

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
<b>Committee Room 1 – Senedd</b>	<b>Gareth Williams</b>
Meeting date: Monday, 12 December 2016	Committee Clerk 0300 200 6565
Meeting time: 15.20	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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**1 Introduction, apologies, substitutions and declarations of interest**  
(15.20)

**2 Instruments that raise no reporting issues under Standing Order  
21.2 or 21.3**  
(15.20 – 15.25)

(Pages 1 – 2)

**CLA(5)–15–16 – Paper 1 – Statutory Instruments with clear reports**

Negative Resolution Instruments

**SL(5)040 – The Religious Character of Schools (Designation Procedure) (Wales)  
Regulations 2016**

**SL(5)041 – The Non–Domestic Rating Contributions (Wales) (Amendment)  
Regulations 2016**



### **3 Paper(s) to note**

(15.25 – 15.30)

**Report by the House of Commons Public Administration and Constitutional Affairs Committee: The Future of the Union, part two: Inter-institutional relations in the UK**

(Pages 3 – 51)

**CLA(5)–15–16 – Paper 2 – Report by the House of Commons Public Administration and Constitutional Affairs Committee: The Future of the Union, part two: Inter-institutional relations in the UK**

### **4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(15.30)

(ix) any matter relating to the internal business of the Committee, or of the Assembly is to be discussed.

### **5 Appointment and accountability of Commissioners: Inquiry plan**

(15.30 – 16.00)

(Pages 52 – 59)

**CLA(5)–15–16 – Paper 3 – Inquiry plan**

**Date of the next meeting**

Monday 9 January 2017

# Statutory Instruments with Clear Reports Agenda Item 2

12 December 2016

## SL(5)040 – The Religious Character of Schools (Designation Procedure) (Wales) Regulations 2016

### Procedure: Negative

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These Regulations set out the procedure to be followed by the Welsh Ministers in making an order or orders designating voluntary schools as schools which have a religious character under section 69 of the School Standards and Framework Act 1998.

Religious character is not acquired or lost by virtue of being designated or not designated under the procedure set out in these Regulations. Designation is the recognition of a religious character which a school already has as a question of fact. Under the School Standards and Organisation (Wales) Act 2013 a school must first close if it wishes to acquire or change religious character.

**Parent Act:** School Standards and Framework Act 1998

**Date Made:** 22 November 2016

**Date Laid:** 25 November 2016

**Coming into force date:** 1 January 2017

## SL(5)041 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2016

### Procedure: Negative

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These Regulations, which apply in relation to Wales, amend the Non-Domestic Rating Contributions (Wales) Regulations 1992 (“the 1992 Regulations”).

Under Part II of Schedule 8 to the Local Government Finance Act 1988, billing authorities (in Wales, county and county borough councils) are required to pay amounts (called non-domestic rating contributions) to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities.



These Regulations amend the 1992 Regulations by substituting a new Schedule 4 (Adult Population Figures) for all the local authorities.

**Parent Act:** Local Government Finance Act 1988

**Date Made:** 30 November 2016

**Date Laid:** 5 December 2016

**Coming into force date:** 31 December 2016





House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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**The Future of the  
Union, part two:  
Inter-institutional  
relations in the UK**

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**Sixth Report of Session 2016–17**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons to be printed  
29 November 2016*

**HC 839**

Published on 8 December 2016  
by authority of the House of Commons

## Public Administration and Constitutional Affairs

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

### Current membership

[Mr Bernard Jenkin MP](#) (*Conservative, Harwich and North Essex*) (Chair)

[Ronnie Cowan MP](#) (*Scottish National Party, Inverclyde*)

[Paul Flynn MP](#) (*Labour, Newport West*)

[Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Cheryl Gillan MP](#) (*Conservative, Chesham and Amersham*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Adam Holloway MP](#) (*Conservative, Gravesham*)

[Kelvin Hopkins MP](#) (*Labour, Luton North*)

[Gerald Jones MP](#) (*Labour, Merthyr Tydfil and Rhymney*)

[Dr Dan Poulter MP](#) (*Conservative, Central Suffolk and North Ipswich*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

The following members were also members of the committee during the Parliament: [Oliver Dowden MP](#) (*Conservative, Hertsmere*), [Mr David Jones MP](#) (*Conservative, Clwyd West*) and [Tom Tugendhat MP](#) (*Conservative, Tonbridge and Malling*).

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 146. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/pacac](http://www.parliament.uk/pacac) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are: Dr Rebecca Davies (Clerk), Ms Rhiannon Hollis (Clerk), Sean Bex (Second Clerk), Dr Adam Evans (Committee Specialist), Dr Henry Midgley (Committee Specialist), Ms Penny McLean (Committee Specialist), Rebecca Usden (Committee Specialist), Amanda Knightly (Hansard Scholar), Ana Ferreira (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268, the Committee's email address is [pacac@parliament.uk](mailto:pacac@parliament.uk).

# Contents

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<b>Summary</b>	<b>3</b>
<b>1 Introduction Inter-institutional Relations in the UK</b>	<b>5</b>
<b>2 Intergovernmental Relations</b>	<b>8</b>
The Joint Ministerial Committee	8
Poorly regarded and ineffective? The Joint Ministerial Committee	10
The revised Memorandum of Understanding	12
Informal and bilateral IGR	13
Informality and bilateralism: an effective model of intergovernmental relations?	14
The way forward: towards a meaningful system of intergovernmental relations	17
The Joint Ministerial Committee	17
Formalising bilateralism	19
Intergovernmental relations and the UK's withdrawal from the EU	20
Transparency and scrutiny of intergovernmental relations	23
<b>3 Inter-parliamentary Relations</b>	<b>26</b>
The current level of inter-parliamentary relations in the UK	26
Proposals for greater inter-parliamentary cooperation	27
The way forward: inter-parliamentary relations in the UK	28
<b>4 The Civil Service, post-devolution</b>	<b>31</b>
The role of the Home Civil Service, post-devolution	31
Whitehall's awareness of devolution	33
<b>Conclusions and recommendations</b>	<b>36</b>
<b>Appendix: Joint Ministerial Committee plenary meetings since 1999</b>	<b>42</b>
<b>Formal Minutes</b>	<b>43</b>
<b>Witnesses</b>	<b>44</b>
<b>Published written evidence</b>	<b>45</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>46</b>



## Summary

Since 1997, the UK's constitution has been subject to considerable change. Devolution to Scotland, Wales and Northern Ireland has been a cornerstone of this constitutional change. Each of the devolved nations has accrued considerable new powers since becoming operational in the late 1990s, with devolution representing a dynamic process of continued adaptation and evolution.

In Wales, this process has seen the National Assembly for Wales, which was established as a body corporate with only secondary legislative powers, become a legislature which could soon have the power, pending the Wales Bill currently before Parliament, to vary income tax. In Scotland, the powers of the devolved institutions were increased by the Scotland Act 2012 and by the Scotland Act 2016. As a result, the Scottish Parliament will now have the ability to set the rates and bands of income tax on non-savings and non-dividend income and new powers in the field of welfare policy, including the ability to top-up reserved benefits such as Universal Credit and Tax Credits. The Corporation Tax (Northern Ireland) Act 2015 will enable the Northern Ireland Assembly to set its own rate of Corporation Tax from 2018 onwards.

The quality of inter-institutional relations in the UK has, however, lagged behind these developments. At the intergovernmental level, relations have long been criticised for the ineffectiveness of formal machinery such as the Joint Ministerial Committee (JMC) and the reliance, instead, on informal and, often, ad-hoc arrangements, driven more by short term political pressures than by a genuine desire for trust and understanding. At the inter-parliamentary level, relations have been even more limited and modest in scope. The regular quadrilateral meetings of the Speakers and Presiding Officers of the four UK legislatures have been arguably the closest the UK has come, post-devolution, to formal inter-parliamentary arrangements. While intra-Civil Service relations have been considered to be more effective, as a result of the continuation of the shared Civil Service in Great Britain, there have nonetheless been suggestions that the devolved administrations are still all too often treated as an afterthought by Whitehall.

This report examines how these three key pillars of inter-institutional relations have developed since devolution, and the changes that will be required so these relationships can become stronger and more effective in the future. This is all the more pressing as a result of the increasing number of concurrent policy areas, most notably in Scotland as a result of the Scotland Act 2016, where competency will be shared between the UK and a devolved Government. The outcome of the EU referendum also creates the need for more sustained and meaningful dialogue, and strengthened intergovernmental relations.

Work continues on a revised Memorandum of Understanding between the four UK administrations, while a more formal model of inter-parliamentary relations would face practical difficulties. So, this report has focused on making pragmatic and practical recommendations aimed at delivering a model of inter-institutional relations that is predicated on mutual respect and which promotes goodwill, trust and meaningful engagement.



# 1 Introduction: Inter-institutional Relations in the UK

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1. Since the election of the Labour Government in 1997, the UK's constitution has undergone significant change. Devolved legislatures and Governments have been established in Scotland, Wales and Northern Ireland, with each institution accruing considerable new, and varying, powers since they became operational in 1999. From having had only one UK-wide, and three sub-state, referendums prior to 1997, there have now been further referendums on devolution in Wales and Scotland, the Good Friday Agreement and Scottish independence. There have also been two UK-wide referendums, the most recent resulting in the United Kingdom voting to leave the European Union. However, while the UK's constitution, and, in particular, the territorial constitution, bears little relation to that of twenty years ago, there has, with few exceptions<sup>1</sup>, been little reform to the central institutions of the UK state and particularly the way in which Whitehall and Central Government operates.

2. In July 2015, PACAC launched a multi-phase inquiry entitled 'The Future of the Union', in order to examine the broader consequences of devolution, and decentralisation, for the future of the United Kingdom.<sup>2</sup> We published our first Report in this inquiry, *The Future of the Union, part one: English Votes for English Laws*, in February 2016. It explored the constitutional implications of English Votes for English Laws, as implemented following amendments to the House of Commons' Standing Orders.<sup>3</sup> In December 2015, PACAC launched the second phase of our inquiry into the future of the Union: Inter-Institutional relations in the UK.<sup>4</sup>

3. Once the United Kingdom was defined (with the exception of Northern Ireland between 1921 and 1972) by a compact array of political institutions. But, as the House of Commons Justice Committee noted in 2009, "the devolution of responsibilities from UK central Government to new devolved institutions with their own electoral mandates transformed the territorial politics of the UK from a set of relationships between departments within a single UK Government into a set of relationships between different governments".<sup>5</sup> The UK Government was joined in 1999 by the Northern Ireland Executive, the Scottish Government and the Welsh Government. Relations between the

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1 The changes to the Standing Orders to create a system of English Votes for English Laws, the creation of the Supreme Court and the expulsion of all but 92 of the hereditary members of the House of Lords stand out as the few examples of change to the 'centre'.

2 [Standing Order No.146](#), as agreed by the House of Commons on 5 June 2015, reconstituted what was the Public Administration Select Committee as the Public Administration and Constitutional Affairs Committee. The Committee's remit is "to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs."

3 House of Commons Public Administration and Constitutional Affairs Committee, [The Future of the Union, part one: English Votes for English Laws](#), Fifth Report of Session 2015–16, HC 523.

