



Our Ref: MFC/0491

Lord Lang of Monkton
Chair
Select Committee on the Constitution
House of Lords
London
SW1A 0PW

7th March 2017

Dear Lord Lang,

I enclose the Government's response to the recommendations in the Constitution Select Committee report entitled *The Union and Devolution*.

We thank you and the other members of the committee for your hard work in producing these recommendations and advice.

Yours sincerely,

CHRIS SKIDMORE MP
MINISTER FOR THE CONSTITUTION

Introduction

The Government welcomes this report's contribution to the debate on devolution and the union. The Government is committed to the union and agrees with the Committee that the four nations of the United Kingdom are stronger united than apart.

The Prime Minister reiterated this when she said:

“Not everybody knows this, but the full title of my party is the Conservative and Unionist Party. And that word unionist is very important to me.

It means we believe in the union, the precious, precious bond between England, Scotland, Wales and Northern Ireland. But it means something else that is just as important, it means we believe in a union not just between the nations of the United Kingdom, but between all of our citizens, every one of us, whoever we are and wherever we are from.

We are a government of one United Kingdom that respects all parts of this United Kingdom. The United Kingdom's constitutional arrangements have evolved over time and been adapted to reflect the unique circumstances of the world's most successful and enduring multi-nation state.

The United Kingdom has a strong UK Parliament, containing elected representatives of all parts of the UK. In addition to this, the devolved settlements provide the different nations of the United Kingdom with the ability to pursue different policies in devolved areas should they wish to, whilst protecting and preserving the benefits of being part of the bigger UK family of nations.

The Government is strengthening the devolution settlement through implementation of the Scotland Act 2016 and the Wales Act 2017. We have been working closely with the Irish Government and the Northern Ireland Executive to implement the Stormont House and Fresh Start Agreements. The UK Government is committed to strong and stable devolved government in Northern Ireland that works for everyone.

In addition, no constitutional settlement would be complete, if it did not offer, also, fairness to England. That is why we introduced English Votes for English Laws.

Since the publication of your report, the people of the UK have voted to leave the European Union. A significant range of powers will be repatriated from the EU when we leave, meaning decisions will have to be taken on future arrangements in policy areas covered by UK laws. The Government's approach to this is set out in section three of the command paper *The United Kingdom's exit from and new partnership with the European Union* (Cm 9417).

A strong United Kingdom is now more vital than ever. The UK Government's focus remains on making a success of exiting the European Union and getting the right deal for the UK as a whole.

Responses to individual recommendations

- 1) Once the Wales Bill has completed its passage through Parliament, we recommend that the UK Government commission a thorough evaluation of the impact on the Union and its constituent nations of the cumulative effect of the devolution settlements and its plans for decentralisation within England.**
(Paragraph 100)

Strengthening and sustaining the Union and continuing good governance of the United Kingdom and its constituent parts is a priority for the UK Government. The Scotland Act 2016 and the Wales Act 2017 have been introduced with cross-party agreement and scrutinised by the UK Parliament, as well as the legislatures of the devolved nations. Therefore, the UK Government does not believe that there is a need to carry out such an evaluation.

- 2) The Government needs fundamentally to reassess how it approaches issues relating to devolution by focusing on issues through the lens of the Union.**
(Paragraph 101)

Strengthening and sustaining the Union is a priority for this Government. The Government governs for the whole of the UK and its citizens. It supports the strength of the union and the lives of its citizens in all that it does. This includes our approach to devolution, which is governed by the principle that where a matter is devolved it is because that is the right thing to do for the integrity and success of the UK. Such an approach ensures that we have a coherent and functioning union and allows decisions to be taken at the most appropriate level. We have a system that upholds and guarantees the opportunities of our single, integrated domestic market, enables the pooling and sharing of risks and resources, common defence and security arrangements, and the strength of our currency backed by the stability of the Bank of England. This strengthens the bond forged by values, experiences and history, shared by millions of people across our country.

The Prime Minister made clear her commitment to maintaining the Union when she said “I believe with all my heart in the United Kingdom – the precious bond between England, Scotland, Wales and Northern Ireland”.

