SELECT COMMITTEE ON THE CONSTITUTION

Inter-governmental relations in the UK

Oral and written evidence

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Inter-governmental Relations with Special Reference to Northern Ireland

1. Introduction
Historically the term inter-governmental relations (IGR) was little used in Northern Ireland and in the period 1921-1972 intergovernmental contact with the UK Government was minimal, and mainly related to financial arrangements. During Direct Rule from Westminster between 1972 and 1999 intergovernmental relations was a redundant issue. Moving into negotiations leading to the Good Friday Agreement IGR became an important issue, but covered two dimensions: the relationship with the UK Government and the relationship with the Irish Government. The focus of this submission is on IGR involving the devolved government in Northern Ireland, the UK Government and the other devolved governments. However, participation by the Irish Government does impinge on these relations. North-South inter-governmental relations solely within Ireland are excluded. The processes of IGR are examined in five different categories in both institutional format and more informal and ad-hoc processes.

2. Bilateral Relations between Northern Ireland and the UK Government
At this level IGR are relatively unstructured and operate mainly on an ad-hoc basis.

2.1. First Minister/Deputy First Minister – Prime Minister
High level meetings have not been common and have operated mainly on a single issue basis. A distinctive feature is that the First and Deputy First Minister both attend, as constitutionally they are co-equal in status. Normally the UK Prime Minister would be accompanied by the Secretary of State for Northern Ireland and sometimes by the Chancellor, or the Deputy Prime Minister, who has a special responsibility for devolution.

2.2. First Minister/Deputy First Minister – Secretary of State
Meetings between the First and Deputy First Minister and the Secretary of State are more frequent as consultation and cooperation may be required in relation to the responsibilities of the Northern Ireland Office. Issues may arise over finance, security matters, or changes in constitutional legislation. Requests for a meeting with the Prime Minister may produce an offer of a meeting with the Secretary of State instead. In 2011 the First and Deputy First Ministers met the Secretary of State and the Chancellor on the issue of the devolution of corporation tax.

2.3. Northern Ireland Executive Ministers – UK Ministers
Meetings between ministers tend to be on a one to one basis but are not a regular occurrence. Although mainly operating on an ad-hoc basis it can be noted that the Northern Ireland Act 1998 specifies that the UK minister and appropriate Northern Ireland minister should consult one another with a view to securing a single system
of social security. Negotiations between the Northern Ireland minister and the Minister for Social Security in the Department for Work and Pensions led to agreement on a series of flexibilities for Northern Ireland on the introduction of welfare reform. Treasury ministers and the Northern Ireland Finance Minister maintain regular contact. In 2015 negotiations also took place between the Home Secretary and the Northern Ireland Minister for Justice on the conditions for the extension of the remit of the National Crime Agency to Northern Ireland. Details of legislative consent motions may be a further reason for ministerial contact. Party political differences also intrude as Sinn Fein ministers are usually opposed to engaging in one to one meetings with their equivalent UK ministers. There can be frequent contact between government departments, and procedures for this are laid down in memoranda of understanding and bilateral concordats, although these are not legally binding. These documents can cover such matters as the EU and international relations. Relations with the Treasury are also prescribed in the Statement of Funding Policy which also sets out principles for resolving disputes.

2.4 Northern Ireland Executive Ministers – Northern Ireland Office Ministers

This relationship is somewhat complex and most major issues would draw in the First and Deputy First Minister. The direct responsibilities of the Northern Ireland Office (NIO) may bring its ministers into contact with Northern Ireland ministers in ad-hoc ways, for example, in discussions about the financial issues concerning welfare reform. Areas of overlapping responsibilities, mainly related to economic and financial issues, may lead to formal contacts. In 2010 an international working group was set up deal with the collapse of a financial company, the Presbyterian Mutual Society, consisting of the Secretary of State, the Minister of State in the NIO the Financial Secretary to the Treasury, the First and Deputy First Minister and the Northern Ireland Minister for Enterprise, Trade and Investment. The procedures for legislative consent motions involve NIO ministers advising the Executive and appropriate ministers of new Bills which may be suitable for legislative consent motions. Formal Devolution Guidance Notes (Cabinet Office, 2011) refer to the role of the Secretary of State as an honest broker in sensitive issues or problems in the relations between the Executive/ministers and UK Departments/ministers.

3. UK Government Relations with all Three Devolved Governments

This category of IGR covers the most significant formal structure, the Joint Ministerial Council (JMC) and also a more ad-hoc format.

3.1 Joint Ministerial Council

The establishment of devolution was marked by an institutional structure for liaison, consultation, cooperation and consideration of disputes involving the UK Government and the three devolved governments. This mechanism fell into disuse, apart from Europe sub-committee, largely on the grounds that working relations would be better without a formal structure. The JMC was restored in 2008 with a new political view that it could be a way to improve relations and confer parity of esteem on the devolved governments. The plenary sessions were generally to be
attended by the full complement of senior ministers, usually chaired by the Prime Minister and overall UK responsibility reposing with the Deputy Prime Minister, who also chaired the JMC in domestic format. Northern Ireland was represented always by the First and Deputy First Minister whereas Scotland often had one or two ministers alongside the First Minister. The terms of reference are rather general: to consider the non-devolved matters which impinge on devolution; if agreed to consider devolved matters; to keep arrangements for liaison under review and more specifically to consider disputes between the administrations. The JMC is a consultative body rather than an executive or decision making body. UK Government policies of major relevance to the devolved administrations have been the subject of recent discussion, for example, welfare reform, and reforming public bodies and regional pay. There are complex procedures set out for the resolution of disputes and this has been invoked on a number of occasions. All three devolved governments raised a complaint over the Barnett consequentials of the London Olympics, resolved in 2011. The Northern Ireland Executive took a complaint against the UK Government over an £18million capital funding and in 2013 agreement was reached through the JMC procedures. It is recognised that the JMC machinery is unlikely to always produce a resolution. In 2014 the JMC discussed the recommendations of the Silk and Smith Commission and decided to work on revising the memorandum of understanding relating to the guidance on the JMC. This was in the context of a continuing commitment to efficient IGR.

JMC appears not to have been involved in some other bilateral financial disputes, for example, in relation to the financial penalties to be imposed by the Treasury in relation to Northern Ireland not adopting cuts in welfare expenditure.

3.2. Quadrilateral meetings outside the JMC

Such meetings are rare but one important example exists, mainly on an annual basis and that is the quadrilateral meetings of Finance ministers. These usually involve the Financial Secretary to the Treasury, the three devolved finance ministers and the three Secretaries of State. The agenda typically covers an up-date on the economy and the circumstances of the devolved administrations and recently has discussed the spending review, welfare reform, shared services, council tax benefit, pension reform, and EU budget issues. The Quadrilateral can be seen as raising the profile and status of the devolved finance ministers.

4. Trilateral meetings between devolved ministers

Meetings between all three devolved governments, without UK involvement, are also rare and if arranged usually relate to a single issue. There have been meetings of the leaders of the three countries but more or less in emergency circumstances, for example, in 2011, on the economy. On that occasion it was agreed to lobby the UK Government on the impact of austerity measures. Such a meeting has potential value as a flexible format outside the more fixed timetable for the JMC. Trilateral meetings of other ministers can take place on detailed aspects of policy and on an ad-hoc basis and have been held on such topics as the environment, agriculture and the creative industries. The most common form of meetings between ministers outside the leadership of governments are bilateral meetings and visits.
between two of the three devolved administrations and these cover a wide range of issues including transport, renewable energy, tourism, health and social care and environmental issues.

5. The British-Irish Council

The political settlement in 1998 in Northern Ireland led to the creation of the British-Irish council as a broad representative body, to promote the totality of relationships between Britain and Ireland. Consequently it consisted of representatives from the UK Government, the devolved governments in Scotland, Wales and Northern Ireland, the Republic of Ireland, and the governments of the Isle of Man, Guernsey and Jersey. Its role was defined as a forum for ministers to exchange information, discuss, consult and reach agreement on matters of mutual interest. Operationally it developed three tiers of functioning: at twice yearly summit level, at a second level of sectoral work involving ministers; and at a third level of meetings of officials, visits and seminars. There was originally scepticism about the long term interest and commitment of the non-Irish participants and whether the issues discussed would have an Irish dimension. However, the work of the British-Irish Council continued to develop with government leaders normally attending all summit meetings. UK Prime Ministers do not always attend but the Taoiseachs have attended almost all meetings. The activities of the work sectors also expanded and in 2012 a permanent secretariat was set up in Edinburgh. Twelve work sector groups exist with continuous programmes of activity covering: creative industries; demography; digital inclusion, early years, energy, environment, housing, minority languages; misuse of drugs; social inclusion; spatial planning, and transport. One participating country takes the lead, for example, Northern Ireland is the lead on housing, spatial planning, and transport. What has produced this level of engagement with the British-Irish Council? Participants have clearly found some of the work and activities useful. Benefits have arisen in terms of the exchange of ideas and policy copying. In terms of practical cooperation, for example, in the recognition of driving licences, in preparing UK- wide child poverty legislation, in agreement on an accord on an all-islands approach to energy resources, and in examining integrated travel by public transport across two or more countries. On occasions more controversial matters have been dealt with, for example, in relation to the Sellafield nuclear processing plant and radioactive waste but the Council has not a function as such for resolving disputes.

The British-Irish Council has established itself as an important player in inter-governmental networks. Reasons may be cited as

- the composition of the 12 work sectors means that a large number of ministers and officials from the eight administrations do participate
- there are clearly many matters of mutual interest that can be addressed
- a permanent secretariat has given momentum to the work
- smaller countries are given an equitable status, can lead work sectors and host summits and sectoral ministerial meetings
- the UK Government does not dominate as may be the case with the JMC and quadrilateral finance meetings
there is a policy of openness and detailed reporting about its work
- it has facilitated, within its operations, bilateral links, for example, between the Scottish and Irish Governments
- it has contributed to improvements in policy knowledge and policy capacity
- it has contributed to improving British-Irish relations concerning Northern Ireland

6. Comments on Particular Questions

6.1. Improving arrangements

JMC could be improved with a more specific statement of functions, with perhaps a new focus on overlapping powers. A permanent secretariat and publication of more detailed reports and recommendations may be helpful. With greater devolution of fiscal powers it may be useful to boost support and frequency of meetings of Quadrilateral Finance forum.

6.2. Dispute Resolution

JMC seems suitable for more medium level disputes but more serious disputes quickly lead to a blurring of distinctions between IGR and party political differences. JMC-type body may not be equipped to deal with major disputes involving Northern Ireland, where external engagement of the Irish Government and USA Government often is necessary.

6.3. Formal and Informal Mechanisms

May be more useful to distinguish between highly structured and institutional IGR and loosely organised IGR. Also may be useful to distinguish multi-purpose and regular formats from ad-hoc formats. It is difficult to be prescriptive about totally informal meetings.

6.4. Bilateral Arrangements

There is some evidence of bilateral meetings taking place at the quadrilateral finance meetings and this area, including capital funding, may be appropriate for bilateral IGR, for example, a joint exchequer board. However, it can be noted that one argument for the Barnett Formula is that it avoids a need for bilateral meetings and negotiations. It is not difficult to arrange bilateral meetings in an emergency on an ad-hoc basis.

6.5 Asymmetrical Development

To date the asymmetrical development of devolution has been much exaggerated. A large proportion of the operation of the processes and institutions of devolution are similar between Scotland, Wales and Northern Ireland. It can be noted even after the implementation of the Smith Commission recommendations Northern Ireland has more devolved powers than Scotland.
6.6 Statutory IGR
Some aspects of IGR as they involve Northern Ireland are already on a statutory basis, for example, sections 52 and 87 of the Northern Ireland Act 1998. The absence of statutory requirements does allow for flexibility in operation and development and at times more open discussion. A statutory basis may also lead to more use of judicial reviews.

6.7 Scrutiny by UK Parliament
There may be little advantage in producing new mechanisms. The territorial select committees can exercise a scrutiny role over IGR, for example, they could examine the annual reports of JMC. The Secretaries of State will remain answerable in Parliament. One idea is the reconstitution of Grand Committees for Scotland, Wales and Northern Ireland which could scrutinise possible England-only Bills to report on impact on devolved countries.

6.8 Secretaries of State
Direct responsibilities may change but not significantly. Reserved powers will alter but these are mainly the direct responsibility of other UK ministers. Secretaries of State could have a role in confirming whether declared England-only legislation does or does not impact upon the devolved countries. With change in the configuration of devolved powers Secretaries of State may become more involved in cooperation and collaboration in areas of overlapping powers, for example, child poverty or fuel poverty.

5 February 2015
1. I have argued for some time now, including in my submissions to the present committee, for the consideration of UK constitutional issues from the perspectives of federal analysis and the idea of a written constitution. Important developments in recent decades – including the advent of devolution, the introduction of the Human Rights Act 1998 and the establishment of a UK Supreme Court under the Constitutional Reform Act 2005 – represent movement in the direction of a written, federal constitution for the UK. They do not amount to a full adoption of these characteristics, nor is it inevitable that the UK will ever make this complete transition. However, the use of these concepts is valuable to an analysis of the changing UK system of governance. Moreover, especially in the wake of the Scottish Independence Referendum, they are starting to gain more mainstream attention, with advocacy of a UK constitutional convention tasked with considering these sorts of issues.

2. These perspectives suggest a series of observations regarding the present inquiry by the Committee, regarding the consequences that could follow if the UK continues to move towards a written, federal constitution. Within such a system the intergovernmental relations under consideration would be those between the governments of the ‘states’ and the federal government. The constitution would provide for a firm division of powers between these levels, although it might also include some shared areas of responsibility.

3. Here would be an important difference from current arrangements. At present in the UK, the strict legal position is that the powers of the devolved institutions are derived from an Act of the UK Parliament. In theory, operating unilaterally, the Parliament in Westminster could revoke any or all of these authorit.

4. The practical position is of course different, and convention and political reality create a potent barrier to the literal exercise of the legal rights of the UK legislature in this way. Nonetheless, it is important that the different tiers within a federal system are of equal legal status, rather than in a formal relationship of superiority and subordinacy. The rules setting out the basis for this relationship are beyond the reach of any one layer of governance acting alone, and their alteration is dependent upon adherence to a special amendment procedure. A constitutional court is responsible for ensuring that the boundaries are maintained, interpreting and upholding the constitution. The dynamics of the relationship between different tiers would, under such a system, be different.

5. However, the entire basis for dealings between governments could not be provided for on the face of a written constitution. Some matters would be dealt with through additional written protocols, that may or may not derive their authority from the main constitutional document. Convention would also play a part, as it does now. Some of these areas would be justiciable, others not.

6. A more overt federal system for the UK would probably be multilateral in nature. In other words, the states would have uniform rights in their dealings with the federal centre. Such interactions might well take place within a single central institution of some kind. Indeed, a
chamber of the federal Parliament might include the states within it. In this sense, parliamentary oversight of intergovernmental relations would be built into the system.

14 January 2015
Q76 The Chairman: Good morning, Secretary of State and Advocate-General. I welcome you both this meeting of the Constitution Committee. We are getting towards the end of our inquiry into intergovernmental relations, and separately but within the same timeframe we are now studying the new clauses that have been brought forward in relation to the Smith commission. We will probably publish separate reports on them, but we would like to discuss both elements with you if you are agreeable, and I understand that you are.

Without more ado, I will move on to the questions. As a broad, opening question, what is the purpose of intergovernmental relations, in your view, and how do you see them changing in the changing contexts? Secretary of State.

Rt Hon Alistair Carmichael MP: In its broadest terms, their purpose is better government. We have a constitutional set-up now where devolution has developed at different speeds in different parts of the United Kingdom. Occasionally the law of unintended consequences comes into play, so it is important to get everybody around the table occasionally, to share experiences, to thrash out any difficulties that have arisen and to share experience, ultimately with a view to doing things better, because in areas where you have an interface between the different the two Governments in Scotland, which is the focus of my job, inevitably there is a duty on politicians, both in Holyrood and in Westminster, to ensure that the system works properly. That, after all, is what the people of Scotland voted for on 18 September.
Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland; and Rt Hon. Lord Wallace of Tankerness, Advocate-General For Scotland—Oral evidence (QQ 76-86)

The Chairman: Lord Wallace, would you like to add anything?

Rt Hon Lord Wallace of Tankerness: I have nothing to add. As the Secretary of State said, the purpose of intergovernmental meetings is to assist good governance and to try to ensure that the actors at the top level meet, but we should not lose sight of the amount of work that goes on at official level day in, day out. My own office, the Office of Advocate-General, is in daily contact with the Scottish Government legal department with regard to a whole host of issues. We should not overlook what happens at official level day in, day out.

The Chairman: Yes, but when the Scottish Executive was originally set up, it more or less dealt with matters that were already in the bowels of the Scotland Office, so there was no huge underlying change in the structure of government. Since then, it has become more complex, first with Calman and now with what is in prospect. Is there much more work? Do you see a huge expansion of these forms of relationships developing?

Rt Hon Alistair Carmichael MP: There will be a need for the two Governments to work collaboratively on the welfare provisions, for example. That is hardwired into the draft clauses. You will see that there are duties to consult here and there as necessary. I lay heavy emphasis on the fact that it is a duty to consult. Where either Government have an entitlement to act, that is in no way fettered by a duty to consult. To my mind, dealing with overlap and joint administration is a matter of common sense, but it does no harm to have that common sense spelled out in the draft clauses.

Rt Hon Lord Wallace of Tankerness: One of the changes, which took place as far back as 1999, is the importance, where you have separate Governments, of getting a common United Kingdom position in European Union matters. The most obvious one is fisheries and agriculture, which seems to be talked about regularly. When I was a Justice Minister in the Scottish Executive, we and our officials would discuss it at ministerial level. That is important, because one UK view has to be expressed but it is also important that there is a forum for the differing views of the devolved Administrations and the United Kingdom Government to be considered and agreement reached.

Rt Hon Alistair Carmichael MP: There is one very obvious area where you will have to have close joint working and agreement, and that is in the construction of a new fiscal framework. Work on that has already started, but none of this works unless you get that right.

The Chairman: The Smith commission emphasised the need for improvement in intergovernmental relations. Is work going on across the board on that at the moment?

Rt Hon Alistair Carmichael MP: The Joint Ministerial Committee in plenary session has tasked officials in all Governments to come forward with proposals for a review of that, and that will be an important structural point of action. The first meeting took place today of a joint ministerial working group on welfare matters, in which the Parliamentary Under-Secretary of State at the Scotland Office and Ministers from the Treasury and the Department for Work and Pensions are working with Scottish Government Ministers to ensure that in areas where the future transfer of competence—be it legislative, administrative or both—is anticipated, decisions taken now by the United Kingdom Government can be informed by the views on the future intentions of the Scottish Government.
Q77 Lord Lexden: Good morning. We have heard that effective intergovernmental relations require a basic level of equality and status between the participants, but is it in practice realistic for the UK Government and devolved Administrations to be seen as equal in their relationships? As a supplementary, do the relationships vary between devolved and reserved policy areas?

Rt Hon Alistair Carmichael MP: It is not particularly instructive to talk about equality of status, which I think is the term that you used. What does that actually mean? I am more concerned about every constituent part of the structure of government that we now have demonstrating proper respect for the other parts of that government. As a Minister of the United Kingdom Government I fully—and enthusiastically, if you can have such a thing—respect the right of Scottish Ministers to undertake the functions that are given to them in a way that they then have to be accountable to the Scottish people through the ballot box. I think that is a more meaningful approach than talking about equality.

As for the working relations between the different Administrations, because they are different settlements they work in different ways. The relationship between the United Kingdom Government and the Northern Ireland Assembly Government, for example, is always going to be different because of the history of Northern Ireland and the way it came to devolved politics, and given the fact that the peace process itself gave the Republic of Ireland a role in the management of that particular constitutional settlement. The relationship between the Scottish Government and the UK Government is not without its tensions. There is no hiding that fact, particularly in the course of the referendum. Politics occasionally gets in the way of good government.

I come back to the point I made earlier that the people of Scotland said on 18 September that they wanted to have two Governments, they want a Scottish Parliament. They want, though, to remain part of the United Kingdom, and anybody who uses the structures of government to demonstrate a lack of respect for that decision is into dangerous territory.

Rt Hon Lord Wallace of Tankerness: I share the Secretary of State's view that I am not quite sure where it takes us to talk about equality of status. It is much more important that you get on with the job. If you are in meetings, whether Joint Ministerial Committees or one-to-ones, it is important that you deal with that in a rational way and that there is no superiority complex—or inferiority complex, come to that. It is important that there is respect. Members of the Scottish Government have a legitimacy, and we would be wrong to gainsay that. Respect is probably the key word.

Lord Lexden: Can I just come back to the supplementary point as to whether the relationships differ between devolved and reserved policy areas?

Rt Hon Alistair Carmichael MP: Sorry, I understood your question to be about the relationships between the different devolved Administrations. In that case, yes, I think they do vary, for a whole variety of reasons: you have different settlements, different areas of interface and, bluntly, different politics and different personalities involved.

Rt Hon Lord Wallace of Tankerness: Inevitably if you are dealing with a policy area that is in a reserved field, the United Kingdom Government Minister is going to be the lead Minister. Constitutionally, the Minister from the devolved Administration does not necessarily have a locus, but that does not mean that if there are issues, which may be reserved issues but
have impact on devolved matters, the relationship or the dialogue should be anything other than respectful and constructive.

Q78 Baroness Dean of Thornton-le-Fylde: Good morning. I would like to turn to the Joint Ministerial Committee and after that the domestic sub-committee. We have had written evidence, and indeed evidence from witnesses before us, that they feel that the JMC is really a place for grandstanding—a word that has been used by a number of people—and for airing grievances but not necessarily resolving them, and that it is certainly not for policy-making. The Welsh First Minister said that he felt that it was a place for grievances rather than achieving co-operation. He went on to identify two areas where there had been major reform but where they had been insufficiently consulted: one was education and the other was the NHS. The Chairman of the National Assembly for Wales Constitution and Legislative Affairs Committee also took the view that it was a place for grandstanding. The official from the Cabinet Office, Helen MacNamera, rebutted that: she said that that was not the case. So we have two sets of evidence: one saying that the JMC is a place where really not much takes place, and this being rebutted by the officials involved. What is your view, Secretary of State?

Rt Hon. Alistair Carmichael MP: I will share with you the briefing that I have been given by officials in preparation for this. It says that Joint Ministerial Committees and plenary have been, and are, productive and useful. I think it is important that we have that on the record.

Baroness Dean of Thornton-le-Fylde: But what is your view?

Rt Hon. Alistair Carmichael MP: When I hear talk of grandstanding, I can identify elements that justify that tag. They occasionally generate a bit more heat than light, but let us not forget that when you take a room, fill it with politicians from different parts of the country and from different parties and leave the press at the door, yes you are going to get a bit of politics happening. That is kind of how it works. My observation is that there is a need for a structure that allows formal meeting, discussion and sharing of experience, but that you have to have realistic expectations of exactly how much that will achieve. I was not aware of Calman’s view that it was not appropriate as a mechanism for discussing policy, but I can see why he would reach that view. Ultimately, the best structure in the world will work as well or as badly as the politicians who are part of it want it to work. The day-to-day quality of the working will be determined by the willingness of the politicians who hold ministerial office in particular to make it work. If you do not have that willingness to make it work—candidly, there were times in the last few years when there was not that willingness—ultimately it does not work as well as it should. That is why I keep coming back to the point that that sort of game-playing has to stop, and that continuing to use the points of interface between the Governments as an excuse for generating grievance or friction between the Governments demonstrates a lack of respect for the views of the people of Scotland.

Rt Hon Lord Wallace of Tankerness: I have not been present recently at a JMC—plenary or domestic. I am a member of JMC Europe, which does not attract many headlines or much press coverage, but I think it is a useful venue. We tend not to have grandstanding. They are usually held ahead of European summits, and the agenda is issues coming up at the forthcoming European Council. There is usually a Minister from the relevant UK Government department, who will introduce a paper that is constructive. The various devolved Administrations have their say on their perspective on the policy issues.
Ask the devolved Administrations what they think about it, but I think that JMC Europe is a constructive meeting. I last attended the JMC plenary when I was Deputy First Minister. I recall that we had three. The first one in Edinburgh was novel and everyone was quite excited by it. The second one in Cardiff was less exciting. In the third one, held in No. 10, my recollection is of Prime Minister Blair looking out of the window. We never had another one. Neither the noble Lord, Lord McConnell, nor I were particularly aggrieved—it freed up time in the diary. It did not do very much.

The Chairman: When Calman produced his report in 2009, which complained about the lack of commitment to the use of the JMC, there had been long periods where not much had happened. I fear that is going to change, which is why we are asking all these questions.

Rt Hon Lord Wallace of Tankerness: I served on the Calman commission, which did quite a bit of work on intergovernmental issues. We identified that things had lapsed, and that that was not healthy. The Calman commission made a number of recommendations, which may or may not be relevant to the Committee’s considerations, but I commend them.

Baroness Dean of Thornton-le-Fylde: A question for both of you. I do not want to be diverted into the issue of grandstanding, which is certainly not unique in politics to the JMC; we all know that. The two important areas which the Welsh First Minister felt excluded from were the NHS and education changes. He felt that there had been insufficient consultation on that policy change, which put them in a very difficult position. That should not be allowed to happen, should it?

Rt Hon Alistair Carmichael MP: I do not know the detail of either of those matters. I am sufficiently absorbed in dealing with Scotland and relations between Scotland, Westminster and Whitehall to leave the responsibility for what happens in Wales to my colleague Stephen Crabb, but that is where work at getting the proper understanding and cooperation needs to be done daily and weekly at ministerial level in between the relevant Minister in Cardiff and the relevant Minister in Whitehall, and if necessary escalating it to discussions involving the Prime Minister or Deputy Prime Minister and the First Minister. You should not have to wait for a Joint Ministerial Committee to come along to deal with those things. However, the Joint Ministerial Committee provides a forum where all the different Administrations, be it the UK Government or the devolved Administrations, can take working examples like that and share their experience. A different view may well be taken from another devolved Administration.

It comes down to what I said earlier: you have to have the political will to make the constitutional settlement work. That matters more than structures.

The Chairman: We have further questions on this. I bring in Lady Taylor and then Lady Falkner.

Q79 Baroness Taylor of Bolton: First, I reassure Lord Wallace that what he said about JMC Europe echoes what we have been told, but that seems to be a very particular area where relations have developed to look forward on policy as well as problems that arise. For the rest, we get a very mixed picture that causes some concern. We have quoted the First Minister of Wales. He talked about the lack of input into policy. Secretary of State, you said that you have to treat the devolved Administrations with respect, but you talked about consulting, which implies that the policy initiative comes from Westminster. We need to think about how far policy development is a joint process and that the initiatives can come
other than from Westminster, and whether the structures allow for that or need to change in future, particularly post the new clauses and the new challenges that we will have dealing with them.

**Rt Hon Alistair Carmichael MP:** Let us deal first with the point about consultation. The duty to consult, for example in relation to welfare benefits, is an area of shared responsibility, essentially. Consultation is required in both directions. Where the United Kingdom Government are anticipating change in future, they are required to consult the Scottish Government in those areas, and if the Scottish Government anticipate changes they are required to consult the United Kingdom Government. The suggestion that the policy initiative will come from here in future is not correct. The policy initiative can come from either side of the border in relation to those parts of the draft clauses.

**Baroness Taylor of Bolton:** Would you accept that that happened in the past?

**Rt Hon Alistair Carmichael MP:** No, I do not accept that, because in the past there was not the same range of joint responsibilities that are anticipated in future. I do not think, for example, that there should be any role for the United Kingdom Government in being consulted on education policy in Scotland, where responsibility is completely devolved. It is entirely up to the Scottish Government to decide what direction they wish to take on education policy. I know that it is different in Wales. As I say, you would need to speak to the Secretary of State for Wales about how that has worked.

When I say that the constituent parts have to respect each other, I mean exactly that. That means that whether Scottish Ministers, as politicians or UK citizens, like or dislike government policy on defence or foreign affairs, they have to respect the fact that that is the constitutional responsibility of the UK Government.

**Baroness Taylor of Bolton:** Do you see the JMC structure having to change in the light of the new proposals and the Smith commission?

**Rt Hon Alistair Carmichael MP:** We have tasked officials to go away and look at that. I would anticipate that, yes, where you have an increased number of shared responsibilities, you will have to find a different mechanism to deal with the consequences.

**Baroness Taylor of Bolton:** And you are quite clear that the initiatives for any changes could come from either party?

**Rt Hon Alistair Carmichael MP:** Yes, that is what is in the draft clauses.

**Q80 Lord Brennan:** Good morning, gentlemen. What can be done to improve the transparency of intergovernmental relations under this new constitutional framework? Some examples: should the four Governments report regularly to their Parliaments about the progress of intergovernmental relations, and should their Parliaments have a significant scrutiny role in order to inform the public how things are working? A particular example that concerns some of the commentators we have been listening to is in the financial arena. It is noticeable that in the JMC in the past, financial disputes have been significant, not in quantum but in differences of opinion, such as the Olympics and the Barnett formula. We had a little paper from Professor Berrell which I found surprising in one regard—not disturbingly surprising but informationally—that there is a quadrilateral meeting each year outside the JMC between the Finance Ministers of the four countries that is not accountable
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...to anybody. It deals with macroeconomics and how the four are balancing their obligations. How do we make sure that the public know what is going on?

**Rt Hon Alistair Carmichael MP:** That is the job of Parliament. I regularly appear in front of the Scottish Affairs Select Committee in the House of Commons, I have appeared before the committees of the Scottish Parliament and, indeed, here I am today. A willingness of the Government to account for their actions to Parliament is absolutely central, and the extent to which the Government are held to account relies on Parliament doing its job.

The point was made that the agenda for the Joint Ministerial Committee is generally not published. I hope that is the sort of thing that we will look at, because for all intents and purposes if I really want to know what is going to be discussed at a Joint Ministerial Committee I make sure that I listen to “Good Morning Scotland” at eight o’clock on the day of the meeting. That is where I will generally find out. Some of the structures need to catch up with the reality.

On the question of the Finance Ministers’ quadrilateral, yes, more can probably be done to improve its transparency. That comes back to the requirement for the Parliaments to do their jobs. There are plenty of committees in both Houses with competence to look at how those things work. The Treasury Select Committee and the Public Accounts Committee here and the Finance Committee in the Scottish Parliament should all be quizzing their Ministers about what has been happening there.

**Q81 Baroness Falkner of Margravine:** We have had two slightly different views from our witnesses, depending on which group we were talking to. Academics and constitutional experts tended to suggest that, on the whole, constitutional change in the United Kingdom has been driven by calls from within the component parts of the United Kingdom for change to which Westminster then reacts, and then the change happens: one person described it as a constitutional chain reaction. Their view was that we ought to have a unified structure within the UK Government to deal with UK-wide joint working on the implications of a change in one part of the country on another part of the country, in effect recasting the relationship, perhaps in a single department for the nations and regions. That would of course impact on whether you had different Secretaries of State continuing in office or whether it would be more efficient to have Ministers of State attending Cabinet as and when. What are your views on that and on the co-ordination of relations between the UK Government and the devolved Administrations to make it work better for everybody rather than just for the component parts?

**Rt Hon Alistair Carmichael MP:** Well, if you are going to take that holistic view, it has to be genuinely holistic. In the first instance, you need to look at the constitutional settlement across the whole of the United Kingdom. The missing link, candidly, at the moment, is what the English are going to do. I think there is an understanding in the different parts of England now that the conventional model of government, which is highly centralised and coming from Westminster works as badly for my family in the south-west of England as it does for my family in Scotland, and they now want a different constitutional structure for themselves. That is now a live debate in England in a way that, frankly, there has never been hitherto. I wish the people of England as much joy with it as we have had in Scotland, but there is no substitute for having a debate and building a consensus. That is now what has to happen.
There has been talk of a constitutional convention following the next general election. Personally, I am an enthusiast for that. That was the mechanism by which we built the consensus in Scotland for constitutional reform, and yes, I would like to see that taken up in a UK-wide process. Only then can you look to the best structure for government. For the moment, talk of a department for the nations and regions is inappropriate until you have a constitutional settlement, when we know that so much other change is coming.

Baroness Falkner of Margravine: Forgive me, but I am going to push you a bit on that. This is simply a change to do with the machinery of government. This is not to do with powers, it is to improve co-ordination between the component parts. To wait for a constitutional convention implies that this is a process change, not a constitutional, legal change in that sense.

Rt Hon Alistair Carmichael MP: My point of view is that to try to make an overarching process change without an overarching constitutional change will not ultimately be sensible or workable.

Baroness Falkner of Margravine: You fall very much within the politicians’ camp in terms of the evidence that we took. Lord Wallace, can I take you back to what you said about the EU committees? We have had quite positive reaction to how well it works, but one issue came up persistently. We got the impression that the devolved Administrations felt that they wanted to be part of the delegations. Did you feel in your time that that would have enhanced the UK delegation, or would it have spoken with too many different voices?

Rt Hon Lord Wallace of Tankerness: In many respects, they are part of the delegation. There is sometimes an issue as to who sits at the table. When I was the Justice Minister, I remember sitting at the table with the Home Secretary, David Blunkett. An issue came up at the Justice Council which he said was more relevant from the Scottish perspective, and he invited me to lead. There were occasions in my last year when the Scottish Education Minister led at council meetings. That was before the accessions of 2004; there is a physical limit to the number of people who can get into the room.

Certainly, if there is relevance to the devolved Administration, the Scottish Minister, or the Welsh or the Northern Irish Minister, should be there. That is the issue. It is all very well saying that a Scottish Minister should sit at the table, but you might then find that the Northern Ireland Minister wishes to do so too. This is a pragmatic issue, bearing in mind that the United Kingdom is the member state and it is not unreasonable that the bulk of the time, the United Kingdom Minister leads, but on the basis of having consulted with the devolved Administrations. For the most part, the devolved Administrations can be part of the team that goes over to Brussels or Luxemburg. I accept that there have been tensions at times as to who sits at the table.

The Chairman: I think we have reached the point where intergovernmental relations blend in with the new clauses, and I bring in Lord Cullen.

Q82 Lord Cullen of Whitekirk: Secretary of State, you have mentioned on a number of occasions this morning the prospective joint responsibilities of the two Governments under the Command Paper and the new clauses. In that context, you said that there would be a need for closer collaboration and you mention the possibility of different mechanisms being brought in.
I have two questions. First, do you think that need for greater collaboration will need a revision of the structure for intergovernmental relations by addition or modification? Secondly, how will that collaboration be achieved? We have had some evidence to the effect that in the context of welfare proposals, for example, there could be great difficulties, legal complications and dysfunctions. How can that working together be made to work?

Rt Hon Alistair Carmichael MP: In terms of the structures, first, the degree to which you have to have formal structures will depend on the willingness of the respective ministerial teams to work together to make the constitutional structure work. I am by nature an optimist, and I think that, as my noble friend said earlier, the day-to-day working, especially on an official level, is good, and I see no reason for that to change. Occasionally, yes, there will be points of tension. Politicians, by their nature, will always look over the fence and say, “I could do what you are doing rather better”, but at the end of the day they will have a welfare budget of £2.5 billion to £3 billion after the implementation of Smith. I am keen that we move the debate on to talking about what you do with that sort of money, because you could make a big difference to people’s lives rather than obsessing about the legislative and administrative competencies.

Lord Cullen of Whitekirk: You mention what is up to Ministers, but is there somebody in overall charge of what the structure should be, and if so, who is it?

Rt Hon Alistair Carmichael MP: Ultimately, the overall constitutional structure is the responsibility of the whole Government, so the Prime Minister and the Deputy Prime Minister have the final answer.

On the agreement to the structure, the fiscal structure, for example, will be negotiated between the Chancellor and the Chief Secretary on one side and the Finance Secretary in the Scottish Parliament on the other. The creation of whatever new iteration of the Joint Ministerial Committee we have will need to be agreed by all parties. That comes back to my point about respect earlier.

Lord Cullen of Whitekirk: I interrupted you. You were going to talk about its operation.

Rt Hon Alistair Carmichael MP: The opportunity that comes with the Smith commission proposals for welfare, for example, is for the Scottish Government to do things differently if they choose to in certain areas. That is just an extension of the principle that we have lived well with since 1999, when the Scottish Parliament was set up. I do not think that we should see that as any particular challenge or source of concern.

Q83 The Chairman: Given the way in which the new clauses have had their conception and birth—against the background of pressure to make commitments during a referendum campaign, a tight timescale being set, a commission outwith Parliament, a parliamentary process being established and now the production of new clauses—do either or both of you think that there is a proper opportunity for a major constitutional change of this kind to be fully debated in Parliament, and might that not jeopardise what is termed in the Command Paper an enduring settlement?

Rt Hon Alistair Carmichael MP: No, I do not believe it will, for two reasons. There is an earlier part to the work which, with respect, Lord Chairman, you did not touch on, and that is the extensive work that each of the three parties, the Labour Party, the Conservatives and the Liberal Democrats, did in preparation with their commissions ahead of the referendum
and the vow that was made then. Sometimes you have to take a step back to see what you have achieved. I think it was quite remarkable that for the first time ever, we have had all five political parties in Scotland in the room talking about constitutional change and agreeing a package. That is quite a moment for our constitutional future, and that is the guarantee of stability.

As for Parliament’s role in this, first, we will have been through a general election where the proposals will have been the subject of some debate and where all three parties will have had manifesto commitments in relation to them. Then there will be the normal parliamentary process. This is a Bill that, as a constitutional Bill, will be taken on the Floor of each House. I know enough about the workings of both Houses to know that nothing here will be given anything less than the total scrutiny that it deserves. These are important matters. We do not want the law of unintended consequences to start operating after that. That is why in the Scotland Office we have already undertaken an extensive programme of stakeholder engagement among the different interests in civic Scotland, the voluntary sector and elsewhere, and that process will continue from now until the introduction of the Bill following the Queen’s Speech.

I do not believe that the clauses will suffer from a lack of scrutiny. I do believe that some of the issues that required to be addressed were difficult. I think it actually helped that we did it to a tight timetable, because a lot of these difficult issues do not get any easier for being left for another six or nine months.

**The Chairman:** Lord Wallace, is there anything left to add?

**Rt Hon Lord Wallace of Tankerness:** No, the Secretary of State makes the point. By the time the Bill comes before Parliament, there will have been an election in which all three of the United Kingdom parties have indicated that their commitment to the Smith agreement will be in their manifestos, so there will undoubtedly be a mandate. That does not mean that when we get down to the fine detail, Parliament does not have an important role to play in ensuring that what is delivered is what people were presented with, and that it works. I do not want to suggest that the clauses published in January are perfect in every detail. There will be work to be done on them. We have accepted that.

**The Chairman:** Let me ask the question in obverse form. The Scottish National Party resiled from the Smith commission agreement within 24 hours. The Labour Party is under pressure from Mr Gordon Brown to move towards full home rule—something he opposed a few weeks earlier but is now strongly committed to. Those are two major parties in Scotland commanding a substantial proportion of the electorate. You talk about an enduring settlement. What chance is there of that settlement enduring beyond the general election?

**Rt Hon Alistair Carmichael MP:** I come back to my initial assertion: to get agreement from all five parties is quite a remarkable achievement. Lord Smith of Kelvin was one of the few men in Scotland who could have achieved it, and we understate or undersell that achievement at our peril.

The position of the Scottish nationalists is interesting. Yes, they have been somewhat less than enthusiastic about it because they want independence. That will always be the case. Nothing short of independence will ever be good enough for the nationalists, but they have still signed up for it. They cannot be allowed to gloss over that too easily. I do not know that I would characterise the debate within the Labour Party in as stark terms as you. I look at
these proposals and recognise them as home rule. Home rule was one of the reasons why I joined the Liberal Party as a 14 year-old in Argyll. The late Baroness Michie of Gallanach, who was somewhat of an enthusiast, as you will recall, was very clear that home rule was a big part of what it was to be a Scottish Liberal. I think Ray would have recognised the Smith commission’s proposals as home rule, because Ray, like others before her, promoted home rule but always within the context of a strong United Kingdom, and that is what we have.

**Baroness Taylor of Bolton:** I just wanted confirmation that I heard you say what you are actually saying. We are saying that the Smith commission did good work and that there will be debate during the general election, but that per se will not produce legislation. I think Lord Wallace said that there would be scrutiny of normal parliamentary work in the normal way. Scrutiny to what end? Scrutiny to make sure that anything that is put forward is actually workable and would, as the Lord Chairman suggests, be taken in the context of finding an enduring settlement, not something that is a knee-jerk reaction to certain moods at a particular time?

**Rt Hon Alistair Carmichael MP:** I believe that what we have is politically durable and that it will endure. That was the task of the commission that we set up. Will it mean that the Scottish nationalists stop believing in Scottish independence? No. Let us be realistic about this. They will always agitate and they will always campaign for independence—and as nationalists, that is their right. But we have the agreement of all five parties, and I believe that by that time the agreement will have been endorsed by the people of Scotland at the ballot box at a general election, and prior to that at the referendum. The job of Parliament will be to ensure that what the people of Scotland have voted for is implemented in a way that is workable. That is where the scrutiny will be important.

**Baroness Taylor of Bolton:** But it will be amendable.

**Rt Hon Alistair Carmichael MP:** Of course. Parliament can amend whatever is put in front of it. But remember that it is the job of Parliament to reflect the will of the people as they have expressed it through the ballot box, so anybody who sought to unpick the clauses would risk running against that.

**Baroness Falkner of Margravine:** We know that what parties promise at general elections, whether it is an EU referendum or House of Lords reform, is not necessarily delivered in Parliament. That is a caveat.

**Rt Hon Alistair Carmichael MP:** With respect, there is a distinction here. What we are talking about is a proposition that will have been, in terms, in the manifestos of all three parties. With the best will in the world, I do not know that even in Orkney and Shetland, where we are all constitutional enthusiasts, the creation of House of Lords reform came up many times on the doorstep in 2010, whereas this issue will have been front and centre of the debate during the election campaign, and certainly has been during the last two or three years, so woe betide anybody, be they unionist or nationalist, who for any reason wants to thwart the will of the people.

**Lord Brennan:** This is an extremely interesting topic. How would a new Secretary of State deal with this particular issue? The impression has been given to us by some witnesses that if the political parties, for whatever reasons, have come to a joint conclusion, that will dictate constitutional progress. If there happens by coincidence to be a general election,
Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland; and Rt Hon. Lord Wallace of Tankerness, Advocate-General For Scotland—Oral evidence (QQ 76-86)

that will be a safety valve for it and Parliament will pick up the job of dealing with the detail. Many would find that an unusual process for making constitutional change.

*Rt Hon Lord Wallace of Tankerness:* Well, as the Secretary of State indicated, each of the three United Kingdom parties had already produced proposals. My own party had produced proposals through a group chaired by Sir Menzies Campbell, and the Conservative Party through a committee chaired by Lord Strathclyde. The Labour Party produced proposals, too. The Smith agreement did not come out of nowhere; it was informed. Indeed, we published a Command Paper as a Government in October, setting out the position that the parties had already established. So the proposals did not suddenly emerge; they had been debated within the parties. There is nothing novel at all about having a Bill presented to Parliament that has been in the manifestos of three parties and has been put to the people, with Parliament then being asked to consider the legislation that reflects what has been in the manifestos.

To give historical perspective to this, in 1997 the manifestos of the Labour Party and the Liberal Democrats committed to implementing the constitutional convention proposals on the Scottish Parliament. The incoming Labour Government in 1997 very faithfully brought that forward and there was plenty of debate in both Houses. But at the core was a proposal that had been debated beforehand and put forward in manifestos. Likewise, in 2010, the Conservative Party, the Labour Party and the Liberal Democrats all committed to the implementation of the Calman commission recommendations, and the Scotland Act 2012 delivers on that. It was not without debate in Parliament, and indeed was not without amendment, but at its core was the political commitment endorsed by the electorate and implemented by Parliament. I do not think that is unconstitutional at all.

Q84  *Lord Lexden:* Have the Government made an assessment of the impact of Smith commission proposals on the union as a whole—on our country as a whole—or was no such assessment thought to be necessary?

*Rt Hon Alistair Carmichael MP:* Of course. That is part of the assessment that we make all the time. Bluntly put, ensuring that the process we went through up to and including 18 September had to be “fair, legal and decisive”, to quote the terms of the Edinburgh agreement, was a necessary part of sealing the deal for the union. In order to complete the business, we have to make good the promises that were made in the course of that campaign. I look for previous precedent to the other side of the Atlantic and what happened in Canada. They went round this course twice in Canada, as you may be aware. In 1980, Quebec voted 60% to 40% to remain part of Canada. Promises of reform were made in the course of that campaign. They were not followed through and they went back to the issue in 1995, at which point the vote was 49.4% to 50.6%. I do not think it is in Scotland’s interests to leave this as a piece of unfinished business, and we will be able to say that we have finally sealed the deal only by implementing the Smith commission proposals. That is why it matters to the whole of the United Kingdom—it matters to the integrity of the union—that we should deliver what we agreed in the Smith commission to deliver.

*Rt Hon Lord Wallace of Tankerness:* It is also worth pointing to the principles which Lord Smith enunciated in his report. These principles guided and informed the work of the commission. For example, the third principle states that the proposals should, “Aim to bring about a durable but responsive democratic constitutional settlement, which maintains Scotland’s place in the UK and enhances mutual cooperation and partnership working”.