4 For the terms of reference for our inquiry into inter-institutional relations, see: [Call for evidence on inter-institutional relations in the UK](#)

5 House of Commons Justice Committee, [Devolution: a Decade On](#), Fifth Report of Session 2008–09, HC 529–I, para. 88.

Governments have been the subject of repeated criticism for their reliance on informal, ad-hoc and bilateral meetings, and the ineffectiveness of the formalised machinery and framework for the conduct of these relations.<sup>6</sup>

4. This weakness has been brought into sharp focus as a result of the outcome of the EU referendum. The majority of voters in Scotland and Northern Ireland voted to remain in the European Union. The Scottish and Welsh Governments supported a Remain vote during the referendum. Since the EU referendum, the UK Government has promised to ensure the “full engagement” of the devolved administrations, as part of a “Team UK approach” to the “Brexit” negotiations.<sup>7</sup> Despite this, many politicians have questioned the extent and significance of this engagement. **The UK’s exit from the European Union will require not just diplomacy and effective intergovernmental relations at the EU level, but also within the UK. It offers both risk and a fresh opportunity, and, therefore, an incentive, to develop more effective intergovernmental relations in the UK.** Chapter Two outlines the longstanding criticisms of intergovernmental relations in the UK, alongside proposals for reform.

5. The transformation of UK politics since devolution has also encompassed relationships between the UK Parliament, the Scottish Parliament, the National Assembly for Wales (NAW) and the Northern Ireland Assembly (NIA). These intra-parliamentary relationships have been more limited and modest in scope than their intergovernmental counterparts and, as will be explored in Chapter Three, this has often been identified as an area where greater collaboration and cooperation should be sought.<sup>8</sup>

6. Devolution has also had implications for the continued existence, within Great Britain, of the unified Civil Service. As a result of devolution to Scotland and Wales, the unified Civil Service now encompasses officials serving Governments of differing political parties in Holyrood, Cardiff Bay and Whitehall. Indeed, during the Scottish independence referendum the unified Civil Service included officials serving an administration that sought independence from the rest of the United Kingdom as opposed to those serving the pro-Union administrations in Cardiff Bay and Whitehall. Our predecessor committee, PASC, explored the conduct of civil servants serving both the Scottish and UK Governments in its 2015 report, *Lessons for Civil Service Impartiality from the Scottish Independence Referendum* and concluded that the single Civil Service for Great Britain should be maintained,<sup>9</sup>

7. In addition, the British Civil Service also collaborates with a separate Northern Ireland Civil Service (NICS). The NICS was established as a result of the Government of Ireland Act 1920 and the creation of a devolved Parliament and Government for Northern Ireland

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6 A. Trench, *Intergovernmental Relations and Better Devolution*, UK’s Changing Union, December 2014, p.7; Bingham Centre for the Rule of Law, *A Constitutional Crossroads: Ways Forward for the United Kingdom*, May 2015, p.9.

7 BBC News, *Mundell to put ‘Scottish interests’ at centre of Brexit talks* 8 August 2016.

8 The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014, para. 29; Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, March 2014, p.162; Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009, p.12.

9 Public Administration Select Committee, *Lessons for Civil Service Impartiality from the Scottish Independence Referendum*, Fifth Report of Session 2014–15, HC 111, 17 March 2015, para. 24.

in 1921.<sup>10</sup> The operation of the Civil Service, post-devolution, will be briefly discussed in Chapter Four, and will be one of the areas of focus of our next inquiry into ‘[The work of the Civil Service](#)’.

8. This report explores how these different intergovernmental, inter-parliamentary and intra-civil service relationships have developed since devolution, and the changes that will be required for these relationships to become stronger and more effective in the future. The latter is of particular significance in the context of the enhanced devolution settlement that Scotland will enjoy as a result of the Scotland Act 2016, the proposed further devolution of powers to Wales in the [Wales Bill](#) - currently before Parliament, and the UK’s exit from the European Union. The continued evolution of the devolution settlements across the UK, particularly the financial settlements between the four governments, will be examined in later stages of our ongoing inquiry into ‘The Future of the Union’.

9. During the course of this inquiry, PACAC took evidence in the National Assembly for Wales and the Centre for Constitutional Change at Edinburgh University. Witnesses included the First Minister of Wales, Rt Hon Carwyn Jones AM; the Deputy First Minister of Scotland, John Swinney MSP; the Permanent Secretaries to the Welsh and Scottish Governments, Sir Derek Jones and Leslie Evans; the former Clerk of the National Assembly for Wales and Chair of the Commission on Devolution in Wales, Sir Paul Silk; the then Presiding Officer of the National Assembly for Wales, Dame Rosemary Butler AM; the former Presiding Officer of the Scottish Parliament, Rt Hon Lord Steel of Aikwood; and the three territorial Secretaries of State, Rt Hon Alun Cairns MP, Rt Hon David Mundell MP and, at the time, the Rt Hon Theresa Villiers MP. A full list of those who gave evidence can be found at the back of this report. We thank all of those who gave evidence to this inquiry and to the National Assembly for Wales, Cardiff University and Edinburgh University for hosting these sessions.<sup>11</sup>

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10 [Government of Ireland Act 1920](#), S.8.

11 During the course of our inquiry we were unable to visit Northern Ireland to take oral evidence from the First and Deputy First Ministers. The Northern Ireland Executive, however, have agreed to provide written evidence to PACAC on intergovernmental relations which will be published in due course. We hope to visit Northern Ireland at a later stage of our ongoing inquiry into the ‘Future of the Union’.

## 2 Intergovernmental Relations

10. As the House of Lords Constitution Committee's 2015 report, *Inter-Governmental Relations in the United Kingdom* acknowledges, "intergovernmental relations are necessary in a multi-level political system".<sup>12</sup>

11. In the United Kingdom, intergovernmental relations (IGR) can be divided into two main spheres: multilateral and bilateral. Bilateral relations are both formal and informal. Intergovernmental relations in the UK, at both a multilateral and bilateral level, also have an international dimension as a result of the bodies established by the Belfast Agreement (more commonly referred to as the [Good Friday Agreement](#)): the British-Irish Council and the North-South Ministerial Council. Our inquiry has focused on intergovernmental relations wholly within the United Kingdom and we therefore make no comment on the effectiveness of either the British-Irish Council or of the North-South Ministerial Council.

### The Joint Ministerial Committee

12. The formal machinery of UK-wide intergovernmental relations is underpinned by a [Memorandum of Understanding](#) (MoU) signed between the UK Government and the Scottish, Northern Irish and Welsh Devolved Administrations. The MoU comprises a series of agreements between these administrations and sets out the principles which underlie relations between them; it is not intended that these agreements should be "legally binding".<sup>13</sup> In addition, there are three separate overarching Concordats which apply "broadly uniform arrangements across Government to the handling of: the co-ordination of EU policy and implementation; financial assistance to industry; and international relations touching on the responsibilities of the devolved administrations".<sup>14</sup>

13. The MoU provides for the establishment of the Joint Ministerial Committee (JMC). The JMC consists of UK Government, Scottish, Welsh and Northern Ireland Ministers and is tasked with the following terms of reference:

- a) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- b) where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- c) to keep the arrangements for liaison between the UK Government and the devolved administrations under review, and;
- d) to consider disputes between the administrations.

12 House of Lords Constitution Committee, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, HL Paper 146, para 1.

13 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.3.

14 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.3.

14. The JMC either meets in plenary (JMC (P)) or functional formats. Plenary sessions are expected to be held at least once a year, according to the MoU. These meetings consist of the Prime Minister (or a representative) who takes the chair, the First Ministers of Scotland and Wales (both of whom can be accompanied by one of their Ministerial colleagues), the First and Deputy First Minister of Northern Ireland and the Secretaries of State for Scotland, Wales and Northern Ireland. The MoU allows for other Ministers to be invited to attend, “as appropriate when issues relevant to their areas of responsibility are to be discussed”.<sup>15</sup> The most recent JMC (P) took place on 24 October 2016.<sup>16</sup> A full list of the JMC (P) meetings since 1999 can be found in the appendix of this report.

15. The ‘functional formats’ of the JMC include the JMC Europe (JMC (E)) or JMC Domestic (JMC (D)). The JMC (D) “deals with practical policy matters, where non-devolved policies have an effect on devolved ones or vice-versa.” JMC (E), on the other hand, “meets around four or five times a year, and is concerned with EU business—particularly matters being considered at European Council meetings”.<sup>17</sup> As with the plenary format, these functional committees are chaired by the responsible UK Government Minister.<sup>18</sup>

16. In addition, there is provision, within the MoU, for the JMC to be a dispute resolution device. While the [MOU](#) commits the parties to ensure that “all efforts should be made to resolve differences informally”, where bilateral negotiations fail, the parties can refer disputes to the JMC:

Attendance would include ministers from the UK departments and the devolved administrations involved in the dispute, along with the relevant territorial Secretaries of State or their representatives. The senior UK Minister chairing will as far as possible be someone without a direct departmental interest in the issue in dispute. The meeting might take place on the same date as a regular JMC meeting but would be separate from that meeting.

With the support of the Secretariat, the Minister chairing will provide a further opportunity for the parties to set out their positions and will facilitate discussion of shared interests, options for resolving the dispute and criteria for an agreed outcome. The Minister chairing may in advance of the meeting wish to make informal efforts to resolve matters.

The outcome of this meeting will be one of: an agreement resolving the dispute; agreement to a further round of the process at Ministerial level; an agreement that a request should be made for an independent third party report in terms of paragraphs A3.14a–c; agreement that no resolution can be reached; or, exceptionally, a request by any party that the dispute be considered by a JMC Plenary meeting.<sup>19</sup>

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15 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.12.

16 [Joint Ministerial Committee, 24 October 2016: Statement](#), 24 October 2016.

17 A. Trench, [Intergovernmental Relations and Better Devolution](#), UK’s Changing Union, December 2014, p.8.

18 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.12.

19 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.19–20.

The Chair of the Panel, with the agreement of the parties to the dispute, can commission independent analysis of the issue at hand. In addition, those party to a dispute can request that the JMC in full plenary mode considers the matter. The JMC (P)'s decision is final.

17. In terms of administrative and secretarial support, the JMC is supported by a secretariat consisting of staff from the UK Cabinet Office and the devolved administrations. As the [MoU's](#) annex on the JMC secretariat explains, "the lead role within the Secretariat will fall upon the UK Cabinet Office, including responsibility for servicing meetings and despatching documents as required".<sup>20</sup>

18. In December 2014, at the JMC (P), the then Prime Minister and the territorial First Ministers agreed to commission work on a revised Memorandum of Understanding (MoU). As the [communiqué](#) from that meeting notes:

Ministers noted that the constitutional landscape has changed fundamentally since the [Memorandum of Understanding](#) was agreed between the UK government, Scotland, Wales and Northern Ireland in 2000 and agreed to commission work on a revised Memorandum of Understanding.<sup>21</sup>

Despite indications in March 2016 that the publication of a revised MoU was imminent, at the time of writing it has yet to be published.