Our constitutional arrangements provide the different nations of the United Kingdom with the space to pursue different policies in devolved areas should they choose to, while protecting and preserving the benefits of being part of the union. For that reason, the UK Government and Parliament continue to be responsible for matters where people in the United Kingdom benefit from a common approach. This includes defence, foreign policy and the constitution.

3) We recommend that the UK Government reconsider its use of the inadequate Barnett formula and establish a mechanism that takes into account the relative needs of different nations and regions in allocating funds. (Paragraph 117)

The Barnett formula determines how the block grants from the UK government to the devolved administrations change in relation to UK Government departmental spending within departmental expenditure limits (which broadly covers UK government spending on public services). Under this formula the devolved administrations receive a population share of increases or decreases in funding if the Government spends more or less in England/GB on devolved policy portfolios. Full details of how the Barnett formula works are set out in the Statement of Funding Policy¹.

The formula therefore only determines the *changes* in funding allocated to the devolved administrations relative to changes to UK Government departments' budgets. Differing levels of public spending throughout the UK recognise that costs may be different because there are different demands on services and benefits, depending on local economies, geographies and circumstances.

The Government is committed to retaining the Barnett Formula as the basis for determining changes in the block grants. It is transparent and relatively simple to operate, working mechanically at fiscal events (such as Budget and Autumn Statement) and at Spending Reviews. However, while retaining these useful features, the funding arrangements are evolving to reflect the differing devolution settlements and differing circumstances in each of the devolved nations.

In Scotland, further tax and welfare powers are being devolved to the Scottish parliament including rates and bands of income tax on earned income from April 2017. As these further powers are devolved, Scottish Government spending will increasingly be funded through the taxes it raises. The UK Government has agreed transitional funding arrangements with the Scottish Government until 2021-22, and this will subsequently be reviewed based on the principles set out by the Smith Commission.

In Wales, building on the funding floor introduced at the 2015 Spending Review, the UK Government has reached a new long-term funding agreement with the Welsh Government. Alongside the devolution of further tax powers, this will provide the Welsh Government with a fair level of funding (based on the range recommended by the Holtham Commission) while taking into account Welsh tax capacity and treating population change consistently across tax and spending.

The UK Government has also made a number of specific funding streams available to the Northern Ireland Executive as part of the recent Stormont House and Fresh

Start Agreements, aimed at helping to address Northern Ireland's specific challenges and issues.

4) Where powers relating to the welfare system are to be devolved, the UK Government should retain the ability to ensure a minimum level of provision.

(Paragraph

126)

The Government recognises the importance of a welfare system that operates in the interest of the whole United Kingdom. There continue to be strong practical arguments for maintaining single UK-wide models for elements of the welfare system, not least the recognised advantages that come from pooling and sharing resources and risks, as well as a coherent and consistent approach in meeting the needs of citizens. Welfare provision remains largely a reserved matter in Great Britain with Northern Ireland operating its own system, which largely maintains parity. However, in line with the Smith Commission agreement we support and are enacting the devolution of significant welfare powers (i.e. those included in the Scotland Act 2016) within a UK-wide structure which allows elements of the welfare system to be varied to reflect particular circumstances in Scotland. The Silk Commission recommended that the social security system in Wales remain non-devolved.

The Government believes that the current approach balances the requirements of maintaining a universal welfare system with a more tailored approach in some specific areas of welfare that effectively takes account of diverse local conditions. For example, Northern Ireland has an approach that closely mirrors the approach elsewhere in the UK but funds a number of local supplementary measures. In Scotland, as a result of the Scotland Act 2016, the Scottish Parliament will have new responsibilities over welfare powers in Scotland, including for carers and disability benefits.

Furthermore, the UK Government believes that Ministers in the devolved administrations should be financially accountable on issues where powers have been devolved. That is why, as part of the Scottish Government's fiscal framework agreement, both the UK and Scottish Governments committed to financial responsibility and democratic accountability and we continue to work together on these arrangements. We are also committed to devolving tax powers, including a portion of income tax, to Wales.