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Principle 5 states that the proposals should, “Not cause detriment to the UK as a whole nor any of its constituent parts”. Certainly that non-detriment principle is very important. These were the principles that Lord Smith set out and which informed the work of his commission.

**Lord Lexden:** In practical terms, the Command Paper refers to ongoing engagement in Scotland, but there is not a word about any work regarding the rest of the United Kingdom.

**Rt Hon Alistair Carmichael MP:** It was a paper for the future constitutional settlement for Scotland, so that would be in line with previous work in this area. As I said to you earlier, it is now for other parts of the United Kingdom to decide what they want by way of a constitutional settlement. It is worth making the point that since we started the process of devolution, we are now delivering devolution for the third time to the Scottish Parliament. We have delivered it already three times to Wales and twice to Northern Ireland. We have never been faced with a coherent request from any part of the United Kingdom that has not been met and honoured in full.

**The Chairman:** We have three further topics that we would like to cover and six minutes left. I hope you will forgive us if we overrun by five minutes.

**Baroness Taylor of Bolton:** We have more or less seen the answer to the question of whether we should have pan-UK reform. My real concern is what the end point of all this change is. You talked about an enduring settlement and non-detriment, but where is the end point?

**Rt Hon Alistair Carmichael MP:** As a Liberal, I am an unashamed federalist. I know that that is not always a welcome term in the Palace of Westminster, and it brings with it a degree of political baggage in relation to the European debate. In particular, I think that the people of England have right to the same quality of government that we now have in Scotland, and I want to see them come forward with proposals that will allow us to have a settlement across the whole of the United Kingdom that is enduring. In fairness, we will be able to say that we have achieved that enduring settlement—this comes back to your question, Lord Chairman—once the people of England have decided what they want and have been given it.

**Rt Hon Lord Wallace of Tankerness:** I could not have put it better than that as a fellow Liberal Democrat. Federalism has been my party’s policy for longer than I have been alive.

**The Chairman:** Let us move to something that will be covered separately by statutory instrument.

**Q85 Baroness Dean of Thornton-le-Fylde:** This is a quick point about the voting age being reduced to 16. Is it the UK Government’s policy that the voting age should be 16? Is that the way we are going? It has happened in Scotland and it is covered by the Welsh Bill. Following those, is it quite likely that it will de facto be extended?

**Rt Hon Lord Wallace of Tankerness:** Formally, it is not the policy of the United Kingdom Government to have votes at 16 and 17 for UK elections. It is the policy of one part of the coalition—it is my party’s policy—but it is not the policy of the Government. In the few short weeks left to this Parliament, I do not think that we will be legislatively to have votes at 16 and 17 for general elections. However, the experience of the Scottish referendum really engaged young people aged 16 and 17. Most schools, if not every secondary school, had some form of hustings or ballot. Young people certainly responded to that. They also turned
out to vote, and my personal view is that that is important. I have often wondered how often people do not vote as they get older because they did not do so in the first place, which means that voting gets a sort of mystique, just as I have never bought a lottery ticket—I am always frightened to do so, because I do not have a clue how to do it. Young people’s engagement has been really healthy. The fact that Parliament has legislated to give the National Assembly for Wales similar powers is indicative, but it will be a matter for the next Parliament to determine whether this is taken forward at a UK level for UK elections. As I say, my party is committed to it.

Rt Hon Alistair Carmichael MP: If you look at Hansard, you will see that when I took this order through the House of Commons I said that as far as the United Kingdom is concerned, it is unthinkable that the franchise for the 2020 election will still be restricted to people aged 18 and above. Once you see what has been possible by giving the vote to 16 and 17 year-olds in Scotland and subsequently elsewhere, the objections to it are seen, frankly, as the nonsense that they are. I reiterate my experience of the referendum. The referendum was very difficult at times and it was not a universally positive experience for everybody, but one thing that came out from it, quite magnificently, was the participation of 16 and 17 year-olds. I saw it first hand—I had a 17 year-old son who was very much part of the campaign and who voted. He was engaged, as were his friends, and that applies even to youngsters younger than 16. One of the most vigorous “No thanks” campaigners in Orkney was a 15 year-old boy called Jack Norquoy, of whom I think you will probably hear a bit more in years to come. He shared a platform with me and Baroness Williams of Crosby and you saw political wisdom from both ends of the age spectrum, which showed that there is no monopoly of it in either.

Baroness Dean of Thornton-le-Fylde: I presume that we should not read into that that you are going to move to 15.

Rt Hon Lord Wallace of Tankerness: No, we are not. My understanding, Lord Chairman, is that we will have the opportunity to debate the Section 30 order shortly after we return from the recess.

The Chairman: Thank you.

Q86 Lord Cullen of Whitekirk: I have a question about Clause 1 of the draft clauses, which states that the Scottish Parliament is to be recognised as permanent. Given that the Scottish Parliament is a devolved Parliament, what do you regard as the practical effect for the future of this clause if it is turned into law?

Rt Hon Lord Wallace of Tankerness: The Smith commission made a specific recommendation that UK legislation should state that the Scottish Parliament and indeed the Scottish Government are permanent institutions, and that is what we have sought to do with this. In the last 16 years, there has been no question but that the Scottish Parliament and the Scottish Government are permanent and should be permanent institutions. Obviously, we have had to grapple with the concept of the sovereignty of the United Kingdom Parliament and the fact that no Parliament can bind another, but I think that the fact that Lord Smith and his commission have recommended this is a very good signal of—“intent” is not quite the right word—recognition, perhaps, of the central importance of the Scottish Parliament and the Scottish Government in the United Kingdom’s constitutional arrangements.
Lord Cullen of Whitekirk: Would there be anything to prevent the United Kingdom Parliament, at some time in the future, from making an order for a further referendum for independence, which might lead to the end of devolution and the devolved Parliament?

Rt Hon Lord Wallace of Tankerness: It is certainly theoretically possible that that could happen. We did it with the Section 30 order to pave the way for the referendum that we held in September last year. Legally it is possible. However, just as we have been held to the vow that was made, I think that those who said that the referendum was a once-in-a-lifetime event should be held to that vow as well.

Lord Cullen of Whitekirk: Is Clause 2, which deals with the Sewel convention, likewise a clause that, if turned into law, would not have any legally binding effect, because Parliament could think otherwise?

Rt Hon Lord Wallace of Tankerness: I will not look it up immediately, but I think it is to become Section 28(8) of the Scotland Act. Section 28(7) makes it clear that the United Kingdom Parliament can still legislate. But, again, the Smith commission recommended that we should put the Sewel convention on a statutory footing. We have taken that faithfully and discharged it. It does not give rise to justiciable rights, nor do I think that it would be healthy if it did, but it is a very clear signal of the intent of the United Kingdom Government and obviously, if passed, of the United Kingdom Parliament that the Sewel convention, initiated by Lord Sewel when the Scotland Act 1997 was going through your Lordships’ House, should be part of our constitutional arrangements. In fairness, I should say that in the 16 years since the Scottish Parliament was established, the United Kingdom Government have held to that. Just to reflect what I said earlier, considerable work goes on between officials in my department and UK Government departments and those in the Scottish Government to try to address these issues of legislative consent Motions week in and week out and seeing whether or not a legislative consent Motion is needed. It is very rare indeed that there are any disputes and, if there are, they are always resolved. A lot of work is done to try to make sure that that commitment made by Lord Sewel is honoured.

The Chairman: You are almost talking yourself into saying, “If it ain’t broke, don’t fix it”, but we will leave that hanging. Thank you very much to both of you, Secretary of State and Advocate-General, for coming and giving such forthcoming and helpful answers. We are most grateful.
Mr Bruce Crawford MSP, Devolution (Further Powers) Committee, Scottish Parliament; Mr Ian Davidson MP, House of Commons Scottish Affairs Committee; and Mr Laurence Robertson MP, House of Commons Northern Ireland Affairs Committee—Oral evidence (QQ 55-63)

Transcript to be found under Mr Ian Davidson MP, House of Commons Scottish Affairs Committee
Mr Ian Davidson MP, House of Commons Scottish Affairs Committee; Mr Laurence Robertson MP, House of Commons Northern Ireland Affairs Committee; and Mr Bruce Crawford MSP, Devolution (Further Powers) Committee, Scottish Parliament—Oral evidence (QQ 55-63)

WEDNESDAY 28 JANUARY 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Lord Foulkes of Cumnock
Lord Goldsmith
Lord Lexden
Baroness Taylor of Bolton

Examination of Witnesses

Ian Davidson MP, Scottish Affairs Committee, House of Commons, Laurence Robertson MP, Northern Ireland Affairs Committee, House of Commons, and Bruce Crawford MSP, Devolution (Further Powers) Committee, Scottish Parliament

Q55 The Chairman: Good morning and welcome to our three witnesses. We are very pleased to have you here today. We have Ian Davidson, Chairman of the Scottish Affairs Select Committee, Laurence Robertson, who is chairman of the Northern Ireland Affairs Committee, and Bruce Crawford MSP, who is Member of the Scottish Parliament for Stirling and formerly a civil servant, I believe.

Bruce Crawford MSP: For my sins, yes. It was a good job.

The Chairman: That adds a dimension to the evidence that we will seek from you.

Bruce Crawford MSP: I probably worked for you at one stage.

The Chairman: And you are convener of the Scottish Parliament’s Devolution (Further Powers) Committee. I should also mention that Lord Foulkes of Cumnock, who is not a member of the Committee, is entitled to attend under standing orders and has asked to do so—and we make him welcome. I have explained to him that we will bring him in for
questions if there is time, but he understands that we are on a tight timetable today because we have a link-up by conference with the Minister in Edinburgh shortly. So we will get under way without further ado. I shall start with a broad general question to let you let off a little steam, if that is appropriate. How effective is the current system of intergovernmental relations? Does anything cry out to you as being really good or really bad about it? Do you have any sense of how these things can be put right, if they can be?

**Ian Davidson MP:** I am not aware of anything particularly wrong. I have other things to do with my time, so I have not paid any attention—and nor have my staff—to intergovernmental relations. We have been much more focused on outcomes rather than issues of process.

**Laurence Robertson MP:** I am afraid that I have to agree with my colleague.

**The Chairman:** That is fine.

**Bruce Crawford MSP:** Thank you very much for asking us along this morning. First, it is not an issue that my committee has taken any evidence on. We are at the beginning of the work on examining the output of the Smith commission proposals. Obviously, there was a good deal of emphasis in Lord Smith’s report about the need for improved intergovernmental relations. He was a very busy man with a very significant task to take in a very short time, so I do not think that he would have made these comments unless they were worth making, and I happen to share his view that there needs to be a bit of an improvement here. I shall give an example of what I mean by that. There is an important issue about how we adjust in future the Scottish Government’s block grant, particularly if we take into account the revenue-raising powers that the Scottish Parliament will have in future, with devolved taxes. One of the most recent ones, stamp duty land tax, has already been devolved—and, frankly, it was about getting an agreement between the two Governments on that issue. Other issues in the future will be vital. That point was made by both Wendy Alexander, the former convener of the Scotland Bill Committee, and Linda Fabiani in 2011, because it took four years until the end of 2014 for the two Governments to reach agreement on that critical matter. That was much to the frustration of the Scottish Government’s Finance Committee and the view is that the two Governments will have to co-operate better and the systems will need to be more transparent to aid parliamentary oversight. That is certainly something that I agree with. If I may I will read out a short note about what the Finance Committee said: “there needs to be much greater transparency from both governments and the Scottish Government should consult with the Parliament prior to the agreement of future adjustments to the block grant arising from the devolution of further fiscal powers. The Committee also emphasises that sufficient time is made available to allow effective parliamentary scrutiny of the adjustments to the block grant prior to implementation”. That is very much about relationships between Parliaments and Governments, but there are other issues out there as well about the area of employment and job creation, on which we have taken evidence from individuals such as Ross Martin, Chief Executive of the Scottish Council for Development and Industry and Stuart Patrick, the Chief Executive of Glasgow Chamber of Commerce. They were able to tell us their experience in areas such as the UK Trade and Investment department and Scottish Development International about why they need to improve working there, as well as about Skills Development Scotland and the job
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centres along with the Department for Business, Innovation and Skills and Scottish Enterprise. So there are plenty of examples of where better work could be done.

Q56 The Chairman: Thank you. We will come to those shortly. You have identified that there are difficulties, but our purpose in looking at this does not reflect a personal view on the part of any Committee member. You will find as many different views about devolution generally around this table as there are members of the Committee. If it is going to operate with increasing complexity arising from the Smith commission proposals, it is clear that the machinery has to be in place and working effectively. Can I ask, particularly those who have not focused on it, whether you see a need for more formality, and possibly a statutory basis? Would you welcome that as enabling the wheels to turn more effectively?

Laurence Robertson MP: Just yesterday in the House of Commons we had the Second Reading of the Corporation Tax (Northern Ireland) Bill, which proposes the transfer of responsibility to raising corporation tax to the Assembly in Northern Ireland. Given the complexity of that, and given that it has to be EU compliant and is a completely new thing to do in the United Kingdom—only certain companies will be able to do it and some will not qualify—there is certainly the need for close co-operation in that kind of arrangement. Whether that is there or up and running is beyond my experience because I have never worked in Whitehall, but that is an example of how it will have to be carefully administered to bring the benefits to the people of Northern Ireland.

The Chairman: Do you want to add anything?

Ian Davidson MP: Who would not want better co-operation and working together and things to be effective and all that sort of stuff? However, there is a distinction to be drawn between lots of things that are politics and lots of things that are administration. One of two things that we have tended to see in Scotland over quite a period are the politics of process, and an obsession with the machinery, what powers there are going to be and how it is going to be handled. Very often, that is used deliberately to deflect attention away from product—outcomes and outputs. So you have a discussion about processes as an alternative to actually doing anything.

The other obsession that there has been in Scotland to a great extent is the politics of grievance. If you have a formal machinery for discussing process, the potential for the politics of grievance is enormous, and anybody worth their salt could manage to manufacture disputes out of any discussion at all that they wanted, saying, “We’ve been done down, this is cheating, they’re not paying proper attention, there is no respect here”, and all the rest of it. In many ways, I can understand why people want to do that if they do not want to focus on outcomes, but having it out publicly is not necessarily in the best interests of the people that we serve. I am quite impressed by the way in which lots of our staff on the committee are able to deal with government departments and people in the Scottish Government and, when we went to Wales, people in the Welsh Government, to get things done. I did not need to be involved because there was no political dimension to it then; I was not trying to score points of anybody else—it was just being processed. That is a useful distinction to make.

The Chairman: Thank you very much. I think that some of the themes that we have all touched on will emerge in further questions.
Lord Lexden: Could you summarise for our benefit the current arrangements by which parliamentary scrutiny of intergovernmental relations are supposed to be secured both in the House of Commons and in the devolved legislatures? Do you think improvement is needed and, if so, how should it be obtained?

Ian Davidson MP: If you want a technical explanation of the machinery I think you should get a note from the staff. I am not particularly concerned about that. The reports that we have done in the Scottish Affairs Committee have been focused on outputs and outcomes and particular issues rather than examining the entails of the machinery just for its own sake. We usually have our inquiries for a point, rather than simply to examine something for its own sake.

Lord Crickhowell: I wanted to come back on something Mr Crawford said about the Smith commission and the importance of intergovernmental relations. I am a mere Welshman, so I may have got it entirely wrong, but when I listened to the First Minister of the Scottish Government on the “Andrew Marr Show” on Sunday, she seemed to suggest that the translation into practice of the draft legislation from the Smith commission, which involves just that kind of joint discussion, was an attempt to interfere in Scottish Government affairs, although people have said that it is not a veto situation. Her remark was, “What are you doing having these discussions at all?” That seems rather different from the emphasis that you were putting on the importance of intergovernmental discussions of this kind.

Bruce Crawford MSP: I have a tricky role to play here this morning, because I am the convener of a Scottish Parliament committee and, as such, am here to represent the committee and not the Scottish National Party itself. I could quite easily in that regard talk about the specific clauses in Smith that have caused concern about what the word "agreement" means, but I am not here in that role. You will shortly have Fiona Hyslop here to do that; obviously, the First Minister has some very strong points on that. It would breach my responsibilities as a convener in the Scottish Parliament to comment on that, but I will comment, if you do not mind, on the informality issue.

The Chairman: Yes, please.

Bruce Crawford MSP: There is a place for both. Informal processes allow for a place where mutual respect, understanding and trust can be built up. I can use an example from my own time as a Minister. I had very good relationships with David Cairns, the former, and late, Minister of State at the Scotland Office, as well as with David Mundell and Michael Moore on the day-to-day business of government, passing Sewel motions, and so on, so that the legislation being enacted in Westminster could be taken through properly in Scotland. It was an effective relationship that worked. So these things go on underneath the undergrowth all the time, every day, in an informal way. There will always be a place for formal relationships, when disagreements have reached a stage where they cannot be resolved. Therefore, a formal mechanism will be inevitable to allow that position to be resolved. However, formal processes can stifle innovation and stop creative thinking, so we need to be careful when we use them and use them only when we need them.

Lord Brennan: Why should departments have to deal with their counterparts in the devolved Administrations? Should the relationship be scrutinised both as to process and as to outcome by the departmental Select Committees of the Commons?
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**Ian Davidson MP:** To what end? I can always see that there are things for us as a Select Committee to do, but what is the point? Do we add value to scrutinising? Am I interested, particularly, and are the members of my committee interested in scrutinising for the sake of scrutiny, or would we rather spend our time focusing on things that get done? Yesterday, for example, we had a joint meeting with the BIS committee, interviewing representatives of City Link. We have had informal contacts with people in the Scottish Government about the question of providing support to workers who were sacked. It did not cause any political issues and did we did not need to have it formalised—we did not need to find out how it was done. We just got the answers back and then moved on to the next business. If there is evidence that the machinery is not working, we might want to scrutinise why. But you have to remember that there are the two strands. One is the political, where there will inevitably be clashes and conflicts on different principles, and the other is actually doing business. A very valuable point was made by the previous speaker. A lot of this relates to the question of respect. The Scottish Affairs Committee has had excellent relationships with the Welsh Government. We asked to go there to meet them and discuss blacklisting and the bedroom tax, and they let us hold meetings in the building and arranged a press conference for us. They arranged guests for us—they could not have been more helpful. The Scottish Parliament would not allow us in the building; they would not allow us to have meetings there, would not let us meet the press there or do anything at all. That is not administration, that is politics. You can have all sorts of analysis about why it is done, and all the rest of it, but ultimately it comes down to politics. That is the problem.

**Laurence Robertson MP:** We were very welcome in the Northern Ireland Assembly building on the part of the previous Speaker, Speaker Hay, so I hope that is helpful. We have never scrutinised the process, we have never scrutinised intergovernmental relations, but in an inquiry looking at the letters issued to the so-called on-the-runs, which we have not quite completed so there is a limit to what I can say, we detected questionable relations between Her Majesty’s Government, the Assembly and the Executive, when it was suggested that the responsibility for the administrative scheme for on-the-runs should have been devolved to the Assembly, to the Justice Minister, and was not. So we uncovered something that could be said to be a breakdown in the relations there, but it was not done through scrutinising the relations as such; it was done through looking at a particular issue. This emerged from that inquiry.

**The Chairman:** I had better give Mr Crawford a right of reply on the Scottish Government point.

**Bruce Crawford MSP:** The Scottish Parliament point, as far as Mr Davidson’s point is concerned, is a matter for the Presiding Officer and the Deputy Presiding Officers. That has always been the case that is laid down. I know that there are ongoing discussions with the Speaker here, Mr Bercow, and the Presiding Officer of the Scottish Parliament—I think they met yesterday—to discuss how intergovernmental relations and interparliamentary matters could be improved. That is all I can really say on that matter.

As for the issue under consideration that is specific to the question, I really think that is a matter for the House of Commons to decide itself. It is not for me to advise the House of Commons how to go about its business.
Lord Goldsmith: It is very interesting to look at the extent to which your particular committees look at intergovernmental relations. Mr Robertson said that it may crop up, but it is not particularly on the agenda, at least as far as his committee is concerned. One of the things that the Smith commission said was that intergovernmental relations should be subject to more effective parliamentary scrutiny, and your committees would be a key part of that. What are your views on how that could be achieved and whether it is worth achieving it? The evidence that we have had included evidence from Professor Nicola McEwen, who said that there was a complete lack of transparency in the way intergovernmental relations worked. There are reports, but they tell you very little. That is not unique in government; it is just that if you are in the same Government, although the reports may not be very illuminating there are other ways of discovering the state of play. That is more difficult between the devolved Administrations. What would be needed? More effective scrutiny?

Ian Davidson MP: I come back to my earlier point: what is the point? If we find a blockage on, say, the bedroom tax or the Work Programme, we ask, “What is the blockage? Why is that blockage occurring?”, rather than simply examining the entrails for their own sake. I can understand why academics want to look at these things, because academics have to do things, but those of us who are actually elected and who are interested in politics and want to see how we can improve the lot of the people we represent are much more interested in achieving things. If you want to have a seminar and discussion on how the Work Programme, for example, can best be devolved not only to Scotland but to local authorities, I think that is fruitful. If, as a result of that, you identify some administrative or organisational blockages, we should move to tackle those, rather than simply examine them in the abstract. What is the point?

Lord Goldsmith: It is not for me to say what the point is. I started by saying what the Smith commission had proposed, but I suppose that in the example Mr Robertson gave, if there had been consideration previously of what the relationship should be in relation to certain justice issues, there may have been less confusion about where the on-the-runs issue was being dealt with. I gave evidence to Mr Robertson’s committee—this was not during my period, because it was when justice was not devolved. That may be an example, I do not know.

Laurence Robertson MP: I am very grateful for the evidence Lord Goldsmith gave our committee, but if we had looked at it in the abstract—if we had had an overarching look at government relations—I am not sure that this issue would have emerged. I understand the theory behind the question: the danger would be that we would carry out our inquiry without really knowing what details we were looking at.

Laurence Robertson MP: I am very grateful for the evidence Lord Goldsmith gave our committee, but if we had looked at it in the abstract—if we had had an overarching look at government relations—I am not sure that this issue would have emerged. I understand the theory behind the question: the danger would be that we would carry out our inquiry without really knowing what details we were looking at.

Bruce Crawford MSP: Another question is whether the current system of intergovernmental relations is transparent. Does it allow people to understand what is going on? I do not think it does. We could improve that. The system could be more effective. More information could be made available to parliamentary committees. In that regard, I agree with what the Secretary of State said when he appeared before our committee on 4 December. He said, “I would be open to that sort of suggestion with the caveat that experience teaches me that, when minutes are going to be published, they tend to be less revealing than they might otherwise be. If we are to be serious about this, we will need to find more robust and
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extensive mechanisms”. First, it is in no one’s interests to say that when there are ongoing sensitive issues, intergovernmental relations necessarily need to be exposed. It could lead to arguments in the media that do not need to be there at that stage and to unnecessary political wrangle and not allow for a proper examination of the situation. I do not think there is an easy answer to how we go about it.

I certainly think that we need to be more transparent though. We have had a certain degree of criticism from civic societies in Scotland about the Lord Smith process, how quickly it was done and the lack of transparency. I just use that as example.

In terms of the information that either the House of Lords or the Scottish Parliament committees get, it is probably too early in the life of my committee to give you a committee view, but I will give you another example. There is a need for government to speed up, return the processes and allow us to get information quicker. Alistair Carmichael appeared before our committee in the Scottish Parliament on, I think, 4 December. We wrote to him immediately afterwards with some issues that we wanted to raise. Two months down the road we have still not had a response. Therefore I think there is a responsibility on Governments, whether it is the UK Government or the Scottish Government, to respond more quickly to committees to allow that scrutiny to take place. There will be an issue when further powers are devolved to the Scottish Parliament, particularly in the welfare area, which will be the responsibility of the Department for Work and Pensions, which is going to have to up its game. It has been invited along a number of times to the welfare committee of the Scottish Parliament but has so far refused to attend it. That was a matter for Daily Record comment in Saturday’s media. So there is an issue there about the Department for Work and Pensions appearing in front of Scottish Parliament committees to give evidence.

In that way, we can scrutinise intergovernmental relations a lot more.

The Chairman: I want to bring in Lord Foulkes before we move on. There will be an opportunity to respond then.

Lord Foulkes of Cumnock: I want to ask a different question.

The Chairman: In that case, perhaps we had better hold it back until we get to it.

Ian Davidson MP: Can I just come back on this point about the DWP coming before the Scottish Parliament committee? That is not about process; that, as I understand it, is because Members of the Scottish Parliament want to kick a Tory Minister up and down the street for political reasons. That might or might not be justifiable, but it is nothing to do with administration, and we should not fool ourselves into thinking that that is what it is about.

The Chairman: I understand the point that both of you are making. The purpose of our Committee in choosing this subject was to choose a subject with a low political profile ahead of the general election, so that we might contribute something useful to the mechanical operations of intergovernmental relations.

Bruce Crawford MSP: To be fair, there are a lot of things that we will have to resolve from the Smith commission outcomes in relation to how we make the welfare systems work in Scotland as well as in the rest of the UK. A lot of detail will be recorded, and the only way they are going to get that detail on some occasions will be by having Ministers in front of them. The convener of the welfare committee in Scotland is a Labour Member.
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The Chairman: Absolutely. We agree with the need for machinery.

Q59 Lord Foulkes of Cumnock: My point follows on from that. The Scottish Parliament has a lot of powers devolved to it. After Smith, it is going to have a great deal more: very important matters to deal with. There are clearly grey areas where there are responsibilities at Westminster, and at Holyrood where Holyrood obviously has a role. But there are reserved areas where Holyrood has no responsibility whatever. This Committee has had evidence recommending that Scottish civil servants be banned from carrying out any work relating to reserved matters, that devolved Parliaments are banned from holding votes on reserved matters, and that the devolved Administration be banned from taking official positions on reserved matters.

I understand, Mr Crawford, that on Thursday in government time in the Scottish Parliament you are having a debate on Chilcot. That is clearly a reserved matter. Is this not bad for intergovernmental relations?

Bruce Crawford MSP: Again, I need to watch what I say because I am not here representing the Scottish National Party; I am here representing the committee as convener of the committee. But I will just ask you to look at history. The Scottish Parliament has had a long tradition of being involved in debates that are far-reaching and wide-ranging on many occasions, such as the war in Iraq.

Lord Foulkes of Cumnock: Is that a good thing, though?

Bruce Crawford MSP: If councils can have a debate on these sorts of things—and the Parliament of Scotland, I would argue, is equally the voice of the people of Scotland—it would be wrong to curtail the activities of the Scottish Parliament in that way. It would create great frustration.

The Chairman: I think the point has been made and answered. We will move on.

Q60 Lord Crickhowell: For more than a dozen years the idea has been around that it might be a good idea to create a single department that is responsible for devolution and to replace the three existing territorial departments. When I put this suggestion to our Welsh witnesses, there was pretty strong hostility to the idea. The view was expressed pretty powerfully by the First Minister, and indeed by the chairman of the committee, that there was still a need for a Secretary of State to represent Welsh interests to the Government here. I think Mr David Melding, an AM, said that if you made such a move it would be vital to have all-party consensus. Perhaps as a former Secretary of State in a rather different world, my attitude to this is biased and irrelevant, but I would like to know your view as regards Scotland and Northern Ireland.

Ian Davidson MP: I would be totally opposed to any suggestion of a unified devolution structure. Again, I understand why academics might want to argue for that: because it looks neater and so on and so forth. But this is about politics, not just administration. Therefore if you are going to have political dialogue relating, say, to Scotland, Wales or Northern Ireland, you need to have someone who is focused on these geographical areas. Again, there is this dilemma between administrative neatness and the desire of academics in particular to have things harmonised and slotted into boxes and to write reports on it and so on, and the sometimes grubby deals that have to be done politically.
Laurence Robertson MP: When I looked at this initially, I thought that it was perhaps an attractive idea, but the more I thought about it, and for the reasons Ian gave, I thought that the amount of money that would be saved is negligible. The importance of having dedicated offices for Scotland, Wales and Northern Ireland outweighs any attraction of saving money. I have come round to the view that the offices should continue as they are.

Bruce Crawford MSP: I can give you a personal view. I am not attracted to the idea. I share the view of Professor Wyn Jones, who gave evidence to you previously, who thought that that sort of territorial office might be an impediment to good bilateral ties. I think there was also an argument that is the same for the Scotland Office and the Wales Office: that on many occasions better relationships can be achieved bilaterally between the Scottish Government and government departments directly. I have always been of the view that that is the way to do it, otherwise the Scotland Office or the Wales Office will always be seen by UK departments as the ones with the voice and the responsibility, and the UK departments might not necessarily take on the responsibility of mainstreaming into government in the UK issues to do with Scotland in that way. We could have a better relationship. That does not mean that I did not respect the work that I did with David Cairns, David Mundell or Michael Moore: that relationship was strong and real. I think things could be improved. But if you want to save money, that is a way to save money.

Q61 Baroness Taylor of Bolton: Just to take us back a moment, we have already heard that the Scottish Parliament thinks that it is fine to debate reserved matters; mention was made of the Chilcot inquiry. Yet post the devolution legislation there was a self-denying ordinance within Parliament here that we would not discuss devolved matters. The Calman commission said that there should be an annual debate on the state of Scotland. I think, Mr Davidson, that your committee supports that. Is it time that we moved on? What would be achieved? Would it help or hinder relationships between the two Administrations? Do we need to look at this whole area again? We have extra problems because of Smith. How will we define who should be debating what, or will it be a free for all?

Ian Davidson MP: I take the view that the Scottish Parliament should be free to debate whatever it likes, as we should. There is an extent to which the Scottish Parliament wants to debate UK national issues, because there is a core substantial bloc of people who want to run an independent country and therefore want a view on international issues. Secondly, there is the element of “Oh look, there’s a squirrel”. It is a distraction technique—to have a debate on Trident or Chilcot rather than have a good examination of the failings of the Scottish education system, for example. There is a clear element of that. Now, in Westminster, we should move away from our self-denying ordinance, which arose for understandable reasons. There was a feeling at the beginning that if Westminster continued to debate devolved issues, we would perhaps subordinate or undermine the Scottish Parliament, or some of my colleagues might very well indicate that they were in favour of abolishing it. Therefore we had to allow the Scottish Parliament to grow and develop free of advice from what would be seen as big brother or sister. I think that day is passed. There is a particular role, as I have discussed with some of my parliamentary colleagues who are chairs, in doing compare and contrast. I think that we should now look at, for example, the educational results of England, Wales, Northern Ireland and Scotland to see who has done best, and look at the successes or otherwise of the Work Programme. It was interesting that
the Welsh had done much more progressive work in combating the bedroom tax than had the Scottish Parliament at that time. Feeding off each other is useful—but there was certainly a very strong feeling from some of my parliamentary colleagues that we could not do that lest it be seen as an attempt to undermine the Scottish Parliament. I think the Scottish Parliament should be seen as sufficiently mature and self-assured to allow these sorts of comparisons. Since it is not doing the comparisons itself, because very often it would not necessarily reflect to its greater glory, it may be the role of people like us to have a look at those sorts of issues.

Laurence Robertson MP: I think that the Scottish Parliament should be able to debate Chilcot or anything that it wants to debate. Similarly, in this place, we should debate devolved issues, because they affect the whole of the United Kingdom. I shall give you one example. I personally think that the single best thing that we could do in Northern Ireland to try to move away from the years of conflict is integrated education, where children are educated together. That is not an issue that we can discuss in this place—and that is ridiculous, because it has a big impact on the whole of the United Kingdom, and certainly on my constituents in the broadest sense. Yet we are not supposed to debate that. So I agree with Ian that we need to move forward from that situation. That is to some extent a criticism of the devolution settlement. I know that it perhaps goes a little bit beyond what you are looking at, but it is an important matter.

Lord Brennan: On the question arising from this freedom to debate, if the governing party of a devolved Administration in Parliament votes in a particular way on a reserved matter, can we then anticipate that that government party will mandate its Westminster MPs to follow that line?

Ian Davidson MP: I would imagine so. Let us live in the real world here. If the SNP has a majority in the Scottish Parliament and it is against X, it is not unreasonable to expect SNP MPs who are down here to vote for or against X as well, because it is stemming from the same route. I am entirely relaxed about that. Why should it not do that? But an SNP majority would not be able to mandate Scottish Labour MPs to vote the same way, nor should they. I would expect Labour MSPs to vote on most issues in the same way as Labour MPs would, on the basis that I am here not just because I am charming but as a representative of the Labour Party. Therefore, in those circumstances, you are entitled to expect that party representatives will have a consistent view.

Bruce Crawford MSP: I think Ian is always charming. But as far as this issue is concerned, in the past the Scottish Parliament has voted to say, for example, that it opposes Trident. That is a very clear position for a majority of MSPs in the Scottish Parliament. As for Ian’s description of the Scottish Parliament being “sufficiently mature” and grown up enough to do it, it would be surprising to the people of Scotland if the Scottish Parliament was unable to debate issues of the day that were important. They would think that it was irrelevant, in that respect, if it was not debating those sorts of issues. So it is absolutely appropriate—but I am not sent here to tell the House of Commons or the House of Lords what they should debate. It is entirely up to you what you do.
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Q62 Lord Lexden: Mr Davidson, there is a growing interest in comparative studies. Would their expansion and value be enhanced by greater co-operation between your various committees? Would you welcome that?

Ian Davidson MP: If we decided to look at, say, educational results or the number of working class students going to university, I would very much welcome having the co-operation of the Irish and Welsh Select Committees, and also the relevant body in England. We would expect to have a degree of co-operation from the regimes in Edinburgh, Wales and Northern Ireland. That might be done by official relationships or by formal discussions. I anticipate, living in the real world, that those who thought that they were going to get good results out of it would be more inclined to co-operate fully as opposed to those who thought that they would look badly out of it. You would find a way to get it, even if you had to put in freedom of information requests. There would be a muddling through. Again, the importance is with outputs and outcomes and deciding things, rather than in examining the entrails of how you get there.

Lord Lexden: To what extent are your officials in touch with one another at the moment?

Ian Davidson MP: I do not know, I do not care, and I do not need to know. Anything that I ask them, they find out for me. As to how they do it, so what?

Bruce Crawford MSP: I am not sure whether I am part of the regime or not. We might have different political views, but that does not mean that we cannot share an agenda to make sure that our job is done properly. Some of what we do about how best we hold the Government to account is also about how they agree with each other and how we can examine what they do. I know that there have already been some good examples of inter-committee work between the Scottish Parliament and committees here, and I think that is something that we could build on. I know there is a fair bit of exchange of expertise, to answer your question directly. I think your clerk is Rebecca Davies, and I know that she and the clerk from my own committee are in regular touch. That is helpful—it helps to build relationships, creates trust and builds a bit of respect.

Laurence Robertson MP: As far as I know, the clerks are in regular touch and I do find that useful. My clerk has some experience of the Scottish Affairs Committee, as far as I know; beyond that, I do not know. But obviously dialogue and communication has to be helpful.

Q63 Lord Cullen of Whitekirk: In the past, some have suggested the creation of a Joint Committee between two or more Parliaments or Assemblies across the United Kingdom to scrutinise intergovernmental relations. What do you see are the advantages or disadvantages of such an arrangement? Perhaps you do not think that it is a good idea at all.

Laurence Robertson MP: As far as I know, the clerks are in regular touch and I do find that useful. My clerk has some experience of the Scottish Affairs Committee, as far as I know; beyond that, I do not know. But obviously dialogue and communication has to be helpful.
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Lord Cullen of Whitekirk: A committee of that sort could sit wherever it wanted, in London, Edinburgh or wherever.

Laurence Robertson MP: You have the plenary sessions but you also have four sub-committees, which do work together. I am sure that that is beneficial.

Ian Davidson MP: I must confess that my overwhelming reaction is that I would find other things to do. MPs have a limited amount of time, and I can think of absolutely no reason why this should be one of my top priorities. If there was a point to it, maybe I would do it, and I can see why, drawing up a structural diagram might be a good thing to do. But someone else can do it.

Bruce Crawford MSP: Smith talked about improving intergovernmental relationships. That is certainly going to have to be true in the areas of taxation and welfare in future, as more is devolved to Scotland. How do we achieve that where it is appropriate? It is difficult to see how it would fit and work. Inevitably there will be committees in the House of Lords and the House of Commons that have a particular, distinct role, and committees in the Scottish Parliament with that sort of distinct role. That does not mean that we cannot work more closely together, where appropriate, to make sure that we are scrutinising the Ministers properly with regard to where this journey ends in terms of the Smith commission proposals on welfare and taxation.

The Chairman: Thank you very much. You have given us some extremely informative and revealing answers in what has been a lively session. Do any of my colleagues wish to ask any further questions? Have you left anything unsaid that you would like to say before you go?

Bruce Crawford MSP: Lots, but I may be here for a long time.

The Chairman: You have done very well, Mr Crawford.

Ian Davidson MP: If this is described as a lively session, you have obviously not been along to the Scottish Affairs Committee much.

The Chairman: We are the House of Lords and not the House of Commons—but some of us remember the House of Commons in the good old days. Mr Robertson?

Laurence Robertson MP: No.

The Chairman: Thank you very much indeed—we are most grateful for your concise answers and for what you have contributed to the Committee.
The Chairman: I would like to welcome our two witnesses today from Wales. We have a Member of Parliament, David Davies, and a Member of the Welsh Assembly, David Melding, both with substantial experience in the breadth of government administration and constitutional matters. We are most grateful to you for coming and giving of your time. We have 45 minutes. I would like to go straight into the questions that we are keen to explore with you. The first one I would like to ask you, by way of a broad, general question, is how effective you think the current system of intergovernmental relations is. Do you see certain obvious areas where there is a need for improvement? Do you have any thoughts on what those improvements might be? We shall get into more detail later on, but that would be an opening opportunity for you. David Davies, would you like to start?

David Davies MP: Thank you, Lord Chairman. I would say overall there is room for improvement and I am not quite certain how that would happen. Things work all right at an
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

official level, but sometimes not so well at the personal level, and sometimes personal relationships are important. For example, there are some Ministers who, as the chair of the Welsh Affairs Select Committee, we can go and talk to about issues that might be partially devolved. There are others who will have absolutely nothing to do with us at all and, in fact, will routinely refuse to appear before Select Committees, which is, as you know, something that potentially we could cause a great deal of fuss over but choose not to.

Having said that, because it is important to be fair here, the overall situation between Wales and London is far better, I understand, than between London and Scotland, where I believe the Scottish Affairs Select Committee are not even able to visit the Scottish Parliament. We find it perfectly easy enough to go and visit the Welsh Assembly and do so on a regular basis. I am not sure I am giving a very clear answer on is it good or bad. It is a mixture. We muddle along. There may be ways of improving things but overall it is not too bad.

The Chairman: Thank you. You have certainly opened up a topic because other witnesses have told us that the machinery is not terribly good but personal relations are compensation for that. It is interesting what you have said. We will no doubt return to it. Mr Melding?

David Melding AM: I think it is a very fair description that you have just shared. Often it is surprisingly good, I think for cultural reasons, because people get on. It is in the interests of different Governments to solve problems. I would not say that there is a great crisis, but in terms of the machinery there is evidence that as we move to a more formal situation in Britain of the constitution using more federal mechanisms, there are potential difficulties in the future if we do not strengthen some of those mechanisms. Certainly, the success seems to be on a bilateral level rather than the multi-governmental level. It is the variability, I think, which is perhaps disturbing to those who look at the process and how the legislatures have some sense of oversight and hold the various Executives accountable. I think there are some weaknesses in the process there, particularly.

Q33 Lord Crickhowell: It seems to me that, in a sense, you are discussing two separate issues there. There is the relationship with the Select Committee, which you chair, Mr Davies, and the difficulties that you have had because certain people did not want that Committee to interfere, and Mr Melding, I think, was discussing more the relationships organisationally between the two. In one evidence session, I think it was acknowledged that the relationship between the Secretary of State for Wales and the Welsh Government had greatly improved with the appointment of the new Ministers in the Welsh Office and was now working pretty well. There is a distinction. I think you are satisfied, on the whole, with the way the government relationships are working, but I think you were only addressing, Mr Davies, the relationship with your Committee.

David Davies MP: Thank you, Lord Crickhowell. It is nice to see you again. I think there is a bit of a malaise there at times. It is not just my Committee. There are some Ministers in Parliament who seem unable to meet their opposite numbers in the Welsh Assembly, and I am not trying to suggest where the fault lies for that. There is supposed to be a Minister in every department who is responsible for devolution, but officials tell me that they are not certain that a great deal of attention is always paid to the new constitutional landscape that we have. I know this from the work that we have done on the Select Committee—and I had better give an example to back this up. We discovered during a recent inquiry that the Minister responsible for Visit Wales I do not think has ever spoken or hardly ever speaks to
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

the Minister responsible for VisitBritain. Even the officials do not tend to meet each other. It is a similar problem with UKTI, which is of course responsible for getting investment into the UK, and the equivalent body within the National Assembly. This is not a Committee problem; this is a problem that rests somewhere at ministerial and senior official level.

**Q34 Lord Lexden:** Could I ask you both to comment on the Silk commission’s proposal that a Welsh intergovernmental committee be established to, “Oversee the operation of the Welsh devolution settlement”?

**David Melding AM:** Shall I begin? I think there is a whole argument to be had about how formal you want the mechanisms. In a functional sense, I think the evidence is quite clear that it is the bilateral links that work best, with some exceptions: the JMC (Europe) is a very effective body and I think shows you what can be done when all the Administrations want to achieve a common goal or, sometimes, to deal with slight differences of emphasis in terms of how European policy impinges on devolved issues.

At the minute, we have had the situation in Wales where three pieces of legislation have been referred to the Supreme Court. Two have received judgments, and they were pretty crushing judgments, against the UK Government. I am not sure that is a terribly elegant way of dealing with disputes and I am sure the Supreme Court will get very irritated at some point if that is used, though I think Lord Crickhowell was very apposite earlier in suggesting that relations are now better between the Wales Office and the Welsh Government.

The choice is how formal you want it, and if it is formal then you are probably going to get judicial review occasionally when there are disputes. Some people feel that that is a reasonable thing to have in the process. Most fully federal systems would have that. It is clearer and it allows, perhaps, both David’s Committee and the National Assembly for Wales to hold our Executives more accountable. They would report perhaps more frequently than they do at the moment on the JMC about those procedures. I can see advantages there. I do not think they are so overwhelming that you would say you have to go down a very formal route. I think you can achieve these things with softer mechanisms, but they have to be effective and there is just too much variability at the moment. That is the big thing I would point out to you.

I think it is very interesting the Foreign Office really gets it, which is why JMC (Europe) works, presumably because the culture of dealing with different Governments and people of different views is somewhat easier there than in the old unitary, strongly centralised departments. We want to reduce that element of random variability as much as possible, I would say.

**Q35 Lord Powell of Bayswater:** As a former member of the Foreign Office many, many years ago, I am glad to hear that it occasionally gets something right. You are the first person I have heard say that for a long time. Can we just come on to the parliamentary scrutiny of intergovernmental relations? How much of it do you do, both in the Welsh Affairs Committee and in the Welsh National Assembly? How do you do it? How effective is it? I do not know which of you would like to speak first.

**David Davies MP:** Perhaps I had better go first on that, as it is in the standing orders of the Welsh Affairs Select Committee that that is one of our roles. I think it is fair to say that Committee Members see themselves as having a much broader role than that. In reality,
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

while we will try to scrutinise how well the relationships are working, it is something that often tends to come out in the course of other inquiries that we are doing. I mentioned two just now with Visit Wales and UKTI business investment. I think it would be quite difficult to frame an inquiry based solely on that because of, frankly, the difficulty of getting some Ministers from the Welsh Assembly to come and give evidence to us and to recognise that we have a role in scrutiny of Welsh Government.

Lord Powell of Bayswater: Well, the scrutiny in this case would be of the relations between the two Governments, would it not?

David Davies MP: That is true, but I am just thinking through how an inquiry would work. In order to follow that through, we would have to talk to Ministers from the UK Government, which is fine, but also Ministers from the Welsh Assembly Government to ask them about the interactions that they are having, and they may not be willing to turn up. Some of them will not turn up at all.

Lord Powell of Bayswater: If there is no parliamentary scrutiny, or no effective parliamentary scrutiny, is Parliament not falling down on the job?

David Davies MP: I worry about that. We have Welsh Grand Committees from time to time where we can raise pretty well any subject that affects Wales, but obviously within Parliament itself I am absolutely unable to raise issues about the health service or education or anything that is devolved. I feel that that sometimes lets down my constituents, but any attempt to do that would be ruled out of order unless it is rather imaginatively done, which it is.

David Melding AM: I think it is a perfectly fair point: should we not just improve our own game? It is not mission impossible even if the system is fairly murky. It is easier at the JMC level, I think, and our Ministers make written statements, usually, after each meeting. They are not very frequent, so this is not exactly a huge burden. They could trigger evidence sessions in a relevant Committee or, indeed, full debate in plenary in the Assembly, so that is certainly possible. The problem is that JMC tends to deal with really big, capital letter stuff like the Barnett formula and these sorts of issues and they are well rehearsed anyway, frankly.

