolved governments. (Paragraph 241)
33. The Devolution Guidance Notes are out of date. They do not take account of significant developments such as the return of powers following the UK's departure from the European Union and the development of common frameworks, or the introduction of new intergovernmental relations structures in January 2022. They also make outdated references; for example, they refer to the "Scottish Executive" instead of the Scottish Government and the "National Assembly for Wales" instead of the Senedd. (Paragraph 250)
34. *We reiterate our previous recommendation that the Devolution Guidance Notes should be updated as a matter of priority, and we urge the new Government to do so without delay. This should be completed alongside long overdue updates to the Cabinet Manual.* (Paragraph 250)
35. *In updating to the Devolution Guidance Notes, the UK Government should consider the proposals made by the Senedd Legislation, Justice and Constitution Committee, and how these could be expanded to include the Scottish and Northern Irish institutions.* (Paragraph 251)
36. For UK Government consultation with the devolved administrations on UK legislation to be meaningful and effectively resolve differences, it must be timely. We recognise that the legislative timetable in the UK Parliament can make early engagement a challenge and that there are, at times, conflicting accounts from the UK Government and the devolved administrations regarding the timing and quality of consultation. We nonetheless reiterate our previous recommendation that instructions in the Devolution Guidance Notes regarding early consultation should be followed as a matter of course. (Paragraph 266)
37. We note that there is currently no reciprocal convention requiring the devolved administrations to give notice to the UK Government of devolved legislation that could affect reserved matters. (Paragraph 267)
38. *We recommend the principle of positive engagement, discussed in paragraph 201, includes a requirement that the UK Government and the devolved governments engage on legislative proposals that impact upon one another's areas of legislative competence. This should be a feature of the new Government's manifesto commitment to strengthen the Sewel convention "by setting out a new memorandum of understanding outlining how the nations will work together for the common good."* (Paragraph 267)
39. This memorandum of understanding could include a requirement that a decision by a devolved legislature to withhold consent to a bill be pre-

conditioned by meaningful engagement on the part of the devolved government with the UK Government, with both parties having an obligation to make every effort to resolve any concerns raised. (Paragraph 268)

40. Early consultation via a principle of positive engagement would also help resolve differences of view between the UK Government and the devolved governments as to whether legislative consent is required for particular bills. (Paragraph 269)
41. Late consultation by the UK Government on legislation which potentially impacts upon devolved competence diminishes the devolved legislatures' and their committees' capacity to effectively scrutinise legislative consent motions. The UK Government should note the time required to consider adequately the increased number of legislative consent motions which are now being put before the devolved legislatures and should take account of the devolved legislatures' timetables to help ensure in as far as possible that sufficient time for scrutiny is available. (Paragraph 275)
42. We recognise that the Explanatory Notes accompanying a bill set out the Government's understanding of the territorial extent of the bill. However, they do not provide the House of Lords with an explanation of what engagement has taken place to date to secure the consent of the relevant devolved legislatures. (Paragraph 281)
43. *We reiterate our previous recommendation and urge the new Government—on introduction of a bill to the House of Lords that engages the Sewel convention—to submit a memorandum to the House about the devolution implications of the bill and explain what engagement has taken place with the relevant devolved administrations.* (Paragraph 281)
44. *Where the UK Government considers consent is not required from a devolved legislature and proceeds to give effect to that view, we reiterate our previous recommendation that the Government should justify its approach to the House at the beginning of the bill's consideration.* (Paragraph 282)

Secondary legislation and Henry VIII powers

45. *We recommend the new Government develops a clear set of criteria regarding the appropriate use of delegated powers in areas of devolved competence. These criteria should be set out in guidance provided to the Office of the Parliamentary Counsel, which should be published.* (Paragraph 305)
46. *We reiterate our previous recommendation that formal engagement with the devolved administrations on the use of delegated powers in areas of devolved competence should be a requirement. UK Ministers should either consult devolved ministers or seek their consent, depending on the significance of the delegated power in question. In developing the criteria referred to in paragraph 305, the UK Government should set out the circumstances in which it ought “not normally” to exercise a delegated power without the consent of the relevant devolved institution. For instance, where UK legislation contains powers which empower UK ministers to alter acts of the devolved legislatures, these powers should not normally be exercised without the explicit consent of the relevant legislatures.* (Paragraph 306)
47. *The process for consulting and seeking the consent of the devolved institutions on the use of delegated powers in areas of devolved competence should be set out in writing and should include recognition of the role of the devolved legislatures in scrutinising such powers. The Senedd's Statutory Instrument Consent Mechanism provides a*