### **Poorly regarded and ineffective? The Joint Ministerial Committee**

19. Despite the existence of the JMC, there has been, according to Professor McEwen, a "prevailing preference, it seems for informality in intergovernmental relations".<sup>22</sup> Indeed, between 2002 and 2008 the JMC did not meet in plenary format, with intergovernmental relations instead relying upon the internal relationships within the Labour Party that, up until 2007 was in power in Westminster, Holyrood and Cardiff Bay.<sup>23</sup>

20. It is therefore not entirely surprising that as the Bingham Centre for the Rule of Law noted in its 2015 report, [A Constitutional Crossroads: Ways Forward for the United Kingdom](#), "every review of devolution has concluded that the centre needs to be reformed to take account of the implications of devolution and, in particular, that the UK's intergovernmental machinery is not fit for purpose".<sup>24</sup> According to the Bingham Centre's report, this has been the view of Select Committees in both Houses of Parliament, as well as the Commission on Scottish Devolution (the Calman Commission), the Commission on Devolution in Wales (the Silk Commission) and the Smith Commission.<sup>25</sup>

21. The House of Commons Justice Committee in its 2009 report, [Devolution: a decade on](#), for example, drew attention to the absence of IGR arrangements that would allow coordination of action, the promotion of common interests and the effective management

20 [Memorandum of Understanding and Supplementary Agreements: Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, p.15.

21 [Joint Ministerial Committee Communiqué](#), 24 October 2016.

22 [Q423](#)

23 [Q478](#)

24 Bingham Centre for the Rule of Law, [A Constitutional Crossroads: Ways Forward for the United Kingdom](#), 2015, p.9.

25 See, for example: Commission on Devolution in Scotland, [Serving Scotland Better: Scotland and the United Kingdom in the 21st Century](#), Final Report, June 2009; Commission on Devolution in Wales, [Empowerment and Responsibility: Legislative Powers to Strengthen Wales](#), March 2014; The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), 27 November 2014.

of consequential effects of decisions that are taken in the respective territories of the UK as a key weakness of the current devolution settlement.<sup>26</sup> Similarly, in 2015, the Lords Constitution Committee reported that the JMC’s operation was “not well regarded—at least in the eyes of the devolved administrations”, describing the plenary meetings as “ineffective while its Domestic sub-committee does not appear to serve a useful purpose”.<sup>27</sup>

22. Professor Tierney, Professor of Constitutional Theory at Edinburgh University noted that a lot of the complaints the Constitution Committee received during its inquiry into IGR came from the devolved territories with regard to the JMC (P) format.<sup>28</sup> According to Professor Tierney, these complaints ranged from issues coming onto the agenda very late, so that the devolved administrations “were not getting cognisance of what was likely to be discussed” to the JMC operating much more as a retelling of UK governmental policy “rather than a full discussion of how things ought to operate”.<sup>29</sup> According to Professor McEwen, the devolved governments have expressed frustrations about the lack of time to have substantive discussions in JMC meetings.<sup>30</sup> Professor Tierney noted that these concerns also extended, to a certain extent, to the subcommittees of the JMC, though he contended that their internal workings appeared to operate on a “better, less partisan level”.<sup>31</sup>

23. In his evidence to PACAC, the First Minister of Wales, the Rt Hon Carwyn Jones AM, claimed that the use of existing intergovernmental machinery had undergone a particular decline in the previous two years (2013–2015):

The JMC domestic group has not met for some time now. It was the case that that group would meet quarterly. JMC plenary is due to meet annually, though that has not met for 15 months now.<sup>32</sup>

In addition, the First Minister told PACAC that there was “no real machinery for a regular Heads of Government meeting”, with intergovernmental relations often conducted on the basis of “bilateral discussion between the UK and Scotland in one room, as it were, us in another room and Northern Ireland in another room.”<sup>33</sup>

24. The Scottish Government’s evidence was generally more positive, albeit not wholly uncritical, about the effectiveness of the JMC machinery. While describing the formal institutional level of IGR as “quite formulaic and quite predictable”, the Permanent Secretary to the Scottish Government, Leslie Evans, did not agree with the idea that the JMC was ceremonial in nature.<sup>34</sup> Instead, Ms Evans depicted the JMC as an important part, both symbolically and practically, of a “whole range of intergovernmental relationships”.<sup>35</sup> Furthermore, while Mr Swinney highlighted an example, relating to a discussion on the UK Government’s fiscal policies, where the JMC had been rather formulaic, he also pointed to

26 House of Commons Justice Committee, *Devolution; a decade on*, Fifth Report of Session 2008–09, HC 529–I, para. 105.

27 House of Lords Constitution Committee, *Inter-governmental relations in the United Kingdom*, 11th Report of Session 2014–15, HL Paper 146, p.5.

28 Professor Tierney is a legal advisor to the House of Lords Constitution Committee and spoke to PACAC in a personal capacity.

29 [Q428](#)

30 [Q428](#)

31 [Q428](#)

32 [Q73](#)

33 [Qq74, 78](#)

34 [Qq335, 350](#)

35 [Q349](#)

a case regarding the London Olympics and Barnett consequential “as an example of how an issue raised in the JMC in a particular fashion on a particular day led to an acceptance” from the UK Government that an issue raised by the devolved administrations should be satisfactorily resolved.<sup>36</sup> According to Mr Swinney, on certain, “more strategic questions”, the JMC can be formulaic, but “on some of the practicalities you can maybe make a bit of headway”.<sup>37</sup>

**25. The Joint Ministerial Council should be at the heart of the UK’s intergovernmental relations, playing an important coordinating role and facilitating effective government. With devolution of power to Edinburgh, Cardiff and Belfast having increased, and following the outcome of the EU referendum, having an effective mechanism for intergovernmental cooperation and discussion for all four UK administrations is more important than ever before. Unfortunately, however, it is clear that the JMC, while not without its merits, is not, as it is currently organised, set up to cope with this increasingly significant responsibility.**

**26. If it is to be fully effective, the JMC needs to enjoy the confidence of all four Governments. It is clear from the evidence received that the Scottish and Welsh Governments have had different experiences of both the JMC specifically and, of intergovernmental relations more generally. While this arguably reflects the respective importance attached by the UK Government to the different devolved administrations, it is crucial that a multilateral forum such as the JMC engages with, and treats, the three devolved administrations with respect and as valued partners.**

### *The revised Memorandum of Understanding*

27. As noted above, in December 2014, at the JMC Plenary JMC (P), the Prime Minister and the territorial First Ministers agreed to commission work on a revised Memorandum of Understanding (MoU). As the [communiqué](#) from that meeting notes:

Ministers noted that the constitutional landscape has changed fundamentally since the [Memorandum of Understanding](#) was agreed between the UK government, Scotland, Wales and Northern Ireland in 2000 and agreed to commission work on a revised Memorandum of Understanding”<sup>38</sup>

28. Despite indications in March 2016 that publication was imminent, a revised MoU has yet to be published. At the most recent JMC (P), on 24 October 2016, all four administrations agreed to revisit the issue as a result of the changed political landscape since the UK’s decision to leave the European Union in June 2016. The four administrations did, however, agree that the JMC (P) should meet more regularly and to create a new Joint Ministerial Committee on EU Negotiations (JMC (EN)) as a means of furthering multilateral engagement between the devolved administrations and the UK Government on the subject of the UK’s withdrawal from the European Union.<sup>39</sup>

36 [Q355](#)

37 [Q335](#)

38 [Joint Ministerial Committee Communiqué](#), 24 October 2016.

39 [Joint Ministerial Committee Communiqué](#), 24 October 2016.

## Informal and bilateral IGR

29. Despite the existence of multilateral, formal machinery in the form of the JMC, bilateralism and informality have, according to Professors McEwen and Tierney, been key features of intergovernmental relations post-devolution.<sup>40</sup> The most vivid demonstration of this was in the years 2002 to 2008 when the JMC largely fell into abeyance, with the Labour Party, then in office in London, Cardiff and Edinburgh from 1999–2007, acting instead as the main conduit for intergovernmental relations, bypassing the formal machinery of Government.<sup>41</sup> While there has since been a resumption of the JMC as a formal mechanism of intergovernmental relations, “an awful lot of work” still takes place outside of this formal machinery, with a “prevailing preference, it seems, for informality in intergovernmental relations”.<sup>42</sup>

30. The continued reliance on informality and bilateralism, and the perceived weakness and failings of the JMC, has repeatedly raised concerns about the sustainability of the current model of intergovernmental relations in the UK. For example, Alan Trench has previously argued that the “lightly institutionalised and largely informal” nature of the UK’s intergovernmental relations has resulted in a reliance on a “sizable dollop of goodwill”.<sup>43</sup>

31. In its 2015 report, [Inter-Governmental Relations in the United Kingdom](#), the House of Lords Constitution Committee noted that over the past five years more formalised bilateral forums have been established in the context of further devolution to Scotland, Northern Ireland and Wales.<sup>44</sup> In 2011, for example, a Joint Ministerial Working Group on Rebalancing the Northern Ireland Economy was established between the UK Government and Northern Ireland Executive on the devolution of Corporation Tax rate setting powers to the Northern Ireland Assembly.<sup>45</sup> This followed the Treasury’s March 2011 consultation paper [Rebalancing the Northern Ireland economy](#).<sup>46</sup> This Working Group concluded its work in October 2012.<sup>47</sup>

32. A UK-Scottish Government Joint Exchequer Committee (JEC) was established in 2011 as a means of managing the devolution of fiscal powers to the Scottish Parliament provided for in the Scotland Act 2012.<sup>48</sup> The UK- Scottish JEC has most recently been focused on implementing the more extensive fiscal devolution contained in the Scotland Act 2016 and in negotiating the fiscal framework that underpins this devolution. A UK-Welsh JEC was also established to accommodate the devolution of fiscal powers to the National Assembly for Wales provided by the Wales Act 2014.

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40 [Qq423–424](#)

41 [Q478](#)

42 [Q423](#)

43 A. Trench, [Intergovernmental Relations and Better Devolution](#), UK’s Changing Union, December 2014, p.7.

44 House of Lords Constitution Committee, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, HL Paper 146, para 53.

45 HM Government, [Press Release: Ministers meet at Stormont to discuss rebalancing the Northern Ireland Economy](#), 15 December 2011.

46 HM Treasury, [Rebalancing the Northern Ireland economy](#), March 2011.

47 HM Revenue and Customs, [Corporation Tax: devolution of rate-setting power to Northern Ireland](#), p.1.

48 House of Lords Constitution Committee, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, HL Paper 146, para. 54.

33. Most recently, a joint Ministerial Working Group on Welfare was established in 2015 to manage the partial devolution of welfare responsibilities to the Scottish Parliament and Scottish Government that result from the Scotland Act 2016.<sup>49</sup> The Joint Ministerial Working Group is co-chaired by an UK Government and a Scottish Government Minister and has the following terms of reference:

- To promote the exchange of information required for the transfer of powers between relevant Government Departments.
- To ensure a smooth transition of the new responsibilities to the Scottish Government and that they are delivered in a way that is coherent from the perspective of those who seek to benefit from them.
- To discuss policy and operational practice in areas where responsibility is due to transfer, all in the context of respecting the principle of “no pre-emptive action.”
- To work cooperatively to deliver the transfer of powers in relation to the spirit of the Smith [Commission] agreement and to ensure that the emerging Bill is fit for purpose.
- To allow for open discussions that seek to provide a resolution of contentious and challenging issues.