5) Should any currently reserved powers be devolved in the future, the UK Government should address the case for introducing UK-wide minimum provision in policy areas that affect an individual's rights and entitlements.

(Paragraph

130)

Where powers are devolved, the devolved administrations and legislatures are responsible for ensuring policies fit with international obligations, and they should also be accountable to the electorate for their actions.

- 6) While voters can assess the outcome of public policies, they cannot accurately express a judgement on their elected representatives at the ballot box if they are ill-informed about the division of responsibilities between different levels of government. All those involved in developing devolution settlements should ensure that the division of powers is made as clear as possible, to aid public understanding of what responsibilities lie at each level of government.**

(Paragraph

205)

The Government supports this objective and has taken steps to increase public knowledge of the new settlements in Scotland and Wales. For example, in March 2015 the UK Government published a leaflet explaining the changes to devolution in Scotland. The Scotland Office undertook activities and published digital material in May 2016 on the Scotland Act 2016.

The UK Government is working to raise awareness of its powers, to make clear the Scottish Government's existing powers, the powers that are coming into force from the Scotland Act 2012, and the powers that have been delivered by the Scotland Act 2016. This work raises awareness not just of the new powers coming to the Scottish Parliament, but on the current reserved and devolved responsibilities.

The Government has a track record of delivering in this area. A successful example of work previously undertaken was the HMRC led engagement on implementing the Scottish Rate of Income Tax. HMRC undertook significant engagement with businesses and representative bodies to raise awareness of tax devolution.

The Government will continue to engage with civic Scotland, where appropriate, on the Scotland Act 2016; promoting an accurate understanding of the provisions and encouraging discussion about what the powers will mean for Scotland.

The Wales Act 2017 will put in place a reserved powers model of devolution in Wales, similar to that already in place for Scotland. The new model makes clear that powers are devolved to the National Assembly for Wales unless they are explicitly reserved to Parliament. As part of this clear devolution boundary, the new model also makes clear which bodies are reserved public authorities and therefore the responsibility of the UK Government and Parliament, and which are devolved Wales public authorities that are the responsibility of the Welsh Government and the National Assembly for Wales. This will help ensure that the public are clear who should be held to account for decisions that affect the public services that they use every day.

The Northern Ireland Office routinely engages with a wide range of stakeholders in the business community and in civil society, promoting public understanding of the role and powers of the UK Government in Northern Ireland and the powers of the devolved institutions.

- 7) It is vitally important that independent public sector broadcasters continue to provide a common UK-wide service in addition to regional and local coverage, particularly in relation to topics such as news and current affairs. (Paragraph 153)**

The BBC is a national broadcaster and as such it is responsible for delivering services, including news and current affairs, for the whole of the UK; for Scotland, Wales and Northern Ireland respectively; and at regional level. There is a specific requirement, enshrined in the BBC's public purposes in the new Charter and Agreement, that requires the BBC to provide impartial news and information both locally and nationally and across a range of platforms.

In addition, the public purposes set out a requirement for the BBC to better reflect, represent and serve the diverse communities of all of the UK's nations and regions.

- 8) There is a strong case for creating a flexible framework, based on appropriate principles as a guide to future action within which any further demands for devolution can be considered in a coherent manner. (Paragraph 160)**

The Smith and Silk Commissions both considered proposals for further devolution against a set of principles. The Government supports this approach. The Government is also committed to the Northern Ireland devolution settlement and is working to implement the Fresh Start and Stormont House Agreements.

- 9) The solidarity that binds together the citizens of the UK as one people is essential to the Union. This is most clearly evident in the social union that provides for a pooling and sharing of resources across the UK. It should, however, guide the activities of decision-makers throughout the UK in a broader fashion: through comity and fair dealing. There is no way to legislate for, or enforce, solidarity but it is nonetheless vital to ensuring that the Union does not fall prey to division and an "us vs them" mentality. All those working in public service, at whatever level, must bear this principle in mind. This is particularly true in dealings over shared or concurrent powers, or in policy areas where decisions taken by one administration will have an impact on others. In these situations, solidarity means that the policies of one administration should not inflict avoidable harm on another nation or region. (Paragraph 170)**

The Government agrees and is committed to the working arrangements set out in the Memorandum of Understanding between the UK Government and the devolved administrations.

