



HOUSE OF LORDS

Select Committee on the Constitution

10th Report of Session 2021–22

**Respect and
Co-operation:
Building a Stronger
Union for the
21st century**

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Select Committee on the Constitution

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Q in footnotes refers to a question in oral evidence.

SUMMARY

This Committee believes in the United Kingdom. We cherish the principle of mutuality upon which it rests. We recognise its current strains but have faith in its future as a supple, adaptable, shared asset for all our nations, regions and communities.

This report is written in that spirit of optimism. It concentrates not on some grand, new constitutional settlement but upon a range of practicable, achievable improvements to the functioning of the Union and to its inter-relationships, both procedural and human, which could enhance its vitality and enrich its service to our people in the demanding decade to come.

The world is changing at an unparalleled rate. For the last twenty years and more, our governments have faced a financial crash, climate change, an information and technology revolution, withdrawal from the EU, a pandemic, and new emerging threats from regimes hostile to liberal democracy. Any one of these issues would test our system of government. The UK's governing institutions have had to deal with the cumulative effects of them all.

Constitutions matter but they need constant attention and occasional repair if their vitality and adaptability are to be sustained. Opponents of the United Kingdom argue its demise is inevitable. It is not, but there is no room for complacency; each of its nations and regions would be diminished if the Union ceased to exist. The opportunity to revitalise the Union, making it fit for purpose in the 21st century, is clear and achievable.

State of the Union

The United Kingdom's unique constitutional arrangements reflect its character as a multi-national and diverse state which accommodates a range of identities and are particularly well suited in responding to the new challenges of the digital age. They provide for the significant autonomy of its constituent nations complemented by the pooling of resources and sharing of risks, to ensure greater resilience in its collective response to global security, the pace of industrial change, economic, financial and public health challenges, present and future.

Global pandemics do not respect national boundaries and cross-border co-operation is therefore critical. We believe the United Kingdom's collective response to the COVID-19 pandemic through the furlough scheme, financial support to businesses and the procurement of vaccines demonstrates the continued strength of the Union.

Improving the shared governance of the United Kingdom will require a greater degree of respect and partnership between the different layers of government.

For the Union to flourish, it must enjoy popular support in each nation, based on a recognition of the common benefits accruing to all nations and regions.

We have expressed concern in the past about governments' tendency to 'devolve and forget'. There has also been evidence at times of a unilateral approach to strengthening the Union, which has been insufficiently sensitive to its pluralism. We do not believe either approach is an effective means of strengthening it. While we welcome the Government's stated commitment to the Union, we believe it needs to set out a clearer vision about how it will be shaped in the

21st century. This vision needs to be rooted in the best appreciation we can reach about the fundamental challenges which have been building up over decades and which have led to today's discernible atmosphere of distrust and uncertainty in popular discussion and debate.

Parliamentary sovereignty

Parliamentary sovereignty remains a fundamental doctrine of our constitution. While the UK Parliament could, in theory, legislate to abolish the devolved institutions; in reality, it would not do so, and certainly not without the express consent of relevant voters in a referendum, as recognised in the devolution statutes. This illustrates the political constraints which in practice circumscribe the legislative supremacy of the UK Parliament. As with other political constraints, there may, from time to time, be tensions in their operation. Parliament's legislative authority must continue to be exercised with respect and restraint if the Union is to be strengthened.

Sewel convention

The Sewel convention is a fundamental part of the United Kingdom's devolution arrangements, which provides that the UK Parliament does not normally legislate on devolved matters without the consent of the devolved legislatures. If trust is to be maintained between the UK Government and the devolved administrations, it is essential that it be respected by all governments and legislatures. While the legislative consent procedure generally worked well from 1999, implementing Brexit placed it under strain.

For the Sewel convention to operate well, constructive relationships and good faith is required between the UK Government and the devolved administrations. Other than in exceptional circumstances, the UK Government ought not to seek to legislate in devolved areas without consent.

We do not believe it would be desirable to involve the courts in adjudicating disputes on the meaning and application of the convention, which are best resolved through political deliberation. As any breach of the convention will have political consequences, we believe that Parliament is the appropriate forum to scrutinise its operation.

We believe the absence of any meaningful dialogue between Parliament and the devolved legislatures on legislative consent matters is a gap in the legislative process. We recommend that to increase confidence in the Sewel convention, as well as strengthening interparliamentary scrutiny of intergovernmental relations more generally, the House of Lords should strengthen its scrutiny of bills that engage the Sewel convention. This should include the provision of a memorandum by the Government about the devolution implications of relevant bills, a greater degree of committee scrutiny of legislative consent issues—seeking input from the devolved legislatures, where appropriate—and greater prominence for the granting, or withholding, of legislative consent by the devolved legislatures in House of Lords Business.

Intergovernmental relations

It is unfortunate that greater progress on reforming the intergovernmental structures was not achieved before the challenges of Brexit and COVID-19 demonstrated the inherent weaknesses in the current arrangements. The governance of the United Kingdom requires strong relationships to be built and

maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive at all levels.

We welcome the agreement reached between the UK Government and devolved administrations on a process for agreeing exclusions from the UK Internal Market Act 2020's market access principles in policy areas covered by common frameworks. This is an encouraging sign that constructive intergovernmental relations are being re-established. We also welcome the review of intergovernmental relations, which appears to have addressed many of the defects in the previous structure. We believe Prime Ministers have a critical role to play in making the new intergovernmental structures a success and maintaining strong relationships between the four administrations, including chairing regular meetings of the new Prime Minister and Heads of Devolved Governments Council.

We recognise that, whatever changes to the intergovernmental structures are agreed, even the best governance structures will not be capable of resolving fundamental political differences between the different administrations. The arrangements should however be capable of fostering greater trust and more effective, cooperative, working relationships. The success of the new arrangements will depend on how the Government and devolved administrations operate them and whether they are committed to using the new structures to cooperate on achieving shared objectives, rather than simply managing—or taking opportunities to accentuate—their differences.

Better co-operation and partnership between the UK Government and devolved administrations is in the public interest, and the public supports greater joint working. There are a range of challenges that, reserved or devolved, will affect all parts of the United Kingdom equally, including international trade, health and social care, as well as shared competences like social security and cross-border transport links.

Effective scrutiny of intergovernmental relations needs to be underpinned by greater transparency including the provision of information about the Government's engagement with the devolved administrations. While we welcome the Government's provision of some information, we believe greater detail is required. To this end we recommend the Government enters into a formal agreement with the House of Lords on the information it will provide about its intergovernmental engagements, to enhance the current scrutiny arrangements. The Government should also make time available in the House to hold a debate on its annual report on intergovernmental relations.

Interparliamentary relations

Enhanced interparliamentary relations have an important role to play in allowing all legislatures in the United Kingdom to scrutinise the new intergovernmental arrangements, increasing transparency and holding their respective executives to account, as well as helping to foster greater mutual respect between them. There is a strong appetite among the devolved legislatures for greater interparliamentary engagement with the UK Parliament. We believe that the House of Lords can play an important role in facilitating this.

We welcome the plans to establish a new interparliamentary forum and look forward to participating in it. To be a success the interparliamentary forum should be based on an equal partnership between the legislatures and

relatively informal arrangements—providing a framework for more detailed interparliamentary collaboration where there is an appetite to do so.

The governance of England

England's place in the Union should not be overlooked, but there are no obvious governance changes to provide England with a distinctive voice that command political and public support. Establishing an English parliament would destabilise the Union and do little to address the need for greater decentralisation within England, which we believe has the greatest potential to resolve concerns about the governance of England.

England is highly centralised, with greater regional economic inequalities, compared to most other Western European countries. We strongly support the development of devolution within England to help improve economic performance and address regional inequalities. Greater decentralisation will help to strengthen the governance of England more generally and achieve a better overall balance of powers between the centre and the other parts of the United Kingdom. This will benefit the overall health of the Union.

Considering its importance, we regret the long delay in the publication of the Government's Levelling Up white paper. We believe that the success of the Levelling Up agenda will require a long-term commitment, developing cross-party support and strong cross-departmental collaboration, to deliver effective and properly resourced devolution within England.

The current deals-based approach to devolution is not sufficiently ambitious. We recommend the Government develops a principled devolution framework to provide a clear baseline for further devolution of powers within England. However, building greater capacity and capability in devolved authorities will be critical to the successful extension of devolution within England to the counties, as will achieving greater coherence in sub-national governance arrangements. As devolution within England develops, it will be important that English devolved authorities have an opportunity to influence discussions at the national level, perhaps through the existing intergovernmental arrangements.

Whitehall

To deal effectively with and respond to the challenges of governing the United Kingdom in the 21st century, significant culture change is required in Whitehall, including the end of its top-down mindset. Following the completion of the review of intergovernmental relations and if, or when, devolution is extended across England, Whitehall will need to transform how it manages, and mediates between, the different interests of the nations and regions. Greater respect and co-operation between Whitehall and the different parts of the United Kingdom will help strengthen the Union.

We note the Government's responsibility for the Union, intergovernmental relations and English devolution has been brought together under the role of Secretary of State for Levelling Up, Housing and Communities, who is also the designated Minister for Intergovernmental Relations. While the combined responsibility for the devolution arrangements is welcome, we are concerned that the role's broader responsibilities risk undermining its focus on this important area. We also hope the combined ministerial responsibility for the devolution arrangements becomes a settled part of the machinery of government, as we

believe continued and frequent restructuring will risk undermining Whitehall's capacity to manage a fundamental part of the United Kingdom's governance arrangements.

We endorse the Dunlop review's recommendation that a senior Cabinet position—at present the Secretary of State for Levelling Up, Housing and Communities—should have a duty to uphold the integrity of the constitution, including the operation of intergovernmental relations and the devolution arrangements more generally.

We welcome the establishment of dedicated Cabinet committees on the Union and the Government's commitment to increasing civil servants' knowledge of the devolution arrangements through training programmes and secondments. We will judge these initiatives by their success in inspiring the change in mindset which we believe is required across Whitehall.

Funding arrangements

We continue to believe the Barnett Formula requires reform to introduce a fairer allocation of funding between the four nations. As fiscal devolution develops and the funding of the devolved administrations become less reliant on the block grants, we recommend the Government examine how funding arrangements could more effectively address relative needs across the United Kingdom.

The multiplicity of funding pots from which local government is invited to bid occupies a disproportionate amount of its capacity. These pots must be rationalised to allow their resources to be re-focussed on exercising devolved powers. Meaningful and thriving devolution within England will not be achieved if devolved authorities are not granted the financial means to exercise their powers effectively. We recommend the Government introduces greater fiscal devolution to devolved authorities, including taxation, while taking account of institutional capability. Central government's continued role in redistributing resources should not be used as a vehicle to impose its own policy preferences on English devolved authorities.

We welcome the creation of the Shared Prosperity Fund but heard significant concerns about the UK Government's role in making allocations from the Fund directly in devolved areas, without the involvement of the devolved administrations or devolved authorities. The Government's lack of engagement with the devolved administrations on the overall design of the Fund is unhelpful and has undermined trust. To rebuild trust and partnership, we recommend the devolved administrations and devolved authorities should have a more constructive role in the governance of the Fund, including decisions about local priorities and the allocation of funding.

The Union's purpose and potential in the 21st century

We believe that the Union's strength historically has been its ability to adapt to changing circumstances both national and international. The Union should continue to adapt, but with a renewed focus on strengthening effective relations among its constituent parts. We believe that the flexibility of our uncodified constitution is well-suited to achieving this.

The Committee's vision is of a more cooperative Union based on a renewed sense

of respect and partnership between the different layers of government and a new emphasis on shared governance in the interests of all its citizens.

After the challenges of Brexit and COVID-19 we believe there is a clear opportunity to reset relationships to achieve a better functioning Union which can keep pace with the rapid changes and the many challenges that confront its nations and regions in the 21st century. A Union which can achieve greater wellbeing and deliver greater resilience across the whole United Kingdom.

Respect and Co-operation: Building a Stronger Union for the 21st century

CHAPTER 1: INTRODUCTION

Introductory remarks

1. This Committee believes in the United Kingdom. We cherish the principle of mutuality upon which it rests. We recognise its current strains but have faith in its future as a supple, adaptable, shared asset for all our nations, regions and communities.
2. This report is written in that spirit of optimism. It concentrates not on some grand, new constitutional settlement but upon a range of practicable, achievable improvements to the functioning of the Union and to its inter-relationships, both procedural and human, which could enhance its vitality and enrich its service to our people in the demanding decade to come.
3. The United Kingdom is a successful joint endeavour, shaped over the years by its constituent nations and regions. For more than three centuries this Union has sought to protect and promoted the interests of the people for whom these islands are home. Each generation has had to meet different challenges and seize anew fresh opportunities. The Union has never stood still. It has shown itself capable of adapting to the demands of the day and finding renewed purpose, and can now do so again.
4. The world is changing at an unparalleled rate. For the last twenty years and more, our governments have faced a financial crash, climate change, an information and technology revolution, withdrawal from the EU, a pandemic, and new emerging threats from regimes hostile to liberal democracy. All of these had an impact on people's life experiences and heightened discontent at the governance within the Union in addressing fairly the impact of those challenges across the whole of the UK.
5. Any one of these issues would test our system of government. The UK's governing institutions have had to deal with the cumulative effects of them all. In the face of a global pandemic, however, the rate of innovation in science and technology has allowed the economy to function to a level that would not have been possible 20 years ago, the social security system to respond at speed and the UK to deliver an unprecedented public health response.
6. Constitutions matter. They embody the distinctiveness of a state—what makes it special—as well as its governing relationships. They need constant attention and occasional repair if their vitality and adaptability are to be sustained. We recognise the current constitutional stresses and strains that affect the UK's constitution and the importance of addressing these without delay if confidence in the Union is to be maintained.
7. Successful constitutions require respect, loyalty, even a degree of affection on the part of those they serve and protect. If working well, constitutions are a work of poetry as well as plumbing, part of the cultural wealth of a state

as well as its governing mechanics and procedures. Care and respect for the vitality and diversity of the constitution is a central and constant duty owed by any government to the people of the state.

8. In the early post-war years, the United Kingdom's uncodified constitution seemed to fit the country comfortably. Recently, however, it has begun to show signs of wear. There are causes for concern. This report captures the Committee's analysis of current discontents that rustle through nearly every one of the many levels of governance we have lain upon our islands without pattern or plan. The nations have come to know each other less well, which has fed a sense of alienation and mistrust.
9. We seek a United Kingdom where multiple identities have room to breathe, but where we never lose sight of the importance of working together in order to advance our common interests. A Union is about more than a set of economic transactions. It exemplifies deeper ties of family and friendship, and the instinctive empathy flowing from common experiences and shared hopes for the future.
10. The unique make-up of the United Kingdom means there are no easy, ready-made, solutions available to make our Union fully fit for the 21st century.
11. Our report is a call to action—not just to a carefully, mutually respectful restoration of our governing arrangements and institutions, important though that is—but to the creation of a re-energised, more supple, less rancorous Union for the benefit of all.

Overview

12. The Committee last comprehensively addressed the governance of the UK in its report on *The Union and devolution*,¹ which was published one month before the Brexit referendum on 23 June 2016. That report set out what the Union is for, how it has been affected by devolution, where the risks to the stability of the Union lay and how the Union might be strengthened following the stresses of two decades of ad hoc devolution. Much has happened since then, not least the UK's departure from the EU and the COVID-19 pandemic, both of which create challenges as well as opportunities. We are therefore clear that now is a good time to revisit the UK's system of multi-level governance, including the devolved arrangements in Scotland, Wales and Northern Ireland, as well as governance in England.
13. The report considers the strains in the current constitutional arrangements and explores what changes might be necessary to achieve a better-governed Union. We believe that attitudes and culture are as important, and probably more so, than structures, although structures can help to reinforce, with the right incentives, positive attitudes to the Union. This theme runs through our report.
14. Several significant developments occurred during our inquiry. The English Votes for English Laws procedures in the House of Commons were repealed and, following the publication of Lord Dunlop's review of the UK's

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

Union capability (‘the Dunlop review’),² the UK Government and the devolved administrations reached agreement on the long-running review of intergovernmental relations.³ We considered these developments in our inquiry, and followed-up on related recommendations from earlier reports.

15. In Chapter 2 we consider the present state of the Union, including the strains and their causes, changing public attitudes to the Union, the Government’s strategy for strengthening or maintaining the Union and our vision for a better-governed Union.
16. In Chapter 3 we address parliamentary sovereignty and how it might be understood in the context of the devolution arrangements. Chapter 4 covers how the operation of the Sewel convention has come under strain during the implementation of Brexit and possible improvements to the legislative consent process, including the scrutiny role of the House of Lords.
17. Chapter 5 considers the role of intergovernmental arrangements in managing relations between the UK Government and the devolved administrations, and the role of proposed reforms—structural and behavioural—in facilitating greater co-operation and joint working on shared objectives. Enhanced intergovernmental relations strengthen the case for greater interparliamentary scrutiny of these arrangements, and we consider this in Chapter 6.
18. Chapter 7 addresses the governance of England, including English devolution and how it ought to develop in future, and the implications of this for wider UK governance. In Chapter 8 we consider Whitehall’s approach to managing relations between central government and the nations and regions of the UK, including the role that machinery of government and management changes can play in facilitating a new mindset.
19. Chapter 9 examines the UK’s funding arrangements, including the continued role of the Barnett Formula, the new UK Shared Prosperity Fund and the desirability of granting English regions greater financial autonomy. Chapter 10 concludes by considering the Union’s purpose and potential in the 21st century.
20. The Committee’s members are from different parts of the UK and several served in local government before joining the House. The Committee’s background has therefore informed this inquiry. We were also conscious of the need to seek a broad range of evidence to ensure views from across the UK are reflected in our report.
21. We are grateful to all who assisted our work by providing oral or written evidence. All the written evidence and transcripts of the oral hearings are on our webpages.⁴ The Committee visited Senedd Cymru/the Welsh Parliament and the Scottish Parliament and held informal discussions with the constitutional committees in all three devolved legislatures. We held

2 Lord Dunlop is a member of the Committee. See Cabinet Office, *The Dunlop Review into UK Government Union Capability* (24 March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972987/Lord_Dunlop_s_review_into_UK_Government_Union_Capability.pdf [accessed 14 January 2022]

3 Cabinet Office and Department for Levelling Up, Housing and Communities, *The Review of Intergovernmental Relations* (13 January 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046083/The_Review_of_Intergovernmental_Relations.pdf [accessed 14 January 2022]. The review began in March 2018.

4 See Appendix 2 for details.

evidence sessions at the Senedd and the UK Government's 'hub' office in Edinburgh. We are grateful to both institutions for hosting us.

22. In this report we use 'nation' to refer to the four constituent nations that make up the UK (England, Northern Ireland, Scotland and Wales); 'devolved administrations' to refer to the Scottish and Welsh Governments, and the Northern Ireland Executive; 'devolved legislature' to refer to the Senedd,⁵ Scottish Parliament and Northern Ireland Assembly; 'Sewel convention' rather than 'legislative consent convention'; and 'English devolved authorities' to refer to the different units of local governance within England, including the combined authorities and counties.

⁵ We generally refer to the 'Senedd' rather than the 'Welsh Parliament', including when it was still known as the 'National Assembly for Wales'.

CHAPTER 2: STATE OF THE UNION

Context

23. The United Kingdom as currently constituted marks its centenary in 2022.⁶ Following decades of political and, later, civil unrest, the partition of Ireland was confirmed in 1922 with the creation of the Irish Free State and Northern Ireland's decision to remain a devolved part of the UK. From the late nineteenth century Scotland's distinctiveness was recognised through greater administrative autonomy and representation in the Cabinet, as became true of Wales after the mid-1960s. Only a minority supported full independence in both nations. The system of English local government established in the late nineteenth century, comprising counties (including London) and districts, endured in the post-war period.
24. The last time the UK's territorial constitution was considered in the round was by a Royal Commission appointed in response to growing nationalism in Scotland and Wales in the late 1960s. By the time the Commission reported in 1973,⁷ a uniform two-tier system of English local government had been established (with metropolitan councils for its main urban areas), devolution in Northern Ireland had been replaced with Direct Rule from Westminster and the UK had joined the then European Economic Community. At the end of the 1970s proposals for devolution to Scotland and Wales failed to receive the necessary levels of support and were abandoned. English metropolitan councils were abolished in 1986, including the Greater London Council.
25. The new Labour government elected in 1997—with a majority of MPs in England, Scotland and Wales—were committed to decentralising the UK so that the Union “will be strengthened, and the threat of separatism removed”. By 2000, devolved institutions had been established in Scotland, Wales, Northern Ireland and Greater London (but not in any of the English regions).⁸ Between 2010 and 2015 the Coalition government significantly expanded the powers of the Scottish and Welsh legislatures, introduced metro mayors in England, and English Votes for English Laws in the House of Commons.
26. Having first formed a minority administration in 2007, the SNP became a majority government in Scotland in 2011 with a manifesto commitment to seek consent to hold an independence referendum. While 55 per cent of Scots voted ‘no’ in 2014 and the SNP lost its majority in subsequent devolved elections, support for independence and the SNP remained high. The 2015 general election gave the Conservatives, the SNP and Labour a majority of seats in England, Scotland and Wales, respectively, with seats split between unionist and nationalist parties in Northern Ireland. Polls also suggested support for independence has increased more recently in Wales, albeit from historically low levels, as well as increasing ambivalence about the merits of the Union in England.

6 As a result of the Anglo-Irish Treaty in 1921 the Irish Free State (later the Republic of Ireland) was constituted on 6 December 1922. Northern Ireland chose to remain a devolved part of the United Kingdom. Legislation in 1927 changed the name of Westminster to the “Parliament of the United Kingdom of Great Britain and Northern Ireland”. See House of Commons Library, *The Anglo-Irish Treaty, 1921*, [CBP 9260](#) (11 October 2021)

7 *Royal Commission on the Constitution 1969–1973*, Volumes 1 and 2, Report (Cmnd 5460, October 1973)

8 Labour party manifesto, ‘New Labour – because Britain deserves better’ (1997): <https://www.fes.de/fulltext/jalhi/90057/90057010.htm>. See ‘Devolution: strengthening the Union’ section

27. In the 2016 EU referendum a majority of voters in England and Wales voted to leave the EU while a majority of voters in Scotland and Northern Ireland voted to remain. This prompted calls for a second independence referendum by the Scottish Government, which were rejected by the UK Government on the grounds that this was not a priority during the implementation of Brexit and the response to COVID-19. Some of the UK Government's Brexit-related legislation, including the UK Internal Market Act 2020, placed the constitutional convention relating to legislative consent under pressure, and provoked criticism from the Scottish and Welsh Governments (and sometimes the Northern Ireland Executive) that the devolution arrangements were being undermined. The creation of a de facto 'sea border' for certain purposes between Great Britain and Northern Ireland has led to renewed calls for unification of the island of Ireland by nationalists, while provoking significant concerns among unionists.
28. By the time the UK left the EU in 2021, its constitutional arrangements had changed considerably since its accession to the EEC in 1973, when there was no devolution.

Union of nations

29. While the UK Government has referred to the UK as a 'unitary state',⁹ 'union of nations' may be a more accurate description. This acknowledges the formation of the contemporary UK through a series of unions between the different nations in the British Isles, notwithstanding the partial severance of one of those unions a century ago.¹⁰
30. The Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Michael Gove MP,¹¹ told us:
- “the Union is not an historical artifact. It is not a dry set of constitutional arrangements. It is a living, breathing success story and it is a project for the future ... but the most important thing about the Union is to recognise that it is a family of nations and a nation of families, and if we concentrate solely on the constitutional wiring then we miss the bigger picture.”¹²
31. Our witnesses emphasised the multi-national nature of the UK, and its willingness to accommodate different identities without requiring uniformity.¹³ The Director of the Bennett Institute for Public Policy, Professor Michael Kenny, said “the Union has always meant different things to the different parts of the country ... what Unionism means, what its roots are, what are the objects of its attachment, are quite different in Scotland, Wales, Northern

9 Department for Business, Innovation & Skills, *UK Internal Market*, CP 278 (July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf [accessed 14 January 2022]. Para 16 says “The UK is a unitary state with powerful devolved legislatures, as well as increasing devolution across England”.

10 The Committee has previously referred to the 'union state'. See Constitution Committee, *Reviewing the constitution: terms of reference and method of working* (1st Report, Session 2000–01, HL Paper 11), para 21. Prior to the formation of Great Britain, England could also be characterised as a 'union' state as a product of the gradual consolidation of the seven kingdoms of Anglo-Saxon England—the heptarchy—between the 5th and 8th centuries.

11 When Michael Gove gave evidence to the Committee on 20 July 2021, he was the Chancellor of the Duchy of Lancaster and the Minister for the Cabinet Office.

12 [Q 101](#) (Michael Gove MP)

13 [Q 18](#) (Alex Massie), see also written evidence from Empowering Yorkshire ([FGU0009](#)), Professor Jim Gallagher ([FGU0051](#)), Professor Ailsa Henderson and Professor Richard Wyn Jones ([FGU0046](#))

Ireland and England.”¹⁴ Michael Gove told us that “states evolve over time, and I think there is something about the historically loose and baggy nature of Britishness that is of great value”.¹⁵

The Union and devolution

32. Devolution in the late 1990s introduced a fundamental change to the UK’s constitutional arrangements, which continued apace over the following 20 years.¹⁶ A purpose of devolution was to accommodate the distinctiveness of Scotland, Wales and Northern Ireland, and in doing so respond to discontent about the centralised nature of the UK’s governance arrangements. Devolution is also underpinned by strong political, administrative, economic, and cultural rationales. Despite the advantages devolution within England has only recently begun to develop.
33. Since the introduction of the devolution arrangements in the late 1990s, there has been no over-arching assessment of their operation or implications for the Union as a whole. Instead, 16 ad hoc commissions and talks have taken place (two of which are ongoing in Northern Ireland and Wales), always focused on a single nation and each invariably leading to the further devolution of powers to those nations. An overview of these forums is provided in Appendix 4. The powers devolved to each nation are summarised in Appendix 5. The Committee has observed that the creation and extension of devolution has not always been sufficiently attentive to the health of the Union. We said: “While the constitution should reflect the wishes and interests of the nations and regions, that must not be at the expense of the stability, coherence and viability of the Union as a whole.”¹⁷ Professor Michael Kenny, Philip Rycroft and Jack Sheldon have said that “there is an ingrained tendency to view devolution primarily in relation to the politics and governance of the specific territories where new powers have been awarded, and to underplay the very significant interactions and spillovers for the UK state as a whole.”¹⁸
34. **The opportunity to revitalise the Union, making it fit for purpose in the 21st century, is clear and achievable. Opponents of the United Kingdom argue its demise is inevitable. It is not, but there is no room for complacency; each of its nations and regions would be diminished if the Union ceased to exist.**

The Union’s purpose in the 21st century

35. In our report on *The Union and devolution* we said: “The Union has brought stability, peace and prosperity to the United Kingdom.”¹⁹ We remain of the

14 [Q 34](#) (Professor Michael Kenny)

15 [Q 102](#) (Michael Gove MP)

16 In the case of Northern Ireland, devolution was restored rather than introduced, a devolved Parliament of Northern Ireland having existed between 1921–73 and devolved assemblies between 1973–74 and 1982–86. See House of Commons Library, Parliament and Northern Ireland, 1921–2021, Briefing Paper, [CBP-8884](#), 21 December 2020.

17 Constitution Committee, *The Union and devolution*, Summary

18 Professor Michael Kenny, Philip Rycroft and Jack Sheldon, The Constitution Society, ‘Union at the Crossroads: Can the British state handle the challenges of devolution?’ (11 April 2021), p 6: https://www.bennettinstitute.cam.ac.uk/media/uploads/files/Union_at_the_Crossroads_Report.pdf [accessed 14 January 2022]

19 Constitution Committee, *The Union and devolution*, paras 42–71, 77 and 78. See also [Q 216](#) (Professor Jim Gallagher).

view that these are the following key elements of the Union:

- (a) Political union: this is manifest in the sovereign UK Parliament with representation from 650 constituencies across the UK and in the sharing of common fundamental values which underpin governance across the UK: democracy, liberty and the rule of law. Within this framework, the UK retains a strong common identity and international profile. While the devolved legislatures have a great deal of autonomy on domestic matters, externally the UK operates as a single entity diplomatically through its influential membership of international bodies such as the Council of Europe, NATO, the G7, the Commonwealth, the United Nations, including the Security Council, and the new international bodies that are emerging.
- (b) Economic union: the UK is the world's fifth-largest economy²⁰ and provides all its nations and regions with a single market, single currency and central bank. This provides protection against global shocks including the financial crisis, which made possible the bailout of banks in Scotland and England, and the COVID-19 pandemic, which saw the introduction of furlough support across the UK. The UK's economic significance also allows it to exert greater influence internationally, strengthening opportunities across the UK for future growth and investment through trade agreements.
- (c) Social union: this allows for the pooling and sharing of risks and resources, including the redistribution of wealth, to create advanced social security and health systems within and between nations. In response to COVID-19, the social union enabled co-operation between central and devolved governments on the procurement and rollout of the vaccines.²¹
- (d) Security and defence union: in response to increasing global uncertainty the Union provides an integrated security, defence and intelligence capability, protecting all parts of the UK from a range of state and non-state actors, the threat of cyber-attacks, electoral interference and international terrorism.²²
- (e) Cultural union: the UK's shared history, cultural and family ties, including a common language (and recognised minority languages) and institutions that embody a deep and rich history of unity through diversity, such as the BBC. In the sporting context, while UK teams participate in the Olympic and Paralympic games, separate national teams compete against one another in the Commonwealth games.

36. The United Kingdom's unique constitutional arrangements reflect its character as a multi-national state which accommodates a range

20 World Bank, '2020 GDP values': <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> [accessed 12 January 2022]

21 We noted that the devolution of some aspects of taxation and social security to Scotland and Wales has complicated this union. See Constitution Committee, *The Union and devolution*, para 120

22 This includes Her Majesty's Naval Base Clyde which houses the UK's nuclear deterrent, and Royal Navy ship building on the Clyde and at Rosyth, as well as the UK's membership of the Five Eyes intelligence alliance with the US, Canada, Australia and New Zealand. In November 2021, the Ministry of Defence announced a reorganisation of the Army, including an increase in the proportion of personnel based in the devolved nations and the creation of an infantry 'Union Division' in Scotland. See HC Deb, 25 November 2021, [cols 483–84](#).

of identities and are particularly well suited in responding to the new challenges of the digital age. They provide for the significant autonomy of its constituent nations complemented by the pooling of resources and sharing of risks, to ensure greater resilience in its collective response to global security, the pace of industrial change, economic, financial and public health challenges, present and future.

Challenges for the Union

37. Despite concerns about the state of the Union, the journalist Sam McBride did not think there was “any inevitability to whether the Union either survives or falls apart”; this will depend “on the consequences of the actions of the people who are involved”.²³ The Chair in Public Policy at Edinburgh University, Professor James Mitchell, agreed, saying that nothing in politics is inevitable and it was important not to overstate current problems.²⁴ However, other witnesses thought the state of the Union was now fragile, with some considering its future to be in doubt.
38. Witnesses criticised what was considered to be an ad hoc and reactive approach to devolution and territorial politics by successive UK governments.²⁵ The co-chair of the Independent Commission on the Constitutional Future of Wales, Professor Laura McAllister,²⁶ remarked that “devolution was never thought of in a holistic, strategic way. Nor were the implications of an asymmetric model of devolution thought through.”²⁷ Professor Kenny, Philip Rycroft and Jack Sheldon, from the Bennett Institute for Public Policy, said such an approach had run its course and that a more strategic approach to multi-layered governance was required. Without this it was “almost inevitable that relationships between the governments of the UK’s component parts will continue to deteriorate, adding further to the already significant strains on the Union, and ultimately to the risk of its break-up.”²⁸

Brexit

39. Some witnesses thought that implementing Brexit had undermined the Union and increased tensions between its constituent nations.²⁹ In Northern Ireland Sam McBride said that while Brexit had increased support for a unified Ireland, he did not feel this was imminent.³⁰ The leader of the Social Democratic and Labour Party, Colum Eastwood MP, was more certain that Brexit would result in Northern Ireland leaving the Union in future.³¹ In Scotland, the journalist Alex Massie said it had clearly resulted in calls for a second independence referendum, with voters who had previously voted ‘no’, now considering voting ‘yes’ were another referendum to be held.³²

23 [Q 29](#) (Sam McBride)

24 [Q 207](#) (Professor James Mitchell)

25 Written evidence from Professor Ailsa Henderson and Professor Richard Wyn Jones ([FGU0046](#)), Professor Will Jennings, Professor Gerry Stoker and Dr Jennifer Gaskell ([FGU0032](#)), Electoral Reform Society ([FGU0022](#)) and Paul Evans and Paul Silk ([FGU0034](#))

26 Professor McAllister is also Professor of Public Policy and the Governance of Wales at the Wales Governance Centre at Cardiff University.

27 [Q 171](#) (Professor Laura McAllister)

28 Written evidence from Professor Michael Kenny, Philip Rycroft and Jack Sheldon ([FGU0029](#)). See also The Constitution Society, *Union at the Crossroads: Can the British state handle the challenges of devolution?*

29 [QQ 159–60](#) (Naomi Long MLA), [Q 171](#) (Professor Richard Wyn Jones, Professor Laura McAllister), [QQ 186–87](#) (Colum Eastwood MP); written evidence from Professor Jim Gallagher ([FGU0051](#))

30 [QQ 16, 20, 24](#) (Sam McBride)

31 [QQ 186–87](#) (Colum Eastwood MP)

32 [QQ 16, 20, 24](#) (Alex Massie)

40. The Scottish Government’s Cabinet Secretary for the Constitution, External Affairs and Culture, the Rt Hon Angus Robertson MSP, and the First Minister of Wales, the Rt Hon Mark Drakeford MS, both claimed that the UK Government was hostile to devolution and had used Brexit to recentralise devolved powers. Mark Drakeford warned that “we are sleepwalking into the end of the Union as we know it”.³³ While he supported Brexit, the leader of the Democratic Unionist Party, Sir Jeffrey Donaldson MP, said there was no doubt that the Northern Ireland Protocol had undermined Northern Ireland’s constitutional and economic relationship with the rest of the UK.³⁴
41. In this context it is worth noting that none of the nations are politically homogenous. To use Brexit as an example, however contentious, the Conservative government elected with a majority in 2015 had a clear mandate to hold a referendum on a UK-wide basis.³⁵ However, the political rhetoric after Brexit has tended to emphasise that ‘England’ voted for Brexit (53.5 per cent voted Leave), while Scotland and Northern Ireland voted against. This tends to downplay that most Welsh voters (52.5 per cent) also voted Leave as did a substantial number of voters in Northern Ireland (44 per cent) and Scotland (38 per cent). There was also a substantial number of remain voters in England (46.5 per cent), including a majority in Greater London (just under 60 per cent), which has a higher population than Scotland and Wales combined.

COVID-19

42. Many witnesses felt the furlough scheme and vaccine programme had demonstrated the complementary benefits of the Union and devolution.³⁶ We have already noted the UK Government’s willingness to empower the devolved administrations in response to the COVID-19 pandemic rather than adopting a centralised approach. However, while co-operation between the UK Government and the devolved administrations was strong at the outset of the pandemic, intergovernmental relations quickly deteriorated between the four administrations.³⁷ We consider intergovernmental relations further in Chapter 5.
43. Since the start of the COVID-19 pandemic, through the Barnett Formula,³⁸ the Scottish and Welsh governments and Northern Ireland Assembly have received an additional £14.5 billion, £8.6 billion and £5 billion, respectively. This has allowed the devolved administrations to provide financial support to individuals and businesses. In addition, the UK Government has provided UK-wide support through the furlough scheme, including PAYE staff and the self-employed, and on the procurement of vaccines.³⁹ In response to the Omicron variant, the Treasury provided an additional £1 billion of financial support, including £430 million to the three devolved administrations, in

33 [Q 69](#) (Angus Robertson MSP) and [Q 81](#) (Mark Drakeford MS)

34 [QQ 125–26](#) (Sir Jeffrey Donaldson MP)

35 Holding a referendum was a Conservative manifesto commitment.

36 [Q 16](#) (Sam McBride), [Q 81](#) (Mark Drakeford MS), [Q 102](#) (Michael Gove MP), [Q 125](#) (Sir Jeffrey Donaldson MP), [Q 139](#) (Professor Iain McLean) and [Q 159](#) (Naomi Long MLA)

37 Constitution Committee, *COVID-19 and the use and scrutiny of emergency powers* (3rd Report, Session 2021–22, HL Paper 149), para 99

38 See Chapter 9

39 HM Treasury, ‘Extra £28 billion for the Union since the start of the Covid-19 pandemic’ (24 June 2021): <https://www.gov.uk/government/news/extra-28-billion-for-the-union-since-the-start-of-the-covid-19-pandemic> [accessed 14 January 2022]

December 2021.⁴⁰ The partnership between the UK Government and the devolved administrations was also evidenced by the Welsh Government's loan of 10 million lateral flow tests to the UK Government during a period of low supply.⁴¹

44. **Global pandemics do not respect national boundaries and cross-border co-operation is therefore critical. We believe the United Kingdom's collective response to the COVID-19 pandemic, including the furlough scheme, financial support to businesses and the procurement of vaccines, demonstrates the continued strength and importance of the Union.**
45. **While differences in the public health response to the COVID-19 pandemic between the UK Government, the devolved administrations and English local government raised awareness of the devolution arrangements, they also exposed long-standing tensions in intergovernmental relations.**

Political context

46. Since the introduction of devolution in the late 1990s, politics in the United Kingdom has become significantly more pluralistic and less consensual.
47. In 1999 the Labour Party was in office either alone or in coalition across Great Britain's three administrations. In 2022, the Conservatives have a majority at Westminster; the SNP govern with the support of the Scottish Green Party at Holyrood having entered a co-operation agreement;⁴² Labour govern alone in Cardiff Bay (but have entered a co-operation agreement with Plaid Cymru); and, since the restoration of the power-sharing arrangements in 2020, five parties make up the Northern Ireland Executive at Stormont.⁴³ The main British political parties have never enjoyed a significant presence in Northern Ireland.⁴⁴
48. Over the last decade the leaders of the devolved administrations and some metropolitan mayors in England have developed prominent public profiles, across the UK. Their profile arguably rose further during COVID-19.

40 HM Treasury, 'UK Government confirms £430 million funding for Devolved Administrations to tackle Covid' (15 December 2021): <https://www.gov.uk/government/news/uk-government-to-confirm-extra-funding-for-devolved-administrations-to-tackle-covid> [accessed 14 January 2022] and HM Treasury, '£1 billion in support for businesses most impacted by Omicron across the UK' (21 December 2021): <https://www.gov.uk/government/news/1-billion-in-support-for-businesses-most-impacted-by-omicron-across-the-uk> [accessed 14 January 2022]

41 'Welsh government loans England 4m more Covid tests', *The Guardian* (30 December 2021): <https://www.theguardian.com/world/2021/dec/30/welsh-government-loans-england-4m-more-covid-tests> [accessed 14 January 2022]

42 The co-operation agreement does not create a formal coalition, but Green ministers have been appointed to the Scottish Government. See Scottish Government and Scottish Green Party, 'Cooperation Agreement between the Scottish Government and Scottish Green Party Parliamentary Group' (1 September 2021): <https://www.gov.scot/publications/cooperation-agreement-between-scottish-government-scottish-green-party-parliamentary-group/pages/1/> [accessed 14 January 2022]

43 The co-operation agreement does not create a coalition and no Plaid Cymru ministers have been appointed. See Welsh Government, *The Co-operation Agreement 2021* (22 November 2021): <https://gov.wales/sites/default/files/publications/2021-11/cooperation-agreement-2021.pdf> [accessed 14 January 2022]

44 **Q 20** (Sam McBride). Northern Ireland's distinct party-political system originated in 1921. Attempts by the UK Conservatives to field candidates in Northern Ireland were not successful. Ulster Unionist MPs took the Conservative whip until the 1970s.

49. Witnesses noted what they considered to be the decline of ‘British’ politics. The Director of the Centre for English Identity and Politics at the University of Southampton, the Rt Hon Professor John Denham,⁴⁵ said it was “not obvious that any single British party will be able to form a Union-wide majority government in the foreseeable future”, and this “has highlighted the tension created by a Union government whose legitimacy rests almost entirely in England.”⁴⁶ The Professor of Practice in the Management of Public Organisations at the Blavatnik School of Government, Professor Ciaran Martin,⁴⁷ referred to the profound impact of the “withdrawal of MPs sitting for Scottish constituencies from UK national leadership roles”.⁴⁸
50. Sam McBride said that while the “centenary year of Northern Ireland ... ought to have been a celebratory year for unionism” Unionists instead felt isolated from and misunderstood by London. Alex Massie said that Unionists in Scotland were in the same position.⁴⁹ Sir Jeffrey Donaldson felt that the UK Government’s strong rhetorical support for the Union was not always followed through.⁵⁰ Professor Iain McLean, Professor of Politics at Nuffield College, University of Oxford, thought the different parts of the UK were becoming increasingly estranged from one another.⁵¹
51. Some witnesses emphasised that the UK Government should show greater respect and sensitivity to the democratic mandates of the devolved administrations, including the right to pursue distinct policies from London.⁵² Professor Denham told us that “leadership depends crucially on respecting others within the system who have their own autonomy and their own legitimacy, and leadership becomes one of managing those relationships, not simply of saying that the union Government decide and that is it.”⁵³ The leader of the Alliance Party, Naomi Long MLA, stressed that: “Ultimately, it is relationships that will maintain the Union, not structures.”⁵⁴
52. In this context, it is important to acknowledge the political realities, including respect for the UK Government’s democratic mandate. The nationalist parties in the Scottish Government and Northern Ireland Executive do not

45 Professor Denham is a former MP who served in Gordon Brown’s government as Secretary of State for Innovation, Universities and Skills and Secretary of State for Communities and Local Government.