useful model for achieving this. The process of consulting and seeking the consent of the devolved institutions on the use of such powers should form part of the principle of positive engagement discussed in Chapters 3 and 5. (Paragraph 307)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Ipswich
 Baroness Andrews
 Lord Beith
 Lord Burnett of Maldon
 Baroness Drake (Chair)
 Lord Falconer of Thoroton
 Baroness Finn
 Lord Foulkes of Cumnock
 Baroness Goldie
 Lord Keen of Elie
 Lord Strathclyde
 Lord Thomas of Gresford

Declarations of interest

Lord Anderson of Ipswich
No relevant interests
 Baroness Andrews
No relevant interests
 Lord Beith
No relevant interests
 Lord Burnett of Maldon
No relevant interests
 Baroness Drake (Chair)
No relevant interests
 Lord Falconer of Thoroton
No relevant interests
 Baroness Finn
No relevant interests
 Lord Foulkes of Cumnock
No relevant interests
 Baroness Goldie
No relevant interests
 Lord Keen of Elie
No relevant interests
 Lord Strathclyde
No relevant interests
 Lord Thomas of Gresford
No relevant interests

Specialist advisers

Professor Stephen Tierney
No Relevant interests
 Professor Roger Masterman
No Relevant interests

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/8250/the-governance-of-the-union-consultation-cooperation-and-legislative-consent> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the committee is listed below in chronological order of oral evidence session, and then 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 Ciaran Martin, Professor of Practice in the Management of Public Organisations, Blavatnik School of Government, University of Oxford | QQ 1–10 |
| * | Professor Jim Gallagher, Visiting Professor at School of Law, The University of Glasgow | QQ 11–36 |
| * | Philip Rycroft, Former Permanent Secretary, Department for Exiting the European Union | QQ 11–36 |
| * | Dr Lisa Claire Whitten, Research Fellow, School of History, Anthropology, Philosophy and Politics, Queens University Belfast | QQ 37–49 |
| * | Professor Derek Birrell, Professor of Social Policy, University of Ulster | QQ 37–49 |
| ** | Professor Laura McAllister, Professor of Public Policy and the Governance of Wales, University of Cardiff, and Co-Chair, The Independent Commission on the Constitutional Future of Wales | QQ 50–71 |
| * | The Rt. Revd. and Rt. Hon. Dr Rowan Williams, Co-Chair, The Independent Commission on the Constitutional Future of Wales | QQ 50–71 |
| * | Rt Hon Alister Jack MP, Secretary of State for Scotland, House of Commons | QQ 72–95 |
| * | Rt Hon David TC Davies MP, Secretary of State for Wales, House of Commons | QQ 72–95 |
| * | The Lord Caine, Parliamentary Under-Secretary of State, Northern Ireland Office | QQ 72–95 |
| ** | Rebecca Evans MS, Cabinet Secretary for Finance, Constitution & Cabinet Office, The Welsh Government | QQ 96–121 |
| * | Andrew Goodall CBE, Permanent Secretary, The Welsh Government | QQ 96–121 |

Alphabetical list of witnesses

- | | |
|---|-------------------------|
| Clare Adamson MSP, Convener, Constitution, Europe, External Affairs and Culture Committee | GOU0005 |
|---|-------------------------|