- 10) Any future proposal to devolve power should be assessed in light of the merits of devolving a particular power to a particular nation, as well as against its impact on the Union as a whole. (Paragraph 181)**

The UK Government agrees with this recommendation. Previous devolution has been guided by similar assessments. We welcomed that the Smith Commission's conclusions were guided by the principle that that it would not cause detriment to the UK as a whole nor to any of its constituent parts.

11) The circumstances in which changes to the devolution settlements require the consent of the people via a referendum should be clearly set out. (Paraphrased from paragraph 186):

The UK Government's position is that national referendums should only be held on issues of fundamental constitutional significance. This is in accordance with the recommendations of the Committee in its 2010 report, *Referendums in the United Kingdom*.

The Government agreed to a referendum on Scottish independence in 2014 and agreed the terms as set out in the 2012 Edinburgh Agreement. The referendum was legal and fair, and the result was decisive. The people of Scotland voted clearly to remain part of the United Kingdom and the Edinburgh Agreement committed both governments to respecting the outcome. The Government is as convinced today as ever that it is firmly in Scotland's best interests to remain a part of the United Kingdom.

In 2012 the Silk Commission's first report recommended a referendum before a Welsh Rate of Income Tax could be implemented. The Government agreed that recommendation when it responded to the Silk Commission in 2013 and the Wales Act 2014 provided for there to be a referendum if the Assembly voted, by a two thirds majority, to trigger one. But there is now a strong consensus that Welsh devolution has moved on since the Wales Act 2014 and that the Welsh Government should not have to call a referendum before assuming the power to raise a portion of income tax. The then Chancellor announced at the Autumn Statement in 2015 that the Government would remove the requirement for a referendum and this is provided for in the Wales Act 2017.

The UK Government remains fully committed to the Belfast Agreement which makes clear that the constitutional status of Northern Ireland will only ever be determined by the consent of the people who live there. All tests of public opinion point to continuing support for the current political settlement, including Northern Ireland's position within the United Kingdom. The Secretary of State is obliged to call a border poll if it appears likely to him that a majority of those voting would support a united Ireland (Schedule 1 to the Northern Ireland Act 1998). In the absence of that view it continues to be the case, as the Government set out in its Northern Ireland manifesto last year, that the requirements in the Belfast Agreement for such a poll are not met. The Government, working with the Northern Ireland Executive, will continue to provide stability and govern in the interests of the whole community.

12) Powers should not, however, be devolved solely because they can be—power should be devolved to a particular nation only when doing so would benefit the people of that nation or region and without detriment to the Union as whole. (Paragraph 198)

The Government agrees with this principle. We welcome that the Smith Commission's work and conclusions were guided by principles that included considering whether devolution would deliver outcomes that are meaningful to the people of Scotland and that it would not cause detriment to the UK as a whole nor to any of its constituent parts. The Silk Commission was also guided by similar principles in its work.

13) Powers should not be devolved simply because theoretically they can be exercised at a lower level of government. (Paragraph 222)

The Government is committed to stable constitutional arrangements across our country. These arrangements provide the different nations of the United Kingdom with the space to pursue different policies should they wish to, whilst protecting and preserving the benefits of being part of the larger United Kingdom. The UK Government welcomed the Smith Commission's principles that devolved powers should enable the delivery of outcomes that are meaningful to the people of Scotland and that devolving a particular power should not cause detriment to the UK as a whole nor to any of its constituent parts. The Silk Commission was guided by similar principles in undertaking its work.

14) We recommend that the UK Government identifies which public responsibilities are essential to the effective functioning of the Union, and therefore need to remain the responsibility of the UK Parliament and Government. (Paragraph 218)

Our constitution has successfully adapted and evolved in response to the needs and expectations of people across the UK. In part this is due to its uncodified, reflexive nature.