46 Written evidence from Professor John Denham ([FGU0027](#)). See also [Q 37](#) (Professor John Denham). In the 20th century the main British political parties rarely won a majority in each of the British nations; only the Labour party achieved this—in the 1945 and 1997 general elections. In the next century the Labour party achieved the same in the 2001 and 2005 general elections.

47 Professor Martin is a former senior civil servant, including holding the role of Constitution Director from 2011–14, when he helped to negotiate the Edinburgh Agreement between the UK and Scottish governments.

48 [Q 1](#) (Professor Ciaran Martin). See also Professor Ciaran Martin, *Resist, Reform or Re-Run? Short- and long-term reflections on Scotland and independence referendums* (13 April 2021), p 24: https://www.bsg.ox.ac.uk/sites/default/files/2021-04/Scotland_Referendum_final.pdf [accessed 14 January 2022]. He said: “Scotland’s voters have opted out of UK-wide politics. They seem no longer to be interested in sending senior figures to Westminster, and to want to send separatists instead. This is a profound democratic rupture, and only a change in the voting habits of Scots can change it. It is a symbol of growing apart politically. It is a symbol that for the Union to work as it used to requires convincing people to think and vote differently – not changing the constitution.”

49 [Q 15](#) (Sam McBride, Alex Massie)

50 [Q 125](#) (Sir Jeffrey Donaldson MP)

51 [Q 158](#) (Professor Iain McLean)

52 [Q 4](#) (Philip Rycroft), [QQ 16, 19, 21–22](#) (Alex Massie), [QQ 18, 20, 29](#) (Sam McBride), [Q 47](#) (Andy Burnham), [Q 62](#) (Lord O’Neill of Gatley), [Q 69](#) (Angus Robertson MSP) and [Q 161](#) (Naomi Long MLA)

53 [QQ 35, 45](#) (Professor John Denham)

54 [Q 169](#) (Naomi Long MLA). Naomi Long is also the Minister for Justice in the Northern Ireland Executive.

support the Union and wish to see Scotland and Northern Ireland leave it; that position long predates devolution and Brexit. Colum Eastwood was candid about this, telling us: “I do not think the Union is in a great state ... As an Irish nationalist, I am not too annoyed about that”.⁵⁵

53. The SNP have supported independence for Scotland since 1943.⁵⁶ In the 2014 referendum 45 per cent of voters supported independence. In the 2019 general election the SNP secured almost 45 per cent of the Scottish vote (and 45 out of 59 seats).⁵⁷ In the 2021 Scottish Parliament election, the SNP won 48 per cent of the vote and 64 out of 129 seats. The Scottish Green Party, which also supports independence, won eight seats. Unionist parties won the remaining seats, with the Conservatives on 31, Labour on 22 and the Liberal Democrats on 4. The current level of support for Scottish independence and the SNP—which are not necessarily the same thing—has inevitably had a significant impact on discussions about the future of the Union.
54. In the Senedd elections of May 2021 the Welsh Labour party won 30 out of 60 Senedd seats, while the Conservatives won 16 seats and the Liberal Democrats only one. Plaid Cymru, the only party which supports independence for Wales, won 20 per cent of the vote and 13 seats. While the Welsh Government explicitly supports the Union, in October 2021 it established the Independent Commission on the Constitutional Future of Wales co-chaired by Professor McAllister and Dr Rowan Williams the former Archbishop of Canterbury.⁵⁸ Professor McAllister told us they had been asked to look at “how to radically reform the devolution settlement within the Union, as one option, but also to explore the alternative constitutional models for Wales regardless of what happens anywhere else in the UK or beyond.” This included the option of independence. She hoped Wales had the potential to be “honest brokers in the conversation about the future of the UK.”⁵⁹
55. Out of 90 seats in the Northern Ireland Assembly, the DUP and Sinn Féin are the largest parties with 26 each. The SDLP has 12 seats, the UUP 10 and the Alliance party 7, with the remaining seats split between smaller parties. In total 40 MLAs designated as unionist and 38 MLAs designated as nationalist, with the remainder non-aligned. The next Assembly election is due to take place in May 2022 and strong polling for Sinn Féin has led to speculation that it could become the largest party in the Assembly, with its leader Michelle O’Neill MLA becoming the first nationalist First Minister.⁶⁰
56. Before devolution, politicians representing the interests of the nations, including the territorial secretaries of state, would typically negotiate behind closed doors, including in Cabinet committees. After devolution, what had been a series of discussions within a single UK government, or at least

55 Q 184 (Colum Eastwood MP)

56 See Peter Lynch, *The History of the Scottish National Party* (Welsh Academic Press, 2013), p 63

57 In the 2015 general election, the SNP won just under 50 per cent of the vote and 56 out of 59 seats. In the 2017 general election, the SNP won 37 per cent of the vote and 35 out of 59 seats.

58 See Welsh Government, ‘The Independent Commission on the Constitutional Future of Wales’ <https://gov.wales/independent-commission-constitutional-future-wales> [accessed 14 January 2022]. Philip Rycroft is one of the Commission members.

59 QQ 171, 181 (Professor Laura McAllister)

60 ‘DUP battling back, but Sinn Féin’s Michelle O’Neill still on course for First Minister’, *Belfast Telegraph* (12 November 2021): <https://www.belfasttelegraph.co.uk/news/politics/dup-battling-back-but-sinn-feins-michelle-oneill-still-on-course-for-first-minister-41047391.html> [accessed 14 January 2022]

among governments largely sharing a similar political outlook, became multiple discussions between four different administrations, with different political perspectives, sometimes airing disagreements in public. The UK's political discourse has also become increasingly fragmented and dominated by existential debates about the Union's survival rather than policy priorities. As a result, the Union looks very different when viewed from Edinburgh, Cardiff and Belfast and cities in England.

57. Michael Gove acknowledged a “retreat in mindset”, telling us: “Respect for the devolution settlement—genuine respect—has sometimes become a case ... of devolve and forget. Within each of the devolved administrations, policy and politics have developed in their own way ... I do think that there is a job of work to do to re-knit some of the relationships, particularly in civil society”.⁶¹
58. **The flexibility of the United Kingdom constitution has allowed for an asymmetrical approach to adapt to and accommodate its different nations and regions. However, the increasing lack of overall coherence in our constitutional arrangements, in particular the failure to develop a modern form of ‘shared governance’ which recognises central and devolved governments have distinct statutory responsibilities that often intersect, has undermined the strength of the Union. We consider this in Chapter 5.**
59. **Facilitating greater co-operation will also require a new, and more modern, style of governance. Improving the shared governance of the United Kingdom will require a greater degree of respect and partnership between the different layers of government. We consider these requirements throughout this report.**
60. **Whatever the constitutional future of the United Kingdom, it should be recognised that everyone involved in its governance has a common interest in ensuring that the Union works as well as it possibly can and delivers for people in all its constituent parts. The United Kingdom's nations and regions are inextricably linked geographically, socially, politically and economically. It is imperative, therefore, that all executives and legislatures, whatever their political outlook, work constructively and in partnership to advance the shared interests of the United Kingdom's inhabitants.**

Public opinion

61. In our 2016 report on *The Union and devolution*, we noted evidence which showed the Union was supported by most people in each of the nations. We said: “This popular support is a vital element that underpins and supports the continuance of the Union. It is an essential characteristic of what a number of witnesses described as a voluntary union of nations.”⁶²
62. Five years later, Professor Ailsa Henderson⁶³ and Professor Richard Wyn Jones,⁶⁴ who have co-directed the Future of England Survey since 2011 and the four-nation State of the Union Survey since 2018, had detected “a clear sense of ambivalence about the Union, particularly in England, where around

61 [Q 102](#) (Michael Gove MP)

62 Constitution Committee, *The Union and devolution*, paras 25–29

63 Professor Henderson is the Professor of Political Science at the University of Edinburgh.

64 Professor Wyn Jones is the Director of Cardiff University's Wales Governance.

40% of respondents are happy for one or more other parts of the UK to go their own way”. If this was added to ”the proportion who want independence (or reunification, in the case of Northern Ireland) and the proportion who hold this ambivalent attitude to the Union, then we reach half or more of the electorate in each of the four parts of the UK.”⁶⁵

63. Public attitudes to our constitutional arrangements in each of the four parts of the UK change constantly. However, over the last 12 months individual polls have recorded support for independence in Wales, for a united Ireland in Northern Ireland and indifference in England to Scottish independence, at historically high levels.⁶⁶ However, while polls tend to focus on levels of support for different options in different parts of the UK, they do not always gauge voters’ relative priorities. For example, in November 2021, a YouGov poll for *The Times* on support for Scottish independence noted independence was ranked eighth in a list of priorities behind health, which was ranked first, as well as education and social care.⁶⁷
64. Witnesses considered the persistently high support for independence in Scotland, increasing support for a united Ireland and for independence in Wales, as being destabilising for the Union.⁶⁸ Professor Wyn Jones went as far as describing this as the “tectonic plates shifting”, saying: “If you look at public attitudes and if you are a Unionist, you have cause for alarm.”⁶⁹
65. More generally, Professor Kenny noted a reduction in “emotional” support for the Union.⁷⁰ Philip Rycroft, a former senior civil servant,⁷¹ told us: “The only way to sustain the Union in the long term is to win back that consent with a healthy majority in all parts of the Union” and “the emotional case for the Union ultimately lies in people’s acceptance that this is a union that stands by all its parts, works for all its parts, is ultimately a union, if you like, of co-operation, a union of solidarity.”⁷²
66. **While polls only provide a snapshot of public opinion and as reported, they say little about voters’ relative priorities, there is evidence of an increasing ambivalence about the Union among the populations of each nation. While not a panacea, improving the governance of the United Kingdom is an important part of addressing this. For the Union to flourish, it must enjoy popular support in each nation, based on a recognition of the common benefits accruing to all nations and regions.**

65 Written evidence from Professor Ailsa Henderson and Professor Richard Wyn Jones (FGU0046)

66 See ITV News, ‘Is the United Kingdom on the brink of a break-up?’ (4 March 2021): <https://www.itv.com/news/2021-03-04/is-the-united-kingdom-on-the-brink-of-a-break-up> [accessed 14 January 2022]. Witnesses talked about an increasing ambivalence among the English about the Union. See Q 1 (Professor Ciaran Martin, Philip Rycroft), QQ 30, 32, 33, 37 (Professor Michael Kenny), Q 160 (Naomi Long MLA), Q 171 (Professor Richard Wyn Jones, Professor Laura McAllister), see also written evidence from Professor Jim Gallagher (FGU0051) and Professor Ailsa Henderson and Professor Richard Wyn Jones (FGU0046)

67 ‘Voters lose interest on Union question’, *The Times* (25 November 2021): available at <https://www.thetimes.co.uk/article/voters-lose-interest-on-union-question-25mzsz3r8> [accessed 14 January 2022]

68 Q 207 (Professor James Mitchell). See also Q 1 (Philip Rycroft)

69 Q 171 (Professor Richard Wyn Jones)

70 QQ 32, 34 (Professor Michael Kenny)

71 Among other roles, Philip Rycroft served as Head of the UK Governance Group and Permanent Secretary to the Department for Exiting the European Union.

72 QQ 1–2 (Philip Rycroft)

The Government's strategy to strengthen the Union

67. Professor Martin thought the Government's strategy for managing and strengthening the Union since devolution had been too technocratic and lacked vision. However, he did "not think there are any low-risk options left for maintaining the Union" so the correct strategy would "require profound political thinking."⁷³ Alex Massie urged the Government to adopt an "overall approach, which takes Scotland, Northern Ireland and Wales and the Union more generally seriously" so that people across the UK felt that "they are being heard, listened to and respected."⁷⁴ He considered the UK Government's strategic response to the threat of independence in Scotland to have been "inadequate" and "tactically inept".⁷⁵
68. Other witnesses felt that the Government's approach was sometimes counterproductive. Dr Paul Anderson, Lecturer in Politics at Canterbury Christ Church University, said: "One of the principal strengths of British unionism is that it means different things to different people". He cautioned that imposing one particular understanding of the Union risked being counterproductive in "further loosening rather than bolstering the bonds of Union it is seeking to protect."⁷⁶ Professor Martin, Philip Rycroft and Professor Denham agreed, referring to the Government's approach to the UK Internal Market Bill and Northern Ireland Protocol as symptomatic of a predominantly "Anglocentric British nationalism".⁷⁷
69. Witnesses considered a more confrontational or 'muscular' approach had been adopted by the Government, in contrast to previous governments.⁷⁸ Mark Drakeford described the Government as "aggressively unilateral in the way it goes about things".⁷⁹ Professor McAllister considered such an approach to be more of a risk to the Union than Scottish or Welsh nationalism.⁸⁰
70. When Boris Johnson became Prime Minister in July 2019, he adopted the additional and new title of "Minister for the Union" with responsibility for working to "ensure that all of government is acting on behalf of the entire United Kingdom: England, Northern Ireland, Scotland, and Wales."⁸¹ In his first speech as Prime Minister he promised to unleash "the productive power not just of London and the South East; but of every corner of England, Scotland, Wales and Northern Ireland".⁸² The 2019 Conservative manifesto also declared that "the days of Whitehall knows best are over. We will give

73 [Q 1](#) (Professor Ciaran Martin)

74 [QQ 22, 25](#) (Alex Massie)

75 [Q 17](#) (Alex Massie)

76 Written evidence from Dr Paul Anderson ([FGU0011](#))

77 [QQ 1–2](#) (Professor Ciaran Martin), [Q 5](#) (Philip Rycroft), [QQ 32, 37](#) (Professor John Denham). See also Michael Kenny and Jack Sheldon, 'When Planets Collide: The British Conservative Party and the Discordant Goals of Delivering Brexit and Preserving the Domestic Union, 2016–2019', *Sage Journals*, 2021, vol. 69(4) 965–984: <https://journals.sagepub.com/doi/full/10.1177/0032321720930986> [accessed 14 January 2022]

78 [Q 18](#) (Alex Massie). For a defence of the 'muscular' approach see Henry Hill, 'Putting muscle behind the Union', *The Critic* (November 2021): <https://thecritic.co.uk/issues/november-2021/putting-muscle-behind-the-union/> [accessed 14 January 2022]

79 [Q 81](#) (Mark Drakeford MS)

80 [QQ 171, 183](#) (Professor Laura McAllister)

81 Cabinet Office, 'Minister for the Union': <https://www.gov.uk/government/ministers/minister-for-the-union> [accessed 14 January 2022]

82 Boris Johnson, 'First speech as Prime Minister' (24 July 2019): <https://www.gov.uk/government/speeches/boris-johnsons-first-speech-as-prime-minister-24-july-2019> [accessed 14 January 2022]

towns, cities and communities of all sizes across the UK real power and real investment to drive the growth of the future and unleash their full potential.”⁸³

71. A ‘Union unit’ was established in No. 10 to provide strategic advice on the Government’s approach to what was clearly a priority for the new prime minister.⁸⁴ Following personnel changes, in February 2021 the unit was replaced by a Cabinet ‘Union Strategy Committee’. We consider machinery of government issues further in Chapter 8.⁸⁵
72. Since 2019 the Government’s strategy for maintaining the Union and reducing regional inequality in England has encompassed the following elements:⁸⁶
 - (a) Governance: including the review of intergovernmental relations,⁸⁷ the Dunlop review, the potential expansion of devolution within England⁸⁸ and the relocation of civil service jobs outside London.⁸⁹
 - (b) Infrastructure: including the Union Connectivity Review⁹⁰ (cross-border) and the Integrated Rail Plan for the North and Midlands.⁹¹
 - (c) Economic development: including the Levelling Up agenda, the United Kingdom Internal Market Act 2020, the Shared Prosperity Fund and the introduction of freeports.⁹²
73. In our report *Inter-governmental relations in the United Kingdom*, which was published following the Scottish independence referendum, we concluded that an “overarching strategy” was required to “reinforce the central position of the Union in our country’s constitutional architecture, while recognising the benefits that devolution can bring.”⁹³ The Dunlop review considered it necessary to “embed the Union at the heart of UK Government policy development and decision-making”.⁹⁴

83 Conservative and Unionist Party Manifesto 2019, *Get Brexit Done: Unleash Britain’s Potential*, p 29: <https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba-Conservative%202019%20Manifesto.pdf> [accessed 14 January 2022]

84 See also Politico, ‘Project Love – Boris Johnson’s plan to save the union’ (14 April 2021): <https://www.politico.eu/article/boris-johnson-project-love-save-the-union/> [accessed 14 January 2022]

85 Luke Graham, a former Scottish Conservative MP, became the first head of the unit following the 2019 general election. Oliver Lewis, a former head of research at the Vote Leave campaign, became the new unit head in February 2021 but resigned after only two weeks. The Prime Minister later appointed Lord McInnes of Kilwinning, a former director of the Scottish Conservative and Unionist Party, as his special adviser on Scotland, in July 2021.

86 A Policy Exchange report, which was published shortly after Boris Johnson became Prime Minister, is considered to have influenced the Government’s strategy. See Policy Exchange, *Modernising the United Kingdom: Unleashing the power of the Union – ideas for new leadership* (3 August 2019): <https://policyexchange.org.uk/wp-content/uploads/2019/08/Modernising-the-UK.pdf> [accessed 14 January 2022]. Among other things, the report advocated relocating civil service jobs across the UK, establishing freeports, investment in cross-border infrastructure and central government expenditure in local authorities across the UK.

87 We consider intergovernmental relations in Chapter 5.

88 We consider devolution within England in Chapter 7.

89 We consider Whitehall and the civil service in Chapter 8.

90 Department for Transport, *Union connectivity review: final report* (26 November 2021): <https://www.gov.uk/government/publications/union-connectivity-review-final-report> [accessed 14 January 2022]

91 Department for Transport, *Integrated Rail Plan for the North and Midlands* (18 November 2021): <https://www.gov.uk/government/publications/integrated-rail-plan-for-the-north-and-the-midlands> [accessed 14 January 2022]. We consider this further in Chapter 5.

92 We consider funding matters in Chapter 9.

93 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146), para 212

94 The Dunlop Review into UK Government Union capability, p 8

74. **While we welcome the Government's stated commitment to the Union, we believe it needs to set out a clearer vision as to how it will be shaped in the 21st century. We have expressed concern in the past about governments' tendency to 'devolve and forget'. There has also been evidence at times of a unilateral approach to strengthening the Union, which has been insufficiently sensitive to the pluralism of the Union. We do not believe either approach is an effective means of strengthening the Union, at a time when there are several parties of government in the United Kingdom who are not committed to its success.**
75. **This vision needs to be rooted in the best appreciation we can reach about the fundamental challenges which have been building up over decades and which have led to today's discernible atmosphere of distrust and uncertainty in popular discussion and debate.**
76. **While the strategy for strengthening the Union has taken some time to find its feet, we detected during our inquiry an apparent willingness to adopt a more sensitive approach by the Government. We recommend that it should consolidate this approach, and we examine how it might do so in chapters 4 and 5 on the Sewel convention and intergovernmental relations.**

CHAPTER 3: PARLIAMENTARY SOVEREIGNTY

77. We have said “Parliamentary sovereignty is the defining principle of the United Kingdom’s constitution. By this principle, Parliament’s law-making power is not subject to any permanent restrictions and therefore Parliament cannot bind its successors.”⁹⁵ While Parliament can choose to place limits on the exercise of its sovereignty, as it did by enacting the European Communities Act 1972, it can also remove these, as it did by repealing the 1972 Act almost half a century later.
78. It has remained the accepted view that Parliament has “the right to make or unmake any law whatever”. This is expressly reiterated in the devolution statutes.⁹⁶ For example, section 28(7) of the Scotland Act 1998 states: “This section [which provides for the legislative competence of the Scottish Parliament] does not affect the power of the United Kingdom to make laws for Scotland.” Parliament clearly intended that its sovereignty should be unaffected by the devolution statutes. The *Scotland’s Parliament White Paper* said: “the UK Parliament is, and will remain, sovereign in all matters”, and “Westminster will be choosing to exercise that sovereignty by devolving legislative responsibilities to a Scottish Parliament without in any way diminishing its own powers.”⁹⁷
79. This position has been frequently restated by the courts in judgments concerning devolution matters. In the *AXA* case, Lord Hope of Craighead⁹⁸ said: “[a] sovereign Parliament is, according to the traditional view, immune from judicial scrutiny because it is protected by the principle of sovereignty”.⁹⁹ In the 2018 *Continuity Bill Reference* the Supreme Court referred to section 28(7) as representing “the continued recognition of [Parliament’s] unqualified sovereignty”.¹⁰⁰ In October 2021 the Supreme Court used section 28(7) to draw a clear distinction between the sovereignty of the UK Parliament and the limited authority of the Scottish Parliament. The Scottish Parliament “has plenary powers within the limits of its legislative competence. But it does not enjoy the sovereignty of the Crown in Parliament ... Parliament ... has an unlimited power to make laws for Scotland, a power which the legislation of the Scottish Parliament cannot affect.”¹⁰¹
80. However, devolution precipitated the adoption of a self-denying ordinance by the UK Parliament. During consideration of the Scotland Bill by the House of Lords in October 1998, Lord Sewel, then Parliamentary Under-Secretary of State at the Scottish Office, said:

95 Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145), para 59. The doctrine was explained by A.V. Dicey as follows: “The principle of Parliamentary sovereignty means neither more or less that this, that Parliament has, under the English [sic] constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England [sic] as having a right to override or set aside the legislation of Parliament.” See A.V. Dicey, *Law of the Constitution*, 8th edition (London: MacMillan, 1914), pp 39–40

96 See the Government of Wales Act 2006, [section 107\(5\)](#), the Scotland Act 1998, [section 28\(7\)](#) and the Northern Ireland Act 1998, [section 5\(6\)](#)

97 Scotland’s Parliament, Cm 3658 (1997), para 4.2

98 Lord Hope of Craighead is a member of the Committee

99 UK Supreme Court, *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46, para 49

100 UK Supreme Court, *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland* [2018] UKSC 64, para 53

101 UK Supreme Court, *The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland*, [2021] UKSC 42, para 7

“Clause 27 [which became section 28] makes it clear that the devolution of legislative competence to the Scottish Parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters. Indeed ... we envisage that there could be instances where it would be more convenient for legislation in regard to devolved matters to be passed by the United Kingdom Parliament. However, as happened in Northern Ireland earlier in the century, we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.”¹⁰²

81. What became known as the ‘Sewel convention’ was articulated in a Memorandum of Understanding between the UK Government and the devolved administrations:

“The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”¹⁰³

82. In relation to the Senedd and Scottish Parliament this convention has been given statutory recognition.¹⁰⁴ This however did not change its nature as a political constraint on Parliament, lacking legally enforceable authority.¹⁰⁵ The Sewel convention was addressed by the Supreme Court in the first Miller case, concerning the UK’s withdrawal from the EU.¹⁰⁶ The court stated: “While the UK government and the devolved executives have agreed the mechanisms for implementing the convention in the Memorandum of Understanding, the convention operates as a political restriction on the activity of the UK Parliament.”¹⁰⁷ The court confirmed that the convention was not justiciable, saying: “Judges ... are neither the parents nor the guardians of political conventions; they are merely observers.”¹⁰⁸ The court confirmed that section 28(8) of the Scotland Act was “not seeking to convert the Sewel convention into a rule which can be interpreted, let alone enforced, by the courts; rather, it is recognising the convention for what it is, namely a political convention.”¹⁰⁹ We consider the operation of the Sewel convention in the next chapter.

102 HL Deb, 19 October 1998, [cols 789–91](#)

103 Cabinet Office, ‘Memorandum of Understanding and Supplementary Agreements’ (October 2013), para 14: <https://www.gov.uk/government/collections/intergovernmental-relations#memorandum-of-understanding>. The original MoU was agreed in 1999 and, since 2009, has been reviewed and amended several times—the most recent edition dates from October 2013. See also Review of Intergovernmental Relations

104 Scotland Act 1998, [section 28\(8\)](#) and Government of Wales Act 2006, [section 107\(6\)](#)

105 We acknowledged this in our report *Proposals for the devolution of further powers to Scotland*, para 76. The then Advocate General for Scotland, Lord Keen of Elie, made clear this was the Government’s intention during the passage of the Scotland Bill by which section 28(8) was inserted into the 1998 Act. See HL Deb, 8 December 2015, [col 1502](#)

106 UK Supreme Court, *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5, paras 136–51

107 *Ibid.*, para 145

108 *Ibid.*, para 146

109 *Ibid.*, para 148

83. Professor Michael Keating, Chair in Scottish Politics at the University of Aberdeen, told us:

“There are two interpretations of the devolution settlement. One is based on the traditional doctrine of parliamentary sovereignty and suggests that Westminster has merely lent powers to the three devolved territories, which can be reclaimed at any time. The other is that devolution represents a substantial constitutional change and requires a modification of our understandings of parliamentary sovereignty and supremacy. The former view has been generally sustained by the courts, including the Supreme Court. The latter has been expressed by many academic commentators as well as by some judges in writings, lectures and obiter dicta.”¹¹⁰

84. The Scotland Act 1998 and the Government of Wales Act 2006 have each been amended to guarantee the permanence of the devolved institutions, stipulating they can only be abolished with the consent of the voters in Scotland and Wales,¹¹¹ with no suggestion that the creation of devolved institutions or the conferral of powers on them is in any way temporary.¹¹² Furthermore, the authority to make law has been given by Parliament to the devolved legislatures and subsequently extended at regular intervals.¹¹³ While parliamentary sovereignty means the UK Parliament could, theoretically, abolish the Senedd and the Scottish Parliament it is extremely unlikely to do so, without consent, due to the significant political and constitutional consequences this would have.¹¹⁴ Furthermore, while the permanency provisions may not be intended to be enforced by the courts they can provide evidence of constitutional significance, therefore guiding the conduct of government and acting as an aid to political scrutiny.¹¹⁵ Although the Parliament of Northern Ireland was abolished in 1973, this enjoyed cross-party support at Westminster given the circumstances which were generally acknowledged as exceptional.
85. The Supreme Court has been at pains to point out no modification of Parliament’s legal supremacy has taken place. Any suggestion that Parliament’s legislative supremacy is even open to modification is rare

110 Written evidence from Professor Michael Keating ([FGU0053](#))

111 The Scotland Act 2016 states that the Scottish Parliament and Government are “a permanent part” of the UK’s constitution, declaring that they “are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum”. Scotland Act 2016, [section 1](#), creating new section 63A Scotland Act 1998. An equivalent provision is contained in the Wales Act 2017 section 1, creating new [Part A1](#) of the Government of Wales Act 2006. Northern Ireland Act 1998 [Section 1](#) also states that “Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll”.

112 See Constitution Committee, [Proposals for the devolution of further powers to Scotland](#) (10th Report, Session 2014–15, HL Paper 145), para 61. We also considered the permanency provisions in Constitution Committee, [Scotland Bill](#) (6th Report, Session 2015–16, HL Paper 59), para 36, and Constitution Committee, [Wales Bill](#) (5th Report, Session 2016–17, HL Paper 59), paras 13 and 14

113 See [Scotland Act 2012](#), [Scotland Act 2016](#), [Government of Wales Act 2006](#), [Wales Act 2014](#), [Wales Act 2017](#), [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010](#) and [Corporation Tax \(Northern Ireland\) Act 2015](#)

114 While A.V. Dicey said that the Act of Union did not enjoy any higher status than the Dentists Act, he made it clear that the Act of Union was an important statute with which it would be “political madness to tamper gratuitously”. See Introduction to the Study of the Law of the Constitution, p 141. The same can be said of the ‘permanence provisions’ within the devolution statutes.

115 See lecture delivered by David Feldman on ‘Legislation as Aspiration: Statutory Expression of Policy Goals’ (16 March 2015): <http://www.statutelawsociety.co.uk/wp-content/uploads/2015/03/Feldman-Legislation-as-Aspiration.pdf> [accessed 14 January 2022] and David Feldman, ‘Legislation which Bears no Law’ (2016) 37 Statute Law Review 212

and speculative.¹¹⁶ Even those who would favour a different constitutional ordering for the UK recognise the nature of Parliament’s supremacy. Angus Robertson, in evidence to the Committee, acknowledged that parliamentary sovereignty was the current constitutional reality in the UK.¹¹⁷

86. **In recent times the Supreme Court, when deciding cases on devolution issues, has consistently reaffirmed that parliamentary sovereignty remains a fundamental doctrine of our constitution. We welcome this legal clarity, while recognising that how Parliament chooses to exercise this sovereignty is subject to substantial political constraints.**

Political conceptions of sovereignty

87. Parliament’s sovereignty, manifest in the power to make or unmake any law, can be expressed as the legislative supremacy of Parliament. However, we heard that sovereignty has a political as well as a legal dimension: that Parliament’s legal authority rests on, and its exercise is conditioned by, political legitimacy.
88. Some witnesses believed that devolution had changed the political underpinnings of parliamentary sovereignty. The origins of devolution, legitimised as they were in the three devolved territories by referendums, give rise to claims that popular sovereignty stems from different democratic mandates in Scotland and Wales and Northern Ireland. We heard that, as a consequence, sovereignty should be considered as ‘shared’ across the UK and that the doctrine of parliamentary sovereignty should be updated to reflect this.¹¹⁸
89. It seemed clear that some witnesses were referring to the political rather than legal dimension of sovereignty, but they did not always clearly distinguish between these two aspects.
90. The Welsh Government has said:
- “Whatever its historical origins, the United Kingdom is best seen now as a voluntary association of nations taking the form of a multi-national state, whose members share and redistribute resources and risks amongst themselves to advance their common interests. Wales is committed to this association, which must be based on the recognition of popular sovereignty in each part of the UK; Parliamentary sovereignty as traditionally understood no longer provides a sound foundation for this evolving constitution.”¹¹⁹

116 House of Lords, *Jackson v Attorney General* [2005] UKHL 56, per various statements made obiter

117 In another context, the authority of Parliament to unmake law is evidenced recently in the [Early Parliamentary General Election Act 2019](#) which replaced, and in so doing supplanted, provisions within the [Fixed-term Parliaments Act 2011](#) that an early general election could only be called pursuant to a formal vote of no confidence in the government or a motion providing for an early election passed by a two-thirds majority in the House of Commons.

118 [Q 42](#) (Professor John Denham, Professor Michael Kenny), [Q 95](#) (Mark Drakeford MS), [QQ 171–73](#) (Professor Richard Wyn Jones), [QQ 171, 175](#) (Professor Laura McAllister), [Q 208](#) (Professor James Mitchell, Professor Jim Gallagher). See also Welsh Government, *Reforming our Union: Shared governance in the UK* (June 2021), p 7: <https://gov.wales/sites/default/files/publications/2021-06/reforming-our-union-shared-governance-in-the-uk-june-2021-0.pdf> [accessed 14 January 2022]

119 Welsh Government, *Reforming our Union: Shared governance in the UK*, p 6

91. The Scottish Government has said:
- “The permanence of devolution in the UK’s constitutional arrangements [needs] to be recognised, with justiciable protections in law for the powers of the devolved institutions, as is the case in other states. A new legal framework should create these protections, and incentives to resolve any issues by agreement rather than by imposition from Westminster.”¹²⁰
92. It is well-recognised that the UK is a union of nations, a fact observed by the Committee.¹²¹ It is also clear that the idea of popular sovereignty has been widely recognised as the political principle underpinning the legitimacy of parliamentary sovereignty. A.V. Dicey advanced this idea in discussing the role of constitutional conventions which “give effect to the will of that power which ... is the true political sovereign of the state—the majority of the electors”.¹²² Dicey divided the attributes of sovereignty between, on the one hand, the legal sovereign: “the person or body with the power of law-making unrestricted by any legal limit”; and, on the other, the political sovereign: the person or body whose will “is ultimately obeyed by the citizens of the state”.¹²³ It is therefore long understood in the UK’s constitution that Parliament’s legal sovereignty rests for its validation on the will of the people, as expressed through UK general elections.
93. In our report *The Union and Devolution* we were clear that Parliament has been responsive to the aspirations of the devolved territories for further powers: “successive Governments have responded individually to demands from each nation. Devolution has thus developed in an ad hoc fashion, with different constitutional conversations taking place separately in different parts of the country.”¹²⁴ On that basis it is difficult to see why parliamentary sovereignty “no longer provides a sound foundation for this evolving constitution”. Arguably it has been too responsive to demands for an ‘evolving constitution’ at the expense of a more strategic approach to constitutional change that promotes the Union as much as it furthers devolution.
94. Some witnesses focused not so much on the reality of Parliament’s supremacy but on how that supremacy was being used by the Government, in their view on occasion illegitimately. As we discussed in the previous Chapter, the Brexit process was a particular point of focus, with the UK Government said to be conducting an “executive power grab”.¹²⁵
95. **There might appear to be a difference between the doctrine of parliamentary sovereignty as reflected in legislative supremacy and the rather more elusive concept of popular sovereignty. We are not convinced that there is much practical distinction between them. The UK Parliament’s legislative supremacy ultimately depends for its political legitimacy on the consent of the people, as expressed in UK general elections.**

120 Scottish Government, ‘After Brexit: The UK Internal Market Act and devolution’ (March 2021), pp 36–37: <https://www.gov.scot/publications/brexit-uk-internal-market-act-devolution/pages/4> [accessed 14 January 2022]

121 Constitution Committee *The Union and devolution*, para 10

122 Law of the Constitution, pp 425–26

123 *Ibid.*, pp 70–71

124 Constitution Committee, *The Union and devolution*, para 99

125 Q 208 (Professor Jim Gallagher), Q 173 (Professor Richard Wyn Jones) and written evidence from Professor Jim Gallagher (FGU0051)

96. **The UK Parliament has legislated to devolve power and has established in statute the devolved institutions. In theory, it could legislate to abolish them. In reality, it would not do so, and certainly not without the express consent of relevant voters in a referendum, as recognised in the devolution statutes. This is an illustration of the existence of the political constraints which in practice circumscribe the legislative supremacy of the UK Parliament.**
97. **Parliamentary sovereignty has operated for centuries subject to such constraints. Parliament is also not the only source of law within the constitution: the Royal prerogative and the common law represent distinct areas of lawful authority and set important practical limitations upon Parliament's legislative reach, as do the United Kingdom's increasing international obligations.**
98. **Constitutional conventions also circumscribe Parliament's law-making capacity if not its formal competence. In the context of devolution, the Sewel convention provides a specific restraint on the UK Parliament's power to legislate in devolved areas, which is also explicitly recognised in statute. We discuss in the following chapter the effectiveness of the convention. As with other checks and balances and political constraints, there may, from time to time, be tensions in the operation of the convention. However, we consider that the doctrine of parliamentary sovereignty has successfully accommodated the process of devolution and will continue to do so. Parliament's legislative authority must continue to be exercised with respect and restraint if the Union is to be strengthened.**

CHAPTER 4: SEWEL CONVENTION

99. We considered the principle of consent in the devolution arrangements in our report *The Union and devolution* and recommended: “The principle of consent has become fundamental to the development of devolution in the UK, and should continue to be a guiding principle in the future.”¹²⁶ Our witnesses acknowledged the continued importance of the principle.¹²⁷ This principle is also an essential part of achieving, and maintaining, mutual respect between the UK Government and the devolved administrations.

Background

100. The convention provides that Parliament does not normally legislate on devolved matters without the consent of the devolved legislature in question.¹²⁸ The convention has also been held to extend to legislation which alters the legislative competence of a devolved legislature or the executive competence of devolved ministers, although this is contested. The convention only applies to primary, rather than secondary, legislation.¹²⁹
101. As discussed in the previous chapter, the doctrine of parliamentary sovereignty means that the UK Parliament can continue to legislate for all parts of the UK. Nevertheless, since 1999, the legislative consent process—commonly referred to as the Sewel convention—has been a central pillar of the relationship between Westminster and the devolved legislatures. Until recently it largely operated without controversy. It has, however, been tested, especially by the Brexit process.
102. In November 2014, the Smith Commission recommended that the Sewel convention be put on a statutory footing.¹³⁰ This was done by the Scotland Act 2016 and the Wales Act 2017.¹³¹ Similar legislative provision has not been made for Northern Ireland, but it is clear the convention applies in relation to the Northern Ireland Assembly.
103. Section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006 state that “*it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent*” (emphasis added) of the Scottish Parliament or Senedd. These provisions recognise the existence of the Sewel convention as a non-legal rule of the constitution; they do not give the convention legal effect. This

126 Constitution Committee, *The Union and devolution*, paras 182–86

127 Q 29 (Alex Massie) and written evidence from Professor Michael Keating (FGU0053)

128 This is the definition used in legislation: Scotland Act 1998, [section 28\(8\)](#); Government of Wales Act 2006, [section 107\(6\)](#). As noted by Lord Sewel in HL Deb, 21 July 1998, [col 791](#), an analogous convention had applied to the Parliament of Northern Ireland (created by the Government of Ireland Act 1920) between 1921 and 1973. Parliament adopted a similar self-denying ordinance in respect of the Dominions in the Statute of Westminster 1931, [section 4](#): ‘No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.’ This provision is still in force. It is also a convention that Parliament will not normally make law for the Crown Dependencies without their consent.

129 See House of Commons Library, Devolution: The Sewel Convention, Briefing Paper, [CBP-8883](#), 13 May 2020, pp 12–18

130 The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (27 November 2014), para 22: <https://web.archive.org/web/20150204215450/https://www.smith-commission.scot/> [accessed 14 January 2022]

131 By amendments to the [Scotland Act 1998](#) and [Government of Wales Act 2006](#), cited in the next paragraph.

distinction was made clear by the Supreme Court in the first Miller decision on withdrawal from the EU. As we observed in the last chapter, while the court acknowledged the constitutional significance of the Sewel convention, including its application to changes to the devolved institutions, it noted that as a political and not a legal restriction on Parliament, it cannot be enforced by the courts.¹³²

104. Before Brexit, UK bills were sometimes amended in response to concerns raised by the devolved administrations or in response to a devolved legislature withholding consent. This included the two Scotland Bills which amended the Scotland Act 1998. The Scottish Government requested various amendments to both bills before it was prepared to invite the Scottish Parliament to grant consent. On occasion, the UK Government has proceeded with legislation in the absence of consent because it disagreed with a devolved administration's assessment that specific provisions engaged devolved competences and thus required consent.¹³³
105. Brexit created the prospect that the UK and devolved legislatures would have greater discretion to exercise their existing powers, once they were no longer constrained by EU law. Following the Brexit referendum, several key bills deemed necessary by the UK Government to implement Brexit contained significant implications for the powers of the devolved institutions. The UK Government maintained that this Brexit legislation extended the reach of devolved powers or left them unaffected, but the Scottish and Welsh Governments criticised what they perceived to be new constraints on their ability to exercise these powers, particularly through the UK Internal Market Act 2020.¹³⁴ The subsequent disagreements between the four administrations led to the UK Parliament on several occasions legislating in relation to devolved matters without the consent of one or more of the devolved legislatures.
106. In 2018 the European Union (Withdrawal) Bill enabled UK ministers temporarily to restrict the ability of devolved institutions to modify retained EU law. Following criticisms by the Welsh and Scottish governments, the UK Government introduced several amendments to address these concerns. Mark Drakeford told us that Theresa May's government had worked hard to preserve the convention during passage of this Bill.¹³⁵ While the Senedd eventually provided its consent, the Scottish Parliament did not despite the efforts of the UK Government to secure consent, including making significant amendments to what became the so-called 'freezing powers' (temporarily maintaining limits on devolved competence analogous to those that applied through EU law before Brexit) under section 12. In response, the Scottish Government went on a 'Sewel strike' by announcing it would not seek the

132 *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellants)*, paras 140–51

133 An overview of these examples is provided in the Annex to House of Commons Library, Devolution: The Sewel Convention, Briefing Paper, [CBP-8883](#), 13 May 2020

134 See House of Commons Library, 'EU powers after Brexit: 'Power grab' or 'power surge'?', 29 July 2020: <https://commonslibrary.parliament.uk/eu-powers-after-brexite-power-grab-or-power-surge/> [accessed 14 January 2022]

135 [Q 86](#) (Mark Drakeford MS)

Scottish Parliament’s consent for subsequent Brexit bills, although it made exceptions.¹³⁶

107. In 2020 the European Union (Withdrawal Agreement) Bill, which required enactment before the Government’s Withdrawal Agreement with the EU could be ratified, passed without the consent of the Scottish Parliament, the Senedd or the Northern Ireland Assembly: the first time a bill engaged the competence of all three devolved legislatures and passed without any of those legislatures’ consent. The United Kingdom Internal Market Bill was passed without the legislative consent of the Scottish Parliament and the Senedd. We were critical of this Bill, including its impact on devolution.¹³⁷ During its consideration of the Bill, the House of Lords passed amendments to strengthen the position of the devolved institutions, but most of these were overturned in the House of Commons. An exception was the Government’s response to an amendment moved at report stage by Lord Hope of Craighead to disapply the market access principles where the four administrations agreed that divergence between the different parts of the UK was acceptable through the common frameworks process.¹³⁸
108. Appendix 6 provides an overview of the instances in which the devolved legislatures have granted or withheld consent.