- Dr Paul Anderson, Senior Lecturer in Politics,
Liverpool John Moores University, and Dr Coree
Brown Swan, Lecturer in British Politics, University of
Stirling [GOU0001](#)
- * Professor Derek Birrell, Professor of Social Policy,
University of Ulster ([QQ 37-49](#))
- * The Lord Caine, Parliamentary Under-Secretary of
State, Northern Ireland Office ([QQ 72-95](#))
- * Dr Lisa Claire Whitten, Research Fellow, School
of History, Anthropology, Philosophy and Politics,
Queens University Belfast ([QQ 37-49](#))
- * Rt Hon David TC Davies MP, Secretary of State for
Wales, House of Commons ([QQ 72-95](#))
- Professor John Denham, Director, Centre for English
Identity and Politics, University of Southampton [GOU0002](#)
- Department for Levelling Up, Housing and
Communities [GOU0006](#)
- ** Rebecca Evans MS, Cabinet Secretary for Finance,
Constitution & Cabinet Office, Senedd Cymru / Welsh
Parliament ([QQ 96-121](#)) [GOU0010](#)
- * Professor Jim Gallagher, Visiting Professor at School of
Law, The University of Glasgow ([QQ 11-36](#))
- * Andrew Goodall CBE, Permanent Secretary, The
Welsh Government ([QQ 96-121](#))
- * Rt Hon Alister Jack MP, Secretary of State for
Scotland, House of Commons ([QQ 72-95](#))
- * Professor Ciaran Martin, Professor of Practice in the
Management of Public Organisations, Blavatnik School
of Government, University of Oxford ([QQ 1-10](#))
- ** Professor Laura McAllister, Co-Chair, The
Independent Commission on the Constitutional Future
of Wales ([QQ 50-71](#)) [GOU0007](#)
- Northern Ireland Assembly [GOU0009](#)
- Northern Ireland Executive [GOU0013](#)
- Rt Hon Angus Robertson MSP, Cabinet Secretary for
Constitution, External Affairs and Culture, Scottish
Parliament [GOU0011](#)
- Dr Elin Royles, Reader, Centre for Welsh Politics
and Society / Department of International Politics,
Aberystwyth University, Dr Carolyn Rowe, Reader,
Aston Centre for Europe, Aston University, and Dr
Rachel Minto, Senior Lecturer, Wales Governance
Centre, Cardiff University [GOU0003](#)

* Philip Rycroft, Former Permanent Secretary,
Department for Exiting the European Union (QQ
11-36)

Senedd Cymru / Welsh Parliament

GOU0008

Scottish Government

GOU0004

UK Government

GOU0012

APPENDIX 3: CALL FOR EVIDENCE

Further to the House of Lords Constitution Committee’s report ‘Respect and Co-operation: Building a Stronger Union for the 21 century’, published in January 2022, the Committee, chaired by Baroness Drake, is conducting an inquiry into relations between the national and devolved administrations. In the context of numerous matters relating to the territorial constitution, the inquiry will focus on:

- Co-operation via the new intergovernmental relations arrangements in place since January 2022;
- Consultation by the UK Government with the devolved administrations; and
- Respect for the Sewel convention.

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

The deadline for written evidence submissions is 5pm on 8 April 2024.

Background

‘Intergovernmental relations’ refers to the mechanisms by which the relationship between the UK Government and the Scottish Government, Welsh Government and Northern Ireland Executive is conducted. Following a review of intergovernmental relations undertaken jointly by the UK Government and the devolved administrations, a new intergovernmental relations structure was established in January 2022.³⁸⁷ The resulting policy paper, ‘Review of intergovernmental relations’, states the following:

“All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which engagement will normally take place at the lowest appropriate level possible”³⁸⁸

The new intergovernmental relations structure established a new dispute resolution process. The ‘Review of intergovernmental relations’ policy paper states that:

“Any government may refer a disagreement to the [Intergovernmental Relations] Secretariat as a dispute. Escalation of a disagreement between governments as a dispute will only be considered after due and full consideration has been given at portfolio-level, ... where a disagreement cannot be resolved at portfolio level, and has significant implications for the relationship between two or more governments.”³⁸⁹

The role of the Office of the Secretary of State for Scotland and the Office of the Secretary of State for Wales is to ensure the interests of the relevant nation are represented “at the heart of the UK government” and that the UK Government’s

387 House of Lords Library, *Intergovernmental relations within the UK* (10 January 2024): <https://lordslibrary.parliament.uk/intergovernmental-relations-within-the-uk/> [accessed 23 September 2024]

388 Cabinet Office and Department for Levelling Up, Housing and Communities, *Policy paper: Review of intergovernmental relations* (13 January 2022), para 21: https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf [accessed 23 September 2024]

389 *Ibid.*

responsibilities are represented in the relevant nation.³⁹⁰ The Northern Ireland Office ensures “the smooth working of the devolution settlement in Northern Ireland.”³⁹¹

The devolved legislatures of Scotland, Wales and Northern Ireland are limited in their legislation-making powers to areas within devolved competence. The UK parliament, by contrast, has competence to legislate across the UK. However, the Sewel convention, established in 1999, specifies that the UK Parliament will “not normally” legislate in areas of devolved competence without the consent of the relevant devolved legislature.