Where further scrutiny would be useful and sometimes is lacking—as I say, we do not have this guarantee that the significant matters are necessarily followed up—is on the bilateral stuff, which is quite close to being in private, really, until a Minister reveals what has happened or is being quizzed very specifically. Some things can go through the system without people quite realising how much has been discussed between the Administrations and that, I think, is where the problem is. There should be some indication. We need to ensure that our mechanisms are such that we pick up the signals as well. We should not be too passive. Big stuff tends to be fairly noteworthy anyway. I would not want to give you the impression that we are completely feeble in all this. It can be improved. There is a level of scrutiny but I think it should be fuller.

Lord Powell of Bayswater: Surely it should be wider than just the JMC. We are conducting scrutiny of intergovernmental relations. Does the Welsh Assembly not try to look at the whole picture, including the bilateral relations between departments and so on, to make sure that it is being conducted properly?
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

David Melding AM: I do not think it does it at that systematic level. If there is an issue that comes up that is then a problem, like CAP reform, that negotiation was quite a different outcome in terms of what we have ended up with in Wales and the details there. In general, it would be difficult for, say, members of the public or people who want to bring issues to our attention—which is part of what our legislature is about as a forum for national debate—to follow the process. Certainly, Members of the Assembly, if they want to track some of these things, have ways of doing that, but I think it is harder than in the routine scrutiny we apply to the departments of the Welsh Government, for instance.

The Chairman: I think Mr Davies wanted to come back in.

David Davies MP: Yes. I am instinctively against setting up extra Committees or bodies. I suppose that is probably a political instinct that I have. None the less, there may be an argument for something that can, in a more formal way, allow Members of Parliament and Members of the Welsh Assembly to look into roles and to raise questions. There may be Assembly Members who want to raise questions on non-devolved issues, just as there are bound to be MPs who want to ask about the health service and so on, so there might be an argument for some kind of body that could do that. I am certainly not going to try to think up exactly how that should be done here and now.

Lord Powell of Bayswater: If you do not scrutinise the system of intergovernmental relations, the assumption will be that you are happy with it.

David Melding AM: There is no real formal system to scrutinise, is there? The JMC is there, but bilaterally we could get a very dusty answer from our Ministers saying, “These are private discussions at the moment and when we have an announcement to make, we will make that announcement”. If the legislature is trying to mould some sort of policy options earlier in the process, it would find that difficult. A lot of this is out of sight, and I am not saying that that makes it impossible to track if you are inquisitive and apply powers very skilfully, but it should not be that difficult. We value more transparent mechanisms, do we not? That is part of accountable, responsible and effective scrutiny in government.

The Chairman: That leads us into a question Lord Lexden wanted to ask.

Q36 Lord Lexden: Yes. My question follows naturally from the last. Could you summarise for us the essential steps that you think need to be taken, both in the House of Commons and in the Welsh Assembly, to make scrutiny more effective and more transparent than it is at the moment?

David Davies MP: Again, I would be reluctant to suggest putting in place some kind of new body, something like a Council of Europe but for the United Kingdom, that would allow various people to get together and scrutinise and conduct their own inquiries. There would be an immense cost and a lot of time involved in doing that. I think the current system would work well if people on all sides recognised the responsibility to co-operate with each other at government level. I will try not to name names and shame anyone in particular with that comment, but there are some who are much better than others. I might as well be kind and say that the former Labour—and I am a Conservative MP—Agriculture Minister in the Welsh Assembly was very good at appearing before Select Committees in Parliament and talking about agricultural matters, so there was a lot of good stuff going on there.
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I think I would probably be inclined to let the system muddle along as it is rather than put in place something else, because even if you put something else in, if people are not willing to co-operate it is still not going to work very well and we have just spent a whole load of money and put a big time commitment on to people. The Welsh Grand Committee has a reasonably useful role in raising Welsh matters and perhaps there is room for a Welsh debate once a year in Parliament. It used to happen and it now seems to have gone off to the Backbench Business Committee to decide what we are going to have. It is not a huge priority for them.

David Melding AM: First of all, it seems to me, looking at the British constitution as a whole, that the House of Lords would be well placed to take on responsibilities for, if I can say grandly, the health of the union. I certainly think that if a constitution develops so that your House reflects something of a territorial dimension in its membership—I do not mean a simple system like the Senate has or complete reform so that it suddenly becomes similar to, say, the German system—there is flexibility in the House of Lords to have clear Welsh, Scottish, English and Northern Irish interests expressed. I do not see why we could not have mechanisms where the Government make something like a State of the Union report or address and then that is debated fully. Speaking as a passionate unionist, I want to see the United Kingdom flourish as a multinational entity. Clearly, devolution is getting much more focused. It is not a system that is different from federalism; it is probably one of the more volatile variations. I just think we need to recognise where our constitution is going and we need some mechanisms, what would loosely be called federal mechanisms in other places. It seems to me the upper Chamber of Parliament would be in a very good position to discuss some of these issues, to look at the strategic picture and to do it in a fairly dispassionate way.

The problem with the JMC is it does not meet very often. The Domestic Committee hardly ever meets. When it meets at the moment, often for an hour or two, it has a lot of grandstanding politics in it. We know what the First Minister is going to be demanding going there, and it does not seem to be very much about, really, the integrity and health of the British constitution and our parts in it, which the public, presumably, or most of them—overwhelming majorities in Wales, Northern Ireland, Scotland and—

The Chairman: We will come on to the JMC in a later question, if we may.

David Melding AM: They would want to see, anyway, that these things work effectively. Under that, I think then it is for the legislatures to say, “The Welsh Government should, perhaps once a year, give a clear expression of what it is trying to do in its negotiations. What are the big strategic issues? We said they should do this in terms of Europe”. I think then that would allow the Welsh Assembly, perhaps, through its various Committees to effectively scrutinise. I am not one for revolution, but I think we need to improve some of these mechanisms that have developed since 1999. They need enhancement, some of them quite significantly.

Q37 Lord Crickhowell: Mr Melding has begun to take us into the world that we are now in. We have been talking about Wales and the Welsh Assembly, but as a result of events in Scotland and their fallout we are moving to, if not to a federal system, a very substantial change in relationships, which is a subject for considerable debate. One of the suggestions is that instead of having essentially separate bodies, we should have one government
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

organisation covering all the devolved bodies. It is interesting that as long ago as 2010, your Committee, Mr Davies, addressed this issue and said that you recognise that there are arguments for a single department of the nations and regions but went on, quite reasonably, to say that Wales would still need a strong voice in Whitehall. Indeed, the government guidance on the role of the Secretary of State says that the Secretary of State for Wales acts to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that will have effect in Wales and to represent the UK Government in Wales. I think two issues arise here. One is: if we were to move to a committee for the regions, how easy would it be for a Welsh component, a Welsh Minister, in such a body to fulfil those duties? Following on from it is the question that you have been given notice of: would it make it easier or harder for Parliament to scrutinise intergovernmental relations? I would like you to take the two matters, the actual idea of a body covering the whole lot, all the devolved bodies, and how you see that, and then the parliamentary scrutiny of such a body.

**David Davies MP:** Lord Crickhowell, are you suggesting removing the Welsh, Scottish and Northern Irish Offices and rolling them all into one kind of—

**Lord Crickhowell:** It has been suggested and is being suggested in some of the evidence given to us.

**David Davies MP:** I would strongly oppose that suggestion. To throw it back at you, of course, you were an esteemed and much loved Secretary of State for many years and I know during that time you fought very hard for various projects within Wales. No matter who is in Parliament, I would very much want somebody around the Cabinet table to be fighting for Welsh interests, and somebody else for Scottish and Northern Irish ones, of course, and perhaps even English in time to come. I would be very concerned that if we had, effectively, one Cabinet Minister for the regions, there would bound to be conflicts of interest arising because what is wanted in Wales, Scotland and Northern Ireland at different times is going to be quite different and sometimes they may be asked to prioritise. I would certainly be very opposed to that idea. I think the extra cost of that Cabinet Minister’s salary is worth its weight in gold to the people of Wales, so we would certainly want your successors to continue in that role.

**Lord Crickhowell:** And the supervision of such a body?

**David Davies MP:** One body overseeing the whole thing? It is one of these ideas that is easy to argue in theory but I would wonder who else would be a part of it. The Cabinet Ministers, yes; the First Minister; some of the other Ministers in the Welsh Assembly; the Chairman of the Welsh Affairs Select Committee, I would not mind. There would probably be quite a lot of people all wanting to get involved in it, and my worry is that the practicalities might become quite difficult.

**David Melding AM:** I am not sure what happens to the territorial departments is a primary question. Your equivalent today is Carwyn Jones, the Secretary of State for Wales. His office has no comparison to the office that you held with such distinction. That is not to demean the current Secretary of State; it is just that the role is very different. It seems to me if you had one department for the union or whatever, I could see that working, and I could see, perhaps—to follow on from my earlier remarks about the role that the House of Lords...
Mr David Davie MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42) would have—that the Secretary of State for the union would be a Member of the House of Lords. I could see that working.

I suspect if that model were to eventually emerge, you would then have Ministers of State for each of the nations. I think that is how it would work, which would be quite similar, functionally, to what happens now. I would focus on what you really want those people to do—oiling the bilateral arrangements, ensuring that the multilateral arrangements are working well, just having that sort of oversight. In all this devolution, speaking I think for most people, we do not want to lose sight of the effectiveness of the British state. The way the British state works has a big impact on all our electorates. I think it is that big picture we have lost sight of a bit. “What is Britain for?” does not seem to be asked very often now. I think that is where we need to get to, and I am very optimistic that if we do reform with confidence we will find that we have a very British version of a quasi-federalism, I suppose, which would be very functional. That is where we need to get to.

Lord Crickhowell: One final question: if our Prime Minister was to take the bold step of moving in this direction, would there not be a strong political reaction in Wales, and indeed elsewhere in the United Kingdom, of saying, “There is no longer a proper Secretary of State. Clearly, the Government is downgrading the role”, and so on? There would be a political difficulty as well, would there not?

David Davies MP: I think there would, yes, a very strong one.

David Melding AM: The answer to that is that we need cross-party consensus on how to strengthen the British constitution. If we believe in Britain, then we need to get our act together and put these things first.

Q38 Lord Cullen of Whitekirk: I appreciate all that you have said about the voice for Wales and Welsh interests. I think the proposition that was put to us was very much along the lines that this grand Secretary of State for the regions would be a facilitator and would also help to deal with what is perceived at the moment to be a patchy understanding of a devolution settlement as between different departments. It is moving into a different type of role from the current role. I appreciate all you say about losing the identity of a Secretary of State for each of the regions, but there is something to be said for and some argument in favour of a greater overall understanding within the UK Parliament and the UK Government of how the regions and the devolution settlements ought to work.

David Davies MP: If that were the case, then this hypothetical new Cabinet Minister would also have to be a Secretary of State for England. We, as you say, have a very disjointed constitutional settlement with different powers all over the place, and now it looks as though something is going to be given to England—we know not yet what, but something before the election, so we are all reliably informed. That person is going to have to be looking out for England as well. I just worry that perhaps from a parochial point of view we will in Wales have lost out on the one person around the Cabinet table who is fighting for our interests and fighting to keep Wales in the union, which for me is vitally important.

Lord Cullen of Whitekirk: It is an important point you make.

Q39 Baroness Taylor of Bolton: I am tempted to go down the last line of questioning and say might it not be an acknowledgement that devolution has taken place, but that is a separate issue. Can I start by thanking you, Mr Melding, for acknowledging the potential
role for the House of Lords and the people here when you talked about a debate in terms of the state of the union? Mr Davies, earlier you were talking about your frustration at not being able to raise certain issues on the Floor of the House because, quite rightly I think, a devolution settlement said that if issues are devolved then it is in the Assembly that discussions of those should take place. There have been suggestions that Parliament should have annual debates—not just the House of Lords but the House of Commons—about the state of the union, the state of Scotland and perhaps the state of Wales. That is quite difficult to do without breaching that principle that you do not talk about things that are devolved, and people like yourself, Mr Davies, would have to be quite restrained, if possible, in what you were talking about. We are talking about intergovernmental relations and surely there is scope for discussion, be it annually or be it in any other context, of how that relationship is working. That is what we are trying to assess and yet you are implying that Parliament at the moment, or at least the Commons at the moment, does not have any mechanism for debating properly that full relationship and how it is working.

David Davies MP: I think what you are saying is correct in that it would be positive if that were discussed once a year. A debate around the mechanisms and around the relationships would be a good thing. I suppose Parliament has the mechanism to discuss it if it wants to. Parliament can discuss whatever it wants. Previously, we used to have a Wales day in Parliament. I am not sure if it was formally there or whether it just happened around about 1 March. Anyway, it used to happen, certainly when I first started, and now it has gone because of the new reforms. Everyone has to appear before the Backbench Business Committee and make their case. I think there is an argument for perhaps having one session per year for Wales, Scotland and Northern Ireland, perhaps even for England as well, or one session just to discuss relationships overall, or all four regions together. I am absolutely open to that, and I am sure imaginative Members of Parliament will no doubt find ways to bring into that debate issues that might be concerning them that might be within the purview of the Welsh Assembly.

Baroness Taylor of Bolton: That is part of the problem, is it not? If you are going to get talking about the details or the minutiae or constituency cases that are really for the Assembly Member, then there is going to be a reaction and people will say that is not what such a debate is about. It would require restraint—

David Davies MP: Yes. That would be up to the Speaker because, in reality, I do not think people would do that. I do not think people would be that au fait with the rules of the House. For me it would be remarkable if anyone wrote to me to say, “You should not have mentioned that. It was slightly out of order in a debate”.

Baroness Taylor of Bolton: No, I was meaning the House itself or how the Government or the Executive would react if you used such a debate for constituency casework, which is actually an Assembly responsibility.

David Davies MP: May I digress slightly? You make a good point, but something else that frustrates me is that it is hard even to get information via the House of Commons Library about things in Wales that would be very easy to get in England. For example, although the Library has come out with a report on health statistics recently, I have put questions to the Library about Welsh matters and they have come back saying that it has been hard for them to get the information. Unfortunately, I cannot think of an example, but I know it has happened. I think it would certainly be helpful to MPs who are dealing with constituency
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)
matters if they had as much ability to get from the House of Commons Library information about Welsh matters as they have about English matters.

David Melding AM: Could I just make a short remark on that?

The Chairman: Yes, please.

David Melding AM: I do not think there would be a lack of material for either House or both Houses of Parliament to discuss in terms of the health of the union. You would not want to drill into the application and development of policy or specific cases of constituents raising issues of access to public services, because they are scrutinised by the Scottish Parliament and the National Assembly, but through talking about the distribution of resources in terms of the taxation needs formula, perhaps to replace Barnett eventually, these things need to be discussed very explicitly. Defence policy, in terms of the distribution of armed forces around the UK, research and development, where that is conducted—all these things are massive. A typical complaint in Wales would be, “We send a lot of soldiers, a lot of recruits into the Army, but we do not have much of the higher spending and higher-value stuff in terms of the Ministry of Defence”. I am not saying that is fair, necessarily. It is an area that probably needs some scrutiny.

There are lots of subjects that are intensely of interest at a Welsh, Scottish, English and Northern Irish level but are at that strategic all-union level. There would be a lot of material to debate. I think at Westminster you need to take control again of where the UK constitution is going. We have just had the people of Scotland vote, in effect, on whether Britain continues by referendum on secession. I absolutely agree that we had to have that referendum, but most other states around the world were looking at us thinking, “This is Britain and they are having a referendum on secession. It does not get bigger than that”. We need a vision for a reformed, decentralised UK constitution for a multinational union. We have always been that, but it has now become political as well as cultural.

The Chairman: I am going to interrupt you there, Mr Melding.

David Melding AM: Anyway, I am talking too much.

The Chairman: Not because I would not like to go down that avenue; I would love to if we had all day. Sadly, we only have about eight minutes left and three questions to address. I would ask colleagues and both of you to try to focus your answers as concisely as you can. I would be grateful.

Q40 Lord Brennan: Gentlemen, the word “relations” is neutral constitutionally. For the public, that phrase would mean co-operation between Governments. No matter how formally or informally we devise these arrangements, there has to be some kind of results-based analysis. Is it working? The Silk commission proposed an audit—a national audit, a Welsh audit, and you can do it across the four areas—so that the public, both devolved and overall, would better understand what is going on in their country. These would be reported to Parliament and, through Parliament and through the media, to the public. What do you think?

David Davies MP: The possibility of having joint Select Committees, effectively, is certainly a positive idea. We have conducted a joint Select Committee meeting before, and I have explored the possibility of doing that in the future, obviously if I am back here and still able to do the job. There is a willingness between Select Committee Chairs in Parliament and the
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

Assembly to work together on certain issues, but I think what you are suggesting is a lot more formalised and has a permanency.

**Lord Brennan:** Joint Committees, yes, but considering audit reports and material as to what is going on.

**David Davies MP:** I think it is a good idea and I see no reason why we could not do that.

**David Melding AM:** It would have the advantage of involving the public as well. They could read these reports and civic society could look and comment. Some sort of process would be helpful of getting information that does not necessarily come from one of the Governments. At the minute, nearly all the information comes from one of the Governments, and it is not in their interest to present things that shed light on some things that have not perhaps been satisfactorily dealt with. I can see an advantage of it. How you achieve it, whether it needs to be as formal as the Audit Commission doing it, I do not know.

**Q41 Baroness Dean of Thornton-le-Fylde:** Good morning. Mine is a straightforward question but I would first like to say thank you very much, both of you, for the reference to the union. I think it is something that we need reminding of, which you saw from the reaction of the Committee. We have been talking about “bilateral” as between, if you like, the UK Parliament and the Welsh. What about the relationship between your two Committees? Is there scope for greater co-operation between the two Committees that you are here representing as Chairmen this morning in scrutinising the intergovernmental effectiveness and, perhaps, other areas of common interest? Related to that, is there any exchange at all of expertise, perhaps of staff who support each of your individual Committees? Is there any exchange of experience or time among those people to bring that dimension into the individual workings of your Committees?

**David Melding AM:** I think there is potential. Standing orders sometimes are not flexible enough for a very formal approach, but we can work together. I think there are, at official level, quite a lot of exchanges; the clerks of my Committee will quite often discuss issues with David’s secretariat. I think we need to be imaginative and do more of this joint working ourselves. We are asking others to improve their systems, so we need to do it as well. I should say that on European issues my Committee is part of the UK network of oversight or scrutiny of European directives, so there is a network that meets twice a year. It is Lord Boswell in your House and the equivalent Committees around. That is very effective, but the Chairs meet, so it is not full Committees. Perhaps networks like that would be quite useful as well.

**David Davies MP:** Absolutely, it is correct that our staff talk to each other a lot. I do not think they formally are placed in each other’s working environments, but there would be no issues around that.

**David Melding AM:** It is possible to do.

**David Davies MP:** It would be possible. We go back quite a long way, having both been elected to the Welsh Assembly in 1999. There is no “bromance” here, but we could certainly work together on Select Committees. I think I have appeared before your Select Committee.

**David Melding AM:** You have.
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

**David Davies MP:** We know each other well, so that would not be an issue. I think that there could be an issue with different personalities. A lot of this comes down to working relationships rather than any mechanism, because there is nothing at all to stop us from doing this. Perhaps we should do it. I might even take this as a slight suggestion or even a telling off that we have not done more of it officially and look to do it in the future.

**David Melding AM:** Or you might suggest we should do more of it.

**The Chairman:** Thank you very much. On that note we will move on.

Q42 **Baroness Falkner of Margravine:** Mr Davies, with your Select Committee anyway, standing orders allow for it to take evidence from any of the Welsh Committees if you so choose, but I seem to think from what you said in response to other questions that on the whole you would tend to be opposed to setting up a new institution of some form. My question is specifically to do with the scrutiny of JMC, of which we have heard several witnesses say that it is less effective than it might be. You seem to be sympathetic to doing more together in terms of joint liaison, but what would be your views of having a specific scrutiny-related devolution committee? The McKay commission recommended that to improve scrutiny of the other intergovernmental relations.

**David Davies MP:** I am not wholly opposed to it. Usually, we are meant to have a clear view of something being good or bad and argue the case in politics. All of us are guilty of that. I do not think there is a clear argument for or against it. I come down slightly on the side of being against it, because there are obvious pros in putting in place a more formal mechanism for scrutiny. The cons, as I see it, are arguments about who goes on it, how often it meets, the cost, and the rest of it. I am slightly going to come down against it, but if it were set up I have no doubt that I would be first in the queue to try to get involved and take part in it. It could have some advantages, I will say that.

**Baroness Falkner of Margravine:** Particularly in light of what you said about the difficulty of obtaining information when you need information. Mr Melding?

**David Melding AM:** I think it could be very productive. It would probably relate to the other reforms you want to see and what the overall purpose is. If you move to one territorial office or an office for the union, I would prefer that to regions because it is the constitution as a whole we need to look at here. If that system came in, then presumably the Select Committees would change anyway and you would more or less have to create a Committee that gave oversight or scrutiny to that new department. I think it would be very useful. Things are so fragmented at the moment and that is the problem. We do not see these interconnections so easily because there is not a mechanism to allow it at the moment, or an effective one.

**Baroness Falkner of Margravine:** Potentially, the nature of the asymmetry is what creates the problems. Just one final quick question: in the absence of a department for the devolved Administrations, do you only see that kind of devolution committee as being the scrutiny function of that department or do you imagine in the absence of that overarching department that you could still improve scrutiny by having a parliamentary devolution committee?

**David Davies MP:** I think you could. The pros are, even without an overarching Cabinet Minister, a mechanism like that could definitely work. I still want to draw attention to the
Mr David Davies MP, House of Commons Welsh Affairs Committee; and Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister (QQ 32-42)

possible disadvantages over who is there, how often it meets, what it actually does, what it costs, and all the rest of it, but I do not see that you have to have an overarching Cabinet Minister in order to make something work. I am sure there are parallel organisations within the UK and Europe already.

The Chairman: Thank you very much. I think we will draw things to a conclusion there. Thank you both very much indeed. At one level you have been a marvellous warm-up act because we are about to interview the First Minister in a few minutes. More seriously, you have given us a lot of food for thought. You have offered us a slightly different perspective on some of the issues on which we have already had quite a lot of advice, and that is extremely helpful. I am most grateful to you both for coming. Thank you very much.

David Melding AM: You are most welcome.

David Davies MP: Thank you, sir.
Intergovernmental-relations between the United Kingdom Government and the devolved administrations.

The topic of the Committee’s inquiry is being considered during what might be described as a major earth tremor in our nation’s constitutional history.

In its publication ‘Scotland in the United Kingdom: An enduring settlement’ published on 22nd January 2015 the Government proposes a major change to the status of the Scottish Parliament. Part 1 of the draft clauses dealing with Constitutional Arrangements proposes to recognise the Scottish Parliament as ‘a permanent part of the UK’s constitutional arrangements.’

Furthermore, the draft clauses include proposals to put the Sewel convention (which only permits Parliament to legislate for a devolved matter if the relevant Institution passes a legislative consent motion) into the legislation on the face of the Bill. However, in answer to a question on 22\textsuperscript{nd} January 2015, (Hansard Vol. 758 No 90 col. 1495) Lord Wallace of Tankerness said that the clauses ‘were ...added after Section 28(7) of the Scotland Act 1998, which makes it clear that the Westminster Parliament can still legislate.’

Precisely what purpose is served by this proposal is unclear, and it may even be a greater source of conflict in the future in circumstances where the Westminster Parliament has no alternative but to legislate for Scotland.

Nevertheless, the current arrangements between London and the devolved administrations work fairly well.

In addition to the Joint Ministerial Committee, which comprises the UK Government, Scottish, Welsh and Northern Ireland Ministers, which meet in various formats under a Memorandum of Understanding, all administrations in these islands alongside the British and Irish Governments sit on the British-Irish Council which is charged with promoting harmonious relations and matters of mutual benefit.

With regard to how the various administrations communicate, I can confirm, having served as a Minister at Stormont for over six years, that there would rarely be a day when I did not receive correspondence from UK and other Ministers or rarely a day when I did not send such communications of a similar nature.

There were and are a number of administration to administration meetings taking place at official and Ministerial level all the time. I attended many of them, either at Westminster or in Departments in London or in the relevant devolved administration.

Ministerial visits regularly take place involving either UK Ministers or devolved administration Ministers.
Working on European matters creates the necessity for similar meetings where access to funding or the implementation of directives can have different effects in various areas of the United Kingdom.

Whitehall has adapted fairly well to devolution. However, there are always examples of where the regional interest can be overlooked. I suppose this is inevitable. It was the case before devolution so I suppose it is just a fact of life.

My biggest concern, however, is in relation to the operation of the Sewel convention, which as I pointed out earlier, is about to be enshrined in legislation.

The Sewel Convention means that Parliament will not legislate for the devolved administrations without their consent even if the national interest is endangered. The recent case of the failure of the Northern Ireland Assembly to take measures to allow the National Security Agency to fully operate in the Province is one example. While progress is now being made, it has meant that the NCA has not been fully operational in Northern Ireland for over two years. This is unacceptable.

Whether it is by the Barnett formula or some other replacement mechanism, the devolved administration receive large financial subventions from London. Without them the regions could not deliver the services that are required.

There have been regional policies for financial redistribution within the United Kingdom for decades, under all Governments and well before devolution. These policies recognised the changing nature of regional economies both within the regions of England as well as the home nations.

However, with the establishment of the devolved administrations, the sums paid out to Edinburgh, Cardiff and Belfast are substantial and London does not have the ability to specify the purpose for which the monies are transferred.

My biggest concern is that there is little recognition for or acknowledgement of these substantial subventions and the various devolved administrations are in the position to dish out these monies which in large measure they do not raise themselves, and blame Westminster if there is not enough to go round! There seems to me to be no accountability for these funds and Parliament gets no feedback on where this money goes or what the outcomes of the expenditures are. This is a mistake.

I do not believe that London should be interfering in every regional decision but there needs to be a mechanism to ensure that devolved administrations are still accountable to Parliament in some way for this money.

26th January 2015
The Scottish independence referendum challenged the fabric of the United Kingdom. That challenge has not gone away, as at the least substantial further devolved powers will in future be exercised by the Scottish Parliament in Edinburgh. It also seems much nationalist opinion in Scotland is not prepared to take ‘No’ for an answer, though how and when these aspirations will be pursued is not clear. A lot may depend on the elections of 2015 and 2016. This will provide a lively context for intergovernmental relations, and this paper concentrates on how the UK government and Parliament should conduct themselves in these circumstances.

The Constitutional Context

The referendum campaign tested the UK’s territorial constitution close to destruction; but it has exposed to view the essential nature of the UK as a union. I have written on this extensively elsewhere and will not repeat the full argument here. The UK as a union is a multinational state, and an essentially voluntary association. The union has important economic aspects, but is also a social union – that is to say resources are shared to support pensions, benefits and public services. These aspects of the union are connected: an economic union, and its associated currency, are not stable without fiscal sharing; and fiscal sharing enables, and is given a normative purpose by, a common understanding about what the state provides to citizens. A political union is what makes this possible, and is expressed in Parliament at Westminster; the internal structure of that political union includes the devolved legislatures.

This constitutional context has in the past been more implicit than explicit. Governments, and Parliaments, have tended to treat the territorial nature of the UK as an afterthought or oddity – not core to its nature, even though it is there in lights in the name. So managing relations with the devolved governments and legislatures can be seen as an afterthought, important to them perhaps, but a distraction for ministers and others. If the UK wishes to sustain itself, this needs to change.

The political context

We face the most uncertain general election most of us can remember. For the first time since they brought down the Callaghan government in 1979, SNP MP’s could be relevant to the Westminster arithmetic; can it could even be that for the first time since Lloyd George, the interests of non-English members could dominate the Commons agenda. This is bound to affect intergovernmental relations.

Intergovernmental relations

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Virtually every country has internal intergovernmental relations, typically between state and federal governments. Devolution brought them to the UK, but they came as a bit of a surprise. To the extent that UK government thought about them at all in advance of devolution, the implicit model was that of a Cabinet committee: ministers discussing policy, now including devolved ministers. Policy dialogue is still an important part of intergovernmental relations, though much of that happens on a day-to-day basis between officials. Party competition is inevitable in these relationships, but did not arrive in the UK until the SNP minority administration of 2007. It was a bit of a shock to the system then, and we now have just nearly every political party in the UK in office somewhere in the country.

What we have faced since 2011 in respect of Scotland however is constitutional competition; we can expect that to continue, using whatever mechanisms of intergovernmental relations are available. The challenge for the United Kingdom government is to have an overall vision of how it wishes the UK to be (a policy for the union) and a strategy for using the intergovernmental machinery to achieve its ends, rather than merely react to what the devolved administrations put on the agenda.

A territorial strategy for the United Kingdom

The first and most important element of a UK strategy for maintaining and managing the union is to acknowledge that one is needed. Policy on Scotland and Wales especially has been for decades an afterthought, episodically important but strategically peripheral. This has been reflected in the size and scale of the territorial offices, and the status of the Secretaries of State. Instead of three Secretaries of State, and three tiny departments, the United Kingdom should have one substantial department, and one powerful Secretary of State whose job it is to manage the territorial constitution.

The second element of such a strategy is to have a clear and coherent vision of the nature of the union which is being sustained, and presented to the people of the UK. That is as I have argued above firstly maintaining a deep economic union – a consistent focus on a single UK domestic market, supporting a single currency and a shared macroeconomic and fiscal framework. Secondly, matching a commitment to a single market, a shared social market: guaranteed common minimum standards of social security, and of access to public services which should not be solely dependent on revenues raised in different parts of the country. This is the classic territory of fiscal federalism (balancing needs and resources as they arise in different parts of the union) and should guide in a coherent way the plans for devolution to the different parts of the country, and needs managing actively as it is politically highly controversial.

The third element is a clear understanding of the nature of the political union, and what it means not merely for the three small nations, but its implications for England. (The detail of this is beyond the scope of this evidence, but the essential point is that the UK government and Parliament are England’s government and Parliament, because England is by far the dominant part of the union: subject to sustaining that critical element of the political union, there is scope to ensure that there is an acknowledgement of English interests and voices in the legislative and other parliamentary processes.)
If the UK had a powerful department and Secretary of State, and a clear strategy, it would be able to set the agenda for relations with the devolved administrations in a way in which it has never done. The various ministerial and other committees should be seen by the government as places where they pursue their strategy, rather than meetings which have to be had simply to satisfy the desires of the devolved administrations.

The structure of the various ministerial committees matters less than their content. Some already work better than others. The finance quadrilateral, dealing primarily with issues connected with the public spending survey has and will have real business to do. Official and ministerial relations on the legislative programme remain effective. Other issues may be more bilateral, given the differences in tax devolution, but the UK should aim make such discussions as multi-lateral as possible, as the same general principles apply (notably getting the right balance between devolved resources and shared of UK taxation supporting devolved public services). It will be important for Wales and Northern Ireland to be aware of the changing fiscal arrangements affecting Scotland, as in principle similar powers could be available to them.

Some of the devolved administrations, notably the Welsh Assembly Government, hanker after some institution to act as referee between them and the UK government. They are particularly concerned about the Treasury, which makes decisions about the allocation of resources, but is not accountable to the devolved bodies. This is crying for the moon. It is perfectly reasonable for the courts to take a view on the effect of the devolution legislation (and under the oversight of deputy president Lord Hope, the Supreme Court developed a sophisticated devolution jurisprudence); but that is a well-defined judicial function of the interpretation of legislation. It would not be possible for the courts, or any other arbiter, to overrule ministerial decisions, UK or devolved: these are political choices, and the remedies are political.

I see no advantage in making these arrangements statutory, as there is a risk of introducing inflexibility into a system subject to change; but there may be benefit in statutory requirements to produce and present information to Parliament about how this system is working.

**The role of Parliament**

It is not possible to take politics and political competition out of intergovernmental relations anywhere; and in the present Scottish context constitutional conflict will be around for some time. Parliament, and especially the House of Commons, is an actor in these relationships rather than simply a scrutineer. There would however in my view be an advantage in the House of Lords taking a markedly more active role then scrutiny of intergovernmental relations, taking evidence not merely from UK ministers but from the devolved administrations too, on a regular basis. It should be an acknowledged responsibility of any Second Chamber to concern itself with the maintenance of the union.

January 2015
WEDNESDAY 28 JANUARY 2015

Members present
Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Lord Foulkes of Cumnock
Lord Goldsmith
Lord Lexden
Baroness Taylor of Bolton

Examination of Witnesses

Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government

Q64 The Chairman: Minister, good morning. Can you hear us?

Fiona Hyslop MSP: Just. I shall try to adjust the sound up a bit, if I can.

The Chairman: Just. I will try to turn the sound up a bit.

Fiona Hyslop MSP: I can hear you now. That is good.

The Chairman: Good morning. We are starting a little before schedule. I am most grateful to you for being available at all. I know how busy Ministers are. I think that I see you sitting in the Balmerino walnut-panelled room that I occupied myself about 20 years ago. Would I be right?

Fiona Hyslop MSP: This is now the Permanent Secretary’s room. It is used to be Jack McConnell’s room when he was First Minister.

The Chairman: And it was the Secretary of State’s room before. How have the mighty fallen? We are very grateful to you for taking part in this discussion session with us this morning. You have been a MSP since 1999, throughout the life of the devolved Parliament. You are currently in the Cabinet as Secretary for Culture, Europe and External Affairs. I think
you understand the nature of our inquiry. It is not a party-political inquiry; it is very much concerned with the machinery of government and the intergovernmental relations that enable the machinery to operate smoothly and possibly unnoticed by Members while it delivers the capacity for government to run smoothly. I would like to start by asking you from your perspective—can you hear me?

Videolink lost.

Clearly the intergovernmental machinery has not been operating very well this morning. Can you hear us?

**Fiona Hyslop MSP:** I can. Third time lucky.

**The Chairman:** I apologise for this. I could blame it on the Scottish line, but I think that it is just as likely to be the Westminster line. Let us fire on and hope for the best. I was asking a broad opening question. What do you see as the purpose of intergovernmental relations, and how do you think they operate?

Videolink lost.

**Fiona Hyslop MSP:** I can see you and I can currently hear you. It seems to suddenly break off, and then I cannot.

**The Chairman:** Let us press on quickly before it happens again. I hope that it will not. Did you hear the question?

**Fiona Hyslop MSP:** Yes. In intergovernmental relations, the main purpose is to build relationships of trust and understanding to ensure that there is continuity and co-operation in areas of mutual interest. I have attended Joint Ministerial Committees as a Minister over the past seven years, primarily on the Joint Ministerial Committee on Europe, most recently, but also prior to that. Can you hear me?

**The Chairman:** Yes, we can.

**Fiona Hyslop MSP:** I think the main purpose is to make sure that we can anticipate opportunities and deal with disagreements, trying to get as much dealt with at official level, where at all possible, and to leave ministerial discussion for strategic interests and purposes. This is about co-ordination. It is a movable feast. Obviously, a great deal of experience has been built up since 1999. We are in a different position even from when I started being a Minister seven years ago. There is always room for improvement. I hope that, particularly with your inquiry—I do not know when you are due to report, but obviously the Westminster election is looming—whatever configuration of party is in government, it is a good opportunity to try to baseline a higher level of co-operation from the start of that new Government and those new Ministers.

**The Chairman:** Thank you. We are hoping to report before the end of March, before the House rises for dissolution. That is why we have to have these rather short interviews, unfortunately.

Can I ask one very quick supplementary? Does your answer mean that you and your Government are committed to improving the machinery of government, and is this an area to which you give a considerable amount of attention?
Ms Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government—Oral evidence (QQ 64-66)

Fiona Hyslop MSP: Absolutely, because it is mutually important. You probably hear more about our disagreements than our levels of agreement, but we are always looking for improvements. One thing that I have asked our officials to look at is the experience in relation to Europe and the European Union. We are in the process of producing a table of problem areas but also positive experiences. I met Shan Morgan, the UK Permanent Representative in Brussels and suggested that we do that to demonstrate where we have good experiences and where there have been problems and to try to iron them out.

Videolink lost.

The Chairman: I am so sorry. This has never happened before. We will move swiftly on. I got the thrust of your answer, and I shall now bring in Lord Brennan. I should explain that the camera will sweep round to him. You may hear him before you see him.

Q65 Lord Brennan: Minister, last week the First Minister for Wales told us that intergovernmental relationships should be put on a statutory basis. Do your Government agree?

Fiona Hyslop MSP: I think that certain elements should be put on a statutory basis. I would be particularly keen to have participation, representation and the ability to speak at the European Council, for example, on a statutory basis. But we have to get the balance right between the need for statutory relationships and quick, rapid and informal relationships. So there needs to be a balance between that. The JMCs should be statutory in terms of what they do, but they are not the be all and end all of our relationships, and we need to improve things at the operational level earlier on. Early engagement is really important. On the point about the principle, we need to make sure that the co-operation is prompt and proactive. I am not sure that making it statutory would resolve that. It should involve respect and trust, which I am not sure you can legislate for; it is more about culture and behaviour. But we also need to have speed and common sense. Some issues arise quite quickly and promptly, and the test of good relationships is being able to deal with them speedily. That is about values as much as statutory legislation, which is required to protect that intergovernmental space.

Q66 Lord Cullen of Whitekirk: Cabinet Secretary, I would like to ask you about the Joint Ministerial Committee and perhaps, to set the scene, refer very briefly as to some of the evidence that we have heard. Some have said that it may be difficult for devolved Administrations to raise issues for discussion in that forum, while others have described the committee as being an opportunity to air grievances and resolve disputes rather than being a vehicle for co-operation. Last week, the First Minister of Wales said that the committee was not a proper forum for the four Administrations to come together to discuss issues of mutual interest, as he felt that it should have been. Any comments?

Fiona Hyslop MSP: His point about how it should be a forum for mutual interest is one where everyone comes to the table with an equal perspective. The issue that the time and the agenda are quite often controlled by the chair, who is always a UK Government Minister, is something to look at. The British-Irish Council, which I also attend, has a rotating chair, and that might provide a different balance. JMC (Domestic) has met less frequently and tends to be one more where grievances are formed, unfortunately. It should be an area where we can try to deal better with some issues. Bilateral relationships are absolutely key.
Ms Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government—Oral evidence (QQ 64-66)

_Videolink lost._

_The Chairman:_ Minister, I am so sorry about this. We lost the videolink again. If it happens again we will have to draw stumps. It is not fair on you to keep you sitting while we constantly reconnect.

_Fiona Hyslop MSP:_ Well—

_Videolink lost._
General

1. From your perspective, what is the purpose of inter-governmental relations in the UK?

The purpose of inter-governmental relations should be to facilitate the smooth operation of government for the benefit of the people in each part of the UK.

Good inter-governmental machinery should be effective whatever the political make up of the 4 member administrations and should not depend on the goodwill (or otherwise) of individuals. To be effective, it needs to be based on 'parity of esteem', and mutual respect and trust. The UK Government and devolved administrations are equals in their areas of competence, and this should be recognised in the level of respect between them.

Good inter-governmental relations should enable us to be proactive (or at the very least, prompt) in identifying and addressing issues of joint interest or potential difference at the earliest possible stage. This should include involvement in policy development in reserved areas which will impact on devolved areas, whether directly or indirectly (and there is a growing interdependence of reserved and devolved issues post-Smith), including through changes to budgets. Early involvement would potentially allow the Scottish Government, using its greater knowledge of Scottish circumstances, to flag any unintended consequences of UK policy at a stage where it could be taken into account. It should therefore result in more workable and effective policy.

Better inter-governmental relations should also facilitate the development of greater flexibility in policy implementation as envisaged by Lord the Smith. In his evidence to the Devolution (Further Powers) Committee of the Scottish Parliament on 2 December he said:

Where common cause is made-on Europe, or on energy policy in relation to fuel poverty or energy efficiency - we should say, "Hey, is Scotland a wee bit different in this area?" and listen to the Scottish voice instead of having a one-size-fits-all policy. You know which areas I am talking about - for example, there is a different type of fuel poverty in Scotland.²

There is no reason why reserved policy could not vary in different parts of the UK to take account of local circumstances, or conversely why devolved administrations could not implement similar policies wherever appropriate. The advantages of this approach are discussed further in the Scottish Government’s paper More Powers for the Scottish Parliament published on 10 October 2014 (see pages 6-7)³

2. What would be the advantages and disadvantages of inter-governmental relations being put on a statutory basis?

The advantages are obvious. The MOU and overarching concordats set out a number of

² http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9663#.VH30RdjSiz4
sound principles including on timely sharing of information, consultation, allowing
devolved Ministers to speak in the Council of Europe and so on. However there is
currently no mechanism to enforce this, so the UK Government (not exclusively, but
mainly) can, and does, choose to ignore these principles when it decides. It is not
unusual for SG to be given extremely short notice in which to consider draft UK
legislation making it difficult for any response to be taken into account.

Following the UK decision to veto EU treaty changes designed to save the euro in
December 2011, the Scottish FM and the Welsh FM wrote jointly to the Prime Minister
requesting a JMC Plenary be convened as set out in the MOU on the grounds of “mutual
feeling regarding the exclusion of the devolved administrations from policy development
and decision making” on European matters, many of which are devolved. The letter
stated: “As you know, given the potentially serious impact of using the UK veto, we
remain deeply concerned that the UK government did so without consulting the devolved
administrations”. The meeting did not happen despite the fact that under the MOU the
UK Government cannot refuse such a request and that the MOU sets out the timescales
in which this should happen.

In addition, some form of statutory underpinning of elements of the machinery or of the
dispute protocol might be useful in preventing an administration from, for example,
blocking attempts at dispute resolution through inactivity etc.

The disadvantages are also obvious. Given the breadth of engagement and potential
overlap between the UK Government and the Scottish Government’s areas of interest,
and the asymmetrical nature of the devolution settlements in each of the devolved
administrations, putting the inter-governmental machinery on a statutory basis could
prove cumbersome, prescriptive and difficult (and potentially both costly and time-
consuming) to enforce. Statutory underpinning in itself cannot provide the necessary
approach and values which are essential to effective inter-governmental relations.
These behaviours are more effectively instilled by good practice than statute.

It is not clear that there would be effective remedies for breaches of the statutory
framework. We would not want to see regular recourse to the Supreme Court about
inter-governmental relations in the way that the UK Government has repeatedly referred
proposed draft Welsh Government legislation. The principles espoused in the current
MOU and underpinning machinery allow for the application of a degree of common
sense and good practice, rather than a legalistic approach.

Joint Ministerial Committee and bilateral relations

3. Is the Joint Ministerial Committee a useful forum for inter-governmental
relations in the UK?
   • Are you able to raise issues of concern?
   • To what extent is the JMC a vehicle for co-operation, rather than dispute
     resolution or 'grandstanding'?

The current format means that the agendas for JMC Plenary and Domestic meetings are
agreed by the JMC Joint Secretariat with each administration consulting its own
The Scottish Government—Written evidence (IGR0015)

Ministers on possible topics. The asymmetrical nature of the devolution settlements mean that some topics are not suitable for quadrilateral discussion and any one administration (again, not exclusively, but mainly the UK) can prevent discussion on a specific topic. The UK Government in recent years has sometimes chosen not to expose topics to discussion at JMC until their policy position—and often draft legislation—has been finalised. This of course means that the views of the DAs cannot readily be taken into account.

In theory, the 'current issues' section which remains a standing item on the agenda of meetings in both Plenary and Domestic format provides the opportunity for each administration to raise issues of concern. In practice, lack of time can make this opportunity less useful, since the UK Government is generally unwilling or unable to schedule more than 60-90 minutes for each meeting and there is often no time is left for 'current issues'. Providing additional time might also provide the opportunity for proper discussion rather than simply statement of contrary positions.

The Scottish Government has certainly benefitted in the past from this opportunity for Ministers to raise issues directly with their UK counterparts without the issue being filtered through official government machinery (particularly since some Whitehall officials frequently lack an understanding of the position in Scotland). This has, on occasion, led to resolution of an issue.

4. What practical steps could be made to improve the JMC system, or should it be replaced by a different arrangement entirely?
   - Could the JMC Domestic committee, or sub-committees of it, be the vehicle for multilateral co-operation in domestic policy-making?

The JMC Plenary meeting on 15 December 2014 instructed officials from the JMC Joint Secretariat to review the Memorandum of Understanding, and develop proposals for its improvement. This is now being taken forward, with the next step being a workshop involving officials from all 4 member administrations in Edinburgh on 27 February.

Given the differing devolution settlements, the level of possible multilateral co-operation will depend entirely on the issues being discussed, but this would be the same whatever the forum. Any new structure, such as JMC sub-committees should be flexible enough to allow bilateral, trilateral and quadrilateral formats, where appropriate. Section 30(1)(a) of the Smith report, which recommends new governance arrangements to oversee the implementation and operation of the tax and welfare powers to be devolved, reflects the need for strengthened bilateral mechanisms.

Practical improvements might also be made by rotating the chair and the location of the meeting in the way that the British-Irish Council does and by increasing the duration of the meeting where necessary.

5. Are there any specific changes you feel will be necessary following the devolution of the powers proposed by the Smith Commission?
   - Should the bilateral Joint Exchequer Committees be made a permanent
fixture alongside the Finance Ministers' Quadrilateral meetings? The Smith report is clear at paragraph 95 that the Scottish and UK Governments should work via the Joint Exchequer Committee (JEC), which was established to oversee implementation of the Scotland Act 2012, to agree a revised fiscal and funding framework. However, Smith made clear that inter-governmental machinery required to be reformed and scaled up significantly to reflect the scope of the arrangements to be agreed between the two governments. These arrangements will need to include oversight of the financial implications arising from the devolution of the welfare powers as well as additional fiscal responsibilities. In this respect the relationship between JEC and the newly established Joint Ministerial Working Group on Welfare will need to be considered.