The UK Government's approach is to provide the different nations of the United Kingdom with the space to pursue different domestic policies should they choose but also to protect and preserve the benefits of being part of the larger United Kingdom. For that reason, the UK Government and Parliament continue to be responsible for topics where it is important to have a common approach. This includes defence, foreign policy and the constitution.

15) Devolution Impact Assessments should be published for any future proposals for further devolution. (Paraphrased from paragraph 226)

We welcome that the Smith Commission's work and conclusions were guided by principles that included considering whether devolution would deliver outcomes that

are meaningful to the people of Scotland and that it would not cause detriment to the UK as a whole nor to any of its constituent parts. The Silk Commission was also guided by similar principles in its work.

There are a number of powers that will need to be returned to the UK after exit from the EU. The Government's approach to this is set out in section three of the command paper *The United Kingdom's exit from and new partnership with the European Union* (Cm 9417).

16) We illustrate in this Chapter a range of ways in which the public could be informed and engaged in conversations about the territorial constitution of the UK. While we do not advocate a particular method, the implementation of our recommendations would benefit from public engagement and consultation. If the public are to remain convinced of the benefits of the Union, and the Union is to reflect their needs and preferences, they should be involved in the steps we recommend to strengthen it. (Paragraph 238)

The Government's focus is on delivering a fair and balanced settlement for people across the UK. That includes the implementation of the Scotland Act 2016 and the Wales Act 2017; the Stormont House and Fresh Start Agreements for Northern Ireland; a solution to the English question; and promoting greater levels of democratic engagement.

17) We are strongly opposed to the concept of full fiscal autonomy: (Paragraph 267)

The Government agrees that Full Fiscal Autonomy is not an appropriate mechanism for funding in the UK. The Institute of Fiscal Studies and HM Treasury looked at Full Fiscal Autonomy in the case of Scotland during the passage of the Scotland Bill and the negotiation of the accompanying Fiscal Framework for the Scottish Government. This analysis confirmed that Full Fiscal Autonomy would require the Scottish Government to fund all public spending in Scotland. There would be no more pooling resources and sharing risks with the rest of the UK: this would mean almost £10bn of extra spending cuts or extra tax in Scotland in the final year of this Parliament, or £5,000 of higher taxes or additional cuts for every family in Scotland.

Neither the UK Government or the IFS has examined the case for Full Fiscal Autonomy in Wales and Northern Ireland, but our starting principle remains that all parts of the UK are best served by pooling and sharing of resources.

18) Federalism does not provide a solution to the tensions in the UK's territorial constitution. (Paraphrased from paragraph 275)

The Government agrees with this.

19) The Government should set out a strategy to support and promote unity in the Union (Paraphrased from paragraph 283)

The Government agrees that it has a responsibility to strengthen and sustain the Union, and to promote the benefits of the Union to its citizens. The Scotland Office, Wales Office and Northern Ireland Office are tasked with supporting their respective Secretaries of State in promoting the best interests of Scotland, Wales and Northern Ireland within a *stronger* United Kingdom and ensuring that the UK Government's responsibilities are fully and effectively represented in those areas.

Furthermore, the UK Governance Group was established in June 2015 to lead the UK government's work on constitutional and devolution issues. Strengthening and promoting the Union is an ongoing priority for all levels of the UK Government.

20) We recommend the UK Government sets out a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations. (Paraphrased from paragraph 299)

The Government agrees that it is important for civil servants to have an understanding of the UK's devolution arrangements. Learning for all staff in the UK Civil Service, which includes officials working for the UK Government, Welsh Government, and Scottish Government, is provided via Civil Service Learning offering both digital and face-to-face learning opportunities. A number of new learning products on devolution and intergovernmental working have recently become available.

The One Civil Service Interchange scheme launched in 2015, provides opportunities for civil servants of all grades to experience working in other administrations.