The Devolution Guidance Notes, produced by the Cabinet Office, advise that, when a bill alters the executive competences of the devolved ministers, the devolved ministers should be adequately consulted. The Guidance Notes also state that consent is required for bills that alter the executive competence of the devolved governments.³⁹²

The Committee has previously concluded that: “For the Sewel convention to operate well, constructive relationships and good faith are required between the UK Government and the devolved administrations.”³⁹³

The Sewel convention does not apply to delegated legislation. However, previous Committee reports have raised concerns about the use of delegated powers to make regulations in areas of devolved competence, and the use of Henry VIII powers to alter acts of the devolved legislatures.³⁹⁴

The Committee has previously concluded that events such as Brexit placed a strain on the legislative consent process and the public health response to the COVID-19 pandemic exposed long-standing tensions in intergovernmental relations.³⁹⁵

This is an opportune moment for the Committee to consider the efficacy of the new intergovernmental relations structures, which have now been in place for two years. It is also a timely moment for the Committee to revisit the issue of consultation with the devolved administrations and assess current adherence to the Sewel convention.

390 Office of the Secretary of State for Scotland: <https://www.gov.uk/government/organisations/office-of-the-secretary-of-state-for-scotland> [accessed 23 September 2024]; Office of the Secretary of State for Wales: <https://www.gov.uk/government/organisations/office-of-the-secretary-of-state-for-wales> [accessed 23 September 2024]

391 Northern Ireland Office: <https://www.gov.uk/government/organisations/northern-ireland-office> [accessed 23 September 2024]

392 Cabinet Office, *Devolution Guidance Note 8: Post-Devolution Primary Legislation affecting Northern Ireland*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60983/post-devolution-primary-ni.pdf [accessed 23 September 2024]; Cabinet Office, *Devolution Guidance Note 10: Post-Devolution Primary Legislation affecting Scotland*: <https://assets.publishing.service.gov.uk/media/5a79c7efe5274a18ba50ec92/post-devolution-primary-scotland.pdf> [accessed 23 September 2024]; Cabinet Office, *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales*: https://assets.publishing.service.gov.uk/media/5ad9edd4ed915d32a3a7100a/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf [accessed 23 September 2024]

393 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21 century* (10 Report, Session 2021–22, HL Paper 142), para 123

394 Constitution Committee, *Nationality and Borders Bill* (11 Report, Session 2021–22, HL Paper 149), paras 103–104; Constitution Committee, *Trade (Australia and New Zealand) Bill* (11 Report, Session 2022–23, HL Paper 135), para 20; Constitution Committee, *Levelling-up and Regeneration Bill* (12 Report, Session 2022–23, HL Paper 140), paras 23–24; Constitution Committee, *Retained EU Law (Revocation and Reform) Bill* (13 Report, Session 2022–23, HL Paper 151), paras 39–40

395 Constitution Committee, *Respect and Co-operation: Building a Stronger Union for the 21 century* (10 Report, Session 2021–22, HL Paper 142), paras 45 and 120.