Turning specifically to JEC, the Committee may be aware of the difficulties both governments faced in agreeing the block grant adjustment for the devolved taxes. As Smith noted in his report, it will be important that, going forward, there are mechanisms in place to resolve disputes in a timely and constructive fashion. The Exchequer Secretary to the Treasury is alternate chair of the JEC, but decisions have been taken to date between the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy and the Chief Secretary of the Treasury. We would suggest that one way to improve the effectiveness of the JEC would be for UK membership to be sufficiently senior to ensure decisions can be taken in the course of the meeting.

More generally, we would want to avoid putting in place any formal arrangements which became mechanical in their operation. In relation to the Finance Ministers Quad, business tends to be transacted bilaterally between the devolved administrations and the UK Government, as an issue that affects the Scottish Government may not be a concern for the Northern Ireland Executive. However, these forums can serve a useful purpose where the devolved administrations are seeking a similar discussion or outcome from the UK Government in relation to a particular issue, for example, representations made by all 3 devolved administrations in relation to retaining the budget exchange mechanism.

6. Are bilateral or multilateral relations most effective in the UK?
   - What should be the balance between bilateral and multilateral relations?
   It depends on the issue – some issues have a common resonance across the DAs and are best tackled in a multi-lateral forum. Others are primarily bilateral in nature and should be treated as such. Again this is a product of the asymmetrical nature of devolution in the UK - the nature of which means that most issues require a degree of bilateral working.

   - Should bilateral relations be made more formal?
   Yes, there is a clear need for formal bilateral engagement, but this should be in addition to existing/improved informal relations - not in place of them.

Dealing with Whitehall

7. What has been the experience of your administration in dealing with Whitehall
dealing with UK Government departments are consistent and timely?
The UK & Ireland Relations Team, which is part of our Directorate for Culture, Europe and External Affairs encourages all Scottish Government policy officials to liaise with their counterparts and have regular discussions and provide a signposting service to assist in the identification of potential contacts. Its officials deliver presentations to staff on working with the UK Government.

It also operates a system of portfolio managers who liaise with devolution counterparts in Whitehall.

Dealing with Whitehall departments has suffered somewhat from the Cabinet Office decision to discontinue the Devolution Administrations Whitehall Contacts Group, which facilitated such discussions and encouraged a level of understanding of devolved issues in the UK Government.

It is probably fair to say that dealings with Whitehall vary between and sometimes within departments (in both UK and Scottish Governments). It can often come down to the relationships that have been established between policy officials.

8. What do you think the role of the Secretary of State for Scotland should be?
   - What changes would you make to the current role of the Secretary of State?
The role of the Secretary of State for Scotland is - of course - a matter for the UK Government. However, the reality of inter-governmental relations is that formal mechanisms (including both the JMC and British Irish Council) are delivered effectively by the Cabinet Office. Most policy-specific engagement tends to take place directly between relevant Whitehall departments and their Scottish Government counterparts. In these circumstances, it is not wholly clear to what extent the Scotland Office adds any real value to inter-governmental relations. The risk is in fact that it becomes a bottleneck or constraint on exchanges between the UK and Scottish Governments.

9. What would be the advantages and disadvantages of having a single UK Government department dealing with inter-governmental relations, with a single Secretary of State?
   - How would a change to a single department and Secretary of State be perceived in Scotland?
The Scottish Government's preference remains that we normally raise issues directly with relevant UK departments (where we have often established good working relationships) - and our experience suggests that most UK departments prefer coming direct to relevant parts of the Scottish Government. Where issues arise, the UK & Ireland Relations Team work through the devolution contact for individual departments (and if necessary, via the Cabinet Office).

A single Whitehall department leading on inter-governmental relations would dilute the degree of detailed knowledge and lessen the chances of successful resolution of an issue,
increase the risk of creating a bottleneck in Whitehall and would be less effective than the current arrangements.

February 2015
Introduction

The Institute for Government has been engaged in a research project entitled ‘Governing after the referendum’ since April 2014, in partnership with the ESRC and University of Edinburgh. Our research focus lies on improving the effectiveness of the UK’s changing territorial constitution and the relationships between the UK and devolved governments. As part of this research we have examined how the UK’s intergovernmental machinery has evolved since 1999 and how it works at present, the challenges that the machinery faces under the current devolution arrangements, and the changes that may be required as further powers are transferred away from Westminster and Whitehall.

Our work covers the formal intergovernmental machinery such as the Joint Ministerial Committee structures, and we also look at the role of the territorial offices and departmental level links with the devolved administrations, such as via working groups in specific policy areas. Our findings and final recommendations will be set out in full in a report to be published in mid February 2015.

We are pleased to contribute to this timely House of Lords Constitution Committee inquiry, and below we address a number of the specific issues in which the committee has expressed an interest.

Why existing arrangements for intergovernmental relations need to be improved in light of the further transfer of powers to the devolved nations

Recent and forthcoming changes to the devolution arrangements do require a rethinking of aspects of the UK’s intergovernmental machinery. The original devolution settlements, created in 1999, were designed in a way to minimise disruption to existing systems of government. Almost all of the powers devolved were already under the control of the separate Scottish, Welsh and Northern Ireland Offices so few Whitehall departments faced significant change. Furthermore, the formula and block grant system for funding the territories was kept intact, as was the unified Home Civil Service. This institutional continuity – combined with the dominance of a single party across Great Britain until 2007 and a benign economic and public spending context – meant that the first two terms of devolution were marked by relatively low-key, informal and consensual intergovernmental relations.

Since then much has changed. Political differences and a context of austerity have increased the frequency of disputes (though at the operational level relationships are often good and productive), including about finance, but also about the effects of UK government reform programmes in areas such as welfare and energy policy, which cut across the divide between reserved and devolved functions. There is also a wider frustration at the devolved level about the variable performance of Whitehall in consulting and engaging the devolved governments when developing policy that affects devolved areas. Fiscal and welfare devolution is also creating a more complex distribution of powers and responsibilities, creating a greater need for coordination and cooperation in these and other areas.
The set of issues outlined above create a need for enhanced intergovernmental machinery at both the multilateral and bilateral levels, which we discuss in turn now.

**How the multilateral intergovernmental machinery can be improved**

The formal multilateral machinery (the JMC structures) has an important symbolic function as the summit of senior political figures from the four governments – particularly in the JMC Plenary format – and provides an opportunity for tricky issues to be aired at the highest level. At a time of political differences between the governments, it is important that these formal meetings are taken seriously, but there was a perception among some of those we spoke to in the administrations that the UK government does not seem to prioritise these meetings, that not enough time is set aside for them, and that contentious issues are kept off the agenda (leading to what was described to us as a ‘sanitised’ agenda that produces a discussion of little value). We also heard that JMC meetings are sometimes used as an occasion for ‘political grandstanding’ – particularly by devolved ministers – rather than for productive dialogue.

Formal ministerial meetings of this sort will never be the place where complex intergovernmental issues are worked through, but the JMC meetings could be used more for genuine dialogue about common and shared problems, and for the building of mutual understanding and learning about how the different governments operate and what are the challenges they face. When differences of opinion cannot be resolved lower down between officials, these can also be referred upwards to the JMC, so it is important that these formal meetings happen on a regular basis.

There are several different JMC formats that should be differentiated. The JMC Plenary committee has continued to meet on an annual basis, which should be a minimum requirement. The JMC Domestic has met less regularly in recent years, and it seems that there is a lack of agreement about the purpose of this format. We think it should probably be scrapped in its current form, and replaced by new sectoral sub-committees in cross-cutting areas such as welfare, the economy and the environment, where all the governments have similar objectives, even if they do not agree on the best way to achieve them.

At present, in answer to the committee’s second question, cooperation between the governments does happen, but often in an ad hoc and variable way that depends on personal relationships more than structures, which leaves it dependent on individual officials who frequently change jobs (taking their institutional memory with them). Reforms along the lines suggested above could help to institutionalise some of this policy cooperation.

There is also a need for enhanced intergovernmental systems around fiscal and budgetary issues. The ‘Finance Quad’ meetings should be turned into a proper JMC Finance committee, with the additional transparency and capacity for external scrutiny that comes with this. There should also be more transparency in general about how the devolved governments’ budgets are calculated, which is becoming much more complex as a result of tax devolution.
The JMC Europe meeting plays a distinct and important role in giving the devolved governments an opportunity to feed in their views on the formulation of the UK line in EU negotiations. However, the perception from some devolved officials is that their ministers are often listened to but then ignored, which can cause frustration, as can the reluctance of some UK departments to allow devolved ministers to participate in meetings of the EU Council of Ministers. This is a sensitive area as the UK government will naturally wish to preserve its sole prerogative to represent the country in international negotiations, but when EU decisions interact closely with devolved matters (such as fisheries and agriculture), a more inclusive approach should be adopted.

The formal JMC dispute resolution mechanism established in 2010 appears to have been a successful innovation. It has only been invoked four times, but we were told by several officials that the threat of escalating an issue to the JMC’s dispute resolution committee is useful in encouraging administrations to reach an agreement.

Why there is a need for strengthened bilateral machinery

The UK’s devolution settlements are significantly different from each other, as are the nature of many of the policy challenges faced in the different territories. As a result, alongside the multilateral machinery discussed above, there is a need for strong bilateral relationships in many policy areas.

Welsh devolution is the least extensive, and at present there are a number of complex constitutional ‘jagged edges’ where devolved and non-devolved powers intersect (for instance around skills and employment policy, energy and the environment, and justice and community safety). In such areas, coordination of policy is an ongoing challenge, but we were told that intergovernmental consultation does not always happen in time or at all. The proposal of the Silk Commission and Welsh Government for a new standing Welsh Intergovernmental Committee could be a useful way to facilitate relations between the UK and Welsh Governments and to create a single forum to which challenging issues can be referred.

In Scotland, recent and forthcoming changes to the devolution arrangements have led to the emergence of areas of shared competence in place of a neat division between reserved and devolved domains (which was, broadly speaking, the logic of the initial settlement). In particular, the devolution of income tax and other tax and borrowing powers, and also the devolution of a number of welfare benefits, means having formerly been almost wholly reserved the welfare and tax systems will become a joint responsibility of the two governments. There will therefore be a need for new UK-Scottish intergovernmental machinery both to oversee the transfer of these powers, and then to ensure that there is effective administration of the new more complex fiscal framework and the intersection between devolved and reserved welfare policy.

The Smith Commission has also created an expectation of more extensive consultation with Edinburgh in areas such as the regulation of energy markets, broadcasting and the media, so this also creates a need for new bilateral communication channels and accountability mechanisms for bodies such as Ofcom and Ofgem.
The appropriate balance between formal mechanisms and informal relationships

One clear lesson from our research is that good inter-personal relationships at the official level are key to effective inter-governmental relations. But while good relationships are vital, our research also found that the existence of regular forums for discussion of particular policy issues can be a useful way to build such relationships. Face-to-face contact is very important, and this can be facilitated through formal mechanisms such as the JMC and intergovernmental working groups. So our conclusion is that well-designed formal mechanisms in areas where there is a clear need for intergovernmental cooperation or consultation can help to build the informal relationships and networks that bring wider benefits.

How the UK Parliament can best scrutinise inter-governmental relations between the UK Government and devolved administrations

There should be greater transparency and scrutiny of formal intergovernmental relations given the growing range of important and often contentious issues that must be resolved between administrations. Such scrutiny could be provided by a new Devolution Committee of the House of Commons, as recommended by the McKay Commission, or perhaps through joint scrutiny arrangements by parliamentarians from the UK and devolved legislatures. The House of Lords Constitution Committee itself will no doubt also continue to call to account those involved in intergovernmental relations to shine a light on how these processes work in practice.

Informal intergovernmental relations are harder to scrutinise. There are already Memoranda of Understanding and devolution guidance notes that provide guidelines for intergovernmental relations, including information sharing and consultation. There are not regularly updated – Guidance Note 5, which details the role of the Secretary of State for Northern Ireland, includes policing and criminal justice among their responsibilities, suggesting that the note has not been updated since 2010 at least, when control over these policy areas was devolved. Guidance notes relating to interactions with the devolved administrations should be regularly updated to enable external scrutiny.

We also conclude that in each department a single named senior official should be responsible for ensuring that the department consults sufficiently and early enough in policy development processes, and that official could then be called to account for his or her actions and the performance of the department in this regard.

How the role of the territorial Secretaries of State and their departments should be altered

We conclude from our research that there is a need for more coherent and principles-based policy and practice relating to the UK’s territorial constitution as a whole. In line with past periods of change, devolution is at present proceeding on separate tracks for each part of the UK, with important decisions being taken in response to political pressures in each territory, without much consideration of the implications for the rest of the country. This may lead to what Professor Charlie Jeffery has termed a “constitutional chain reaction”, as developments relating to one territory then spill over in unexpected ways into debates.
elsewhere in the country (as when devolution to Scotland raises the pressure to address the ‘West Lothian Question’).

As a result, we favour the creation of a stronger and more joined-up single centre for devolution policy and strategy in Whitehall – perhaps along the lines of past proposals for a single ‘Department for Devolution’ or ‘Department for the Nations and Regions’. This could bring together the different units with responsibility for devolution issues across the Cabinet Office and Treasury along with the three territorial offices. We believe this could help to encourage more joined-up thinking about devolution strategy across the UK, as well as allowing lesson learning and exchange of best practice across different administrations. It might also save costs by merging back office functions, though a proper analysis of the business case would be required to be certain of this. There might even be advantages to having some officials from the devolved administrations co-located in this department to improve relations and understanding.

However, the asymmetry of the devolution arrangements, combined with the fact that so much is changing in each part of the UK, mean that there will still be three different jobs to be done in overseeing each of the settlements. Any merged department would therefore need to retain separate policy teams or directorates for the three nations (along with a central strategy team looking across the bigger picture). There is also a case to retain separate ministers for each of the three nations, but these could potentially be Ministers of State with the right to attend Cabinet (to ensure the territorial voices are present at the top level of policy discussion) rather than Secretaries of State as at present.

3 February 2015
Q43 The Chairman: Good morning, First Minister. Can you hear us?

Carwyn Jones: Good morning. I can hear you, yes, fine.

The Chairman: You may be an old hand at this process with cameras, but it is a novel experience for us in this Committee. Can I say how grateful we are to you for being available to talk to us? We appreciate how busy you are and we do very much appreciate it. We have just had a meeting with David Melding AM and with David Davies MP, which has been very helpful, and we look forward to asking you various questions. Can I start straight away, because I know time is always against us on these occasions?

Carwyn Jones: Yes.

The Chairman: One of the things that emerged from the discussion with the AM and the MP was that relations between the Assembly Members and the House of Commons Members are not terribly good at a personal level. It is really against that background that I would like to ask you what you see as the purpose of intergovernmental relations in the United Kingdom and how you feel that that situation can be addressed.
Carwyn Jones: First of all, of course, I can offer evidence from the government side of relationships rather than the parliamentary side. The purpose of intergovernmental relations is, in an ideal world, to work together on common issues and see whether there can be common conclusions as a result of that work. That is not what we have now, though, in terms of the structure that is in place. For example, we have had occasions where we have had to adapt our policies as a result of a sudden announcement that is made in England. Education is one example of that, with qualifications, and it has happened with higher education—just to give two examples. Ideally, because we are talking about a system that affects not just England, the proposals would come before a JMC or its equivalent and the consequences worked through. What tends to happen is that there is an announcement, there is an effect on the devolved Administrations, there is often no notice, and we have to go from there, whereas it would be better for these things to be worked through in a more logical manner.

Q44 The Chairman: Thank you. Do you see the mechanism of intergovernmental relations as something that helps relationships or gets in the way of them, or is it insufficiently developed to do either?

Carwyn Jones: I think the effect is neutral. If we look at the system we work under, we have memoranda of understanding with government departments. They are pretty much kept to. If we look at the JMC process, we have to divide it into three: JMC (Europe), which functions reasonably well; JMC (Plenary), which meets every year, which again functions, although it tends to be a meeting where grievances are aired rather than constructive proposals taken forward; and JMC (Domestic), which has no real purpose as far as I can see at the moment, and thought would have to be given to how that is replaced. The principle is a good one, obviously, but the mechanism and the structure that are in place at the moment do not deliver what I think the original intention was meant to be.

Q45 Baroness Taylor of Bolton: First Minister, my colleagues will come shortly to ask more details about the JMC, and what you have said so far about it working on Europe is interesting, because that echoes something that we heard earlier. I wanted to ask you about your personal relationships and any structural relationships with the other devolved Administrations outside the JMC, in particular the scope for policy development. You just indicated that you feel sometimes bounced by the Westminster Government into policy decisions. We were told that the devolved Administrations do not gang up on Westminster, but I wonder to what extent you have had discussions with Northern Ireland or with Scotland, particularly on policy issues, perhaps with a view to trying to impact policy development rather than just having to be responsive to things that you get from Westminster.

Carwyn Jones: We do work closely with Northern Ireland and Scotland. I think it is fair to say that the relationship with Scotland was affected by the referendum. The Scottish Government took the view that independence was the solution to any issues that surrounded devolution. We do meet regularly, both at the British-Irish Council and, of course, at bilaterals. I last met the First Minister and Deputy First Minister of Northern Ireland shortly after the Scottish referendum. I met the Scottish First Minister in November. Where we can share common ground we will work together to promote that common ground, although clearly there will be some differences, for example on the Welsh Government’s position on Barnett and the Scottish Government’s position on Barnett. As
you would expect, we work together where there is common ground and we would then look to promote that common ground.

Baroness Taylor of Bolton: Do you think that that is likely to increase in the future? We are in a period of some turmoil, given the fact that although the referendum went for Scotland staying within the union, a lot of changes are still very much centre stage and very much on the agenda. Do you think there will be a forward-looking approach to the devolved Administrations trying to influence UK policy development? Is that possible?

Carwyn Jones: Yes, in non-devolved areas with varying degrees of success. Our difficulty is really that we should not be talking about three devolved Administrations trying to influence another Administration, but simply that the four Administrations should be able to sit down together. The difficulty we have had over the years is that constitutional conversations have taken place in different rooms: Whitehall with Scotland on the one hand, Wales in another room, Northern Ireland in another room. Much more thought needs to be given to all four Administrations being part of a process that leads to greater constitutional stability than we have at the moment and, I have to say, will continue in the future.

Q46 Lord Brennan: First Minister, do you think that the strengthening of the constitutional process in intergovernmental relations is going to be better achieved by giving it a statutory framework, bearing in mind, to the extent that you as a lawyer think appropriate, how such a framework could or should take the position of England into account?

Carwyn Jones: It has been so many years since I was a lawyer and I am not insured to give legal advice, but I will do my best.

There are fundamental issues here that need to be addressed. The JMC in its present form is basically a Westminster creation that is designed to allow Westminster to discuss issues with the devolved Administrations. It is not jointly owned in that sense; the meetings always take place in London and it is not a proper forum of four Administrations coming together to discuss issues of mutual interest in that way.

I think it is important for intergovernmental machinery to be put on a statutory basis. That certainly adds teeth to the system, but it is the system itself that needs to be examined very, very carefully as well. My view of how that is done would be that one of the things that the JMC could be doing now is to start the work that is needed for what I believe is a constitutional convention process that is needed for the UK. The JMC could certainly be a catalyst or a place where that work could be catalysed in order to put in place what in my view would be the right constitution for the UK in the 21st century.

Q47 Lord Powell of Bayswater: First Minister, you have already spoken a bit about the JMC and we have had different evidence about this. We had one witness who told us that it was an institution for political grandstanding. We have had people who said that the devolved Administrations could not put items on the agenda. I think your own introductory comments about the JMC might be described as modified rapture, and you have now also given us some ideas as to what might replace it. Do you have hope for it even in its present form or would you prefer it to be removed as soon as possible and some other institution put in its place?
Carwyn Jones: It needs to be replaced. The difficulty with JMC (Domestic), for example, is that, because the Prime Minister never attends, it became the practice of the Scottish First Minister not to attend, and then, of course, you get that decline in attendance of Heads of Government at what should be an important meeting. Consideration needs to be given to what needs to replace that element of the JMC.

The JMC (Plenary), I think it is right to say, has become more of a meeting place where grievances are aired. There tends to be more—how shall I put it—full and frank discussion in the JMC (Plenary) than constructive discussion. That is the nature of things: in some ways, of course, there are four different Administrations with four different parties or combinations of parties running them. It certainly is not the case that the current machinery has enabled joint working and joint consideration of policy that affects the whole of the UK to be taken forward. It is the replacement for the JMC that is the important consideration.

Lord Powell of Bayswater: Surely there has to be somewhere where differences can be discussed and resolved. I thought that one of the main purposes of the JMC was that it was like a court of appeal. If differences are not resolved anywhere else in the structure, at least it is there and they can be resolved. Has that been your experience?

Carwyn Jones: The issues are aired in JMC, and they are often resolved outside the JMC after they have been aired. There is a dispute resolution process in place that has not been tested to its fullest extent because whenever disputes have arisen they have been resolved. The difficulty is that the dispute resolution process that is in place leads back inevitably to the Treasury, which will then take the final decision. Again, it comes back to the point that it gives the impression of being a UK Government committee that is there to meet on occasion with the devolved Administrations rather than a committee of all four Administrations. That is part of the difficulty with the current structure.

Lord Powell of Bayswater: If it was not there, there would need to be something?

Carwyn Jones: Yes, there would. Coming back to the point I made earlier, too many conversations have taken place in different rooms and there has to be an effective forum where all four Administrations can discuss constitutional and other issues. The JMC as a principle can fulfil that aspiration, but its current structure does not really allow it.

Q48 Lord Cullen of Whitekirk: Does the asymmetry of devolution cause any problem in regard to what can usefully be discussed at a single meeting of the JMC? In other words, can some points be of interest to some Administrations but not to others, so it may affect what can be discussed?

Carwyn Jones: Let us take welfare, for example, which is not devolved to Scotland and Wales, and executive devolution, if I remember rightly, to Northern Ireland. On the face of it, the argument might be that this is not an issue for the JMC because welfare per se is not devolved, but there are issues, such as those that we have had to deal with the DWP. Where programmes are put in place, they do have an effect on programmes that are devolved. Even where an issue is not on the face of it devolved, it has an effect on devolved areas, and that is just one example of where that has happened. Even where we do discuss issues that may not be devolved or may be devolved to different extents in different parts of the UK, there will still be a knock-on effect in the same way—I do not want to get into an argument on this—with English courts and English laws. That knock-on effect is always the difficult effect to measure.
Baroness Dean of Thornton-le-Fylde: Good morning, First Minister. I would like to take the questions about the JMC a bit further. The Smith Commission looking at Scotland says that the JMC must be reformed as a matter of urgency and scaled up significantly. On the other hand, Professor Keating, a Scottish academic, says that if you make it over-elaborate, no one will use it. You are on record as saying that if there is a dispute, the Treasury, and the UK itself, decides, and this has to change. Could I ask you what you think is needed practically either to be changed—I think you just said it needs to be reformed—or perhaps replaced? As First Minister for Wales, practically for Wales in the event of further devolution, what would you need from the JMC by way of change?

Carwyn Jones: Two things. First of all, the JMC needs to be put on a statutory basis—or the intergovernmental machinery, if I can put it that way, needs to be put on a statutory basis so that it has a greater sense of underpinning.

Secondly, with the JMC (Domestic), instead of having one meeting that deals or tries to deal with all issues, I think there is merit in having different work streams represented by different meetings. It is a model that is used, for example, in the British-Irish Council. Take welfare; I think it would be more productive if there were to be meetings with the relevant Ministers dealing with the issue of welfare to work out what the decisions of the UK Government might be and what effect there might then be on devolved employment programmes, for example, so that those issues can be resolved. They are not issues of political dispute in that sense, but they could be resolved with proper consideration at the beginning of the process rather than difficulties appearing once an announcement has been made. There are two examples there of how the machinery could be improved.

Baroness Falkner of Margravine: First Minister, in light of what you have said, I would like to turn to transparency in the JMC. Some of our witnesses have told us that the reports, the communiqués, were extremely bland, very brief. Nobody could work out what items were on the agenda, what had been resolved and how it got resolved. In light of that sense of frustration about accountability and transparency, would you have a view, such as regular reports perhaps being published after a JMC that went into far more detail and that were capable of being used for parliamentary scrutiny at Westminster and within the devolved Assemblies?

Carwyn Jones: I think there is merit in that suggestion. It is quite right to say that the communiqués are bland. The reality is, of course, that once all of us leave JMC (Plenary) we tell people what was discussed in there anyway. People are curious to know what is happening. There are some details that cannot be gone into—when we have security briefings, of course, there are issues that cannot be made public for obvious reasons—but, for example, where we raise issues as a Government with the UK Government I will say that when I leave the meeting. I think a balance can be struck. For example, it has been the case for many, many years in Wales that Cabinet minutes are published publicly. We have had no difficulty with that. Yes, we have the opportunity to redact certain parts of the minutes where there are good reasons for doing so, but I think that transparency would be helpful certainly not just for the legislatures but for the public understanding of what happens in JMC.

Baroness Falkner of Margravine: Do you think that parliamentary input into what should appear on the agenda would be useful?
Carwyn Jones: It is difficult to know what the mechanism would be for that to happen, given, of course, that the JMC is an intergovernmental event rather than an interparliamentary event. I would expect, of course, the different Administrations to bring issues to the table as influenced by the members of the respective legislatures.

The Chairman: Perhaps I could pursue this a little further, First Minister. It seems to me there is a lack of follow-through from the meetings of the JMC, possibly because the minutes are so vague and brief. Is there a follow-through that you are conscious of, and if not, should there be? I am thinking, for example, of whether we injected into the IGRs such provision as an annual audit of intergovernmental relations and possibly even a debate at Westminster on the state of the union generally in which all the different components would take part. Do you feel those are the sort of mechanisms that might improve IGR?

Carwyn Jones: First of all, the state of the union debate would be a matter for the future legislature to consider. As I said earlier, I think there is merit in greater transparency in what the JMC does along the lines of what we already do here with Cabinet meetings in Wales. It does enable the public, and indeed Members, to understand not everything but most of what is discussed in those Cabinet meetings. The same can apply to the JMC.

The Chairman: You do not feel there is a danger that everything just disappears into the undergrowth and nothing seems to have happened by way of follow-through?

Carwyn Jones: I think it is fair to say that the communiqué does not always reflect to the greatest accuracy what was discussed in those meetings, because there are some robust discussions. The minutes themselves will reflect those discussions. I think a compromise can be found, as we have here in Wales, between a communiqué that says very little and a set of minutes that will be too detailed and would involve revealing areas of sensitive information, such as with regards to security.

Baroness Taylor of Bolton: I was just going to say that Cabinet minutes only reveal decisions made; they do not actually reveal much of the discussion that took place and they certainly do not reveal the extent of any dissent, which is one of the great weaknesses of Cabinet minutes. Therefore, I think there is a problem in relying on anything that is considered an official document in that way. I think you do need to find other ways and other mechanisms of getting issues raised.

I did want to open up the suggestion that we are talking about structures, but a lot of this is dependent on personalities and the way in which people work together. A lot of the evidence that we have heard suggests that it is the personalities and how people are willing to co-operate that make a difference.

The Chairman: Do you want to comment on that, First Minister?

Carwyn Jones: Yes. Coming back to the point I made earlier where we have four Administrations run by different parties or combinations of parties, on that basis it is important that politicians of different beliefs can work together in a business-like way and certainly that is what we try to do. There will be occasions when there will be disputes; that is the nature of democracy. Certainly, from my point of view, I would always go into a JMC with a view to finding ways forward rather than with a view to trying to spend the entire time involved in argument. That is necessary for the survival of the UK. I think that we, as Heads of Government, do take seriously the need to have that business-like relationship, despite the party differences.
Lord Lexden: First Minister, could I lead you into the final section of our session this morning, which goes under the heading "Dealing with Whitehall"? Could you very kindly sum up for us the experience of your Administration in dealing with Whitehall departments?

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

Much depends on the experience of a particular department in dealing with devolved Administrations. Some departments are well used to the model of devolution, and they understand the differences and what they need to do to consult us in order to move policy forward. With others—the Home Office is an example of this—it is more difficult, not because of a deliberate malevolence on their part but because of a lack of understanding, quite often of the political structures in Wales. This is particularly true with the issue of civil contingencies and with issues such as policing, where there are jagged edges where the Home Office has proposed certain ways forward but has based that policy on the structure—for example, the health structure—that exists in England rather than what happens in Wales. It is mixed. In the main, I think it is fair to say that the relationship is as it should be, but there are some exceptions where that does not happen.

Lord Lexden: A brief supplementary if I may. Could I ask you to comment on one of the observations that have been made by one of our expert witnesses, who said that there is a quite striking lack of expertise at a senior level in Whitehall with the devolved territories? Could you comment on that?

Carwyn Jones: I think that is correct. I do not think the situation is as bad as it once was, but it is still far from perfect. There is also a difference in the perception of devolution in Scotland and in Northern Ireland as compared to Wales. It is not always case—and the Home Office again is an example of this—that there are different devolved structures in Wales. Again, it is not a Whitehall failing collectively; it is an issue with some departments, not so much with others. Their awareness of Scottish devolution and its structures tends to be far better than their awareness of Wales.

Lord Powell of Bayswater: First Minister, another quick supplementary to that. Do you think the extent of knowledge in Whitehall about Wales particularly, but all the Administrations, could be improved by more exchanges of officials between Whitehall and the devolved Administration? You would always have people who had experienced both sides in practical ways. Would that not help quite a bit to improve the relationship and make it more effective?

Carwyn Jones: I think it would, yes. From our point of view, we have never been of the view that we should create a separate Welsh civil service that exists independently of the civil service in England or Scotland. We do not think that is in anyone’s interests, and there are certainly advantages to be gained where we can second people. We have done this to Whitehall departments and vice versa. I think that is a very healthy exchange and one that we would be keen to promote further.
Q52 The Chairman: Thank you. I was very gratified to hear that answer, First Minister, because I, as you can understand, take a fairly close interest in Scotland. Do you think your answer would still hold water if a Welsh Nationalist Government were elected in the Assembly in Wales?

Carwyn Jones: I could not comment on the electoral prospects of a party I am not a member of.

The Chairman: I will not draw you any further on it, but I think you get the drift of what I am implying. Can I bring in Lord Crickhowell?

Q53 Lord Crickhowell: Good morning, First Minister. I want to take you to two related questions. The first is on the role of the Secretary of State for Wales. The guidance given in government is that the Secretary of State for Wales acts to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that have affected Wales and to represent the UK Government in Wales. I am going to ask you—but I would like to put it in the context of the second question—what you think the role of the Secretary of State for Wales should be. You have already indicated that we are in a changing world and there is a need for four Administrations to work together, particularly after the Scottish referendum and the likely developments, indeed the developments in the Wales Act and future scheduled developments. What is your view about the advantages and disadvantages of having a single UK Government department dealing with intergovernmental relations with a single Secretary of State? Do you think that is a good idea or a bad idea? How would the Secretary of State for Wales and his role fit into such a structure if we did go down that road?

Carwyn Jones: I think the first thing to emphasise is that the interests of the different devolved Administrations are not all the same, so to have one Secretary of State trying to represent all three devolved nations around the Cabinet table would be difficult. Barnett is one glaring example of where we would take a very different view from the Scottish Government. At the moment, I would say the case is not made for the removal of the position of Secretary of State for Wales. It is important to have somebody around the Cabinet table who has an understanding of Wales and its constitutional structure. It is also important at this time of constitutional change to make sure that Wales's voice is heard. It is certainly the case with all that has happened in Scotland that devolution has been viewed through a blue and white prism, that everything about devolution has been seen in terms of the effect on Scotland and not in terms of the effect on Wales. I would be very, very wary of losing that Cabinet voice in Westminster that puts Wales's case at a time when it is difficult enough to get Wales's constitutional position noticed compared to the situation in Scotland. My fear would be that if you had a Secretary of State who was responsible for the three devolved Administrations, the emphasis would be very strongly on Scotland and issues that arise now and again on Northern Ireland, and Wales would just go off the agenda.

Lord Crickhowell: I am sympathetic to what you say. Nonetheless, we are in a sense getting devolution in an ad hoc way, bit by bit. Something happens in Scotland and that triggers something, say, in Wales, and we are not really having a collective look at the whole constitutional effect of the changes that are taking place. Do you not think there is a case for some kind of co-ordination of the whole arrangement so that we protect the constitution of the United Kingdom as a whole?
Carwyn Jones: I entirely agree. I have been saying now for some years that we need a constitutional convention in the UK. It is absolutely right to say that devolution of powers has been done in a piecemeal fashion, and I do not think that will do in the future. For example, the Smith Commission’s recommendations for Scotland, which I have no quibble with, has an effect on Wales. I know that the view that is taken by some in the UK Government is that that is a wholly separate process with no effect at all on the other devolved Administrations. That is naive. There is inevitably an effect; people in Wales will see what is proposed for Scotland and say, “If Scotland is having, for example, air passenger duty, why is Wales not?” The effect will be there, but I do not think with the Smith Commission process that thought was given to what the effect would be on the rest of the UK. It was purely seen through a Scottish prism.

How can that be taken forward? I would like to see the four Administrations, perhaps using the JMC, to put a process in place that will begin the constitutional convention, to lay down the process, to lay down the timetable for the convention, and then, of course, to do the job that it would be asked to do: to come forward with a constitution for the UK for the 21st century, to ensure, as I would want to see, that the UK survives and prospers. Then, of course, there will be joint agreement on that constitution with the four Administrations. I think that provides us with a robust model for the UK in the future. I do not see signs of that happening at the moment, and that troubles me. I think we are in a situation where, first, there is piecemeal devolution—that is absolutely correct; but, secondly, a complete lack of understanding that where a particular power is devolved in one part of the UK, it is bound to have an effect on other parts of the UK.

Lord Crickhowell: Thank you. That is a very helpful answer. There is only one drawback and difficulty I see about the convention way forward. That is the time it is likely to take and the other priorities that are already given to the timetable, and it is going to be quite difficult to reconcile the two.

Carwyn Jones: I think there are two issues here: the issue of structure and the issue of powers. The constitutional convention for me would look at the structure of the UK, not at the powers devolved to the different Administrations. That is a parallel process. I would not expect the constitutional convention to say, “We are going to look now at where powers should rest for air passenger duty”. That would not be the level of detail I would expect. What the convention should do, to my mind, is to say, “Okay, this is what the UK will look like. This is where the devolved Administrations fit. This is what the UK Parliament and UK Government do. This is their constitutional position”, and maybe looking at the mechanism as to how powers are devolved but not which powers are devolved. I think those two processes can run in parallel. It is absolutely correct to say, of course, that this will take some time. It cannot be done overnight. All the better for the process to start, to my mind, as quickly as possible.

Q54 The Chairman: First Minister, we are in a slight purdah at the moment because of the tail end of the Parliament. We as a Committee have contemplated all kinds of things that we might wish to pursue as major lines of inquiry after the next election, but there is not a lot of point in us starting on another inquiry for which we would not have time to develop the themes that you have touched on. What you have said is of considerable interest to us, of course, and I am most grateful. I see that you have Dr Hugh Rawlings beside you, who has a very distinguished constitutional history and a long period of commitment to the Welsh
office. I should have asked you at the outset whether you wish to involve him in any of the answers. He has been sitting there with appropriate inscrutability on his face. If you wish to invite him to say anything now, we would be very happy to hear if he has anything to add.

**Carwyn Jones:** He has not nudged me or kicked me under the table, so I take that as a sign of encouragement, but I will ask you, Hugh, if there is anything you wish to add to what I said.

**Dr Rawlings:** Thank you very much, Chair. Perhaps I could just mention again the point that the First Minister has made about statutory underpinning for the JMC. This question perhaps needs to be seen in the wider context as well that as a result of the Smith Commission we seem to be moving towards greater legalisation of the UK constitution. Tomorrow, we expect to see the new Scotland Bill in which, for example, the Sewel convention is supposed to be being written or given statutory underpinning, that being something that hitherto has proceeded on a non-statutory basis, on the basis of informal understandings between the Government and the Parliament.

I think that this question of underpinning intergovernmental relations with statute needs to be seen in that context, and perhaps we need to pause and think about how far we are going to take this. Are we, in fact, moving towards a written constitution for the United Kingdom, perhaps as a result of a convention process, or are we, as appears to be at the moment, perhaps looking at legalisation of particular aspects of the constitution without regard for wider issues? Those would be issues that I think the Committee might want to think about.

**The Chairman:** Thank you again. You have raised some very interesting thoughts, which we might well wish to pursue at a later date. First Minister, I do not know if there is anything else you would like to add to your answers on a topic that we have not covered. Do you think we have covered everything to your satisfaction?

**Carwyn Jones:** Yes, I think we have. We could spend a lot of time talking about the constitution, but that is for another day, I suspect. Certainly, I am grateful for the opportunity to share my views with regard to intergovernmental relations and, no doubt, the events of the next few months will have an effect on those.

**The Chairman:** Thank you very much. Your replies have been illuminating. They have also been concise. We have covered a lot of ground very quickly. We are most grateful to you, and we shall study very carefully the answers you have given us and think a lot about them. Thank you so much.

**Carwyn Jones:** Thank you.
1. There is a long-standing distinction in multilevel systems between coordinate federalism, in which each level has its own distinct competences and administers them; and cooperative federalism in which competences and policy fields are shared. The latter became more important following the Second World War with the expansion of government and the welfare state.

2. This gave rise to the idea of intergovernmental relations (IGR), sometimes described as an order of government in its own right. This was inevitable but did raise problems. The idea that everything in government has to be coordinated or ‘joined-up’ is an illusion, as joining up on one basis usually means uncoupling on another one. So vertical policy systems linking governments within individual policy spheres can loosen horizontal coordination at the devolved level. IGR also tends to downgrade the role of parliaments and enhance the power of the executive. Priorities of devolved governments may also be distorted by grants and programmes from the central level.

3. It is for this reason that federal systems in recent years have sought to disentangle competences where possible and simplify relationships. This has gone along with moving towards block grants rather than earmarked funding.

4. Another move is towards competitive federalism. Sometimes this refers to economic competition, which can be harmful where it involves tax competition and a race to the bottom. It can be benign, however, where it involve competing in policy innovation, allowing mutual learning and comparison.

5. The devolution settlement in Scotland had the advantage of being based on reserved powers, with whole blocks of competences devolved, and a block funding system. Developments in Wales may be heading in this direction with legislative powers to accompany administrative devolution.

6. There is a risk, however, that IGR in the UK will become over-complex and institutionalized, as powers are devolved in a piecemeal manner, creating new interdependencies, and as governments compete to claim policy space.

7. The Smith Commission report fails to identify clear blocks of competences or provide a convincing rationale for dealing with particular problems at one or other level. Some of its recommendations deal with individual policies within a broader field.

8. There is evidence that the UK parties are seeking to raise the profile of the UK Government in Scotland following the election of the SNP administration in 2007 and again after the referendum. They are also seeking to make connections within Scotland, notably with local government. The extension of the City Deal programme is an example. The Canadian federal government did similar things following the Quebec referendum of 1995; there it has been a sensitive matter as provinces have often resisted federal spending intrusions in matters of provincial competences. While understandable from a political standpoint, this risks complicating intergovernmental relations and distorting priorities.

9. The scope of IGR should therefore be well-defined and limited. There are three circumstances that call for it:
a. Where competences are shared, as in some economic development matters;
b. Where there is a clear interdependence between one competence and another, which often happens in welfare matters.
c. Where there is a spillover effect from one jurisdiction into another, as may happen on taxation, for example the proposal to devolve corporation tax in Northern Ireland.

10. IGR can be used for two purposes, which may require different institutions
a. For joint policy-making
b. For conflict-resolution.

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

12. What is important is that the various governments know what the others are doing, so that needless difficulties are avoided.

13. Experience elsewhere suggests that political parties are key elements in IGR, with deals done within ruling parties or between parties at centre and periphery. Electoral trends in the UK suggest that we may be about to move from the former towards the latter.

14. Three areas are particularly important for the future of IGR

15. The first is finance. Federal states with resource-sharing will usually have some intergovernmental forum for discussing this, often with an independent body to advise on facts and figures. In the UK, the Barnett Formula is entirely at the discretion of the centre.

16. The second is Europe. The Joint Ministerial Committee on Europe is the one that has had a continuous existence since 1999 but there are concerns about the representation of the devolved territories in European matters.

17. The third is welfare. As devolution is extended to welfare, there will be more interconnections between devolved and reserved matters. Care will need to be taken to design further devolution so as not to create excessive interdependence and mechanisms will be needed to ensure that IGR, where needed, works properly.

9 January 2015
Mr Christopher Luke—Written evidence (IGR0005)

1. To someone like myself who – despite being half-English and half Ulster-Scots, and also having a Welsh sister-in-law – was denied a vote in the recent referendum on Scottish Independence on account of my being resident in England, I welcome this opportunity to comment on inter-governmental relations between the United Kingdom Government and the devolved administrations.

2. I am sure you will appreciate that, given my family's roots in all four parts of the United Kingdom, I am unashamedly a UNIONIST with a capital U, N, I, O, N, I, S, T. I believe very strongly that the sum of the Union is greater than its component parts; that the Union is – or should be – a partnership of equals in which no one part has, or should have, dominance over the other three; that without any of its parts the residue of the kingdom would very soon cease to remain “united”; and that one’s primary allegiance, other than to Almighty God, should be to the maintenance of the Union of the United Kingdom of England, Scotland, Wales and Northern Ireland, rather than to any political party (or parties).

3. Like a four-piece jigsaw puzzle or a multi-threaded tapestry, each piece of the jigsaw – each localised but, nevertheless, currently interwoven thread – is unique and special. Without the contribution of any one piece or thread the picture itself becomes incomplete, its beauty marred, and its value depreciated by others at home and abroad. It is therefore fundamental to the well-being of the United Kingdom (as a whole) that a way forward is established which will buttress the Union of the United Kingdom for many years to come, lest we degenerate into being merely a federation of semi-independent nation-states bound and gagged together, possibly via our shared membership of the leviathan European Union.

4. The Union of the United Kingdom has served the diverse peoples of England, Scotland, Wales and Northern Ireland well for 214 years, whilst the legislative union between Scotland and England established by the 1707 Treaty of Union – and underpinned by the earlier Union of the Crowns of 1603 – has proved to be largely successful in promoting peace and harmony, growing prosperity and lasting stability, between the peoples of England and Scotland for that much longer. Together, we have become – to coin a phrase – “a force for good” on the world stage, and have achieved much more together than would have been the case had we remained – or, God forbid it, were we to ever again become – apart from, rather than parts of, one another. We are not merely strangers, or even neighbours, in the same street, but members of the same family and occupants of the same house.

5. It is to be regretted that successive UK Governments (of all political hues) have not always appreciated the motives of the electorate in voting for particular political parties in the various states/regions of the United Kingdom, and have often used – or should one say abused – those states/regions who have rejected Members of Parliament belonging to political parties other than their own, as being not unlike the political equivalent of rats in a vivisectionist's laboratory when experimenting
with controversial policies (particularly relating to the reform of local government finance and the restructuring of local government) to the detriment of good relationships between the government and the governed as a whole.

6. The latter has been compounded by Scotland having its own legal system and complications/misunderstandings surrounding the level and range of powers hitherto devolved to the Northern Ireland Parliament and Government between 1921 and 1972 – which many see as a prototype for legislative devolution elsewhere in the UK – rather than the comparatively short period of direct-rule in the Province between 1972 and the restoration of some semblance of devolved government in Ulster in 1998 ahead of the subsequent creation of the National Assembly for Wales and the Scottish Parliament and/or any serious consideration of how best to enact and execute legislation for solely English matters.

7. At the outset I declare that, historically, I opposed the devolution of fiscal and primary legislative powers to those directly-elected bodies often referred to as “the devolved institutions” – believing such bodies would indeed institutionalise the anomaly which has come to be known as “the West Lothian Question”. In my heart of hearts too, I would much prefer all pro-union parties in Scotland would revert to a pre-1995 scenario when Scotland enjoyed a modest degree of administrative devolution channelled via a two-tier structure of local government (i.e., regional and district councils) rather than a smaller number of unitary local authorities with the Scottish Parliament acting as both a state-wide upper-tier of devolved administration (in a local authority sense) and a legislature (in a law-making capacity) for functions and services transferred to it from the United Kingdom Parliament and Scotland Office.

8. However, recognising that this is not an option being actively considered by any of the main pro-union parties in Scotland I have reluctantly come to the conclusion that, in order to overcome the anomaly of the West Lothian Question, rather than devolve more powers over a wider range of government functions and public services in Scotland, all efforts must now be placed on federalising the governance of the United Kingdom as a whole, if we are to avoid creating two classes of Parliamentarian in the UK Parliament and institutionalising the very division which the United Kingdom Parliament was created to dissolve.

9. That said, the prospect of devolution of further powers to the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly – primarily, it would appear, as a sop to nationalists Hell-bent on destroying the integrity of the United Kingdom – surely calls into question the level and range of powers devolved to each of these institutions. The disparity of authority devolved from Whitehall and Westminster – coupled with the absence of a uniform structure of local government throughout the UK – could well unleash currently suppressed antagonism between, and within, elected local representatives throughout the UK.