Legislative consent process

109. To support Whitehall’s implementation of the Memorandum of Understanding, the Cabinet Office produced several Devolution Guidance Notes (DGNs). The notes require that, before a department submits a bill to the Parliamentary Business and Legislation Cabinet Committee, adequate consultation should have taken place with the devolved administrations, if required, with a view to resolving any significant issues in good time.¹³⁹ Most of the DGNs do not reflect the current devolution arrangements and some have not been updated for over a decade.¹⁴⁰
110. Once a bill has been introduced in either House of Parliament, a devolved legislature will indicate its consent by passing a legislative consent motion in accordance with its standing orders, after the relevant committee has considered a legislative consent memorandum from its devolved administration, which is normally lodged within two weeks of a bill’s introduction in the UK Parliament. Subsequent memorandums and motions

136 The Scottish Government did not recommend consent to the Fisheries Bill, Trade Bill, and Immigration and Social Security Co-ordination Bill, all of which the UK Government recognised as engaging devolved competences. The Scottish Government thought that the Agriculture Bill required consent, but the UK Government disagreed. The Scottish Government, despite its ‘strike’, did however recommend that the Scottish Parliament provide consent to the Healthcare (International Arrangements) Bill and the Direct Payments to Farmers (Legislative Continuity) Bill.

137 Constitution Committee, *United Kingdom Internal Market Bill* (17th Report, Session 2019–21, HL Paper 151), Chapter 2

138 HL Deb, 18 November 2020, [cols 1431–33](#). For further details about the debate and the amendments see [UK Internal Market Act 2020](#)

139 Cabinet Office, ‘Devolution guidance notes’ (March 2019): <https://www.gov.uk/government/publications/devolution-guidance-notes>, see also *Devolution Guidance Note 8: Post – Devolution Primary Legislation affecting Northern Ireland*, *Devolution Guidance Note 10: Post – Devolution Primary Legislation affecting Scotland* and *Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales* [accessed 17 January 2022]

140 The Scottish Affairs Committee identified this issue in May 2019. See Scottish Affairs Committee, *The relationship between the UK and Scottish Governments* (Eighth Report, Session 2017–19, HC 1586), paras 98–101

may be required if bills are amended.¹⁴¹ The approval or refusal of a legislative consent motion is notified by the clerk of the relevant devolved legislature to the clerks of the two Houses. The letters and associated memoranda are published on the bill pages on parliament.uk. When legislative consent is refused by a devolved legislature an italic note appears on the list of public bills in *House of Lords Business* to signify that consent has been granted or refused.¹⁴²

111. In our report *Brexit legislation: constitutional issues* we recommended that the Procedure and Privileges Committee considers “how legislative consent could be given greater prominence in the legislative process at Westminster”.¹⁴³ As a result, the Procedure and Privileges Committee recommended that “when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the minister should set out the efforts that were made to secure consent and the reasons for the disagreement.”¹⁴⁴ The House agreed to this recommendation, which is now part of the legislative process in the House of Lords.¹⁴⁵

Sewel convention under strain

112. From 1999 until Brexit the Sewel convention was generally considered to have worked well. Devolved administrations are at times willing for the UK Parliament to legislate in devolved areas, where it is practical or convenient.¹⁴⁶ The Senedd’s Legislation, Justice and Constitution Committee has been critical of the Welsh Government’s decision to ask or permit Parliament to legislate in clearly devolved areas, noting that this has the effect of by-passing legislative scrutiny in the Senedd.¹⁴⁷ On the other hand, we also noted that during the current Senedd the Welsh Government has lodged fourteen legislative consent memorandums and is currently recommending against consent in eight of them.¹⁴⁸
113. Angus Robertson said the Scottish Government accepted it was sometimes necessary and helpful for the UK Parliament to legislate in devolved areas. He said early intergovernmental engagement on proposed UK bills was key,

141 All three devolved legislatures have substantively the same procedures. See Scottish Parliament, Standing Orders, [Rule 9B](#), see also Welsh Parliament, Standing Orders, [Standing Order 29](#) and Northern Ireland Assembly, Standing Orders, [Standing Order 42A](#) [accessed 14 January 2022].

142 Something similar occurs in the House of Commons business paper.

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

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

145 Since its introduction, the procedure has applied to several bills. See Covert Human Intelligence Sources (Criminal Conduct) Bill, HL Deb, 21 January 2021, [cols 1288–89](#), see also Trade Bill, HL Deb, 18 January 2021, [col 996](#). The procedure works less well for Government bills which start in the Lords as consent might not have been considered by all devolved legislatures by the time the statement is made. See Public Service Pensions and Judicial Offices Bill [HL], 6 December 2021, [col 1652](#). Partly for this reason, the procedure no longer applies to Lords-starting private members’ bills. See Procedure and Privileges Committee, *Legislative Consent Motions for Lords Private Members’ Bills* (2nd Report of Session 2021–22, HL Paper 61), para 11

146 Examples are the [Civil Partnership Act 2004](#) and the [Gender Recognition Act 2004](#)

147 See Senedd Legislation, Justice and Constitution Committee, Fifth Senedd Legacy Report (March 2021), para 118: <https://senedd.wales/media/eccmngfv/cr-ld14319-e.pdf> [accessed 14 January 2022]. See also written evidence from the Legislation, Justice and Constitution Committee submitted to the House of Commons Procedure Committee, 30 March 2021 ([TTC 11](#))

148 Senedd, ‘Legislative Consent’, <https://senedd.wales/senedd-business/legislative-consent/> [accessed 12 January 2022]. See also letter from Huw Irranca-Davies MS, Chair of Senedd Legislation, Justice and Constitution Committee to the Chair (7 October 2021): <https://committees.parliament.uk/publications/7487/documents/78618/default/> [accessed 12 January 2022]

in line with current guidance, and for the process to work there must be political willingness to respect the convention. He thought the process had worked “very well” before Brexit¹⁴⁹ and, after Brexit, he highlighted the passage of the Covert Human Intelligence Sources (Criminal Conduct) Bill as a good example of the convention working well; the two governments had sought to reach agreement on a possible amendment, but failed to do so, and as a result the UK Government proposed amendments to remove the relevant provisions from the Bill following the Scottish Parliament withholding its consent.¹⁵⁰ In our report *COVID-19 and the use and scrutiny of emergency powers*, we noted that the convention had worked well, in extenuating circumstances, with the Coronavirus Act 2020.

114. However, witnesses said the consent process had been strained by the implementation of Brexit, reducing trust between the UK Government and devolved administrations.¹⁵¹ Mark Drakeford told us that the convention had “withered on the vine”. He was prepared to accept why the UK Government felt it necessary to seek the enactment of the European Union (Withdrawal Agreement) Act 2020, as a major constitutional bill, without the consent of three devolved legislatures. However, he felt that the Government’s argument that this instance was exceptional¹⁵² was undermined by its subsequent approach to the passage of the UK Internal Market Bill. He told us this was “the single most damaging act to the Union in the whole 20-plus years of devolution”.¹⁵³
115. The Scottish Government has said the UK Government’s approach to the UK Internal Market Bill demonstrated it was “willing to reshape the devolution settlement, unilaterally and in the most fundamental way, setting aside any rules of the UK constitutional system that it finds inconvenient”.¹⁵⁴ The Welsh Government also sought judicial review of the impact of the Internal Market Act 2020 on the Senedd’s legislative competence.¹⁵⁵ In contrast, the UK Government’s position was that the Internal Market Bill

149 See also letter from Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture, to the Chair (4 November 2021): <https://committees.parliament.uk/publications/7755/documents/80763/default/>

150 [Q 72](#) (Angus Robertson MSP)

151 Written evidence from Empowering Yorkshire ([FGU0009](#)), Dr Paul Anderson ([FGU0011](#)), Baroness Lord Shipley, Lord Tyler and Lord Wallace of Saltaire ([FGU0018](#)), Dr Daniel Gover and Professor Michael Kenny ([FGU0025](#)), Professor John Denham ([FGU0027](#)), and Professor Michael Kenny, Philip Rycroft and Jack Sheldon ([FGU0029](#)), Baroness Helena Kennedy and Mr Aarif Abraham ([FGU0035](#)), Volt UK ([FGU0039](#)) and the Law Society of Scotland ([FGU0044](#))

152 On 17 January 2020, the then Secretary of State for Exiting the European Union, the Rt Hon Steve Barclay MP, wrote to his counterparts in the devolved administrations outlining the UK Government’s response to their concerns about the EU Withdrawal Agreement Bill. He wrote: “The Sewel Convention holds that the UK Government should not normally press ahead with legislation without legislative consent motions from the devolved administrations but the circumstances of our departure from the European Union are specific, singular and exceptional.” See: Letter from Rt Hon Steve Barclay MP to Michael Russell MSP (17 January 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859145/2020-10-20_Letter_to_Michael_Russell_MSP.pdf [accessed 14 January 2022]. See also Written Statement [HCWS60](#), 23 January 2020, in which Michael Gove MP says: “The circumstances of our departure from the EU, following the 2016 referendum, are not normal – they are unique.”

153 Mark Drakeford suggested that the UK Government was prepared not to follow the convention when it was inconvenient to do so, for example in relation to the Animal Welfare (Sentencing) Bill, which was passed without consent in the run up to devolved elections in May 2021. See [Q 86](#) (Mark Drakeford MS)

154 Scottish Government, *After Brexit: The UK Internal Market Act & Devolution*, p 4

155 Welsh Government, ‘Written Statement: Legal challenge to the UK Internal Market Act 2020 – Update’, 29 June 2021: <https://gov.wales/written-statement-legal-challenge-uk-internal-market-act-2020-update> [accessed 14 January 2022]

would facilitate “the biggest transfer of powers in the history of devolution”, with the Scottish Parliament acquiring 111 powers.¹⁵⁶

116. The Institute for Government has warned that: “if the UK government decides to make a habit of legislating without consent in devolved areas, without making serious attempts to secure that consent, then the implications for the stability of the Union could be severe.”¹⁵⁷
117. Sir Jeffrey Donaldson said the UK Government’s tendency to pursue legislation in the absence of legislative consent undermined confidence in devolution and the UK Government should do so only in the most exceptional circumstances. While he did not think the convention required substantive changes, he said there were deficiencies in the process, including an expectation of a ‘rubber stamp’ by the devolved legislatures. He urged greater engagement earlier in the process to work through any issues.¹⁵⁸
118. We note that a lack of engagement on legislative competence has occurred in the other direction. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill were both passed by the Scottish Parliament, despite early requests by the Secretary of State for Scotland to make changes to specific provisions in those bills on the basis that they were *ultra vires*.¹⁵⁹ After these requests were rejected the UK Government’s decision to make a referral to the Supreme Court was criticised by the First Minister of Scotland, Rt Hon Nicola Sturgeon MSP, as “morally repugnant.”¹⁶⁰ The Supreme Court subsequently ruled that the provisions in both bills were *ultra vires*. Lord Reed, the president of the court, observed: “Counsel for the Lord Advocate explained to the court that [an] approach to the drafting of [the relevant section], taking no account of limitations on legislative competence, had been adopted as a matter of policy.”¹⁶¹
119. For the convention to survive Professor Martin told us: “It needs a clear statement ... of recommitment to it from the UK Government, acknowledging the exceptional circumstances of the last few years.”¹⁶² Michael Gove said: “I believe that the principle of consent is very important. I think that the UK Parliament should only legislate in the absence of [a legislative consent motion] exceptionally.”¹⁶³
120. **The Sewel convention is a fundamental part of the United Kingdom’s devolution arrangements. If trust is to be maintained between the UK Government and the devolved administrations, it is essential that it**

156 HC Deb, 16 July 2020, [col 1705](#)

157 Akash Paun and Kelly Shuttleworth, Institute for Government, *Legislating by consent: How to revive the Sewel convention* (September 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/legislating-by-consent-sewel-convention.pdf> [accessed 14 January 2022]

158 [QQ 129, 131](#) (Sir Jeffrey Donaldson MP)

159 See letter from Alister Jack to Scottish Government on UNCRC Bill (24 March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973000/Letter.pdf [accessed 14 January 2022]

160 See ‘Sturgeon blasts decision to refer Holyrood bills to the UK Supreme Court’, *The Guardian* (12 April 2021): <https://www.theguardian.com/uk-news/2021/apr/12/sturgeon-blasts-referral-childrens-rights-bill-uk-supreme-court> [accessed 14 January 2022]

161 The United Nations Convention of the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter on Local Self-Government (Incorporation)(Scotland) Bill – A Reference by the Attorney General and Advocate General, para 60

162 [Q 10](#) (Professor Ciaran Martin)

163 [Q 107](#) (Michael Gove MP)

be respected by all governments and legislatures. While the legislative consent procedure generally worked well from 1999, implementing Brexit placed it under strain.

121. **It has been useful at times for the UK Parliament to legislate for the devolved jurisdictions on devolved matters with consent; indeed, sometimes the devolved administrations have relied on Parliament to do so.**
122. **It is not clear how the Sewel convention was intended to apply in a situation where one devolved legislature provides consent and the others do not. This circumstance arose with the European Union (Withdrawal) Bill; we noted that the Government's efforts to accommodate the concerns of the devolved administrations satisfied the Welsh Government but not the Scottish Government. Thereafter the Scottish Government chose not to seek the consent of the Scottish Parliament to several Brexit bills. This illustrates the importance of all sides engaging properly with the Sewel convention.**
123. **For the Sewel convention to operate well, constructive relationships and good faith are required between the UK Government and the devolved administrations. The Sewel convention is undermined both if the Government refuses to seek, or chooses to act without, consent, and if devolved administrations recommend the refusal of consent to their legislatures, for purely political purposes.**
124. **Where the UK Parliament legislates in devolved areas without consent it should demonstrate that the particular circumstances require it to do so. In any event, the UK Government should always demonstrate that it has taken all reasonable steps to secure consent. Other than in exceptional circumstances, the UK Government ought not to seek to legislate in devolved areas without consent. While the convention does not technically apply to secondary legislation, the UK Government should still seek consent before acting in this area.**

Possible reforms to the legislative consent process

125. In response to the strains explored above a number of proposals have been made to reform the Sewel convention. As part of their joint policy programme, the SNP and Scottish Green Party agreed that: “to protect the powers of the Scottish Parliament, [they] will press for the Sewel convention to be strengthened and legally defined, and for the UK Government to respect the legislative consent decisions of the Scottish Parliament.”¹⁶⁴ We wrote to both parties on 31 August 2021 to ask for further information about their preferred approach. Angus Robertson responded on their behalf with proposals to strengthen the statutory form of the convention. However, he argued that it was “important to recognise that the claim of unlimited sovereignty by the Parliament at Westminster makes it virtually impossible to guarantee the

¹⁶⁴ Scottish Government and Scottish Green Party, ‘Shared Policy Programme’ (1 September 2021), p 7: <https://www.gov.scot/publications/scottish-government-scottish-green-party-shared-policy-programme/documents/> [accessed 14 January 2022]

Sewel convention, or any other aspect of the devolved settlement, or indeed the wider UK constitution”.¹⁶⁵

126. At the time of publication, the Northern Ireland Assembly’s Committee on Procedures was conducting an inquiry into the legislative consent process in Northern Ireland. The Committee’s chair wrote to us about the Committee’s concerns with the current process—in the Assembly and at Westminster—and, among others, asked for the following possible procedural changes to be considered:
- (a) Rather than simply being tagged in the order papers, if the granting or withholding of consent by a devolved legislature could be given greater prominence in parliamentary proceedings.
 - (b) If the Assembly could be informed directly (and at the same time as the relevant Northern Ireland Executive minister) about any bills being introduced to Parliament that require legislative consent. This was to avoid a repeat of circumstances when bills had been passed by the UK Parliament, without the Assembly’s knowledge or consent, because Northern Ireland Executive ministers had not notified the Assembly in breach of standing orders.¹⁶⁶

The role of the courts?

127. The UK Supreme Court has issued several judgments about the boundary between reserved and devolved competences. In certain cases, it has found in favour of the devolved administration, in others it has found the UK Government’s argument to be more convincing.¹⁶⁷ Mark Drakeford was disappointed by the Supreme Court’s decision not to give legal effect to the operation of the Sewel convention in the first Miller case. In response he suggested the convention could be reformed by removing the ‘not normally’ exception so the UK Parliament cannot legislate without consent or making the convention justiciable. He hoped that fleshing out the statutory provisions would increase the chances of a court deciding it was justiciable in future. He would prefer fundamental disagreements to be adjudicated by the Supreme Court as they would be able to provide independent oversight rather than the process being concentrated in the hands of one party.¹⁶⁸ Professor Jim

165 Letter from Chair to First Minister, Deputy First Minister and Co-Leaders of the Scottish Green Party regarding Sewel Convention (31 August 2021): <https://committees.parliament.uk/publications/7288/documents/76365/default/>. Letter from Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture, to the Chair (4 November 2021): <https://committees.parliament.uk/publications/7755/documents/80763/default/>. This response merely restated the Scottish Government’s existing position. See letter from Michael Russell, former Cabinet Secretary for Government Business and Constitutional Relations, to David Lidington, former Chancellor of the Duchy of Lancaster, 12 September 2018: <https://www.gov.scot/publications/strengthening-the-sewel-convention-letter-from-michael-russell-to-david-lidington/> [accessed 14 January 2022].

166 Letter from Carál Ní Chuilíns MLA, Chairperson of Northern Ireland Assembly Committee on Procedures, to the Chair (26 October 2021): <https://committees.parliament.uk/publications/7678/documents/80083/default/>. See also [QQ 159, 166](#) (Naomi Long MLA).

167 For an overview of judgments before July 2016, see House of Commons Library, The Supreme Court on Devolution, Briefing Paper, [07670](#), 27 July 2016. Subsequent judgments include The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland and The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and the European Charter of Local Self-Government (Incorporation) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland.

168 [QQ 86–87, 89](#) (Mark Drakeford MS). See also written evidence from Dr Huw Pritchard and Mr Keith Bush QC ([FGU0041](#)) and Empowering Yorkshire ([FGU0009](#)).

Gallagher, Honorary Professor, Universities of Glasgow and St Andrews,¹⁶⁹ agreed the convention should be given legal force so the courts could adjudicate or enforce it.¹⁷⁰

128. Other witnesses considered that such oversight should remain the preserve of Parliament. Sir Jeffrey Donaldson disagreed with the concept of an independent referee as Parliament is sovereign, while Professor McLean did not consider it realistic or viable as the process was “inescapably political”.¹⁷¹ Michael Gove told us: “By definition, constitutional conventions are guides, and I would not put it on a statutory basis ... there are some things I would rather not see decided in the courts. It seems to me they are matters of political judgment and political consequences if mistakes are made rather than necessarily matters for judicial review”.¹⁷²
129. **It is an established constitutional principle that conventions are non-legal rules and hence unenforceable by the courts. We therefore do not agree that the approach taken to the Sewel convention by the Supreme Court in Miller 1 was misconceived. As any breach of the convention will have political consequences, we believe that Parliament is the appropriate forum to scrutinise its operation.**

Parliamentary scrutiny

130. In addition to intergovernmental engagement, Sir Jeffrey Donaldson suggested there was a role for greater parliamentary scrutiny and dialogue on these issues.¹⁷³ Professor Gallagher agreed interparliamentary engagement could be strengthened so that the legislative process began by checking if the devolved legislatures have provided consent or had any concerns. He suggested this could be achieved through dialogue between the House of Lords and the devolved legislatures, perhaps resulting in a select committee report being published before second reading or committee stage.¹⁷⁴
131. Mark Drakeford said the Government acted as ‘judge and jury’ on what was considered ‘not normal’. He said the Government should be required to publish its justification for deciding to legislate without consent, with both Houses then invited to vote on this justification, with the relevant devolved legislature having the right to contribute to this consideration. If such an approach was adopted, he thought it would make sense for it to occur towards the end of a bill’s passage when its provisions were in reasonably settled form, but only if enough time was built in for proper consideration of such a procedure.¹⁷⁵ Paul Evans, a former Clerk of Committees in the House of Commons, and Sir Paul Silk, a former Clerk to the National Assembly of Wales,¹⁷⁶ suggested adopting a similar process.¹⁷⁷

169 Professor Gallagher is a former senior civil servant and served as the Director General of Devolution at the Ministry of Justice from 2007–10. He was also the Secretary to the (Calman) Commission on Scottish Devolution.

170 Written evidence from Professor Jim Gallagher ([FGU0051](#)). See also [Q 229](#) (Professor Jim Gallagher) and written evidence from Professor Michael Keating ([FGU0053](#)).

171 [Q 130](#) (Sir Jeffrey Donaldson MP) and [Q 144](#) (Professor Iain McLean)

172 [QQ 107–08](#) (Michael Gove MP)

173 [Q 130](#) (Sir Jeffrey Donaldson MP)

174 [Q 221](#) (Professor Jim Gallagher)

175 [QQ 86–88](#) (Mark Drakeford MS)

176 Sir Paul Silk was also the Chair of the (Silk) Commission on Devolution in Wales.

177 Written evidence from Paul Evans and Paul Silk ([FGU0034](#))

132. In our report on the *Scotland Bill 2015–16* we invited the Government to clarify the meaning of the word “normally”.¹⁷⁸ During the Scotland Bill’s consideration by the House, the then Advocate General for Scotland, Lord Keen of Elie, said “it is for Parliament to determine when a circumstance may be considered not normal”.¹⁷⁹ On 9 March 2020, the Secretary of State for Wales, the Rt Hon Simon Hart MP, in evidence to the Senedd defined not normally as “major exceptional circumstances” which were “unlikely ever to be repeated”.¹⁸⁰ The Welsh Government has said that ‘not normally’ should be codified and properly defined, including the criteria governing its application.¹⁸¹ The Institute for Government has suggested the circumstances could include a security emergency, health crisis or natural disaster, especially if the devolved legislatures were not sitting and swift legislative action were required.¹⁸² Sir Jeffrey Donaldson thought it may be appropriate for the UK Parliament to legislate in Northern Ireland during an emergency, such as COVID-19, or to implement a national approach.¹⁸³ In 1997, the *Scotland’s Parliament White Paper* suggested a situation where it would be “more convenient” for legislation regarding devolved matters to be passed by the UK Parliament was where international obligations touched on devolved matters.¹⁸⁴
133. The Institute for Government has recommended the following changes to parliamentary procedure, some of which gained support from our witnesses:¹⁸⁵
- (a) That the UK and devolved governments seek to agree a joint statement setting out a list of circumstances in which legislative consent need not be sought.
 - (b) That a formal commitment be entered into by the UK Government that it will share draft bills—or at least relevant sections—with the devolved administrations at an agreed period (perhaps 21 or 28 days) prior to a bill being introduced to Parliament.
 - (c) That the Government should publish a formal devolution statement (or ‘statement of compatibility with devolution and the legislative consent convention’) when a bill is introduced.
 - (d) Each devolution statement should be referred to a relevant committee of the UK Parliament, with the committee then publishing a report into the devolution and consent issues relating to the bill, including on any unresolved disagreements. This report would inform subsequent parliamentary consideration of the bill.

178 [Scotland Bill](#), para 38. The Government did not respond to the Committee’s invitation. During the report stage on that bill in the House of Lords, Lord Hope of Craighead tabled an amendment to remove ‘normally’ from the relevant clause, but this was withdrawn. See HL Deb, 24 February 2016, [cols 308-10](#)

179 HL Deb, 21 March 2016, [col 2071](#)

180 See Fifth Senedd Legacy Report, para 154

181 Welsh Government, *Reforming our Union: Shared Governance in the UK*, p 11

182 Institute for Government, *Legislating by consent: How to revive the Sewel convention*, pp 27–28

183 [Q 128](#) (Sir Jeffrey Donaldson MP)

184 See Scotland’s Parliament, Cm 3658 (1997), para 4.4. Lord Sewel referred to this example during the debate on the Scotland Bill. See HL Deb, 21 July 1998, [col 791](#).

185 [Q 72](#) (Angus Robertson MSP), [Q 130](#) (Sir Jeffrey Donaldson MP). See also letter from Carál Ní Chuilín MLA, Chairperson of Northern Ireland Assembly Committee on Procedures, to the Chair (26 October 2021): <https://committees.parliament.uk/publications/7678/documents/80083/default/> [accessed 14 January 2022].

- (e) Where there is disagreement about whether the Sewel convention applies, the committee scrutinising the consent issues should have the power to seek legal advice on the question of whether the bill, or particular provisions of the bill, falls within the scope of the convention.
 - (f) If the Government intends to legislate without consent, a relevant minister should make a statement to each House setting out the government's justification for doing so.
 - (g) There should also be an additional stage in the legislative process, as advocated by the Welsh Government, at which the government would move a motion to legislate notwithstanding the absence of consent.¹⁸⁶
134. Given that the UK Government can rely on an assertion of the doctrine of parliamentary sovereignty, both Professor Wyn Jones and Professor Gallagher doubted that changes to the legislative consent process would be sufficient in the absence of self-restraint by the Government.¹⁸⁷
135. Michael Gove appeared to be open minded about possible changes. In response to our suggestion that the process could be improved he said: “partly as we put in place legislation required by Brexit, it may well be the case there may be more legislative consent motions than there have been in the past and, in those circumstances, looking at how we can explain why we are doing what we are doing” might have merit.¹⁸⁸
136. **The Devolution Guidance Notes require early consultation with the devolved legislatures on the devolved aspects of UK bills, to address any significant issues in good time. During Brexit, it is clear this guidance was not always followed but subsequently there is evidence that it is again being followed. We welcome this and recommend the guidance should be followed as a matter of course from now on. We believe it would be desirable for all efforts to be taken to resolve any substantive disagreements before a bill is introduced to Parliament. This could be achieved through the more robust arrangements for joint working (including the new dispute resolution process) agreed as part of the review of intergovernmental relations.**
137. **We believe the absence of any meaningful dialogue between Parliament and the devolved legislatures on legislative consent matters is a gap in the legislative process.¹⁸⁹ While we welcome the obligation on ministers to notify the House of Lords at third reading if consent has not been obtained for a relevant bill, this limits opportunities for meaningful parliamentary scrutiny at an earlier stage in the bill's consideration and lacks transparency.**
138. *We recommend that to increase confidence in the Sewel convention, as well as strengthening interparliamentary scrutiny of intergovernmental relations more generally, the House of*

186 Institute for Government, *Legislating by consent: How to revive the Sewel convention*

187 [QQ 176–77](#) (Professor Richard Wyn Jones) and [Q 221](#) (Professor Jim Gallagher)

188 [Q 108](#) (Michael Gove MP)

189 See also Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom* (2nd Report, Session 2002–03, HL Paper 28), para 130. The Committee said it found “it strange that an issue which is fundamentally about co-operation between legislatures has turned in practice into co-operation between executives.”

Lords should strengthen its scrutiny of bills that engage the Sewel convention as follows:

- (a) *On introduction of a bill to the House of Lords which engages the Sewel convention, the Government should submit a memorandum to the House about the devolution implications, explain what engagement has taken place with the relevant devolved administrations.*
- (b) *In our scrutiny of the bill, the Committee will take into account the Government's memorandum, progress in securing legislative consent and any further evidence or materials, including the view of a committee of a relevant devolved legislature, we consider necessary. As the Committee has done previously,¹⁹⁰ we may occasionally advise the House on the wisdom of proceeding with a bill in the absence of legislative consent.¹⁹¹ Depending on the timing of each devolved legislature's consideration of a legislative consent memorandum and motion, including the possibility of amendments requiring the consideration of supplementary memorandums and motions, we might have to issue a report at a later stage.*
- (c) *The Procedure and Privileges Committee should consider if a devolved legislature's consent, or lack of consent, should receive greater prominence in House of Lords Business by tagging this, once notified to the House, against each stage of the Bill's consideration by the House.*

139. *At present when the Government considers consent is not required from a devolved legislature and proceed to give effect to that view, there is no parliamentary scrutiny of this determination. In future we recommend that the Government should justify its approach to the House at the beginning of a Bill's consideration. This could form part of the statement we have recommended above.*

140. **If the operation of the Sewel convention is strengthened and mutual respect between the UK Government and devolved administrations restored, this will obviate any need to consider transforming the convention's status into a legal rule. We do not believe it would be desirable to involve the courts in adjudicating disputes on the meaning and application of the convention, which are best resolved through political deliberation. A rigid approach to the convention could also limit the ability of the UK Parliament to legislate in devolved areas when it would be appropriate to do so and beneficial to all parties. However, it will be important to keep the new process under review, with the option of considering more substantive procedural changes if the circumstances demand it.**

141. *We recommend that the changes we propose to the operation of the Sewel convention should be reflected in an updated version of*

190 The Committee scrutinises most public bills introduced to the House of Lords. This scrutiny includes consideration of any devolution issues.

191 The process assumes that most of the bills in question will have already completed their passage in the House of Commons. It is also assumed that this process will not be possible in all circumstances, including for bills which start in the House of Lords and in exceptional circumstances, such as emergency legislation.

the Cabinet Manual and the Guide to Making Legislation. In the meantime, as the Devolution Guidance Notes do not reflect the current devolution arrangements, they should be updated as a priority.

Northern Ireland

142. The concept of consent has wider and greater constitutional significance in Northern Ireland. This includes the consent of voters to remain part of the UK or become part of a united Ireland, consent by the Northern Ireland Assembly to the continued application of the Northern Ireland Protocol (before the end of 2024), and legislative consent by the Assembly to the application of UK law in devolved areas.¹⁹²
143. Witnesses noted that the UK Government had become increasingly willing to legislate in areas devolved to the Northern Ireland Assembly. The reasons for this are more complex than circumstances in Wales and Scotland. Abortion policy is devolved to the Northern Ireland Assembly and the Scottish Parliament, but not to the Senedd. The New Decade, New Approach agreement, which restored the devolved institutions in Northern Ireland in January 2020, included a commitment by the Northern Ireland Executive to enact Irish language legislation.
144. In our report on the *Abortion (Northern Ireland) Regulations 2021*, we considered the issues surrounding the UK Government’s intervention in a devolved, and sensitive, policy area.¹⁹³ The UK Government has confirmed its intention to introduce Irish language legislation, if the Northern Ireland Executive is not willing to do so.
145. In the New Decade, New Approach agreement the UK Government also committed to introducing legislation in the UK Parliament to “address Northern Ireland legacy issues”, most of which would concern reserved or excepted matters. The Government’s proposals were to follow an “intensive process” of discussion with the Northern Ireland political parties “to maintain a broad-based consensus on these issues, recognising that any such UK Parliament legislation should have the consent of the Northern Ireland Assembly.”¹⁹⁴ The Government published its proposals in July 2021, including that:

“The [Police Service of Northern Ireland] and Police Ombudsman Northern Ireland would be statutorily barred from investigating Troubles-related incidents. This would bring an immediate end to criminal investigations into Troubles-related offences and remove the

192 See Northern Ireland Assembly Research and Information Service, ‘Consent, cross-community support and the Ireland/Northern Ireland Protocol’, 28 July 2021: <https://www.assemblyresearchmatters.org/2021/07/28/consent-cross-community-support-and-the-ireland-northern-ireland-protocol/> [accessed 14 January 2022]. The Belfast Agreement notes the ‘option of the Assembly seeking to include Northern Ireland provisions in United Kingdom-wide legislation in the Westminster Parliament, especially on devolved issues where parity is normally maintained (e.g. social security, company law’). See HM Government, *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 (April 1998), p 8: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034123/The_Belfast_Agreement_An_Agreement_Reached_at_the_Multi-Party_Talks_on_Northern_Ireland.pdf [accessed 14 January 2022]

193 Constitution Committee, *Abortion (Northern Ireland) Regulations 2021* (23rd Report, Session 2019–21, HL Paper 269)

194 Northern Ireland Office, *New Decade, New Approach* (January 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf [accessed 14 January 2022]

prospect of prosecutions ... [and] end judicial activity in relation to Troubles-related conduct across the spectrum of criminal cases, and current and future civil cases and inquests.”¹⁹⁵

146. Sir Jeffrey Donaldson told us: “there are circumstances in which it is appropriate and proportionate for the UK Government to act, but we have seen with increasing frequency the UK Government deciding to legislate on areas that are either wholly or primarily devolved matters ... that is a matter of concern because it undermines confidence in the devolved administration in Northern Ireland.” He acknowledged this applied to matters on which the Northern Ireland Executive had failed to reach agreement.¹⁹⁶ Naomi Long and Colum Eastwood agreed that the UK Government should not normally intervene in devolved areas but thought this was necessary on abortion as the Northern Ireland Executive was not willing to legislate in this area and the UK Government had international human rights obligations it was required to meet.¹⁹⁷
147. Sir Jeffrey Donaldson, Naomi Long and Colum Eastwood were united in opposing the UK Government’s legacy proposals. While Colum Eastwood accepted the UK Government was permitted to legislate in this area, and he understood its motivation behind the proposal, he noted it had achieved the rare feat of uniting every political party and victims’ organisation in Northern Ireland against its proposals.¹⁹⁸
148. **We recognise the lack of agreement within the Northern Ireland Executive may sometimes require the UK Government to seek to legislate in devolved areas. However, the unanimous rejection of the Government’s legacy proposals by political parties in Northern Ireland indicates a clear lack of consent on that issue.**

English Votes for English Laws

149. On 22 October 2015 the House of Commons amended its standing orders to incorporate the English Votes for English Laws (EVEL) procedure.¹⁹⁹ The EVEL procedure effectively introduced a legislative consent mechanism in the House of Commons for bills that applied only to England (or to England and Wales, or to England, Wales and Northern Ireland).²⁰⁰ While we do not normally consider House of Commons procedures, in 2016 the then Leader of the House of Commons invited us to consider EVEL and we duly reported on it.²⁰¹ We revisited this issue for this inquiry in the context of legislative consent more generally.

195 HM Government, *Addressing the Legacy of Northern Ireland’s Past*, CP 498 (July 2021), paras 34 and 38: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf [accessed 14 January 2022]

196 [QQ 125–28](#) (Sir Jeffrey Donaldson MP)

197 [Q 164](#) (Naomi Long MLA), [QQ 192–93](#) (Colum Eastwood MP). See also UK Supreme Court, *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)*, [2018] UKSC 27

198 [QQ 125, 128](#) (Sir Jeffrey Donaldson MP), [Q 164](#) (Naomi Long MLA), [QQ 192–93](#) (Colum Eastwood MP)

199 HC Deb, 22 October 2015, [cols 1159–1258](#)

200 As currently constituted, there was no need for any equivalent procedure to be introduced in the House of Lords.

201 Constitution Committee, *English votes for English laws* (6th Report, Session 2016–17, HL Paper 61)

150. The EVEL procedure was suspended at the onset of the COVID-19 pandemic in April 2020. They were then repealed by the House of Commons on 13 July 2021.²⁰²
151. The demand for an answer to the West Lothian Question grew during the 2001–05 parliament, when votes on English-only proposals for foundation hospitals and top-up tuition fees were carried only with non-English votes.²⁰³ After a long debate, the coalition Government established the McKay Commission in 2012 to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following devolution to Scotland, Northern Ireland and Wales.²⁰⁴
152. The McKay Commission noted strong support for limiting the voting rights of non-English MPs on English-only legislation and thought maintaining the status quo created a long-term risk. The Commission proposed adopting a constitutional principle that bills which mainly affected England (or England and Wales) should normally be passed only with the consent of a majority of MPs for constituencies in England (or England and Wales). It suggested this principle should be endorsed by a resolution of the House of Commons and accompanied by procedures, reflected in standing orders, such as the consideration of a consent motion in grand committee before second reading. However, the Commission was clear that MPs representing constituencies outside England should not be prevented from voting on matters before Parliament, including the final decision, as this would create two classes of MPs. Its main objective was to create an opportunity for the ‘English’ view to be expressed and taken account of, with political accountability for any decision to override this view. It concluded: “If perceived concerns and political expectations in England are to be met, any new procedures should be simple, comprehensible and accessible. Proposals must be widely regarded as fair, go with the grain of parliamentary procedure and practice, give politics the chance to work, and respect the prerogatives of all MPs.”²⁰⁵
153. The procedure eventually adopted by the House of Commons in 2015 went beyond the McKay Commission’s proposals by requiring an additional legislative stage before third reading under which MPs representing English (or English and Welsh, or English, Welsh and Northern Irish) constituencies provided their consent via a legislative grand committee in which only those members may vote, followed by a further vote by all MPs on the bill’s final

202 See HC Deb, 13 July 2021, [cols 306–26](#)

203 Professor Iain McLean suggested such circumstances also arose during the 2017 to 2019 Parliament, when the UK Government depended for confidence and supply on the votes of DUP MPs. See [Q 145](#) (Professor Iain McLean)

204 The Commission was chaired by Sir William McKay, a former Clerk of the House of Commons. One tangible consequence of devolution to Scotland was the reduction in the number of Scottish MPs from 73 to 59. As a result of boundary reviews in each nation, it is proposed that the number of Scottish MPs will be reduced further to 57, with Welsh MPs reducing from 40 to 32 – in part as a result of further devolution to Wales. The number of MPs returned for Northern Ireland has remained unchanged at 18.

205 The McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons: Executive Summary* (March 2013): https://webarchive.nationalarchives.gov.uk/ukgwa/20130403030714mp_/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission_Executive-Summary_25-March-2013.pdf [accessed 14 January 2022]

stage.²⁰⁶ The new procedure did not prove popular with MPs. Some suggested they created different categories of MPs. The requirement for the Speaker to certify all English (or English and Welsh) bills, and the complicated voting procedures which resulted, made many MPs sceptical about the procedure, including what were regarded as short and formulaic debates in the grand committees.

154. While recognising the EVEL procedure was not perfect, some witnesses were surprised that the Government chose to repeal it, as it was considered to be important in providing English MPs with a collective ‘voice’ should this be required.²⁰⁷ Professor Henderson and Professor Wyn Jones said there was clear public support for an EVEL-style process.²⁰⁸ Other witnesses were however very critical of the EVEL procedure, including Professor Denham who described it as “obscure and bureaucratic”.²⁰⁹
155. Explaining the Government’s reasons for inviting the House of Commons to repeal the EVEL procedure, Michael Gove told us the procedure failed to strengthen the Union, saying “85% of the Members of Parliament come from England, and we need to recognise that for our Union to work ... there should be generosity of spirit on the part of those of us living and voting in England, and part of that comes from respecting our parliamentary traditions.”²¹⁰
156. As the Government has a majority of English seats, EVEL is not a live issue in the current parliament. This will not necessarily be the case in future parliaments. As a result, some witnesses said the repeal of the procedure was short-sighted and created future constitutional risks to the Union.²¹¹
157. Paul Evans advocated simplifying the EVEL procedure to increase understanding among parliamentarians and the public.²¹² Dr Daniel Gover, lecturer in politics at Queen Mary University of London, and Professor Kenny have noted the McKay Commission’s original proposals had rejected a veto and relied more on creating political incentives to hear and respect the English ‘voice’. If the procedure was to be revived in future, they suggested focusing on a system founded on ‘voice’ rather than ‘veto’, as this would be less vulnerable to the criticism received by the repealed EVEL procedure.

206 Erskine May (25th edition, 2019), para 27.8: <https://erskinemay.parliament.uk/section/5201/outline-of-the-2015-standing-orders/> [accessed 14 January 2022]. In addition, bills which extended to England only were considered by a public bill committee comprised only of MPs representing English constituencies. New procedures were created for consideration of certain House of Lords amendments. New procedures were created for affirmative instruments and certain other statutory instruments which extended to England, or England and Wales, only.

207 [Q 7](#) (Professor Ciaran Martin), [Q 36](#) (Professor Michael Kenny), [Q 136](#) (Professor Iain McLean), and [Q 214](#) (Professor Jim Gallagher)

208 Written evidence from Professor Ailsa Henderson and Professor Richard Wyn Jones ([FGU0046](#))

209 [Q 28](#) (Alex Massie, Sam McBride), [QQ 31, 36](#) (Professor John Denham); written evidence from the Yorkshire Devolution Movement ([FGU0015](#)) and from Professor John Denham ([FGU0027](#))

210 [QQ 105, 108](#) (Michael Gove MP). The Government considered that the EVEL procedures “added complexity and delay to the legislative process”. See HC Deb, 13 July 2021, [col 308](#). See also Written Statement [HCWS169](#), English Votes for English Laws (12 July 2021), which says: “It is a fundamental principle that all constituent parts of the United Kingdom should be equally represented in Parliament, and Parliament should deliver for the whole UK. The operation of this procedure (and the constraints on the role of certain MPs) does not support this aim.”

211 [QQ 36, 39, 41](#) (Professor Michael Kenny), [QQ 136, 145](#) (Professor Iain McLean)

212 Written evidence from Paul Evans and Paul Silk ([FGU0034](#)). The evidence was submitted before the EVEL procedure was repealed.

Such an approach would not prevent all UK MPs ultimately voting on legislation.²¹³

158. **The principle of legislative consent is important in the English context, as it is to the devolution arrangements. English Votes for English Laws was an attempt to answer the West Lothian Question. It is widely accepted that the procedure used was flawed and the repeal of the EVEL standing orders was unopposed in the House of Commons. We note the Government’s motivation for repealing the EVEL procedure was to strengthen the Union. That said, following its repeal, the Question remains unanswered.**

213 See the supplementary written evidence submitted by Dr Daniel Gover and Professor Michael Kenny to the House of Commons Procedure Committee ([TTC 15](#)). See also Daniel Gover and Professor Michael Kenny, The Constitution Unit, ‘Deliver us from EVEL? Is the government right to abolish ‘English Votes for English Laws?’ (27 June 2021): <https://constitution-unit.com/2021/06/27/deliver-us-from-evel-is-the-government-right-to-abolish-english-votes-for-english-laws/> [accessed 14 January 2022].