21) The UK Government should consider opening branches of core government departments such as Treasury and Cabinet Office in Scotland to facilitate collaboration and cooperation with the devolved administrations. (Paraphrased from paragraph 304)

Many UK Government departments have significant staff presences in Scotland, Wales and Northern Ireland. There are around 24,000 UK Government staff in Scotland, around 23,000 UK Government staff in Wales, and around 3,700 UK Government staff in Northern Ireland.

The UK Governance Group was established in June 2015 to lead the UK government's work on constitutional and devolution issues. It brings together under one civil service command the Cabinet Office Constitution Group, the Scotland Office, the Office of the Advocate General for Scotland and the Wales Office. The Group ensures that the civil service has an improved capability to support ministers in the vital challenge of sustaining the United Kingdom and the constitutional settlement.

The Treasury recognises that it is important to engage effectively across its whole policy portfolio in all the nations of the UK, and work effectively with the devolved administrations to deliver for citizens.

A number of informal networks also exist across departments based in Scotland, Wales and Northern Ireland to share experiences and best practice, including working effectively with relevant partners.

The Northern Ireland Office works with UK Government partners, the Northern Ireland Executive and, consistent with the three stranded approach, the Irish Government on Northern Ireland issues including implementing the provisions of the Fresh Start and Stormont House Agreements.

22) We recommend that the UK Government consider the ways in which all UK Government services and departments could be branded, to make clear to citizens the distinction between services provided by devolved and local government and those provided by the UK Government. This should be part of a long-term strategy to develop better public understanding of the respective roles of the UK and devolved governments and legislatures. (Paragraph 320)

The Government agrees that it would be helpful to clarify to citizens which part of government is responsible for which services. The UK Government is actively taking forward initiatives in Scotland and Wales to help achieve this including appropriate branding for UK Government offices, services and relevant materials, with further consideration being given in Northern Ireland.

As noted above, the Wales Act 2017 implements a reserved powers model of devolution in line with that already in place in Scotland. This will provide greater clarity over the responsibilities of the Welsh Government and the National Assembly for Wales, and the responsibilities of the UK Government and Parliament.

23) The Annual Tax Summary sent to each taxpayer in the devolved nations should set out how they are contributing through their taxes to the revenue of their devolved government and the UK Government, and on what services the revenues raised by different governments are spent. (Paragraph 322)

The Government agrees that it is important to the success of devolution that taxpayers are aware of who sets their tax rates and ultimately how tax revenues are spent. We have taken steps to ensure this is the case, including publicity and public information campaigns to raise awareness.

In Scotland, where significant tax devolution has taken place (and will continue with the implementation of the Scotland Act 2016 with regards to income tax in 2017) Scottish taxpayers will see on their PAYE statements and their Personal Tax

Accounts a tax code showing they are a Scottish taxpayer. Given that the Annual Tax Summary is published after the end of the tax year, the UK Government is still considering how best the summary might be amended to reflect devolved tax raising powers.

24) Referendums that affect the integrity of the UK should be handled by the Civil Service as though they were elections: civil servants may support ministers to the extent of gathering information for them but may not become actively involved in the campaign or the drafting of manifesto-like material. We endorse the House of Commons Public Administration Select Committee's recommendation that "the Civil Service Code should be revised to specifically refer to referendums and provide civil servants across the UK with clear and definitive guidance on their role in respect of referendum campaigns ... so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the 'yes' and 'no' campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy". This guidance should make clear how Civil Service impartiality will be protected in these difficult circumstances, and in particular during the 'long campaign' leading up to the shorter official 'purdah' period.

In addition, we recommend that the Civil Service Code be amended to reflect the reality of devolution, and in particular the pressures that may be placed on civil servants faced with conflicting political priorities. As the Commons Public Administration Select Committee concluded, "There is now an opportunity to strengthen and clarify the Civil Service Code based on the culture and practice of government since the advent of devolution" (Paragraphs 341-42)

The Civil Service Code sets out the values and standards of behaviour which apply to the work of civil servants at all times - including in the run up to a referendum. The Code makes clear that it is the role of the Civil Service to support the Government of the day in developing and implementing its policies, which in respect of civil servants working in the devolved administrations means supporting their respective Governments. Ahead of the Scottish independence referendum, both the UK and Scottish Governments set out clear policy positions on the referendum question. It is right and proper that civil servants supported their Ministers on their Government's position in line with the provisions of the Civil Service Code.