10. At the same time, as devolution may well result in the eventual contracting-out of more public and local services to the private and voluntary sector or the ending of
UK-wide pay and conditions of employment for remaining public-sector workers – as both the devolved institutions and local authorities struggle to prudently operate on finite resources – one should be aware that this may, in turn, subconsciously nurture a further loosening of the wider public’s allegiance to the UK as a whole, as it has hitherto among many employees of many newly-privatised industries.

11. Under these circumstances, and as the terms of reference for your own inquiry suggests, one feels it is imperative that members and officials of the devolved institutions and local authorities from across the United Kingdom liaise with each other more closely than they have hitherto – perhaps via the forum of the British-Irish Council and/or more regular joint meetings of the Local Government Association (representing local authorities in England), Convention of Scottish Local Authorities, Northern Ireland Local Government Association and the Welsh Local Government Association (representing local authorities in Scotland, Northern Ireland and Wales respectively) – to prevent any power being devolved to quasi-autonomous non-governmental organisations (by default) although, in doing so, one is mindful of the need to ensure any such forums and organisations are accountable to the electorate as a whole (rather than simply Her Majesty’s Government at best, and the UK Parliament as a whole at worst), lest they be viewed as supra-quangos in their own right.

12. In any event, administration by quango (aka “quangopus government” as it was rightly described by the late Clifford Forsythe, who was Ulster Unionist MP for South Antrim from 1983 until his death in 2000 and Ulster Unionist Parliamentary Spokesman on Local Government from 1983 to 1995) will surely result in increased, not fewer, calls for separatism, from those who will soon come to realise that the devolved institutions and/or local authorities are little more than smokescreens to masquerade the absence of any meaningful decentralisation of authority to locally-elected representatives. Forsythe, it should be noted, was a passionate opponent of quango-rule and consistently argued for greater administrative devolution to, and in, Northern Ireland, citing the unimplemented 1979 Conservative General Election Manifesto commitment to establish one or more elected regional councils with a wide range of powers over local services in the Province as the way forward for administering the affairs of Northern Ireland.

13. Amidst the current uncertainty surrounding the level and range of powers to be devolved, both the Prime Minister and a large element of both the Coalition Government and HM Loyal Opposition appear, at best confused, and at worst ignorant, over the differences between devolution and federalism.

14. The two are not synonymous. In a federal United Kingdom, the state legislatures of England, Scotland, Wales and Northern Ireland, would not be subordinate to the United Kingdom Parliament (from whom any devolved institution/local authority would devolve its authority, and by whom they could, if needs be, either be overruled or even abolished), but autonomous from each other and, most importantly, fully independent from the federal parliament and government of the United
Kingdom at Westminster, to allow all Members of the United Kingdom Parliament to continue to vote on what would then be solely UK-wide matters.

15. Much as it irks me to say it – as one who strongly supports the hereditary principle and who was, and remains, strongly opposed to the eviction of all but a remnant of hereditary peers from sitting and voting in the House of Lords – this could be further strengthened by replacing the existing House of Lords with an elected senate (comprising either of nominated representatives from an English Parliament, the National Assembly for Wales, Northern Ireland Assembly and the Scottish Parliament or directly-elected senators from each of the states of the UK chosen to represent that particular state rather than any political party) and, furthermore, possibly abolishing the Scotland Office, Northern Ireland Office and Wales Office, and transferring their remaining powers to the Scottish Parliament, Northern Ireland Assembly and the National Assembly for Wales respectively. This would, of necessity, require the creation of an English Parliament and, in all probability, the creation of a Constitutional Convention to determine the number of senators from each state in a future federal senate, the voting system for electing senators, the tenure of a senator’s term in office, and the powers of veto (if any) the House of Commons would have over the Senate, as well as to decide which functions should be exercised and what services should be provided/purchased at federal level and which functions should be exercised and what services should be provided/purchased at state or even local authority level, as well as the future role (if indeed there is one) for the Scotland Office, Wales Office and the Northern Ireland Office.

16. It is significant that, to the best of my knowledge, during the recent debate on devolution in the House of Commons on 14th October 2014, not a single MP cited Edmund Burke’s apposite remarks in his speech to the electorate of Bristol on 3rd November 1774, when he said “(The United Kingdom) Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates, but parliament is a deliberative assembly of one nation with one interest that of the whole, where not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a Member indeed, but when you have chosen him he is not a Member of Bristol but he is a Member of Parliament.” In other words, all Members of the United Kingdom Parliament should be entitled to debate and vote on all legislation enacted in the United Kingdom Parliament.

17. The Prime Minister’s proposal for “English laws to be made by English Members alone” not only transforms the Conservative Party into an English Nationalist Party – with as much contempt for the Union as a whole as the separatists in the Scottish National Party – but it seeks to destroy the legislative union which the United Kingdom Parliament was created to maintain.

18. Furthermore, by failing to explain that the “Barnett Formula” – designed in the late 1970s by the then Chief Secretary to the Treasury, Joel Barnett, as a “short-term
solution” to minor Cabinet disputes over the cost of executing and applying legislation in Scotland, Wales and Northern Ireland, in the countdown to expected devolution in 1979 – was never designed either to be permanent or a territorial subsidy by the taxpayers of allegedly “prosperous” England to fund the machinations of profligate elected local representatives in the purportedly “disadvantaged” regions/states of Scotland, Wales and Northern Ireland, Her Majesty’s Government is failing to remind others that it is a temporary means of addressing the higher cost of providing/purchasing services in rural parts of the United Kingdom with a smaller population spread over a larger geographical area, until such times as the elected representatives of those regions/states assume responsibility for their provision from Whitehall. This has served only to increase (rather than diminish) existing acrimony between the Scottish electorate and voters in the remainder of the United Kingdom to the detriment of the Union as a whole.

19. Time alone will tell whether a decentralised, or federal, United Kingdom will prove to be as lasting and secure a legacy for future generations as the post-1707 pre-1995 legacy was for those of us who were fortunate enough to have enjoyed the dying days of the latter. It is undeniable, however, that the status-quo is unsustainable. Whilst the recent referendum on Scottish Independence may have sedated the clamour for an independent Scotland for the time being, it has not fully slain the prospect of Scottish Independence in the future. The latter would surely lead to wanton instability and the long-term destruction of all of us.

20. May Almighty God be moved to afford the unionist parties wisdom in how best to buttress the Union of the United Kingdom and improve the governance of all its component parts in the months and years ahead.

14 January 2015
Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, and Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office, Cabinet Office—Oral evidence (QQ 17-31)

Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, and Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office, Cabinet Office—Oral evidence (QQ 17-31)

Transcript to be found under Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office, Cabinet Office
WEDNESDAY 7 JANUARY 2015

Members present

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

Examination of Witness

Professor Nicola McEwen, University of Edinburgh, and Professor Alan Page, University of Dundee

Q8 The Chairman: Can I welcome both our distinguished witnesses? Professor Nicola McEwen has had a strong link with Edinburgh University since 2001, I think. Is that right, Professor McEwen?

Professor McEwen: Yes.

The Chairman: She is well known on the constitutional and political scene. Professor Page has been Professor of Public Law at the University of Dundee, but he has also been a lecturer at the University of Wales, Cardiff, and the University of Westminster. We are very grateful to you for coming today. We have lined up a number of questions that we would like to ask you, and I am conscious that time is relatively limited. We shall try to be as concise as we can, and you are welcome to enlarge on your answers in writing afterwards if you feel we have not dealt with them properly. I would like to ask the first question, which is really to ask you a rather broad question, just to open things up. What is the purpose of inter-government relations? What are the shortcomings and benefits of what is in place?
Are there any good or bad examples that you really think should be published and highlighted? Professor McEwen, would you like to start?

**Professor McEwen:** Sure. It is a pretty big question. In terms of purpose, in any system, no matter how much you try to separate the powers of one level and the powers of another level, there will always be the need to co-ordinate and interact. There will always be overlaps and interdependence. That is the main purpose of inter-governmental relations: managing that interface and managing that inter-dependence. In our case, there is an inevitable interdependence between some of those areas that are devolved, such as social policy, and those areas that are reserved, like social security. That is an example of ways that you need to engage. European integration also demands the need for interaction, because so much of those areas that are Europeanised are also areas that are devolved. Then there are those policy challenges that defy the constitutional division of powers, such as climate change, poverty and security, and which need co-operation and co-ordination.

How does it work in our case in practice? There is an overreliance on informality—on the ad hoc nature of inter-governmental co-ordination. There are some strengths in that. The co-operation that is evident between senior officials certainly helps co-operation between the Governments, even in times of political difference. However, there is perhaps a need to have a more regular and regulated system that is more transparent. That is one of the main weaknesses, I think.

**Professor Page:** Thank you. I would agree with all that Professor McEwen has said. I would define the purpose in the following terms. The purpose of inter-governmental relations is to foster good working relations between the different Governments who make up the United Kingdom, with a view to the identification, discussion and resolution of matters of common concern. I would simply put it in those terms.

As to how well and how badly it works, it is capable of working well. The first example that springs to mind is the European Union, where there is this external compulsion, or necessity, by dint of the European agenda to work out what the United Kingdom’s position is in advance of meetings at the European level that involve discussion with the devolved Governments. The other example that is usually cited is emergencies. Calman talks about foot and mouth as an example of the system working well. Where it does not work so well—it was picked up by the Silk commission and I would agree with the point—is that observance of the basic tenets, the principles on which the system is supposed to be based, is at best patchy across Whitehall. It is a mistake, in other words, in my view, to look at the UK Government as a single entity or monolith. It is made up of a series of departments, and the departments vary in their responses and attitudes to the fact of devolution. Silk is very clear about that. In Calman, too, there are hints later on in the chapter on inter-governmental relations that awareness of devolution needs to be increased in some departments.

**The Chairman:** Yes. There are some mind-sets that need to be reformulated, are there not?

**Professor Page:** Yes.

**The Chairman:** Let us move on to some of the detail.
Q9 Lord Brennan: It is obviously important for Governments to co-operate with each other within our country, but there may come a time, especially with greater amounts of devolution, especially with financial issues, where you have a political dispute or legal dispute or combination of the two that goes right to the wire, beyond the co-operative arrangements. What do you suggest is the way of dealing with those really serious issues in a plausible constitutional way?

If you will forgive me, Lord Chairman, Professor McEwen, you are a Professor of Territorial Politics. Professor Page only lacks a chair in Northern Ireland to have completed a quadrilateral cover of the nation. What significance should we attach to the word “territory” for this purpose? Are there territories within territories, e.g. England?

Professor McEwen: Yes. That is always going to be one of the challenges. I am a political scientist, so Professor Page will, I am sure, talk about the need for a statutory footing, and I agree with that. Perhaps there is a role for an arbiter. For me, lots of these disputes are political. They are sometimes reflective of democratic differences in different parts of the country, played out in the inter-governmental arena. We had a period between 2007 and 2010 where a lot of the inter-governmental tensions were not territorial, north-south issues. They were intra-territorial, played out between two different Governments trying to speak for Scotland, in a sense.

It is therefore inevitable that politics will come into these disputes, which makes it quite difficult to conceive of a role for an impartial umpire, in a sense. With regards to some of the proposals that the Silk commission was suggesting, I could see a scope for that arbitration role, if it is about a dispute over legal jurisdiction. Where it is more political, around finance, which is often the area of most tension, that is quite difficult. It is not really something that you can objectively pass judgment on. There is, of course, a protocol for dispute resolution within the Joint Ministerial Committee, which has been invoked. If we can learn a bit more about precisely how that is invoked, and how resolutions are reached within that Committee, if it was more transparent, that would be enlightening.

Q10 Lord Crickhowell: Can I just ask one question in this context? Alan Trench, who sadly could not be with us this morning, said in his written evidence that the system is fundamentally skewed in the interests of the UK Government. I have a question mark about that. In what way do you agree with that?

Professor Page: Just to go back to the previous question, if I may, just to begin with, it is important to remember that there is an independent third-party mechanism for the resolution of disputes in the form of the United Kingdom Supreme Court. The evidence, however, is that Governments prefer not to go to court for the purposes of resolving disputes. They prefer to do it through the kind of political process that Professor McEwen has been talking about.

At the same time, there is this mechanism, in the new protocol attached to the agreement on the Joint Ministerial Committee, which envisages a procedure for the settlement of disputes that stops short of the independent third-party resolution of disputes. There is provision made for bringing in somebody to form, if you like, an independent view of what the dispute is about, but the whole machinery stops short of providing an alternative mechanism for the resolution of disputes other than through the political process that Professor McEwen has been talking about.
I have some sympathy with that, in the sense that, if I recall the wording of the protocol properly, it says effectively, “There will come a point at which we may just have to agree to disagree. No solution can be imposed upon anyone”. Since the UK Government hold the cards, and are the most powerful actor in the process, that must inevitably mean that the devolved Governments are left with a sense of grievance that they have somehow lost out.

Lord Lester of Herne Hill: I find it easy to think of examples, if I may. You just said, Professor Page, that we have a mechanism called the Supreme Court of the United Kingdom. I want to follow that up to see how that really works. I want to give you the example that Lord Lexden and I agitate about, which is the situation in Northern Ireland. As you know, under federal systems there will be federal values, federal rights, which are core rights that bind the whole nation. We do not have a federal system; we do not have federal rights. This Parliament spends three years reforming defamation law, and then the hopelessly deadlocked Northern Ireland Administration says, “We are not going to apply it to Northern Ireland”, which produces a ridiculously difficult problem for publishers, who have an old system in Northern Ireland and a new system in England. They have somehow to comply with both.

There is nothing that the Supreme Court of the United Kingdom can do about that, except say that somehow it violates the European Convention on Human Rights. The European Convention on Human Rights is little use on that problem, and in theory the Minister is bound to be able to use that as a mechanism. However, what I am suggesting to you is that the present system does not work in that sort of situation. Instead of having federal values that protect the rights of the citizen throughout the whole of the United Kingdom, what we have is an asymmetrical system without any federal values, and I am using that as shorthand, that protect our rights as a kingdom. Do you agree with that?

Professor Page: What you are saying is that the law of defamation should, if you like, be reserved or treated on a UK-wide basis?

Lord Lester of Herne Hill: No, I am not saying that at all. I am saying that the right to free speech ought to be a core value that goes throughout the United Kingdom, and that the balance between libel or reputation and free speech is a balance that should be able to be struck throughout the United Kingdom, in a way that the Human Rights Act tries to do. That is our best substitute for the proper allocation of powers and rights between the centre and the different parts of the United Kingdom. In other words, I am saying the system requires radical reconstruction into a federal sort of arrangement.

Professor Page: I have quite a lot of sympathy with that, if only in the sense that I would argue that Scotland, and I am simply talking about Scotland at the moment, is already in a near-federal relationship with the rest of the United Kingdom. I leave open the question of whether you can generalise from that and treat the whole of the United Kingdom on a federal basis. I do have sympathy with the basic proposition, yes.

Lord Lester of Herne Hill: What I am really suggesting is that the Scottish tail should be allowed to wag the English dog.

Lord Goldsmith: Sorry, I want to go back to one point of, at least, definition, particularly in the light of what you said, Professor Page, about dispute resolution. The Silk commission talks about arbitration. Is that really arbitration, or is it mediation, or is it something else? I see arbitration ultimately, properly understood, as a method of dispute resolution with a
dispositive decision being given by some third party, after all sorts of processes, rather than an attempt to bring the parties together. I just wondered what you understand those who propose arbitration mean by that.

**Professor Page:** It is arbitration in the sense that you define it.

**Professor McEwen:** Yes.

**Professor Page:** That is what is being looked for: that is to say, independent third-party resolution of disputes—someone we can hand this over to.

**Professor McEwen:** Yes. If I recall correctly, the proposition was particularly around constitutional jurisdictional disputes, and decisions on that basis.

**Q11 Baroness Taylor of Bolton:** Can I move on from dispute resolution to the development of policy, the scope for joint development and the hazards of it? Professor McEwen, you mentioned areas where there were difficulties, where there was overlap or consequential issues, when policy decisions were made. You mentioned big issues like climate change, and reference was also made to the EU. Is there really scope for joint working on these areas, before you get to any dispute? Do the devolved institutions feel that they have the facility for putting items on the agenda and raising issues? Does it depend on party balance or individuals?

You mentioned earlier that you thought there was too much reliance on the informality. Would something that was more structured or more formal help in that respect, or even hinder? How do you see policy development going in the future? I hesitate to use your phrase about a near-federal relationship, but how do you see policy development in those areas where there is inevitably not absolutely a clear line, because there are consequences from the decision in one area to the decision in another?

**Professor McEwen:** Having overlap between policy competencies always necessitates a need to communicate, and to co-operate to some extent. However, we have no provision in the UK for co-decision, which is co-development and co-production of policy. I am sure the devolved Administrations would rather like that in some areas, but that is not the situation that we are in. The area that you mentioned, climate change, is a good example of a policy area that spans the local, the devolved, the national and the EU, and has necessitated working together. There was an inter-governmental accord that the devolved Administrations signed with the UK Government around the Climate Change Act, for example, because in order for that to take effect, it needs things to happen. It needs everyone to agree and sign up to that process. That does work to some extent.

Where it is more difficult to work is where the initiative is taken on the part of the devolved Administrations. If they want something to happen, it is much harder than if the UK Government is driving the process. More formal structures may help, but what matters most is the interpersonal relationships and the trust that can be built up between departments. Having people in Whitehall that understand devolution is crucially important. Mainstreaming that understanding across Whitehall departments is important. You see variation between different Whitehall departments. In fisheries, for example, and on environment and agricultural issues, there will be more of an understanding of the devolved issues than there has traditionally been within the DWP, for example. That will have to change with the new settlement. There is definitely variation between departments and
between individuals within departments. That is probably the biggest hindrance to positive working relations.

**Baroness Taylor of Bolton:** I think you hinted earlier that some of the reliance on informality was a weakness. Do you see more formal structures, and how?

**Professor McEwen:** Formal structures help the informal as well. It is a weakness if you solely rely upon it. However, in many countries, whether within federal countries or between countries, having formal structures helps to facilitate the informal networking that is so important as well.

**Lord Lester of Herne Hill:** The question is, “How do party political differences between the different Administrations affect inter-governmental relations?” I have already mentioned the Northern Ireland parallel, but how would you react to that question?

**Professor McEwen:** It depends on which party differences, in a way. Up until the independence referendum, and perhaps I will come to that in a moment, the most contentious period was when it was a Labour Government here and an SNP Government in Scotland, at least with respect to the UK-Scottish relationship, because of the competition between those parties within Scotland, not just on an north-south basis. Things got better, initially, from 2010. What made it difficult was the dominance of the independence referendum issue, which brought more tension into the relationship, diminished trust and created difficulties with access.

Even in that context, things still happened. Co-operation still took place in more functional areas. We have to be careful not to exaggerate the significance of party political difference. What it did mean was that there needed to be greater reliance on the machinery of inter-governmental relations at first. It was not quite as easy to resolve differences over a cup of coffee with your colleague, or a quick phone call. You needed to be able to use formal channels, and that has been the main lesson since party incongruence has emerged.

**Professor Page:** I would agree with that. It makes a massive difference that there is no political congruence between the two systems and between the two Governments. That has been a fact of life since 2007, and it is going to remain one, in all likelihood. What one needs, therefore, is a system that will work despite the existence of party and political differences.

**The Chairman:** This Committee produced a report in 2002, I think, and I was on the Committee at the time. A lot of the arrangements were dead on the vine at that time. It has taken a long time for them to come alive at all, but we have still some way to go.

**Lord Lester of Herne Hill:** From the perspective of the central Government, when you have devolution, and when you have a real breakdown, as I think is the case in Northern Ireland, with two extreme parties in deadlock with each other and unwilling to comply with any diktat from Westminster, and you are looking at that kind of situation through Whitehall eyes, there is very little that Whitehall can do about it at the moment, because the powers are devolved. There is very little that parliamentarians can do, because they are not allowed to ask questions about it, under our own conventions, if it is to do with the exercise of devolved power. Is that right?

**Professor Page:** As you say, under convention or under a self-denying ordinance on the part of the Westminster Parliament, questions cannot be asked about matters that are devolved.
There is, in all probability, a lot to be said for that. However, I do not think that should result in a position of indifference or neglect, or disinterest, as to what is happening in the devolved parts of the United Kingdom. The history of Northern Ireland between 1922 and 1972 bears testimony to that. It was arguably as a result of that neglect and indifference on the part of Westminster that things came to the pass that they did.

Q12 Lord Crickhowell: One of the central disputes that has arisen this morning, certainly in our first session, is between what I might describe as the Alan Trench point of view, which is that, on the whole, relationships should be bilateral and informal between the departments, and what I might call the Page view, which is that we need a bringing together and a collective cohesive management of the whole thing and probably the abandonment of the individual Secretaries of State and their departments. There is a difficulty, it seems to me, about that solution, which has arisen, in a way, in the conversation we have just had about Northern Ireland and the very difficult situations there, and the unbalancing that would, I suspect, arise because of the scale and importance of the Scottish issue for the Welsh. I do not see that if necessary you could get the sort of effective balance that we want.

On the other hand, as we saw in the passage of the Wales Bill, you can get ad hocery development of the constitution. Is there a compromise somewhere: that you do need bilateralism to deal with the separates, but that you need some kind of co-ordinating operation to deal with the major constitutional issues, and the major differences? I am not sure what the solution would be, but we are groping for it and already there is an argument developing.

Professor McEwen: Yes, I agree with that. To some extent we already have that mixed bag. There are the quadrilateral meetings within the Joint Ministerial Committee, which we can criticise and improve upon. There are those quadrilateral meetings that take place outside of that formal framework around finance, for example, and those ad hoc issues that emerge from time to time. Then, there is the emergence of semi-formal bilateral arrangements, mainly focused on implementing new settlements. The Joint Exchequer Committee, for example, has been set up initially between the Scottish Government and the UK Government to oversee the implementation of the Scotland Act 2012. Presumably, it will extend to oversee implementation of the new arrangements that emerge from Smith. A Joint Exchequer Committee was set up between the UK Government and the Welsh Assembly Government to oversee some financial relationships there.

One of the things that was striking about both the Smith report and the Silk report was their emphasis on the need for more formal bilateral arrangements. I understand the concern about bilateralism perhaps having knock-on effects for other bits of the UK, which may be unfairly disadvantaged. However, it is interesting that they all seem to want a more formal direct relationship. I do not think it is an either/or. There is a place for both more formal bilateral arrangements and more formal multilateral arrangements alongside the informal things that we have been talking about as well.

Lord Crickhowell: Professor Page, you have strong views expressed in your paper.

Professor Page: Yes, the bilateral character of the relationships is inevitable, to a certain extent. My argument is that it can be taken too far, and that there is a need for an overall view of the relationships, which can in part be provided by multilateral machinery, but my argument is also that there needs to be an overall view taken within the United Kingdom
Government. Retaining territorial departments in a sense really just reinforces bilateralism. No one is taking an overall view of these relationships, and that is what is essential.

Q13 Lord Powell of Bayswater: We have just been talking about the balance between quadrilateral and bilateral. There is also the balance between informal and formal. Indeed, Professor McEwen has now added semi-formal, so we have formal, semi-formal and informal. My impression from some of the answers in the earlier session, and indeed today, is that you do not see a strong need for more formal, justiciable statutory mechanisms, but you do see a need for better informal mechanisms. Would that be a fair way of putting it?

Professor Page: That is not my view.

Professor McEwen: That is not my view either. There is a need for more regular formal machinery. The formal machinery that we have is very ad hoc at the moment. Compared with any other multi-level state or any federal state, it is very unstructured in the UK. I think, as devolution develops and as the system becomes more complicated, and indeed if we do move towards a situation where the lower chamber changes in its territorial composition—in a sense, if English votes for English laws comes to pass—then it almost heightens the importance of the inter-governmental arena for overseeing and managing those inter-dependencies. There is a need for more formal and more regular inter-governmental co-operation, and more transparency and scrutiny of that. That is very important.

Professor Page: Yes. I argue in my submission that the whole thing should be put on a statutory basis. It is not enough to simply rely on the memorandum of understanding and the concordats that were drawn up at the time, and have been adjusted since, but it is the missing element, if you like, in the devolution settlements. Silk talks about embedding inter-governmental relations in the Welsh devolution settlement. That simply, in my view, reinforces the bilateralism of the whole system.

I would see an argument in favour of putting it on a proper statutory basis. People normally say, “Oh, we could not possibly do that. That would be the end of the world as we know it”, but we have done it in relation to the Civil Service with the Constitutional Reform and Governance Act. We set out the basic principles there. The world, as far as I am aware, has not come to an end as a result of it. As I argue in my submission, I see considerable benefit in making plain that this is not just something dreamt up between Governments but has popular sanction. This is the expectation of the legislatures of the United Kingdom of the way in which relationships will be conducted.

Lord Powell of Bayswater: One of the papers says that the concordats had got a bit out-dated. It may be yours; I cannot remember, I am afraid. That rather suggests to my mind that people do not see a particular need for them, and that they are happier with the less formal structures.

Professor Page: I suppose that is one possible interpretation. My preferred interpretation would be—I am talking about the Scottish settlement in this case—that they are symptomatic of the fact that Scotland has simply been forgotten about. These things have been allowed, as the Chairman said, to wither on the vine. I do not think that is satisfactory, because you cannot point to a thoroughgoing and effective system of informal relations that makes all that irrelevant. That is not the situation that we have at the moment.
Q14 Baroness Falkner of Margravine: Professor McEwen, you commented on the importance of formal mechanisms. You did not go so far as to go to statute. What would be your view on that?

Professor McEwen: I am not sure I have a strong view, to be honest. I am not a lawyer. I bow to the knowledge of my colleagues who are. I do not have an issue with it. In addition to any legal ramifications that would have, I could see it also as having positive, symbolic implications, attaching a heightened significance to relationships, which is not there at the moment. Sometimes there is a cultural problem, and statutory arrangements can help to shift cultural practices. That is the bigger issue, in a sense, and it is particularly an issue in central Government. There needs to be greater awareness of devolution, and of how it is changing and developing, but also of where the inter-dependencies emerge and how you need to manage them. It is a spirit and cultural thing.

Baroness Falkner of Margravine: For both of you, having said what you have said about how the current system is inadequate, are there any models overseas, with our particular level of asymmetry, that you think might be applicable here?

Professor McEwen: Yes, there are many examples of different ways of working: committees, councils and so on. I would be very happy to provide a paper on that, if that would be useful to the Committee. However, I cannot think of another system that is as asymmetrical as the UK. That is always going to be the difficulty. We can take inspiration from other cases, but we will have to find the solutions internally. I noticed that the Silk commission was particularly taken by the North South Ministerial Council on the island of Ireland. The Calman commission was particularly taken by the co-operation amongst officials of EU member states in COREPER. Those are some things that might be useful for us, but the solutions are going to have to come from the machinery that we have, and, developing that, what is suitable for the UK.

Professor Page: Yes, I would agree with that, and I would be wary of off-the-shelf solutions adopted or drawn from other systems. The system that has to be put in place has to be one that works for the United Kingdom. We have the massive benefit of 14 years’ experience. We know what works; we know what does not work. It is about taking the best bits of it and reinforcing that and generalising that across the system. I would be entirely confident about our ability to come up with a bespoke solution that met the needs of the United Kingdom.

Q15 Lord Lexden: I have two simple but large questions. The first is: in what practical ways should the existing arrangements for inter-governmental relations be changed in the light of the pending devolution of more power to the devolved institutions in general, and the Scottish Parliament in particular?

Professor McEwen: The new emerging settlement, at least with respect to Scotland, will increase the powers of the parliament, and increase dependence on the UK Parliament. In taxation, the Smith report talks about income tax being a shared tax. I do not think that is quite right, but it is a shared policy space within which both Parliaments will be operating. The social security inter-dependences are very evident within the new settlement, so there is more of a need to co-operate than there has been before. I am not sure that that need has been recognised yet. It was within the Smith report, but that will still have to filter down.
Professor Nicola McEwen, University of Edinburgh; and Professor Alan Page, University of Dundee—Oral Evidence (QQ 8-16)

Interestingly, developments in Wales are going in the opposite direction, in a way. If the reserved powers model is developed, that will help to disentangle things that were very complicated before in Wales, whereas we seem to be going in an opposite direction in Scotland. I think, because of those complexities, there is a very real risk that there are accountability issues that emerge. There will be more need to co-operate, but because it is so hidden and lacking in transparency just now that it will be very difficult for the parliaments and the electorate to be able to understand who is responsible for what.

In terms of practical measures, I would like to see the sorts of bilateral arrangements that have been set up to oversee transitional arrangements being seen on a more permanent basis. I would like to see proper annual reports. The Joint Ministerial Committee annual reports are about a page and a half of very generously spaced text that says nothing at all, other than the items that were on the agenda. I understand the issues around confidentiality and the political sensitivities, but after the meeting has taken place, why can we not see what was discussed, who raised which issues and who came to which resolutions? In a democratic system we should be seeing that in the reports, that should be tabled to Parliament, and Parliament should have an opportunity both to input into these meetings and to scrutinise the outcome.

Professor Page: On the first limb or part of what Professor McEwen has just talked about, in answer to your question, I would be wary of just a simple proliferation of committees without addressing what we both see as the underlying weaknesses of the current system. Smith could be read as advocating that we should have a Joint Committee on this, a committee on that, and a committee on the other thing. The danger is that you end up with a whole lot of committees, and no one with a very clear idea of why they are meeting, and we have not progressed at all. Things need to be done, but I would not just favour a committee-based solution or imagine that that somehow would bring about the best of all possible worlds.

Lord Lexden: In what practical ways could scrutiny by the Westminster Parliament of inter-governmental relations be improved?

Professor Page: It is a good question, and I am slightly sceptical of this business of an annual report. Calman talked about an annual report that would be scrutinised by a Joint Committee of the UK and Scottish parliaments. I see that as pretty much a futile exercise and as not really adding very much to anything. I would therefore prefer to approach it in terms of UK governmental arrangements. If you have a department for inter-governmental relations, you have a focus for scrutiny that could be a lot more meaningful and get into the actual detail of what is happening, rather than being presented with a three, four, five or six page report and not being very sure who to ask about it, and not really getting much information either.

I would see scrutiny as working not on an annual report basis but in terms of the system as a whole, and how inter-governmental relations and the devolution settlements are working. The McKay commission recommends, and it is a very good recommendation, that there be a devolution committee. They were obviously talking about the House of Commons, but it does not need to just be about the House of Commons. Again, it is coming back to this point about the need to take a pan-UK or cross-UK view of the arrangements. Yes, an annual report would be part of that process, but I would not see it as central or critical.
Professor McEwen: An annual report is important. Some reporting mechanism is important, with much more detail than we currently see. The communiqués also tell us nothing. There is no real need for that. They can be more substantive, and that would help any scrutiny process. I guess it would be for each Parliament to decide the best ways in which to engage in scrutiny, but there are clearly some committees and some policy areas that are more affected by inter-governmental relations than others. With regards to finance, the Treasury Select Committee has a very busy agenda, but might want to periodically consider that inter-governmental dynamic.

I am not so sure about channelling everything into a devolution committee, because that seems to me to have similar risks to channelling things within Whitehall departments to small devolution teams. You nurture a small unit of experts, and the problem then is the rest, where you lose that cultural understanding of devolution that you need across the system of devolution. If we are serious about the UK as a union that is multinational, inter-dependent and multilevel, you need to have a broader understanding of that across the piece.

Q16 Lord Lester of Herne Hill: I do not think either of you could give very good marks to successive Governments since the Kilbrandon report, and the shelving of the memoranda of dissent by Crowther-Hunt and Peacock. I do not think you would give very high marks to the ability of successive Governments on constitutional reform in this area. I doubt that you could. Certainly I could not. As I listen to you, I am unclear, especially with Professor Page, whether your view is that we could still, over the next five or 10 years, take what we now have and turn it into a coherent constitutional framework, with a proper allocation of powers and rights and responsibilities across the whole of the United Kingdom. I am unclear whether you have this unionist view, or whether you think it is beyond the capacity of this country to do anything of the kind, because of our geographical and political asymmetry. Are you, in that sense, an optimist or a pessimist? Do you think it is possible, or do you think it is not possible? Do you think it is realistic or not?

Professor Page: It is possible. Whether it will happen or not is another question. It is perfectly possible. It is not beyond the wit of man and Government to come up with a coherent, workable, effectively functioning system.

Lord Lester of Herne Hill: If we do not, then do you think that the present asymmetrical framework, with a more formalised system, can cope, or do you think that in the end it is going to lead more likely to a centrifugal situation, in which breakup becomes more likely?

Professor Page: An ever looser union, which is one way it has been expressed, is a very real possibility.

Professor McEwen: There is perhaps a need to have a proper debate about what the union is for—that general purpose that might be relevant for the whole of the UK. One of the strengths, historically, of the UK has been the ability to adapt to arrangements that suit different parts. There will always be a difficulty in the UK because of the size of England and because, for now and the foreseeable future, the lack of an English Parliament makes any sort of federal-type solution very difficult.

I would not necessarily score as low as you on the past practice, in that the 1998 Scotland Act was a good one in that it set out very clearly what the areas of reserved responsibility ought to be. It did so after a long period of reflection and debate, not just and perhaps not
primarily within Parliament but within a broader society. I am very concerned about the way that the process has unfolded now, post-referendum, which is very quick. It is very rapid. There is not enough time for reflection by anybody. It is moving away from that clarity that we had with the original devolution settlement, and making something much more complicated and messy, without thinking through the consequences of what that will be. I am sure there will be lots of unintended consequences that emerge as a result.

**The Chairman:** On that challenging note, I would like to thank you both very much indeed. You have been extremely informative and admirably concise, but you have given us a lot of very valuable information. We are very grateful for the way in which you have placed your experience at our disposal, and the two submissions you have also sent us. As I said earlier, please feel free to add to your answers when you see the transcript. I hope we will produce a report in due course that you can live with, if I cannot put it higher than that. In the meantime, thank you very much indeed for coming.
Further to my oral evidence to the Committee and subsequent communication with the Committee clerk, I am submitting this supplementary note for the Committee’s consideration. It covers two main themes. First, it examines some of the challenges for intergovernmental challenges emerging from the Smith Report and the draft clauses which are expected to pave the way to a new Scotland Bill. Second, it considers some international examples of intergovernmental coordination and their applicability to the UK context.

Intergovernmental Relations under the new devolution settlement

All multi-level systems require mechanisms of coordination to manage the interdependencies between the jurisdictional competences of each level of government. A machinery of intergovernmental relations evolved in the UK after 1999, but in spite of some changes made after 2007, it remains weakly institutionalised and focused more on communication than coordination. The opportunities for the devolved governments to participate in and influence decision-making processes of central government remain weaker than we usually find in federal states.

This is problematic in view of the new Scottish constitutional settlement embodied in the Scotland Act 2012, and draft legislation emerging in the wake of the Smith Report. The original devolution settlement created a reserved powers model, identifying those areas in schedule 5 which would remain reserved matters, leaving the Scottish Parliament free to legislate in all other areas. The new settlement, by contrast, increases the extent to which both parliaments will be working in concurrent jurisdictions, especially in tax and welfare, necessitating cooperation, coordination and joint decision-making.

For example, the Scotland Act 2012 introduces an obligation on the Scottish Parliament to raise a proportion of income tax, and the new proposals would extend this responsibility to all income tax, with the opportunity to set most rates and thresholds. Every other aspect of income tax policy, however, will remain reserved. As a result, the Scottish Parliament will be setting rates and thresholds within the context of a policy framework over which it has no legislative or executive control. To date, effective intergovernmental forums (most notably, the Joint Exchequer Committee) have been established to permit joint working of the implementation of the new devolved powers, including agreement over consequential adjustments to the Scottish block grant. It is not clear – and seems doubtful - whether these forums will outline this transitional and implementation phase, or whether they will provide opportunities for the Scottish Government to at least be consulted on those reserved areas of tax policy which will shape and constrain the new devolved responsibilities.
Interdependence is also evident in the area of social welfare. The draft clauses retain as a general reservation ‘schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits’. The social security powers proposed within the Smith Report are listed as exceptions, and include Disability Living Allowance/PIP, Attendance Allowance and Carer’s Benefit. Although this may appear a relatively coherent package of powers, it interacts with other areas of the welfare and tax system which are not devolved. In particular, entitlement to DLA/PIP brings with it entitlement to a range of ‘passported benefits’, e.g. child tax credits for a disabled child, working tax credits and disability premiums in a range of income-related benefits. The draft clauses specifically create (non-legislative) concurrent powers in other areas of welfare, most notably in the Universal Credit, with new powers given to Scottish ministers shared with the UK Secretary of State, and subject to his agreement. Similar provisions are established in relation to energy efficiency, where the Scottish Government will be given the power to ‘make schemes’, through regulation, for the purposes of reducing fuel poverty, subject to the agreement of the UK Secretary of State.

The draft clauses attempt to map the Smith proposals onto the existing reserved powers model, setting out a bewildering array of exceptions to the reservations, and revealing the extent to which both the proposed legislative and executive powers will require cooperation between the two governments. It points to a need for closer and ongoing intergovernmental collaboration, way beyond the Joint Ministerial Committee. As in Finance, an intergovernmental forum has recently been established to oversee the devolution of new welfare powers, but whether it will have a role beyond this transitional period is uncertain. Some mechanisms to manage policy interdependences on a longer term basis will be essential if the new devolution settlement is to work effectively. Moreover, unless such joint working can be conducted on the basis of equality of status and mutual respect, the complexities and interdependencies are likely to create new sources of tension and dissatisfaction, and lead to growing pressure for a further revision of the devolution settlement.

**Learning from Others: International Examples of Intergovernmental Coordination**

All federal and multi-level systems rely upon intergovernmental relations: to manage the overlaps between their respective powers; to coordinate in areas of shared jurisdiction to confront policy challenges that span the constitutional division of powers; to resolve intergovernmental disputes; to facilitate constitutional change; and to shape and respond to the process of Europeanisation. In all cases, a crucial component of intergovernmental relations takes place informally, in regular ad hoc communication between ministers and officials at all levels of responsibility. This informal interaction is complemented by more formal processes of intergovernmental relations. *In most, if not all, countries, these processes are far more formal and structured than the system which has emerged in the UK.*
In Germany, joint decision-making and intergovernmental relations between the levels are highly institutionalised. In addition to regional representation within the Bundesrat, there is extensive intergovernmental coordination in dozens of intergovernmental forums. Land premiers and ministers convene in conferences, both at premier level and across almost all areas of policy-making. Most of these conferences meet regularly and operate according to formal procedural and decision-making rules. Each has separate working groups and commissions focused on particular policy issues, while one - the Conference of the Ministers for Cultural and Educational Affairs - even has its own sizeable bureaucracy (with a secretariat of 216 in 2004). A Conference of Prime Ministers, which includes only the leaders of the Länder, meets at least four times a year, and in addition, they meet several times a year with the federal Chancellor to discuss key political, economic and fiscal issues to coordinate governance, communicate policy priorities, and mitigate conflict.4

Whereas German federalism has been designed so that the federal and Land levels of government are interdependent and subject to joint decision making, extensive intergovernmental relations are evident even in systems which are more ‘dualist’ in their allocation of powers. In Canada, the constitution provides for a relatively clear demarcation of federal and provincial jurisdictions, but an extensive network of intergovernmental relations has developed to manage the inevitable interdependencies. There are dozens of intergovernmental bodies facilitating cooperation between premiers, ministers and senior officials. The Canadian Intergovernmental Conference Secretariat (CICS), a joint federal-provincial body, provides administrative support to an average of over 90 intergovernmental meetings per year, including federal-provincial First Ministers' Meetings, and the inter-provincial Annual Premiers' Conference. The latter is more formal and meets more regularly than the former: between 2000 and 2010, 12 official First Ministers Meetings were held compared to over 43 Premiers conferences.5 Departmental federal ministers meet formally and regularly with their provincial and territorial counterparts in subject-specific meetings across the range of policy portfolios. In addition, provinces have sought to strengthen their cooperation and ability to influence national agendas by setting up an additional forum, the Council of the Federation, which convenes meetings of Premiers usually twice a year, and oversees the tasks of a variety of working groups in response to shared challenges, including for example, the Canadian Energy Strategy working group, the Fiscal Affairs working group and the Health Care Innovation working group.

5 Parker, Jeffrey, 2015, Comparative Federalism and Intergovernmental Agreements: Analyzing Australia, Canada, Germany, South Africa, Switzerland and the United States. London and New York: Routledge
The relatively recent federalisation of Belgium followed the principle of separate and exclusive powers for the three institutional levels (federal, regional and linguistic community) but a machinery of intergovernmental relations has developed to manage inevitable interdependencies between policy spheres and in response to European integration. Cooperation takes place within inter-ministerial conferences bringing together federal, regional and community ministers, supported by networks of officials. There are currently 14 such conferences, including on the Economy and Energy, Finance and the Budget, and Foreign Policy. They are not formal decision-making bodies, but can facilitate cooperation agreements and Memorandums of Understanding between governments at different levels. In Spain, which is a quasi-federal state, an extensive series of inter-ministerial sectoral conferences has developed to manage interdependencies across a range of policy fields. Not all of them meet frequently - the Council of Fiscal and Financial Policy and the Conference on Issues Related to the European Communities are among the most prominent.

Lessons for the UK?

The multi-level system in the UK stands apart from many other federal and multi-level systems, not only because it is explicitly not federal, but in two other key respects.

First, the UK system is highly asymmetric. Constitutional asymmetry has been evident in a variety of federations (e.g. Malaysia in relation to Borneo, India in relation to Kashmir and Jammu, or Canada vis-à-vis Quebec). It is the degree of asymmetry in the UK which is comparatively staggering, and makes it difficult to adopt forums of intergovernmental cooperation similar to those identified above. This is particularly the case where such forums are intended to reach agreement over shared jurisdiction, especially if that meant the devolved administrations could (be seen to) exert influence over national policies or policy frameworks.

Second, the UK system is multinational. The multinational character of the UK is not contested by either level of government (as it often is in other multinational states), though that multinational character is sometimes (as now) expressed politically. As a result, each level of government will seek to maintain or enhance its legitimacy to speak on behalf of the nation or people it represents – Scotland in the case of the Scottish Government, Wales in the case of the Welsh government, and Britain (including all constituent nations and regions) in the case of the UK Government. Such competitive nation-building is likely to spill-over into the intergovernmental arena, such that governments will be more likely to favour opportunities to maximize their respective decision-making autonomy over processes designed to produce collaboration and joint decision-making.

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Nonetheless, there are some lessons that can be drawn from a comparative context:

- There are no such thing as ‘watertight compartments’: however power is allocated, there will be inevitable spillover effects which necessitate intergovernmental cooperation. However, this need is greater where governments operating at different levels are making policy in the same or closely related jurisdictions.

- Formal institutionalized intergovernmental relations are more likely to generate cooperation and agreement than more ad hoc arrangements. When issues arise, they are more likely to be dealt with if the institutional forums already exist to do so.

- Formal processes are more effective when they are less hierarchical and where all parties share an equal stake in the proceedings. This may be facilitated by having a joint secretariat or joint working between administrations, rotating responsibilities for hosting or chairing meetings between governments.

- Formal, regular meetings can strengthen day-to-day informal interaction by strengthening intergovernmental networks and building trust among officials. Such interaction can often enhance mutual awareness of policy interdependencies and head off disputes.

- As well as set piece meetings of heads of government or ministers, effective intergovernmental cooperation can be pursued in intergovernmental working groups, focused on particular tasks or policy challenges. Such forums have emerged in the UK, but mainly only to oversee the transitional implementation of new powers, rather than to confront shared challenges on an ongoing basis.

January 2015
Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister; and Mr David Davies MP, House of Commons Welsh Affairs Committee (QQ 32-42)

Mr David Melding AM, Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister; and Mr David Davies MP, House of Commons Welsh Affairs Committee (QQ 32-42)

Transcript to be found under Mr David Davies MP, House of Commons Welsh Affairs Committee
Summary

1. The essential weakness of the current arrangements lies not so much in the framework within which intergovernmental relations are conducted, although that stands in need of revision, as in the fact that intergovernmental relations are for the most part left to the uncoordinated efforts of Whitehall departments. If this weakness is to be overcome the current arrangements need not only to be revised but compliance with them needs to be strengthened. This requires a much greater degree of central coordination and oversight than has been practised hitherto, which might best be undertaken by a new intergovernmental or ‘home affairs’ department based on the existing territorial departments. There would also be considerable merit in putting the main elements of the revised arrangements on a statutory basis.

How can existing arrangements be improved? Are new intergovernmental mechanisms required?

2. Intergovernmental relations have been the subject of criticism ever since the current arrangements were put in place. At its most general, the complaint, which long pre-dates devolution, is that the devolved administrations are forgotten about or ignored. Included within this general complaint are a number of more specific complaints – about the unwillingness of the UK Government to discuss matters the devolved administrations want to discuss and about its failure to consult the devolved administrations or to take account of their views. There are also complaints which are specific to the EU - that devolved interests are lost or diluted in the formation of the UK negotiating line, and that attendance at Council meetings is not as of right but at the discretion of UK Ministers. The lack of independent third party mechanisms, other than the courts, for the settlement of disputes is also contentious.