CHAPTER 5: INTERGOVERNMENTAL RELATIONS

159. Intergovernmental relations, at the executive level, are a frequently overlooked part of the UK's devolution arrangements but are critical to ensuring the effective governance of the UK in the 21st century. In our 2015 report *Intergovernmental relations in the United Kingdom*, we said: "The structures and practices of inter-governmental relations should serve to strengthen, and provide constitutional stability to, the Union."²¹⁴ The Committee considered the need to strengthen intergovernmental relations in its reports on the key Brexit bills we discussed in Chapter 4.²¹⁵
160. The Dunlop review, which devoted a chapter to intergovernmental relations, was published on 24 March 2021, 16 months after it was completed.²¹⁶ The Dunlop review recommendations and the Government's responses are in Appendix 7.

Background

161. Until 2022, the formal structures underpinning intergovernmental relations were set out in a Memorandum of Understanding (MoU) between the UK Government and the devolved administrations.²¹⁷ The MoU has been superseded by the review of intergovernmental relations.²¹⁸
162. The MoU provided for the establishment of a Joint Ministerial Committee (JMC), comprising ministers from each administration, to provide central co-ordination to the relationships. JMC plenary meetings were expected to take place annually and typically consisted of the Prime Minister, the three First Ministers and the deputy First Minister of Northern Ireland, with other UK Government ministers in attendance depending on the agenda. There were two standing sub-committees: JMC (Europe) and JMC (Domestic).²¹⁹ JMC meetings served two purposes: joint decision-making on shared competences or responsibilities and resolving disputes.²²⁰
163. JMC plenaries did not take place after 2002 but were revived in 2008, following the formation of the first SNP Scottish Government in 2007, and were held regularly until 2018. No formal JMC plenary meetings have taken

214 Constitution Committee, *Inter-governmental relations in the United Kingdom*, para 16. See also Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom*, para 29

215 Constitution Committee, *European Union (Withdrawal) Bill* (9th Report, Session 2017–19, HL Paper 69), Chapter 10, see also Constitution Committee, *European Union (Withdrawal Agreement) Bill* (1st Report, Session 2019–21, HL Paper 5), Chapter 5, Constitution Committee, *United Kingdom Internal Market Bill*, Chapter 2 and Constitution Committee, *Brexit legislation: constitutional issues*, Chapter 3

216 Cabinet Office, *Review of UK Government Union Capability* (November 2019): <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability>

217 Memorandum of Understanding and Supplementary Agreements

218 Review of Intergovernmental Relations

219 Three further ad-hoc JMCs were established: JMC (Poverty), JMC (Knowledge Economy) and JMC (Health). A JMC (European Negotiations) was established during Brexit and was considered to have worked well in otherwise challenging circumstances. Finance Ministers' and Agriculture Quadrilaterals also took place, as did Joint Exchequer Committees following the partial devolution of tax and welfare powers.

220 Disputes were usually resolved via informal bilateral meetings, or at official level, but if it was not possible to resolve disagreements through these channels, disputes were referred to the JMC and resolved in a meeting of the relevant ministers, chaired by a UK Government minister. The process was used on four occasions: three concerning funding disputes and the remaining one about fishing quotas. In 2017, the Welsh and Scottish governments tried to open a dispute about the Conservative Party's confidence-and-supply deal with the DUP.

place since 14 March 2018.²²¹ In our report *COVID-19 and the use and scrutiny of emergency powers* we noted that the JMC plenary was not used during the pandemic; instead meetings of COBRA and related groups initially took place, to which the devolved administrations were invited to participate. From June 2020, these arrangements were replaced by two Cabinet committees, which the devolved administrations were not invited to participate in.²²²

164. Most witnesses agreed the intergovernmental structures required reform to make them more robust, with some saying that Brexit and COVID-19 had highlighted the deficiencies in the current arrangements.²²³
165. While there was clear frustration from the Welsh and Scottish governments about the state of intergovernmental relations until the end of 2020, from the beginning of 2021 the UK Government appeared to step up its engagement with the devolved administrations. Mark Drakeford praised the regular meetings which had started since December 2020 between Michael Gove, the First Ministers and the deputy First Minister of Northern Ireland, saying that “Below the surface ... and out of the limelight of intergovernmental relations, it continues to be possible in some areas to make progress on joint matters.”²²⁴
166. Michael Gove referred to the “successful” COVID-19 meeting which the Prime Minister convened with the First Ministers and Deputy First Minister on 2 June 2021,²²⁵ following the devolved elections in May, saying “I do not think there was any complaint from any party there about the tone, nature or content of the meeting. While there may have been, as you would expect, divergent views about what the priorities should be, it was a good example of leadership, and it set the tone for future such meetings.”²²⁶ A further meeting of the Prime Minister, First Ministers and deputy First Minister took place on 18 October 2021 to discuss the “shared challenges” of COVID-19, climate action and COP26 preparations.²²⁷

221 [Q 84](#) (Mark Drakeford MS). See also Joint Ministerial Committee communiqué, 14 March 2018: <https://www.gov.uk/government/publications/joint-ministerial-committee-communique-14-march-2018> [accessed 14 January 2022].

222 Constitution Committee, *COVID-19 and the use and scrutiny of emergency powers*, paras 92–113

223 [Q 3](#) (Philip Rycroft), [Q 36](#) (Professor Michael Kenny), [Q 101](#) (Michael Gove MP), [Q 127](#) (Sir Jeffrey Donaldson MP); written evidence from Dr Paul Anderson ([FGU0011](#)), Electoral Reform Society ([FGU0022](#)), Professor Michael Kenny, Philip Rycroft and Jack Sheldon ([FGU0029](#)), the United Kingdom Constitution Monitoring Group ([FGU0031](#)), Dr Huw Pritchard and Mr Keith Bush QC ([FGU0041](#)), the Law Society of Scotland ([FGU0044](#)), the Royal Society of Edinburgh ([FGU0047](#)), and Professor Jim Gallagher ([FGU0051](#)). In 2015, the then First Minister of Wales, the Rt Hon Carwyn Jones, told us: “There tends to be more—how shall I put it—full and frank discussion in the JMC (Plenary) than constructive discussion”. See Constitution Committee, *Inter-governmental relations in the United Kingdom*, p 17

224 [Q 81](#) (Mark Drakeford MS). See also [Q 100](#) (Michael Gove MP). For read outs of the regular meetings see Cabinet Office, ‘Communiqués on COVID-19 Engagement’ (22 December 2021): <https://www.gov.uk/government/publications/communiques-on-covid-19-engagement> [accessed 14 January 2022]

225 This was not a formal JMC plenary meeting. The meeting took place on 3 June 2021. The meeting was originally due to take place in late May 2021 but was postponed at the request of the Scottish and Welsh First Ministers, who requested more substance about the purpose of the meeting.

226 [Q 104](#) (Michael Gove MP). See also oral evidence taken before the Constitution Committee, inquiry on revision of the Cabinet Manual, 17 May 2021, [QQ 35, 37](#) (Simon Case)

227 This was not a formal JMC plenary meeting either. See Cabinet Office, ‘Meeting between the Prime Minister and the First Ministers and deputy First Minister of the Devolved Governments on 18 October 2021’ (19 October 2021): <https://www.gov.uk/government/publications/prime-minister-led-engagement-with-the-devolved-administrations/meeting-between-the-prime-minister-and-the-first-ministers-and-deputy-first-minister-of-the-devolved-governments-on-18-october-2021> [accessed 14 January 2022]

167. While Angus Robertson said it had been possible for the administrations to work together at some levels, he said the UK Government had used Brexit to “drive a coach and horses through intergovernmental relationships as they are supposed to work”. He also expressed regret that the initially positive intergovernmental approach to common frameworks had been undermined by the UK Internal Market Act 2020.²²⁸ However, positive progress appears to have been made by the UK Government and the devolved administration on the operation of common frameworks and their interaction with the 2020 Act. On 9 December the UK Government confirmed its intention to repeal section 12 of the European Union (Withdrawal) Act 2018, which led the Scottish Government to withhold consent (see paragraph 112).²²⁹ The UK Government also confirmed it had agreed a process with the devolved administrations to permit, in policy areas covered by common frameworks, exclusion from the 2020 Act’s market access principles.²³⁰
168. **It is unfortunate that greater progress on reforming intergovernmental structures was not achieved before the challenges of Brexit and COVID-19 demonstrated the inherent weaknesses in the current arrangements. Both challenges have underlined the pre-existing need to strengthen intergovernmental arrangements.**
169. **The governance of the United Kingdom requires strong relationships to be built and maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive at all levels: between the Prime Minister, First Ministers and deputy First Minister, and other ministers, and officials from all four administrations.**
170. **We welcome the agreement reached between the UK Government and devolved administrations on the process for agreeing exclusions from the UK Internal Market Act 2020’s market access principles in policy areas covered by common frameworks. This is an encouraging sign that constructive intergovernmental relations are being re-established.**
171. **We recognise that, whatever changes to the intergovernmental structures are agreed, even the best governance structures will not be capable of resolving fundamental political differences between the different administrations. The arrangements should however be capable of fostering greater trust and more effective, co-operative, working relationships.**

228 [Q 70](#) (Angus Robertson MSP). See also [Q 81](#) (Mark Drakeford MS)

229 Written Statement [HLWS443](#), 9 December 2021, ‘The European Union (Withdrawal) Act & Common Frameworks Report and Repeal of Section 12 Powers’

230 Written Statement [HLWS444](#), ‘Process for agreeing exclusions from the UK Internal Market Act in areas covered by a Common Framework’, 9 December 2021. See also Cabinet Office and Department for Levelling Up, Housing & Communities, ‘Guidance, Process for considering UK Internal Market Act exclusions in Common Framework areas’ (10 December 2021): <https://www.gov.uk/government/publications/process-for-considering-ukim-act-exclusions-in-common-framework-areas/process-for-considering-uk-internal-market-act-exclusions-in-common-framework-areas> [accessed 14 January 2022]. See also oral evidence taken before the Common Frameworks Scrutiny Committee on 7 December 2021, [Q 233](#) (Angus Robertson MSP)

Review of intergovernmental relations

172. On 14 March 2018, in anticipation of the UK’s departure from the EU, the JMC agreed to review intergovernmental structures, including the MoU.²³¹ On 3 July 2019, draft principles as part of the ongoing review were developed and agreed by all four administrations, including agreement that “devolution is an established part of the UK’s current constitutional arrangements” and “Maintaining positive and constructive relations, based on mutual respect for the responsibilities of governments across the UK and their shared role in the governance of the UK” was a key principle for ensuring effective joint working.²³² The UK Government published the outcome of the review on 13 January 2022.²³³ In a written statement Michael Gove said the review:

“provides an up-to-date and fit-for-purpose system, introducing new structures for more regular, formal intergovernmental engagement and new processes to increase impartiality and to avoid, resolve and, where necessary, escalate disputes. It is a commitment to a cooperative spirit and to constructive collaboration with the devolved administrations, through more transparent and accountable arrangements, and will be to the benefit of citizens in every part of the UK.”²³⁴

173. The Dunlop review said it was necessary to “provide a more predictable and robust process for managing intergovernmental relations”. Table 1 compares the Dunlop review’s recommendations for changes to intergovernmental structures agreed as part of the review of intergovernmental arrangements.

Table 1: Comparison of Dunlop review recommendations and the outcome of the review of intergovernmental relations

Dunlop review recommendations	Review of intergovernmental relations
Replacing the JMC with a UK Intergovernmental Council (UKIC) including several sub-committees on areas such as the internal market, common frameworks and climate change.	The JMC will be replaced with a ‘Prime Minister and Heads of Devolved Governments Council’ (the Council). Beneath the Council engagement will be conducted through subject-specific departmental Interministerial Groups (IMGs) ²³⁵ and cross-cutting Interministerial Standing Committees.
The new UKIC should look to take on a decision-making role via co-decision by consensus.	Intergovernmental decisions will continue to be based on agreement by consensus. The default position will remain that a joint approach will not be taken in the absence of such consensus.

231 See Cabinet Office, *Report and Communiqué of the Joint Ministerial Committee 2018*: <https://www.gov.uk/government/publications/joint-ministerial-committee-communicue-14-march-2018> [accessed 14 January 2022]. An earlier attempt by the JMC to reach agreement on changes to the intergovernmental arrangements failed in 2014. See also The Constitution Society, *Union at the Crossroads: Can the British state handle the challenges of devolution?*, pp 21–22

232 Cabinet Office, ‘Draft principles for intergovernmental relations’ (3 July 2019): <https://www.gov.uk/government/publications/draft-principles-for-intergovernmental-relations> [accessed 14 January 2022]

233 Cabinet Office and Department for Levelling Up, Housing and Communities, *The Review of Intergovernmental Relations*

234 Written Statement [HCWS536](#) see also Cabinet Office and Department for Levelling Up, Housing and Communities, *The Review of Intergovernmental Relations*

235 A number of IMGs have already been established across Whitehall.

Dunlop review recommendations	Review of intergovernmental relations
The Prime Minister should host a summit at least twice a year based around a meeting of the UKIC.	The Prime Minister will host an annual meeting of the Council. Meetings will be chaired by the Prime Minister. In addition to its annual meeting, the Council may meet more frequently.
The UKIC should be supported by an independent secretariat.	The Council will be supported by a standing IGR Secretariat, consisting of officials from all governments. The Secretariat will be accountable to the Council rather than to individual sponsoring governments.
The UKIC should have a clear dispute handling process.	There is a three-stage escalation process, with the principle that disputes should be resolved at the lowest level possible. If governments reach a stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement in their respective legislatures setting out the circumstances for the failure to reach a solution. The involvement of the Secretariat in this process ensures greater impartiality, as does recourse to independent third-party advice when required.
UK Government ministers should make a statement to Parliament following each UKIC meeting.	The Government has committed to making regular statements to Parliament on intergovernmental relations. ²³⁶

Source: Cabinet Office, *Review of UK Government Union Capability* (November 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972987/Lord_Dunlop_s_review_into_UK_Government_Union_Capability.pdf and Cabinet Office and Department for Levelling Up, Housing and Communities, 'Progress update on the review of intergovernmental relations' (24 March 2021): <https://www.gov.uk/government/publications/progress-update-on-the-review-of-intergovernmental-relations> [accessed 14 January 2022]

174. The proposed changes to intergovernmental structures, as set out in a progress review published alongside the Dunlop review on 24 March 2021,²³⁷ were welcomed by most witnesses, although Professor Martin remarked that the proposals appeared to be less robust than those made by the Dunlop review.²³⁸ Angus Robertson told us the progress update offered some improvements, including on dispute resolution, quadrilateral Treasury discussions and establishing an independent secretariat, but that agreement on how discussions on international issues would be handled had progressed more slowly. He also remarked that the Prime Minister appeared to be reluctant to chair the intergovernmental council that it was proposed would replace the JMC.²³⁹ Philip Rycroft thought the Prime Minister should

236 Written Statement [HLWS558](#), 'Update on transparency of intergovernmental relations', 10 November 2020. Neither the Dunlop review or written statement make a definitive recommendation whether the statements should be oral or written.

237 Cabinet Office, 'Progress update on the review of intergovernmental relations' (24 March 2021): <https://www.gov.uk/government/publications/progress-update-on-the-review-of-intergovernmental-relations>

238 [Q 4](#) (Professor Ciaran Martin)

239 [Q 70](#) (Angus Robertson MSP)

always chair the new Council to demonstrate his commitment to the new arrangements.²⁴⁰

175. Mark Drakeford said real progress had been made with the review, and agreement had been reached on several issues that would significantly improve the conduct of intergovernmental relations. He told us:

“The more ground we can gain in the [intergovernmental relations], the easier I think it will be to make the case to people everywhere in the [UK] that this is a union that they wish to continue membership of, because there is a set of agreements and arrangements that allow intergovernmental discussions to be carried out on the basis of parity of participation, respect for one another and independence of dispute avoidance and dispute resolution.”²⁴¹

176. Michael Gove told us that “to make sure devolution succeeds and flourishes and prospers, you need to renovate and rehabilitate institutions”. He hoped the review would put intergovernmental relations on “an even more stable and sustainable footing.” While he noted that the most difficult discussions had concerned the devolved administrations’ role in reserved areas, such as international relations, he was confident that “we can reach a way of operating that will allow all the legitimate concerns of devolved administrations to be heard, and we can benefit from their perspective, while at the same time maintaining the appropriate distinction on what is reserved and what is devolved.” He said the UK Government was “always open to arguments from the devolved administrations about how we can improve our constitutional settlement overall.”²⁴²

177. **We welcome the belated publication of Dunlop review’s recommendations. We also welcome the outcome of the intergovernmental relations review, which appears to have addressed many of the defects in the previous structure. There will inevitably be disagreements, but stronger structures and relationships should be able to withstand and overcome these.**

178. *We believe the Prime Minister has a critical role to play in making the new intergovernmental structures a success and maintaining strong relationships between the four administrations. Given its importance to the working of the Union, we recommend the Prime Minister and Heads of Devolved Governments Council should meet at least twice each year.*

Culture of mutual respect, partnership and co-operation

Mutual respect

179. While acknowledging the importance of structures, many witnesses stressed that mutual respect and trust between the administrations, as well as partnership and co-operation on areas of shared interest for the benefit of

240 [Q 4](#) (Philip Rycroft)

241 [Q 83](#) (Mark Drakeford MS)

242 [QQ 100–02](#) (Michael Gove MP)

the public, were more important for successful intergovernmental relations.²⁴³ The need for such an approach has also been acknowledged by devolution commissions across the UK.²⁴⁴

180. Witnesses referred to the risk of the structural changes agreed as part of the review becoming meaningless if there was a determination to disrupt things for political reasons.²⁴⁵ In the context of Northern Ireland, Colum Eastwood said: “We have learned in the 23 years since the Good Friday Agreement that you can have all the structures and mechanisms in place, but if people do not want to work with those mechanisms and structures, they are irrelevant.”²⁴⁶ In the Welsh context, Professor Wyn Jones was sceptical that structural changes would be able to overcome the fundamentally different concepts of the state between the UK and Welsh governments.²⁴⁷ Similarly, in the Scottish context, Professor Gallagher said: “If you have two sides who are obsessed with the concept of sovereignty, sharing power is not something they are particularly keen on.”²⁴⁸ However, he was also clear that: “The obligation of the United Kingdom Government is to be the grown-up in the room. This is the Government of the Union ... the Prime Minister of the United Kingdom is the Prime Minister of the Union, not just of Unionists.”²⁴⁹

181. Michael Gove said that while:

“on a day-to-day and week-to-week basis ministers have very good relationship with their counterparts in the devolved administrations, it is necessarily the case that ministers in the Scottish Government have a different constitutional vision, so there is an incentive for them, when a political platform is provided, to try to amplify what they perceive to be weaknesses in the constitutional settlement and to downplay the day-to-day effectiveness of our arrangements”.²⁵⁰

182. **We believe that strengthening the intergovernmental structures will achieve only so much. The success of the new arrangements will depend on how the Government and devolved administrations operate them and whether they are committed to using the new structures to cooperate on achieving shared objectives, rather than simply managing—or taking opportunities to accentuate—their differences.**

243 [Q 3](#) (Philip Rycroft), [Q 8](#) (Professor Ciaran Martin), [Q 131](#) (Sir Jeffrey Donaldson MP), [Q 187](#) (Colum Eastwood MP), [Q 172](#) (Professor Laura McAllister), [Q 210](#) (Professor James Mitchell), [Q 225](#) (Professor Jim Gallagher); written evidence from Dr Paul Anderson ([FGU0011](#)), New Local ([FGU0017](#)), Baroness Bryan of Partick and Seán Patrick Griffin ([FGU0036](#)), Dr Huw Pritchard and Mr Keith Bush QC ([FGU0041](#)) and the Law Society of Scotland ([FGU0044](#))

244 See Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* (Final Report, June 2009), paras 42 and 45: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/15_06_09_calman.pdf, see also Commission on Devolution in Wales, ‘Empowerment and Responsibility: Legislative Powers to Strengthen Wales’ (March 2014), para 5.8.2: <https://webarchive.nationalarchives.gov.uk/ukgwa/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/> and New Decade, New Approach, para 3.2. See also Common Frameworks Scrutiny Committee, *Common frameworks: building a cooperative Union* (1st Report, Session 2019–21, HL Paper 259), para 112

245 [QQ 209, 211](#) (Professor James Mitchell)

246 [Q 187](#) (Colum Eastwood MP)

247 [Q 172](#) (Professor Richard Wyn Jones)

248 [Q 209](#) (Professor Jim Gallagher). See also [Q 4](#) (Professor Ciaran Martin)

249 [Q 217](#) (Professor Jim Gallagher)

250 [Q 100](#) (Michael Gove MP)

Co-operation and partnership

183. In addition to making joint decisions and resolving disputes, intergovernmental relations can be used to work towards common goals. Witnesses said there needed to be a stronger culture of co-operation and partnership between the UK Government and the devolved administrations. This should facilitate joint working on shared priorities, such as addressing the challenges of COVID-19 and climate change, and on shared competences, such as taxation, social security and the internal market, the latter having assumed greater importance following the UK's departure from the EU.²⁵¹
184. Professor Martin said his experience of co-operation on national security and cyber security incidents, including the terrorist attack on Glasgow airport in June 2007, showed these relationships working well, “based upon openness and trust rather than strict adherence to administrative boundaries”.²⁵²
185. Professor Kenny, Philip Rycroft and Jack Sheldon said: “Engagement between Whitehall and the devolved governments on major questions of shared interest had been largely perfunctory since devolution was introduced”.²⁵³ Professor Mitchell lamented the lack of a “governing mindset reflected in negotiation, give and take, compromise, constructive engagement, but [instead there is] a campaigning mindset that encourages adversarial theatrical politics”, which had resulted in important shared policy matters, like tackling drug deaths, being ignored because of a binary constitutional dispute between the UK and Scottish governments.²⁵⁴
186. In March 2021, the UK Government commissioned a Union connectivity review to assess transport connectivity between the nations of the United Kingdom. While the review acknowledges devolution has been good for transport within each nation, it considers this has resulted in a neglect of connectivity between the nations. Among other proposals, the review recommends upgrading the West Coast Main Line.²⁵⁵ The review encourages the UK Government and devolved administrations to “collaborate constructively to address the issues identified by the Review to support the movement of goods and people between the nations of the UK which will improve economic growth, jobs, housing and social cohesion for all”. While the Welsh Government and Northern Ireland Executive engaged with this review, the Scottish Government refused to do so on the basis that it concerned matters which were devolved.²⁵⁶

251 Q 6 (Philip Rycroft), QQ 110–11 (Professor Graeme Roy), QQ 216–217, 224 (Professor James Mitchell), written evidence from Dr Paul Anderson (FGU0011) and Professor John Denham (FGU0027). We noted that the increase in shared competences would “make inter-governmental relations both more complex and more important” in our report *Proposals for the devolution of further powers to Scotland*, para 10

252 Q 3 (Professor Ciaran Martin)

253 Written evidence from Professor Michael Kenny, Philip Rycroft and Jack Sheldon (FGU0029)

254 QQ 208, 216 (Professor James Mitchell)

255 The review ruled out the option of building a bridge between Scotland and Northern Ireland as too costly and impractical.

256 Union connectivity review: final report. See also ‘Scottish Government accused of ‘irresponsible nationalism’ on transport review’, *Evening Standard* (5 October 2021): <https://www.standard.co.uk/news/uk/scottish-government-peter-hendy-government-snp-boris-johnson-b958932.html>, and Office for the Secretary of State for Scotland, ‘Scottish Government invited to work with UK Government to deliver ambitious transport improvements’ (26 November 2021): <https://www.gov.uk/government/news/scottish-government-invited-to-work-with-uk-government-to-deliver-ambitious-transport-improvements> [accessed 17 January 2022].

187. Professor Gallagher said opinion polling conducted by the Our Scottish Future think tank had “demonstrated that the overwhelming majority of the Scottish population want the Governments to work together. Whether they themselves are nationalists or unionists, they expect that.”²⁵⁷ Michael Gove agreed:

“People want the devolution settlement to be respected. They want an acknowledgement and a recognition that their respective parliaments or assemblies are adding value and that there should be co-operation and collaboration. It is in that spirit that ... [we] have been taking forward work on the intergovernmental review and in other areas, because we want to show that in practical terms you can add value when all Governments work together.”²⁵⁸

188. Several witnesses said the point of devolution was to allow policy diversity, which provided an opportunity for the different administrations to share learning and best practice.²⁵⁹ In our report *Inter-governmental relations in the United Kingdom* we recommended that “the JMC structure be used to facilitate joint policy-making and co-ordination, incorporating mechanisms by which ‘policy initiatives can come from the devolved administrations, as well as from the UK Government’”.²⁶⁰ Michael Gove said he would welcome more collaboration at every level, including sharing information and best practice.²⁶¹
189. **Better co-operation and partnership between the UK Government and devolved administrations is in the public interest, and the public supports greater joint working. There are a range of challenges that, reserved or devolved, will affect all parts of the United Kingdom equally, including health and social care, as well as shared competences like social security and cross-border transport links. The UK Government and devolved administrations are already committed to co-operation under the Memorandum of Understanding but must do more to make this a reality.**
190. **Devolution provides a good opportunity for policy experimentation and shared learning through intergovernmental structures. Improved intergovernmental relations should also facilitate a more open approach to sharing good practice and any lessons learned.**

Data

191. If there is to be stronger co-operation between the four administrations, it is important for them to possess comparable data. Several witnesses emphasised the importance of developing more transparent and consistent data from across the nations and regions of the UK to inform devolution policy and

257 [Q 211](#) (Professor Jim Gallagher). See Our Scottish Future, ‘Poll Shows UK-Wide Shared Priorities and Values’, (16 September 2021): <https://ourscottishfuture.org/poll-shows-uk-wide-shared-priorities-and-values/> [accessed 14 January 2022]. The Dunlop review also said the “public expect UK and devolved institutions to work together in the interests of all”. See Cabinet Office, *Review of UK Government Union Capability*, p 11

258 [Q 101](#) (Michael Gove MP)

259 [Q 4](#) (Professor Ciaran Martin), [Q 147](#) (Professor Iain McLean), see also The Constitution Society, ‘Union at the Crossroads: Can the British state handle the challenges of devolution?’, p 40: <https://consoc.org.uk/publications/union-at-the-crossroads-can-the-british-state-handle-the-challenges-of-devolution-by-michael-kenny-philip-rycroft-and-jack-sheldon/> [accessed 17 January 2022].

260 Constitution Committee, *Inter-governmental relations in the United Kingdom*, paras 284–291

261 [Q 102](#) (Michael Gove MP)

decision making.²⁶² While some good data already existed, particularly in some of the devolved administrations, Professor McCann, Chair in Urban and Regional Economics at Sheffield University Management School, and Professor Roy said further work was required to assess and link up the different data sets.²⁶³

192. Professor McCann told us that while the UK had a lot of data very little of it was linked or joined up, which was a significant weakness compared to many other countries, including at the sub-national level. He said work was ongoing to break down the “firewalls” between evidence in the UK, including efforts to build better data sets in the English city regions. He emphasised that making progress in this area would be particularly valuable for decision-makers in Whitehall and in the devolved authorities.²⁶⁴
193. In November 2021, a Concordat on Statistics between the UK Government and the devolved administrations was agreed, which obliges the administrations to work together to achieve a more coherent statistical picture across the UK, by collecting and analysing data that are easily comparable on a UK-wide basis and to facilitate shared learning and more informed decision-making.²⁶⁵ However, the Concordat does not cover data on the English regions.
194. *Facilitating better and more joined-up data sets from the nations and regions of the United Kingdom will facilitate shared learning and properly informed and more effective decision making, building on the strength of existing data in Scotland and Wales. To this end we welcome the agreement in the Concordat on Statistics between the UK Government and devolved administrations. We recommend, however, that the Government prioritise the development of more robust data for the English regions. Such data is central to achieving the Government’s Levelling Up agenda.*

Involvement of the devolved administrations in international trade agreements

195. The agreement of future trade deals present opportunities for investment and growth across the Union. Angus Robertson emphasised the importance of the Welsh and Scottish governments being involved in the negotiation and implementation of international trade agreements. While reserved, their implementation was likely to have an impact on devolved competences.²⁶⁶ Other witnesses agreed it was important for the devolved administrations to be involved in this area.²⁶⁷ In our report *Parliamentary Scrutiny of Treaties* we said effective engagement with the devolved institutions was required not just on their competences but on the important role they would play in implementing any new international obligations. We recommended that they should, accordingly, be involved in treaty negotiations.²⁶⁸
196. **The negotiation, agreement and implementation of future international trade agreements, including the interplay between reserved and**

262 [Q 117](#) (Professor Graeme Roy), [Q 148](#) (Professor Iain McLean) and written evidence from the Local Government Information Unit ([FGU0054](#))

263 [QQ 113, 124](#) (Professor Philip McCann), [Q 123](#) (Professor Graeme Roy)

264 [Q 112](#) (Professor Philip McCann)

265 See also Written Statement [HLWS361](#) (4 November 2021)

266 [QQ 70, 73](#) (Angus Robertson MSP). See also Welsh Government, *Reforming our Union: Shared Governance in the UK*, p 18

267 [Q 4](#) (Professor Ciaran Martin), [QQ 4–5, 9](#) (Philip Rycroft)

268 Constitution Committee, *Parliamentary Scrutiny of Treaties* (20th Report, Session 2017–19, HL Paper 345), paras 140–41, 149–51 and 156

devolved competences, may pose challenges for intergovernmental relations. While trade is a reserved matter there is value in consulting the devolved administrations in this area, particularly as they will be required to help implement future agreements. Trade agreements are a key part of the economic union, but also cover much wider issues of investment, fair competition, culture and exchange. The principles of respect and co-operation entail that the devolved administrations should be engaged throughout the process of treaty-making and implementation, including during treaty negotiations, where appropriate. The proposed inter-ministerial group on Global Britain as part of the new intergovernmental structures potentially offers a route to achieving this.

A statutory basis for intergovernmental relations?

197. Some witnesses said consideration should be given to putting intergovernmental arrangements in statutory form.²⁶⁹ Mark Drakeford supported doing so to build confidence, strengthen relationships and to make it harder for one party to cast them aside, but he preferred any provisions to cover the principles rather than the detail.²⁷⁰ Professor Gallagher suggested including, in any statute, a “constitutional provision obliging a duty of sincere co-operation, which could in principle be subject to judicial review and therefore enforcement”.²⁷¹
198. We have previously suggested that the statutory approach should be considered by the Government.²⁷² However, on reflection, the downsides of such an approach are worth considering. Depending on how any statutory provisions were drafted, if they are too high-level the courts may decline to make these justiciable, as per the statutory form of the Sewel convention; if they are too detailed there is a risk of political disputes becoming legal ones. It may therefore be better to resolve political differences in the enhanced dispute avoidance and resolution process agreed by the UK Government and devolved administrations as part of the joint review of intergovernmental relations.
199. **Attitudes and behaviours need to change to make the new intergovernmental arrangements a success. If this does not happen, there may be a stronger argument for placing intergovernmental relations on a statutory footing. However, we are alive to the potential downsides of detailed statutory provisions resulting in political disagreements being settled in court rather than through political dialogue.**

Transparency and accountability

200. While we recognised the need to strike the right balance between openness and confidentiality in our report on *Inter-governmental relations in the United*

269 [QQ 4, 8](#) (Philip Rycroft), [Q 127](#) (Sir Jeffrey Donaldson MP), written evidence from Professor John Denham ([FGU0027](#)) and Dr Huw Pritchard and Mr Keith Bush QC ([FGU0041](#))

270 [Q 84](#) (Mark Drakeford MS)

271 [QQ 211–12](#) (Professor Jim Gallagher). See also [Q 211](#) (Professor James Mitchell)

272 Constitution Committee, *Inter-governmental relations in the United Kingdom*, p 86. We repeated this recommendation in our report *The Union and devolution*, paras 284–291. See also Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (Eighth Report, Session 2017–19, HC 1485), para 132

Kingdom,²⁷³ we criticised the then low level of transparency and accountability regarding intergovernmental engagement.²⁷⁴

201. In December 2016, the Scottish Parliament concluded an agreement with the Scottish Government on the information the Scottish Parliament should receive to support its scrutiny of intergovernmental relations. The agreement is based on the principles of transparency, accountability and respect for the confidentiality of discussions between governments. The agreement requires the Scottish Government to provide advanced written notice, and written summaries, of all formal intergovernmental meetings. They will also make relevant materials available online, as well as producing an annual report; with ministers and officials providing evidence when invited to do so.²⁷⁵ The Senedd and Welsh Government have entered into a similar agreement.²⁷⁶ No such agreement exists between the Northern Ireland Assembly and the Northern Ireland Executive.
202. In November 2020, the UK Government announced measures to support parliamentary scrutiny of its intergovernmental engagement with the devolved administrations. These included the publication of the conclusions of formal intergovernmental meetings and quarterly reports on intergovernmental activity, among other materials. The Government also undertook to make regular statements to Parliament, appear before select committees when “appropriate” and to issue an annual report on intergovernmental activity.²⁷⁷
203. **Effective scrutiny of intergovernmental relations needs to be underpinned by greater transparency including the provision of information about the Government’s engagement with the devolved administrations.**
204. *While we welcome the Government’s commitment to publish quarterly and annual reports on intergovernmental engagement, we recommend that these documents should provide greater detail about (a) the work commissioned, (b) actions agreed or decisions taken, and (c) outcomes. Without such information, it will be difficult for Parliament adequately to assess the effectiveness of the Government’s engagement.*

273 Constitution Committee, *Inter-governmental relations in the United Kingdom*, chapter 5 and paras 173–203. We called for more detail to be published about JMC meetings, including announcing the dates, venues and headline agenda items of meetings further in advance, with additional detail published after the meetings about what was discussed, including the publication and laying of this information in the Libraries of both Houses. We supported proposals for an independent annual audit of intergovernmental relations, including an annual statement to Parliament by the Prime Minister about the conduct of intergovernmental relations over the previous 12 months.

274 We also suggested this in 2002. See Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom*, para 37

275 Scottish Government, ‘Inter-Governmental Relations: Agreement between the Scottish Parliament and Scottish Government’ (8 December 2016): <https://www.gov.scot/publications/igr-agr-scotparl-scotgov/>. The correspondence and annual reports are available, see Scottish Parliament, ‘Intergovernmental Relations’: <https://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/102067.aspx> [accessed 17 January 2022]

276 Welsh Government, ‘Inter-institutional relations agreement between the National Assembly for Wales and the Welsh Government’ (31 January 2019): [Providing inter-governmental information to the National Assembly | GOV.WALES](https://gov.wales/inter-institutional-relations-agreement). The correspondence and annual reports are available, see Welsh Parliament, ‘Inter-Institutional Relations Agreement’ (10 June 2020): <https://business.senedd.wales/mgIssueHistoryHome.aspx?IIId=25602>

277 Written Statement [HLWS558](#), 10 November 2020. The Law Society of Scotland said the UK Government should make an oral statement to Parliament following each intergovernmental meeting. See written evidence from the Law Society of Scotland ([FGU0044](#))

205. *Similarly, while the more regular meetings between the Prime Minister and other UK ministers with the First Ministers and Deputy First Minister of the devolved administrations is welcome, we recommend that the communiqués issued following those meetings be more detailed and informative than at present.*
206. *We recommend the Government enters into a formal agreement with the House of Lords on the information it will provide about its intergovernmental engagements, to enhance the current scrutiny arrangements. This agreement should formalise the information already provided by the Government and, in the same manner as the agreements between the Scottish and Welsh administrations and legislatures, should include the advance notification of formal intergovernmental meetings to the House, as well as greater detail about those meetings as we have recommended. The agreement should also include a commitment to provide the proposed memorandum we recommended to strengthen the House's consideration of legislative consent issues.*
207. *The House of Lords takes a keen interest in the United Kingdom's devolution arrangements. We therefore recommend the Government should make time available in the House to hold a debate on its annual report on intergovernmental relations.*

CHAPTER 6: INTERPARLIAMENTARY RELATIONS

208. As intergovernmental relations assume greater importance, so does the role of interparliamentary relations in scrutinising the new arrangements and holding the different executives to account. We have expressed support for greater interparliamentary engagement in our previous reports on intergovernmental relations.²⁷⁸

Background

209. Calls for greater interparliamentary co-operation within the UK have been made many times: by the Richard, Calman, McKay, Silk and Smith commissions, as well as by committees in both Houses of Parliament and in the devolved legislatures.²⁷⁹ However, until Brexit there had been little progress to make UK interparliamentary co-operation a reality.

210. The informal Inter-Parliamentary Forum on Brexit, whose creation was prompted by a report by the then House of Lords EU Committee,²⁸⁰ met eight times between October 2017 and September 2019 and comprised the chairs and convenors of committees scrutinising Brexit-related issues in both Houses, the Senedd and the Scottish Parliament. As the Northern Ireland Assembly was not operating between 2017 and 2020 Assembly officials attended as observers during this period.²⁸¹

211. The Forum provided a mechanism for dialogue and co-operation between parliamentarians on issues of common interest, and for considering scrutiny challenges arising from the new constitutional arrangements which were required post-Brexit. Where appropriate the Forum set out a common position of its views, as well as holding informal meetings with UK and devolved ministers and third parties.²⁸²

212. On 17 January 2019 the Forum noted “that at some point, consideration of more formal interparliamentary structures will be needed”.²⁸³ On 5 September 2019 the Forum wrote to Michael Gove (in his previous capacity as the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office) to recommend that the UK Parliament and devolved legislatures

278 See Constitution Committee, *Devolution: Inter-Institutional Relations in the United Kingdom*, Chapter 4. See also Constitution Committee, *Inter-governmental relations in the United Kingdom*, Chapter 5

279 For a useful overview, see Institute for Welsh Affairs, ‘Missing Links: Past, present and future inter-parliamentary relations in the devolved UK’ (September 2020): <https://www.iwa.wales/wp-content/media/Missing-Links-Past-present-and-future-inter-parliamentary-relations-in-the-devolved-UK.pdf> [accessed 17 January 2022].

280 European Union Committee, *Brexit: devolution* (4th Report, Session 2017–19, HL Paper 9), paras 297 and 298. See also European Union Committee, *Beyond Brexit: How to Win Friends and Influence People* (Session 2017–19, HL Paper 322), paras 173 and 174

281 The Forum met in London, Cardiff and Edinburgh with a changing membership and no dedicated resources or secretariat. The Senedd website provides a helpful roundup of the documents from each meeting of the Forum, see Welsh Parliament, ‘Interparliamentary forum on Brexit’ (9 July 2020): <https://business.senedd.wales/mgIssueHistoryHome.aspx?IID=22530> [accessed 17 January 2022].

282 Several UK and Scottish government ministers met the Interparliamentary Forum for Brexit, as did third parties such as the Institute for Government.

283 Public Administration and Constitutional Affairs Committee, ‘Interparliamentary Forum on Brexit’ (18 January 2019): <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/101800/interparliamentary-forum-on-brexit/>

should have a role in scrutinising intergovernmental relations as part of the review of these arrangements.²⁸⁴

Renewed interparliamentary engagement

213. The Dunlop review thought improvements in intergovernmental relations “should also have the positive effect of encouraging more dialogue and relationship building between the UK Parliament and the devolved legislatures”. The review stated: “Greater transparency and more robust scrutiny by the UK Parliament and the devolved legislatures” could be an appropriate way of “encouraging the right types of collaborative behaviours” between the different administrations.²⁸⁵
214. Our witnesses called for enhanced interparliamentary engagement to scrutinise intergovernmental arrangements, with many citing the Interparliamentary Forum on Brexit as a good model for informal engagement.²⁸⁶
215. Professor McAllister told us:

“The weaknesses of [interparliamentary relations] have been exposed both with Brexit and with COVID-19, most significantly with timelines for scrutiny. Decisions are made at governmental level and then the parliaments find there has been no opportunity for them to effectively scrutinise what has happened. By reversing that and ensuring that you get [interparliamentary relations] right, you might generate an improved model of intergovernmental relations as well.”²⁸⁷

216. Paul Evans and Paul Silk, who advocated a formal body to replace the Inter-Parliamentary Forum on Brexit, said:

“Any steps that can be taken to foster co-operation between the UK’s legislative bodies is highly desirable and will contribute to better future governance of the Union. Better co-operation between parliamentarians in Belfast, Cardiff, Edinburgh and London should be attractive both to those who support the continuation of the Union and to those, like Sinn Féin and the SNP, who do not believe in the Union: mechanisms established now, while the Union continues, could form the basis of

284 European Union Committee, ‘Interparliamentary Forum on Brexit holds eighth meeting’ (10 September 2019): <https://committees.parliament.uk/committee/176/european-union-committee/news/92841/interparliamentary-forum-on-brexit-holds-eighth-meeting/>

285 Cabinet Office, *Review of UK Government Union Capability*, pp 32 and 34

286 Q 111 (Professor Graeme Roy), Q 217 (Professor James Mitchell); written evidence from Dr Paul Anderson (FGU0011), Professor Michael Kenny, Philip Rycroft and Jack Sheldon (FGU0029), Paul Evans and Paul Silk (FGU0034), the Law Society of Scotland (FGU0044), Royal Society of Edinburgh (FGU0047) and Jack Sheldon and Hedydd Phylip (FGU0048). See also The Constitution Society, ‘Union at the Crossroads: Can the British state handle the challenges of devolution?’, pp 40–41: <https://consoc.org.uk/publications/union-at-the-crossroads-can-the-british-state-handle-the-challenges-of-devolution-by-michael-kenny-philip-rycroft-and-jack-sheldon> [accessed 14 January 2022], Institute for Government, *The UK internal market Balancing frictionless trade and regulatory autonomy* (June 2021): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/uk-internal-market.pdf> [accessed 14 January 2022] and Constitution Committee, *Common frameworks: building a cooperative Union*, para 140. The Committee said: “the House of Lords and its committees could play a valuable role in providing a neutral forum for receiving the views of devolved legislatures and facilitating closer interparliamentary cooperation.”