“As far as possible” discussion within the Joint Ministerial Working Group should be “open, transparent and accessible, with the aim of keeping stakeholders fully informed of progress”, while at the same time “recognising the confidentiality of some aspects of the negotiations”.<sup>50</sup> In its 2015 report on intergovernmental relations, the House of Lords Constitution Committee recommended that the work of the Joint Ministerial Working Group on Welfare and the Joint Exchequer Committee should be brought “within the auspices of the JMC structure, to ensure that their work is co-ordinated as part of a wider intergovernmental relations strategy”.<sup>51</sup>

### ***Informality and bilateralism: an effective model of intergovernmental relations?***

34. Professor Tierney’s evidence suggested a certain synchronicity between the bilateralism and informality of IGR and those of the UK’s constitution more generally:

The devolution model is an asymmetrical one, so different powers have been given to the different regions, therefore bilateralism has made a certain sense. We have an unwritten constitution, so informality is well practiced in the British Constitution.<sup>52</sup>

There appears, therefore, to be a degree of complementarity between the way in which IGR operates, post-devolution, and the contours of the UK’s territorial constitution.

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49 HM Government, [News Story: Joint Ministerial Working Group on Welfare](#), 11 February 2015.

50 HM Government, [News Story: Joint Ministerial Working Group on Welfare](#), 11 February 2015.

51 House of Lords Constitution Committee, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, HL Paper 146, para. 62.

52 [Q423](#)

35. This may not in itself, however, be indicative of a successful model of intergovernmental relations and, indeed, the First Minister of Wales claimed that the level of formalised bilateral machinery between the UK and Welsh Governments is “fairly non-existent”.<sup>53</sup> Instead, the Welsh Government’s relations with the UK Government appear to rely on a more informal set of frequent bilateral meetings with the Secretary of State for Wales.<sup>54</sup> The First Minister also claimed that there “is no real machinery for a regular Heads of Government meeting” and noted that while he meets the Secretary of State for Wales “probably on a monthly basis” he only meets with the Prime Minister, on average, “once a year”.<sup>55</sup> Though the First Minister said that contact with the Wales Office was “welcome”, for example, in relation to the Wales Bill, there nonetheless needed to be contact on a Head of Government to Head of Government basis.<sup>56</sup>

36. Indeed, Heads of Government relations became a key theme of the First Minister’s evidence to PACAC. In addition to having few meetings with the Prime Minister, he also suggested that there have been “more than one occasion when letters have not been responded to or been responded to very late, sometimes many months down the line”.<sup>57</sup> He cited the example of correspondence to the Prime Minister on the subject of the Wilson doctrine (the convention whereby MPs’ correspondence should not be intercepted by the intelligence services), “asking for assurances that Assembly Members (AMs) would receive the same treatment as Members of Parliament”. According to the First Minister, he never received an answer to this correspondence.<sup>58</sup>

37. Interestingly, the First Minister of Wales’ depiction of IGR differed significantly to the evidence provided to PACAC by the Deputy First Minister of Scotland, John Swinney MSP. Mr Swinney told us that the regularity of IGR has improved over the period of time that the SNP has been in office (since 2007) and, contrary to the First Minister of Wales’ claim that there has been a particular decline in the IGR machinery in the last two years, he did not think he could “point to a deterioration in the quality of interaction with the Governments in that way”.<sup>59</sup> With regards to correspondence between the Scottish Government and Downing Street, Mr Swinney again differed from the First Minister of Wales, stating that “generally I would not say that correspondence goes unheeded”.<sup>60</sup> This difference in experience could be explained by the differing, and asymmetrical, settlements for Wales and Scotland as well as a reflection on the size and capacity of the devolved administrations.

38. Furthermore, in contrast to the “fairly non-existent” level of bilateral IGR mechanisms between the UK and Welsh Governments,<sup>61</sup> evidence from the Scottish Government indicated a well-developed network of informal and formal bilateral relations with the UK Government. On the more formalised level, these relations include the Joint Exchequer Committee and the Joint Ministerial Working Group, while less formal bilaterals include the “thousands of interactions a week” at official level between the two Governments.<sup>62</sup>

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53 [Q73](#)

54 [Q74](#)

55 [Qq74](#), [76](#)

56 [Q77](#)

57 [Q89](#)

58 [Q89](#)

59 [Qq335](#), [359](#)

60 [Q336](#)

61 [Q73](#)

62 [Q391](#)

39. One of the most prominent examples of bilateral relations between the Scottish and UK Governments was the fiscal framework agreed in February 2016.<sup>63</sup> This agreement enabled the Scottish Parliament to pass a legislative consent motion in favour of the Scotland Act 2016, paving the way for the devolution of significant fiscal levers and the devolution of certain areas of welfare policy. The fiscal framework and the scope of fiscal devolution to the Scottish devolved institutions will be the subject of a future inquiry by PACAC. While he had reservations as to certain aspects of the negotiations, Mr Swinney described the framework as a “practical and pragmatic way of implementing the Smith commission agreements [on no detriment as a result of fiscal and welfare devolution]”.<sup>64</sup> In his evidence, the Secretary of State for Scotland, the Rt Hon David Mundell MP, informed PACAC that he and Mr Swinney had had a “very good conversation” in which they reflected on the Scotland Act and “both acknowledged that we had worked very well together in order to achieve that [the passage of the Act and agreement of a fiscal framework]”.<sup>65</sup>

40. The ability to reach constructive agreement appears to be indicative of the way in which the Joint Exchequer Committee (JEC) works for the Scottish and UK Governments. In contrast to the JMC, the JEC aims, according to Mr Swinney, “to operate by agreement” with the “presumption that we are obliged to get to some form of agreement”.<sup>66</sup> Reflecting on his experience of negotiating block grant adjustments with the UK Government for the, in revenue terms, smaller taxes that had been devolved in the Scotland Act 2012, Mr Swinney noted that in both instances “we got to points of agreement about that [block grant adjustments] with which I am perfectly satisfied”.<sup>67</sup> In terms of the fiscal framework negotiations, this presumption to agree was further magnified by the requirement in the Smith Commission report that a framework be agreed. This, Mr Swinney acknowledged, “obviously put a particular discipline on getting to an acceptable conclusion for both parties”.<sup>68</sup>

**41. Bilateralism is a prominent aspect of intergovernmental relations in the UK. With substantial new fiscal and welfare responsibilities flowing to the Scottish devolved institutions, this will only grow in importance in the future. We are therefore heartened at the evidence of constructive cooperation between the Scottish and UK Governments in relation to both the Scotland Act 2016 and the fiscal framework which will underpin the practical operation of this important constitutional legislation. *The UK Government must maintain and strengthen this practical and pragmatic approach to intergovernmental relations. This is essential if the full potential of the new powers contained in the Scotland Act 2016, particularly those in areas where competency is shared between the two Governments, are to be realised. It will be all the more important as an underpinning to the discussions about exiting the European Union which are currently taking place.***

**42. However, the starkly different evidence provided by the Scottish and Welsh Governments does suggest that intergovernmental relations in the UK are still overly dependent on factors such as the respective influence of the different administrations.**

63 HM Government and the Scottish Government, [The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government’s fiscal framework](#), February 2016

64 [Q338](#)

65 [Q528](#)

66 [Q357](#)

67 [Q358](#)

68 [Q357](#)

Although PACAC is aware of reports that the UK Government has, at times, been unreceptive to concerns expressed by the Scottish Government, the Scottish Government appears to have experienced a more effective and responsive relationship with Whitehall than can be said of the Welsh Government. It is to be expected that the UK Government will have to, at times, prioritise certain relationships. *However, the UK Government must do all it can to promote goodwill and to develop a system of effective intergovernmental relations which ensures that devolved administrations with less nominal influence are treated with respect, so that meetings and discussions are trusting and sincere, and that the matters being decided are substantive rather than tokenistic.*

43. In the following section we outline a series of recommendations aimed at fostering a stronger sense of shared purpose and collaboration in intergovernmental relations in the UK, at both a multilateral and bilateral level.

## The way forward: towards a meaningful system of intergovernmental relations

### *The Joint Ministerial Committee*

44. Our evidence sessions in Scotland and Wales demonstrated a clear desire from those devolved administrations to be fully engaged in an effective and meaningful system of intergovernmental relations. John Swinney's evidence indicated that the main reform the Scottish Government seeks to the existing system of intergovernmental relations is the ability to raise and address issues of concern and to reach points of agreement.<sup>69</sup> In evidence to the House of Lords Constitution Committee during its inquiry into intergovernmental relations in 2015, the Scottish Government noted that while some capacity exists for issues of concern to be raised, the practical effect of this has been reduced by the timetabling of JMC meetings:

In theory, the 'current issues' section which remains a standing item on the agenda of meetings in both Plenary and Domestic format provides the opportunity for each administration to raise issues of concern. In practice, lack of time can make this opportunity less useful, since the UK Government is generally unwilling or unable to schedule more than 60–90 minutes for each meeting and there is often no time ... left for 'current issues'. Providing additional time might also provide the opportunity for proper discussion rather than simply [a] statement of contrary positions.<sup>70</sup>

45. In his evidence to PACAC, the First Minister of Wales, Rt Hon Carwyn Jones AM, bemoaned the lack of opportunities for the devolved administrations to discuss issues of importance with the Prime Minister on a Heads of Government basis and noted that while the JMC (P) enables the devolved administrations to communicate their views to

69 [Qq369–370](#)

70 Written evidence from the Scottish Government, House of Lords Constitution Committee, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, HL Paper 146, para. 45.

the UK government, it is “not a collaborative body”.<sup>71</sup> The First Minister also highlighted that with the JMC’s domestic sub-committee having not met “for some time”, Heads of Government meetings are now confined to JMC plenaries.<sup>72</sup>

46. Professor Stephen Tierney noted that the Lords Constitution Committee had heard a number of complaints from the devolved administrations , namely that

... issues were coming on to the agenda very late, they were not getting full cognisance of what was likely to be discussed, that the JMC often operated much more as a relating of UK governmental policy rather than a full discussion of how things ought to operate.<sup>73</sup>

In terms of potential solutions to these complaints, Professor Tierney suggested that the devolved administrations could be given a greater say in setting the agenda for meetings “so that the operation of both plenary and subcommittee is a much more iterative discussion of process rather than an information giving-one”.<sup>74</sup>

47. The sense of purpose and agenda for the JMC was also raised by Professor McEwen. Reflecting that “if you are going to ask very busy people to make time for these forums, ideally they would be given a task”, she noted that at present the JMC is not a decision making body. Professor McEwen suggested that maybe such a role should be part of the JMC’s work or that the JMC could be timetabled so as to more closely align with substantive political events e.g. in advance of the budget or spending reviews. Drawing attention to the experience of the JMC (E), “the one format of the JMC that has worked relatively well”, she claimed that its relative success was linked to the sub-committee’s meetings being timetabled “to discuss upcoming meetings of the European Council”, resulting in there being “something to discuss and something meaningful to get agreement or at least consultation on”.<sup>75</sup>