3. Some new mechanisms will doubtless be required as a result of the implementation of the Smith Commission. The essential weakness of the current arrangements, however, lies not so much in the framework within which intergovernmental relations are conducted as in the fact that intergovernmental relations are for the most part left to the uncoordinated efforts of Whitehall departments. The point was made by the Silk Commission:

‘The MoU, DGNs and concordats provide clear explanations on how the Governments should communicate with each other on various matters, including the legislative process. However it is clear from the evidence we have received that a number of Whitehall departments are either not always aware of these basic documents or do not always apply them when developing and implementing policy or during the legislation (sic) process itself.’

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8Commission on Devolution in Wales, Empowerment and Responsibility: Legislative Powers to Strengthen Wales (2014) para 5.2.9
If this weakness is to be overcome the current arrangements need not only to be revised but adherence to them needs to be strengthened, as the Silk Commission argued.9

Principles

4. The Memorandum of Understanding sets out the shared understanding of the UK Government and the devolved administrations of the principles, drawn from pre-devolution practice, on which relations between them are based.10 There are three principles: communication and consultation, cooperation and confidentiality.

5. One principle missing from the Memorandum, but recognised in other relevant texts is ‘mutual respect’. As recommended by the Calman Commission,11 the revised version of the Civil Service Code, laid before Parliament in November 2010, defines the core civil service value of ‘integrity’ as including ‘a particular recognition of the importance of cooperation and mutual respect between civil servants working for the UK Government and the devolved administrations and vice-versa.’ Mutual respect is no less important to relations between governments than it is to relations between civil servants. The Calman Commission saw mutual respect ‘in all circumstances’ as the ‘guiding principle’ in relations between the UK and Scottish Parliaments and Governments.12 The Silk Commission regarded it as fundamental that relations between the Welsh and UK Governments should be based on ‘the principles of mutual respect and equality of esteem.’13 In his foreword to the Smith Commission Agreement, Lord Smith made specific reference to the need for greater respect between the UK and Scottish Governments.14 The revised arrangements ought therefore to include mutual respect among the principles on which intergovernmental relations are based.

6. Cooperation, on the other hand, is one of the principles which is said to underlie relations between the administrations, but it is expressed in terms which fall some way short of an obligation. ‘All four administrations want to work together, where appropriate, on matters of mutual interest. The administrations recognise the importance of cooperation across a range of areas. They also recognise that it may be appropriate for them to undertake activities on each other’s behalf, which may be covered in agency arrangements or other agreements.’15 It is for consideration whether there would be merit in including in the revised arrangements an obligation of loyal cooperation along lines similar to the German ‘Bundestreue principle’, which imports an obligation to respect the interests of other administrations when exercising an administration’s own powers, or its derivative, the principle of loyalty in EU law (art 4(3) TEU).

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9 Commission on Devolution in Wales (n 1) para 5.2.13
10 Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee (October 2013)
12 Commission on Scottish Devolution (n 4) para 4.135
13 Commission on Devolution in Wales (n 1) para 5.2.6
15 Memorandum of Understanding (n 3) para 8
Bilateral concordats

7. The revision of the framework needs to extend to bilateral concordats between individual Whitehall departments and the devolved administrations, which in the Scottish case are seriously out of date, many of them not having been revised since they were first entered into. (Whether that is true of bilateral concordats with other devolved administrations I am not aware.) The fact that they have not been ‘regularly reviewed’, contrary to the claim made by the UK Government in its response to the Committee’s previous report on intergovernmental relations,\(^\text{16}\) speaks to a more general neglect of intergovernmental relations since the current arrangements were first put in place.

Finance

8. The revised arrangements should cover all relations, including financial relations, which are likely to increase in importance with the devolution of fiscal powers, but which are the currently treated as a matter for HM Treasury and HM Treasury alone. Should the role of the territorial Secretaries of State and their departments be altered in the light of the further devolution of powers? If so, how?

9. The case for replacing the current territorial departments with a single department for intergovernmental relations would seem overwhelming.\(^\text{17}\) As the Committee pointed out in its previous report, even if the dispersal of responsibility among several Cabinet Ministers does not involve unnecessary duplication, it must imply a certain loss of focus. ‘Four Ministers cannot devote the same attention to the framing of policy for intergovernmental relations and implementing that policy that one could. This may raise no problems in present circumstances, when relations are amicable and informal. If relations become less amicable, clarity of focus and consistency of approach will be at a premium.’\(^\text{18}\) It is precisely that clarity of focus and consistency of approach that has been lacking in recent years.

10. A key responsibility of any new department should be monitoring and encouraging compliance with the revised arrangements by line departments. At present no one within UK Government is responsible for monitoring compliance with the Memorandum of Understanding and concordats. It is little surprise therefore that bilateral concordats should be out of date or that compliance should not feature highly on the scale of departmental priorities.

\textit{How can the UK Parliament best scrutinise and hold to account both formal and informal inter-governmental relations between the UK Government and the devolved administrations? Are there lessons to be learned from the devolved legislatures?}


\(^{17}\) See J D Gallagher, The Day After Judgment, Scotland and the UK After the Referendum (September 2014) Section 4

\(^{18}\) Constitution Committee, Devolution: Inter-Institutional Relations in the United Kingdom (HL 2002-03, 28) para 77
11. In its previous report, the Committee expressed surprise at the limited extent of the arrangements for the scrutiny of intergovernmental relations, not just at Westminster, but also in the devolved assemblies and legislatures. The situation is little changed since that report.

12. In terms of UK parliamentary scrutiny, the McKay Commission recommended in 2013 the appointment of a Devolution Committee of the House of Commons, as part of ‘a more articulated Westminster response to the challenges of devolution’, whose scrutiny work would include holding UK Ministers to for their responsibilities in connection with devolution and their relations with the devolved administrations. With a new intergovernmental affairs department subject to the Committee’s scrutiny, this would seem obvious starting point.

13. As regards lessons to be learned from the devolved legislatures, the situation in Scotland, as mentioned, is little changed since the Committee’s previous report. The Scottish Parliament’s strategy for EU engagement and scrutiny did envisage evidence being taken from the Minister with responsibility for Europe before and after meetings of the Joint Ministerial Committee (Europe), but it is confined to an anodyne ‘read out’ after meetings, which is hardly more informative than the JMC annual report. The disappointing answer to the Committee’s second question therefore so far as Scotland is concerned is that there is nothing to be learned.

14. The Scottish Parliament’s experience does however highlight one problem to which the Committee ought to have regard in framing its recommendations, which is that intergovernmental relations are typically conducted behind a veil of secrecy which is inimical to effective parliamentary scrutiny. As has been noted, confidentiality is one of the principles underlying relations between the administrations, and the cardinal importance attached to the principle is also reflected in the UK and Scottish freedom of information legislation (Freedom of Information Act 2000, s 28; Freedom of Information (Scotland) Act 2002, s 28). Consideration needs therefore to be given to the relaxation of the statutory and other bars on disclosure if intergovernmental relations are not to remain a ‘black hole’ at the heart of the Union state.

15. There are, in my view, clear benefits to be gained from putting the main elements of the revised framework, i.e. the principles, the key institutions and the obligation to account, on a statutory basis. It would underline the importance attached to intergovernmental relations, which are no less important a part of the devolution settlements than the powers possessed by the individual administrations: if that was not clear at the time of devolution it is clear now. It would set out, clearly and authoritatively, the expectations of the

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19 Constitution Committee (n 11) para 111
20 Report of the Commission on the Consequences of Devolution for the House of Commons (March 2013) paras 259, 275
21 Richard Rawlings, Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution (University of Wales Press 2003) 403
parliaments and assemblies of the United Kingdom as to the way in which relations between their respective governments should be conducted (rather than as at present being drawn from increasingly remote pre-devolution practice). It would provide a focus for parliamentary scrutiny of intergovernmental relations and the operation of the devolution settlements. And it would address the longstanding criticism that none of this has been subject to democratic scrutiny or approval.\(^\text{22}\)

16. The risk is that it would open the door to judicial intervention. The current arrangements signal a ‘strong aversion’ to judicial scrutiny of intergovernmental relations.\(^\text{23}\) The Memorandum of Understanding is thus ‘a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties.’\(^\text{24}\) The one however does not follow from the other, and it has to be questioned whether the deep seated fear that executive effectiveness would somehow be compromised by judicial intervention - ‘the inept intrusion of the law’\(^\text{25}\) - is still warranted.

17. The Silk Commission proposed a statutory code of practice which would embed intergovernmental relations within the Welsh devolution settlement.\(^\text{26}\) Rather than being embedded on a settlement by settlement basis however I would propose that they be embedded on a UK-wide basis.

Other questions

*To what extent do current structures promote proactive cooperation, rather than simply acting as a means of dispute resolution?*

18. The current structures do not simply act as a means of dispute resolution, but nor do they promote proactive cooperation (above).

*What is the appropriate balance between formal mechanisms and informal relationships?*

19. Informal relationships will always have role to play and should be encouraged. But they are not a substitute for a properly functioning system of intergovernmental relations. The mistake, as the Committee pointed out in its previous report, is to treat them as though they are.\(^\text{27}\)

*To what extent should inter-governmental mechanisms comprise bilateral mechanisms, as opposed to those including all four administrations?*

20. Given the asymmetry of the devolution settlements one would expect intergovernmental mechanisms to be mainly bilateral rather than multilateral. Bilateralism, however, can be taken too far, leaving no coherent overall view of the settlements or how

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\(^\text{22}\) Richard Rawlings ‘Concordats of the Constitution’ (2000) 116 LQR 257
\(^\text{23}\) Rawlings (n 15) 261
\(^\text{24}\) Memorandum of Understanding (n 3) para 2
\(^\text{25}\) Committee on Devolution in Wales (n 1) para 5.2.13
\(^\text{27}\) Constitution Committee (n 11) paras 24-29
relations with the devolved administrations should be structured. The problem with the current approach is its fragmentary, piecemeal character. What is required is a coherent, unified approach.

4 January 2015
WEDNESDAY 28 JANUARY 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Lord Foulkes of Cumnock
Lord Goldsmith
Lord Lexden
Baroness Taylor of Bolton

Examination of Witnesses

Graham Pendlebury, Director of Local Transport, Department for Transport, John Robbs, Director, Marine and Fisheries, Defra, and Lindsey Whyte, Deputy Director in charge of Devolution, HM Treasury

Q67 The Chairman: Good morning. I welcome our three witnesses for the final session of this morning. It is a shortish session, but we are very grateful to you for coming along because what you have to say to us will fit into a bigger picture, which is gradually emerging. We have had a lively session already this morning with three politicians, a chaotic session with a Scottish Government Minister simply because the line broke down four, or was it five, times before we gave up on it—she sitting in Edinburgh very patiently. Now, in these calmer waters, with officials from three departments, I hope we will find the search for truth a little easier.

I welcome you all. We know you are, so I will not go over that again. I will simply ask the first question, to give you a chance to open up the subject a little, by asking you what your departments’ individual experience has been in dealing with devolved Administrations. As a little PS, has it given you any strong views about how good or how inadequate the arrangements are?

Lindsey Whyte: The first thing I would say is that the Treasury has really embedded day-to-day engagement with devolved Administrations on a very wide range of issues. That has
only continued to strengthen as the work on the referendum and the significant moves into further tax devolution, and in the future through the implementation of the Smith agreement into welfare. That has only served to reinforce the fact that engagement with the devolved Administrations is core to the vast majority of Treasury roles now. Of course, we operate in both reserved and devolved policy spaces, so we have slightly different interactions in different parts of the Treasury. It might be helpful if I explain a bit about my team’s role within that and my personal experience.

**The Chairman:** Just briefly, yes.

**Lindsey Whyte:** My team is responsible for the Treasury’s work on implementing existing devolution and in preparing for further devolution. As part of that, we play a central role within the Treasury in co-ordinating across all the policy teams and making sure that they understand the current status of the devolution settlements and how they are evolving. Ministers look to us to pull advice together across the department to reflect that. We also manage the interactions of the devolved Administrations. A large amount of that goes through my team where it deals specifically with budget and finance matters; my team is also the spending team for the devolved Administrations. We also play a role in facilitating a wider role in engagement with specific policy teams. Infrastructure UK, for example, now has very positive relationships with some of the capital experts in all the devolved Administrations and uses those, for example, to explore the opportunities for the devolved Administrations to take advantage of the infrastructure guarantees.

I would characterise our engagement as continual and really very regular. I think we have very constructive and positive relationships at all levels through the organisation. Our Ministers talk very regularly to their counterparts in each of the devolved Administrations. The vast majority of the time we can resolve issues bilaterally and through our informal processes. We also, of course, have a more formal structure, which sits underneath the Joint Ministerial Council. My team is responsible for the Treasury’s role in supporting those structures: the Finance Ministers’ Quadrilateral and laterally the Joint Exchequer Committees for Scotland and Wales. We have found those to be very useful.

**Q68 The Chairman:** Thank you. Because you are the Treasury and because money is involved, we would expect your context to be more extensive in departmental terms and more frequent. Perhaps we might hear a slightly different story from the departments.

**John Robbs:** If I may, I will first explain why you have me. It is not solely because I am responsible for marine and fisheries, which is an area where we have extensive contacts with the devolved Administrations; Defra’s small devolution unit also comes under me, and that carries out a co-ordinating role across the department. In terms of Defra’s relations with the devolveds, like the Treasury we have extremely extensive working relationships across pretty much our entire range of business. You could divide it into two broad categories. One is EU and international business, which of course is reserved in the case of Defra. However, the common agricultural policy, the common fisheries policy, all the EU directives and so on amount to a wide-ranging agenda in which the devolved Administrations have a very strong interest. On those dossiers, where we are negotiating, Defra is the lead UK department but with full and detailed involvement with the devolved Administrations, which you can explore later if you like.
The separate category is domestic business, where responsibilities are devolved. However, that does not mean to say that we stop talking to each other. We retain a very strong interest in making sure, for example, that we make the best use of the resources available between us, so that we do not do the same thing four times differently. We ensure that we take account of knock-on effects on each other, so we do not cause each other problems. This occurs in a whole range of business. For example, we work together on animal disease outbreaks, because evidently they and plant diseases are not just going to stop when they hit a territorial boundary. We work together on things like the Marine Science Co-ordination Committee, which is pan-UK, where we are all wrestling with pretty similar questions and we discuss what the priorities are: “You do that, I’ll do that, we’ll compare results”. We share the resources and work together. There are also a number of UK bodies, such as the Joint Nature Conservation Committee, which all four Administrations appointed. So you have EU business and areas of domestic policy, even though devolved, where we still want to work together.

In addition to that sort of subject cutting, there are layers—it is a multilayered relationship. You have Ministers, senior officials, working-level officials, and stakeholders—we have quite a lot to do with Scottish stakeholders. You can come at it either way.

The Chairman: Understood. Thank you.

Graham Pendlebury: Good morning everybody. I have a very similar story to John’s, so I will keep it as brief as I can. My day role, if you like, is local transport in England, but I also have a small devolution unit in DfT that sits under my authority. We would very much expect the individual policy and modal teams within the department to have their own bilateral relations with their counterparts in the different devolved Administrations. Indeed, I would see it as a failure if everything came through me, because that would suggest that the bilateral relationship was not really working. In DfT, most transport matters are already very substantially devolved, and there is a bit more devolution to come under the recent command paper and parallel provisions in Wales. Just as John said, our engagement does not just stop at reserved matters; we also very much exchange ideas, information and best practice about matters that may be devolved to the different Administrations. We have very constructive, professional relationships and networks, which seems to work fine. I would never say that everything is perfect and that we get everything absolutely right. Clearly there will be cases where that does not happen.

I think we have a slight advantage in that much of what we do in transport is not desperately politically contentious. If you are interested in how you maintain your roads and keep your maritime workers safe—things like that—these tend to be areas where there is broad consensus, and we are very much in the space of making sure that we share each other’s good practice and setting common standards where we can.

The Chairman: Thank you. That sets the scene.

Q69 Baroness Taylor of Bolton: Thank you for your answers. Perhaps I should say that when we have talked to some people from the devolved Administrations they have not always seen the relationship as being quite as smooth as you are implying, and departments have been mentioned as not having the kind of relationships with them that you are talking about. Others have said that other things are going well, however, which is good to hear.
Can I press you a bit on policy development? You have talked about contacts and talking to people. We have heard that these are often on the basis of individuals rather than formal structures, which might be something that you could comment on. When there is a new area of policy development, the way you have been talking it is as if that comes from Whitehall and then you consult people in devolved Administrations. I would like you to take us through the mechanisms for that. Also, to what extent can devolved Administrations come to you with ideas for policy development that then lead to something that is implemented by both Administrations or by more than one Administration?

**Graham Pendlebury:** Shall I kick off? Obviously there is a basic set of principles, which are set out in various concordats and guidelines, but you are right that a lot of this is down to individual personal relationships. I would not deny that, because we do have extensive professional networks and so forth, but I would certainly like to think that we have extensive consultation, bearing in mind that the same would apply to local government in England. There are multiple stakeholders who we would try to involve where it is going to directly affect their interests. I would even hope that we would try to do that where the effects might be a little more indirect. I can give you a specific example. It is our practice in DfT—I am not sure what the practice is in other departments—that every time there is a change in the EU presidency, we have an extensive process of discussion with the devolved Administrations about the different dossiers that are coming forward and our Ministers write to their opposite numbers in the devolved administration; we wrote on 20 January this year about the Latvian presidency, setting out the range of issues that we expect to be progressed and actively inviting the devolved Administrations to participate in the establishment of our policy positions or our negotiating positions in that area. That is one example that is reasonably formalised. We do that every six months and there are lots of accompanying tables and dialogues that go on that we send out to people, and staff in the department will go to Edinburgh, Belfast and Cardiff to make sure that we are bringing in everybody’s views.

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

**Baroness Taylor of Bolton:** You have just prompted a question in my mind. In Scotland they have recently changed the drink-drive limits.

**Graham Pendlebury:** Correct, yes.

**Baroness Taylor of Bolton:** That could have been used as an initiative to suggest that we did it throughout the UK. Was there any discussion? Was there an initiative from Scotland that was rejected? That was something that they did by themselves, but it could have led to a UK-wide policy.

**Graham Pendlebury:** It could have led to a UK-wide policy, but our Ministers took the view that for the time being they wanted to retain at least the current level, so there was dialogue and discussion. Of course, one of the things that we will look very actively at is how...
Mr Graham Pendlebury, Department for Transport; Mr John Robbs, Defra; and Ms Lindsey Whyte, HM Treasury—Oral evidence (QQ 67-75)

this plays out in Scotland. It was one of those quite iconic things, because there is one very visible difference now between the two countries that you do not often see, which is the different limit. There was a lot of publicity on that, with signs and police and so forth on the borders to make sure that there was common understanding. That is very much discussed. I believe Philip Rycroft was here in front of you a few days ago. He mentioned the areas of research that we do jointly with Transport Scotland, such as seatbelt usage and mobile phone usage, to see whether the penalties are having any effect on behaviour. We had the same dialogue on the drink-drive issue, but there was a policy difference and we will now see how the two systems pan out and which is the better.

Lord Crickhowell: Can I put a specific example to you, which is rather different from these general issues? At what level and who is involved—I suspect the Treasury is heavily involved—in a decision like the electrification of the Great Western Railway, which is currently a major issue because of the question of where the railway starts, in England or in Wales, because, whichever way you like to look at it, it crosses the border?

Graham Pendlebury: Rail electrification is broadly speaking an issue for the Secretary of State for Transport and DfT Ministers, but a very good example is the electrification in south Wales. The Prime Minister announced a joint arrangement with the Welsh Government back in November, I think, through which the UK Government will contribute £125 million overall towards electrification on the Welsh sections of the Great Western service and the Welsh Government will provide the parallel investment for the electrification of the valley lines that spin off that. So there is a sort of joint agreement between the two Governments, led by the DfT. Obviously ultimately money is an issue where our friends from the Treasury get involved. But on the actual detail—

The Chairman: I think we should move on, because we have lots of other questions to ask first.

Q70 Lord Lexden: You have made clear, as we expected, that relationships are, for the most part, conducted informally. Could you give us a sense of the balance between the formal and the informal, at both official and ministerial level if you are able to, and perhaps indicate whether you think the balance should be shifted in any way perhaps to greater formality, particularly in view of the pretty substantial new devolved powers that will be made available in Scotland and in Wales?

Lindsey Whyte: Shall I start? I would characterise the current situation by saying that the vast majority of our interaction is informal, and also bilateral with individual devolved Administrations. Particularly when we are dealing with spending issues, in a negotiation we have generally found that we can resolve issues on the vast majority of occasions through informal routes, through officials and then through ministerial conversations that happen very regularly. In addition to that, we have a sort of structure of formal processes that sit underneath the Joint Ministerial Committee. If it is helpful, I can explain a little bit about it.

Lord Lexden: Just very briefly.

Lindsey Whyte: Okay, so we have the Finance Ministers’ Quadrilateral meeting, which is primarily used as a forum to bring forward finance issues that are common across the devolved Administrations. That has been a useful forum in developing the statement of funding policy which, as I am sure you are aware, is the document that sets out the principles that govern the Treasury’s relationship on behalf of the UK Government with the
Mr Graham Pendlebury, Department for Transport; Mr John Robbs, Defra; and Ms Lindsey Whyte, HM Treasury—Oral evidence (QQ 67-75)

developed Administrations. We have in the past been able to use the Finance Ministers’ quad to reach agreements on some quite technical issues, but very important ones—for example, around the nature of budget exchange for the devolved Administrations.

Going slightly to the previous question about policy development, that was a good example of where the proposal came from the devolved Administrations, and we were able to use that process to implement that. We also now have for Scotland and Wales a bilateral Joint Exchequer Committee and structures that have been used to take the policy decisions associated with implementation of the Scotland Act 2012, which will also be used for the Wales Act 2014. We have found those very useful, and the structures underneath have enabled us to develop the operational detail that needs to underpin that. I think there will certainly be lessons from those structures, where they have worked well, that we would like to take forward. As you say, particularly in the case of Scotland with the Smith commission announcement, we are going into much more extensive tax devolution and now into welfare, so I imagine there will have to be supplementary structures there. That will be something that we need to consider as part of the review of the memorandum of understanding, which I think that Philip Rycroft and Helen MacNamara talked about in their evidence session. There will always be a question about the right balance between the formal structures and the more informal official structures underneath that. I do not think that we have a prior about what the correct model is going into that, but in some of the discussions that we have had with stakeholders, both ahead of the publication of the command paper last week and immediately afterwards, they have certainly made clear the value that they attach to being able to have conversations at the right level of technical detail. We would certainly want to be able to find a way whereby we can still do that; not everything is necessarily within the implementation—we need to go up to a formal ministerial process.

The Chairman: Could you keep your comments fairly concise, because we will run short of time otherwise?

John Robbs: I will briefly add that, as with Treasury colleagues and Transport colleagues, the ministerial engagement tends to be the tip of the iceberg, as you would expect. Most of the policy discussions in Defra territory are about EU negotiations; you have a very full process from the moment when a proposal or working paper comes out in Brussels, with automatic sharing, working through and resolving issues with only a few or a very small number or possibly none needing to go to ministerial level. We tend to resolve them either by correspondence or at Council meetings. We have very frequent meetings in Brussels and Luxembourg. It is routine for one, two or possibly three Ministers from devolved Administrations to attend. This week in Brussels, we had a Minister from Scotland and one from Wales. Before the Council starts, we meet as a delegation and any outstanding issues are resolved then, informally really, with the Ministers in the room.

Graham Pendlebury: Can I make one brief comment, Chairman? On your question of whether we should move towards more formalisation, that is something that we perhaps need to revisit in the light of the evolution of the devolution arrangements—but for me, the more you formalise it, the more you fossilise the relationship. Those of you who have been government Ministers will know that what then happens is that your officials prepare you formal briefs and the discussions become a kind of negotiation from prepared positions rather than a conversation, sharing expertise and things. Of course, you can have formal arrangements for high-level discussions of strategy, maybe, and perhaps should it be
Mr Graham Pendlebury, Department for Transport; Mr John Robbs, Defra; and Ms Lindsey Whyte, HM Treasury—Oral evidence (QQ 67-75)

needed some sort of dispute resolution process, but I would worry that you could find yourself making everything locked down—and that would be a less open relationship, paradoxically.

I also find that, with officials, when you have formal policy events, it becomes “death by PowerPoint”. So in the end we let those die away, and we prefer more informal relationships.

Q71 Lord Cullen of Whitekirk: Dr Rycroft gave us evidence that the campaign for Scottish independence and the referendum shone a “very harsh light” on the understanding of devolution and the relationship between different parts of the UK and Whitehall. How did that campaign affect your department’s relationship with the Scottish Government and other devolved Administrations? It may have been a difficult time, but was it a useful experience?

John Robbs: I think it is my turn to go first. I am not sure that it was a particularly harsh light, in our case. It certainly highlighted issues and it was the occasion in our department and, I am sure, other departments to make sure that everybody was right up to the mark on the rules and procedures that we are supposed to follow. So it was a good opportunity to remind people of the guidance and the ways in which to operate with devolved colleagues, in case there were newcomers or others who had slipped into perhaps less than perfect ways. So it drew attention to the issues more than was the norm. In our case, business continued from day to day. We could not just wait for the vote to get out of the way because, as I have said before, most of our policy discussions are on the EU agenda, and that was not going to pause. So it was very largely business as usual.

The Chairman: Thank you very much. We are going to ask a couple of Treasury questions now for Ms Whyte, but after she has dealt with them the two of you might be bursting to add something or subtract something. That is usually the case with the Treasury.

Q72 Lord Brennan: Ms Whyte, it is a political necessity for devolved Administrations and Whitehall to understand each other’s financial and Treasury policies. Without committing yourself to any position, could you explain to us how it works or should work in future? Are budgets going to be synchronised in terms of preparation and publication? If not, how do you balance them out? The second point is that there is a matter of real concern about the balance of tax across the country. Let us suppose that there is the ability to have different rates of income tax in Scotland, within its devolved powers, and let us suppose that you have corporation tax in Northern Ireland at 10% and not 20%. How is that going to be balanced nationally, and which Minister will be responsible for that?

Lindsey Whyte: I shall do my best to cover everything that you have asked. I absolutely agree that it is critical to ensure that the UK Government and the Governments in each of the devolved Administrations understand their respective budgets and how they fit together. We have the statement of funding policy, which sets out the overarching principles that govern those relationships. It is certainly the case, as has been set out in the Smith commission report and the Government’s command paper last week that we will need to review the funding arrangements and, indeed, the wider fiscal framework within which the funding model sits, in the light of further devolution. We have reinforced our commitment to ensure that we do that in partnership with the Scottish Government. As you say, we will also need to look at the funding model to support the devolution of corporation...
tax to Northern Ireland, subject to the passage of the Bill before Parliament. With Wales, we will also be working out a funding model to sit along the tax powers within the Wales Act. We are in a good starting position to work through the various funding models and the implications of tax devolution, particularly through the Smith commission. Unlike with previous rounds of devolution, the Smith commission process has agreed a clear set of principles that will need to underpin that, and there has been cross-party agreement on the outcomes that any model will have to achieve. Of course, we will have to do a lot of detailed technical work and decisions about the ultimate funding model will be for Ministers to take, but we are committed to doing that alongside the implementation of the Scotland Bill that will come forward in the next Government. That will help us to learn some of the lessons from the Scotland Act for how we do that.

On the specific questions on the alignment of UK Government budgets with Scottish Government budgets, that would really be a matter for future Governments and Ministers to consider as part of this process—and similarly, in terms of ministerial ownership, although at the moment the work on the funding model and the fiscal framework is being led by the Treasury. The Chancellor is of course responsible for that.

Lord Brennan: Would you expect that the day-to-day stuff will be done at Chief Secretary level?

Lindsey Whyte: Under the current arrangements, the Chief Secretary has tended to manage the day-to-day relationships. He has tended to attend the Finance Ministers’ quad, although he and the Chancellor discuss the detail of what is being discussed in those meetings. But again, the assignment of ministerial roles in the Treasury in future is for Ministers to consider.

Q73 Lord Crickhowell: I have one final question. You have referred to the Finance Ministers’ Quadrilateral meeting. How do the Joint Exchequer Committees interact with the Finance Minister’s Quadrilaterals?

Lindsey Whyte: They are actually there for slightly different purposes. The quadrilateral meeting tends to deal with common issues and financial issues across the devolved Administrations. For example, the quadrilateral meeting reached an agreement on how we dealt with budget exchange and, subsequently, how we would deal with financial transactions capital after the last spending round. That was something that all three devolved Administrations had a common concern about and wanted to raise in that forum. The Joint Exchequer Committees for Wales and Scotland are there to manage and oversee the implementation of the devolution involved in, respectively, the Scotland Act 2012 and the Wales Act 2014. So by nature they are bilateral forums. The Joint Exchequer Committee for Scotland has an official structure underneath that to support that process. We are still in the process of discussing with the Welsh Government what might be appropriate for them, so that we can support that. So while there may be occasions when one of the devolved Administrations would want to raise policy questions that had appeared through the Joint Exchequer Committee in the broader form of the Finance Ministers’ Quadrilateral, that has not tended to be the case. The quadrilateral has mostly focused on more detailed issues around the statement of funding policy, for example.

Q74 The Chairman: Thank you. We will give you a pass on the next question. To the two other departments, I would say that there is a forest of memorandums of understanding,
Mr Graham Pendlebury, Department for Transport; Mr John Robbs, Defra; and Ms Lindsey Whyte, HM Treasury—Oral evidence (QQ 67-75)

concordats and guidance on devolution, and possibly other kinds of protocol, within each department, rather hidden from the outside world. How do you judge the relative importance of those and how do you relate your work to the existence of those documents?

John Robbs: We start, obviously, with the government-level memorandums of understanding, concordats and guidance notes. Then, as you have observed, there is certainly rather a lot below that level, and Defra makes its own very fair contribution to the quantity of other guidance in all sorts of different areas. But these have not been written because people felt there was nothing else they could do with their time; they were done because it was thought they would be useful. We have them on animal health and disease, biodiversity—very detailed stuff. Our internal audit function, for example, has a specification of how it works for devolved Administrations. They are done because the parties think it is useful to set down a shared understanding of how the relationship will work, but in my personal experience much of the value of these things comes in the writing of them. Then the trick is not to forget them. The process of clarifying areas of different interpretation can be very useful, and every now and again they need to be reviewed to make sure that they are working. Once you have written them and got that in your head, the vital thing, of course, is the working relationships and practice, not constantly referring to what is written down on paper. Those personal-level working relationships are what make it work or not. I think they have a role, but you cannot operate by constantly opening the reference work and reading the relevant sub-clause of the relevant chapter, because that just stultifies everything. So use them, but keep them in perspective.

Graham Pendlebury: We have exactly the same in DfT. We have concordats with each of the three Administrations. Sitting below that are specific ones on the relationship with Network Rail or whatever it is. I have some of them here. They are quite lengthy, wordy, quasi-legalistic documents, and they provide a framework and an architecture, but if I were a young official thinking about how to engage with my opposite numbers in Scotland, or vice versa, I would probably be terrified of putting my foot wrong because I was breaching some sub-clause. I think the Cabinet Office devolution guidance is better. It is written in plain English and has handy hints on how to do some fairly common-sense things, so I would guide people towards that. In DfT, we have on our own departmental intranet guidance on relations with the devolved Administrations, and indeed with other tiers of government, and I would point people towards that as an instant reference, or suggest picking up the phone to me or one of my members of staff if they have concerns. I am not belittling them—it is very important that we have these formal structures. They are there for a reason. They need to be refreshed, I have to say. I would probably say that the DfT concordats are a bit long in the tooth and that we ought to engage with our colleagues around the UK, particularly in the light of the changes that are happening, and refresh them a little. The fact that they have not been refreshed probably signifies that there is quite a bit of dust gathering on them.

The Chairman: Do you think they need to be reinforced in some way, whether by statutory underpinning or some more rigid form of protocol? While you are thinking about that, to what extent do you seek to communicate with other departments the relative differences between the devolution settlements in different parts of the United Kingdom? Do you regard it as part of your responsibility to have a cross-departmental understanding and flow of knowledge?
Graham Pendlebury: I shall answer your first question first. It is a little like the previous question about formalising things. Personally, I would be very wary about going down some kind of statutory route, because then you build some inflexibility into the system, and every time there is a change of nuance or something you are then stuck with a statutory set of instructions or whatever. It is much better to have a more informal structure.

The Chairman: To save time, do the other two witnesses agree with that approach?

John Robbs: I do. That is my personal opinion.

The Chairman: Okay, let us press on with the other question about communication.

Graham Pendlebury: I think it is fair that we do not share practice with each other on a day-to-day basis about different elements or ways in which our various relationships are conducted. Dr Rycroft chairs the senior officials devolution group. We get together about once a month, give each other talks and presentations and keep each other up to speed, but that is still a more informal testing of the waters and seeing what is working and what is not working, and things to watch out for, rather than discussing the detail of our individual concordats.

John Robbs: I agree. As Philip Rycroft said, more could be done and probably should be done.

Lindsey Whyte: Just to add to that, we do quite a lot of work through our spending teams and with Whitehall departments to make sure that the operation of the Barnett formula, for example, and the budget system on the spending side for the devolved Administrations is well understood and that both departments and teams within the Treasury understand the implications of policy decisions and recommendations for the devolved Administrations. We have increasingly embedded that into our structures to make sure that all the submissions that go to Ministers reflect that.

I would just say that we are moving much more into further tax devolution, as I said. That is becoming much more mainstreamed into wider parts of the Treasury, and we are certainly looking to continue to increase the role of my team in ensuring that across the Treasury people understand the differential devolution settlements and the different paces at which they are progressing, but also the overarching principles that should still guide those settlements so that they can understand what that means for their day-to-day operation as that becomes much more relevant for more people.

The Chairman: Have any of your departments had scrutiny from the House of Commons or House of Lords Select Committees on devolution issues?

John Robbs: Certainly Defra is a very regular customer on EU affairs, where there is a strong devolved Administration interest.

The Chairman: But not on the Scottish Government or the Welsh Assembly or the Northern Ireland Assembly?

John Robbs: Oh, I see. I have been to Edinburgh twice with different Defra Ministers to appear before Scottish committees, yes.

The Chairman: But not before UK committees?

John Robbs: No, not before UK committees on devolution issues.
Lindsey Whyte: We have had quite a lot of scrutiny. The Chief Secretary and the Financial Secretary have both appeared before Scottish parliamentary committees. There has also been scrutiny within the UK Parliament. Formerly the Exchequer Secretary and now the Financial Secretary has supported the Secretaries of State for Scotland, Wales and Northern Ireland on the Scotland Act 2012, the Wales Act 2014 and, just yesterday, on the Second Reading of the Corporation Tax (Northern Ireland) Bill. The Chancellor, as you may know, was before the Treasury Select Committee last week to talk about the Smith agreement.

Q75 Lord Goldsmith: This has been a very helpful session. We were keen in this Committee to understand not just the relationship between the Cabinet Office and the territorial offices in the devolved Administrations but how you work with the functional departments across the line. So it has been helpful to hear what you have to say. One practical question that we would like to know a bit more about is what the extent is of direct experience of your officials working in devolved Administrations, or of those from devolved Administrations working in your departments? Do you have exchanges and people moving from one to the other?

Graham Pendlebury: I did a quick trawl when I saw that that might be one of the questions to see whether any of our directors had ever worked in any of the devolved Administrations. Apart from a couple of people saying that when they were 16 they worked in a benefits office in Belfast for a couple of weeks, the answer is basically no. What is more common is when people have previously worked in the old government offices for the regions or in local government in England. So we do not have formal structures. In some ways, the traffic has tended to be the other way. We have had senior officials who have moved out to the devolved Administrations for career and, dare I say, quality of life reasons. They have found that it has been congenial. That does not mean to say that we do not have exchanges when it is practical. To give you a specific example, you may have heard that the department, jointly with stakeholders in the north, is preparing a transport strategy for the north of England, connecting the major cities there. We have seconded in a senior official from Transport Scotland to help us with that, because many of these east-west connectivity issues and connectivity issues up to Aberdeen are similar to the ones in the north of England—so why would we not bring somebody down for a few months to help us out with that process? That is a practical example. But we do not have a more systematic approach—you cannot get promoted unless you have done three years in a devolved Administration, or something like that.

The Chairman: You make it sound like Siberia.

John Robbs: I think it is a slightly opposite perception. Like Graham, at senior level we have tended to have rather one-way traffic of senior colleagues going to work for the Scottish or Welsh Governments and showing a marked reluctance ever to come back. London property prices, commuting and so on are not always that appealing from a distance. So we have done that. We also have secondments, although in relatively small number, which tend to be more at working level, with more experts from core Defra and our network of arm’s-length bodies going in and out. The other place where the interchange happens is often in the UK Permanent Representation in Brussels, which we work with on all our EU business. There you tend to have devolved people coming in and working with us as part of the UK team and then going back. So we have it in different areas and do it in different ways.

Lord Goldsmith: Is it helpful when it happens?
John Robbs: Yes, it is. It always depends on the individual, but as a generalisation it is helpful.

Lindsey Whyte: We are very similar in that we have people who have joined the Treasury with previous experience from the devolved Administrations. Within my team, I have someone who has previously worked in the Northern Ireland Executive and I have just recruited somebody from the Scottish Government. We also have people who go out on secondment to the devolved Administrations, the territorial offices and the Smith commission secretariat or the Silk commission. We similarly do not have a central record, but it is very much encouraged within the department to do that sort of interchange, whether with the devolved Administrations, the private sector, international institutions or other government departments, as part of career progression in the department.

The Chairman: Do any of my colleagues want to ask another question, or do you feel that there is anything unsaid that you would like to say? No? All passion spent. Thank you very much—you have been extremely helpful in shedding light on these issues. You have given us the perspective that we needed, and it will play into the bigger picture very well indeed. Thank you very much for coming.
Dr Hugh Rawlings, Director, Constitutional Affairs; and Rt Hon. Carwyn Jones AM, First Minister of Wales—Oral evidence (QQ 43-54)

Dr Hugh Rawlings, Director, Constitutional Affairs; and Rt Hon. Carwyn Jones AM, First Minister of Wales—Oral evidence (QQ 43-54)

Transcript to be found under Rt Hon. Carwyn Jones AM, First Minister of Wales
Mr John Robbs, Defra; Mr Graham Pendlebury, Department for Transport; and Ms Lindsey Whyte, HM Treasury—Oral evidence (QQ 67-75)

Transcript to be found under Mr Graham Pendlebury, Department for Transport
Mr Laurence Robertson MP, House of Commons Northern Ireland Affairs Committee; Mr Ian Davidson MP, House of Commons Scottish Affairs Committee; and Mr Bruce Crawford MSP, Devolution (Further Powers) Committee, Scottish Parliament—Oral evidence (QQ 55-63)

Transcript found under Mr Ian Davidson MP, House of Commons Scottish Affairs Committee
Rt Hon. Peter Robinson MLA, First Minister of Northern Ireland—Oral evidence (QQ87-97)

Rt Hon. Peter Robinson MLA, First Minister of Northern Ireland—Oral evidence (QQ87-97)

Evidence Session No. 6 Heard in Public Questions 87 - 97

WEDNESDAY 11 FEBRUARY 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Baroness Falkner of Margravine
Lord Lexden
Baroness Taylor of Bolton

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Examination of Witness

Peter Robinson MLA, First Minister of Northern Ireland

Q87 The Chairman: First Minister, we are very grateful to you for coming along to this meeting with us. I know that you were in London anyway, but I know how busy a day can be for you. We very much appreciate it. We are getting towards the end of our inquiry into intergovernmental relations. We have drawn quite a lot of evidence from academic sources, officials and Ministers in all the devolved territories, provinces or whatever you would like to call them. The opportunity to speak to you towards the end is very useful, so thank you for coming. I already apologised to you in advance that we might have to break off for a Division, in which case I hope that you will bear with us while we go to vote.

Intergovernmental relations from the point of view of Northern Ireland and the rest of the United Kingdom are probably slightly different from those of the others, partly because the political structure is different, the relationship with the Republic of Ireland is there, and your degree of devolution, although it has been more sustained over the years than anything in Scotland or Wales, is different. How do you see intergovernmental relations in general? Does Northern Ireland have anything special that could have application to the rest of the United Kingdom? Can you think of any other way in which it might be possible to improve it?
Rt Hon. Peter Robinson MLA, First Minister of Northern Ireland—Oral evidence (QQ87-97)

Rt Hon Peter Robinson MLA: First, thank you for the welcome and the invitation. I suppose what puts many people in Northern Ireland on edge is that it appears that the desire to consider constitutional reform is sparked only because of Scotland. Important although Scotland is, Northern Ireland, and indeed Wales, would not want to be left behind in any improvements that can be made.

Intergovernmental arrangements are made more difficult by two factors. One is the unbalanced nature of the responsibilities of the people around the table. You are pitching devolved Administrations against a sovereign Government. The very fact that the meetings always take place in London indicates that we are being brought in as opposed to being a full part of any structure. It is also complicated by the fact that all the devolved regions are led by parties that are not represented in the Government of the United Kingdom. Over the last number of years, that has led to a more confrontational, adversarial role within the JMC, where parties are coming in to deal with issues in their jurisdiction that they want to go back to publicise, so it becomes grandstanding as opposed to a genuine effort to reach agreement and to find areas where we can learn from each other.

Having been on it for a very long time and seen it under different Governments, I notice, particularly with Scotland, that it has become much more adversarial. To some extent, there are two devolved institutions, which recognise that they are devolved institutions, and one devolved institution that believes that it is a sovereign state and has the standing of the Government. Those kinds of relationships are awkward, as has been seen in the dispute resolution procedure, for example, which is meaningless. At the end of the day, the Cabinet Office will decide whether the Treasury was right. We do not think that is a very impartial court to take our case to. However, in general terms it is useful and worth while. It is not the body that I would take any serious issue to that I wanted to take up with the Government; I would deal directly with the Government. Indeed, all the big changes, whether it is the Stormont House agreement, corporation tax or issues about our budget, have been through direct contact with the appropriate Minister.

The Chairman: Thank you. You have touched on a number of points of considerable interest to us, so I hope that we will pursue them further in other questions. Lord Lexden.

Lord Lexden: Before going on to my main question, can I ask whether relations between the Executive, the United Kingdom Government as a whole and other devolved Administrations are complicated by the fact that the Executive brings together the principal parties, who have wholly opposed constitutional and many political objectives? Meetings are attended by you and the Deputy First Minister, which is quite unlike the arrangement elsewhere. Does that complicate matters?

Rt Hon Peter Robinson MLA: It complicates them for me and, I think, puts Northern Ireland in a difficult position. If the Deputy First Minister and I are present, there will be a range of issues on which he and I will take a different stance. That becomes evident very quickly, so it is hard in some cases to put forward a unified Northern Ireland voice. That is probably the minority of issues that we deal with. If we deal with social and economic issues, we can probably work out a Northern Ireland position, but when it comes to more constitutional issues, we are in very different spheres.

Q88 Lord Lexden: My main question at this point is to ask whether you think there would be benefit in putting intergovernmental relations on a more formal footing with a statutory
element—the statutory element to be carefully contrived so that there was not too much prescription for arrangements on a statutory basis.

Rt Hon Peter Robinson MLA: I think it would be difficult to legislate for good relations. You could, however, legislate with some minimum requirements on the number of occasions each of the bodies and sub-bodies met. You could place a duty on UK departments either to take into account or to consult the devolved regions when they are dealing with matters that have an impact there. I could give you examples of major policy issues that were decided by a UK Government department that had a direct impact on what we were doing in Northern Ireland and that we heard about on the news. That is not good and it goes a long way from having a good relationship and a better understanding of what we can do.

One example would be Michael Gove’s GCSE announcement. That has implications for people from Northern Ireland getting into universities. It has implications for national and international employers. Again, we learnt from the press about that issue.

Lord Lexden: So you think there might be a role for a statutory element?

Rt Hon Peter Robinson MLA: A duty? Some of the devolved regions might, but I would not want to slow down the work of government here by making some onerous demand of hoops that they had to jump through before they take a decision. Where there is a clear impact, the very least the Minister could do would be to pick up the phone to speak to his counterpart and indicate an intention to do something and the impact that it might have.

Baroness Taylor of Bolton: I listened with interest to what you said so far. Some of it echoes other things that we have been told, and some of it does not. You said that you would not bring serious issues to the Joint Ministerial Committee; you would go directly to Ministers or civil servants. Can you say something about those informal relationships with ministers or between your civil servants and Whitehall civil servants?

Rt Hon Peter Robinson MLA: Perhaps I should redefine what I said more closely when I said that I would not take serious issues there. Where I am looking for change from the Government on an issue, I will do it directly. Of course, many of the issues that we discuss at the JMC and its subgroups are serious, but they are not so much issues for decision; it is more a case of discovering what is happening in each of the devolved areas and with the UK Government rather than us getting an agreed policy.

One body that we have is the British-Irish Council. Within that body, there is provision for us to look at particular topics of importance, setting up workgroups and trying to bring forward a common policy in some of those areas. It is separate from the JMC, but it is worth while.

In one of the documents that I read, there was a suggestion that it might be worth looking at having something similar to the JMC, but I am not sure about the extent to which we would just be duplicating what is happening elsewhere or whether it would have a different remit.