287 QQ 172–73 (Professor Laura McAllister). See also Q 173 (Professor Richard Wyn Jones), who was more sceptical.

structures that would be needed if the constitutional position of its component nations were to change.”²⁸⁸

217. The Scottish Parliament and Senedd have expressed support for building stronger interparliamentary relationships, to address post-Brexit challenges including on the internal market and common frameworks. The Scottish Parliament’s Europe, External Affairs and Culture Committee saw this as “as a key means of adding value to scrutiny of the EU–UK relationship”.²⁸⁹ The Senedd’s Legislation, Justice and Constitution Committee was complimentary about the role of the Inter-Parliamentary Forum on Brexit and supported “the re-constitution of a similar body to maintain and strengthen the existing interparliamentary relationships.”²⁹⁰ The same sentiments were echoed in our informal meetings with those committees, and the equivalent committee in the Northern Ireland Assembly.
218. Paul Evans and Paul Silk called for reciprocal access to parliaments by members of other parliaments²⁹¹ and for UK Government ministers to accept suitable invitations to give evidence to committees of the devolved legislatures.²⁹² Such an undertaking has already been provided by the Scottish Government regarding appearances before UK Parliament committees.²⁹³
219. **Enhanced interparliamentary relations have an important role to play in allowing all legislatures in the United Kingdom to scrutinise the new intergovernmental arrangements, increasing transparency and holding their respective executives to account, as well as helping to foster greater mutual respect between them. There is a strong appetite among the devolved legislatures for greater interparliamentary engagement with the UK Parliament. We believe that the House of Lords can play an important role in facilitating this.**
220. **Greater interparliamentary engagement can also assist the scrutiny work of committees, by providing informal opportunities for collaborative working and coordinated scrutiny in areas of common interest, including shared policy areas like social security, taxation, common frameworks and the legislative consent process.**

288 Written evidence from Paul Evans and Paul Silk (FGU0034). See also Hansard Society, ‘An inter-parliamentary body for the UK Union?’ (3 February 2021): <https://www.hansardsociety.org.uk/blog/an-inter-parliamentary-body-for-the-uk-union> [accessed 17 January 2022]. They called for the establishment of a formal ‘Interparliamentary Body for the Union’ of 20–50 parliamentarians, drawn from the UK Parliament and devolved legislatures, with responsibility for scrutiny and oversight of intergovernmental arrangements. They envisaged that such a body would have similar powers as select committees to receive evidence and issue reports, as well as holding intergovernmental ministers to account. See also written evidence from Jack Sheldon and Hedydd Phylip (FGU0048)

289 Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, ‘Session 5 Legacy Paper’, 23 June 2021: https://www.parliament.scot/-/media/files/committees/meeting-papers/constitution-europe-external-affairs-and-culture-committee/cceac_paper_3-legacy_paper.pdf

290 Welsh Parliament, *Fifth Senedd Legacy Report* (March 2021): <https://senedd.wales/media/eccmngfv/cr-ld14319-e.pdf> [accessed 17 January 2022]

291 Written evidence from Paul Evans and Paul Silk (FGU0034). This is already the case in the UK Parliament, Senedd and Scottish Parliament.

292 Written evidence from Paul Evans and Paul Silk (FGU0034). See also Cabinet Office, ‘Devolution guidance notes: Attendance of UK Ministers and Officials at Committees of the Devolved Legislatures’: <https://www.gov.uk/government/publications/devolution-guidance-notes> [accessed 17 January 2022].

293 See Scottish Government, ‘Scottish Ministerial Code (2018 edition)’, para 3.11: <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/documents/>. This option is recognised, but in a more neutral manner, see Welsh Government, ‘Welsh Ministerial code (5 August 2021)’, para 7.16: <https://gov.wales/ministerial-code-html> [accessed 17 January 2022].

221. *We note that UK Government ministers have been willing to appear before committees of the devolved legislatures, which is welcome, but we recommend this should become formalised in the UK Ministerial Code by including in it an expectation that this will occur, where appropriate.*

New interparliamentary forum

222. In response to an invitation by the Lord Speaker, the committee chairs with responsibility for European affairs and the constitution from both Houses and the three devolved legislatures are expected to meet in the House of Lords in the spring to consider establishing a successor body to the Inter-Parliamentary Forum on Brexit.
223. **We welcome the plans to establish a new interparliamentary forum and look forward to participating in it.**
224. **To be a success the interparliamentary forum should be based on an equal partnership among the legislatures and relatively informal arrangements—providing a framework for more detailed interparliamentary collaboration where there is an appetite to do so.**
225. *We recommend that the UK Government and devolved administrations should undertake to engage with the new interparliamentary forum.*

CHAPTER 7: THE GOVERNANCE OF ENGLAND

226. Over the last decade there has been an increasing focus on the role and powers of local government in England. We have previously noted that: “The English Question encompasses both concerns about the representation of England within the Union, and about the devolution or decentralisation of power within England”. In 2016, just after EVEL had been introduced and when metro mayors were a relatively new concept, we concluded that it was “too soon to know whether EVEL and the ‘devolution deals’, separately or in combination, will provide an answer to the English Question. What is clear is that the English Question remains one of the central unresolved issues facing decision-makers grappling with the UK’s territorial constitution.”²⁹⁴ Witnesses told us that addressing the English Question was key to strengthening the Union, and that any reforms to how England is governed will affect the governance of the entire UK.²⁹⁵
227. We have considered the introduction of the EVEL procedure, and its repeal, in Chapter 4. We have previously concluded that the creation of an English parliament would introduce a destabilising asymmetry of power to the Union and was not a viable option for the future governance of England.²⁹⁶ Following the failed attempt to establish a regional assembly for the north east of England in 2004, there is clearly limited political support for pursuing regional devolution within England. However, devolution to combined or county authorities appears to command a degree of cross-party support within England.

Representation of England in the Union

228. Some witnesses noted the ‘dual-hatted’ roles of the UK Government and Parliament in governing and legislating for both the UK and England, including the confusion this sometimes created during the response to COVID-19.²⁹⁷ However, Professor Kenny said this had helped to raise awareness of the realities of devolution and the Union in the UK.²⁹⁸
229. Some supported a clearer distinction between these two roles.²⁹⁹ Professor Denham and Professor Gallagher both suggested a Cabinet Committee for England could be created.³⁰⁰ Philip Rycroft proposed creating a Minister for England and renaming some Government departments as explicitly English.³⁰¹ Professor Denham thought a ‘First Minister for England’ could be established in due course, which may in turn lead to increasing demands

294 Constitution Committee, *The Union and devolution*, paras 428 and 430

295 [QQ 1, 7](#) (Philip Rycroft), [Q 37](#) (Professor John Denham), [Q 94](#) (Mark Drakeford MS) and [Q 207](#) (Professor Jim Gallagher)

296 Constitution Committee, *The Union and devolution*, para 376. See also [Q 214](#) (Professor Jim Gallagher)

297 [Q 30](#) (Professor John Denham), [Q 74](#) (Angus Robertson MSP), [Q 207](#) (Professor Jim Gallagher) and written evidence from Professor John Denham ([FGU0027](#))

298 [Q 30](#) (Professor Michael Kenny), see also [Q 16](#) (Alex Massie).

299 [Q 26](#) (Sam McBride), written evidence from Professor Jim Gallagher ([FGU0051](#)), Royal Society of Edinburgh ([FGU0047](#)), Professor Ailsa Henderson and Professor Richard Wyn Jones ([FGU0046](#)), United Kingdom Constitution Monitoring Group ([FGU0031](#)), Professor John Denham ([FGU0027](#)), Dr Paul Anderson ([FGU0011](#)) and the Electoral Reform Society ([FGU0022](#))

300 [Q 216](#) (Professor Jim Gallagher) and written evidence from Professor John Denham ([FGU0027](#))

301 [Q 7](#) (Philip Rycroft)

for an English parliament.³⁰² However, there was limited support for such an approach among other witnesses. Michael Gove told us he did not detect any discontent in England regarding the current arrangements, including its lack of a separate voice within the Union.³⁰³

230. **England’s place in the Union should not be overlooked, but there are no obvious governance changes to provide England with a distinctive voice that command political and public support. Establishing an English parliament would crystallise England’s relative strength—in population and economic terms—vis a vis the existing devolved legislatures. This would destabilise the Union. It would also do little to address the need for greater decentralisation within England, which we believe has the greatest potential to resolve concerns about the governance of England.**

Devolution within England

231. Unlike devolution to Scotland, Wales and Northern Ireland, devolution within England is based on the relationship between central and local government rather than a regional tier of government. Rather than executive and legislative devolution, it concerns the transfer of powers, budgets and responsibilities.
232. In 2000, following a referendum, the Greater London Authority (comprising a directly-elected mayor and a separately elected London Assembly) were established with limited powers of scrutiny, introducing an additional tier of government for the capital. In 2014 the first ‘devolution deal’ was concluded between the Government and Greater Manchester. This involved the devolution of some executive powers and funding to the local councils in that region (the ‘combined authorities’) on the condition that a directly-elected mayor was introduced. Since that date a further nine deals have been agreed, most of which cover the largest metropolitan areas in England.³⁰⁴ While these bodies may appear to be a reintroduction of the metropolitan county councils abolished during the Thatcher government, in practice they have a reduced remit and more limited revenue raising powers than their predecessor bodies.
233. The 2019 Conservative manifesto said: “Our ambition is for full devolution across England, building on the successful devolution of powers to city region mayors, police and crime Commissioners and others, so that every part of our country has the power to shape its own destiny.”³⁰⁵
234. Some witnesses remarked how centralised the UK and England were, compared with other countries.³⁰⁶ Professor Philip McCann told us that the UK has “probably the most centralised governance system of any OECD

302 **Q 36** (Professor John Denham); written evidence from Professor John Denham (**FGU0027**). See also Professor John Denham, The Constitution Society, ‘England and the Union: time to think again’ (5 August 2021): <https://consoc.org.uk/england-and-the-union-time-to-think-again/> [accessed 17 January 2022].

303 **QQ 105–06** (Michael Gove MP)

304 See House of Commons Library Research Briefing **07019**, 26 March 2020

305 Conservative and Unionist Party Manifesto 2019 *Get Brexit Done: Unleash Britain’s Potential*, p 29

306 **Q 13** (Professor Ciaran Martin), **Q 217** (Professor Jim Gallagher), **Q 226** (Councillor James Jamieson), written evidence from Professor John Denham (**FGU0027**), Professor Jim Gallagher (**FGU0051**) and Lord Shipley, Lord Tyler and Lord Wallace of Saltaire (**FGU0018**). The Local Government Information Unit described the UK as “remarkably centralised in comparison with similar economies around the world”. See written evidence from the Local Government Information Unit (**FGU0054**)

country” and described the local productivity variations in the UK as “absolutely extraordinary”.³⁰⁷

235. Witnesses advocated greater devolution from the UK Government to English devolved authorities.³⁰⁸ Some witnesses said the London model of governance should be extended across England, noting that London in effect has regional government, with greater devolved powers than anywhere else in England.³⁰⁹ Michael Gove was in favour of more power being exercised locally and supported the development of the metro mayors’ roles.³¹⁰ Professor Denham was sceptical that Whitehall would ever be willing to devolve sufficient power, and said the current approach was more about pushing local areas to comply with the Government’s policy agenda.³¹¹
236. Councillor James Jamieson, the Chair of the Local Government Association (LGA), told us the default question should be “why should this [policy area] not be devolved?” rather than “why should this be devolved?”.³¹² Councillor Nick Forbes, the chair of LGA’s Labour group, said there were three arguments in favour of further devolution: improved democratic representation; better service delivery; and better economic outcomes.³¹³ Drawing on international evidence, the Institute for Public Policy Research has concluded that further devolution in England, including the devolution of power to promote economic development, will lead to greater economic prosperity and inclusion being achieved in England’s regions.³¹⁴
237. Councillor Forbes told us that local government is best placed to provide better quality and value for money services. After public health budgets were devolved to all upper-tier local authorities in 2013, he said, most local authorities have achieved “savings of a magnitude of one-quarter of the overall budget by recommissioning, reprocurring, joining things up at the local level and ensuring that there is a focus on prevention as well as good value for money.”³¹⁵ Discussing the adult education budget, which has been devolved to a number of mayoral combined authorities, Councillor Forbes said his council had increased the number of learners despite having to top-slice a 10% share of the budget to cover overheads.³¹⁶

307 [Q 110](#) (Professor Philip McCann). See also Professor Philip McCann, The Productivity Institute, *The fiscal implication of levelling up and UK governance devolution*, (8 December 2021): <https://www.productivity.ac.uk/wp-content/uploads/2021/12/PIP008-Fiscal-Implications-FINAL-081221-1.pdf> [accessed 14 January 2022]

308 [Q 234](#) (Councillor Nick Forbes), written evidence from Empowering Yorkshire ([FGU0009](#)), Yorkshire Devolution Movement ([FGU0015](#)), New Local ([FGU0017](#)), Local Government Association ([FGU0021](#)), Electoral Reform Society ([FGU0022](#)), Core Cities UK ([FGU0028](#)), Unlock Democracy ([FGU0037](#)), Centre for Cities ([FGU0052](#)), London First ([FGU0049](#)) and Local Government Information Unit ([FGU0054](#))

309 Written evidence from Lord Shipley, Lord Tyler and Lord Wallace of Saltaire ([FGU0018](#)), the LIPSIT Project ([FGU0038](#)) and the Centre for Cities ([FGU0052](#))

310 [Q 106](#) (Michael Gove MP). See also [Q 35](#) (Simon Case)

311 [Q 41](#) (Professor John Denham); written evidence from Professor John Denham ([FGU0027](#))

312 [Q 235](#) (Councillor James Jamieson)

313 [Q 234](#) (Councillor Nick Forbes)

314 Institute for Public Policy Research, *The Devolution Parliament: Devolving power to England’s regions, towns and cities* (February 2020), pp 26–35: <https://www.ippr.org/files/2020-02/the-devolution-parliament-feb20.pdf>

315 [Q 226](#) (Councillor Nick Forbes)

316 [Q 227](#) (Councillor Nick Forbes)

238. Before it was disbanded in 2021 the Industrial Strategy Council³¹⁷ said international comparisons indicated that strong local leadership and efficient governance are central to driving economic growth and reducing regional inequality. The Council identified five interdependent pillars of devolution—Political, Administrative, Fiscal, People and Places—and said that progressing these “has clear relevance for further sub-national devolution in the UK.” The Council also identified a lack of longevity, scale and policy coordination over time as a barrier to current devolution structures in England having more than a limited positive impact on local economies.³¹⁸
239. While we focused on devolution within England, witnesses also commented on the lack of decentralisation in Scotland.³¹⁹ In 2014, the Smith Commission said:
- “There is a strong desire to see the principle of devolution extended further, with the transfer of powers from Holyrood to local communities ... The Scottish Government should work with the Parliament, civic Scotland and local authorities to set out ways in which local areas can benefit from the powers of the Scottish Parliament”³²⁰
240. **England is highly centralised, with greater regional economic inequalities, compared to most other Western European countries. The English regions—as do Scotland, Wales and Northern Ireland—feel remote from central decision making in the United Kingdom. We strongly support the development of devolution within England, noting that a highly centralised state can have a negative impact on democratic culture and economic prosperity. Greater devolution within England can help improve economic performance, address regional inequalities and improve service delivery.**
241. **We believe a greater degree of respect and partnership is required between the Government and sub-national government in England, as it is between the UK Government and the devolved administrations; per our recommendations in chapter 5.**
242. **Greater decentralisation will help to strengthen the governance of England more generally and achieve a better overall balance of powers between the centre and the other parts of the United Kingdom. This will benefit the overall health of the Union.**

317 The Industrial Strategy Council was an independent advisory group established in November 2018 to provide “impartial and expert evaluation of the government’s progress in delivering the aims of the Industrial Strategy”. The Council was disbanded by the Government in March 2021. The Council was chaired by former Bank of England Chief Economist Andy Haldane, who has since been appointed Head of the Levelling Up Task Force jointly established by the Prime Minister and Michael Gove.

318 Industrial Strategy Council, ‘Devolution and Governance Structures in the UK (May 2021)’, pp 4 and 18: <https://industrialstrategyCouncil.org/sites/default/files/attachments/Devolution%20and%20Governance%20Structures%20in%20the%20UK%20Lessons%20from%20evidence-Final%20Version270521.pdf> [accessed 17 January 2022]

319 [Q 52](#) (Andy Burnham), [Q 106](#) (Michael Gove MP), [Q 156](#) (Professor Iain McLean), [Q 210](#) (Professor Jim Gallagher), [Q 215](#) (Professor James Mitchell), written evidence from Baroness Kennedy and Mr Aarif Abraham ([FGU0035](#)), Unlock Democracy ([FGU0037](#)) and the Centre for Cities ([FGU0052](#)). See Industrial Strategy Council, *Devolution and Governance Structures in the UK*, p 28

320 Report of the Smith Commission for further devolution of powers to the Scottish Parliament, p 6. See also Chris Deerin, ‘Why the SNP must stop hoarding power in Edinburgh’, *The New Statesman* (September 2021): <https://www.newstatesman.com/politics/scotland/2021/09/why-the-snp-must-stop-hoarding-power-in-edinburgh> [accessed 17 January 2022]

243. **Like England, Scotland remains a highly centralised country, notwithstanding the substantial devolution of power to the Scottish Parliament. The benefits that may be achieved by greater decentralisation in England, could also apply in the Scottish context, as recommended by the Smith Commission.**

Levelling up

244. The Government has committed to publishing a Levelling Up white paper, now postponed to January 2022.³²¹ Michael Gove has suggested this will focus on four key areas: local leadership; living standards; public services; and “pride of place”.³²² The Prime Minister has said the White Paper will include the extension of metro mayoral powers to county councils.³²³ A number of pilot county deals are expected to be announced alongside the publication of the White Paper. There has also been media speculation about the content of the White Paper. Reports have suggested that the White Paper will include the creation of a unitary local authorities in England;³²⁴ the creation of ‘governors’ in the counties, with areas opting for a directly elected mayor or governor being granted the most powers³²⁵ and that Local Enterprise Partnerships³²⁶ will be abolished and their powers transferred to local authorities.³²⁷
245. Several witnesses, including Rt Hon Andy Burnham, mayor of Greater Manchester, said the extension of devolution across England will be vital if the Government is successfully to tackle regional inequality and achieve its levelling up ambitions.³²⁸ Lord O’Neill of Gatley, Vice-Chair of the Northern Powerhouse Partnership, said there were tentative signs that early adopters of devolution in England had already improved their economic performance.³²⁹

321 The Government was originally committed to publishing a ‘devolution and local recovery’ white paper by autumn 2020, but this was superseded by a commitment to publish a levelling up white paper by September 2021. This commitment then slipped to ‘by Christmas’, before slipping further to January 2021.

322 Politico, ‘Boris Johnson pins election hope on “levelling up” Britain – whatever that is’ (7 December 2021): <https://www.politico.eu/article/boris-johnson-uk-election-hopes-levelling-up/>

323 Prime Minister Boris Johnson, Speech on his vision to level up the United Kingdom (15 July 2021): <https://www.gov.uk/government/speeches/the-prime-ministers-levelling-up-speech-15-july-2021> [accessed 17 January 2022]

324 Anna Isaac, Ashley Cowburn, ‘Ministers plan sweeping changes to local government as part of levelling up agenda, leaked paper reveals’, *The Independent* (9 December 2011): <https://www.independent.co.uk/news/uk/politics/levelling-up-local-government-white-paper-b1972948.html> [accessed 17 January 2022]

325 ‘American-style governors could level up England’, *The Times* (4 December 2021): <https://www.thetimes.co.uk/article/american-style-governors-could-level-up-england-lpw9l2sbg> [accessed 17 January 2022]

326 Local Enterprise Partnerships are business-led non-statutory bodies that pursue local economic development in England by bringing together the private sector, local authorities and voluntary institutions.

327 ‘Ministers examine shake-up of regional development in England’, *Financial Times* (7 December 2021), available at: <https://www.ft.com/content/04498975-8f2d-4444-b0e7-b4ba6f04678a> [accessed 17 January 2022]

328 Q 44 (Professor Michael Kenny), Q 53 (Andy Burnham), Q 56 (Lord O’Neill of Gatley), Q 113 (Professor Philip McCann), Q 215 (Professor Jim Gallagher), Q 232 (Councillor Nick Forbes), written evidence from Lord Shipley, Lord Tyler and Lord Wallace of Saltaire (FGU0018), Local Government Association (FGU0021), Professor Jim Gallagher (FGU0051), LIPSIT Project (FGU0038), Volt UK (FGU0039) and the Centre for Cities (FGU0052)

329 Q 60 (Lord O’Neill of Gatley). As Commercial Secretary to the Treasury, Lord O’Neill of Gatley, helped to negotiate the first devolution deal with Greater Manchester.

246. The Institute for Government has said:

“The agreement and implementation of county deals will by necessity be a cross-departmental process. Depending on the precise proposals counties bring forth, the process is likely to involve not only DLUHC, but also the departments for transport, education, business, health and social care, and the environment. The success of this agenda will therefore depend on whether those leading the process have the political and administrative clout to drive action across Whitehall, which many in local government perceive to be instinctively sceptical about devolution.”³³⁰

247. Some witnesses emphasised a particular need for the Treasury to be more willing to grant autonomy to local areas, including allocating the required investment.³³¹

248. Councillor Forbes and Councillor Jamieson also argued for a “whole-government approach” to levelling-up rather than a departmental one. Councillor Jamieson suggested that an ‘English devolution’ task force should be established to facilitate discussion between central and local government in making progress with devolution within England, saying it was important to “put councils at the heart of delivering the Government’s ambitious programme to improve opportunities in all parts of the country”. A similar model had been used, successfully, to coordinate a response to Brexit.³³²

249. **Considering its importance, we regret the long delay in the publication of the Government’s Levelling Up white paper. We believe that the success of the Levelling Up agenda will require a long-term commitment, and cross-party support, to deliver effective and properly resourced devolution within England.**

250. *Effective joint working between Government departments, particularly the Treasury, and local government will be key to the effective delivery of the Levelling Up agenda, including the expansion of devolution across England. To this end, we believe the Local Government Association’s proposal to establish an English devolution task force to facilitate discussion between central and local government has considerable merit. We recommend that the Government explore further with local government how this might work in practice.*

330 Institute for Government Insight, ‘How to make a success of county devolution deals’ (9 December 2021), pp 5–6: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/county-devolution-deals.pdf> [accessed 17 January 2022]

331 [Q 51](#) (Andy Burnham), [Q 230](#) (Councillor Nick Forbes), [QQ 231, 236](#) (Councillor James Jamieson)

332 [Q 232](#) (Councillor Nick Forbes, Councillor James Jamieson). See also letter from Councillor James Jamieson, Local Government Association Chair, to Baroness Taylor of Bolton (6 January 2022): <https://committees.parliament.uk/publications/8366/documents/85222/default/>

Public support for devolution within England

251. Some witnesses referred to evidence of growing public support for greater devolution of powers within England as well as the increasing profile of the metro mayors, including during the response to COVID-19.³³³
252. Professor Kenny noted the historical disconnect felt by English regions to London, which may have more to do with regional inequalities than constitutional complaints.³³⁴ Some witnesses thought the decentralisation of power in England was necessary to rebuild trust in government and tackle the alienation felt in “forgotten parts of England”.³³⁵ Andy Burnham saw it as an opportunity to give all parts of England a stronger voice and to nurture a “bottom-up”, place-based form of politics.³³⁶ Professor McLean thought a network of mayors across England could help respond to the “English question”.³³⁷ The Heseltine Institute for Public Policy, Practice and Place agreed.³³⁸
253. **We note evidence of increasing public support for devolution within England, which is important ahead of its expansion. If effective devolution is achieved within England, to empower local government, we believe this will help to respond to concerns about the governance of England.**

A framework for further devolution within England?

254. The beginning of English devolution has been based on a series of ad hoc devolution deals which, in the view of the LIPSIT Project, resulted in “huge complexities and inequalities in the various powers of different places.”³³⁹ The Heseltine Institute said that the deals-based approach to devolution is “hugely time consuming for local government officers and civil servants.”³⁴⁰
255. In our report *The Union and devolution*, while cautiously welcoming the devolution deals and noting they may address some concerns about centralisation of power in England, we noted that the Government was approaching English devolution in the same bilateral, reactive manner that it approached devolution to the nations. We warned that there seemed to be little consideration given to how this approach may affect the overall governance

333 [Q 44](#) (Professor Michael Kenny), [Q 46](#) (Andy Burnham), [Q 60](#) (Lord O’Neill of Gatley), written evidence from Local Government Association ([FGU0021](#)), Electoral Reform Society ([FGU0022](#)), Unlock Democracy ([FGU0037](#)), Professor Jim Gallagher ([FGU0051](#)) and Centre for Cities ([FGU0052](#)). See also Centre for Cities, *New Polling finds the public overwhelmingly back more devolution to their cities* (9 April 2021): <https://www.centreforcities.org/press/new-polling-finds-public-overwhelmingly-back-more-devolution/>, and YouGov, ‘Democracy and British parliamentarianism’ (8 December 2020): <https://yougov.co.uk/topics/politics/articles-reports/2020/12/08/democracy-and-british-parliamentarianism> [accessed 17 January 2022]

334 [Q 39](#) (Professor Michael Kenny)

335 [Q 49](#) (Andy Burnham), [QQ 213, 215](#) (Professor Jim Gallagher). See also Industrial Strategy Council, *Devolution and Governance Structures in the UK*, pp 11–12

336 [Q 46](#) (Andy Burnham)

337 [QQ 146–47](#) (Professor Iain McLean)

338 Written evidence from the Heseltine Institute for Public Policy, Practice and Place ([FGU0055](#))

339 LIPSIT Project, *Delivering Levelling-Up: Don’t turn on the taps without fixing the pipes* (September 2021), p 20: <https://demos.co.uk/wp-content/uploads/2021/09/Delivering-Levelling-Up-Report.pdf> [accessed 17 January 2022]

340 Written evidence from the Heseltine Institute for Public Policy, Practice and Place ([FGU0055](#))

of England in the long term and recommended that the Government sets out where it envisaged the process of devolution deals would eventually lead.³⁴¹

256. This ad hoc approach appeared to be confirmed by the Prime Minister’s levelling up speech in July 2021, which emphasised the Government will not adopt a “one size fits all” template for further devolution but will consider various options, including directly elected mayors for individual counties or the devolution of power for specific local purposes, such as improving bus services.³⁴²
257. The United Kingdom Constitution Monitoring Group and the Heseltine Institute both said a more consistent form of English devolution was required, including for county areas.³⁴³ The Local Government Association agreed, advocating “a model where all local authorities in England are able to access enhanced and locally customisable devolution powers”. They suggested this could be delivered through the introduction of a new English Devolution Baseline, setting out a list of powers available to all councils, with the flexibility over which of the powers being used are held at local rather than national level.³⁴⁴ The Institute for Government has also recommended that the Government publish a devolution framework setting out the parameters within which any new devolution deals for county areas will be agreed.³⁴⁵
258. However, some witnesses opposed a “one-size fits all approach” to English devolution, instead preferring a more flexible and bespoke approach.³⁴⁶ Lord O’Neill said that while greater symmetry was desirable it would be a mistake for this to become too stringent a requirement, as some areas may be better placed to make quicker progress than others.³⁴⁷ Councillor Forbes agreed that different levels of devolution should be available for different combined authorities depending on their “development, ambition and speed of delivery at a local level”.³⁴⁸
259. ***The current deals-based approach to devolution is not sufficiently ambitious. We recommend the Government develops a principled devolution framework, in co-operation with the Local Government Association and devolved authorities, to provide a clear baseline for further devolution of powers within England. This should allow devolved authorities to choose which powers they are capable of delivering and wish to adopt, and which should remain at the centre.***

341 Constitution Committee, *The Union and devolution*, paras 160, 403 405 and 406. See also Constitution Committee, *Cities and Local Government Devolution Bill* (2nd Report, Session 2015–16, HL Paper 9), paras 12 and 14.

342 Prime Minister Boris Johnson, *Speech on Levelling Up* (15 July 2021): <https://www.gov.uk/government/speeches/the-prime-ministers-levelling-up-speech-15-july-2021> [accessed 12 January 2022]

343 Written evidence from the Heseltine Institute for Public Policy, Practice and Place (FGU0055) and the United Kingdom Constitution Monitoring Group (FGU0031)

344 Written evidence from the Local Government Association (FGU0021)

345 ‘How to make a success of county devolution deals’, Institute for Government Insight, p 2

346 Written evidence from Lord Shipley, Lord Tyler and Lord Wallace of Saltaire (FGU0017), Local Government Association (FGU0021), Electoral Reform Society (FGU0022), Professor Will Jennings, Professor Gerry Stoker and Dr Jennifer Gaskell (FGU0032), Unlock Democracy (FGU0037), LIPSIT Project (FGU0038) and Professor Jim Gallagher (FGU0051)

347 Q 64 (Lord O’Neill of Gatley). See also QQ 48, 52 (Andy Burnham)

348 Q 227 (Councillor Nick Forbes)

Capacity and capability

260. The historical centralisation of powers to Whitehall, has had a negative impact on the capacity and capability of local government. Councillor Forbes said it was “worth noting that local government has been the sector of public service delivery most affected by job losses throughout the decade of austerity, while we have seen modest growth in civil service numbers”.³⁴⁹ Lord O’Neill told us that many local authorities lacked the capability or resources to structure a request for devolved powers.³⁵⁰ The LIPSIT Project said the Government’s deal-based approach favoured local authorities with existing capacity.³⁵¹ Councillor Jamieson and Councillor Forbes said that the current system of competitive bidding for multiple funding pots occupies a significant amount of local authority capacity that could be better deployed on delivering services.³⁵² Speaking at the County Councils Network conference on 22 November 2021, Michael Gove reportedly acknowledged the number of funds needed to be rationalised.³⁵³
261. Witnesses also pointed to a lack of capacity in some local authorities to administer new devolved services, particularly in rural areas. Councillor Forbes acknowledged that capacity across local authorities is inconsistent and said that capacity considerations will have to be built into future devolution settlements. He told us that capacity and impact at the local level would be improved if civil service resources associated with devolved powers were redirected to local government.³⁵⁴
262. Professor Mitchell emphasised that local authorities need resources and capabilities when power is devolved to them, otherwise the process will only “dump problems” on them.³⁵⁵ The Industrial Strategy Council recommended that devolution should be a “staged process”, which gives institutions time to “develop, evolve and build capacity”.³⁵⁶
263. Some witnesses considered the requirement for elected mayors demonstrated the lack of flexibility in the current devolution model.³⁵⁷ Councillor Forbes was not convinced that the elected mayor model would operate well in a county area and urged broader discussions about alternative governance options. Councillor Jamieson agreed, arguing that mayors may be more suitable for some parts of the country compared to others and different models should be adopted for different places.³⁵⁸ Lord O’Neill preferred mayors as they were more accountable and provided additional weight to the voice of local areas in their interactions with central government.³⁵⁹

349 [Q 231](#) (Councillor Nick Forbes)

350 [Q 63](#) (Lord O’Neill of Gatley)

351 LIPSIT Project, *Delivering Levelling-Up: Don’t turn on the taps without fixing the pipes*, p 21: <https://demos.co.uk/project/delivering-levelling-up-dont-turn-on-the-taps-without-fixing-the-pipes/> [accessed 17 January 2022]

352 [Q 227](#) (Councillor Nick Forbes, Councillor James Jamieson)

353 Institute for Government, ‘How to make a success of county devolution deals’, p 8: <https://www.instituteforgovernment.org.uk/publications/devolution-county-deals> [accessed 17 January 2022]

354 [QQ 227, 231](#) (Councillor Nick Forbes). See also [Q 231](#) (Councillor James Jamieson)

355 [Q 215](#) (Professor James Mitchell)

356 Industrial Strategy Council, *Devolution and Governance Structures in the UK*, p 28. See also [Q 117](#) (Professor Graeme Roy), [Q 118](#) (Professor Philip McCann)

357 [Q 227](#) (Councillor Nick Forbes), written evidence from New Local ([FGU0017](#)) and the Local Government Association ([FGU0021](#)). See also Institute for Government, ‘How to make a success of county devolution deals’ pp 9–11.

358 [Q 229](#) (Councillor James Jamieson, Councillor Nick Forbes)

359 [Q 57](#) (Lord O’Neill of Gatley). See also Industrial Strategy Council, *Devolution and Governance Structures in the UK*, p 37

264. *We recommend that to facilitate further devolution to devolved authorities in England the Government should provide them with adequate resources and support to build the necessary capacity to exercise additional powers, as well as the capability to deliver them. This will be critical to the successful extension of devolution within England to the counties.*

Alignment

265. The Industrial Strategy Council found that relationships between subnational institutions are most effective when boundaries are aligned and there is a clear division of labour and responsibilities. The Council highlighted the historically inconsistent approach to regional policy in England.³⁶⁰ Box 1 describes the different layers of sub-national government in England.

Box 1: Sub-national governance in England

- **333 Local Authorities**, including 24 county councils, 181 district councils, 58 unitary authorities, 36 metropolitan districts, 32 London boroughs, the City of London and the Isles of Scilly
- **38 Local Enterprise Partnerships** representing a wide spectrum of geographies include city-regions, single counties and multi-county areas, some of which are overlapping
- **41 Police and Crime Commissioners**, some of which have been subsumed into combined authority structures
- **135 Clinical Commissioning Groups**
- **10 Combined Authorities**, mainly covering metropolitan areas but also including the non-metro area of Cambridgeshire and Peterborough, and the partial metro area of North of the Tyne
- **10 elected ‘metro’ mayors**, including Greater London
- **Seven pan-regional transport bodies**, including Transport for the North (which has statutory status) and Midlands Connect, England’s Economic Heartland and Transport for the South East (which do not have statutory status)

Source: Written evidence from the Heseltine Institute for Public Policy, Practice and Place (FGU0055) and Department for Levelling Up, Housing and Communities, ‘Local government structure and elections’ (19 October 2021): <https://www.gov.uk/guidance/local-government-structure-and-elections> [accessed 17 January 2022]

266. The Industrial Strategy Council emphasised that governance structures should be “clear and streamlined and reflect the geographical and economic differences of places”.³⁶¹ The Heseltine Institute agreed, telling us that “[k]ey factors to consider in the establishment of new combined authorities include local and regional identities, economic geography ... and population size.”³⁶² Councillor Forbes agreed, telling us that devolution is effective where there is “a functioning economic geography” and “a strong sense of local identity that people buy into”.³⁶³

360 Industrial Strategy Council, *Devolution and Governance Structures in the UK*, p 18

361 *Ibid.*, pp 18, 29, 30 and 33. See also LIPSIT Project, *Delivering Levelling-Up: Don’t turn on the taps without fixing the pipes*, pp 22–23

362 Written evidence from The Heseltine Institute for Public Policy, Practice and Place (FGU0055)

363 [Q 227](#) (Councillor Nick Forbes)

267. *The devolution framework should include steps to achieve greater coherence in England’s sub-national governance arrangements to improve democratic accountability. We recommend the development of devolution within England should ensure greater alignment between subnational bodies to create functioning economic geographies which also respect local identities, in so far as possible.*

Dialogue between central and local government

268. Devolution within England is developing. In this context, it will be important to consider how English devolved authorities can contribute to wider governance discussions at the national level. Andy Burnham said the metro mayors needed to “be heard as an equal partner within the governance of our country” so that “the voice of mayors can at least be heard before policies are set.”³⁶⁴ Professor Mitchell said it was important to get the balance right to “ensure that the local, regional and substate national voice is louder and clearer at the centre.”³⁶⁵
269. Dr Paul Anderson said: “There should be specific English representation in wider [intergovernmental relations] structures involving the devolved governments as well as a separate England specific forum to bring together relevant ministers and the leaders and mayors of combined authorities.”³⁶⁶ The Dunlop review suggested establishing an ‘English Regions Forum’ to feed in views to UK Government ministers ahead of meetings of the proposed new intergovernmental Council.³⁶⁷ The Public Administration and Constitutional Affairs Committee has suggested establishing a committee of English devolved authorities for representation through JMC structures.³⁶⁸ Lord O’Neill agreed the devolved authorities should have a stronger voice in UK governance arrangements but said it was important not to rush into putting something in place.³⁶⁹
270. Andy Burnham told us that there should be a Cabinet Committee of the nations and regions, which would ensure “the regional voice is heard at the centre all the time.”³⁷⁰ He proposed nominating one of the metro mayors to attend Cabinet meetings and represent England from a devolved authority perspective.³⁷¹
271. Professor Gallagher said: “The regions of the north of England, the great cities of the north of England, have many of the same interests and issues with the centre as Scotland, Wales and, in its own different way, Northern Ireland do. Therefore, an institution that brings [them] together seems to me to be quite important.” He said it would be in the interests of the devolved administrations to make common cause with the Mayors of Manchester and Birmingham, among others, and thus gain leverage over

364 [QQ 47, 53](#) (Andy Burnham)

365 [Q 215](#) (Professor James Mitchell)

366 Written evidence from Dr Paul Anderson ([FGU0011](#)). See also written evidence from the Local Government Information Unit ([FGU0054](#)) and the Local Government Association ([FGU0021](#))

367 Cabinet Office, *Review of UK Government Union Capability*, p 37

368 Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships*, para 137

369 [Q 68](#) (Lord O’Neill of Gatley)

370 [Q 53](#) (Andy Burnham)

371 [Q 55](#) (Andy Burnham)

central government.³⁷² Professor Mitchell also saw benefits in broadening the existing intergovernmental structures to encourage a move away from its focus on constitutional matters to public policy concerns.³⁷³

- 272. As devolution within England develops, it will be important that English devolved authorities have an opportunity to influence discussions at the national level. English devolved authorities should be given greater prominence in the intergovernmental arrangements—either through a parallel forum or a sub-committee of the new Prime Minister and Heads of Devolved Governments Council—so they have an opportunity to contribute to United Kingdom-wide discussions. This could also facilitate greater dialogue between the nations and regions, therefore strengthening the Union.**

372 [Q 213](#) (Professor Jim Gallagher). See also written evidence from Professor Jim Gallagher ([FGU0051](#)). Gordon Brown has suggested creating “a decision-making Council of the Regions and Nations”. See Gordon Brown, ‘How to save the United Kingdom’, *The New Statesman* (18 November 2020): <https://www.newstatesman.com/uncategorized/2020/11/how-save-united-kingdom> [accessed 17 January 2022]

373 [Q 213](#) (Professor James Mitchell)

CHAPTER 8: WHITEHALL

273. Despite the significant constitutional impact of introducing the devolution arrangements at the end of 20th century, this does not appear to have fundamentally altered Whitehall’s traditional approach to the governance of the UK, readying it to meet the challenges of the 21st century. Dr Paul Anderson told us that “Despite the reality of political decentralisation for over two decades, very little has changed at the centre in both Westminster and Whitehall. A unitary attitude prevails.”³⁷⁴ The Electoral Reform Society agreed, saying: “... centralisation permeates the British state’s relationships with the UK’s nations and localities, acting as a barrier to genuine and long-term collaboration, trust and parity of esteem.”³⁷⁵
274. We have previously concluded that a change of culture in Whitehall is needed if the Union is to operate at its full potential. In our report *The Union and devolution* we urged a new mindset at all levels of government—one that recognises the devolved institutions as established parts of the UK constitution—and emphasised the importance of devolved administrations being more effectively and consistently involved in policy development “in a way that answers their concerns and improves the governance of the UK.”³⁷⁶
275. These points were echoed in this inquiry. Several witnesses told us that Whitehall had been slow to understand the impact, and adjust to the realities, of devolution on UK governance.³⁷⁷ Professor Gallagher said the high turnover among senior Whitehall staff hindered its capacity to address devolution issues.³⁷⁸ Michael Gove acknowledged that ministers and civil servants needed to update their knowledge of how different parts of the UK work.³⁷⁹
276. Witnesses said significant culture change was required to overcome a centralised mindset, embrace the plurality of the devolution arrangements and work with leaders with different political complexions.³⁸⁰ Philip Rycroft told us there is unwillingness in Whitehall to give due accord and legitimacy to voices in other parts of the UK.³⁸¹ Sir Jeffrey Donaldson spoke of a tendency in Whitehall to see issues that are UK-wide from an English perspective. While he acknowledged that the devolved administrations benefit financially from decisions made by Whitehall, he was concerned by their limited ability to shape policies.³⁸²
277. While Simon Case recognised the importance of changing Whitehall’s culture, he emphasised that Brexit and COVID-19 had expedited regular engagement with the devolved administrations. He told us that consideration of devolution and Union issues, including engagement with the devolved

374 Written evidence from Dr Paul Anderson (FGU0011)

375 Written evidence from Electoral Reform Society (FGU0022)

376 Constitution Committee, *The Union and devolution*, p 4

377 Q 3 (Philip Rycroft), Q 172 (Professor Richard Wyn Jones), Q 173 (Professor Laura McAllister); written evidence from Professor John Denham (FGU0027), Dr Paul Anderson (FGU0011), Baroness Bryan of Partick and Seán Patrick Griffin (FGU0036), Royal Society of Edinburgh (FGU0047) and Professor Michael Kenny, Philip Rycroft and Jack Sheldon (FGU0029)

378 Q 223 (Professor Jim Gallagher)

379 Q 103 (Michel Gove MP)

380 Q 44 (Professor John Denham); written evidence from the Local Government Association (FGU0021), Unlock Democracy (FGU0037) and Professor Ailsa Henderson and Professor Richard Wyn Jones (FGU0046)

381 Q 3 (Philip Rycroft)

382 QQ 125, 127 (Sir Jeffrey Donaldson MP)

administrations, was now happening much earlier in the Whitehall policy-development process.³⁸³

278. The Dunlop review said:

“The UK Government is the government of the whole United Kingdom. The challenge is whether this is how it appears to its citizens in all parts of the country. Arguably, in some parts of the UK, the UK Government has appeared to retreat from the public sphere since the advent of devolved government in the late 1990s ... There was also, in Whitehall, a sense of ‘devolve and forget’, which resulted in rowing back in areas where the UK retained an interest ... The UK Government is in fact active in Scotland, Wales and Northern Ireland. It directly employs more than 57,000 civil servants in Scotland, Wales and Northern Ireland”.³⁸⁴

279. **To deal effectively with and respond to the challenges of governing the United Kingdom in the 21st century, significant culture change is required in Whitehall, including the end of its top-down mindset. Following the completion of the review of intergovernmental relations and if, or when, devolution is extended across England, Whitehall will need to transform how it manages, and mediates between, the different interests of the nations and regions. Greater respect and co-operation between Whitehall and the different parts of the United Kingdom will help strengthen the Union.**

The machinery of government and devolution

280. Professor Gallagher told us that continuous reorganisation at the centre of Government had impeded its capacity to manage devolution.³⁸⁵ Box 2 provides an overview of the changes to the machinery of government concerning devolution since 1997.