**48. There is longstanding criticism of the ineffectiveness of the existing JMC. It is clear that while the JMC plenary (JMC (P)) offers scope for the different devolved administrations to air their views to the UK Government, this potential is limited. The failure of the JMC Domestic committee has rendered the JMC (P) the sole forum for Heads of Government meetings. At best, these plenaries take place annually and the tight timetables for plenary meetings mean that there is little opportunity for issues of concern to be discussed in detail and undermine the ability of the JMC to be a vehicle for constructive engagement and collaboration.**

***49. In the absence of new Heads of Government meetings or the revitalisation of the JMC Domestic, the format of JMC plenaries needs some reform. While it is not realistic to expect plenaries to end up with points of agreement on all issues, plenaries should enable the devolved administrations to raise, and discuss in satisfactory depth, issues of concern. This would add a greater sense of purpose, and value, to the JMC. The continuing discussions on the new Memorandum of Understanding should therefore look at international examples of IGR best practice.***

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71 [Q92](#)

72 [Qq79–80](#)

73 [Q428](#)

74 [Q428](#)

75 [Q428](#)

50. *PACAC recommends that the ongoing review into the MoU should examine the idea of evolving the JMC (P) into an annual Heads of Government Summit, analogous to meetings of the Council of the European Union. Under this model, responsibility for hosting the JMC would rotate among the four administrations, with the host Government given the responsibility for setting the agenda for the plenaries. The four Heads of Government would meet in this consultative body and the communiqué should, wherever possible, be agreed unanimously. This would provide the devolved administrations with greater opportunity for involvement, and responsibility, in the JMC.*

51. *Adopting a ‘summit’ approach could facilitate an extension of the length of time spent on JMC/Heads of Government business. For example, they could include informal as well as formal meetings, to facilitate greater interaction and, hopefully, to strengthen trust and relationships between the people who make up the different administrations. Rotating the responsibility for hosting, and setting the agenda would help meet the demands of the devolved administrations and would provide a greater guarantee that the interests of all four of the Governments are heard and better understood.*

### **Formalising bilateralism**

52. As discussed in paragraphs 29–33, bilateralism and informality have been two of the defining features of intergovernmental relations since devolution. As devolution has progressed, bilateralism had arguably become even more significant with the creation of Joint Exchequer Committees (JEC) in Scotland and Wales and Joint Ministerial Working Groups on Rebalancing the Northern Ireland Economy and on Welfare, in Scotland. This preference for bilateral and informal approaches has been described as having a “certain sense” due to the uncodified nature of the British constitution and the asymmetric nature of the different devolution dispensations.<sup>76</sup> In light of the deepening of these asymmetries, as well as the growth of concurrent powers, e.g. in tax and welfare policy as a result of the Scotland Act 2016, it was suggested to PACAC that there may be a need “to look at formalising some of the bilateral arrangements that have emerged in recent years”.<sup>77</sup>

53. Professor McEwen, for example, spoke of the possibility of extending the remit of the Scottish-UK Joint Exchequer Committee (JEC) beyond the transitional period after the Scotland Act 2016 powers, so that the JEC could become a “forum where those matters [the interdependencies in tax policy after the Scotland Act 2016] could be discussed in a private forum”, and thus reducing the scope for “gaming within the system” whereby the different Governments seek to make policy decisions with a detrimental effect on one another.<sup>78</sup> Similarly, it was uncertain whether the Joint Ministerial Group on Welfare would be functional after the transition of devolved responsibilities to Holyrood, despite the fact that devolution would result in ongoing interdependencies.<sup>79</sup> In light of the new welfare responsibilities that have been devolved to the Scottish Parliament and Government and the fact that social security is a transferred matter in Northern Ireland, Professor McEwen suggested that there “is a case to be made to suggest that the JMC might have a welfare focus brought within it”.<sup>80</sup>

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76 [Q423](#)

77 [Qq423–424](#)

78 [Q448](#)

79 [Q443](#)

80 [Q443](#)

54. It is instructive that following the Scotland Act 2012 there was a period of about two years when the Scottish-UK JEC did not meet, prior to its revival in the context of the additional tax and borrowing powers that are devolved by the Scotland Act 2016.<sup>81</sup> Furthermore, while a Welsh-UK JEC was established following the devolution of minor taxes in the Wales Act 2014, the First Minister of Wales described the level of bilateral contact between the two administrations as “fairly non-existent”.<sup>82</sup>

**55. *Bilateralism and informality have been a defining feature of intergovernmental relations in the UK post-devolution and while these tendencies may reflect the asymmetry of the different devolution settlements and the uncodified nature of the UK Constitution, the deepening asymmetry and growth of concurrent policy responsibilities requires a more rigorous and formal approach to bilateral intergovernmental relations. PACAC recommends that the revised Memorandum of Understanding should recognise the Scottish and Welsh Joint Exchequer Committees as permanent standing bodies in recognition of the interdependencies that will continue to mark tax policy in the future. Similar provision should be made for the Joint Ministerial Working Group on Welfare.***

**56. *Since all of the devolved legislatures are now responsible for some aspects of tax policy and Holyrood and Stormont both have welfare responsibilities, the four administrations should establish new sub-committees of the Joint Ministerial Committee focused on tax, welfare and the financial settlements between the four Governments of the UK. This would allow areas of mutual concern among the four administrations to be discussed, models of best practice in these areas to be more effectively shared and would be another step towards the establishment of a more purposeful and policy relevant model of intergovernmental relations. To support this, there should be a formal mechanism for representatives of Departments of State and their counterparts in the devolved administrations to meet at least once a year, to discuss policy matters. Additionally, within each Department of State there should be a minister acting as a designated contact point for the devolved administrations.***

### **Intergovernmental relations and the UK's withdrawal from the EU**

57. The subject of intergovernmental relations in the UK has become particularly salient in light of the vote to leave the European Union in June 2016. Immediately after the referendum result, on the 24 June 2016, the then Prime Minister, the Rt Hon David Cameron indicated that the negotiations to leave the EU would involve the “full engagement” of the devolved administrations.<sup>83</sup> Later, on 27 June, Mr Cameron re-emphasized this commitment and added that the UK Government would also consult with Gibraltar, the Crown dependencies, overseas territories, “and all regional centres of power including the London Assembly”. He added that “officials will be working intensively together over the coming weeks to bring our devolved Administrations into the process for determining the decisions that need to be taken” and noted that work had already begun on working through the challenges relating to the common border area between Northern Ireland

81 [Q448](#)

82 [Q73](#)

83 HM Government. [EU referendum outcome: PM statement](#), 24 June 2016.

and the Republic of Ireland.<sup>84</sup> Since her appointment as Prime Minister, the Rt Hon Theresa May MP has reaffirmed this pledge to fully engage the devolved administrations to ensure a UK-wide approach to these negotiations.<sup>85</sup>

58. As mentioned in paragraph 27, during the most recent JMC (P) meeting, the four UK administrations agreed to establish a new Joint Ministerial Committee on EU Negotiations: JMC (EN). According to the communiqué released after the meeting, the JMC (EN) will be given the following terms of reference:

Working together in EU Negotiations.

Through the JMC (EN) the governments will work collaboratively to:

- discuss each government’s requirements of the future relationship with the EU;
- seek to agree a UK approach to, and objectives for, Article 50 negotiations;
- provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations, and;
- discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.<sup>86</sup>

It was also agreed that a work programme and meeting schedule for JMC (EN) would be prepared for discussion at its first meeting in November.<sup>87</sup> In addition to these points of agreement, it has also been reported that the UK Government has offered the devolved administrations a ‘hotline’ with the Secretary of State for Exiting the European Union, the Rt Hon David Davis MP.

59. There was frustration expressed about the lack of clarity from the UK Government about how it intends the UK to leave the European Union. The First Minister of Scotland, the Rt Hon Nicola Sturgeon MSP, for example, said that large parts of the plenary were “hugely frustrating” with participants leaving the meeting knowing “no more about the UK Government’s approach to the EU negotiations now than we did when we went into the meeting”. With regards to the JMC (EN), Ms Sturgeon noted that a “significant amount of work” would need to be undertaken “to make sure that the engagement we have is meaningful”.<sup>88</sup>

60. While welcoming the UK Government’s agreement of more frequent JMC meetings and for the devolved administrations to play a “meaningful role in developing the future work programme relating to Brexit”, the First Minister of Wales, the Rt Hon Carwyn

84 HM Government, [PM Commons statement on the result of the EU referendum](#), 27 June 2016.

85 HM Government, [Prime Minister to visit Scotland and underline commitment to “preserving this special union”](#), 15 July 2016; HM Government, [PM to visit Wales to underline her strong personal support for the union](#), 18 July 2016; HM Government, [PM statement in Northern Ireland](#), 25 July 2016.

86 [Joint Ministerial Committee Communiqué](#), 24 October 2016.

87 [Joint Ministerial Committee Communiqué](#), 24 October 2016.

88 Scottish Government, [Joint Ministerial Committee on EU referendum](#), 24 October 2016.

Jones AM, also highlighted the “huge uncertainty about what success will look like from the UK Government”. Such uncertainty, according to Mr Jones “makes it difficult for the devolved administrations to positively influence the process”.<sup>89</sup>

61. In a joint statement following the JMC (P), the First and Deputy First Ministers of Northern Ireland, Rt Hon Arlene Foster MLA and Martin McGuinness MLA stated that they were “heartened at the widespread support for our position that we are facing unique circumstances in this unfolding situation” (Northern Ireland is the only constituent nation of the UK to share a land border with an EU state).<sup>90</sup> Noting that commitments had been made by the UK Government “on the priority being attached” to Northern Ireland’s unique situation, the First and Deputy First Ministers called for these words to be “translated into action with a meaningful and clearly established role in negotiations”, arguing that there must be “no democratic deficit when it comes to our region’s voice being heard and its interests defended”.<sup>91</sup>

62. The decision to leave the European Union raises a number of key questions with direct consequences for the devolved administrations and their involvement in the process. These questions range from the nature of the consent that will be sought from the devolved legislatures for the ‘Great Repeal Bill’, through to the policy and resource implications, for all four administrations, of the return of competencies from the European Union, particularly those in the fields of fisheries and agriculture.

**63. PACAC welcomes the UK Government’s commitment to engage the devolved institutions throughout the process of negotiating the UK’s withdrawal from the EU and the agreement, at the last JMC (P), of a new Joint Ministerial Committee on the EU negotiations. The onus for facilitating constructive dialogue between the devolved administrations, while negotiating the process of leaving the EU, is on the UK Government. It is, therefore, vital that the UK Government’s commitment to engage with the devolved administrations is meaningful and is not simply a tool to allay the concerns of the Scottish and Welsh Governments and the Northern Ireland Executive.**

**64. PACAC welcomes the opportunity provided by the decision, taken at the most recent JMC (P), to defer consideration of a revised Memorandum of Understanding, in light of the changing political and constitutional landscape since the EU referendum.**

***65. There now exists an ideal opportunity for the formal machinery of intergovernmental relations in the UK to be imbued with a sense of purpose, with a revitalised and reformed JMC. While PACAC supports the decision to establish a new Joint Ministerial Committee on EU negotiations, this should not preclude further consideration by the four administrations as to how the JMC and its sub-committees can be best structured so as to assist the UK Government to develop a truly UK-wide approach in a range of areas where all four administrations have policy interests in the outcome of the negotiations to leave the EU.***

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89 Welsh Government, [Statement by the First Minister following today’s Joint Ministerial Committee](#), 24 October 2016.