Questions

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

1. How effective are the new intergovernmental relations structures—introduced in January 2022—at maintaining and improving relationships between the UK Government and the governments of the devolved nations?
 - To what extent have the new intergovernmental structures provided a mechanism for the UK Government to effectively consult the devolved administrations, including on legislation affecting areas of devolved competence, and secure consent for such legislation?
 - The UK Government and the three devolved administrations have committed themselves to “promoting collaboration and the avoidance of disagreements”. How has this operated in practice and to what extent has the joint approach on common frameworks assisted that collaboration, if at all?
 - How has the dispute resolution process operated in practice? Is it effective?
 - What are the implications of the restoration of the Northern Ireland Executive for the efficacy of the new intergovernmental relations structures?
2. Is there scope to strengthen the role of the territorial departments (the Office of the Secretary of State for Scotland, the Office of the Secretary of State for Wales and the Northern Ireland Office) at official and ministerial level in order to improve communication and consultation between the UK and devolved administrations?
3. To what extent are the devolved administrations consulted prior to legislation being introduced in the UK Parliament that alters the executive competences of the devolved ministers? What impact has this had on the executive competences of the devolved ministers?
4. Has respect for the Sewel convention eroded or strengthened in recent years? If so, what has been the cause of any such development?
5. Is there any scope to strengthen the Sewel convention. If so, how?
 - Is there a case for updating the Devolution Guidance Notes? If so, which sections require updating and how?
6. The Sewel convention does not apply to delegated legislation. Within this context, what are the implications of the UK Government:
 - (a) using delegated legislation in areas of devolved competence, with or without consultation or consent?
 - (b) using Henry VIII powers to alter acts of the devolved legislatures?

APPENDIX 4: GLOSSARY

Term	Definition
Agriculture Quadrilateral	Not technically a sub-committee of the JMC but met during the period in which the JMC was in operation.
Common frameworks	Developed following the UK's departure from the European Union to ensure a common approach on policy areas for which powers were previously exercised by the EU.
Devolution Guidance Notes (DGNs)	Provide guidance to civil servants by setting out working arrangements between the UK Government and the devolved administrations.
Dispute resolution process	The process within the new intergovernmental relations structures by which disagreements that cannot be resolved at portfolio level are addressed and resolved.
East-West Council	Established as part of the Safeguarding the Union Command Paper with the intention of strengthening cooperation between Northern Ireland and other parts of the UK by advising on shared challenges and opportunities with an East-West dimension.
Finance Interministerial Standing Committee (F:ISC)	Tier 2 of the new intergovernmental relations structures; consists of representatives of the Treasury and the devolved governments' finance ministers.
Finance Ministers' Quadrilateral (FMQ)	Not technically a sub-committees of the JMC but met during the period in which the JMC was in operation.
Intergovernmental relations	Engagement between the UK Government and the Scottish Government, the Welsh Government and the Northern Ireland Executive.
Intergovernmental Relations Secretariat	Provides administrative support across the new intergovernmental relations structures; promotes efficient and effective maintenance of relations at each tier and handles the resolution of disputes.
Interministerial Committees (ICs)	Tier 2 of the new intergovernmental relations structures; established by consensus if particular issues need in-depth and focused consideration by ministers.
Interministerial Groups (IMGs)	Tier 1 of the new intergovernmental relations structures; portfolio-level engagement on policy areas of mutual interest.
Interministerial Standing Committee (IMSC)	Tier 2 of the new intergovernmental relations structures; provides oversight of all IMGs and has a remit to consider all policy areas of mutual interest, both domestic and international.

Term	Definition
Joint Ministerial Committee (JMC)	A forum comprising ministers from the UK and devolved government; established by the 1999 MoU and in operation prior to the introduction of the new intergovernmental relations structures in January 2022.
Memorandum of Understanding (MoU)	Agreed by the four governments of the UK in 1999, establishing a framework and formal structures for intergovernmental relations, which remained in place until the new intergovernmental relations structures were introduced in January 2022.
Prime Minister and Heads of Devolved Governments Council	Tier 3 of the new intergovernmental relations structures; oversees all intergovernmental relations in the UK; meetings are chaired by the Prime Minister.
Secondary legislation	Law created by ministers (or other bodies) under powers given to them by primary legislation; also known as ‘delegated legislation’ or ‘subordinate legislation’.
Senedd Statutory Instrument Consent Mechanism	A mechanism requiring that a member of the Welsh Government must lay before the Senedd a Statutory Instrument Consent Memorandum in relation to a “relevant statutory instrument” laid before the UK Parliament.
Sewel convention	Under the terms of the convention the UK Parliament will “not normally” legislate on a matter within the devolved competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the relevant devolved legislature having passed a legislative consent motion.
Statutory Instruments	The most common form of secondary legislation.
The Review of Intergovernmental Relations	Undertaken jointly by the UK government and the devolved administrations; led to the new intergovernmental relations structures in place since January 2022.