Box 2: Changes to machinery of government concerning devolution: 1999–2021

May 1997–June 2003:

- Between 1997–2001 the Department for Environment, Transport and the Regions was responsible for local government and the (English) regions. In 2001 it was renamed Department for Transport, Local Government and the Regions. In 2002 local government and the regions became part of the Office of the Deputy Prime Minister (ODPM).³⁸⁶
- There were separate Scotland, Wales and Northern Ireland Offices, with the respective secretaries of state being responsible for constitutional matters in their areas.
- A small Constitution Secretariat was established to support the devolution arrangements in general. This was initially located in the Cabinet Office before being moved to the ODPM and then to the Devolution and Crown Dependencies Division of the Department for Constitutional Affairs (DCA).

383 Q 34 (Simon Case)

384 Cabinet Office, *Review of UK Government Union Capability*, p 43

385 Q 223 (Professor Jim Gallagher)

386 In 2004 the ODPM tried, and failed, to deliver devolution to the North East of England, after the proposal was defeated in a referendum.

June 2003–May 2010:

- The Lord Chancellor and Secretary of State for Constitutional Affairs (and then Justice) became responsible for constitutional reform and devolution to the nations.
- The Scotland and Wales Offices were part of the DCA (and in 2007 its successor, the Ministry of Justice), which was responsible for constitutional reform, devolution strategy and intergovernmental relations.
- The Department for Communities and Local Government became responsible for local government and the regions from 2006.
- A separate Northern Ireland Office was maintained. The three secretaries of state continued to exist but combined their territorial responsibilities with other ministerial portfolios.

May 2010–September 2021:

- Between 2010 and 2015 the Deputy Prime Minister was responsible for constitutional reform, intergovernmental relations and devolution.
- Between 2015 and 2021, the Chancellor of the Duchy of Lancaster, Minister for the Cabinet Office (and, for one incumbent, First Secretary of State) fulfilled a similar role to the Deputy Prime Minister between 2010 and 2015, with responsibility for overseeing constitutional affairs and maintaining the “integrity of the Union”.
- Alongside the Northern Ireland Office, the Scotland and Wales Offices again became free-standing and the three secretaries of state, played a lead role in liaising with the devolved administrations and in delivering further devolution to each nation during this period.
- In 2018 the Department for Communities and Local Government became the Ministry of Housing, Communities and Local Government
- In 2015, these roles were supported by a UK Governance Group, including responsibility for constitutional and devolution issues and maintaining good relations with the devolved administrations, territorial offices and Whitehall more generally.

September 2021–present:

- Responsibility for UK governance and devolution policy was merged with the Ministry for Housing, Communities and Local Government to create a new Department for Levelling Up, Housing and Communities. The Prime Minister has also been Minister for the Union since 2020.
- Separate Scotland, Wales and Northern Ireland Offices remain in place, as do the three secretaries of state.
- In May 2021 Sue Gray became second permanent secretary with responsibility for the Union and Constitution Group, including teams in both the Cabinet Office and DLUHC. The UK Governance Group remains an umbrella group for those teams, the Scotland and Wales Offices and the Advocate General for Scotland, and works closely with the Northern Ireland Office. A separate team in DLUHC is responsible for English devolution.
- A levelling up taskforce, based in the Cabinet Office, will report jointly to the Prime Minister and the Secretary of State for Levelling Up, Housing and Communities.

New Secretary of State

281. The Dunlop review recommended a senior Cabinet position “with specific responsibility for the constitutional integrity and operation of the United Kingdom ... [should] be formally recognised within the machinery of government” with the suggested title of “Secretary of State for Intergovernmental and Constitutional Affairs”. The review suggested this role should have a status equivalent to one of the Great Offices of State, including a duty to uphold the integrity of the constitution and the operation of intergovernmental relations. This would be akin to the existing duty on the Lord Chancellor regarding the rule of law and independence of the judiciary.³⁸⁷
282. In *Inter-governmental relations in the United Kingdom* we considered arguments for creating a single department and secretary of state for devolution, or for the Union, but concluded that the asymmetrical devolution arrangements justified retaining the three territorial secretaries of state to act as a key conduit between the UK Government and each of the devolved administrations.³⁸⁸ The Dunlop review also recommended retaining the separate secretaries of state but reinforcing their influence by appointing a Secretary of State for Intergovernmental and Constitutional Affairs.³⁸⁹
283. In September 2021 the Prime Minister partially fulfilled Lord Dunlop’s recommendation by appointing Michael Gove as Secretary of State for Levelling up, Housing and Communities and Minister for Intergovernmental Relations, including responsibility for English devolution and managing relations with the devolved administrations. The Prime Minister retained the three Secretaries of State for Scotland, Wales and Northern Ireland, who continue to represent those nations’ interests in Cabinet and the UK Government in each of the devolved nations.
284. Appearing before the Committee in July 2021 in his previous role as Chancellor of the Duchy of Lancaster, Michael Gove told us it was not necessary to implement Lord Dunlop’s recommendation as his then position fulfilled that role.³⁹⁰ Simon Case emphasised the Prime Minister’s commitment to maintaining the Union was the responsibility of all Cabinet ministers.³⁹¹ In an earlier appearance before the Public Administration and Constitutional Affairs Committee in May 2021, Michael Gove said the “work of coordinating the roles of the Scotland Office, the Wales Office and Northern Ireland Office with other UK Government Departments ... is a natural fit in the Cabinet Office”. He also saw his then role as co-ordinating and ensuring other departments acted in an appropriate manner on intergovernmental relations and was concerned that the creation of a single Secretary of State for this area risked making other departments complacent in this respect.³⁹²
285. **We note the Government’s responsibility for the Union, intergovernmental relations and English devolution has been brought together under the role of Secretary of State for Levelling**

387 Cabinet Office, *Review of UK Government Union Capability*, pp 16–17

388 Constitution Committee, *Intergovernmental relations in the United Kingdom*, para 125

389 Cabinet Office, *Review of UK Government Union Capability*, p 17

390 [Q 103](#) (Michael Gove MP)

391 [QQ 35, 37](#) (Simon Case)

392 Oral evidence taken before the Public Administration and Constitutional Affairs Committee on 20 May 2021, [QQ 56–57](#) (Michael Gove MP)

Up, Housing and Communities, who is also the designated Minister for Intergovernmental Relations. While the combined responsibility for the devolution arrangements is welcome, we are concerned that the role's broader responsibilities risk undermining its focus on this important area. We hope the combined ministerial responsibility for the devolution arrangements becomes a settled part of the machinery of government. We believe that Whitehall's capacity to manage a fundamental part of the United Kingdom's governance arrangements would be at risk of being undermined if this combination continues to be vulnerable to frequent and significant restructuring.

286. **We endorse the Dunlop review's recommendation that a senior Cabinet position—at present the Secretary of State for Levelling Up, Housing and Communities—should have a duty to uphold the integrity of the constitution, including the operation of intergovernmental relations and the devolution arrangements more generally.**
287. **We believe that retaining separate territorial secretaries of state helps to maintain the prominence that the Union and intergovernmental relations demand in the Cabinet and across Whitehall.**
288. *We recommend that a greater understanding of the Union should become part of every Government department's DNA but acknowledge this will take time to achieve. In the meantime, there needs to be strong political and civil service leadership of what should be regarded as a major change programme across Whitehall.*

The Cabinet Union Strategy Committee

289. In line with a recommendation of the Dunlop review,³⁹³ the Government established two Cabinet committees: a Union Strategy Committee in February 2021, chaired by the Prime Minister and tasked with considering “matters relating to strengthening the Union of the United Kingdom”, supported by a Union Policy Implementation sub-committee, chaired by the Secretary of State for Levelling Up, Communities and Housing, to deliver the Government's priorities relating to the Union.³⁹⁴
290. When asked how the different parts of government will work together to strengthen the Union, Simon Case told us the Cabinet Union Strategy Committee's role was “to get all departments and all civil servants, as well as Ministers and everyone else, thinking much more about how to operate right across the United Kingdom.”³⁹⁵
291. In May 2021 Sue Gray was appointed as Second Permanent Secretary in the Cabinet Office with responsibility for the Union and the constitution. In September 2021 she moved to the new Department for Levelling Up, Housing and Communities, following Michael Gove's appointment as Secretary of State for that department.
292. **We welcome the intention behind the establishment of the Cabinet Union Strategy Committee and the Union Policy Implementation sub-committee, including the roles of the Prime Minister and**

393 Cabinet Office, *Review of UK Government Union Capability*, p 18

394 Cabinet Office, *List of Cabinet Committees*: <https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees> [accessed 12 January 2022]

395 [Q 31](#) (Simon Case)

Minister for Intergovernmental Relations in chairing those bodies. We hope the Union Strategy Committee will be genuinely strategic in its approach. We will judge the Committees by their success in inspiring the change in mindset which we believe is required across Whitehall.

UK Governance Group

293. In 2015, the UK Governance Group (UKGG) was established in the Cabinet Office with responsibility for constitutional and devolution issues. It brought together the Cabinet Office’s Constitution Group, the Office of the Secretary of State for Scotland, the Office of the Advocate General for Scotland and the Office of the Secretary of State for Wales and included a team with a focus on Northern Ireland.³⁹⁶ Philip Rycroft described it as:

“an attempt ... to get the understanding of the constitution and devolution more centred in Whitehall, including getting a voice around the Permanent Secretary’s table to remind them constantly that they had to be thinking about the whole of the United Kingdom.”

However, he noted a lack of incentives in the structure to encourage people to invest time and resources to consider devolution in the context of their departmental responsibilities, which had led to devolution being pushed to the periphery.³⁹⁷

294. The Dunlop review recommended:

“[t]he establishment of a single Permanent Secretary Head of UKGG to lead the three offices of the Secretaries of State for Scotland, Wales and Northern Ireland as well as the relevant Cabinet Office teams, supporting the new senior minister and three Secretaries of State ... [and] a shared policy function for all three offices should be created in the Cabinet Office as soon as possible”.³⁹⁸

295. This was suggested as a means of giving Union strategy a coherent voice in government and bringing the Northern Ireland Office more firmly into the UKGG.³⁹⁹ This recommendation has been partially implemented by the Government, as the Northern Ireland Office remains separate and it is unclear if a shared policy function has been created.⁴⁰⁰

296. **We endorse the Dunlop review’s recommendation to establish a single Permanent Secretary with responsibility for the Union who would lead the offices of the Secretaries of State for Scotland, Wales and Northern Ireland.**

Relocation of Government departments

297. The Dunlop review recommended the Government addresses “the case for an increased policy presence in Scotland, Wales and Northern Ireland” and proposed that “Permanent Secretaries of departments with substantial reserved responsibilities should be required to produce specific plans

396 Cabinet Office, *Review of UK Government Union Capability*, pp 15–16

397 **Q 14** (Philip Rycroft)

398 Cabinet Office, *Review of UK Government Union Capability*, p 19–20

399 *Ibid.*, p 20

400 Letter from Michael Gove MP to the Chair (18 January 2022): <https://committees.parliament.uk/publications/8552/documents/86349/default/> [accessed 18 January 2022]

outlining how their department will move policy posts into Hubs”. It suggested this would enhance co-operation with the devolved administrations and help build the Government’s devolution capability.⁴⁰¹ We made a similar recommendation in *The Union and devolution*.⁴⁰²

298. In March 2021 the Government announced plans to open branches of the Treasury in Darlington and the Cabinet Office in Glasgow. Government ‘hub’ offices have opened in Edinburgh, Cardiff and Belfast.⁴⁰³ Simon Case told us of plans “to move up to 30,000 posts, including senior civil servants, out of Whitehall and into other parts of the United Kingdom”.⁴⁰⁴
299. Sir Jeffrey Donaldson said he would welcome UK Government presence in different parts of the UK, including Belfast, and the redistribution of central government jobs.⁴⁰⁵ While Sam McBride said opening Government “hubs” could help the Government better understand those parts of the UK, he did not think they would increase support for the Union.⁴⁰⁶ Lord O’Neill described moving some Government departments out of London as a “token gesture”.⁴⁰⁷ Andy Burnham was similarly doubtful that relocating departments would make a real difference, as it did not amount to proper devolution or levelling up.⁴⁰⁸
300. **The continued dispersal of central government departments across the United Kingdom is welcome. While it is not an alternative to proper devolution, and its impact on support for the Union should not be overestimated, the presence of civil servants throughout the United Kingdom is part of a package of measures that facilitates greater co-operation and partnership between central and devolved governments.**

Civil service training and secondments

301. The Dunlop review recommended that the full range of civil service leadership programmes should include a significant devolution dimension.⁴⁰⁹ In response Michael Gove has said knowledge and experience of devolution is an explicit focus of civil service training at all grades.⁴¹⁰
302. The Dunlop review also recommended that “[i]n order for the UK, Scottish and Welsh Government to best realise the benefits of being one Civil Service, the UK Government should look to work with the Scottish and Welsh Governments to take steps to encourage more staff interchange between administrations.”⁴¹¹ In previous reports we have recommended that the

401 Cabinet Office, *Review of UK Government Union Capability*, p 25

402 Constitution Committee, *The Union and devolution*, para 304

403 [Q 30](#) (Simon Case)

404 [Q 30](#) (Simon Case)

405 [Q 127](#) (Sir Jeffrey Donaldson MP)

406 [Q 22](#) (Sam McBride)

407 [Q 67](#) (Lord O’Neill of Gatley)

408 [Q 52](#) (Andy Burnham)

409 Cabinet Office, *Review of UK Government Union Capability*, p 25

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

411 Cabinet Office, *Review of UK Government Union Capability*, p 25. The Northern Ireland Civil Service is separate.

Government sets out “a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations.”⁴¹²

303. Several witnesses said two-way secondments between central, local and devolved government should be encouraged to increase learning about how different layers of government operate in the UK, with such experience being a prerequisite for promotion.⁴¹³ Philip Rycroft said senior civil servants having experience outside Whitehall would help to break their “metropolitan bias”.⁴¹⁴ The Dunlop review recommended that “[s]enior civil service job and person specifications should be amended to include a requirement to demonstrate significant experience working in or with one of the devolved administrations or a Union-related issue.”⁴¹⁵
304. Michael Gove has confirmed that the Government intends to offer greater opportunities for secondments between the UK Government and the devolved administrations.⁴¹⁶ Sue Gray told us how much she learned during her secondment from the Cabinet Office to the Department of Finance in the Northern Ireland Executive, and the value of bringing that learning back to Whitehall. As a result of her own experiences, she would be encouraging more of her colleagues to spend time in devolved and local governments.⁴¹⁷ Professor Roy also spoke about his experience as a senior civil servant in the Scottish Government including the “collegiality” that exists between civil servants across the UK, regardless of any political differences between the different administrations.⁴¹⁸
305. **We welcome the Government’s commitment to increasing civil servants’ knowledge of the devolution arrangements through training programmes. To have the desired impact on changing Whitehall’s mindset this will require significant take up from the most junior to the most senior civil servants.**
306. **The emphasis on secondments from central to devolved government is a positive development, but needs to be expanded further, including secondments between all layers of government right across the United Kingdom.**

412 Constitution Committee, *Inter-governmental relations in the United Kingdom*, para 170 and Constitution Committee *The Union and devolution*, para 299

413 [Q 52](#) (Andy Burnham), [Q 158](#) (Professor Iain McLean), [Q 223](#) (Professor Jim Gallagher), [Q 224](#) (Professor James Mitchell), see also written evidence from Professor Michael Kenny, Philip Rycroft and Jack Sheldon ([FGU0029](#)) and the LIPSIT Project ([FGU0038](#)).

414 [Q 14](#) (Philip Rycroft). See also The Constitution Society, ‘Union at the Crossroads: Can the British state handle the challenges of devolution?’ (12 April 2021), p 40: <https://consoc.org.uk/publications/union-at-the-crossroads-can-the-british-state-handle-the-challenges-of-devolution-by-michael-kenny-philip-rycroft-and-jack-sheldon/> [accessed 17 January 2022]. Professor Wyn Jones was more sceptical about the impact of more secondments due to the high degree of turnover among civil servants. See [Q 173](#) (Professor Richard Wyn Jones)

415 Cabinet Office, *Review of UK Government Union Capability*, p 25

416 [Letter from Michael Gove MP to Lord Dunlop on the government response](#)

417 [Q 103](#) (Sue Gray)

418 [Q 118](#) (Professor Graeme Roy)

CHAPTER 9: FUNDING ARRANGEMENTS

307. The UK’s funding arrangements are complex and, much like the UK’s constitution, have developed in an ad hoc manner over time.

308. Public discussion about which parts of the UK enjoy the highest public expenditure, relative to revenue raised, tends to focus on Scotland. The Institute for Fiscal Studies has provided a more balanced account:

“Under current constitutional arrangements the implicit budget deficits and surpluses for the nations and regions of the UK are subsumed within the deficit of the UK as a whole. The UK government manages the overall public finances on behalf of whole country, and in effect, transfers revenues from those areas with surpluses (or smaller deficits) to the areas with (bigger) deficits. The fiscal transfers that Scotland receives are normal within a fiscal union. Indeed ... the fiscal transfers to Wales and Northern Ireland are much larger, and those to the north of England slightly larger than in Scotland’s case.”⁴¹⁹

309. Professor Henderson and Professor Wyn Jones noted grievances in the UK about the distribution of resources, with surveys showing each nation believes it receives less than its rightful share.⁴²⁰ Professor McCann told us that if regional inequalities in the UK are to be addressed then the whole fiscal architecture needs to be considered in the round, including the Barnett formula, fiscal devolution and borrowing powers.⁴²¹

The Barnett Formula

310. The Barnett Formula was devised in 1978 and is used by the Treasury to determine the allocation of funding to the devolved administrations. Any changes in spending on public services in England automatically trigger an equivalent change to the block grant allocated to the devolved administrations, which is then adjusted based on each nation’s population size. There have been repeated calls, including by us and other House of Lords select committees, to replace the Barnett Formula with a needs-based system for the allocation of funding to the nations and regions, with oversight by an independent body.⁴²²

311. Following a recommendation by the Holtham Commission,⁴²³ a Welsh ‘adjustment’ was made to the Barnett Formula in 2016 which guarantees that Welsh devolved spending will not fall below 115% of spending on similar public services in England. Mark Drakeford welcomed this change, but the Welsh Government has still proposed replacing the formula with a “new

419 Institute for Fiscal Studies, ‘Response to latest Government Expenditure and Revenue Scotland (GERS) estimates’, (18 August 2021): <https://ifs.org.uk/publications/15581>

420 Written evidence from Professor Ailsa Henderson and Professor Richard Wyn Jones (FGU0046)

421 Q 121 (Professor Philip McCann)

422 See Select Committee on the Barnett Formula, *The Barnett Formula* (1st Report, Session 2008–09, HL Paper 139), Economic Affairs Committee, *A fracturing Union? The implications of Financial Devolution to Scotland* (1st Report, Session 2015–16, HL Paper 55), Constitution Committee, *Inter-governmental relations in the United Kingdom*, para 91; and Constitution Committee, *The Union and devolution*, paras 116–117. Lord Barnett, who as Chief Secretary to the Treasury oversaw the formula’s introduction, later became critical of the formula, and argued it should be reformed.

423 The Independent Commission on Funding and Finance for Wales (Holtham Commission) was established in 2008 to examine the then funding arrangements, including the Barnett Formula, and assessed the case for increasing Wales’s taxation and borrowing powers. See: House of Commons Library, Holtham Commission, Standard Note [SN/EP/6288](https://www.parliament.uk/resources/sn/EP/6288), November 2012, and Appendix 4

relative needs-based system” overseen by “a public agency accountable to all four governments jointly.”⁴²⁴ Professor McLean told us about the Australian Commonwealth Grants Commission, which he suggested provided a model of how such a body could operate in practice.⁴²⁵

312. Witnesses told us the formula should be reformed to make it more efficient, fairer, needs based and transparent.⁴²⁶ Professor Denham said the formula is “widely seen as unfair” because it provides “an over generous settlement” to Scotland, underfunds Wales and does not guarantee a fair share of national funding to English localities.⁴²⁷ In *The Union and devolution* we said the public must feel that the distribution of common resources is fair compared with other parts of the UK if support and consent for the Union is to be maintained.⁴²⁸ Mark Drakeford and Professor McAllister both said the unfairness of the formula risked undermining one of the strongest cases for the Union: as a “vehicle for redistribution”.⁴²⁹
313. However, some witnesses felt the formula was likely to persist despite its shortcomings.⁴³⁰ Several witnesses said it would be politically difficult to reform the formula and doing so risked undermining the Union.⁴³¹ Professor McLean and Professor Roy both said that while increased fiscal devolution to the Scottish Parliament had diminished the formula’s significance, it has not eliminated it.⁴³² Philip Rycroft said that it “may be that we just have to accept that [the Barnett Formula] is part of the price of union; it is sort of baked in.”⁴³³
314. At every budget the Treasury publishes its *Statement of funding policy*, which sets out how funding to the devolved administrations is determined, including through the formula.⁴³⁴ Awareness of this publication is low and, consequently, how the formula operates in practice is not well understood.
315. **We continue to believe the Barnett Formula requires reform to introduce a fairer allocation of funding among the four nations. Pending reform, the Treasury’s Statement of funding policy merits a higher profile and greater parliamentary scrutiny.**

424 Welsh Government, *Reforming our Union: Shared Governance in the UK*, pp 21–22

425 [QQ 150, 152–53](#) (Professor Iain McLean)

426 [Q 13](#) (Philip Rycroft), written evidence from Royal Society of Edinburgh ([FGU0047](#)), Empowering Yorkshire ([FGU0009](#)), United Kingdom Constitutional Monitoring Group ([FGU0031](#)), Yorkshire Devolution Movement ([FGU0015](#)), Baroness Bryan of Partick and Seán Patrick Griffin ([FGU0036](#)) and Professor John Denham ([FGU0027](#))

427 Written evidence from Professor John Denham ([FGU0027](#)). See also [Q 20](#) (Alex Massie)

428 Constitution Committee, *The Union and devolution*, para 140

429 [Q 85](#) (Mark Drakeford MS), [Q 183](#) (Professor Laura McAllister)

430 Written evidence from The United Kingdom Constitutional Monitoring Group ([FGU0031](#)). See also Institute for Government, *Funding devolution: The Barnett formula in theory and practice*, p 21: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/funding-devolution-barnett-formula.pdf> [accessed 17 January 2022]

431 [Q 13](#) (Philip Rycroft, Professor Ciaran Martin), [Q 43](#) (Professor John Denham), [Q 85](#) (Mark Drakeford MS), [Q 71](#) (Angus Robertson MSP)

432 [Q 121](#) (Professor Graeme Roy), [Q 150](#) (Professor Iain McLean)

433 [Q 13](#) (Philip Rycroft)

434 See HM Treasury, Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive (October 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030043/Statement_of_Funding_Policy_2021_-_FINAL.pdf [accessed 17 January 2022]

Fiscal devolution

316. Witnesses supported fiscal devolution to Scotland and Wales, in principle. Following fiscal devolution, Philip Rycroft said the level of revenue that Scotland could now raise was high by international devolved governance standards.⁴³⁵ Fiscal devolution had increased the complexity of Scotland's fiscal arrangements, which Professor Roy described as a “mix of continued block grant, shared taxes, soon-to-be-assigned tax revenues, fully devolved taxes, social security responsibilities”.⁴³⁶
317. We have previously supported fiscal devolution but warned that: “The greater the amount of revenue raised and spent locally, the less scope for the allocation of resources on the basis of need by central government. This allocation is vitally important to ensure that a key purpose of the social union is supported by a pooling and sharing of resources across the whole UK.”⁴³⁷
318. Professor Roy told us the fiscal frameworks negotiated for Scotland and Wales in 2016 had held up well during the COVID-19 pandemic and, along with the block grant and the furlough scheme, had protected the nations' economies.⁴³⁸ In contrast, Angus Robertson said Brexit and COVID-19 had subjected Scotland's fiscal framework to “unprecedented stress-testing”. He suggested the review of Scotland's fiscal framework, due to take place in 2022,⁴³⁹ should examine whether further powers, including borrowing powers, should be devolved to “grow Scotland's tax base and fund its ongoing economic recovery.”⁴⁴⁰
319. Fiscal devolution can increase the accountability of the devolved administrations to their electorates, but it does not guarantee higher revenue. Greater autonomy to vary tax rates can potentially result in higher, and lower, revenue depending on the income generated, with block grants being reduced accordingly. Using powers under the Scotland Act 2016, the Scottish Government increased the number of income tax bands, with higher earners paying more than in England. However, the Institute for Fiscal Studies has said while over £500 million of income tax increases had been implemented, these have netted ‘nothing’ in additional revenues relative to no devolution. This is because weak growth in Scottish employment and earnings offset the income tax rises.⁴⁴¹ In contrast, while the Welsh Government has chosen to maintain the same income tax rates as England, this decision is forecast to deliver a net revenue increase of £80 million by 2024–25.⁴⁴²

435 Q 6 (Philip Rycroft)

436 Q 110 (Professor Graeme Roy)

437 Constitution Committee, *The Union and devolution*, para 116

438 Q 111 (Professor Graeme Roy)

439 See HM Treasury and the Scottish Government, *UK and Scottish governments agree first stage of the Fiscal Framework Review*: <https://www.gov.uk/government/news/uk-and-scottish-governments-agree-first-stage-of-the-fiscal-framework-review> [accessed 17 January 2022]

440 Angus Robertson MSP told us the Scottish Government would like the following: caps on capital borrowing to be replaced by a prudential borrowing scheme; a commitment to remove the restriction on borrowing to fund day-to-day costs; an increase in the borrowing cap for forecast errors to £600 million; an increase in the Scotland reserve drawdown power to £700 million; and the devolution of VAT and full powers over income tax and national insurance contributions. See [QQ 71, 73](#) (Angus Robertson MSP)

441 Paul Johnson, Institute for Fiscal Studies, ‘More devolution of tax powers is a risk worth taking on all sides’ (20 December 2021): <https://ifs.org.uk/publications/15892> [accessed 17 January 2022]

442 @fiscalphillips, tweet on 20 December 2021: <https://twitter.com/fiscalphillips/status/1472932075040870402> [accessed 17 January 2022]

320. The Independent Fiscal Commission for Northern Ireland, which is examining options for further fiscal devolution in Northern Ireland, published its interim report on 13 December. It considered that there was scope for devolving income tax, SDLT, landfill tax, excise duties, air passenger duty, and setting a lower rate of corporation tax, which it will explore further in its final report. The Commission noted that the Northern Ireland Executive would need to increase its capacity and capability to take on greater fiscal devolution before such fiscal devolution was feasible.⁴⁴³
321. While Naomi Long welcomed fiscal devolution in principle, she was conscious that the Northern Ireland Assembly had not used its existing powers to change the rate of corporation tax⁴⁴⁴ and questioned whether it was ready to exercise further powers.⁴⁴⁵ Colum Eastwood also welcomed fiscal devolution but said any proposals should be tested against any impact on Northern Ireland's block grant.⁴⁴⁶
322. *While greater fiscal devolution can increase the accountability of the devolved administrations to their electorates, it presents risks to devolved budgets as well as opportunities. As fiscal devolution develops and the funding of the devolved administrations becomes less reliant on the block grants, we recommend the Government examine how the funding arrangements could more effectively address relative needs in the nations and regions. A key purpose of the continuing social union requires the pooling and sharing of resources across the whole United Kingdom.*

Funding arrangements within England

323. Some witnesses criticised the local funding arrangements in England as inefficient and unfair and called for reforms, including the allocation of funds according to a needs-based formula, greater fiscal autonomy for raising and allocating expenditure, and multi-annual budgets to allow for greater strategic planning and local decision-making.⁴⁴⁷ Councillor Jamieson pointed out that while taxes are collected centrally, they are raised locally. He said: "All taxation comes largely from place. It is paid by our residents, whether it is income tax, VAT, stamp duty or whatever." He was against the

443 The Independent Fiscal Commission NI, *More Fiscal Devolution for Northern Ireland? – Executive Summary* (December 2021): https://www.fiscalcommissionni.org/files/fiscalcommissionni/documents/2021-12/fcni-additional-exec-summary-with-charts-accessible_1.pdf [accessed 17 January 2022]. The Commission noted that unlike its engagement with similar commissions for Scotland and Wales, the Treasury had not fully engaged with this exercise as it was sceptical about readiness of the Northern Ireland Executive to demonstrate that its finances were on a sustainable footing.

444 While Corporation tax is devolved to the Northern Ireland Assembly this power has not been commenced. Commencement is conditional on the Northern Ireland Executive demonstrating that its finances are on a sustainable footing. The Treasury does not believe this condition has been met. Corporation tax has not been devolved to the Scottish Parliament or the Senedd.

445 [Q 167](#) (Naomi Long MLA)

446 [Q 199](#) (Colum Eastwood MP). Subject to Treasury consent, if the Northern Ireland Executive chose to reduce corporation tax there would be an associated reduction in the size of the block grant. See also John FitzGerald, 'The potentially poisoned chalice of fiscal autonomy in Northern Ireland', *The Irish Times* (7 January 2022): <https://www.irishtimes.com/business/economy/john-fitzgerald-the-potentially-poisoned-chalice-of-fiscal-autonomy-in-northern-ireland-1.4770272> [accessed 17 January 2022]

447 Written evidence from Empowering Yorkshire ([FGU0009](#)), Yorkshire Devolution Movement ([FGU0015](#)), New Local ([FGU0017](#)), Lord Shipley, Lord Tyler and Lord Wallace of Saltaire ([FGU0018](#)), Local Government Association ([FGU0021](#)), Unlock Democracy ([FGU0037](#)), LIPSIT Project ([FGU0038](#)), Volt UK ([FGU0039](#)), London First ([FGU0049](#)), Professor Jim Gallagher ([FGU0051](#)), Centre for Cities ([FGU0052](#)) and the Local Government Information Unit ([FGU0054](#))

idea that the Chancellor decides how much money every council gets and thought local decisions should be made about locally raised money.⁴⁴⁸

324. The Industrial Strategy Council noted the need to rationalise the number of funding pots by introducing “[m]ulti-year, single pot funding settlements” which would help create certainty and allow for “longer-term strategic planning and implementation” by local authorities.⁴⁴⁹ The Housing, Communities and Local Government Committee has recommended the Government should provide grants to local and combined authorities on a block basis, rather than being subject to ringfencing or competitive bidding.⁴⁵⁰ The House of Lords COVID-19 Committee has recommended introducing a three-year rolling local government financial settlement which would “allow local authorities to plan for the long-term future of their towns and cities”.⁴⁵¹
325. Councillor Forbes told us local authorities would have more capacity if they spent less time tackling the “fragmented jigsaw approach” to securing funding from local government. He said: “We have something in the region of 26 different funding pots that we have to bid into, all of which have different accounting mechanisms ... It is ... very time-consuming and costly.”⁴⁵²
326. Andy Burnham said the “laborious” bidding processes for centrally held and ring-fenced funding was a “waste of time” and levelling up could be achieved more quickly if combined authorities had more financial autonomy.⁴⁵³ The Local Government Association agreed.⁴⁵⁴ Councillor Jamieson summarised the problem: “[W]hen you have to bid for multiple pots, you might need five different bids in order to get a big enough package to do what you want to, but if you get four but not the fifth you are in the invidious position of having to hand back the money because you cannot deliver what you wanted to.”⁴⁵⁵
327. Michael Gove has suggested that the forthcoming Levelling Up White Paper may address the need to evolve the current system by which local government bids for central government funding.⁴⁵⁶
328. Several witnesses said the English regions were disadvantaged by the UK’s funding arrangements compared to the devolved nations, and this was the most pressing case for reform of the UK’s funding arrangements.⁴⁵⁷ Professor Roy agreed, saying Scotland’s capital borrowing powers put it at an advantage over the English regions.⁴⁵⁸ Professor Denham told us that whereas the Barnett Formula guarantees a certain level of financial support for Scotland, there are no such guarantees for the English regions. He said that the poorer English regions were disproportionately disadvantaged during periods of

448 [Q 236](#) (Councillor James Jamieson)

449 Industrial Strategy Council, *Devolution and Governance Structures in the UK*, p 30

450 Housing, Communities and Local Government Committee, *Progress on devolution in England* (Fourth Report, Session 2021–22, HC 36), para 87

451 COVID-19 Committee, *Towns and Cities: Local Power in the Path to Recovery* (2nd Report, Session 2021–22, HL Paper 115), para 123

452 [QQ 226–27](#) (Councillor Nick Forbes)

453 [Q 51](#) (Andy Burnham)

454 [Q 227](#) (Councillor James Jamieson) and written evidence from Local Government Association ([FGU0021](#))

455 [Q 227](#) (Councillor James Jamieson)

456 Politico, ‘Boris Johnson pins election hope on “levelling up” Britain – whatever that is’ (7 December 2021): <https://www.politico.eu/article/boris-johnson-uk-election-hopes-levelling-up/> [accessed 17 January 2022]

457 [Q 121](#) (Professor Philip McCann, Professor Graeme Roy)

458 [Q 114](#) (Professor Graeme Roy)

fiscal restraint as a result.⁴⁵⁹ Philip Rycroft said that part of the answer to the inequitable distribution of resources arising from the Barnett Formula was proper fiscal devolution in England.⁴⁶⁰ The COVID-19 Committee agreed and recommended the Government explain its plans for the further financial devolution of powers in England in the Levelling Up White Paper.⁴⁶¹

329. The Heseltine Institute said that “[l]ocal authorities, combined authorities and mayors do not currently have sufficient clout or funding to genuinely shape outcomes in the places they represent.” They said the recent transfer of powers over income and property to Wales and Scotland strengthened the case for greater fiscal devolution to local and combined authorities in England. It noted that English local government’s revenue-raising powers were limited compared to other countries in western Europe.⁴⁶²
330. However, Professor Denham noted a reluctance by Whitehall to devolve funding to the English regions due to a belief among ministers that local issues can be tackled by central government.⁴⁶³ In an interview with the State of the Union blog the West Midlands Mayor, Andy Street, said the future of English devolution should involve a sustainable financial settlement that ends the “begging bowl culture” to Whitehall.⁴⁶⁴ Professor Martin agreed, saying: “[O]nly in Britain would we tax people locally and give it to central government, then give it back to localities laden with conditions assessed by civil servants ... who have never even been to that place ... That is not devolution and it is not locally empowering”.⁴⁶⁵
331. Councillor Forbes suggested that business rates and council tax should be modernised “with a stronger sense of local ownership and decision-making.”⁴⁶⁶ The Heseltine Institute cautioned that “[a]n immediate and rapid move towards fiscal decentralisation is likely to be impractical “due to the varying levels of institutional capacity across different combined authorities and governance structures.”⁴⁶⁷ Andy Burnham also recognised that, as the capacity of regions varied, the Government should adopt a “baby steps” approach to devolving tax powers, perhaps by introducing a tourist tax and land value tax to begin with.⁴⁶⁸
332. The Heseltine Institute told us that fiscal devolution in England might risk exacerbating regional inequality given that London and the south east would have a significantly wider tax base to draw on. It said that fiscal transfers by central government would therefore continue to be necessary to stabilise

459 Q 43 (Professor John Denham)

460 Q 13 (Philip Rycroft)

461 COVID-19 Committee, *Towns and Cities: Local Power in the Path to Recovery*, para 178

462 Written evidence from The Heseltine Institute for Public Policy, Practice and Place (FGU0055)

463 Q 44 (Professor John Denham)

464 State of the Union blog, *Interviews: Andy Street* (16 July 2021): <https://stateoftheunion.uk/interviews> [accessed 17 January 2022]

465 Q 13 (Professor Ciaran Martin)

466 Q 235 (Councillor Nick Forbes)

467 Written evidence from The Heseltine Institute for Public Policy, Practice and Place (FGU0055)

468 Q 51 (Andy Burnham)

the transition to greater sub-national fiscal autonomy.⁴⁶⁹ Councillor Forbes agreed.⁴⁷⁰

333. *Over recent years a multiplicity of funding initiatives to which local government is invited to bid has emerged. This occupies a disproportionate amount of local government capacity. We recommend the Government rationalises the funding pots available to local government by introducing a framework of multi-year single-pot funds, which would facilitate long term planning aligned with local needs and allow for local government resources to be re-focussed on exercising devolved powers.*
334. *Meaningful and thriving devolution within England will not be achieved if devolved authorities are not granted the financial means to exercise their powers effectively. We recommend the Government introduces greater fiscal devolution to devolved authorities, which will require the Treasury to relinquish a degree of control over taxation. As with the Barnett formula, there will continue to be a key role for the redistribution of resources by central government to ensure that existing regional inequalities are not exacerbated, and that future geographic inequalities are addressed, in the interests of the Union more generally. Central government's continued role in redistributing resources should not be used as a vehicle to impose its own policy preferences on English devolved authorities in areas that can be devolved.*

Shared Prosperity Fund

335. The Shared Prosperity Fund (the ‘Fund’) will begin in 2022, replacing EU structural funds.⁴⁷¹ Using its powers under the UK Internal Market Act 2020 to provide financial assistance in devolved areas, the Government has said the Fund will “go beyond the limitations of EU funding” by being better tailored to the UK’s needs and aspirations. It will “operate throughout the UK and play a part in uniting and levelling up the whole country.”⁴⁷² The Institute for Government has noted that, under the EU funding arrangements, the devolved administrations enjoyed significant control over how those funds were spent.⁴⁷³

469 The Heseltine Institute for Public Policy, Practice and Place said: “In Germany for example all three levels of sub-national government (local municipalities, districts, and Länder/states) have extensive tax raising powers, and over 30% of tax revenue is taken at the sub-national level compared to under 5% in the UK. In Spain, local and regional taxes account for 23.6% of total tax income, in Italy the figure is 16.5% and even France, historically regarded as a highly centralised state, 13% of tax revenue is taken locally (OECD 2020).” See written evidence from The Heseltine Institute for Public Policy, Practice and Place (FGU0055)

470 Q 235 (Councillor Nick Forbes)

471 Department for Levelling Up, Housing & Communities and Ministry of Housing, Communities & Local Government, *UK Community Renewal Fund: prospectus 2021–22* (11 May 2021): <https://www.gov.uk/government/publications/uk-community-renewal-fund-prospectus/uk-community-renewal-fund-prospectus-2021-22> [accessed 17 January 2022]. The UK Community Renewal Fund applies in the meantime. See also House of Commons Library, *The UK Shared Prosperity Fund*, November 2021, p 14: <https://researchbriefings.files.parliament.uk/documents/CBP-8527/CBP-8527.pdf> [accessed 17 January 2022]

472 *Ibid.*

473 Institute for Government, *The UK Shared Prosperity Fund: Strengthening the union or undermining devolution?* (July 2021), p 9: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/shared-prosperity-fund.pdf> [accessed 17 January 2022]. The devolved administrations acted as the ‘managing authorities’ for allocating EU structural funds, with the UK Government acting in this capacity for England.