90 Northern Ireland Executive, [Foster and McGuinness comment following Joint Ministerial Committee meeting](#), 24 October 2016.

91 Northern Ireland Executive, [Foster and McGuinness comment following Joint Ministerial Committee meeting](#), 24 October 2016.

66. PACAC sees merit, for example, in the idea of creating agriculture and fisheries and economic affairs sub-committees. Such committees could either be formal sub-committees, under the general coordination of JMC (EN) and JMC (P), or could be meetings of the JMC (EN) in a functional, sector-specific, format (in a fashion similar to Council of Ministers meetings at the EU level). Additionally, the JMC secretariat's capacity should be enhanced so that the JMC (EN) can call upon the advice and support of 'shared' technical staff, with expertise in key policy areas.

67. However, it is important to have realistic expectations about the limits of IGR machinery. The response to the recent JMC (P) has indicated that the JMC cannot, by itself, be expected to resolve issues which remain politically contentious between the four administrations. Instead, the effectiveness of any model of IGR rests on the ability of the four administrations to collectively develop an atmosphere of trust and goodwill. In order to develop such an atmosphere of trust and goodwill, the UK Government must show a genuine receptiveness to the concerns and suggestions put forward by the devolved administrations.

### Transparency and scrutiny of intergovernmental relations

68. Professor Tierney noted the lack of transparency in the current system of intergovernmental relations.<sup>92</sup> He suggested that this hampers good decision making within the JMC, first, "because they [the four administrations] do not have to be concerned about what the public find out about" and, second, does not facilitate parliamentary scrutiny of IGR.<sup>93</sup> Professor McEwen claimed that a study conducted by herself and academic colleagues could not "find a case where there was less parliamentary scrutiny of intergovernmental issues formally than there is [in] the UK".<sup>94</sup>

69. The absence of scrutiny of IGR became particularly prominent in the context of the recent fiscal framework negotiations between the Scottish and UK Governments. The limited level of information provided by the two Governments to their respective Parliaments was criticised by the [House of Lords Constitution Committee](#) in its report on what was then the Scotland Bill.<sup>95</sup> The Constitution Committee warned that the absence of a fiscal framework during the Bill's legislative stages had meant it was "impossible for the House [of Lords] to assess whether or not the Bill will cause detriment to all or part of the United Kingdom" and would cause "significant difficulties" for the House of Lords in its scrutiny of the Bill.<sup>96</sup> Indeed, in his evidence to PACAC, the Scottish Deputy First Minister and one of the lead negotiators, John Swinney MSP, freely conceded that the negotiations had resulted in an "unsatisfactory" level of information being shared with the respective Parliaments.<sup>97</sup>

70. In 2015, the Scottish Parliament's Devolution (Further Powers) Committee's report [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#) recommended that IGR in the UK should be based on the principles of transparency and

92 [Q428](#)

93 [Q428](#)

94 [Q426](#)

95 House of Lords Select Committee on the Constitution, [Scotland Bill](#), 6th Report of Session 2015–16, 23 November 2015.

96 House of Lords Select Committee on the Constitution, [Scotland Bill](#), 6th Report of Session 2015–16, 23 November 2015, paras. 14, 16.

97 [Q339](#)

accountability.<sup>98</sup> Furthermore, the Committee called for a written concordat between the Scottish Government and Scottish Parliament to facilitate the latter's scrutiny of IGR, providing the Parliament with a forward programme of planned IGR talks and meetings and with detailed minutes of those meetings.<sup>99</sup>

71. On 10 March 2016, [a written agreement](#) was reached between the Scottish Parliament and the Scottish Government on parliamentary scrutiny of intergovernmental relations. This Agreement established three principles that would govern the relationship between the Scottish Parliament and Government with regard to intergovernmental relations, namely transparency, accountability and respect for the confidentiality of discussions between Governments.<sup>100</sup>

72. The agreement covers the participation of Scottish Ministers "in formal, intergovernmental structures. This means, in practice, discussions and agreements of, or linked to, the Joint Ministerial Committee (in all its functioning formats); the Finance Ministers' Quadrilaterals; the Joint Exchequer Committee; the Joint Ministerial Group on Welfare; and other standing or ad hoc multilateral and bilateral inter-ministerial forums of similar standing as may be established".<sup>101</sup>

73. The Scottish Government agrees to provide to the relevant committee of the Scottish Parliament, as far as is practicable, "advance written notice at least one month prior to scheduled relevant meetings, or in the case of meetings with less than one month's notice, as soon as possible after meetings are scheduled". This advance notice will include "agenda items and a broad outline of key issues to be discussed, with recognition that agenda items, from time to time, may be marked as "private" in recognition of the need for confidentiality".<sup>102</sup>

74. In addition, after each intergovernmental meeting "within the scope of the written agreement", the Scottish Government will provide the relevant Scottish Parliament committee with a written summary of the issues discussed at the meeting within two weeks, if possible, or otherwise as soon as is practicable. This written summary will include:

... any joint statement released after the meeting, information pertaining to who attended the meeting, when the meeting took place, and where appropriate, subject to the need to respect confidentiality, an indication of key issues and of the content of discussions and an outline of the positions advanced by the Scottish Government.<sup>103</sup>

98 Scottish Parliament Devolution (Further Powers) Committee, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#), 5th Report (Session 4), 8 October 2015, para. 60.

99 Scottish Parliament Devolution (Further Powers) Committee, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#), 5th Report (Session 4), 8 October 2015, para. 64.

100 [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government, March 2016.](#)

101 [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government, March 2016, p.2-3.](#)

102 [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government, March 2016, p.3-4.](#)

103 [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government, March 2016, p.3.](#)

Furthermore, the Scottish Government also agreed to provide to the relevant committee “the text of any multilateral or bilateral intergovernmental agreements, memorandums of understanding or other resolutions within the scope of this Agreement” and “to maintain a record of all relevant formal intergovernmental agreements, concordats, resolutions and memorandums that the Scottish Government has entered into”, including making these documents available on the Scottish Government’s website. In addition, the Scottish Government will produce, and submit to the relevant Scottish Parliament Committee, an Annual Report on intergovernmental relations.<sup>104</sup>

**75. The existing level of transparency regarding intergovernmental relations is insufficient and, as demonstrated by the example of the fiscal framework negotiations, has acted as a barrier to effective parliamentary scrutiny of both intergovernmental discussions and, as in that example, significant reform to the UK’s constitutional arrangements.**

**76. In light of the development of devolution of powers to Edinburgh, Cardiff Bay and Stormont, and the growth of concurrent responsibilities shared between the UK Government and the different devolved administrations, as well as the impact of the UK’s exit from the European Union, intergovernmental relations will only grow in significance in future years. PACAC therefore welcomes the written agreement between the Scottish Government and Parliament, which offers the prospect of a more open and accountable model of intergovernmental relations and a model of best practice from which the Welsh Government and the Northern Ireland Executive, and Westminster and Whitehall can learn.**

**77. PACAC therefore recommends that the UK Government agrees to provide the House of Commons and House of Lords with similar transparency to that found between the Scottish Government and Parliament.**

**78. PACAC and the House of Lords Constitution Committee should have advanced written notice, and written summaries, of intergovernmental meetings. This commitment should replicate the lines of the agreement reached between the Scottish Government and Scottish Parliament. This agreement should be guaranteed by making reference to minimum standards of transparency that future Governments will be expected to meet.**

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<sup>104</sup> [Inter-governmental relations: Written agreement between the Scottish Parliament and Scottish Government](#), March 2016, p.3–4.

### 3 Inter-parliamentary Relations

#### The current level of inter-parliamentary relations in the UK

79. Despite the weaknesses of intergovernmental relations (IGR) listed in the preceding chapter, inter-parliamentary relations (IPR) in the UK is arguably the poorer and less well-developed relative of IGR. At a formal level there is no direct parliamentary equivalent to the JMC. The closest comparable body is the [British-Irish Parliamentary Assembly](#) (BIPA), established in 1990 as a link between the UK and Irish Parliaments and, since 2001, expanded to include members from the devolved legislatures and the legislatures of the Isle of Man, Guernsey and Jersey.

80. As with IGR, IPR in the UK has largely relied upon informal, bilateral and ad-hoc arrangements. At committee level, the Welsh Affairs Committee (WAC) has, since 2004, had the power to hold joint evidence sessions with committees of the National Assembly for Wales.<sup>105</sup> Since the first formal joint meeting in 2004, when WAC held an evidence session with the National Assembly's Economic Development and Transport Committee to discuss the Draft Transport (Wales) Bill, WAC has exercised this power on a number of occasions. The most recent example was a joint evidence session with the National Assembly's Constitutional and Legislative Affairs Committee as part of its pre-legislative scrutiny of the draft Wales Bill, on 9 November 2015.<sup>106</sup>

81. In addition, the then Presiding Officer of the National Assembly for Wales, Dame Rosemary Butler AM, suggested that there was a lot of individual and informal contact between the Chairs of Committees in the National Assembly for Wales and their counterparts in Westminster and between the devolved legislatures, while the Director of Assembly Business, Adrian Crompton described a range of networks that existed at a staffing and clerking level.<sup>107</sup>

82. Perhaps the closest that the post-devolution UK has come to formal IPR arrangements has been at Speaker and Presiding Officer level. In 2002, the then Speaker of the Northern Ireland Assembly, Lord Alderdice organised a [Conference of the Speakers, Presiding Officers and Clerks of the United Kingdom, Ireland, the Isle of Man and the Channel Islands](#) and in recent years a system of regular quadrilateral meetings between the Speakers and Presiding Officers of the four UK legislatures has been established. Dame Rosemary Butler AM described these meetings as valuable, particularly in providing opportunities for knowledge exchange. For example, she explained that, as a result of these meetings, the National Assembly for Wales' professional development system was now being taken on by the other Presiding Officers and Speakers.<sup>108</sup>

105 Standing Order No.137A(3) enables the Welsh Affairs Committee to "invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote)".

106 House of Commons Welsh Affairs Committee, [Joint meeting with Welsh Assembly Committee on draft Wales Bill](#), 6 November 2015.

107 [Qq7-8](#), [10](#).

108 [Q13](#)

## Proposals for greater inter-parliamentary cooperation

83. In light of the underdeveloped nature of IPR, it is perhaps unsurprising that there have been repeated calls for inter-parliamentary cooperation to be enhanced in recent years. For example, commenting on the “strange” absence of a formal forum for parliamentarians from all four UK legislatures to meet, other than BIPA, the House of Commons Justice Committee in its 2009 report, [Devolution: a decade on](#), recommended that “one way of securing a greater interchange and understanding would be to develop a format similar to the British-Irish Parliamentary Assembly, bringing together Members of Parliament and of the devolved Parliaments and Assemblies”. Among the functions that such a body could have would be holding the Joint Ministerial Committee to account and sharing experience and best practice. While the Justice Committee noted that there would need “to be reasonable confidence in the value which could be added by such a body for the idea to be developed”, they nonetheless considered the idea worthy of debate.