Baroness Taylor of Bolton: Earlier, I think you used the words “brought in”—you felt that you were brought in to London to hear what was being proposed. We have been told that Whitehall has not fully taken on board the fact that there are devolved Administrations. That seems to be the case particularly in policy development. I get the feeling—bluntly in the education example that you used—that a lot of things are a fait accompli: you feel that you are just informed about rather than take part in genuine policy development between
your Administration and Whitehall. Is that how you feel, and do you have any scope or any activities with the other devolved Administrations to formulate policy so that not everything is initiated by Whitehall?

Rt Hon Peter Robinson MLA: We need to remember that one of the significant arguments for devolution is that we can do something that is uniquely Scottish, Welsh or Northern Irish, so from that point of view it is not so much about getting an agreed policy. Very often because of the differences between the political parties in the various regions, you will end up with very different policies being rolled out. However, there are issues that complicate what we are doing because of actions by the UK Government, whether it is passports, integration or whatever else. There are areas where the best we can to is try to influence the Government to change—alter or amend—a policy to take account of some peculiarity that there might be in each of our devolved regions.

The three devolved regions have met on a number of occasions. We would pick up the phone to each other, which is perhaps a bit more complicated since the Scottish referendum, but we meet regularly. To some extent, it is almost ganging up to get the same position so that we can take on the Government. That indicates the feeling that we all have that the law is being laid down to us and there is not that much flexibility.

Baroness Taylor of Bolton: Just one final point. When you gave evidence to the Commons Political and Constitutional Reform Committee, you seemed to give a different impression about what happened with regard to JMC (Europe) from what we have heard elsewhere. Generally, we have been told that that is one of the better areas of co-operation, but you were making the point that sometimes you felt that more could have been done.

Rt Hon Peter Robinson MLA: I think that Defra has a better record. Our Minister from the Northern Ireland Executive will go out when quotas and other issues are being decided. I will pick up the phone on the night when those decisions are being taken, speak to the UK reps and indicate what is important for Northern Ireland. We have a better relationship with Defra largely because agricultural issues are more important to Northern Ireland than they are to England, so it is important that our voice is heard and taken into account in those areas. We do not get everything that we want, but we have a better relationship. We certainly get information and consultation.

Baroness Falkner of Margravine: Please forgive me for being late, so that I have missed your introduction. You mentioned the lack of co-ordination in areas where there are clearly very different policy interests. Would it be better to co-ordinate within sectoral areas in the way that you do on the British-Irish Council—issue areas, energy, agriculture and fisheries—between the devolved Administrations and Whitehall?

Rt Hon Peter Robinson MLA: I think that you can make a strong case for it. I come from a school of thought that inclines towards small government, and we would start to build it out quite a bit if we did that with a level of duplication with what we are doing in the British-Irish Council. Of course, the British-Irish Council has another player at the table outside the devolved regions and the national Government of the United Kingdom.

Q90 Baroness Dean of Thornton-le-Fylde: Good afternoon, Minister. You are becoming a regular, are you not? On 8 January, you appeared before the Political and Constitutional Committee in the House of Commons. I would like to ask you about the JMC, but secondly, and perhaps more so, about the domestic committee. You referred to the British-Irish
Rt Hon. Peter Robinson MLA, First Minister of Northern Ireland—Oral evidence (QQ87-97)

Council on 8 January, when you appeared before the Committee. You made quite an interesting statement about the balance between the involvement of the devolved Administrations and the right of the UK Government to govern. Interestingly, the First Minister of Wales has suggested that the work-stream idea of the domestic committees should be based on what you have in Northern Ireland—on the British-Irish Council. Do you think that would work with the other devolved nations? One of the academics who has given evidence to this Committee has said that the more you proliferate committees, the less work you will get done. Obviously I paraphrase. Yours seems to be working well. Would you advocate it for JMC (Domestic)? What changes would you recommend for JMC (Plenary) itself?

**Rt Hon Peter Robinson MLA:** I would welcome it if the culture was somewhat different. At present it is simply a case of a UK department coming along on the basis of, “Here’s what we are doing. This is the way it is going to be. There’ll be no progress”. We get back to the issue of the extent to which people arrive there with the view that they are trying to learn from one another about what we have done to tackle similar issues and whether there is value in us taking issues forward jointly—if people have come there in that spirit.

JMC (Domestic), I have to say, does not meet regularly, and if any of these issues are going to get into policy matters, once or twice a year will not satisfy the ability to come out with anything worth while. That means that you will have to ratchet up the number of meetings.

**Baroness Dean of Thornton-le-Fylde:** So how often does the British-Irish Council meet, because you have these 12 work sectors, have you not? How often do they meet?

**Rt Hon Peter Robinson MLA:** One or two times a year, but the work sectors meet separately from the British-Irish Council, and they will meet more regularly when they are preparing their report. The reports come forward. When the issue is reported, it is dropped as we take on other issues.

**Baroness Dean of Thornton-le-Fylde:** They come to the British-Irish Council?

**Rt Hon Peter Robinson MLA:** They come to the council for approval.

**The Chairman:** I am concerned about this reference to the culture being so bad, but there is a Division in the House and I will not ask the question because I do not want to give you 10 minutes to think of an answer. Would you forgive us, and are you able to spare and other 10 to 15 minutes afterwards? I am so sorry. The clerks will look after you.

**Sitting suspended for a Division in the House.**

**The Chairman:** It struck me when you referred to the culture that that is fundamental to the nature of intergovernmental relations. Others have referred to it in different ways, not altogether favourably. Is it a sort of institutionalised national culture, is it poor personal relations, is it ministerial relations, Civil Service relations or departmental relations? How has it gone so wrong, and is it reflected similarly in the British-Irish Council?

**Rt Hon Peter Robinson MLA:** The British-Irish Council is a very different animal. It includes the Isle of Man, Guernsey and Jersey—and, of course, the Irish Government are present, so
the range of issues is different, and of course so is the modus operandi, with the work groups bringing forward reports.

I suppose I had best explain the culture of the JMC. We will have an agenda. It will be made evident early on that we are going to spend 20 minutes on this one and 10 minutes on that one. We will go round the room. We will ask each of the devolved regions, plus whoever is the departmental Minister who is dealing with the issue to make their comments, and that is the end of it. It is not a case of trying to reach any agreement, it is just a stating of positions. That can be helpful to the extent that it gives you an opportunity to put issues to the Government and to influence them. It is useful in that you may pick up ideas about how somebody is dealing with youth unemployment that you have not tried yourself, so you may follow it up with that devolved region. It is helpful to that extent, but it is very much a tick-box exercise as opposed to really getting things done. You have a starting time and a finishing time and you get the impression that some people want to get on to the next meeting and that it is more something that they feel compelled to do.

**The Chairman:** That is helpful, because it strikes a chord with what we have heard from other quarters, and it is clearly something that we are going to be looking at closely.

**Q91 Lord Brennan:** First Minister, bilateral connections between the Administrations in the devolved areas and London are inevitable, particularly in education and welfare, but I am interested in finance, where you have different tax regimes in the three devolved areas: Scotland has higher rates of income tax, Wales lower, there are financial benefits and Northern Ireland has its own settlement of recent origin. How do you see it working multilaterally within different devolved areas so that the devolved Administrations and the central Governments are in financial balance?

**Rt Hon Peter Robinson MLA:** As a former Finance Minister, I have to say that there is another structure, which is the Finance Ministers’ quadrilateral, which I always found to be a useful body. There was much more interaction at those meetings than you would get at a JMC—probably because there were fewer people around the room. You certainly have a much better opportunity to raise issues and deal with particular problems. To that extent, those have been useful and I suspect that they continue to be useful meetings.

In terms of the differences in tax regimes, Northern Ireland has air passenger duty responsibility, and it will have corporation tax-setting powers. We are seeking under the agreement that we have with the Prime Minister to look at the devolution of some other tax-raising powers. Every part of the United Kingdom is somewhat different, but seldom will those issues be the subject of any discussion in the JMC at any level. Mostly, those kinds of issues will be dealt with in the Finance Ministers’ quadrilateral, so it has not been a problem.

We obviously deal with issues like employment, youth unemployment and rebalancing economies. We had a constant issue on the agenda during the economic downturn. I am sure it was helpful to us all to know the speed at which the various parts of the United Kingdom were able to come out of recession, so something of a benchmarking exercise can be part of the discussions and you can look at how you are doing compared with other devolved regions.
Baroness Taylor of Bolton: Just a quick follow-up on what you were saying about tax-raising powers. When it comes to changes, such as corporation tax, who takes the initiative? Does Whitehall say, “Would you like this?”, or do you go to Whitehall and say, “We want that”?

Rt Hon Peter Robinson MLA: I have never known the Treasury to give up any of its power. It is a case of us discussing the issue with the Prime Minister and the Secretary of State, convincing them that Northern Ireland has a unique case, coming out of decades of violence and conflict, and the fact that we have a neighbour on the island with a much more attractive corporate tax rate than we have. They would be more our competitors for direct foreign investment than Scotland and Wales.

Baroness Taylor of Bolton: But on other things, do you look at what Scotland has or is getting and think, “Us next.”?

Rt Hon Peter Robinson MLA: We do, but we are not jealous by nature. We looked at what Scotland was getting. Quite frankly, some of the things looked as though they were being drawn to Scotland for the sake of Scotland building up the areas of responsibility that it would have, rather than asking, “Can this could be done better in Scotland than at the UK level?” For me, that has to be the criterion: what is the advantage to Northern Ireland of doing it differently than is being done at the present time?

Q92 Lord Lexden: First Minister, from all that you and our other witnesses have said, it is inevitably the case that so much is done on a bilateral basis. You also touched on the multilateral relations. What would the right balance be? Do we need to build up multilateral relations to a greater extent? Would there be sufficient business to justify that?

Rt Hon Peter Robinson MLA: I have heard the arguments that people do not have sufficient access to the Prime Minister, the Deputy Prime Minister or other Ministers. I suppose we might be a bit spoilt. The fact that we are coming out of a very long period of division has probably given us a wider level of access than others might enjoy. It could improve the relationship if there was some structure that allowed for bilaterals, or at least an opportunity for a devolved region to have a meeting within a given period.

Lord Lexden: By the way, I cannot resist mentioning to you that Ken Maginnis said in this House a week or two ago that it is easier for you to arrange a meeting with President Obama than with the Prime Minister of this country.

Rt Hon Peter Robinson MLA: There was a stage at the beginning of this Prime Minister’s term, when I rather suspect that he had a few other problems to deal with, where we had met President Obama half a dozen times and the Prime Minister only twice. I have to say that the Prime Minister’s numbers have gone up considerably since then, particularly in and around the Stormont House agreement and other meetings that we have had. So I think he is well ahead at this moment.

Q93 Lord Lexden: Could we turn to your relations—or those of your Administration as a whole—with Westminster departments at the level of administration? There are bound to be areas between departments. Some of our witnesses have been rather critical in this area. One has told us that intergovernmental relations are for the most part left to the unco-ordinated efforts of Whitehall departments. We have been told that that can be very problematic, because, to quote another of our academic witnesses, there is often a striking
lack of expertise at senior level in Whitehall about the devolved territories. Could you comment against that background?

**Rt Hon Peter Robinson MLA**: I think it is true that there will be relatively few of those in officialdom who have sojourned in Northern Ireland or other devolved regions, so their knowledge comes from reading a brief, which can never pick up the nuances of issues in the same way.

I suppose that more secondment might be worth while. That could be done administratively and I would have thought that it would help to create a better understanding of some of the difficulties because of the remoteness that devolved institutions have from the centre of power.

**Lord Lexden**: Is secondment made more difficult by the existence of a separate Northern Ireland Civil Service?

**Rt Hon Peter Robinson MLA**: Obviously it means that you do not have the same churning around. Some people in the Northern Ireland Office will be from the UK Civil Service, but that would be a relatively small number. Secondment, of course, can be a two-way process. A bit more involvement from the Northern Ireland Civil Service in UK departments might help not just in improving the understanding that each will have of the other but in what they may pick up to improve their career. That might be useful as well.

**Q94 Baroness Taylor of Bolton**: We now have devolved Assemblies, but we still have Secretaries of State for Northern Ireland, Wales and Scotland. What do you think the role of the Secretary of State for Northern Ireland should be? There are still quite significant powers that rest with the Secretary of State. How do you see it? Would you make any changes? How might it develop in future?

**Rt Hon Peter Robinson MLA**: The Secretary of State has particular responsibilities in relation to policing, particularly terrorism, which is one area where there is an interface with our Justice Minister and department. But the powers of the Northern Ireland Office are considerably constrained compared with the way they used to be. There are very few issues in the day-to-day life of Northern Ireland where the Secretary of State will be directly involved. However, she has played an important role in the talks process. We are still on the road to a new era in Northern Ireland, so I think it is wise not to disturb the kind of direct relationship that she will have with the Cabinet.

**Baroness Taylor of Bolton**: You would see no real development in the short term, anyway?

**Rt Hon Peter Robinson MLA**: I would certainly counsel against any change. It has been suggested on many occasions that there should be one Secretary of State for the devolved regions. I am not sure that if I had the choice I would want that job. It would be a difficult job to undertake; conflicting issues would come up between the various regions. We certainly look on the Secretary of State as someone who will argue our case, as she and her predecessor did, for instance, on the corporation tax issue. It gives a voice in Cabinet on key issues, and certainly while we are still in the peace process—“process” being the operative word—it is important that we retain that direct relationship with the Cabinet.

**The Chairman**: Lady Dean, do you want to ask your question? It has been slightly coloured by the last answer, I think, has it not?
Q95 Baroness Dean of Thornton-le-Fylde: Yes, it has. I wonder if I could ask a direct question, following on from what Lady Taylor said. Would it be feasible not to have a Secretary of State for Northern Ireland?

Rt Hon Peter Robinson MLA: It would certainly be feasible not to have a Secretary of State for Northern Ireland but to have a Secretary of State for the devolved regions, but I do not think it would be the best option. I would certainly argue that we are in a much better position with our own Secretary of State, although it has to be said that not every devolved region has the same relationship with their Secretary of State. There are those from other areas, I have noticed at meetings, who do not always seem to me to be arguing the same case.

Baroness Dean of Thornton-le-Fylde: Most of politics is about personalities.

Rt Hon Peter Robinson MLA: Yes, that can be the case, and as you have now discovered I am very easy to get on with.

Baroness Dean of Thornton-le-Fylde: What is interesting is that we have had a clearly divergent view between academics who say that you should have one government department and one Secretary of State, which would avoid overlap and reduce cost and all the rest of it, and the politicians who say, “No, we don’t think that would work”.

Rt Hon Peter Robinson MLA: I think there is an unanswerable case if the determining factor is that this is the most cost-effective way of dealing with the devolved institutions. I suspect I will be off their list of dinner guests after saying this, but I do not think that any of the Secretaries of State work so hard that they could not take on some additional work. For me the key issue is the benefit that it has for the devolved regions. I think there is a very strong case for that direct connection between a devolved Administration and the Cabinet. If we are talking about intergovernmental relations, that is one of the conduits that is used to connect the two. I am strongly in favour of it. If one wants to look at a spreadsheet, it might not be the best option, but I think that politically it is the best option.

Q96 Baroness Falkner of Margravine: In the case of Northern Ireland, the Cabinet Office’s guidance on devolution is very clear, and very specific responsibilities are placed on the Secretary of State for Northern Ireland. I think most people would see a case for the maintenance of that particular role. If you were to leave that particular hat on the table right now and think in generic terms, as further powers are devolved down would you in principle see the benefit of the devolved entities having Secretaries of State rather than Ministers of State? That was another proposal that somebody put forward: that perhaps all the devolved entities ought to have named Ministers with responsibilities, but that they should be Ministers of State rather than Secretaries of State sitting in Cabinet and should attend Cabinet as and when their issues are up for discussion. That is one formula.

The other formula could be that you retain the Secretary of State while recognising that the job description is rather thinner than it was some 20 or 30 years ago, but you also allow them to have other issue-specific jobs, for example the Secretary of State for Transport and X. How do you think that would fit?

Rt Hon Peter Robinson MLA: The Committee is looking at improving the internal relationships. The most permanent relationship is that between the devolved region and the Secretary of State as the representative of the national Government. When you start
tampering with that, you reduce the level of that relationship. I would certainly want a Secretary of State who can speak at the Cabinet, rather than a Minister of State who has to try to convince his senior colleague that it is an issue of sufficient importance to bring up at a Cabinet meeting. If the Committee’s task is to look at how you improve relationships, it would be counterintuitive to take a decision that recommended the removal of what has been a key connection between the devolved regions and the national Government.

The Chairman: That is helpful, thank you very much.

Q97 Lord Brennan: First Minister, with the Scottish referendum, the Smith report and the draft Scotland Bill, we are moving, in constitutional terms, very rapidly. From the Northern Ireland standpoint, looking at what is being proposed now, what would be beneficial to Northern Ireland in the way that that is proposed to be run, and what might give you cause for concern?

Rt Hon Peter Robinson MLA: A number of issues which the commission’s report recommends devolving to the Scottish Parliament and Government have already been devolved to us—social security being one. Before the report, we already had in advance of what Scotland had in devolved powers. We have more than Wales as well. Only recently did Wales get borrowing powers. We have had them for many years. From that point of view, on a number of issues the report brings Scotland into line with what Northern Ireland had, but when I look at some of the taxes to be devolved, I cannot see any social or economic change that would result to the benefit of Scotland by having those powers resting in Scotland, unless it is simply a case of adding up as much power as you can to make yourself look as independent as you can. The aggregates levy, stamp duty, all those kinds of issues, would be done much in the same way in the UK as a whole as they will be done in Scotland.

There are some things that I would take if they were on offer—the Crown Estate properties would be a good start. But that is simply looking at what we could financially benefit from. If we are looking at how we can get Northern Ireland to operate more smoothly, effectively and efficiently, I think that over the next few years we have a lot to do in building up the relationships that we have in the Executive and Assembly to get a more delivery-friendly Executive rather than starting to take on more powers.

The Chairman: That is a good note on which to finish. Thank you very much indeed for giving us beyond the allotted span so that we could cover all the areas that we wanted to question you on. Is there anything that you would like to unburden yourself of that we have not asked you about?

Rt Hon Peter Robinson MLA: No, I am fine. You have given me ample opportunity. Thank you all very much.

The Chairman: Thank you very much indeed for coming. We are most grateful.
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

Evidence Session No. 2  Heard in Public  Questions 17 - 31

WEDNESDAY 14 JANUARY 2015

Members present

Lord Cullen of Whitekirk (Chairman)
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Baroness Falkner of Margravine
Lord Goldsmith
Lord Lexden
Lord Powell of Bayswater
Baroness Taylor of Bolton

Examination of Witnesses

Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office, and Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat

Q17 The Chairman: Can I welcome you both, Dr Rycroft and Helen MacNamara, to this, the second session dealing with our study of inter-governmental relationships? I have to give an apology on behalf of Chairman, Lord Lang, who is not able to be here today because of another pressing engagement, and he has asked me to chair the session in his place. The proceedings will of course be broadcast in the usual way. To begin with, in order to put the Committee and others in the picture as to what you do respectively, perhaps I could suggest that you briefly introduce yourselves and say what work you do, without taking too long—just briefly.

Dr Rycroft: If you would find it helpful, Chairman, I will just say what we do and indeed why it is us that are here before you today. I am the Director General in the Deputy Prime Minister’s Office, and by virtue of his role on constitution issues I also manage the Constitution Group in the Cabinet Office. I manage the Scotland Office, the Advocate-General’s office and the Wales Office. Ministers and the Cabinet Secretary will look to me and my teams for general advice on the devolution settlements and their relationships to wider constitutional issues and, clearly, to me and my team for specific advice on Scottish and Welsh issues.
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

We work very closely with Helen and her team in the Economic and Domestic Affairs Secretariat. The EDS services the JMC and the British-Irish Council machinery, but it also helps to ensure, as with any other domestic policy area, that collective decision-making holds for departmental activity in devolved policy areas. You will forgive us if the focus we have had over the last couple of years has not been on the machinery that underpins the devolved settlements. Clearly, the priority of our work just up until September has been on the future of the union itself.

However, that the machinery continued to function through the referendum is a testament in some ways to its robustness, but from our perspective—it is worth the Committee being aware of this—there is no doubt that now is the right time to have a look at that machinery and its relationship to the way in which we in Whitehall manage the interface with the devolved Administrations. Indeed, I am not sure if the Committee is aware of this, but we were commissioned by the JMC at its last meeting to review its workings. I will be holding our first meeting in Edinburgh in February with the three devolved Administrations, with the territorial offices and Cabinet Office colleagues to kick off that process, so your inquiry comes at an extremely helpful time for us in those deliberations. By way of introduction, I hope that is useful to you.

The Chairman: Do you wish to add anything?

Helen MacNamara: Yes. As Philip said, I am the Director of the Economic and Domestic Affairs Secretariat and it is my team, on behalf of the Cabinet Secretary, that is responsible for the UK Government part of all the JMC machinery. That is what we can talk to you about today.

Q18 The Chairman: Dr Rycroft, I wonder if I could ask a question which is not among those of which you have had previous notice. It has come to the attention of the Committee that the Cabinet Office has had some difficulty with the idea that this Committee should hear from departmental witnesses before hearing from the Cabinet Office. You may have no personal knowledge of this, but can you assist us on this or not?

Dr Rycroft: Chair, it is simply a very practical issue about, if you like, the hierarchy of your engagement with Whitehall and Whitehall departments. It seems to us to make sense that you hear first from those of us at the centre of the organisation who have formal responsibility for the JMC machinery for inter-governmental relations—and then, as a result of that, clearly if there are issues you wish to explore in more detail with particular departments, we are absolutely very happy to facilitate.

The Chairman: This has a practical aspect to it, because today we were expecting to hear a witness from Defra, and that witness has withdrawn from giving evidence to us because, I think, of the attitude of the Cabinet Office. You may have no personal knowledge of this, but can you assist us on this or not?

Dr Rycroft: Chair, it is simply a very practical issue about, if you like, the hierarchy of your engagement with Whitehall and Whitehall departments. It seems to us to make sense that you hear first from those of us at the centre of the organisation who have formal responsibility for the JMC machinery for inter-governmental relations—and then, as a result of that, clearly if there are issues you wish to explore in more detail with particular departments, we are absolutely very happy to facilitate.

The Chairman: This has a practical aspect to it, because today we were expecting to hear a witness from Defra, and that witness has withdrawn from giving evidence to us because, I think, of the attitude of the Cabinet Office. It is of concern to us, because, as a Committee, we have a limited amount of time in which to hear witnesses. It may be very difficult, if not impossible, to fit departmental witnesses into the rest of our programme, so there is a practical point about this.

Dr Rycroft: I am sorry to hear that, Chairman. Clearly, what we can do today between us is to cover the territory you wish to cover, but clearly this has all been happening at some speed from our perspective as well. However, it seemed to us to make sense for you to get the overview from the point of view of central government, if you like, before delving into some of the departmental issues in detail.
Q19 Lord Goldsmith: I apologise for not being able to stay for whole of this session, because of other commitments. I apologise for that, but I just want to make this point and invite your comment. This Committee might take the view that it is for it to decide, as a Select Committee of one of the Houses of Parliament, whom it wants to hear from, and it is not for officials to decide that. Forgive me. I can understand we have circumstances where we have the great privilege of talking to senior Ministers, including Mr Clegg, and we of course understand that on those occasions it often happens that there is a clash of commitments that prevents the Minister appearing. I have been on this Committee for several sessions now, but I cannot recall an occasion on which we have been told by officials in government, “Actually, we have decided you should speak to somebody else first”. It ought to be understood—at least it is my view—that it is not really acceptable. We decide whom we want to see and hear from, as do other Committees in the other House, and that is the way the Government should respond.

Dr Rycroft: I respect that point of view.

Lord Powell of Bayswater: It might be slightly better if you acted on that point of view rather than just respected it.

Dr Rycroft: Again, I understand that. Clearly, there is not much I can do about it immediately now, but, as I say, in terms of the organisation of this, in the discussions we had with the secretariat to the Committee, that is the approach we put forward. If the Committee wishes to handle it differently from today, clearly we will facilitate that. I had not realised that the problem expressed itself in a way such that you might not have time to call other witnesses. We thought it the best approach, certainly from our perspective, but I apologise to the Committee if that has caused you some perturbation.

The Chairman: Thank you for that.

Baroness Dean of Thornton-le-Fylde: When you say “we decided”, who is “we”?

Dr Rycroft: It is me working in co-operation with colleagues in the Cabinet Office, mainly.

Baroness Dean of Thornton-le-Fylde: Do you mean with officials?

Dr Rycroft: Yes.

Q20 The Chairman: Thank you for that, anyway. We will now proceed to the questions that you might have expected to be put to you. Could I begin by asking you this general question: to what extent do the Cabinet Office and the territorial offices co-ordinate inter-governmental relationships—in other words, between individual United Kingdom departments on the one hand and the devolved Administrations on the other? The second question, linked to the first, is this: how would you define and compare their respective roles—in other words, the Cabinet Office on the one hand and the role of the territorial offices on the other?

Dr Rycroft: That goes to the heart of the issue, Chairman. I like to see it as a hierarchy of intervention; it is a useful way to look at it. The vast majority of communication and interaction between the UK Government departments and the devolved Administrations takes place without direct Cabinet Office or territorial office oversight or involvement. Working with the devolved Administrations is and should be absolutely mainstream business for many UK Government officials across, as you can imagine, a whole range of
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

government business. Moving up the hierarchy, I would expect my teams in the territorial offices to have a broad overview of all areas of activity, so they understand the broad terms of what is going on, and to be engaging directly with UK Government departments and, as necessary, with the devolved Administration on the most important areas.

If I could just exemplify, the Scotland Office was very heavily involved with BIS, with DECC, with the Treasury and with others on getting Grangemouth issues sorted out last year. The Wales Office worked very closely with DfT, the Treasury and others on issues around the electrification of the Welsh Valley Lines. These are significant policy issues that are going to engage the attentions of their Secretaries of State. Of course they get involved. On some particular issues, I would expect the territorial offices to lead, self-evidently when it comes to legislation—for example, the recently enacted Wales Act—or significant cross-cutting issues like the Commonwealth Games. There, the Scotland Office led in terms of the cross-government work that was required in Whitehall to interface with the Scottish Government and the games organisers through the games process. Coming up the hierarchy again to the Cabinet Office, the Cabinet Office would usually only get involved if there was a particular need to do so—for example, if an issue was proving particularly difficult to resolve and get a common position on in Whitehall, or if it had implications for the wider constitutional settlement.

That is the broad approach we take, but the point I would wish to emphasise is that the bulk of this activity goes on as day-to-day government activity; it does not require constant oversight from me or from Helen or, if you like, from the Cabinet Office as a formal bit of machinery.

**The Chairman:** That seems to put a premium on good communication. In practice, is there as good communication between the departments and the territorial offices as there should be? It has been suggested there are some weaknesses there.

**Dr Rycroft:** Nothing is perfect, and we can always absolutely improve the workings of the system, both at the more formal level and the less formal level. For a lot of departments, doing devolved business is absolutely essential and mainstream for operations, and you will find there is a very good, deep understanding across those departments of how to manage that business with the devolved Administrations. For other departments and for bits of other departments, their interaction with the devolved Administrations may be more ad hoc and more infrequent. It is important we ensure that, right the way across Whitehall, you have sensitivity for and understanding of how the devolved settlements operate, and how to engage constructively with the devolved Administrations. That is something we need to work constantly on to ensure Whitehall is at the right pitch on that all the time.

**Q21 Lord Powell of Bayswater:** Perhaps I could ask for Dr Rycroft’s help on a more general aspect of this stemming directly from your question. Last week this Committee heard evidence from a number of academic witnesses who basically took the view that the problem was a lack of formal structures. They thought that there needed to be more formal structures and a better organised system of running inter-governmental relations. However, we have also had some written evidence from Professor Keating at Aberdeen that suggests, among other things, that if over-elaborate systems are constructed and committees proliferate they will not be used. The success of a system should not be judged on how many committees there are or how often they meet—and more in that vein. Personally I
very much subscribe to that second view, but I wonder where you think the right balance lies between formal structures and sensible ad hoc contacts of the sort that you have largely described in your earlier answers.

**Dr Rycroft:** It is a very good question and an apposite time to be looking at that question. As I have described the way things work and have worked over the piece, if you think that we went through a period of considerable stress through the referendum campaign, it is testament to the strength and depth of those relationships that they largely continued to function successfully through that time. However, the devolution settlements are going through a period of change: in Northern Ireland, obviously, with the deal that was done before Christmas, the Smith deal coming through in Scotland, and Silk 2 and so on in Wales. In the course of the next two or three years, Whitehall will be facing substantially adjusted and enhanced devolution settlements. Hitherto, the machinery has worked imperfectly, perhaps, but it has largely kept relationships going on an even keel across the piece. The question we need to ask is whether that machinery is fit for purpose in that new dispensation. Do we need to introduce more formality at a greater depth? I would not want to assume an answer to that at this stage. We need to hear from lots of voices around that—the academic community that you have already cited, obviously the work of this Committee, from the devolved Administrations themselves, from discussions with departments—to see if adding a degree of formality would help the flow of business.

If that is the direction of travel people wanted to go down, at least to some extent, I would not personally want that to be at the cost of the ease of doing business in terms of the good relationships on a day-to-day basis between officials in Whitehall departments and officials in the devolved Administrations, and between Ministers in Whitehall and Ministers in the devolved Administrations. Ultimately it is the quality of the relationships, and what sits behind that, that makes this stuff work.

**Lord Powell of Bayswater:** I have one final point, Chairman. You see a risk in over-bureaucratizing the process, which could probably work without that as long as individual officials are well instructed in their responsibilities.

**Dr Rycroft:** In my rather careful phraseology about what the future might look like, you are implying a prejudice on my part. There is a risk of over-bureaucratizing things; you can get locked into managing the process and losing sight of managing the issues. That is the balance we have to strike. Again, the work you do as a Committee and the evidence you hear will be material as to the advice we give to Ministers on this in future.

**The Chairman:** Do you wish to say anything about this subject, Ms MacNamara?

**Helen MacNamara:** Just that I share Philip’s views. Too much structure gets in the way, but so does no structure at all. The best relationships work best when you are both able to work informally together and then there is an underpinning structure behind to give that some weight.

**Q22 Lord Lexden:** Can I ask how Northern Ireland fits into your pattern of work? I do not think that that constituent part of our country featured in your introductory remarks.

**Dr Rycroft:** It is a very good question, and there is a very straightforward answer to that. My introductory remarks were about my role; I am not responsible for the Northern Ireland Office. That sits under a different leadership, so it is not within my immediate purview in
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—
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terms of the day-to-day running of the Northern Ireland Office or indeed working through the issues in that devolution settlement. Where I interact with the Northern Ireland Office is clearly around the devolution settlements generally, their relationships to the wider constitutional issues and, indeed, the quality of relationships between Whitehall and the devolved Administrations generally. I meet with colleagues from the territorial offices on a regular basis—indeed, I met with them again as recently as yesterday—so that they hear from each other about what is going on in their respective territories and to have a collective discussion about our approach to Whitehall more generally. I will maybe come on to this later in response to some of your other questions, but I also bring together directors from right the way across Whitehall. Included in that are the NIO, the Scotland Office and the Wales Office, so that we have that connectivity between all the players in Whitehall who have an interest in devolution issues.

Lord Lexden: Can I take it that you feel that the Northern Ireland Office is fully locked in to the arrangements as necessary for its good Government?

Dr Rycroft: Yes, exactly.

Helen MacNamara: If I can add to that, we work with the Northern Ireland Office in the same way as we work with any other domestic policy department. Officials from the Northern Ireland Executive are of course part of the joint secretariat, so there are no distinctions as far as my bit of the Cabinet Office is concerned.

The Chairman: Before we move on to another topic, can I just ask you this particular question? Who—by which I mean which person—is ultimately responsible within the United Kingdom Government for maintaining good inter-governmental relations?

Dr Rycroft: In terms of Ministers, it is very clear: it is the Deputy Prime Minister. If you look to the officials side, in terms of the immediate official responsibility for that it would be me, but obviously I report ultimately to the Cabinet Secretary.

The Chairman: But in terms of Ministers, it is just the Prime Minister; is that right?

Dr Rycroft: It is the Deputy Prime Minister, in virtue of his responsibilities for constitutional matters generally.

Q23 Baroness Dean of Thornton-le-Fylde: Dr Rycroft—and, perhaps, Ms MacNamara, you might wish to add your views, too—you said earlier you do not need to get involved in the day-to-day running, because the departments are doing that in their normal day-to-day activity and that you really become involved if there is an issue to be resolved, but sometimes that may be too late. How do you, in the Cabinet Office, track the various policy developments in the devolved Administrations to ensure there is no overlap or to pick up on any overlap that may be developing?

Dr Rycroft: Could I ask Helen to lead off on that one?

Helen MacNamara: Yes, of course. The straightforward answer is that that is not a function that we are asked to fulfil at the moment in the Cabinet Office or one that we do—tracking absolutely every element of policy that is developing in the devolved Administrations. In the Economic and Domestic Affairs Secretariat, we are responsible for collective agreement and we do an element of co-ordinating domestic policy. We definitely know when there are issues that are significant enough to come to our attention, so we are made aware of the
problems rather than necessarily proactively making sure that everything is co-ordinated. Our expectation, and how it works at the moment, is that the territorial offices themselves—Philip may want to say something about this—have the overview of what is happening in a particular Administration, and our expectation and working practice is that each department will know, just via the day-to-day contact, if there is particularly interesting development in policy, and they will be able to keep track of what is happening, but we in the Cabinet Office do not sit and have an encyclopaedic knowledge of everything that is developing across all departments and across all Administrations at any one time.

**Baroness Dean of Thornton-le-Fylde:** Forgive me for coming back in before Dr Rycroft answers. You rely on the departments to let you know if there is a developing overlap or issue. Do you have an understanding with each of the departments—not necessarily as in a formal arrangement, but an understanding, perhaps—that they need to flag up to you early on if there is going to be an issue? Are they practising that? Are they carrying that out?

**Helen MacNamara:** There are three routes by which we know whether there are issues. Yes, there are the departments themselves—the domestic policy departments. There are also the territorial offices. There is also our day-to-day contact with the devolved Administrations. My team have fortnightly conversations with their counterparts in the DAs, so we would via any of those three routes know about something pretty early. Our working experience is we know pretty early where problems may arise.

**Dr Rycroft:** Maybe I could just reinforce that. It is the quality of the networks of intelligence. The territorial offices are relatively small: there are 60-odd folk in the Scotland Office and slightly fewer in the Wales Office, but they are very well plugged in to what is going on in Scotland and Wales, with multiple contacts in the Welsh and Scottish Governments—to speak of the ones that I look after. Through that, I would expect them to be spotting any issues very early on in their genesis to give us maximum time to get them sorted out. I spend a lot of time talking to my directors and their teams in both those organisations, and that will feed through to me and then I can feed that through to Helen’s team as necessary. Again, however, it is the quality of the intelligence networks that is critical to this, so that we are alert to what is going on across the devolved Administrations and can deal with stuff as appropriate.

**Baroness Dean of Thornton-le-Fylde:** Chairman, could I just come back in quickly? The nature of the question may have directed the way you answered it. It is quite interesting for me to sit and listen. It is all about the devolved Administrations coming in to the centre, but it has to be a two-way street, does it not?

**Dr Rycroft:** Yes.

**Baroness Dean of Thornton-le-Fylde:** What responsibility do you have to feed back to the devolved Administrations when at the centre here in Whitehall we may be doing something where there is an overlap?

**Dr Rycroft:** By the term “overlap”, do you mean if policy is in conflict?

**Baroness Dean of Thornton-le-Fylde:** Yes.

**Dr Rycroft:** There are not huge numbers of instances where we are looking at direct policy conflict like that. There are probably more instances where it is important for the devolved Administrations to understand the direction of thinking in Whitehall and where that may
require a more proactive approach, which I think is what you are driving at. Again, that is about the quality of the relationships between departments and their interlocutors in the devolved Administrations. By and large, the incentive is there for departments to keep their devolved colleagues up to speed with what they are trying to do and what they are thinking about. If I take for example the development of policy in the European context, a very specific example is fisheries policy. It clearly makes sense there for colleagues from Defra to be working very closely with their colleagues in the devolved Administrations so that they are working together to get an agreed UK position. On that example, my understanding is that they have fortnightly teleconference calls between Defra and the devolved Administrations to achieve precisely that. It is not just a reactive thing; it is a proactive thing as well. Again, that is what, underlying all of this, drives the quality of outcomes that we seek to achieve.

Q24 Lord Lexden: Can I ask if you think a major effort is needed to achieve greater consistency across government of knowledge and handling of the devolved Administrations? You will know that both the Silk commission and the Calman commission drew attention to inconsistency across UK Government departments. In this context, could I also draw attention to a clear criticism received from one of our academic papers? Professor Alan Page has told us the essential weakness of the current arrangement lies not so much in the framework within which inter-governmental relations are conducted as in the fact that inter-governmental relations are, for the most part, left to the unco-ordinated efforts of Whitehall departments. I know you will want to respond to these points.

Dr Rycroft: The answer to your question—could more or should more be done?—is yes. I have no doubt about that. The referendum campaign shone a very harsh light, if you like, on the understanding of devolution and the relationship between different parts of the UK and Whitehall. We have learnt from that and I hope we learnt through that over the course of the last two years in terms of departmental responsiveness to devolved issues. We were not starting from a base of zero; clearly, we were starting from a good solid base of day-to-day contacts, experience of working with the devolveds and respect for the devolution settlements. But could we do more on that? Could we improve the understanding of devolution across Whitehall? Absolutely. Is this a priority for the coming months and years? Absolutely.

As I said earlier, with the changes in the devolution settlements, if you look at what we are going to be doing as a result of the Smith agreement in terms of extending the powers of the Scottish Parliament over income tax and over welfare, this will require a new relationship between Whitehall and, in that instance, the Scottish Government—but the same will apply to the other devolved Administrations. It is something that I attach a lot of importance to. It is a big role of the territorial offices to help support their colleagues across Whitehall in their understanding of devolution.

How do you work successfully in the devolved context? As I said earlier, I chair a pretty much monthly meeting of senior officials from across Whitehall. At director level each department has an identified leader on devolution, so that we have one forum in which we can come together to think these things through and ensure that all departments are up to the right sort of speed. Let me just illustrate very briefly the sorts of things we are thinking about doing there. Just before Christmas I brought them together for an extended meeting. As it happens, I took them to Edinburgh so they could transact some of their business as
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

well with the Scottish Government while they were there. That meeting was very much designed to share best practice and understanding. The thing we were focusing on was not so much about the high level of legislation; it was about the day-to-day engagement with the stakeholder community with interest in Scotland. How does Whitehall do that effectively in a devolved context? That is the sort of learning where we need to take the best practice and make sure that is the common practice.

The Chairman: In connection, could I ask you about this? Some witnesses before us have advocated the creation of a new department to replace the territorial offices in aid of consistency, better focus and to ensure compliance with the appropriate arrangements for inter-governmental working. What is your reaction to that, if you have one?

Dr Rycroft: This is a perennial question. It is way, way above my pay grade, I am afraid, in terms of prime-ministerial decisions and how they dispose of their resources in terms of the offices of Secretaries of State and so on. That will be a decision for an incoming Prime Minister after the next election. But where it has traction at official level is: are we most effectively disposed to support Ministers on the question of inter-governmental relations? Should we be looking at how we could improve what we are doing? Again, now is the juncture where we should be thinking that through. How do we make sure that Ministers—again, with a view of the way the devolved settlements are evolving—have the most effective support that they can in the transacting of that business, and how does it relate in particular to the wider set of constitutional issues? Ultimately, I am not just responsible for inter-governmental relations; I have obviously had responsibilities for thinking about the wider constitution as well. These things do interact. I am not going to predict what the priorities of an incoming Government might be, but part of my responsibility is to ensure that from day one that Government has the right resource, disposed in the right sort of way, to give it the support it needs to look at these questions.

Q25 Lord Powell of Bayswater: Lord Chairman, could we bring in question 5 at this point? It is very much related to what Dr Rycroft was saying. It is a question I was going to ask about the exchange of personnel in order to get people accustomed to ways of working together, because the broad thesis is that hitherto most of those working for the devolved Administrations have had Whitehall experience or experience of the Whitehall Civil Service, but that over the future years that will probably become less as others are brought in. How are you going to tackle that? Are there plans to get people on regular exchange? How can you make, bully or persuade departments to do it? Often one sets the goal of exchanging personnel, but nothing ever happens.

Dr Rycroft: That is a very good question and a very timely question. There is no doubt that there is less exchange now than there used to be under the old dispensation. You are probably looking at the last example of somebody who made the transition at a senior level from a devolved Administration to a mainstream Whitehall department, and that is me. That was about five years ago.

Most of the interchange at the moment is through the territorial offices, and there it is still very much part of the picture. Indeed, I have just appointed a new director to the Scotland Office who comes from the Scottish Government, and I have worked with two excellent directors in the Advocate-General’s office, both on secondment from the Scottish Government. Through those organisations, and the Wales Office as well, there is lots of
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exchange between the territorial offices and the devolved Administrations. Where it is less common now is in other Whitehall departments. That is something the Cabinet Secretary has asked me to look at in conjunction with the devolved Administrations to see if and how we can get back to something like the former practice.

From personal experience, there is enormous value in people understanding how work is transacted in those different environments. Perhaps I may just reveal a bit of a prejudice of mine. Whitehall has a huge amount to learn from how the devolved Administrations operate. It is a different sort of challenge. Par for par, officials in devolved Administrations are dealing with a far wider span of policy than their counterparts in Whitehall, and that has enormous benefits for the way they think and deal with policy and relate to the world out there. Whitehall has a huge amount to learn about that.

The final point I would make about this is that, as I say, we need to see whether we can get back to something like the old practice. It is not just about exchanges; it is also about finding opportunities for officials to learn together. If you take something like the high-potential development scheme, which is the route by which people who are aspiring to become directors general get a good, solid learning experience, colleagues from the devolved Administrations are part of that. I know, from people like Helen and others who have been on that, the value they get from having that interaction with these people over a sustained period of time and from the learning that that brings. We need to exploit those opportunities as well.

Lord Powell of Bayswater: Could you envisage a situation in future where, perhaps, appointment of the most senior Civil Service officers in Whitehall would depend on having had, at some stage in their career, a spell in a devolved Administration?

Dr Rycroft: I am probably very biased in my response to that as one of the very few that has. You had better ask the Cabinet Secretary that at some point.

Lord Powell of Bayswater: I thought that you might suggest it to the Cabinet Secretary; that was the point of my question.

Dr Rycroft: I may have done.

The Chairman: Do you want to comment on that subject?

Helen MacNamara: I agree with Philip: it is very important for Whitehall civil servants to have a different perspective, full stop. That definitely includes being able to understand how the devolved Administrations operate, and I absolutely support his view that this is not just about formal interchange but about finding opportunities to work closely together so that you understand and see each other’s perspective. I know that I learnt a lot from hearing and understanding what happens in devolved Administrations, and in my previous role as a policy official I found that tremendously useful.

Q26 Lord Brennan: To both of you, what is your view about the present balance of bilateral/multilateral relations between UK Government departments and their equivalents in the devolved Administrations? That involves at least three bilaterals and a quadrilateral. Secondly, what is to happen in the future as between the devolved Administrations, where there are three possible bilaterals and a trilateral to add to the numbers I have already produced? It has the makings of bureaucratic chaos. What is the plan for the future? If it going to be discussed in Edinburgh in February, when are we going to find out?
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

Dr Rycroft: That was a series of very good questions again. The simple answer to what happens bilaterally/multilaterally is that it depends. I do not want to be trite in giving you that answer, but clearly the form should be driven by the salience of the business. Let me just give you a couple of examples. If you are looking at the Treasury’s dealings with the devolved Administrations, an awful lot of that will be transacted on a bilateral basis, because they each have their own financial settlement. Those settlements throw out lots and lots of detailed, nitty-gritty issues, and it is appropriate that the Treasury is dealing with those issues on a one-to-one basis with the devolved Administrations. However, if you take European issues—I will come back to my Defra example—it absolutely makes sense for Defra to pursue the development of European policy on fisheries, the example I have cited already, on a multilateral basis, and that is precisely what they do.

We do not seek any sort of balance in that. Our interest is that Whitehall departments, supported by the territorial offices, are engaging effectively with the devolved Administrations in a way that delivers the best outcomes. That should continue to be the rubric in the future, and I do not see that necessarily changing dramatically, but what we may be looking at is the overarching machinery that supports all that.

As for the bilaterals and trilaterals between the devolved Administrations, again I have some experience of that from the other side of the fence. Clearly, that is up to them. That is not for us to drive, but, again, you can ask colleagues from the devolved Administrations about practice today. But certainly in the past I found those bilateral/trilateral contexts extremely helpful to understand what was going on in different policy areas as well as across the devolved settlements more generally.

Lord Brennan: Do the Treasury report to you in any way or do they deal with this independently?

Dr Rycroft: The Treasury reporting to anybody is—I would rather not say. That should be off the record, should it not? No, the Treasury do not report to me, unfortunately. I work extremely closely, however, with the Treasury. They have a dedicated devolution team. I spend a lot of time talking to them and understanding their concerns, and vice versa.