336. In our report on the *United Kingdom Internal Market Bill* we concluded that, while it was appropriate for the Government to invest in devolved areas, for reasons of democratic accountability it was important that the division of responsibilities between the UK Government and the devolved administrations was clear.⁴⁷⁴

Co-operation with devolved institutions

337. Several witnesses opposed the Government’s plans to spend money in devolved areas. Others emphasised that decisions about how the Fund is spent should be made in conjunction with devolved institutions. Angus Robertson told us that the Scottish Government objected to the Fund being delivered in a way that undermines devolution and regretted that the UK Government had not engaged meaningfully with the Scottish Government about the development of the Fund. He said a share of the fund should be devolved to the Scottish Government “to ensure that [Scotland’s] distinct needs are met, and that communities and stakeholders who need support from funding are not impacted by policy development delays in Whitehall departments who do not understand their needs.”⁴⁷⁵ Naomi Long and Colum Eastwood made similar points.⁴⁷⁶ Mark Drakeford also thought that the UK Government spending money in devolved areas undermined devolution, and that the money was likely to be used less effectively as a result.⁴⁷⁷ Professor Wyn Jones and Professor McAllister said the Fund should be devolved to the Welsh Government.⁴⁷⁸

338. Sir Jeffrey Donaldson was content for the Government to set the overall UK framework so long as allocations made to the devolved administrations under the Fund were consistent with the Barnett Formula.⁴⁷⁹ Professor Gallagher supported the Fund and said it as “right and proper” for the UK Government to decide on allocations from the Fund.⁴⁸⁰ Philip Rycroft and Professor Martin did not object in principle to the UK Government spending money in devolved areas, but Philip Rycroft cautioned doing so “over the heads of the devolved governments” would be counterproductive.⁴⁸¹

339. Some witnesses emphasised that co-operation between different levels of government was key to determining funding allocations under the Fund.⁴⁸² Michael Gove acknowledged it was important for the Government to engage the devolved administrations to ensure that spending in devolved areas was adding value. He emphasised, however, that the UK Government should be able to engage citizens in Scotland, Wales and Northern Ireland without this always being mediated through the devolved administrations.⁴⁸³

340. The Heseltine Institute said “[m]etro mayors, combined authorities and other local leaders should be engaged throughout the [Shared Prosperity

474 Constitution Committee, *United Kingdom Internal Market Bill*, paras 37–44. The House of Lords voted to remove the financial assistance powers from the Bill, although the Commons then re-inserted them; they eventually became sections 50 and 51 of the UK Internal Market Act 2020.

475 [Q 71](#) (Angus Robertson MSP)

476 [Q 168](#) (Naomi Long MLA), [QQ 201–02](#) (Colum Eastwood MP)

477 [Q 85](#) (Mark Drakeford MS)

478 [Q 175](#) (Professor Laura McAllister, Professor Richard Wyn Jones)

479 [Q 134](#) (Sir Jeffrey Donaldson MP)

480 [Q 218](#) (Professor Jim Gallagher)

481 [Q 13](#) (Philip Rycroft, Professor Ciaran Martin)

482 [Q 218](#) (Professor Jim Gallagher, Professor James Mitchell) and written evidence from Dr Paul Anderson ([FGU0011](#))

483 [Q 108](#) (Michael Gove MP)

Fund] allocation process to ensure projects are closely aligned with local needs and priorities.”⁴⁸⁴

341. The Institute for Government has said that the UK Government’s decision to fund projects throughout the UK could risk duplication if devolved administrations either develop similar funding programmes or are already investing in the same policy areas.⁴⁸⁵ The Royal Society of Edinburgh and Professor McLean felt that Government spending in devolved areas would blur lines of accountability and cause confusion about respective government priorities.⁴⁸⁶
342. While the Fund was first announced in 2018, few details about how it will operate have been confirmed by the Government. We wrote to Neil O’Brien MP, the Minister for Levelling Up, the Union and Constitution, on 9 November 2021, to ask about the governance of the Shared Prosperity Fund, including the role of the devolved administrations. He told us that the Government is committed to including representatives of the devolved governments on the governance structures for the Shared Prosperity Fund.⁴⁸⁷
343. **We welcome the creation of the Shared Prosperity Fund and we believe it is legitimate for the UK Government to set the Fund’s overall framework, as the EU did for structural funds. However, we have heard significant concerns about the UK Government’s role in making allocations from the Fund directly in devolved areas, without the involvement of the devolved administrations or devolved authorities. As devolved bodies already have a role in promoting economic development in their respective areas, it is important that allocations from the Fund take account of this to ensure its benefits are maximised, avoiding unnecessary duplication or nugatory expenditure.**
344. *The Government’s lack of engagement with the devolved administrations on the overall design of the Shared Prosperity Fund is unhelpful and has undermined trust. To rebuild trust and partnership, we recommend the devolved administrations and devolved authorities should have a more constructive role in the governance of the Shared Prosperity Fund. This should include decisions about local priorities and the allocation of funding. Developing trust and partnership in this process will be a test of the UK Government’s willingness to foster a Union based on mutual respect and partnership.*

484 Written evidence from the Heseltine Institute for Public Policy, Practice and Place ([FGU0055](#)). See also written evidence from the Yorkshire Devolution Movement ([FGU0015](#)).

485 Institute for Government, *Funding devolution: The Barnett formula in theory and practice*, p 24

486 [Q 157](#) (Professor Iain McLean) see also written evidence from the Royal Society of Edinburgh ([FGU0047](#))

487 Letter from the Chair to Neil O’Brien MP, Minister for Levelling Up, the Union and Constitution (9 November 2021): <https://committees.parliament.uk/publications/7813/documents/81284/default/> and Letter from Neil O’Brien MP, Minister for Levelling Up, the Union and Constitution to the Chair (1 December 2021): <https://committees.parliament.uk/publications/8170/documents/83560/default/>

CHAPTER 10: THE UNION'S PURPOSE AND POTENTIAL IN THE 21ST CENTURY

345. We believe that the strength of the United Kingdom derives from the sum of its interlocking parts—with the different legislatures, executives, mayors and local government comprising a single state, with ultimate authority embodied in the Crown in Parliament. While different democratic mandates will inevitably lead to friction on occasion, the strength of the constitutional arrangements will be demonstrated in how the different parts take opportunities and resolve disagreements through stronger intergovernmental and interparliamentary relations.
346. Over the last two decades that strength has been tested in the face of an unparalleled rate of change in the world. The UK's governing institutions have had to respond to the cumulative effects of globalisation, a financial crash, climate change, an information and technology revolution, Brexit, a pandemic and hostile threats to our liberal democracy. Challenges which have had an impact on people's life experience and heightened feelings of discontent at the responsiveness of the governance of the Union in fairly addressing that impact across the whole of the UK.
347. Devolution worked well for much of the period since the late 1990s. However, the current arrangements have experienced strain, and we believe it is essential to improve the governance of the United Kingdom. We are confident this can be achieved within the current constitutional framework rather than resorting to more fundamental reforms. Even if fundamental constitutional change were desirable or feasible, it would not resolve fundamentally different political objectives among political parties across the UK.
348. We do not believe it is possible or even desirable for the constitutional arrangements to become wholly symmetrical; but less asymmetry is necessary to rebalance power between London and the nations and regions for the overall benefit to the health of the Union.
349. **We believe that the Union's strength historically has been its ability to adapt to changing circumstances both national and international. The Union should continue to adapt, but with a renewed focus on strengthening effective relations among its constituent parts. We believe that the flexibility of our uncodified constitution is well-suited to achieving this.**
350. We have previously recommended that the UK Government and political parties "devise and articulate a coherent vision for the shape and structure of the United Kingdom, without which there cannot be constitutional

stability.”⁴⁸⁸ Witnesses agreed that the lack of vision was undermining efforts to promote the Union’s benefits.⁴⁸⁹

351. **The Committee’s vision is of a more cooperative Union based on a renewed sense of respect and partnership between the different layers of government and a new emphasis on shared governance in the interests of all its citizens.**
352. **After the challenges of Brexit and COVID-19 we believe there is a clear opportunity to reset relationships to achieve a better functioning Union which can keep pace with the rapid changes and the many challenges that confront its nations and regions in the 21st century. A Union which can achieve greater wellbeing and deliver greater resilience across the whole United Kingdom.**

488 Constitution Committee, *Proposals for the devolution of further powers to Scotland*, para 24. We repeated this recommendation see Constitution Committee *Inter-governmental relations in the United Kingdom*, para 211

489 [QQ 34, 41](#) (Professor John Denham), [Q 171](#) (Professor Laura McAllister) see also written evidence from United Kingdom Constitution Monitoring Group ([FGU0031](#)), Electoral Reform Society ([FGU0022](#)), New Local ([FGU0017](#)), Unlock Democracy ([FGU0037](#)) and Dr Paul Anderson ([FGU0011](#)). In 2018 the Public Administration and Constitutional Affairs Committee recommended the Government publish a ‘Devolution Policy for the Union’. In response the Government undertook to produce such a statement on the Union in due course, but nothing has been produced to date. See Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (Eighth Report, Session 2017–19, HC 1485), para 21

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

State of the Union

1. The opportunity to revitalise the Union, making it fit for purpose in the 21st century, is clear and achievable. Opponents of the United Kingdom argue its demise is inevitable. It is not, but there is no room for complacency; each of its nations and regions would be diminished if the Union ceased to exist. (Paragraph 34)
2. The United Kingdom's unique constitutional arrangements reflect its character as a multi-national state which accommodates a range of identities and are particularly well suited in responding to the new challenges of the digital age. They provide for the significant autonomy of its constituent nations complemented by the pooling of resources and sharing of risks, to ensure greater resilience in its collective response to global security, the pace of industrial change, economic, financial and public health challenges, present and future. (Paragraph 36)
3. Global pandemics do not respect national boundaries and cross-border co-operation is therefore critical. We believe the United Kingdom's collective response to the COVID-19 pandemic, including the furlough scheme, financial support to businesses and the procurement of vaccines, demonstrates the continued strength and importance of the Union. (Paragraph 44)
4. While differences in the public health response to the COVID-19 pandemic between the UK Government, the devolved administrations and English local government raised awareness of the devolution arrangements, they also exposed long-standing tensions in intergovernmental relations. (Paragraph 45)
5. The flexibility of the United Kingdom constitution has allowed for an asymmetrical approach to adapt to and accommodate its different nations and regions. However, the increasing lack of overall coherence in our constitutional arrangements, in particular the failure to develop a modern form of 'shared governance' which recognises central and devolved governments have distinct statutory responsibilities that often intersect, has undermined the strength of the Union. (Paragraph 58)
6. Facilitating greater co-operation will also require a new, and more modern, style of governance. Improving the shared governance of the United Kingdom will require a greater degree of respect and partnership between the different layers of government. We consider these requirements throughout this report. (Paragraph 59)
7. Whatever the constitutional future of the United Kingdom, it should be recognised that everyone involved in its governance has a common interest in ensuring that the Union works as well as it possibly can and delivers for people in all its constituent parts. The United Kingdom's nations and regions are inextricably linked geographically, socially, politically and economically. It is imperative, therefore, that all executives and legislatures, whatever their political outlook, work constructively and in partnership to advance the shared interests of the United Kingdom's inhabitants. (Paragraph 60)
8. While polls only provide a snapshot of public opinion and as reported, they say little about voters' relative priorities, there is evidence of an increasing

ambivalence about the Union among the populations of each nation. While not a panacea, improving the governance of the United Kingdom is an important part of addressing this. For the Union to flourish, it must enjoy popular support in each nation, based on a recognition of the common benefits accruing to all nations and regions. (Paragraph 66)

9. While we welcome the Government's stated commitment to the Union, we believe it needs to set out a clearer vision as to how it will be shaped in the 21st century. We have expressed concern in the past about governments' tendency to 'devolve and forget'. There has also been evidence at times of a unilateral approach to strengthening the Union, which has been insufficiently sensitive to the pluralism of the Union. We do not believe either approach is an effective means of strengthening the Union, at a time when there are several parties of government in the United Kingdom who are not committed to its success. (Paragraph 74)
10. This vision needs to be rooted in the best appreciation we can reach about the fundamental challenges which have been building up over decades and which have led to today's discernible atmosphere of distrust and uncertainty in popular discussion and debate (Paragraph 75)
11. While the strategy for strengthening the Union has taken some time to find its feet, we detected during our inquiry an apparent willingness to adopt a more sensitive approach by the Government. We recommend that it should consolidate this approach, and we examine how it might do so in chapters 4 and 5 on the Sewel convention and intergovernmental relations. (Paragraph 76)

Parliamentary sovereignty

12. In recent times the Supreme Court, when deciding cases on devolution issues, has consistently reaffirmed that parliamentary sovereignty remains a fundamental doctrine of our constitution. We welcome this legal clarity, while recognising that how Parliament chooses to exercise this sovereignty is subject to substantial political constraints. (Paragraph 86)
13. There might appear to be a difference between the doctrine of parliamentary sovereignty as reflected in legislative supremacy and the rather more elusive concept of popular sovereignty. We are not convinced that there is much practical distinction between them. The UK Parliament's legislative supremacy ultimately depends for its political legitimacy on the consent of the people, as expressed in UK general elections. (Paragraph 95)
14. The UK Parliament has legislated to devolve power and has established in statute the devolved institutions. In theory, it could legislate to abolish them. In reality, it would not do so, and certainly not without the express consent of relevant voters in a referendum, as recognised in the devolution statutes. This is an illustration of the existence of the political constraints which in practice circumscribe the legislative supremacy of the UK Parliament. (Paragraph 96)
15. Parliamentary sovereignty has operated for centuries subject to such constraints. Parliament is also not the only source of law within the constitution: the Royal prerogative and the common law represent distinct areas of lawful authority and set important practical limitations upon

Parliament's legislative reach, as do the United Kingdom's increasing international obligations. (Paragraph 97)

16. Constitutional conventions also circumscribe Parliament's law-making capacity if not its formal competence. In the context of devolution, the Sewel convention provides a specific restraint on the UK Parliament's power to legislate in devolved areas, which is also explicitly recognised in statute. We discuss in the following chapter the effectiveness of the convention. As with other checks and balances and political constraints, there may, from time to time, be tensions in the operation of the convention. However, we consider that the doctrine of parliamentary sovereignty has successfully accommodated the process of devolution and will continue to do so. Parliament's legislative authority must continue to be exercised with respect and restraint if the Union is to be strengthened. (Paragraph 98)

Sewel convention

17. The Sewel convention is a fundamental part of the United Kingdom's devolution arrangements. If trust is to be maintained between the UK Government and the devolved administrations, it is essential that it be respected by all governments and legislatures. While the legislative consent procedure generally worked well from 1999, implementing Brexit placed it under strain. (Paragraph 120)
18. It has been useful at times for the UK Parliament to legislate for the devolved jurisdictions on devolved matters with consent; indeed, sometimes the devolved administrations have relied on Parliament to do so. (Paragraph 121)
19. It is not clear how the Sewel convention was intended to apply in a situation where one devolved legislature provides consent and the others do not. This circumstance arose with the European Union (Withdrawal) Bill; we noted that the Government's efforts to accommodate the concerns of the devolved administrations satisfied the Welsh Government but not the Scottish Government. Thereafter the Scottish Government chose not to seek the consent of the Scottish Parliament to several Brexit bills. This illustrates the importance of all sides engaging properly with the Sewel convention. (Paragraph 122)
20. For the Sewel convention to operate well, constructive relationships and good faith are required between the UK Government and the devolved administrations. The Sewel convention is undermined both if the Government refuses to seek, or chooses to act without, consent, and if devolved administrations recommend the refusal of consent to their legislatures, for purely political purposes. (Paragraph 123)
21. Where the UK Parliament legislates in devolved areas without consent it should demonstrate that the particular circumstances require it to do so. In any event, the UK Government should always demonstrate that it has taken all reasonable steps to secure consent. Other than in exceptional circumstances, the UK Government ought not to seek to legislate in devolved areas without consent. While the convention does not technically apply to secondary legislation, the UK Government should still seek consent before acting in this area. (Paragraph 124)
22. It is an established constitutional principle that conventions are non-legal rules and hence unenforceable by the courts. We therefore do not agree

that the approach taken to the Sewel convention by the Supreme Court in *Miller 1* was misconceived. As any breach of the convention will have political consequences, we believe that Parliament is the appropriate forum to scrutinise its operation. (Paragraph 129)

23. The Devolution Guidance Notes require early consultation with the devolved legislatures on the devolved aspects of UK bills, to address any significant issues in good time. During Brexit, it is clear this guidance was not always followed but subsequently there is evidence that it is again being followed. We welcome this and recommend the guidance should be followed as a matter of course from now on. We believe it would be desirable for all efforts to be taken to resolve any substantive disagreements before a bill is introduced to Parliament. This could be achieved through the more robust arrangements for joint working (including the new dispute resolution process) agreed as part of the review of intergovernmental relations. (Paragraph 136)
24. We believe the absence of any meaningful dialogue between Parliament and the devolved legislatures on legislative consent matters is a gap in the legislative process. While we welcome the obligation on ministers to notify the House of Lords at third reading if consent has not been obtained for a relevant bill, this limits opportunities for meaningful parliamentary scrutiny at an earlier stage in the bill's consideration and lacks transparency. (Paragraph 137)
25. We recommend that to increase confidence in the Sewel convention, as well as strengthening interparliamentary scrutiny of intergovernmental relations more generally, the House of Lords should strengthen its scrutiny of bills that engage the Sewel convention as follows:
 - (a) On introduction of a bill to the House of Lords which engages the Sewel convention, the Government should submit a memorandum to the House about the devolution implications, explain what engagement has taken place with the relevant devolved administrations.
 - (b) In our scrutiny of the bill, the Committee will take into account the Government's memorandum, progress in securing legislative consent and any further evidence or materials, including the view of a committee of a relevant devolved legislature, we consider necessary. As the Committee has done previously, we may occasionally advise the House on the wisdom of proceeding with a bill in the absence of legislative consent. Depending on the timing of each devolved legislature's consideration of a legislative consent memorandum and motion, including the possibility of amendments requiring the consideration of supplementary memorandums and motions, we might have to issue a report at a later stage.
 - (c) The Procedure and Privileges Committee should consider if a devolved legislature's consent, or lack of consent, should receive greater prominence in House of Lords Business by tagging this, once notified to the House, against each stage of the Bill's consideration by the House. (Paragraph 138)
26. At present when the Government considers consent is not required from a devolved legislature and proceed to give effect to that view, there is no parliamentary scrutiny of this determination. In future we recommend that the Government should justify its approach to the House at the beginning

of a Bill's consideration. This could form part of the statement we have recommended above. (Paragraph 139)

27. If the operation of the Sewel convention is strengthened and mutual respect between the UK Government and devolved administrations restored, this will obviate any need to consider transforming the convention's status into a legal rule. We do not believe it would be desirable to involve the courts in adjudicating disputes on the meaning and application of the convention, which are best resolved through political deliberation. A rigid approach to the convention could also limit the ability of the UK Parliament to legislate in devolved areas when it would be appropriate to do so and beneficial to all parties. However, it will be important to keep the new process under review, with the option of considering more substantive procedural changes if the circumstances demand it. (Paragraph 140)
28. We recommend that the changes we propose to the operation of the Sewel convention should be reflected in an updated version of the Cabinet Manual and the Guide to Making Legislation. In the meantime, as the Devolution Guidance Notes do not reflect the current devolution arrangements, they should be updated as a priority. (Paragraph 141)
29. We recognise the lack of agreement within the Northern Ireland Executive may sometimes require the UK Government to seek to legislate in devolved areas. However, the unanimous rejection of the Government's legacy proposals by political parties in Northern Ireland indicates a clear lack of consent on that issue. (Paragraph 148)
30. The principle of legislative consent is important in the English context, as it is to the devolution arrangements. English Votes for English Laws was an attempt to answer the West Lothian Question. It is widely accepted that the procedure used was flawed and the repeal of the EVEL standing orders was unopposed in the House of Commons. We note the Government's motivation for repealing the EVEL procedure was to strengthen the Union. That said, following its repeal, the Question remains unanswered. (Paragraph 158)

Intergovernmental relations

31. It is unfortunate that greater progress on reforming intergovernmental structures was not achieved before the challenges of Brexit and COVID-19 demonstrated the inherent weaknesses in the current arrangements. Both challenges have underlined the pre-existing need to strengthen intergovernmental arrangements. (Paragraph 168)
32. The governance of the United Kingdom requires strong relationships to be built and maintained between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive at all levels: between the Prime Minister, First Ministers and deputy First Minister, and other ministers, and officials from all four administrations. (Paragraph 169)
33. We welcome the agreement reached between the UK Government and devolved administrations on the process for agreeing exclusions from the UK Internal Market Act 2020's market access principles in policy areas covered by common frameworks. This is an encouraging sign that constructive intergovernmental relations are being re-established. (Paragraph 170)
34. We recognise that, whatever changes to the intergovernmental structures are agreed, even the best governance structures will not be capable of resolving

fundamental political differences between the different administrations. The arrangements should however be capable of fostering greater trust and more effective, co-operative, working relationships. (Paragraph 171)

35. We welcome the belated publication of Dunlop review's recommendations. We also welcome the outcome of the intergovernmental relations review, which appears to have addressed many of the defects in the previous structure. There will inevitably be disagreements, but stronger structures and relationships should be able to withstand and overcome these. (Paragraph 177)
36. We believe the Prime Minister has a critical role to play in making the new intergovernmental structures a success and maintaining strong relationships between the four administrations. Given its importance to the working of the Union, we recommend the Prime Minister and Heads of Devolved Governments Council should meet at least twice each year. (Paragraph 178)
37. We believe that strengthening the intergovernmental structures will achieve only so much. The success of the new arrangements will depend on how the Government and devolved administrations operate them and whether they are committed to using the new structures to cooperate on achieving shared objectives, rather than simply managing—or taking opportunities to accentuate—their differences. (Paragraph 182)
38. Better co-operation and partnership between the UK Government and devolved administrations is in the public interest, and the public supports greater joint working. There are a range of challenges that, reserved or devolved, will affect all parts of the United Kingdom equally, including health and social care, as well as shared competences like social security and cross-border transport links. The UK Government and devolved administrations are already committed to co-operation under the Memorandum of Understanding but must do more to make this a reality. (Paragraph 189)
39. Devolution provides a good opportunity for policy experimentation and shared learning through intergovernmental structures. Improved intergovernmental relations should also facilitate a more open approach to sharing good practice and any lessons learned. (Paragraph 190)
40. Facilitating better and more joined-up data sets from the nations and regions of the United Kingdom will facilitate shared learning and properly informed and more effective decision making, building on the strength of existing data in Scotland and Wales. To this end we welcome the agreement in the Concordat on Statistics between the UK Government and devolved administrations. We recommend, however, that the Government prioritise the development of more robust data for the English regions. Such data is central to achieving the Government's Levelling Up agenda. (Paragraph 194)
41. The negotiation, agreement and implementation of future international trade agreements, including the interplay between reserved and devolved competences, may pose challenges for intergovernmental relations. While trade is a reserved matter there is value in consulting the devolved administrations in this area, particularly as they will be required to help implement future agreements. Trade agreements are a key part of the economic union, but also cover much wider issues of investment, fair competition, culture and exchange. The principles of respect and co-operation entail that the devolved administrations should be engaged throughout the process of treaty-making and implementation, including during treaty negotiations,

where appropriate. The proposed inter-ministerial group on Global Britain as part of the new intergovernmental structures potentially offers a route to achieving this. (Paragraph 196)

42. Attitudes and behaviours need to change to make the new intergovernmental arrangements a success. If this does not happen, there may be a stronger argument for placing intergovernmental relations on a statutory footing. However, we are alive to the potential downsides of detailed statutory provisions resulting in political disagreements being settled in court rather than through political dialogue. (Paragraph 199)
43. Effective scrutiny of intergovernmental relations needs to be underpinned by greater transparency including the provision of information about the Government's engagement with the devolved administrations. (Paragraph 203)
44. While we welcome the Government's commitment to publish quarterly and annual reports on intergovernmental engagement, we recommend that these documents should provide greater detail about (a) the work commissioned, (b) actions agreed or decisions taken, and (c) outcomes. Without such information, it will be difficult for Parliament adequately to assess the effectiveness of the Government's engagement. (Paragraph 204)
45. Similarly, while the more regular meetings between the Prime Minister and other UK ministers with the First Ministers and Deputy First Minister of the devolved administrations is welcome, we recommend that the communiqués issued following those meetings be more detailed and informative than at present. (Paragraph 205)
46. We recommend the Government enters into a formal agreement with the House of Lords on the information it will provide about its intergovernmental engagements, to enhance the current scrutiny arrangements. This agreement should formalise the information already provided by the Government and, in the same manner as the agreements between the Scottish and Welsh administrations and legislatures, should include the advance notification of formal intergovernmental meetings to the House, as well as greater detail about those meetings as we have recommended. The agreement should also include a commitment to provide the proposed memorandum we recommended to strengthen the House's consideration of legislative consent issues. (Paragraph 206)
47. The House of Lords takes a keen interest in the United Kingdom's devolution arrangements. We therefore recommend the Government should make time available in the House to hold a debate on its annual report on intergovernmental relations. (Paragraph 207)

Interparliamentary relations

48. Enhanced interparliamentary relations have an important role to play in allowing all legislatures in the United Kingdom to scrutinise the new intergovernmental arrangements, increasing transparency and holding their respective executives to account, as well as helping to foster greater mutual respect between them. There is a strong appetite among the devolved legislatures for greater interparliamentary engagement with the UK Parliament. We believe that the House of Lords can play an important role in facilitating this. (Paragraph 219)

49. Greater interparliamentary engagement can also assist the scrutiny work of committees, by providing informal opportunities for collaborative working and coordinated scrutiny in areas of common interest, including shared policy areas like social security, taxation, common frameworks and the legislative consent process. (Paragraph 220)
50. We note that UK Government ministers have been willing to appear before committees of the devolved legislatures, which is welcome, but we recommend this should become formalised in the UK Ministerial Code by including in it an expectation that this will occur, where appropriate. (Paragraph 221)
51. We welcome the plans to establish a new interparliamentary forum and look forward to participating in it. (Paragraph 223)
52. To be a success the interparliamentary forum should be based on an equal partnership among the legislatures and relatively informal arrangements—providing a framework for more detailed interparliamentary collaboration where there is an appetite to do so. (Paragraph 224)
53. We recommend that the UK Government and devolved administrations should undertake to engage with the new interparliamentary forum. (Paragraph 225)

The governance of England

54. England's place in the Union should not be overlooked, but there are no obvious governance changes to provide England with a distinctive voice that command political and public support. Establishing an English parliament would crystallise England's relative strength—in population and economic terms—vis a vis the existing devolved legislatures. This would destabilise the Union. It would also do little to address the need for greater decentralisation within England, which we believe has the greatest potential to resolve concerns about the governance of England. (Paragraph 230)
55. England is highly centralised, with greater regional economic inequalities, compared to most other Western European countries. The English regions—as do Scotland, Wales and Northern Ireland—feel remote from central decision making in the United Kingdom. We strongly support the development of devolution within England, noting that a highly centralised state can have a negative impact on democratic culture and economic prosperity. Greater devolution within England can help improve economic performance, address regional inequalities and improve service delivery. (Paragraph 240)
56. We believe a greater degree of respect and partnership is required between the Government and sub-national government in England, as it is between the UK Government and the devolved administrations; per our recommendations in chapter 5. (Paragraph 241)
57. Greater decentralisation will help to strengthen the governance of England more generally and achieve a better overall balance of powers between the centre and the other parts of the United Kingdom. This will benefit the overall health of the Union. (Paragraph 242)
58. Like England, Scotland remains a highly centralised country, notwithstanding the substantial devolution of power to the Scottish Parliament. The benefits that may be achieved by greater decentralisation in England, could also

apply in the Scottish context, as recommended by the Smith Commission. (Paragraph 243)

59. Considering its importance, we regret the long delay in the publication of the Government's Levelling Up white paper. We believe that the success of the Levelling Up agenda will require a long-term commitment, and cross-party support, to deliver effective and properly resourced devolution within England. (Paragraph 249)
60. Effective joint working between Government departments, particularly the Treasury, and local government will be key to the effective delivery of the Levelling Up agenda, including the expansion of devolution across England. To this end, we believe the Local Government Association's proposal to establish an English devolution task force to facilitate discussion between central and local government has considerable merit. We recommend that the Government explore further with local government how this might work in practice. (Paragraph 250)
61. We note evidence of increasing public support for devolution within England, which is important ahead of its expansion. If effective devolution is achieved within England, to empower local government, we believe this will help to respond to concerns about the governance of England. (Paragraph 253)
62. The current deals-based approach to devolution is not sufficiently ambitious. We recommend the Government develops a principled devolution framework, in co-operation with the Local Government Association and devolved authorities, to provide a clear baseline for further devolution of powers within England. This should allow devolved authorities to choose which powers they are capable of delivering and wish to adopt, and which should remain at the centre. (Paragraph 259)
63. We recommend that to facilitate further devolution to devolved authorities in England the Government should provide them with adequate resources and support to build the necessary capacity to exercise additional powers, as well as the capability to deliver them. This will be critical to the successful extension of devolution within England to the counties. (Paragraph 264)
64. The devolution framework should include steps to achieve greater coherence in England's sub-national governance arrangements to improve democratic accountability. We recommend the development of devolution within England should ensure greater alignment between subnational bodies to create functioning economic geographies which also respect local identities, in so far as possible. (Paragraph 267)
65. As devolution within England develops, it will be important that English devolved authorities have an opportunity to influence discussions at the national level. English devolved authorities should be given greater prominence in the intergovernmental arrangements—either through a parallel forum or a sub-committee of the new Prime Minister and Heads of Devolved Governments Council—so they have an opportunity to contribute to United Kingdom-wide discussions. This could also facilitate greater dialogue between the nations and regions, therefore strengthening the Union. (Paragraph 272)

Whitehall

66. To deal effectively with and respond to the challenges of governing the United Kingdom in the 21st century, significant culture change is required in Whitehall, including the end of its top-down mindset. Following the completion of the review of intergovernmental relations and if, or when, devolution is extended across England, Whitehall will need to transform how it manages, and mediates between, the different interests of the nations and regions. Greater respect and co-operation between Whitehall and the different parts of the United Kingdom will help strengthen the Union. (Paragraph 279)
67. We note the Government's responsibility for the Union, intergovernmental relations and English devolution has been brought together under the role of Secretary of State for Levelling Up, Housing and Communities, who is also the designated Minister for Intergovernmental Relations. While the combined responsibility for the devolution arrangements is welcome, we are concerned that the role's broader responsibilities risk undermining its focus on this important area. We hope the combined ministerial responsibility for the devolution arrangements becomes a settled part of the machinery of government. We believe that Whitehall's capacity to manage a fundamental part of the United Kingdom's governance arrangements would be at risk of being undermined if this combination continues to be vulnerable to frequent and significant restructuring. (Paragraph 285)
68. We endorse the Dunlop review's recommendation that a senior Cabinet position—at present the Secretary of State for Levelling Up, Housing and Communities—should have a duty to uphold the integrity of the constitution, including the operation of intergovernmental relations and the devolution arrangements more generally. (Paragraph 286)
69. We believe that retaining separate territorial secretaries of state helps to maintain the prominence that the Union and intergovernmental relations demand in the Cabinet and across Whitehall. (Paragraph 287)
70. We recommend that a greater understanding of the Union should become part of every Government department's DNA but acknowledge this will take time to achieve. In the meantime, there needs to be strong political and civil service leadership of what should be regarded as a major change programme across Whitehall. (Paragraph 288)
71. We welcome the intention behind the establishment of the Cabinet Union Strategy Committee and the Union Policy Implementation sub-committee, including the roles of the Prime Minister and Minister for Intergovernmental Relations in chairing those bodies. We hope the Union Strategy Committee will be genuinely strategic in its approach. We will judge the Committees by their success in inspiring the change in mindset which we believe is required across Whitehall. (Paragraph 292)
72. We endorse the Dunlop review's recommendation to establish a single Permanent Secretary with responsibility for the Union who would lead the offices of the Secretaries of State for Scotland, Wales and Northern Ireland. (Paragraph 296)
73. The continued dispersal of central government departments across the United Kingdom is welcome. While it is not an alternative to proper devolution,

and its impact on support for the Union should not be overestimated, the presence of civil servants throughout the United Kingdom is part of a package of measures that facilitates greater co-operation and partnership between central and devolved governments. (Paragraph 300)

74. We welcome the Government's commitment to increasing civil servants' knowledge of the devolution arrangements through training programmes. To have the desired impact on changing Whitehall's mindset this will require significant take up from the most junior to the most senior civil servants. (Paragraph 305)
75. The emphasis on secondments from central to devolved government is a positive development, but needs to be expanded further, including secondments between all layers of government right across the United Kingdom. (Paragraph 306)

Funding arrangements

76. We continue to believe the Barnett Formula requires reform to introduce a fairer allocation of funding among the four nations. Pending reform, the Treasury's Statement of funding policy merits a higher profile and greater parliamentary scrutiny. (Paragraph 315)
77. While greater fiscal devolution can increase the accountability of the devolved administrations to their electorates, it presents risks to devolved budgets as well as opportunities. As fiscal devolution develops and the funding of the devolved administrations becomes less reliant on the block grants, we recommend the Government examine how the funding arrangements could more effectively address relative needs in the nations and regions. A key purpose of the continuing social union requires the pooling and sharing of resources across the whole United Kingdom. (Paragraph 322)
78. Over recent years a multiplicity of funding initiatives to which local government is invited to bid has emerged. This occupies a disproportionate amount of local government capacity. We recommend the Government rationalises the funding pots available to local government by introducing a framework of multi-year single-pot funds, which would facilitate long term planning aligned with local needs and allow for local government resources to be re-focussed on exercising devolved powers. (Paragraph 333)
79. Meaningful and thriving devolution within England will not be achieved if devolved authorities are not granted the financial means to exercise their powers effectively. We recommend the Government introduces greater fiscal devolution to devolved authorities, which will require the Treasury to relinquish a degree of control over taxation. As with the Barnett formula, there will continue to be a key role for the redistribution of resources by central government to ensure that existing regional inequalities are not exacerbated, and that future geographic inequalities are addressed, in the interests of the Union more generally. Central government's continued role in redistributing resources should not be used as a vehicle to impose its own policy preferences on English devolved authorities in areas that can be devolved. (Paragraph 334)
80. The Government's lack of engagement with the devolved administrations on the overall design of the Shared Prosperity Fund is unhelpful and has undermined trust. To rebuild trust and partnership, we recommend the

devolved administrations and devolved authorities should have a more constructive role in the governance of the Shared Prosperity Fund. This should include decisions about local priorities and the allocation of funding. Developing trust and partnership in this process will be a test of the UK Government's willingness to foster a Union based on mutual respect and partnership. (Paragraph 344)

The Union's purpose and potential in the 21st century

81. We believe that the Union's strength historically has been its ability to adapt to changing circumstances both national and international. The Union should continue to adapt, but with a renewed focus on strengthening effective relations among its constituent parts. We believe that the flexibility of our uncodified constitution is well-suited to achieving this. (Paragraph 349)
82. The Committee's vision is of a more cooperative Union based on a renewed sense of respect and partnership between the different layers of government and a new emphasis on shared governance in the interests of all its citizens. (Paragraph 351)
83. After the challenges of Brexit and COVID-19 we believe there is a clear opportunity to reset relationships to achieve a better functioning Union which can keep pace with the rapid changes and the many challenges that confront its nations and regions in the 21st century. A Union which can achieve greater wellbeing and deliver greater resilience across the whole United Kingdom. (Paragraph 352)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Corston (until 13 October 2021)
 Baroness Doocey
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Hope of Craighead
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord McAvoy (from 13 October 2021)
 Lord Sherbourne of Didsbury
 Baroness Suttie
 Baroness Taylor of Bolton (Chair)

Declarations of Interest

Baroness Corston
No relevant interests

Baroness Doocey
No relevant interests

Baroness Drake
No relevant interests

Lord Dunlop
Independent Reviewer, Review of UK Government Union Capability

Lord Faulks
No relevant interests

Baroness Fookes
No relevant interests

Lord Hennessy of Nympsfield
Member, Advisory Council, These Islands

Lord Hope of Craighead
No relevant interests

Lord Howarth of Newport
No relevant interests

Lord Howell of Guildford
No relevant interests

Lord McAvoy
No relevant interests

Lord Sherbourne of Didsbury
No relevant interests

Baroness Suttie
Liberal Democrat Northern Ireland spokesperson

Baroness Taylor of Bolton (Chair)
No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests:
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Alison Young, University of Cambridge, acted as legal advisers to the Committee. Professor Tierney declared no relevant interests. Professor Young declared an interest as a member of the United Kingdom Constitution Monitoring Group, which made a written submission to the inquiry before her appointment as legal adviser.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/1127/future-governance-of-the-uk/> and available for inspection at the Parliamentary Archives (020 7219 3074).

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

Oral evidence in chronological order

**	Simon Case, Cabinet Secretary, Cabinet Office	QQ 19–38
*	Philip Rycroft, Former Permanent Secretary, Department for Exiting the European Union and Senior Distinguished Visiting Fellow, Bennett Institute for Public Policy, University of Cambridge, and Professor Ciaran Martin, Former Chief Executive, National Cyber Security Centre	QQ 1–14
**	Alex Massie, Columnist, the Times and Scotland Editor, the Spectator, and Sam McBride, Political Editor, News Letter	QQ 15–29
*	Professor John Denham, Director, Centre for English Identity and Politics, University of Southampton and Professor Michael Kenny, Director, Bennett Institute for Public Policy, University of Cambridge	QQ 30–45
**	Rt Hon Andy Burnham, Mayor, Greater Manchester Combined Authority	QQ 46–55
**	Lord O’Neill of Gatley, Vice Chair, Northern Powerhouse Partnership	QQ 56–68
**	Rt Hon Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government	QQ 69–80
**	Rt Hon Mark Drakeford MS, First Minister of Wales, Welsh Government	QQ 81–99
**	Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, and Sue Gray, Second Permanent Secretary, Cabinet Office	QQ 100–109
**	Professor Philip McCann, Chair in Urban and Regional Economics, Sheffield University Management School, and Professor Graeme Roy, Dean of External Engagement in the College of Social Sciences and Professor of Economics, University of Glasgow	QQ 110–124

**	Sir Jeffrey Donaldson MP, Leader, Democratic Unionist Party	QQ 125–135
**	Professor Iain McLean, Professor of Politics, Nuffield College, University of Oxford	QQ 136–158
**	Naomi Long MLA, Leader, Alliance Party of Northern Ireland	QQ 159–170
*	Professor Richard Wyn Jones, Director, Wales Governance Centre, Cardiff University, and Professor Laura McAllister, Professor of Public Policy and the Governance of Wales, Cardiff University	QQ 171–183
**	Colum Eastwood MP, Leader, Social Democratic and Labour Party	QQ 184–206
*	Professor James Mitchell, Professor of Public Policy, University of Edinburgh, and Professor Jim Gallagher, Visiting Professor of Government, University of Glasgow and Chair, Our Scottish Future	QQ 207–225
*	Councillor James Jamieson, Chair, Local Government Association, and Councillor Nick Forbes, Labour Group Leader and Vice-Chair, Local Government Association	QQ 226–239

Alphabetical list of all witnesses

	Mr Aarif Abraham, Barrister and Acting Director, Garden Court North Chambers and Accountability Unit	FGU0035
	Adams	FGU0002
	All-Party Parliamentary Group on Deliberative Democracy	FGU0010
	Dr Paul Anderson, Lecturer in Politics, Canterbury Christ Church University	FGU0011
	Mr Luke Binney, Student - On placement, University of Hull	FGU0001
	Dr John Boswell, Associate Professor in Politics, University of Southampton	FGU0014
	Baroness Pauline Bryan of Patrick	FGU0036
**	Rt Hon Andy Burnham, Mayor of Greater Manchester (QQ 46–55)	
	Mr Keith Bush QC, Fellow in Welsh Law, Welsh Governance Centre, Cardiff University	FGU0041
**	Simon Case, Cabinet Secretary (QQ 19–38)	
	Centre for Cities	FGU0052

	Citizens' Assembly Working Group, Extinction Rebellion UK	FGU0005
	The Citizens' Convention on UK Democracy	FGU0004
	The Common Ground	FGU0023
	Core Cities UK	FGU0028
*	Professor John Denham, Director, Centre for English Identity and Politics, University of Southampton (QQ 30–45)	FGU0027
	Department of Political Economy and the Policy Institute, King's College London	FGU0019
**	Sir Jeffrey Donaldson MP, Leader, Democratic Unionist Party (QQ 125–135)	
**	Rt Hon Mark Drakeford MS, First Minister of Wales, Welsh Government (QQ 81–99)	
**	Colum Eastwood MP, Leader, Social Democratic and Labour Party (QQ 184–206)	
	Electoral Reform Society	FGU0022
	Empowering Yorkshire Ltd	FGU0009
	Mr Paul Evans	FGU0034
	Professor David Farrell, Chair of Politics, University College Dublin	FGU0012
	Professor James Fishkin, Janet M. Peck Chair in International Communication and Director, Center for Deliberative Democracy, Stanford University	FGU0016
**	Councillor Nick Forbes, Labour Group Leader and Vice-Chair, Local Government Association (QQ 226–239)	
*	Professor Jim Gallagher, Visiting Professor of Government, University of Glasgow (QQ 207–225)	FGU0051
	Dr Jennifer Gaskell, Research Fellow, University of Southampton	FGU0032
**	Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office (QQ 100–109)	
	Dr Daniel Gover, Lecturer in British Politics, Queen Mary, University of London	FGU0025
**	Sue Gray, Second Permanent Secretary, Cabinet Office (QQ 100–109)	
	Seán Patrick Griffin	FGU0036
	Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh	FGU0046
	The Heseltine Institute for Public Policy, Practice and Place, University of Liverpool	FGU0055

	Mr Joshua Huckins, MPA student, University of Southampton	FGU0014
	The Involve Foundation	FGU0042
	Ipsos MORI	FGU0040
**	Councillor James Jamieson, Chair, Local Government Association (QQ 226–239)	
	Professor Will Jennings, Professor of Political Science and Public Policy, University of Southampton	FGU0032
*	Professor Richard Wyn Jones, Director, Wales Governance Centre, Cardiff University (QQ 171–183)	FGU0046
	The Joseph Rowntree Reform Trust	FGU0033
	Professor Michael Keating, Professor of Politics, University of Aberdeen	FGU0025 FGU0053
*	Professor Michael Kenny, Director, Bennett Institute for Public Policy, University of Cambridge (QQ 30–45)	FGU0029
	Baroness Helena Kennedy, Member of the House of Lords, and Barrister, International Bar Association and Doughty Street Chambers	FGU0035
	The Law Society of Scotland	FGU0044
	LIPSIT Project, undertaken by Demos, and Universities of Birmingham, Cardiff, Surrey and Warwick	FGU0038
	Local Government and Social Care Ombudsman (LGSCO)	FGU0026
*	Local Government Association (QQ 226–239)	FGU0021
	Local Government Information Unit	FGU0054
	London First	FGU0049
**	Naomi Long MLA, Leader, Alliance Party of Northern Ireland (QQ 159–170)	
	Alison Macdonald	FGU0043
	Make Votes Matter	FGU0045
**	Professor Ciaran Martin, Former Chief Executive, National Cyber Security Centre (QQ 1–14)	
**	Alex Massie, Columnist, the Times and Scotland Editor, the Spectator (QQ 15–29)	
**	Professor Laura McAllister, Professor of Public Policy and the Governance of Wales, Cardiff University (QQ 171–183)	

- ** Sam McBride, Political Editor, News Letter
([QQ 15–29](#))
- ** Professor Philip McCann, Chair in Urban and Regional Economics, Sheffield University Management School ([QQ 110–124](#))
- ** Professor Iain McLean, Professor of Politics, Nuffield College, University of Oxford
([QQ 136–158](#))
- ** Professor James Mitchell, Professor of Public Policy, University of Edinburgh ([QQ 207–225](#))
- National Association of Local Councils [FGU0007](#)
- National Centre for Social Research [FGU0030](#)
- The newDemocracy Foundation [FGU0008](#)
- New Local [FGU0017](#)
- ** Lord O’Neill of Gatley, Vice Chair, Northern Powerhouse Partnership ([QQ 56–68](#))
- The Organisation for Economic Co-operation and Development (OECD) [FGU0050](#)
- Hedydd Phylip, Doctoral Researcher, Cardiff University [FGU0048](#)
- Dr Huw Pritchard, Lecturer in Law, Wales Governance Centre, Cardiff University [FGU0041](#)
- ** Rt Hon Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government ([QQ 69–80](#))
- ** Professor Graeme Roy, Dean of External Engagement in the College of Social Sciences and Professor of Economics, University of Glasgow
([QQ 110–124](#))
- The Royal Society for Arts, Manufactures and Commerce (RSA) [FGU0013](#)
- The Royal Society of Edinburgh [FGU0047](#)
- * Philip Rycroft, Former Permanent Secretary, Department for Exiting the European Union and Senior Distinguished Visiting Fellow, Bennett Institute for Public Policy, University of Cambridge
([QQ 1–14](#))
- Jack Sheldon, Doctoral Researcher, University of Cambridge [FGU0029](#)
[FGU0048](#)
- Lord John Shipley, Liberal Democrat peer, House of Lords [FGU0018](#)
- Sir Paul Silk [FGU0034](#)

Professor Graham Smith, Professor of Politics, Centre for the Study of Democracy, University of Westminster	<u>FGU0024</u>
Sortition Foundation	<u>FGU0020</u>
Professor Gerry Stoker, Professor of Governance, University of Southampton	<u>FGU0032</u>
Professor Jane Suiter, Professor, Dublin City University	<u>FGU0012</u>
Transforming Yorkshire	<u>FGU0009</u>
Dr Roger Tyers, Research Analyst, House of Commons Library	<u>FGU0014</u>
Lord Paul Tyler, Liberal Democrat Constitutional and Political Reform spokesman, House of Lords	<u>FGU0018</u>
United Kingdom Constitution Monitoring Group	<u>FGU0031</u>
Unlock Democracy	<u>FGU0037</u>
Volt UK	<u>FGU0039</u>
Lord William Wallace, Liberal Democrat Cabinet Office spokesman, House of Lords	<u>FGU0018</u>
Yorkshire Devolution Movement	<u>FGU0015</u>

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Constitution Committee, chaired by Baroness Taylor of Bolton, is conducting an inquiry into the governance of the United Kingdom. The inquiry will focus on how power can best be shared within the UK to establish stable and effective governance arrangements throughout the UK for the 21st century.