84. Also that year, [the Commission on Scottish Devolution \(Calman Commission\)](#) recommended a series of reforms to inter-parliamentary relations in the UK. These included the creation of a joint liaison committee of the UK Parliament and the Scottish Parliament, “to oversee relations and to consider the establishment of subject-specific ad hoc joint committees”, and the removal of barriers limiting the ability of committees of the UK and Scottish Parliaments to work together, including:

- a. Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.
- b. Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.
- c. Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.<sup>109</sup>

85. Further proposals for enhanced inter-parliamentary relations were produced by the Commission on the Future Governance of Scotland ([the Strathclyde Commission](#)), in its 2014 report. In particular, the Commission proposed the creation of “a Committee of all the Parliaments and Assemblies of the United Kingdom” to “consider the developing role of the United Kingdom, its Parliaments and Assemblies and their respective powers, representation and financing.”<sup>110</sup> Later that year, and following the Scottish independence referendum, [the Smith Commission](#), established to take forward the promises made during the referendum of further devolution to Scotland, proposed that “formal processes should be developed for the Scottish Parliament and UK Parliament to collaborate more regularly in areas of joint interest in holding respective Governments to account”.<sup>111</sup>

86. Also published in 2014, the [second report](#) of the Commission on Devolution in Wales (the Silk Commission) recommended improving the level of inter-parliamentary

109 Commission on Devolution in Scotland, [Serving Scotland Better: Scotland and the United Kingdom in the 21st Century](#), Final Report, June 2009, p.12.

110 Scottish Conservatives, [Commission on the Future Governance of Scotland](#), May 2014, p.2.

111 The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), 27 November 2014, p.14.

cooperation between the National Assembly for Wales and the UK Parliament. For example, the Silk Commission proposed that Assembly Members should be given parliamentary passes<sup>112</sup> and that “Members of Parliament representing constituencies bordering Wales who raise cross-border issues that affect their constituents should be accorded the same courtesies by Welsh Ministers as Assembly Members receive. This should apply equally to Assembly Members raising issues in England that affect their constituents”.<sup>113</sup>

87. More recently, the Scottish Parliament’s Devolution (Further Powers) Committee in its 2015 report, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#), argued that “greater inter-parliamentary cooperation in scrutinising intergovernmental relations would be beneficial”.<sup>114</sup> While the Committee envisaged that this cooperation would, at first, be on an “informal basis”, it recommended that “the Scottish Parliament should give consideration to how such co-operation can be best facilitated and engage in a dialogue with other legislatures in this regard..”<sup>115</sup>

88. The House of Lords Constitution Committee’s 2015 report on [Intergovernmental Relations in the United Kingdom](#) also touched on the issue of inter-parliamentary relations. However, while the report expressed “hope that common ground can be found on which to base some form of cross-parliamentary scrutiny of intergovernmental relations,” it made no specific recommendations as to how this might best be achieved beyond highlighting existing practices and potential ideas for reform.<sup>116</sup> For example, it drew attention to the ability of the Welsh Affairs Committee to meet jointly with committees of the National Assembly for Wales. It also noted the idea, floated by the then Deputy Presiding Officer of the National Assembly, David Melding AM, that the Chairs of the existing committees concerned with devolution and intergovernmental relations could meet together, using the example of the biannual meeting of chairs of EU Scrutiny Committees from across the UK.<sup>117</sup>

## The way forward: inter-parliamentary relations in the UK

89. Our inquiry found general support for the principle of improving inter-parliamentary relations in the United Kingdom, but no consensus on how this might be best achieved. Dame Rosemary Butler AM argued that stronger inter-parliamentary relations “must play a key role” in building the greater collaboration and discussion between the four constituent nations of the UK that she felt was a pre-requisite of a “clear enduring settlement for the UK”.<sup>118</sup> Dame Rosemary also suggested that there was “increasing recognition that inter-parliamentary relations are essential to collaboration on areas of common interest”.<sup>119</sup>

112 Commission on Devolution in Wales, [Empowerment and Responsibility: Legislative Powers to Strengthen Wales](#), March 2014, p.161.

113 Commission on Devolution in Wales, [Empowerment and Responsibility: Legislative Powers to Strengthen Wales](#), March 2014, p.162.

114 Scottish Parliament Devolution (Further Powers) Committee, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#), 5th Report (Session 4), 8 October 2015, para. 72.

115 Scottish Parliament Devolution (Further Powers) Committee, [Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations](#), 5th Report (Session 4), 8 October 2015, para. 72.

116 House of Lords Select Committee on the Constitution, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, 27 March 2015, para. 198.

117 House of Lords Select Committee on the Constitution, [Inter-governmental relations in the United Kingdom](#), 11th Report of Session 2014–15, 27 March 2015, para. 196.

118 [Q2](#)

119 [Q2](#)

90. However, when it came to the question of how inter-parliamentary relations should be reformed, Dame Rosemary urged proceeding on an informal basis, “which has worked incredibly well”, rather than on a formal footing.<sup>120</sup> Explaining this preference, she drew attention to the practical difficulties that formal arrangements would face. For example, the busy timetables that parliamentarians have, which in the case of Assembly Members is exacerbated by the fact that AMs are often expected to serve on a number of committees.<sup>121</sup>

91. However, while Sir Paul Silk, the Chair of the Commission on Devolution in Wales and former Clerk of the National Assembly for Wales, acknowledged the “many informal contacts between Members of this place [AMs] and Members of the House of Commons”, he also argued that there were more institutional changes that could be made to improve inter-parliamentary relations.<sup>122</sup> For example, he suggested that proposals like the Strathclyde Commission’s suggestion of a Committee of the Assemblies and Parliaments of the United Kingdom were ideas “worth pursuing a bit further” and “might have some benefit”.<sup>123</sup> However, he claimed that he would not hold his breath to wait for MPs to vote on more formal inter-parliamentary relations arrangements.<sup>124</sup>

92. During [PACAC’s evidence session in Edinburgh](#), Professor McEwen suggested that she would like to see more of the informal links that exist between officials serving the different institutions, including sharing best practice and jointly commissioning research”.<sup>125</sup> However, echoing the comments made by Dame Rosemary Butler AM, Professor McEwen noted that there was already “very limited time” in parliamentarians’ diaries to participate in more formal inter-parliamentary mechanisms.<sup>126</sup>

93. In contrast, Professor Tierney contended that, with increasingly powerful Executives at both the devolved and UK level, parliamentarians should take the question of greater inter-parliamentary cooperation more seriously.<sup>127</sup> While he conceded that joint working would need to “overcome egos, feelings of inferiority and superiority and all the other horrors that go with devolution”, he argued that it should not be “outwith the realms of possibility to bring parliamentarians together at different levels to scrutinise what is happening with a very powerful Executive”.<sup>128</sup>

**94. It is clear that, while the principle of closer inter-parliamentary cooperation commands much support, there is no consensus on any particular model of enhanced inter-parliamentary relations. Any reform of inter-parliamentary relations must acknowledge the practical difficulties mentioned by a number of witnesses to our inquiry, not least the difficulty of finding time for these meetings in the already full diaries of parliamentarians from across all four legislatures.**

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120 [Q6](#)

121 [Q6](#). The House of Commons sits on Mondays between 2.30–10.30pm, Tuesdays and Wednesdays between 11.30am–7.30pm, Thursdays 9.30am–5.30pm and on sitting Fridays sits from 9.30am–3pm. The National Assembly for Wales sits from a Monday afternoon through to Thursday evening (with plenary sessions taking place on Tuesdays and Wednesdays) as does the Northern Ireland Assembly (plenary sessions take place on a Monday and Tuesday). The Scottish Parliament sits from Tuesday through to Thursday evening (with the Parliament meeting in plenary sessions on each sitting day).

122 [Q41](#)

123 [Q42](#)

124 [Q47](#)

125 [Q456](#)

126 [Q459](#)

127 [Q461](#)

128 [Q461](#)

95. *However, PACAC recommends that a number of modest, yet in some cases symbolically significant, steps be taken to enhance inter-parliamentary relations in the United Kingdom.*

96. *First, the provisions of Standing Order No. 137A(3) (henceforth referred to as 137A(3)), which enables the Welsh Affairs Committee to hold joint evidence sessions with committees of the National Assembly for Wales, should be extended to enable all committees of the House of Commons to meet jointly with any specified committee of any of the three devolved legislatures. It makes little sense, given the increasing number of concurrent responsibilities, for 137A(3) to continue to be limited to the Welsh Affairs Committee. Amending 137A(3) will provide for inter-parliamentary collaboration ‘on demand’, allowing Committees of the House that wish to undertake joint evidence sessions with the Committees of the other legislatures to do so at a time of their (and, of course, the relevant Committee of the other legislature) choosing. However, for such a reform to be meaningful, PACAC calls upon the other three UK legislatures to examine where their Standing Orders, or relevant statutory provisions, inhibit greater inter-parliamentary collaboration and, where possible, to eliminate these barriers. This collaboration would not undermine the right of the devolved legislatures to form legislation independently of UK Parliament influence.*

97. *Secondly, while PACAC welcomes the continued inter-parliamentary collaboration at Speaker and Presiding Officer level, the lack of transparency regarding the agenda and conclusions of these meetings is unsatisfactory. PACAC therefore recommends that the Speakers and Presiding Officers consider providing written notice, and written summaries, of these quadrilaterals.*

98. *Finally, while PACAC recognises the role of the House of Commons Library and the Scottish Parliament’s Information Centre in raising awareness of one another’s institutions and is aware of a number of examples of ongoing informal inter-parliamentary cooperation among Clerks and other officials, we recommend that this cooperation be deepened by examining how the training of officials, including the Parliamentary fast stream, can better raise awareness of one another’s institutions. PACAC recommends that at their next meeting, the Speakers and Presiding Officers of the four UK legislatures agree to undertake an audit of their institutional cooperation, including, for example, the level of secondments and placements between each institution.*

## 4 The Civil Service, post-devolution

99. Despite devolution to Scotland and Wales, civil servants working for the devolved administrations remain part of a unified Home Civil Service. According to Richard Parry, an Honorary Fellow at the Centre on Constitutional Change at Edinburgh University, “officials serve exclusively the ministers of the duly-elected administration that they serve. This has been supplemented by a shared understanding that any managerial arrangements consequential on the unified service do not compromise this exclusive loyalty”.<sup>129</sup> In contrast to the other devolved nations, Northern Ireland has, since 1921, had a separate civil service, although the Northern Ireland Civil Service (NICS) closely resembles the Home Civil Service in its organisation and principles.<sup>130</sup> This section of the report is relatively brief as many of these themes will be addressed in more detail as part of PACAC’s inquiry into ‘The work of the Civil Service’.<sup>131</sup>