The Government agrees with the Committee that permanent civil servants should not become involved in campaigning or drafting political material. In its response to the House of Commons Public Administration and Constitutional Affairs Committee (PACAC), the Government recognised the importance of ensuring civil servants comply with the values in the Civil Service Code in all activities, including their participation in referendums. This was supported by specific referendum guidance provided to civil servants to give more detailed and practical advice on conduct in the run up to and during restricted campaign periods. However, the Government

believes that this is sufficient; indeed it feels unnecessary to specify activities in referendums in the Civil Service Code above other activities.

However, the Government has recognised that it would be helpful to clarify the position on civil servants' involvement in referendum campaigns in a personal capacity, in the Civil Service Management Code. This document, which is part of civil servants' terms and conditions of service, provides the detail on civil servants' involvement in political activities, and it is therefore a more appropriate vehicle for such an amendment.

The Government agrees with the Committee's conclusion that guidance is important in helping civil servants navigate the particular challenges of referendums. The UK Government published two sets of guidance to civil servants ahead of the Scottish independence referendum. In August 2012, the Cabinet Secretary set out how civil servants should approach referendum related activity and on-going interaction with the Scottish Government. The Guidance made clear that Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code. This guidance was supplemented by further guidance on conduct during the 28 day restricted period. This approach recognised that questions around conduct in the run up to the referendum were not limited to the formal restricted period. This approach of guidance and advice was replicated ahead of the EU Referendum.

25) If the remit and membership of the Constitutional Reform Cabinet Committee as constituted at the start of this Parliament were not appropriate to its role overseeing changes to the constitution, then they should have been improved, rather than a decision being taken simply to abandon the Committee. The fact that another committee brings together a similar but broader range of ministers does not mean that it will scrutinise proposals in the same way, and with an appropriate focus on the impact of proposals on the constitution as a whole. We would welcome an explanation from the UK Government as to how the focus on the constitutional elements of policy that should have been the remit of the Constitution Reform Cabinet Committee has been integrated into the work of the Home Affairs Cabinet Committee. (Paragraph 345)

Decisions involving devolution and constitutional matters are generally of interest to a number of government departments, and cut across a large swathe of Government business. Given this, the Social Reform (Home Affairs) sub-Committee is the most appropriate Cabinet Committee for reaching the formal collective agreement required on these matters. This body is the forum for reaching collective agreement across Whitehall on most domestic policy. The Secretaries of State for Scotland, Wales and Northern Ireland are all members of the sub-Committee to make sure the interests of each of the devolved parts of the UK are fully considered in the collective positions it agrees, as is the Minister for the Cabinet Office, who has specific responsibility for an overview of constitutional issues. All these ministers are

also full members of Cabinet.

26) Provision for any future referendum on an issue as fundamental to the Union as the secession of one of its four nations should be set out in primary legislation by the UK Parliament. This will enable proper scrutiny by representatives of all four nations. (Paragraph 351).

We welcome the Committee's recognition that the constitution is a reserved matter.

The referendum held in Scotland in 2014 was legal and fair, and the result was decisive. The First Minister of Scotland described the 2014 independence referendum as a 'once in a generation' decision. In the Edinburgh Agreement, both the UK and Scottish governments said they would fully respect the outcome of the referendum.

27) The UK Government should set out a vision of what it seeks to achieve with reforms and where it envisages the process of 'devolution deals' will eventually lead. (Paragraph 406)

Local devolution proposals are subject to rigorous negotiation between Government and places, and the Government has been consistently clear in its focus on how devolution proposals will demonstrably help to:

- strengthen local democratic governance and leadership through supporting effective, accountable local institutions which have the power to make strategic decisions across functional economic areas;
- boost local economic growth; and,
- provide better integrated public services

Within this, however, it is the Government's view that it is for local places to identify and achieve their own specific objectives, putting the onus on local places to define their aspirations, and to make the case to central government as to the powers and budgets that they need to achieve them. This bottom-up approach to devolution has seen rapid and tangible progress in devolving powers and establishing stronger local governance mechanisms across functional economic areas, where more prescriptive, top-down approaches may not have been successful.