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

The deadline for written evidence submissions is 5pm on Friday 30 April. Public hearings will be held from May 2021. The Committee will report to the House later in 2021.

Background

The United Kingdom as currently constituted will mark its centenary in 2022. It is also under strain. Brexit has created a ‘sea border’ for certain purposes between Great Britain and Northern Ireland and there are renewed calls for reunification of the island of Ireland. Support for independence in Scotland is consistently strong; is growing in Wales, but from a low level of historical support. In England, ad hoc devolution, including to city regions, has created overlapping and inconsistent accountabilities. Across the UK, meanwhile, differences in the public health response to the Covid-19 pandemic between the UK Government, the devolved administrations and English local government have highlighted long-standing tensions in inter-governmental relations. The UK Internal Market Act 2020 and other Brexit-related legislation also placed the constitutional convention relating to legislative consent under renewed pressure.

In response, the Prime Minister has added ‘Minister for the Union’ to his portfolio and established a Cabinet Committee on Union Strategy. Further announcements on strengthening the UK Government’s Union capability, improving inter-governmental relations and English devolution are expected.

Previous Committee reports have raised concerns about the effectiveness of inter-governmental mechanisms, the impact of “ad hoc” devolution legislation on the integrity of the UK, which successive Governments had taken for granted, and the impact of the UK Internal Market Bill on the devolution arrangements.

Questions

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

1. Is the current balance of powers within the UK optimal or does power need to be shared differently?
 - Do any changes to the current constitutional arrangements enjoy widespread public support across the UK? What would be the impact of different constitutional arrangements?
2. What are the current challenges for multi-level governance in the UK and how can these be addressed?
 - To what extent are any challenges historical, structural, operational, political, economic or identity-driven? Are there issues about attitude, tone,

and civil service capability in Whitehall and in the devolved administrations? Is a cultural shift required among all concerned to adjust properly to and engage with the new constitutional landscape? Can the UK learn anything from other countries with multi-level governance structures, or from existing structures like the British-Irish Council? Should any changes be accompanied by greater inter-parliamentary scrutiny?

3. Should there be a greater degree of devolution within England and, if so, how should these arrangements relate to the UK as a whole?
 - Does local government in England, including the introduction of combined authorities/mayors, need to be rationalised? Should local areas enjoy greater autonomy in raising and allocating expenditure? Should there be a greater distinction between UK and ‘English’ government in Whitehall, and what would be the impact on the UK? What has been the impact of English Votes for English Laws in the parliamentary context and how might the current arrangements be improved?
4. How well understood in its constituent parts is the UK’s common purpose and the collective provision it makes? And what impact does this have on democratic accountability?
 - Areas of common purpose may include economic, social, trade, international relations, security, including counter-terrorism capacity and security networks, defence, and responding to international crises.
5. How can the existing constitutional arrangements regarding the governance of the UK be made more coherent and accessible, or should the overall structure be revisited?
 - Should the constitutional arrangements continue to be bespoke or become more formalised? Should principles and parameters for a new constitutional framework be articulated? How can any new arrangements be embedded in the constitution such as suggestions for a new Act of Union or Charter of Union? How is the public currently informed about the arrangements? Does there need to be greater public awareness of, and education about, the arrangements and if so, how can this be achieved?
6. How effective are the current funding arrangements for the UK and to what constitutional implications do they give rise?
 - How well have the fiscal frameworks introduced five years ago worked? Is the current approach to the distribution and deployment of funding and resources across the UK fair and efficient, and if not, how can this be improved? What impact will the UK Shared Prosperity, Levelling Up, UK Community Renewal, Towns and Community Ownership Funds have on the overall arrangements?

APPENDIX 4: DEVOLUTION COMMISSIONS AND AGREEMENTS

Table 2: Devolution commissions and agreements since 1997

Date	Name	Terms of reference	Main recommendations
10 Apr 1998	Belfast Agreement/ Good Friday Agreement (Northern Ireland) ⁴⁹⁰	Multi-party talks, sponsored by the UK and Irish governments, to end political violence and restore devolution	Establishment of power-sharing Institutions between political parties in Northern Ireland; Belfast and Dublin and the UK and the Republic of Ireland ⁴⁹¹
31 Mar 2004	Commission on the Powers and Electoral Arrangements of the National Assembly for Wales ('Richard Commission') ⁴⁹²	Established by the Welsh Government to consider the sufficiency of the Assembly's current powers and the adequacy of the Assembly's electoral arrangements	The legal separation of the executive and legislature, the devolution of primary law-making powers and an increase in the number of Assembly Members ⁴⁹³
13 Oct 2006	St Andrews Agreement (Northern Ireland) ⁴⁹⁴	Multi-party talks, sponsored by the UK and Irish governments, to restore power-sharing agreements	Acceptance by Sinn Féin of PSNI and power-sharing commitment by DUP and Sinn Féin ⁴⁹⁵

490 The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland

491 Following endorsement by referendums in Northern Ireland and the Republic of Ireland, the agreement was implemented by the Northern Ireland Act 1998.

492 Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission* (Spring 2004): <https://webarchive.nationalarchives.gov.uk/ukgwa/20100404200945/http://www.richardcommission.gov.uk/content/finalreport/report-e.pdf> [accessed 17 January 2022]. Chaired by Lord Richard, with nine other members, including five appointed through open competition and four nominated by party leaders

493 Most recommendations were implemented by the Government of Wales Act 2006

494 Northern Ireland Office, *The St Andrews Agreement* (13 October 2006): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement-2.pdf [accessed 17 January 2022]

495 Implemented by the Northern Ireland (St Andrews Agreement) Act 2006

Date	Name	Terms of reference	Main recommendations
15 Jun 2009	Commission on Scottish Devolution ('Calman Commission') ⁴⁹⁶	Established by the Scottish Parliament ⁴⁹⁷ to review the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve its financial accountability, and continue to secure the position of Scotland within the UK	Devolution of limited income tax powers, and other taxes, to Scottish Parliament, and additional borrowing powers to Scottish Ministers ⁴⁹⁸
18 Nov 2009	All Wales Convention ⁴⁹⁹	Established by the Welsh Government to educate the public about the current system of Welsh governance and to promote a debate about the Senedd's current powers	Holding a referendum to give the National Assembly for Wales primary law-making powers ⁵⁰⁰ and maintaining size of Assembly at 60 members
5 Febr 2010	Hillsborough Castle Agreement (Northern Ireland) ⁵⁰¹	Multi-party talks, sponsored by the UK and Irish governments, to agree the devolution of policing and justice powers	Devolution of policing and justice powers to the Northern Ireland Executive ⁵⁰²

496 Serving Scotland Better: Scotland and the United Kingdom in the 21st Century. Chaired by Professor Sir Kenneth Calman, with 15 other commissioners, including six politicians and senior figures from across Scottish society.

497 Supported by the opposition Labour, Conservative and Liberal Democrat parties, as well as the UK Government but not the (SNP) Scottish Government.

498 Implemented by the Scotland Act 2012

499 All Wales Convention, Final Report (November 2009) – report no longer available online. Chaired by Sir Emyr Jones Parry, a former UK Permanent Representative to the United Nations

500 On 4 March 2011, a referendum on granting the Assembly full primary law-making powers was approved.

501 Northern Ireland Office, 'Hillsborough Castle Agreement' (5 February 2010): <https://www.gov.uk/government/publications/hillsborough-castle-agreement> [accessed 17 January 2022]

502 Implemented by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010

Date	Name	Terms of reference	Main recommendations
6 Jul 2010	Independent Commission on Funding and Finance for Wales ('Holtham Commission') ⁵⁰³	Established by the Welsh Government to look at the pros and cons of the present formula-based approach to the distribution of public expenditure resources to the Welsh Government; and identify possible alternative funding mechanisms including the scope for the Welsh Government to have tax varying powers as well as greater powers to borrow	Devolution of various taxes to the National Assembly for Wales
19 Nov 2012	Commission on Devolution in Wales ('Silk Commission') ⁵⁰⁴	Established by the UK Government to review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support	Financial devolution, including taxation and borrowing powers ⁵⁰⁵
25 Mar 2013	Commission on the consequences of devolution for the House of Commons ('McKay Commission') ⁵⁰⁶	Established by the UK Government to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales	Introduction of procedure for English-only legislation and establishment of a 'Devolution Committee' ⁵⁰⁷

503 Independent Commission on Funding and Finance for Wales, 'Fairness and accountability: a new funding settlement for Wales' (6 July 2010): <https://gov.wales/sites/default/files/publications/2018-10/fairness-and-accountability.pdf> [accessed 17 January 2022]. Chaired by Gerald Holtham with two other commissioners, both academics.

504 Commission on Devolution in Wales, Empowerment and Responsibility: Financial Powers to Strengthen Wales (November 2012): <https://webarchive.nationalarchives.gov.uk/ukgwa/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/> [accessed 17 January 2022]. Chaired by Sir Paul Silk, a former Clerk to the Welsh Assembly, with eight members drawn from Welsh business, academia, the four main political parties and civic society.

505 Implemented by the Wales Act 2014.

506 The McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons* (March 2013): <https://webarchive.nationalarchives.gov.uk/ukgwa/20130403030820/http://tmc.independent.gov.uk/report-of-the-commission-on-the-consequences-of-devolution-for-the-house-of-commons/> [accessed 17 January 2022]. Chaired by Sir William McKay KCB, former Clerk of the House of Commons, with five other members: three academics and two former first parliamentary counsel.

507 The EVEL procedures entered into force on 23 October 2015 and were rescinded on 13 July 2021. No devolution committee has been established.

Date	Name	Terms of reference	Main recommendations
3 Mar 2014	Commission on Devolution in Wales ('Silk II Commission') ⁵⁰⁸	Established by the UK Government to review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the Assembly to better serve the people of Wales	To make the National Assembly for Wales a permanent part of the UK constitution and move from conferred to reserved powers model ⁵⁰⁹
24 Nov 2014	Smith Commission (Scotland) ⁵¹⁰	Established by the UK Government to convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce recommendations for further devolution of powers to the Scottish Parliament, including more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom	To make the Scottish Parliament a permanent part of the UK constitution and put Sewel Convention on statutory footing ⁵¹¹
23 Dec 2014	Stormont House Agreement (Northern Ireland) ⁵¹²	Multi-party talks, sponsored by the UK and Irish governments, to provide a new approach to some of the most difficult issues left over from Northern Ireland's past	Devolution of corporation tax to Northern Ireland Assembly ⁵¹³

508 Empowerment and Responsibility: Legislative Powers to Strengthen Wales. Same chair and members as first Commission on Devolution in Wales.

509 Implemented by the Wales Act 2017

510 Report of the Smith Commission for further devolution of powers to the Scottish Parliament. Chaired by Lord Smith of Kelvin, with two representatives from each of the five main Scottish political parties.

511 Implemented by the Scotland Act 2016

512 Northern Ireland Office, The Stormont House Agreement (23 December 2014): <https://www.gov.uk/government/publications/the-stormont-house-agreement> [accessed 17 January 2022]

513 Implemented by the [Corporation Tax \(Northern Ireland\) Act 2015](#). The Act has not been commenced.

Date	Name	Terms of reference	Main recommendations
24 Oct 2019	Commission on Justice in Wales ('Thomas Commission') ⁵¹⁴	Established by the Welsh Government to review the operation of the justice system in Wales and set a long-term vision for its future	Legislative devolution of policing and justice to the Senedd ⁵¹⁵
9 Jan 2020	New Decade, New Approach (Northern Ireland) ⁵¹⁶	Multi-party talks, sponsored by the UK and Irish governments, to restore power-sharing agreements	A package of measures to strengthen transparency, governance and the sustainability of the Institutions ⁵¹⁷
Interim report published on 13 December 2021. Final report by Assembly election in May 2022	Independent Fiscal Commission for Northern Ireland ⁵¹⁸	Established by the Northern Ireland Executive to review the case for increasing the fiscal powers to the Northern Ireland Assembly and put forward recommendations that are realistically implementable within the Northern Ireland context and drawing from the experience of Scotland and Wales. The Commission should also consider how the spending power of the block grant can be protected if more powers are devolved	Considered that there was scope for devolving income tax, SDLT, landfill tax, excise duties, air passenger duty, and setting a lower rate of corporation tax, which it will explore further in its final report

514 Commission on Justice in Wales, *Justice in Wales for the People of Wales* (October 2019): https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf [accessed 17 January 2022]. Chaired by Lord Thomas of Cwmgiedd, former Lord Chief Justice, with eight other commissioners, all legal professionals and academics.

515 Not implemented but discussions ongoing between UK and Welsh governments. See 'Talks to resume on devolving justice to Wales', *The Law Society Gazette* (30 September 2021): <https://www.lawgazette.co.uk/news/talks-to-resume-on-devolving-justice-to-wales/5109975.article> [accessed 17 January 2022]. See also Q 182 (Professor Richard Wyn Jones, Professor Laura McAllister), QQ 90, 92 (Mark Drakeford MS); Constitution Committee, *Wales Bill* (5th Report, Session 2016-17, HL Paper 59), paras 79-84

516 New Decade, New Approach

517 Implemented by the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022

518 The Independent Fiscal Commission NI, *More Fiscal Devolution for Northern Ireland?* (13 December 2021): https://www.fiscalcommissionni.org/files/fiscalcommissionni/documents/2021-12/fcni-more-fiscal-devolution-for-ni-interim-report-accessible_1.pdf [accessed 17 January 2022]. Chaired by Paul Johnson, the Director of the Institute for Fiscal Studies, with three other members, all academics.

Date	Name	Terms of reference	Main recommendations
Interim report by the end of 2022. Full report by end of 2023	Independent Commission on the Constitutional Future of Wales ⁵¹⁹	Established by the Welsh Government to consider and develop options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part; and to consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales	-

519 See The Independent Commission on the Constitutional Future of Wales, ‘What we do’: <https://gov.wales/independent-commission-constitutional-future-wales>. The commission is co-chaired by Professor Laura McAllister and Dr Rowan Williams and has nine other members drawn from a range of political opinion and sections of Welsh society.

APPENDIX 5: OVERVIEW OF THE UK'S DEVOLUTION ARRANGEMENTS

Table 3: Overview of reserved/excepted, shared and devolved/transferred powers in Scotland, Wales and Northern Ireland

Policy area	Reserved/ excepted (NI)			Shared			Devolved/ transferred (NI)		
	S	W	NI	S	W	NI	S	W	NI
Crown ⁵²⁰	Yes	Yes	Yes						
Constitution ⁵²¹	Yes	Yes	Yes						
Home Civil Service	Yes	Yes							Yes
Defence and armed forces	Yes	Yes	Yes						
National security, official secrets and terrorism	Yes	Yes	Yes						
Emergency powers and extradition	Yes	Yes	Yes						
Nationality, immigration and asylum	Yes	Yes	Yes						
International relations	Yes	Yes	Yes						
International development	Yes	Yes	Yes						
International trade	Yes	Yes	Yes						
State aid	Yes	Yes	Yes						
Import and export control	Yes	Yes	Yes						
Fiscal, economic and monetary policy ⁵²²	Yes	Yes	Yes						
Financial markets, services and pensions regulation	Yes	Yes	Yes						

520 Including honours

521 Including the Union

522 Including the central bank and currency, but not including devolved taxes and borrowing powers

Policy area	Reserved/ excepted (NI)			Shared			Devolved/ transferred (NI)		
	S	W	NI	S	W	NI	S	W	NI
Insolvency, competition and intellectual property	Yes	Yes	Yes						
National insurance, savings and minimum wage	Yes	Yes	Yes						
Consumer protection, standards and safety	Yes	Yes	Yes						
Weights and measures	Yes	Yes	Yes						
Nuclear energy	Yes	Yes	Yes						
Coal mining, electricity, oil and gas ⁵²³	Yes	Yes							Yes
Firearms and explosives	Yes	Yes	Yes						
Misuse of drugs	Yes	Yes	Yes						
Telecommunications and postal services	Yes	Yes	Yes						
Research councils	Yes	Yes	Yes						
Data protection	Yes	Yes	Yes						
Registration and funding of political parties	Yes	Yes	Yes						
Regulation of medicines	Yes	Yes							Yes
Embryology, surrogacy and genetics	Yes	Yes	Yes						
Broadcasting	Yes	Yes	Yes						
Strategic civil aviation and air transport, security and safety	Yes	Yes	Yes						
Strategic rail and marine transport matters	Yes	Yes							Yes

523 Except petroleum licenses within devolved onshore areas

Policy area	Reserved/ excepted (NI)			Shared			Devolved/ transferred (NI)		
	S	W	NI	S	W	NI	S	W	NI
Highway Code, vehicle standards, driver training and testing, driver and vehicle licensing and road signs	Yes	Yes							Yes
Employment and industrial relations	Yes	Yes							Yes
Health and safety	Yes	Yes							Yes
Foreshore and seabed ⁵²⁴		Yes	Yes				Yes		
Corporation tax	Yes	Yes							Yes ⁵²⁵
VAT	Yes ⁵²⁶	Yes	Yes						
Air passenger duty		Yes	Yes				Yes		
Landfill tax			Yes				Yes	Yes	
Stamp duty			Yes				Yes	Yes	
Income tax			Yes	Yes ⁵²⁷	Yes ⁵²⁸				
Social security									Yes ⁵²⁹
Equal opportunities					Yes ⁵³⁰				Yes
Abortion		Yes					Yes		Yes
Policing and justice		Yes					Yes		Yes

524 Crown Estate

525 Not yet commenced

526 Scotland can maintain a portion of the receipts

527 Setting rates and bands of income tax is devolved to Scotland

528 Setting rates of income tax is devolved to Wales but income tax bands are reserved

529 By long-standing convention, and as per section 87 of the Northern Ireland Act 1998, Northern Ireland maintains 'parity' with Great Britain's social security system

530 Equal opportunities are reserved except in relation to public bodies in Scotland and Wales, where this power is devolved

Policy area	Reserved/ excepted (NI)			Shared			Devolved/ transferred (NI)		
	S	W	NI	S	W	NI	S	W	NI
Road safety, including drink/drug driving limits		Yes					Yes		Yes
Devolved elections			Yes				Yes	Yes	
Agriculture, forestry and fisheries							Yes	Yes	Yes
Economic development							Yes	Yes	Yes
Education, training and skills							Yes	Yes	Yes
Environment, housing and planning							Yes	Yes	Yes
Fire and rescue services							Yes	Yes	Yes
Health and social care							Yes	Yes	Yes
Local government							Yes	Yes	Yes
Tourism, sport, culture and heritage							Yes	Yes	Yes
Transport							Yes	Yes	Yes

Sources: Cabinet Office, 'What is devolved?': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769117/Devolution-Postcard.pdf [accessed 17 January 2022] and House of Commons Library Briefing Paper, *Reserved matters in the United Kingdom*, [CBP 8544](#), 5 April 2019

Table 4: Overview of devolved authorities in England

Areas with devolution	Type of authority	Directly elected mayor?	Policy areas devolved
Greater London Authority	Directly elected assembly	Yes (2000)	Transport; Skills and employment; Arts, culture and sport; Environment; Regeneration; Public health; Fire service; Police and Crime Commissioner; Community Infrastructure Levy; 100 per cent business rate retention pilot
Cornwall and Isles of Scilly ⁵³¹	Combined Authority	No	Transport; Skills and employment; Land and housing; Health and social care integration; Children and other social services; Fire service; Community Infrastructure Levy; 100 per cent business rate retention pilot
Greater Manchester	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing; Health and social care integration; Children and other social services; Fire service; Police and Crime Commissioner; Community Infrastructure Levy; 100 per cent business rate retention pilot
Liverpool City Region	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing; 100 per cent business rate retention pilot
West Midlands ⁵³²	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing; 100 per cent business rate retention pilot
Tees Valley	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing
Cambridgeshire and Peterborough	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing
West of England	Combined Authority	Yes (2017)	Transport; Skills and employment; Land and housing; 100 per cent business rate retention pilot

531 Cornwall Council holds powers such as children's services, the fire service, powers over land and housing and a Community Infrastructure Levy as a unitary authority, rather than on the basis of a devolution deal

532 In 2018 the Home Office announced that the West Midlands Mayor would take responsibility for fire and police services by May 2020. In March 2019 the West Midlands Combined Authority opposed the transfer of the Police and Crime Commissioner to the West Midlands Mayor. See 'West Midlands Mayor's bid to take over police rejected', *Express & Star* (22 March 2019): <https://www.expressandstar.com/news/politics/2019/03/22/mayors-bid-to-take-over-police-rejected/>

Areas with devolution	Type of authority	Directly elected mayor?	Policy areas devolved
Sheffield City Region	Combined Authority	Yes (2018)	Skills and employment; Land and housing
North of Tyne	Combined Authority	Yes (2019)	Transport; ⁵³³ Skills and employment; Land and housing
West Yorkshire	Combined Authority	Yes (2021)	Transport; Skills and employment; Police and Crime Commissioner

Source: *Housing, Communities and Local Government Committee, [Progress on devolution in England](#) (Fourth Report, Session 2021–22, HC 36), pp 8–10*

533 Transport responsibility is shared with the North East Combined Authority

APPENDIX 6: LEGISLATIVE CONSENT MOTIONS SINCE 1999**Table 5: Scottish Parliament**

Session	No. of bills for which LCMs/ Sewel Motions lodged	No. of bills for which LCMs/ Sewel Motions passed	No. of bills for which LCMs/ Sewel Motions withheld
Sixth session (May 2021–January 2022)	4	3	1
Fifth session (May 2016–May 2021)	48	43	5
Fourth session (May 2011–May 2016)	46	45	1
Third session (May 2007–May 2011)	30	30	0
Second session (May 2003–April 2007)	38	38	0
First session (May 1999–March 2003)	39	39	0

Sources: Scottish Parliament, *Legislative and Public Bodies Act Consent Memorandums and Motions statistics*: <https://archive2021.parliament.scot/parliamentarybusiness/bills/19023.aspx> [accessed 17 January 2022], Institute for Government, *Legislative consent motions passed and rejected by the UK devolved legislature, 1999–present*: <https://www.instituteforgovernment.org.uk/charts/legislative-consent-motions-uk-devolved-legislature> [accessed 17 January 2022] and House of Commons Library, *Briefing Paper, 'Devolution: The Sewel Convention'*, [CBP-8883](#) (13 May 2020)

Table 6: Senedd Cymru

Senedd	No. of bills for which LCMs/ Sewel Motions lodged	No. of bills for which LCMs/ Sewel Motions passed	No. of bills for which LCMs/ Sewel Motions withheld
Sixth Senedd (May 2021–January 2022)	7	6	1
Fifth Senedd (2016–2021)	43	41	2
Fourth Senedd (2011–2016)	36	30	6
Third Senedd (2007–2011)	16	15	1
Second Senedd (2003–2007)	0	0	0
First Senedd (1999–2003)	0	0	0

Sources: Welsh Parliament, *Legislative Consent*, Welsh Parliament, *Legislative Consent–Fifth Senedd*, Welsh Parliament, *Legislative Consent Motions*, Welsh Parliament, *Legislative Consent Motions of the Third Assembly 2007–2011*, Institute for Government, *Legislative consent motions passed and rejected by the UK devolved legislature, 1999–present*: <https://www.instituteforgovernment.org.uk/charts/legislative-consent-motions-uk-devolved-legislature> and House of Commons Library, *Briefing Paper, 'Devolution: The Sewel Convention'*, [CBP-8883](#) (13 May 2020)

Table 7: Northern Ireland Assembly

Assembly	No. of bills for which LCMs/ Sewel Motions lodged	No. of bills for which LCMs/ Sewel Motions passed	No. of bills for which LCMs/ Sewel Motions withheld
Sixth Assembly (May 2017–January 2022)	23	22	1
Fifth Assembly (May 2016–December 2016)	4	4	0
In between Fourth and Fifth Assembly	7	6	1
Fourth Assembly (May 2011–September 2015)	38	38	0
In between Third and Fourth Assembly	6	6	0
Third Assembly (March 2007–January 2011)	19	19	0
Second Assembly (November 2003–February 2007)	0	0	0
First Assembly (25 June 1998–18 October 2003)	6	6	0

Sources: House of Commons Library, Briefing Paper, 'Devolution: The Sewel Convention', [CBP-8883](#) (13 May 2020), and Northern Ireland Assembly, Research and Information Service, Briefing Paper 'Legislative Consent Motions January 2020–November 2021' (1 December 2021): <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2021/procedures/7721.pdf> [accessed 17 January 2022]

APPENDIX 7: DUNLOP REVIEW RECOMMENDATIONS AND GOVERNMENT RESPONSES

Table 8: Review recommendations and government responses

Dunlop review recommendation	Government response
Machinery of government	
A senior Cabinet position—"a Great Office of State"—with specific responsibility for the constitutional integrity and operation of the United Kingdom needs to be more formally recognised within the machinery of government. The new role, with the suggested title 'Secretary of State for Intergovernmental and Constitutional Affairs' should include oversight of the wider constitutional implications of English devolution.	The Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations is responsible for the Union, the constitution and devolution across the UK.
A new Cabinet sub-committee should oversee the delivery and implementation of a set of strategic priorities and departments' plans to support the UK Government's Union agenda.	A Union Strategy Committee, chaired by the Prime Minister, has been established, supported by a Union Policy Implementation sub-committee, chaired by the Secretary of State for Levelling Up, Communities and Housing, to deliver the government's priorities relating to the Union.*
The establishment of a single Permanent Secretary Head of UKGG to lead the three offices of the Secretaries of State for Scotland, Wales and Northern Ireland as well as the relevant Cabinet Office teams, supporting the new senior minister and three Secretaries of State.	Sue Gray is the second permanent secretary with responsibility for the Union and Constitution Group, including teams in both the Cabinet Office and DLUHC. The UK Governance Group is an umbrella group for those teams, the Scotland and Wales Offices and the Advocate General for Scotland, and works closely with the Northern Ireland Office***
A shared policy function for all three offices should be created in the Cabinet Office as soon as possible.	Outstanding
Civil service capability	
Each UK Government department should have a Senior Civil Servant board member with lead responsibility for the department's devolution capability and Union strategy.	Every UK Government department has made a member of their board and also a non-executive director responsible for coordinating work across all part of the UK.*

<p>All UK Government departments should have a nominated non-executive board members with specific responsibility to lead on advising and challenging the department on its Union strategy and devolution capability</p>	<p>Cabinet Office has established a Union Advisory Group to provide a forum for high-level strategic discussions between the UK Government and expert stakeholders who represent a range of interests, helping shape our approach and realise opportunities across all nations and regions of the UK.*</p>
<p>The Cabinet Office should ensure there are outcome-based metrics to continually assess departmental capability. Within departments, the responsible board member should report to the wider board, the department's ministers, and the new Secretary of State for Intergovernmental and Constitutional Affairs on the department's performance and strategy for continual improvement.</p>	<p>Outstanding</p>
<p>Each UK Government department should ensure devolution teams are suitably located within the organisation to have greater visibility and significant influence on wider departmental strategy and policy development.</p>	<p>Outstanding</p>
<p>The UK Government should urgently address the case for an increased policy presence in Scotland, Wales and Northern Ireland. Permanent Secretaries of departments with substantial reserved responsibilities should be required to produce specific plans outlining how their department will move policy posts into Hubs.</p>	<p>22,000 roles will move out of London and the south east to the regions and nations of the UK by 2030. This includes a second Cabinet Office headquarters in Glasgow and additional staff for the FCDO in East Kilbride.</p> <p>The UK Government hubs in Scotland, Wales and Northern Ireland will house senior officials from key departments, including a newly created DIT Trade and Investment hub in Edinburgh.*</p> <p>BEIS and HMT already have 'stakeholder engagement' leads in Scotland.</p>
<p>BEIS and DIT should urgently create more posts in Scotland, Wales and Northern Ireland. This will ensure local people and businesses have improved access to the services offered by BEIS and DIT.</p>	<p>Outstanding</p>

<p>The Civil Service should build on the work of the ‘Devolution and You’ programme by ensuring the full range of Civil Service leadership programmes include a significant devolution dimension.</p>	<p>Explicit focus on devolution as a fundamental part of working in government at all grades; new learning interventions and materials to build union capability in the UK Government Civil Service; and learning for Directors General and Permanent Secretaries through the National Leadership Centre and Leadership Academy. Also want to encourage better networking for civil servants between administrations, for them to share ideas and pool expertise.*</p>
<p>Senior Civil Service job and person specifications should be amended to include a requirement to demonstrate significant experience working in or with one of the devolved administrations or a Union-related issue.</p>	<p>Outstanding</p>
<p>The [FCDO] should further build on the devolution and Union aspects of its Head and Deputy Head of Mission overseas leadership programme.</p>	<p>The programme includes a day dedicated to working with the devolved administrations and promoting the interests of Northern Ireland, Scotland and Wales overseas. This has been extended to the Deputy Heads of Mission programme. In addition, the FCDO has updated its guidance to staff, both in the UK and overseas, to increase their understanding on devolution and to highlight the importance of the FCDO’s overseas network delivering for all parts of the UK. The FCDO will continue to equip its staff to make a positive and proactive case for the UK overseas, including strengthening its devolution and Union content within its International Academy foundation and practitioner level courses***</p>
<p>In order for the UK, Scottish and Welsh Governments to best realise the benefits of being one Civil Service, the UK Government should look to work with the Scottish and Welsh Governments to take steps to encourage more staff interchange between administrations.</p>	<p>More Fast Stream places will be offered in the devolved administrations and Territorial Offices. Government will double participants in its UK Government Interchange programme and agree reciprocal schemes with the devolved administrations, including the Northern Ireland Civil Service.*</p>

<p>While respecting that NICS is a separate service, the UK Government should look to work jointly with NICS to increase interchanges. Cross government roles in the Civil Service should be open to NICS staff, whilst NICS roles should be more routinely open to civil servants working in the other administrations.</p>	<p>A new intergovernmental long-term loans scheme will enable 60 people, including members of the Senior Civil Service, to spend up to two years in a different administration, working in priority areas. Half will be civil servants from the Scottish and Welsh Governments and Northern Ireland Executive, working for the UK Government. The remaining placements will be for UK Government civil servants split between the devolved administrations.*</p>
Spending	
<p>It is recommended that HMT should set aside a fund for UK-wide projects.</p> <p>In devolved areas, there should be a second portion of the same fund, which is open to bids from UK Government departments and devolved governments working in co-operation.</p>	<p>Most policies in the Budget are UK-wide. Will continue to work closely and collaboratively with the devolution administrations across many different policy areas and to deliver various funding schemes, including City and Growth Deals.*</p> <p>Financial assistance power in Internal Market Act 2020 will operate to complement the devolved administrations' own schemes, alongside various collaborative programmes. This includes the UK Shared Prosperity Fund, UK Community Renewal Fund, Levelling UP Fund and Community ownership Fund, which will all eventually be UK-wide.*</p>
<p>UK Government departments, when providing funding in Scotland, Wales and Northern Ireland, outside of the block grant, should monitor the application and effect of that funding at local level to ensure value for money.</p>	<p>UK Government intends to work with the devolved administrations and other public authorities to make sure the financial assistance power in Internal Market Act 2020 is used to its best effect and that funding supports citizens and delivers impact for communities and businesses across the UK.*</p>
Intergovernmental relations	
<p>Intergovernmental relations should be recalibrated and the JMC replaced by a UK Intergovernmental Council (UKIC).</p>	<p>The JMC is now known as the 'Prime Minister and Head of Devolved Governments Council' (the Council).**</p>

<p>The Prime Minister should host a summit at least twice a year based around a meeting of the UKIC with the heads of each administration.</p>	<p>The Prime Minister will host an annual meeting of the Council. Meetings will be chaired by the Prime Minister. In addition to its annual meeting, the Council may meet more frequently.**</p>
<p>The UKIC should be supported by an independent secretariat.</p>	<p>The Council will be supported by a standing IGR Secretariat, consisting of officials from all governments. The Secretariat will be accountable to the Council rather than to individual sponsoring governments.**</p>
<p>UK Government ministers should provide a statement to Parliament following each meeting.</p>	<p>In November 2020, the Government committed by written ministerial statement to a number of measures to improve the transparency and accountability of intergovernmental relations, to support parliamentary scrutiny. Included dedicated webpages on GOV.UK and a quarterly report on its engagement with the devolved administrations.</p> <p>All governments are committed to increased transparency of intergovernmental relations through enhanced reporting to their respective legislatures, including producing and publishing communiques on their respective websites, as well as laying an annual report before Parliament.⁵³⁴</p>
<p>There should be a number of subcommittees within the structure.</p>	<p>Beneath the Council engagement will be conducted through departmental Interministerial Groups (IMGs) and cross-cutting Interministerial Standing Committees.**</p>
<p>The new UKIC should look to take on a decision making role via co-decision by consensus.</p>	<p>Intergovernmental decisions will continue to be based on agreement by consensus. The default position will remain that a joint approach will not be taken in the absence of such consensus.**</p>
<p>The UK Government should use the new Cabinet sub-committee (recommended earlier) to agree UK Government positions in advance of meetings of the UKIC and its sub-committees.</p>	<p>Outstanding</p>

⁵³⁴ The first will be published in 2022, summarising engagement in 2021.

DIT and other UK Government departments should build on wider examples of technical engagement and explore establishing inter-ministerial groups.	Most Government departments, including DIT, have established IMGs.
The new UKIC should have a clear dispute handling process.	There is a three-stage escalation process, with the principle that disputes should be resolved at the lowest level possible. If governments reach a stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement in their respective legislatures setting out the circumstances for the failure to reach a solution. The involvement of the Secretariat in this process ensures greater impartiality, as does recourse to independent third-party advice when required.**
Appointments to UK bodies	
This report recommends that an audit of public bodies is undertaken.	The Government said a review of Arm's Length Bodies would be an opportunity to consider Union-related issues and capabilities.*
The Secretary of State for Intergovernmental and Constitutional Affairs should oversee this aspect of the appointments process to ensure that public bodies with a UK-wide remit are representative of the UK as a whole.	The Government will develop a new website for public appointments to make it easier for applicants across the UK to apply for important roles. It will also publish data about where public appointees are based, in order to boost transparency and enable targeted recruitment campaigns in under-represented areas.*
Communications	
The UK Government's activities in Scotland, Wales and Northern Ireland, including spending, should be clearly marked with UK Government branding, in the interests of transparency and democratic accountability.	The Government accepted this recommendation and said the Cabinet Office continues to work closely with other government departments and ALBs to ensure its communications in the nations are as effective as possible.*
All UK Government departments with policy responsibilities in Scotland, Wales or Northern Ireland should keep up-to-date and accurate data about their activities and spending in those countries.	The Government agreed with the underlying principle of the importance of data transparency.*

<p>The UK Government should revise, update and adapt for contemporary circumstances the Scotland analysis programme documents it published in 2014 prior to the Scottish independence referendum. There should be similar programmes for Wales and Northern Ireland. All three analysis programmes should be updated regularly and developed into something that is more akin to a ‘State of the Union’ Report.</p>	<p>The 2014 analysis was undertaken in unique circumstances. Where it is appropriate to do so, it is right the UK Government makes available to the public data on UK Government policies. The UK Government already routinely publishes a considerable amount of data about UK Government policy in each of the nations of the UK, for example, HMRC have published key statistics like the Coronavirus Job Retention Scheme for all nations and regions of the UK.***</p>
<p>UK Government departments should consult the Secretaries of State for Scotland, Wales, Northern Ireland, and Intergovernmental and Constitutional Affairs before making major announcements in respect of policies which apply in Scotland, Wales or Northern Ireland.</p>	<p>Outstanding</p>
<p>All UK Government communications in Scotland, Wales and Northern Ireland should be subject to a strategy overseen by the Secretary of State for Intergovernmental and Constitutional Affairs with the assistance of the Secretaries of State for Scotland, Wales and Northern Ireland.</p>	<p>The Government understands the importance of ensuring the benefits of the Union are clear, visible and recognised in all parts of the United Kingdom. The DLUHC Union and Constitution Group and the territorial offices play an important role in coordinating UK Government communications and engagement activity in Scotland, Wales and Northern Ireland, including ministerial visits and official-led engagement with stakeholders.***</p>
<p>The Secretary of State for Intergovernmental and Constitutional Affairs should have oversight of all ministerial visits to Scotland, Wales and Northern Ireland, and all ministerial visits should be subject to an overall UK communications strategy.</p>	<p>Outstanding</p>

<p>Every UK Government department which is active in Scotland, Wales and Northern Ireland should have a network of stakeholder managers in those nations.</p>	<p>In addition to sustaining the visibility of ministers and officials, the Government continue to build effective relationships with stakeholders across the whole of the UK and increase its presence on the ground in Scotland, Wales and Northern Ireland, to make sure that representative views from communities across all of the UK inform policy development and decision making.***</p>
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Source: * Letter from Michael Gove MP to Lord Dunlop, 24 March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973001/L_Dunlop_Letter.pdf

** Cabinet Office and Department for Levelling Up, Housing and Communities, [Review of Intergovernmental Relations](#) *** Letter from Michael Gove MP to Baroness Taylor of Bolton (18 January 2022): <https://committees.parliament.uk/publications/8552/documents/86349/default/>