Q27 Baroness Taylor of Bolton: Can I bring this now on to policy development? I am interested in quite a few of the things you have already said. For example, you said that different departments have different understandings of the relationship, and I hope that at some stage you can go into some detail as to which departments have the different types and what the issues might be. But you also said that you spent a lot of time on the referendum campaign, as indeed a lot of people did. The phrase you used was that it shone a light on some of the weaknesses that had developed and implied that there was a lack of understanding in Whitehall of the full implications of the devolution that had already taken place. When you were talking about the relationships, you might almost say that if there was not that full understanding perhaps that was why the yes vote was so high, and therefore it is right to consider what you do next. But in terms of what you have been talking about, a lot of it has been “avoiding problems”. You used the phrase “get things sorted out”. It is almost troubleshooting, making sure difficulties do not arise. However, what has happened to joint policy and development? I do not mean awareness of what each other is doing, but working together on individual issues. Could you tell us more about that, please?
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

Dr Rycroft: Yes. Again, of course, that goes to the core of the quality of the relationships between Whitehall in general and the devolved Administrations and between particular departments and their counterparts in the devolved Administrations. There is a huge amount of business transacted and designed to deliver better outcomes that requires a collaborative approach. If I can maybe give you one example of this that we have not touched on until now, if you look at a department like DWP, hitherto the vast majority of their business has been reserved but has to be transacted in Scotland in very close cooperation with the Scottish Government where policy interests align—so, for example, on skills and employability—but also with local authorities, which have to deliver quite a lot of this policy as well, and with a vast number of other organisations in Scotland in the third sector and beyond, whose work is vital to help DWP deliver those outcomes. DWP have a very rich infrastructure of connectivity in Scotland. I do not want to overwhelm you with titles of forums and so on, but at the national level there are at least four important forums they run: the Scottish Employability Forum, National Delivery Group, Third Sector Employability Forum, Health and Employability Delivery Group and so on and so forth.

These are designed to provide points of connectivity between DWP and their operations in Scotland, the Scottish Government, local authorities and other actors in Scotland. They see, at a working level, the sort of detailed interaction that goes on on a day-to-day basis. However, there is also scope, and underexploited scope, to be thinking about more proactive policy development, where we in Whitehall are working with the devolved Administrations to think about how we together can get better quality outcomes.

If, again, I can just give you one good example of that, it would be the City Deal process. We have signed a deal with Glasgow. That has created a relationship between the UK Government, the Scottish Government and the local authorities in Glasgow and the surrounding area. That is focused on policy areas where the UK Government obviously has a role, i.e. innovation, employability or infrastructure. The intent of that, through that working together, is to deliver a better outcome for the people of Glasgow. Certainly, something that is on my radar screen, and on Ministers’ radar screens, is how we build on that sort of example so that we are making the best out of the devolved settlements.

Baroness Taylor of Bolton: I understand where you are coming from and what you are saying there and how it could be productive. However, you did use the phrase there “we in Whitehall”. Indeed, one of our witnesses last week said that the area of policy development is much more difficult if it is one of the devolved Assemblies or parliaments that want to initiate something. How could that work? Does it work? Is that still a work in progress and we have not got there? You are talking about Whitehall initiating joint policy developments, but what if the idea is coming from Scotland or Wales et cetera?

Dr Rycroft: Again, that is about the quality of the relationships. I would not want for a minute to imply that the world is perfect, but it is not a black and white situation where it is either one thing or the other. Clearly there will be circumstances in which the devolved Administrations wish to push a policy proposal. Where that does not get traction, there will be occasions where they want to push something where it does get traction. Working through all that hinges off the broader quality of those relationships. I know there are instances where the departments have sat down and worked out how to take an approach that delivers better outcome for both sides of the equation.
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One of the examples we are hearing about is in Edinburgh, where there is a common interest in looking—this is a small example, but an interesting one—at driver behaviour and drivers using mobile phones. This is a devolved issue. It is looked after by Transport Scotland and the Scottish Government, but there is a common issue there where both sides are broadly thinking through, “How do we approach this? How do we understand driver behaviour?” That ended up with a joint contract and we had both sides chipping into that. That, it seems to me, is a good example of what you are describing, where both parties have something to bring to it, both have a policy interest and through good joint working they deliver a better outcome that works for them both.

Baroness Taylor of Bolton: Can I tempt you to say anything more about the referendum and whether the lack of that smoothness in the machinery might have been a factor?

Dr Rycroft: I will resist to some extent; that takes us into a very much larger domain about the causalities in voter behaviour and so on. The point I was trying to make is that the exigencies of the political circumstance required us to look very hard at the quality of our understanding of the devolution settlement, obviously in this respect with regard to Scotland, the quality of the outreach from Whitehall in Scotland, and the way in which Whitehall dealt with policy issues that were of interest to people in Scotland. Using that as a lever to improve and build on the understanding of the devolution settlements generally and to improve the quality of the relationships not just with Scotland but with Northern Ireland and Wales as well is something that we are very much focused on. It is taking that opportunity to make sure that, as we go into the next Parliament, the Whitehall machinery does this job to the absolute best of its ability.

The Chairman: We should move on now to the Joint Ministerial Committee and its sub-committees.

Q28 Baroness Falkner of Margravine: Ms MacNamara, I suspect you will want to answer these, but I would be very grateful, Dr Rycroft, if you came in as necessary. The JMC, which meets in plenary, seems to have quite a wide cast of characters. At a rough guess—I was looking at the notes about it—a dozen people potentially, depending on the topics under discussion, when you include the Ministers as well. One of our witnesses noted that it can be a forum for grandstanding and that one of the things it suffers from is the lack of an express right for the devolved Administrations to put items on the agenda. Would you agree with that? What would your views be on having an agenda where the devolved Administrations say what they consider we ought to be discussing?

Helen MacNamara: That surprises me. It is absolutely not for me to comment on the content of the meetings, but I do not recognise either the grandstanding or the fact that the DAs cannot put items on the agenda. Regarding the way the JMC operates, there is a joint secretariat, which is between all Administrations, that meets and talks very regularly. In order to put the agenda together for any JMC meeting, officials will meet and discuss and come up with ideas and talk about what might be appropriate, and that often comes from the things we were talking about at the beginning of this Committee about where there might be policy areas or shared challenges or particular external events. All JMC agendas are agreed by all Ministers, so we as officials put joint advice to Ministers and then it is the Ministers together who decide the agenda items.

Baroness Falkner of Margravine: Including the First Ministers?
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**Helen MacNamara:** Yes, absolutely. The secretariat operates very much on a joint basis, so my job, and that of the Economic and Domestic Affairs Secretariat, is a function of the UK Government, but within my team there are people whose job it is to operate as the joint secretariat, and they have a very close working relationship with their counterparts in the devolved Administrations.

**Baroness Falkner of Margravine:** How large is your team?

**Helen MacNamara:** We have 35 or 36 people in EDS, and I have two people whose job it is to be part of this joint secretariat.

**Baroness Falkner of Margravine:** Do UK Government departments also have the ability to prioritise items on the agenda?

**Helen MacNamara:** Yes. Would it help if I talked through, just for the JMC(P) perhaps, how the process works in detail? Would that be a useful thing?

**Baroness Falkner of Margravine:** I think we have time for that, my Lord Chairman.

**Helen MacNamara:** I can do it very quickly.

**The Chairman:** Yes, by all means.

**Helen MacNamara:** What I would do is sit down with my team and we would first work out, from a UK Government perspective, what other things we think would be useful to talk about. The memorandum of understanding provides for pretty much the parameters of JMC discussions, and they are as you would expect: inter-governmental relations, the boundaries between devolved and reserved policy. In recent times, Ministers have also very much wanted to talk about items that are shared challenges across the UK. We will come up with a list that will be based on our knowledge in the centre, but also conversations we will have with other Whitehall departments. It might be that a department has a particular issue that it would like to have discussed in the JMC format. I will chair a meeting and have discussions with my counterparts in the devolved Administrations, and then we will put our advice to Ministers. The Ministers will agree the agenda, so it is very much a joint process.

**The Chairman:** Does the fact that devolution is asymmetrical inhibit discussion, because it is difficult to find things that everybody is interested in?

**Helen MacNamara:** If you look at the items that have been discussed this Parliament, it has not been that challenging. There have been things like the challenges presented by an ageing population or what to do about UK Trade & Investment or the economy. It is always challenging to make sure the discussions are productive and fruitful and Ministers are well briefed and that the conversations are meaningful.

**The Chairman:** Does the system make it easy for an individual devolved Administration to bring up something that is peculiar to its own devolution? That is what I am really concerned with.

**Helen MacNamara:** I do not know if they would for this particular format. It probably is the case that, if there were an issue very much for one Administration, it would be unlikely to find its way into the JMC format. We have better discussions when they are more balanced, but there are plenty of shared challenges.
Baroness Falkner of Margravine: Could I raise a particular example from the recent past? That was, for example, the decision of this coalition Government to pass the European Union (Referendum) Bill. If the devolved Administrations, one or all of them, had a different view on it, would they have been able to express that through this forum—say, for example, Scotland?

Helen MacNamara: There is nothing that limits what could be put on the table for a JMC discussion. Theoretically, it could be anything. There are, of course, sub-committees. Economic matters tend to be discussed by the Finance Ministers. European/international issues tend to be discussed under JMC(E). There is nothing that stops anything being put on the agenda; it would just be for Ministers to decide what was appropriate.

The Chairman: Lady Falkner, do you want to ask about sub-committees?

Q29 Baroness Falkner of Margravine: Yes, I was just about to come on to that, because it flows from what you have said about Subcommittee E. In terms of the domestic and the European sub-committees and the Finance Ministers’ quadrilateral, can any devolved Administration decide that this would be an appropriate moment to convene a meeting?

Helen MacNamara: Absolutely, yes.

Baroness Falkner of Margravine: Has that happened? Have meetings been driven by devolved Administrations’ desire to discuss a certain issue rather than your department deciding on a periodic basis that you need to have that meeting?

Helen MacNamara: I could not give a precise example of when one Administration has really pushed for a JMC against the will of the others. In preparing for this appearance, I tried very hard to find any example of where those sorts of things had happened and we could not find anything. However, maybe through the course of your inquiry you will discover something we are not aware of at the moment. It works in a very straightforward way: there is an expectation, which is set out in the MoU, that the JMC meets once a year in plenary form and then it meets in its sub-committees as appropriate and as Ministers wish. JMC(D) has met once a year, usually, in this Parliament. European meetings happen more often, because they are to decide the stance the UK Government should take at European Council meetings. The Finance Ministers meet as appropriate, and it is for those Ministers to decide when they want to come together and meet.

Baroness Falkner of Margravine: There is a lack of entire transparency around some of those issues, which is why we are trying to flush this out, because the dates and agendas of officials’ meetings are not published in the annual report. How frequently do those take place?

Helen MacNamara: Formally before every meeting, so before a JMC domestic meeting or a JMC plenary meeting, I will chair a formal officials’ meeting where we will go through the agenda and make sure we understand the issues and are able to brief our Ministers to have productive discussions. However, informally there is whole range of contact that happens underneath that.

Baroness Falkner of Margravine: Can I go to Dr Rycroft? You said something in response to some of the other questions rather earlier on about how Whitehall does not know best and that sometimes it is very useful to have the insider experience of having served in devolved Administrations and then coming to Whitehall, as your own experience clearly shows. I
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—

Oral evidence (QQ 17-31)

wonder if the devolved Administrations have expertise—this is perhaps not for you in terms of Whitehall—of how the European Union institutions work. Of course on the one hand we are dealing with the expertise internally of the United Kingdom domestic agenda, but also, given how much legislation comes from Europe, there is also the lack of that experience. Do they have more experience of that than, perhaps, Whitehall does?

**Dr Rycroft:** This is now going back a little while to my previous experience, so, again, it is a question you will have to ask them as to where things stand now. In terms of European experience, certainly the practice in my time, in variously the Scottish Office, Executive and Government, was to ensure there was European experience embedded within those organisations. Indeed, I was one of their prime examples of that. I went and spent a couple of years working in Brussels myself. It is quite hard to keep these things going. It is expensive in terms of the opportunity cost of taking good people out of the operation for a while, but it is absolutely critical. Everybody would tell you that having people on all sides of the equation within the UK who have that understanding of how Brussels works will help the transaction of business within the UK, because they understand the reality of European negotiations, how things work in the Council, how things work between the Permanent Representations and so on. That is an important part of the expertise that makes these systems function properly.

**Baroness Falkner of Margravine:** It is harder and harder to maintain, though.

**Dr Rycroft:** Yes.

**Q30 Lord Lexden:** Can I ask Helen MacNamara in particular how the devolution of further substantial powers is going to affect the current arrangements?

**Helen MacNamara:** We have been commissioned by the last JMC meeting to go away and do some work precisely to answer that question, which Philip referred to, and then go back to Ministers with a proposition of what we should do.

**Lord Lexden:** Can you share with us any indication of how your work is progressing?

**Helen MacNamara:** We have only just started it, is the honest answer. As Philip said at the beginning, one of the things that is useful for us is that we will be able to draw on the conclusions of your Committee’s inquiry to help us.

**Lord Lexden:** Could I finally ask whether even our existing arrangement—one yearly meeting of the principal Ministers involved—is sufficient?

**Helen MacNamara:** Again, whether it is sufficient or not for those Ministers is a question more appropriately put to those Ministers. The meetings have been and are productive and useful, and the decision was made when the MoU was established that once a year was right for the plenary sessions, and then any other meetings and interactions should be as needed and as necessary. That may well be question when we come to what is appropriate in a very changed context. There may want to be more formality and more regularity in getting the Ministers together. There are of course, separate to JMC, any number of interactions between the First Ministers, the Prime Minister, the Deputy Prime Minister and their ministerial colleagues across Whitehall, so this is not the only place in which Ministers come together to discuss their shared issues.

**The Chairman:** Lord Lexden, did you want to speak about enforcement?
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—
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Helen MacNamara: I can give you my answer on enforcement.

Lord Lexden: Yes. Going back to Lord Powell’s questions to you, would a statutory basis be a formality too far, much too far or would it have merit?

Helen MacNamara: Again, this will be an issue that will be considered in this next round of work we are about to embark on, and it will not be for me to decide. The balancing arguments are that there are obviously disputes or disagreements between the Administrations that are technical, and we have a process that exists for that. There are disagreements and disputes that will be legal, and obviously the Supreme Court can be brought in as appropriate. I would imagine the question—ought there to be some sort of enforcement mechanism for the JMC so that people are bound by the outcome?—is quite a difficult one. Philip may wish to comment from a constitutional policy perspective, but if you have an elected Administration in the UK and one of the devolved Administrations disagreeing about something, we have to be realistic that there may well just be occasions where there is an element of political disagreement and things cannot be resolved.

The other thing I would say about enforcement is, again, that we could find no example of a decision or discussion or commitment that had been made in a JMC meeting that had not been followed through. You would have to question the problem that you were trying to solve.

Dr Rycroft: Maybe it is worth adding that, from a broader constitutional perspective, the question of putting these arrangements on a statutory, binding footing does raise some quite profound issues. What we have at the moment reflects the current constitutional settlement in the United Kingdom. The UK Government are attending the JMCs both looking after the interests of one particular part of the UK but also representing the whole, and the UK Government are ultimately accountable to this Parliament. If you begin to look at those accountabilities, the flow of accountability, statutory responsibilities, binding responsibilities and so on, it is not long before you get to the question of the relationship not just between Governments but between parliaments as well. This would, I suspect, be grist to your mill in terms of seeing how the evolution of this matches the evolution of wider constitutional thinking within the UK.

The Chairman: Leaving statute aside, is there or should there be a code of practice?

Dr Rycroft: Do you mean a code of practice beyond the MoU we have at the moment?

The Chairman: Yes.

Dr Rycroft: In response, I would ask: how would a code of practice develop from the MoU?

The Chairman: I notice that the Silk commission, for example, were in favour of a statutory code of practice. Leaving statute aside for a moment, is there a case for a code of practice?

Dr Rycroft: Again, genuinely we are not going into this with a blueprint. It is not so long since we got to the end of the referendum process, but since then we have been pretty heavily engaged with landing the Smith process—and, indeed, we have the next stage of that next week. Ministers have also been very keen that we work through the consequences of all that for Wales, which we are doing. Of course, there has been the Northern Ireland settlement as well. There has been a lot of work going on, which is a bit of a moving picture. Out of that, we will be taking our consideration of “whither the JMC?”.

Genuinely, we are not sitting here at the moment with a blueprint and saying, “This is the
Q31  Lord Powell of Bayswater: Perhaps a final question on the JMC is about the dispute-resolution procedure. We notice from the annual report there have only been four disputes escalated to the top level. How many do you see at the working level, as it were, the official level? Are there many more?

Helen MacNamara: If I can go back to where you were asking about formal structures and informal arrangements, it is definitely the case that we would see it as a good thing that there have been so few formal disputes, because that is an indication that they are being sorted out at working level. It is very helpful to have the formal dispute-resolution structure. I know that most of the time, if there are disagreements, they are resolved in departments. If they cannot be resolved in departments, then either formally or informally either Philip or I are sometimes brought in to chair a meeting and try to resolve things. I can think of a couple of occasions where the threat of something becoming a formal JMC dispute has been the thing that has unlocked agreement. Like I say, it is quite helpful to have that as a formal back-up.

I would not be able to quantify for you exactly how many disagreements there are in any given year between Whitehall departments and their devolved counterparts—it would be quite difficult to say—but I would say that the mechanisms we do have, both formal and informal, do provide ways for bringing people together and finding ways through.

Lord Powell of Bayswater: Who takes the decision to escalate them to the JMC? Can any member of the JMC do it or does it have to be the Prime Minister or the Deputy Prime Minister?

Helen MacNamara: No. Within the devolved Administrations, I would imagine there would be a hierarchy of officials who can decide if something should be a JMC formal dispute. It is quite a serious step to take, but either the devolved Administrations or the UK Government could decide that something was sufficient to bring in to the dispute mechanism. The first stage of that is a meeting that I would chair, bringing officials from the departments together, a cast list as appropriate at that point. During this Parliament, the memorandum of understanding has been revised to allow for, if it is appropriate, the commissioning of some sort of third-party analysis to help broker agreement. If that does not work, the next stage is formally putting the dispute into the JMC machinery and, rather than an independent official, it is an independent Minister that chairs the process and tries to find a resolution. That so far has been enough to solve everything in this Parliament. If that had not worked, the latest stage is to go into the JMC(P), but, as I said to Lord Lexden, there may well be occasions where it is just impossible for politicians to agree about something, and that is the system that we have.

Lord Powell of Bayswater: Do the options include an outside, non-political, non-ministerial arbitrator?

Helen MacNamara: Not at the moment, no.

Lord Powell of Bayswater: Would that possibly be part of the considerations that you are now reflecting on?
Dr Philip Rycroft, Director General, Deputy Prime Minister’s Office; and Ms Helen MacNamara, Director of the Economic and Domestic Affairs Secretariat, Cabinet Office—Oral evidence (QQ 17-31)

Helen MacNamara: I know that is something people have called for, and I am sure it will be something we will examine. But, again, going back to the questions you would have to ask on a constitutional basis, are there grounds on which a non-elected third party could preside over something that was the decision of an elected politician?

Lord Powell of Bayswater: Perhaps the right word would have been “mediator”, not “arbitrator”.

Helen MacNamara: Yes. At the moment, however, that mediation function is either at official level or by an impartial Minister. It has worked.

The Chairman: Does any member of the Committee have any further questions to put? Is there anything further you would like to say, either of you?

Dr Rycroft: No, I think we have covered the territory.

The Chairman: Thank you very much indeed for filling our understanding as to what works and what is also planned to be done. We are most grateful for your attendance. It was slightly longer than we had anticipated, but it was useful time.

Dr Rycroft: Thank you.

Helen MacNamara: Thank you.
About us

UNITED AGAINST SEPARATION is a grassroots campaign group that supports Scotland remaining part of the United Kingdom. With over 65,000 supporters on Facebook, we have the largest grassroots social media campaign of any group opposed to separation.

Our view

On 18th of September 2014 the people of Scotland voted to remain part of the United Kingdom, this decision was decisive and changes should now be made to strengthen the United Kingdom and ensure that the country is not put at such risk again.

Since devolution was established there has been growing disunity and division throughout the United Kingdom and a worrying adversarial approach between Governments and Parliaments/Assemblies now exist. These damaging competitive relationships since 1999 have helped to divide the people of our country, creating rivalries that are better suited to sports than the governance of one country. The divisive nature of the relationships does not just apply to the SNP nor are they alone responsible for this atmosphere. The continued battles between the current UK Government responsible for the NHS in England and the Labour party responsible for the NHS in Wales are deeply disturbing. Instead of everyone working together for the benefit of all British people, we now have governments, parties and civil servants attacking each other and blaming each other for different things happening in different parts of the country on a daily basis. This is breeding resentment, which can only benefit those who seek to break up our country.

It is clear that the current situation is flawed and needs considerable reform if we are to maintain a successful United Kingdom. Any changes made should be designed to strengthen the United Kingdom and improve cooperation between the different governments and legislative authorities.

Recommendations

Respect for reserved and devolved matters

Since devolution was established the British Government and British Parliament have respected the devolution process and chosen not to regularly interfere in devolved matters despite having the power to do so. Sadly this respect is not given for reserved matters by the devolved administrations and devolved legislatures. We believe it is unacceptable for the devolved legislatures to hold any votes related to reserved matters, even if it is just a motion expressing an opinion. Whilst all interference in reserved matters is disturbing and wrong, it is totally unacceptable for a devolved Scottish parliament elected by the people to run schools and hospitals to be formally expressing a view on defence and foreign policy such as trident or wars. These matters are explicitly reserved and the Scottish parliament passing motions that impact on foreign policy undermines the United Kingdom and could potentially harm relations with allies or aid enemies. It is equally wrong for civil servants
working on behalf of the taxpayer to carry out tasks that fall outwith the devolved government’s responsibilities. The Scottish Government should not be issuing government press releases, having official positions, or publishing documents like the white paper which relate to reserved matters, such actions are a misuse of civil servants time and taxpayers money. Scotland has two government’s one for devolved matters, and one for reserved matters. How can relations be improved between Governments and Parliaments when these boundaries continue to be pushed?

We recommend:
- Ban civil servants in devolved administrations from carrying out any work related to reserved matters.
- Ban the devolved parliament and assemblies from holding votes on any reserved matters.
- Ban the devolved administrations from issuing official positions on reserved matters.

**Cooperation not competition**

All the administrations and legislative authorities within the United Kingdom should be working together for the good of the British people, not competing and trying to undermine each other for political reasons. Whilst it would require political will to change such relationships, there are certain things that could be done to help facilitate such attitudes and build partnerships rather than division.

We recommend:
- Require monthly meetings take place between the Secretary of State and Ministers of each department with their counterparts in the devolved administrations. So for example once a month all ministers responsible for health throughout the United Kingdom would meet to discuss health related issues in an attempt to keep up to date with different policy issues, determine best practice and improve understanding and cooperation.
- Senior civil servants from each department should meet their counterparts across the UK monthly.
- The British Government and devolved administrations should also formally meet once a month to discuss a range of specific issues, this should always include the Prime Minister and First Ministers.
- The Secretary of State for Scotland / Wales / Northern Ireland should meet weekly with the respective First Minister to ensure there is regular top level dialogue between the British Government and each of the devolved administrations.

**Summary**

We believe that the current relationships between the administrations and legislatures within the United Kingdom are unhelpful, they create division and are aiding separatism. We believe fundamental changes are necessary in order to strengthen the United Kingdom and improve cooperation and understanding across the country. The only way this situation can be improved is if everyone respects both reserved and devolved matters, recognising
Scotland, Wales and Northern Ireland each have two governments, both with very different responsibilities. To enhance relationships and cooperation between them all, there must be regular meetings at all levels of government. These meetings should be to work together for the good of all people in the United Kingdom, not to compete and divide people down party lines or internal borders.

January 2014
Rt Hon. Lord Wallace of Tankerness, Advocate-General For Scotland; and Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland—Oral evidence (QQ 76-86)

Rt Hon. Lord Wallace of Tankerness, Advocate-General For Scotland; and Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland—Oral evidence (QQ 76-86)

Transcript to be found under Rt Hon. Alistair Carmichael MP, Secretary of State for Scotland
Q1 The Chairman: Professor Wyn Jones, we are very glad to welcome you today, not least because Professor Alan Trench unfortunately has been unable to be with us. We were conscious, when we arranged these meetings, that we were trying to squeeze quite a lot into a relatively short timeframe, but we now have about 40 minutes or so for a solo interview with you. I hope we will get through the questions that we have set as a basis for our discussion.

Perhaps I should start the ball rolling with a rather general question, which will give you the chance to make a second reading speech, if that is what you feel inclined to make. What should be the purpose of inter-government relations? Do you think there are shortcomings in the present arrangements? Would you like to give us some examples of notably good practice and notably bad practice?
**Professor Wyn Jones:** This will probably strike you as being a typical academic answer, but there is an important conceptual point at the start about what we mean by inter-governmental relations. There is a tendency, maybe in particular at the London end, dare I say it, to view this in almost narrow technical terms, as an issue of the plumbing, if you like, of a system. Amongst academic observers, and more generally in the devolved territories, there is a view of IGR as relating more to the nature of the union—the post-devolution UK. It goes beyond the relationship on a day-to-day basis between Cardiff and London. It is about what the union is for and how it is organised.

I know we will come back to the broader constitutional issues towards the end, but in terms of the current structure of the UK constitution it is very striking that, from the perspective of the devolved territories, there has been an almost revolutionary change since 1999. There has been huge institutional change, a new political class has developed and so on. On the other hand, if you look at the central institutions of the state, almost nothing, frankly, has changed. We still have the territorial offices. We still have, down the corridor, the territorial Select Committees. There has been very little change at the centre, and you have had this fundamental change in the devolved territories. One of the difficulties of the discussion about IGR is that, in the devolved territories, when we refer to IGR it is often shorthand for wanting to talk about the nature of the post-devolution union.

We have this interesting and slightly troubling situation where we are having, currently, discussions about Scotland, about Wales and about Northern Ireland. There is an emerging discussion about England. Nowhere, however, is there a discussion about the union and the implications of devolution for the core institutions of the central state. That is a general point, but it is worth making. There may be a tendency at times for people to talk past each other. The constitutional plumbing is important; the detail matters. However, there is also the bigger picture, which needs to be recalled when we are talking about this.

**The Chairman:** Do you think there is an undertone of sensitivity over the fact that it is about devolution? The central Government may have the feeling that, having devolved power in certain areas, they should stand back and let the devolved process make its way. In the devolved Parliaments, Assemblies and other bodies, is there a sensitivity that, “It is ours to do now; we do not want them interfering”? Do you think that has overshadowed the recognition of the need for better Administration?

**Professor Wyn Jones:** That is not quite how I would put it. There is a phrase very closely associated with devolution in Wales, and in particular with the former Secretary of State Ron Davies, who said famously that “devolution is a process, not an event”. That is the view in Scotland, Wales and Northern Ireland. The joke has been that in Whitehall, devolution was seen as an event, not a process. That is the feeling that people have more generally in the devolved territories. There has not been a shift in practices, or certainly in the organisation of the core of the central state. There are, of course, issues of sensitivity.

It is also important to point out the asymmetries that we have. The Welsh devolved settlement has been very different from the Scottish, and extraordinarily complicated and convoluted, which has made it quite difficult for non-specialists to keep up with what has been going on in Wales. Asymmetry is an issue, which I am sure we will return to in the discussion. That is also part of the issue. There is certainly lots of evidence of frustration in the devolved territories at the lack of knowledge. I do not think it is an issue of malign
intention but simply lack of knowledge of how different the settlements are and how they work.

**Q2 Lord Brennan**: Can we talk about what you call the constitutional plumbing? The Scotland Act, the Wales Act and the Northern Ireland statutory history are parliamentary decisions about the constitution and how it is going to work. This memorandum of understanding in the JMC is declared by all its participants not to be legally binding. I am going to ask you first of all: should we agree that this system is not, in itself, based on any constitutional foundation? It is a reaction to practical necessity. However, within it, disputes will arise that have to be resolved in order to make the statute work as intended by Parliament. If we divide the political and administrative stuff from real issues, arbitration apparently is not acceptable in London. Independent mediation, or expert advice when there is a dispute, is a suggestion, but it is not an effective solution unless the parties agree to be bound by it and by the decision they come to.

To finish off, surely now that the Acts of Parliament have established this system, there should be a constitutional base by statute, or a parliamentary declaration of convention, to resolve disputes that cannot be resolved politically or legally through the Supreme Court, if the Supreme Court is not available?

**Professor Wyn Jones**: You are obviously correct in saying that the status of the memorandums is different from the statute that underpins the devolved legislatures and Governments. In terms of how the system works, I should perhaps say that I have chaired two practitioner seminars for the UK Changing Union project, which has been interested in the issue of inter-governmental relations.

If one talks off the record to the people involved in running the current system, they will say that they get things done—that they can make things happen, often in quite circuitous ways. One of the interesting things, for example, is the extent to which in fairly recent times in Wales things have been done by bypassing the territorial office. Rather than the Wales Office, to use the correct nomenclature, being the bridge, as it should be in theory, it has had to be circumvented to make things happen. The system works, in a narrow sense. Things that need to get done do get done, but often in ways that bear very little relationship to the theory, if you like.

Implicit in what you were saying was the thought that there should be more constitutionalisation, moving on to a statutory basis in terms of the memorandums and a different conflict resolution mechanism. The best piece of work that we have on this, until your report, obviously, is the Silk commission work, which I would commend to you. It has a chapter on inter-governmental relations, which is rather well done. They collected useful evidence in that process, and obviously it was not quite as curtailed as the Smith process. That is a really useful body of evidence. They certainly make some suggestions on dispute resolution.

Also, I think, one of the things in there, which is a very simple suggestion that I think has a lot of merit, is to have an independent audit on a regular basis of inter-governmental relations. There are things that can be done, but, as you implied, the UK Government have not shown overwhelming keenness to go down that route so far. Maybe that changes post-Scottish referendum.
Baroness Taylor of Bolton: If devolution is a process rather than an event, what is your take on what has happened not just to policy implementation but policy development? When we started off with devolution, we had a Labour Government and Labour Assembly in Scotland and in Wales. Some of the decision-making undoubtedly was informal, as you say. Have the institutions managed to really move on to talk about not dispute resolution about policy but joint policy development? Where do you see that going in the future?

Professor Wyn Jones: I do not think there is much joint policy development. It varies. I go back to the point about asymmetry here. The Scottish settlement and the competences of the Scottish Parliament are different from those of the National Assembly for Wales, and there are still the residual England and Wales elements, which have an effect. There are two issues in the question. One is competence, and the other is, if you like, party congruence—the same party in power at different levels.

In terms of competence, one of the problems with inter-governmental relations over the last 15 or so years in the Welsh context has just been the deeply unsatisfactory nature of the constitutional dispensations that we have had, which have been pretty conflictual. One recalls the LCO system. Maybe you do not recall the LCO system; maybe you are blessed with not recalling the LCO system that we had in Wales between 2007 and 2011, which was a very cumbersome and conflict-laden way of making primary legislation. We now have a different constitutional dispensation, which is the one that was offered for Scotland in 1979 but then rejected for Scotland as the potential model after the referendum in 1997. It has been implemented in Wales and, lo and behold, we have had two pieces of Welsh legislation sent to the Supreme Court, which is obviously not particularly satisfactory. There are problems with the Welsh dispensation and the nature of the way that the competences of the National Assembly are set out. There is the competence issue.

In terms of policy-making, and this goes back, Chairman, to your initial point, we see that the devolved Administrations in particular cherish their autonomy. There is limited joint policy. In terms of congruence, there is lots of interesting evidence that the move from having Labour in power in London, Cardiff and Edinburgh has had an impact, and has on occasion made inter-governmental relations more conflictual and more complicated, as you would naturally expect, but also in interesting ways. For example, one of the things that happened after 2007, when the SNP formed the Government in Scotland, is that, despite having a Labour-dominated coalition in Wales, the relationship between Wales and London got more complicated, because they were getting caught up in the Edinburgh-London tensions.

Baroness Falkner of Margravine: Were they using the Edinburgh-London tensions at all to their advantage? Were they trying to co-operate with people in Scotland, in any party, in terms of turning the screw for resolution of any of their problems, or getting the experience?

Professor Wyn Jones: I do not think there is much evidence of the territorial combination. There is some discussion on some issues. For example, there was bilateral co-operation between Cardiff and Belfast in its difficult relationship with Michael Gove, when he was Education Secretary. There is some of that, but there is no ganging up, not least because obviously not all the territories have the same interest. From a Welsh perspective, for example, we talk about fair funding. Scotland is quite happy with the current system, thank
you very much. We do not have obviously the same interests in some of these discussions either.

The Chairman: Not all of us are happy with it, but this is a digression. We will go on to party politics instead.

Q3 Lord Lester of Herne Hill: The question I have been asked to ask is, “How do party and political differences between the different Administrations affect inter-governmental relations?”. I will add to that “and the rights of individuals”, as part of it. But before I formally ask you the question, to try to get a bit of the context, when Labour first thought about devolution, the idea was, “No judicial review. All conflicts should be settled politically by the Secretary of State, with an override”. There were big arguments in the Government as to whether that made sense. Then, mark 2 brought in judicial review, but of course the courts, as a source of dispute resolution, can only look at each individual statute, of Scotland, Wales or Northern Ireland, without any broader, let us say, federal type of statute. The only national UK limitations, other than the four corners of each statute, would be European Union law, European human rights law, and the notion that you have limitation of powers. That is what I understand to be the present situation.

First of all, I know you are not meant to be answering constitutional legal questions, but is that roughly your understanding? I am trying to describe a system in which there is no national overall set of statutory or constitutional criteria, except EU law, the European Convention on Human Rights, and the notion that each Administration must act within the four corners of its own statute.

Professor Wyn Jones: Yes, I think that is broadly correct. As a slight tangent, but one that is relevant to your question, I mentioned earlier the role of the territorial departments, and the idea that they were supposed to be the doorkeepers, in some sense, of the relationship between the devolved territories and the central institutions of the state. One of the problems that we see in the current arrangements is that, with the best will in the world, the territorial offices are pretty junior offices. The Secretary of State for Wales, certainly, was where people were banished. It was the Siberian nuclear reactor kind of job in a previous Government.

One of the things that we have is an interesting and quite striking lack of expertise at a senior level in Whitehall in terms of the devolved territories. One of the possibilities that is often raised when there is a reshuffle is that the territorial offices should be disbanded and replaced by a department of the union, or something, with maybe a more senior level team. I see a former Secretary of State for Wales maybe disagreeing with me around the table, but I think there is a lot of merit in the idea of recasting the relationship between the devolved territories and the central state institutionally. The main relationships are bilateral, department to department, so from within the Welsh Government, within the Scottish Government, and the equivalent department in Whitehall. There would then be some kind of department of the territories, or the union or whatever you call it, with an oversight role, as a place of expertise with more senior-level expertise and actual institutional memory in Whitehall. One of the problems that bedevils inter-governmental relations, and certainly it has been the Welsh experience post-devolution, is that often somebody is trained up to mind Wales in department X. Of course, we all know that in Whitehall people shift posts
very quickly, and that expertise is lost very quickly. That is a source of great frustration. That is at a junior level, and it is also the case at a more senior level.

**Lord Lester of Herne Hill:** I shall be rebuked by the Chair for not being able to put the question properly, which I have not yet done. The reason I asked you the questions I did was really just to set the scene, which is that there are no overall national constitutional criteria that any Supreme Court at the moment can use. Therefore, we are looking at each form of asymmetrical devolution in its own compartment. Now I come to my question.

**Professor Wyn Jones:** There is one thing I would like to clarify in my response. You have a distinguished constitutional lawyer just over the table who can explain this far better than I, but the Supreme Court has developed one very important principle in its judgments. They have laid great stress on the democratic mandate that underpins the actions of the devolved legislatures. That has been a very important principle, which has played through in the Supreme Court pronouncements on devolved issues. It would be a mistake to say that there are no overall principles. The Supreme Court has really stressed that, whatever the asymmetries and whatever the differences, the fact that they are democratically elected legislatures matters hugely in the way it regards the actions of the devolved legislatures. There is one overwhelmingly important principle.

**The Chairman:** We must move on, if you do not mind, Lord Lester.

**Lord Lester of Herne Hill:** I have not even put my question properly.

**The Chairman:** No, I think you drew out a lot of very useful information. Lord Cullen did ask to have a quick intervention in support, or perhaps not.

**Lord Lester of Herne Hill:** That is fine.

**Lord Cullen of Whitekirk:** A few moments ago, it seems some time ago, you mentioned the idea of an inter-departmental government department that would deal with relations. I wonder what you think about the alternative, which has been suggested, I think, by Professor Trench, of a revamped approach to the territorial Secretaries of State, making them effectively able to act as a true bridge of communication between the UK Government and the territorial Governments.

**Professor Wyn Jones:** I have to say that I am pretty sceptical about that. The overwhelming impression that I got, in talking to officials and politicians in the devolved territories, is that they view the role of the territorial offices often with some suspicion. It does vary from post-holder to post-holder. However, they find bilateral discussions with departments more productive, basically for political reasons. The Secretary of State is in a slightly ambiguous position, as the representative of the Government in the territory, not necessarily with a mandate in that territory. There is a problem there. I suspect that the revamping would prove endless.

I am digressing slightly, but one of the things that is striking about the history of the Welsh relationship with Whitehall post-devolution is that there have been these endless initiatives to try to make Whitehall more aware of the nature of the Welsh dispensation. It is one of these things that is like painting the Forth Bridge. Once that exercise is finished, they start again, they start again and start again. I suspect that trying to revamp the Secretary of State is not what we need. We need a more fundamental shift at the centre that corresponds to
the transformed nature of the union that we inhabit. It is very strange that we still have the same institutional arrangements, I have to say.

**Q4 Lord Lexden:** Devolution marches on, and sometimes it seems more like stumbling than marching, with significant new powers, particularly, of course, for Scotland, but also significant powers like the devolution of corporation tax that is on the cards from Northern Ireland. In the light of the onward movement of devolution, how do you think the existing inter-governmental arrangements should be revised to take account of them? The Smith commission recommends the replacement or the revision of the existing memorandum of understanding to accommodate these changes. Do you favour that, or should we move to some completely new form of arrangement in the light of the significant changes that have taken place, and the more to come?

**Professor Wyn Jones:** I think it is implicit in what I have already said, but I will make it explicit. There needs to be a more fundamental transformation. I know more about the Silk commission’s recommendations than Smith, and I am sure Alan Trench, if he was here, could talk more authoritatively on the Smith recommendations. Certainly, there are some sensible practical suggestions in Silk, which seem to me to chime in large measure with what Smith is saying.

It is about bilateralising. One of the interesting things is that the experience of multilateral inter-governmental forums is not particularly satisfactory. They may be symbolically important and worth while in some way, but, functionally and practically, apparently they have real difficulty finding agenda items, because of the asymmetries and differences, both in competence and political interests. The multilateral kinds of forums do not seem to be particularly productive. There is therefore a stress in Smith and in Silk on more bilateral work. There are worthwhile things there, I think.

More fundamentally, there needs to be a reconsideration of how the central state responds to devolution. I do not think having this enormous change on the periphery and yet very little changes at the centre is sustainable. It is not conducive to good relations, and I do not think it is conducive to the future of the union, frankly.

**Q5 Lord Crickhowell:** Can I preface my question by taking up a point you made a long time ago about what you thought had been poor relationships between the Secretary of State for Wales and the Wales Office? I suspect it has changed fairly dramatically with the new Secretary of State and the passage of the Wales Bill, and we need to think in those terms, although that reveals a point that is central to the debate that you have opened up so well so far about the need for change. The very fact that the Wales Bill developed in the way that it did suggests that there is a danger of ad hocery as we move down the constitutional path, which concerns this constitutional Committee.

I am particularly sorry that Professor Trench is not with us today. In a way, I am sorry that Professor Page is in the next session. They open up the division. Professor Trench is basically for bilateralism. Professor Page is, I think, probably in your camp in wanting a new overall combined devolved centre. My worry about that is that it seems to me that it is likely that Wales, for example, would be swamped by the concentration on Scotland, and the fact that Northern Ireland’s matters are so very different.
I wonder whether there is not a different compromise, and this is, I think, the centrepiece of my question. The ordinary day-to-day relationships and development need to be bilateral. You need to have a Wales Office or Northern Ireland Office. However, there needs to be a more effective overall responsibility to look at whether changes and developments are taking place that are having a broader constitutional impact. Perhaps it should be the job of the Cabinet Office, but it probably has not been. This is not about dealing with the ongoing relationships. It is about taking a much broader look at constitutional change and developments, and whether conflicts are emerging. Could I be right that there is a compromise here?

Professor Wyn Jones: I think you are. Let me first say that you are absolutely right to say that there has been a change in the mood of the relationship between Cardiff and London, and the new Secretary of State. That is absolutely undeniable. What is worrying is that under the previous regime the relations were such that there had to be so much bypassing in order to get things done. I worry about a system where you have that state of affairs in place. I do not think there is a huge difference between what we are saying. I think bilateralism is inevitable in lots of ways. Simply, because of the differences in competences, and because of the difference in interests, the record of the multilateral forums does not seem to be particularly productive. The detailed day-to-day work cannot happen in that kind of a forum, because at least two of the parties in most discussions have no interest in the discussion. Bilateralism is inevitable, and there are ways of making that work more smoothly.

I am also suggesting that you need some kind of constitutional overview of the union as a whole. My view is that the best way to do that is to get rid of the territorial offices, on which we may well differ, and to have a ministry that has that kind of overview of issues and deals with problems as they arise in the bilateral negotiations. There are all kinds of issues about where it sits exactly, but to have an additional Cabinet post on top of the territorials is unlikely, frankly.

The Chairman: Thank you very much. These are issues we will be exploring further with other speakers. You have opened some interesting cans of—I am not sure what. We have four questions to cover in five minutes. I do not mind overrunning by five minutes, but can I ask that we keep things very brief in the interests of covering the ground?

Professor Wyn Jones: I promise to do my best.

Q6 Lord Powell of Bayswater: We have already touched on this question, so it can be quite brief. It is about the balance between formal and informal mechanisms. Quite a lot of the British constitution does seem to operate informally. It operates fairly well, and we contrast ourselves happily with the more formal structures of European Governments, the EU and so on. Is there really a case for mucking up the present system, when it is working quite well? Secondly, if we introduce more formal statutory mechanisms, are we not letting those damn judges in the door?

Professor Wyn Jones: I would say that the judges have a pretty good record on devolution. They have understood what devolution means.

Lord Powell of Bayswater: Their scope for intervention would be entirely different.
**Professor Wyn Jones:** Indeed. I do not have a particularly strong view on formal versus informal. What I would like to stress again is the need to widen the perspective beyond the simple plumbing issues to the broader arrangements that we have for the union.

**Lord Powell of Bayswater:** Things could go on much as they were, in terms of mechanisms, as long as it has a broader perspective behind it.

**Professor Wyn Jones:** If one were to move to a different institutional organisation, there would then need to be all kinds of changes underneath that. I think, for me, it is the formal institutional structure that we need to get right first, if you like. There is a danger of diving straight into the weeds, which are important; I do not deny that. However, we need to have the conversation about the institutional structures of the core state first, if that makes sense.

**Baroness Falkner of Margravine:** Are there any models that you draw on abroad? Given the way that we are structured here, do you want more co-decision? Do you look at Canada, which is relatively asymmetric?

**Professor Wyn Jones:** One of the problems that we have with all this is that until the debate about England moves forward and is resolved in some way, it is very difficult to have an overall, overarching settlement. I am sure that if Alan Trench were here he would have some interesting things to say about various Commonwealth territories, and so on and so forth, but my own suspicion is that, because of the sui generis nature of territorial Government in the UK, until the English nettle is properly grasped—

**Baroness Falkner of Margravine:** Or not grasped, in quite that uncomfortable manner.

**Professor Wyn Jones:** —or until there is some form of resolution around that, the idea of an overarching settlement is frankly unlikely.

**Q7 Lord Lexden:** How do you think that scrutiny by the Westminster Parliament of inter-governmental relations should be extended and improved?

**Professor Wyn Jones:** That is a very interesting question. It is the Commons Select Committees that are key here. Their role post-devolution is, I think, an uncomfortable one. How can I put this diplomatically? There has clearly been a tension between MPs and AMs, and there is a natural fight for territory and attention. Some of the committee meetings have not been particularly edifying at times. There is a lot of point-scoring, I think, which is natural given the different interests of the individuals concerned. To go back to the point I have been stressing time and again, I am not at all convinced that the current structures for oversight, scrutiny or effectiveness, et cetera that we have in place are ideal.

**The Chairman:** Thank you very much. We are going to call a halt there, Professor Wyn Jones. You have been extremely helpful and open with us, and covered a lot of ground. There was one question that we have not got round to asking, but, looking at it, quite a lot of the territory that is included in it had already been covered. If, when you see the draft minute of the transcript of your contribution, you feel you have something to add that is important, please do not hesitate to write to us. Professor Trench will be writing to us anyway, but I suspect he might call that the right of reply. Time will tell. Thank you very much indeed. We are most grateful.

**Professor Wyn Jones:** Thank you all.