Devolution deals are not envisaged as one-offs, but the start of an ongoing conversation between places and Government, as evidenced by the further agreements secured by Greater Manchester and Liverpool City Region. The Government welcomes and encourages an ongoing dialogue with areas implementing devolution deals on where they would like to go further.

28) The UK Government should explain the requirement to have directly-elected mayors in places that rejected them in referendums and consider more

flexibility in governance structures. (Paraphrased from paragraphs 412-13)

Devolution deals represent a new and different offer to places. Deals are negotiated and agreed by democratically elected local representatives and include far-reaching powers and responsibilities over funding and service delivery. Combined Authorities provide a structure to exercise local democratic leadership on those strategic issues which require solutions across a whole region and its economy – including infrastructure investment, transport coordination, skills provision and more. Where Mayoral Combined Authorities are being established, the Mayor will be the chair, and a member, of the Combined Authority. The ability for the public directly to elect a Mayor – who then effectively works with a Cabinet of local authority leaders to take forward strategies and decisions – offers opportunities to improve local democratic engagement. It is also worth noting that Mayors will be scrutinised by local overview and scrutiny and audit committee(s).

Ministers have been clear that the most ambitious devolved arrangements will require robust local governance and a powerful point of accountability. It is for the elected representatives of an area, who have the democratic mandate to make decisions, to explore opportunities for their areas and to decide whether they wish to introduce a mayor and benefit from major devolved powers. If they do, it will be for local people to decide through the ballot box who they wish to hold the position.

29) The lack of public and community engagement around the ‘devolution deals’ is a weakness in the current policy for the governance of England. There should be a requirement for informing and engaging local citizens and civil society in areas bidding for and negotiating ‘devolution deals’. Local politicians seeking ‘devolution deals’ should lead this engagement. (Paragraph 423)

If public concerns about the governance of England are properly to be addressed, the UK Government, and individuals engaged in political activity at all levels, need to engage with the public on these issues and to understand their concerns. There needs to be a greater effort to understand what people and communities want from devolution or decentralisation. This requires far greater public engagement, both in general across England and in those areas seeking or agreeing greater powers, with real discussions about what those powers should be and by whom they should be exercised. (Paragraph 424)

The Government agrees that public engagement in the devolution agenda is critical and would expect that elected representatives in local areas would seek the views of their constituents through appropriate means. The period ahead of Mayoral elections is likely to provide a key opportunity to raise the profile of devolution amongst the public. Formally, when establishing, or amending, a Combined Authority there is a statutory requirement to hold a public consultation, while local authorities in deal areas also remain subject to the Best Value Duty with its associated requirements around consultation related to commissioning in particular.

All of the devolution deals agreed to date include clear commitments from Government and local areas on implementing, monitoring, evaluating and ensuring accountability, and the text of all agreed deals has been published online.

30) As with any proposals for further devolution to the devolved nations, when bringing forward proposals for devolution or decentralisation of power in England, the UK Government should produce a Devolution Impact Assessment. (Paragraph 427)

The Government agrees that proposals for further devolution should be thoroughly assessed. English devolution proposals are subject to rigorous negotiation between Government and places, and the Government has been consistently clear in its focus on how devolution proposals will demonstrably help to:

- strengthen local democratic governance and leadership through supporting effective, accountable local institutions which have the power to make strategic decisions across functional economic areas;
- boost local economic growth; and
- provide better integrated public services.

As set out in the Cities and Local Government Devolution Act 2016, Government will lay an annual report on devolution before both Houses of Parliament.

31) The recommendations in the following paragraphs concern intergovernmental relations and were addressed when the UK Government responded to the Lords Intergovernmental Relations Report: 289, 291, 299, 302, 305, 308 312, 342.