### The role of the Home Civil Service, post-devolution

100. According to Mr Parry, the present system has not only survived 17 years of devolution, but “is widely held to assist inter-institutional relations”.<sup>132</sup> Indeed, there was broad agreement, among our witnesses, that the Home Civil Service had played an important role in helping to bind the UK together post-devolution. For example, Sir Paul Silk suggested that when the Commission on Devolution in Wales began work his initial presumption was in favour of having a separate Welsh Civil Service. However, the Silk Commission eventually concluded that the advantages of retaining a shared civil service outweighed any disadvantages.<sup>133</sup> This change of heart was in part based on the opportunities the Home Civil Service can provide for career development and “cross-fertilisation” between the Devolved Administrations and Whitehall.<sup>134</sup> Citing the case of the Permanent Secretary to the Welsh Government, Sir Derek Jones, Sir Paul noted:

Derek was in the Treasury before he came back to Wales. I think he would say that the advantage of having been an official in the Treasury before he became an official in the Welsh Office and then the Welsh Government was enormous. There are still those who go between Cardiff and London and bring experience back to Cardiff.<sup>135</sup>

101. Certainly the evidence we received from Sir Derek Jones and his counterpart in the Scottish Government, Leslie Evans suggested that not only were they both well-integrated at the heart of the Home Civil Service, but that there was frequent contact between the Devolved Administrations and other Government departments.<sup>136</sup> Both Sir Derek and Ms Evans, for example, routinely attend the meetings of Permanent Secretaries in London,<sup>137</sup> and both dismissed any suggestion that serving a Devolved Administration while remaining part of the shared Home Civil Service had resulted in any conflicts of

129 [IUK 02](#) [Mr Richard Parry]

130 House of Lords Select Committee on the Constitution, *Inter-governmental relations in the United Kingdom*, 11th Report of Session 2014–15, 27 March 2015, para.136.

131 Public Administration and Constitutional Affairs Committee, [The work of the Civil Service inquiry](#)

132 [IUK 02](#) [Mr Richard Parry]

133 [Q62](#)

134 [Q62](#)

135 [Q45](#)

136 [Q376](#)

137 [Q83](#) and [Q388](#)

loyalty.<sup>138</sup> As Ms Evans stressed, her line manager is Sir Jeremy Heywood, but she serves the Scottish Government and is the chief policy adviser to the First Minister of Scotland and to her Cabinet.<sup>139</sup> Sir Derek made it similarly clear that his duty is to support the First Minister of Wales and the Welsh Government.<sup>140</sup>

102. While John Swinney MSP reiterated the Scottish Government's position in favour of a separate Scottish civil service, there was broad agreement among other witnesses about the advantages of the unified civil service. Sir Derek Jones, for example, claimed that "as things stand, I can do a better job, my civil service can do a better job, supporting the Welsh Government" as part of the Home Civil Service.<sup>141</sup> Philip Rycroft, Head of the UK Governance Group in the Cabinet Office, described the advantages as "relatively straightforward":

We share the same set of values; we share the same senior leadership structure; we share the same training and leadership development opportunities. Colleagues from Scotland and Wales will join the High Potential Development Scheme for potential Director Generals and the equivalent scheme for potential Permanent Secretaries. That gives us a context in which we are working together in a number of different contexts, which helps us to build the relationships that are so important to manage the good relationships between the various Governments.<sup>142</sup>

103. In terms of the practical consequences that might arise from the break-up of the unified Home Civil Service, Mr Rycroft provided the example of joint learning experiences. At present, Mr Rycroft stated, "it is relatively straightforward to organise joint learning experiences right the way across the Civil Service. Just last week [the week beginning 22 February 2016] we had 50 colleagues from the Welsh and Scottish Governments in Whitehall for a week of shadowing with one of the Departments".<sup>143</sup> While NICS officials do participate in joint training in Whitehall, Sir Jonathan Stephens, the Permanent Secretary to the Northern Ireland Office (NIO) explained that this was the responsibility of the NICS to organise, "there is nothing automatic that underpins it".<sup>144</sup>

104. Notably, while Sir Jonathan emphasized that the NIO and the NICS manage to make their relationship work, aided by the fact that "in many ways it [the NICS] is, although separate, identical to the UK Civil Service", he cautioned against applying this model to the other devolved nations:

... a separate Civil Service could be made to work; it has been made to work in Northern Ireland. I think you have to work harder at keeping the professional competence and learning going across the Civil Services, and you have to work harder at enabling lessons to be learned across the two Governments. There are not so many natural interchanges and flows that exist within a unified Civil Service.<sup>145</sup>

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138 [Q379](#)

139 [Q379](#)

140 [Q134](#)

141 [Q128](#)

142 [Q238](#)

143 [Q256](#)

144 [Q257](#)

145 [Q244](#)

Indeed, Sir Jonathan suggested that if one was starting afresh, rather than in the 1920s when the NICS was created, “you would start off with an assumption that you continued with a unified Civil service”.<sup>146</sup> However, as he and Mr Rycroft acknowledged, the NICS is a product of the constitutional history of Northern Ireland and the UK and, as Sir Jonathan reported, there appears to be little appetite in Northern Ireland for any change to the status quo.<sup>147</sup>

**105. The continuation of the Home Civil Service has played an important role in facilitating inter-institutional relations post-devolution. The shared Home Civil Service enables interchange between the devolved administrations and Whitehall, facilitates knowledge exchange and, as we heard from Sir Derek Jones and Leslie Evans, it has not resulted in any conflict of obligations and loyalties for those civil servants serving the devolved administrations.**

### Whitehall’s awareness of devolution

106. In 2015, the Constitution Unit at UCL released a report, [Devolution and the Future of the Union](#), which criticised Whitehall’s attitude towards devolution and claimed that “too many officials and departments tend to treat the devolved governments as an afterthought, or like any other Whitehall department”.<sup>148</sup> During our inquiry, we found some evidence that occasions did arise when the devolved administrations were treated as an afterthought. According to Sir Derek Jones, this “still happens, and it still happens too frequently”, with a considerable degree of variance between different Departments and between different parts of Departments:

Sometimes the experience is very good, so if there is a joint issue or a joint interest it is consulted on in good time, with productive discussion. We will not always agree, but at least it is understood that there is a devolution issue. Sometimes it is overlooked, and that is probably the most frustrating aspect of Cardiff-Whitehall engagement—when a devolution issue is overlooked in Whitehall so that contact starts too late, it is difficult to rescue a good result from a late start.<sup>149</sup>

Leslie Evans also spoke of occasions “when I think we are forgotten about” and when the response from Whitehall “is somewhat sluggish”. While Ms Evans reiterated the positive working relationships Scottish Government officials have with UK Government Departments, she nonetheless stated that “if you were asking me is there a consistent understanding and very front-footed approach to devolution in every party of every department in Whitehall, I would have to say no, but we are working on it”.<sup>150</sup> Both Sir

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146 [Q262](#)

147 [Qq260, 262](#)

148 UCL Constitution Unit, [Devolution and the Future of the Union](#), 2015, p.72. Following the 2015 General Election, the then Prime Minister, the Rt Hon David Cameron MP, established a Constitutional Reform Cabinet Committee. According to Philip Rycroft, at the time of his appearance before PACAC on 1 March 2016, the Committee met early in the course of the Parliament to discuss English Votes for English Laws, but “has not met since” (Q292). Mr Rycroft explained that “a lot of the business that might go through that Committee is [instead] transacted through the Home Affairs Committee” (Q287). The most recent list of Cabinet Committees, published after the appointment of the Rt Hon Theresa May MP as Prime Minister, makes no reference to either a Constitutional Reform Committee, while Home Affairs is now a sub-committee of the Social Reform Cabinet Committee (HM Government, [List of Cabinet Committees and their members as at 18 October 2016](#)).

149 [Q139](#)

150 [Q387](#)

Derek and Ms Evans, however, mentioned recent efforts, led by Philip Rycroft and the UK Governance Group at the Cabinet Office, to bolster devolution awareness and capacity in the civil service across Whitehall.<sup>151</sup>

107. In June 2015, the UK Governance Group was established to lead the UK Government's work on constitutional and devolution issues. It brings together the Cabinet Office Constitution Group, the Scotland Office, the Office of the Advocate General for Scotland and the Wales Office. Headed by [Philip Rycroft](#), it brings together under one command the Cabinet Office Constitution Group, the Scotland Office, the Office of the Advocate General for Scotland and the Wales Office. The Group will ensure that the civil service has an improved capability to support ministers in the vital challenge of sustaining the United Kingdom and the constitutional settlement.

108. In the summer of 2015, the Civil Service unveiled a [Devolution toolkit](#) to give advice to civil servants in UK Government departments aimed at helping them to “take devolution issues into consideration in your work” and providing advice on how “you may best work with colleagues in the devolved administrations of Scotland, Wales and Northern Ireland.”

109. According to the toolkit, “whether a matter is devolved or not, making an effort to develop good relationships with colleagues from across the devolved administrations will help you to better understand the impacts of your work. Closer collaboration can lead to reduced burdens, generate savings and enable stronger policymaking.” While primarily designed for Civil Servants working in UK Government departments, “there are aspects of this toolkit that may also be of use to colleagues from the devolved administrations.”<sup>152</sup>

110. In his evidence to PACAC, Mr Rycroft explained that the toolkit was part of a broader programme of work being undertaken to “ensure there is a sufficient capability and understanding of the devolution settlements across Whitehall” and will evolve over time.<sup>153</sup> Nonetheless, the fact that the toolkit was published last year, some 16 years after the advent of devolution to Scotland and Wales, raised questions about whether the progress of embedding devolution in the culture of Whitehall had been a patchy process.<sup>154</sup> Mr Rycroft signified that it was an indication that Whitehall was putting more effort into deepening awareness of devolution and was a recognition “that we have to get better at this” and “that we have to improve our understanding of devolution right the way across Whitehall”.<sup>155</sup> Mr Rycroft also conceded that as an individual who had previously worked for the Scottish Government, there had “clearly” been times when he wished that Whitehall had had a better understanding of devolution.<sup>156</sup>

**111. It is unacceptable that 17 years after the advent of devolution Whitehall departments, when considering the effect of UK policy decisions, are not better at involving and consulting the devolved administrations, so that their views and interests are positively engaged at the outset, rather than as an afterthought. While Sir Derek Jones and Ms Evans both emphasized the good collaborative relationships that they have with many Whitehall Departments and with the leadership of the Home**

151 [Q139](#) and [Q383](#)

152 Civil Service, [A Devolution Toolkit](#), September 2015, p.5.

153 [Q293](#)

154 [Q293](#)

155 [Q294](#)

156 [Q295](#)

Civil Service, it is nonetheless disappointing that it has taken 16 years for sustained efforts to be made at boosting awareness of devolution issues and capabilities across Whitehall. Nonetheless, these efforts are better late than never and PACAC welcomes the work undertaken by the UK Governance Group, including the development of the Devolution Toolkit.

*112. To supplement the progress Whitehall departments have made in engaging relevant officials from devolved administrations in UK policy formation, PACAC recommends that every Whitehall department should implement procedures to ensure such engagement takes place. A senior official should also be appointed within each department to review successful and failed examples of inter-administration engagement at official level. The UK Governance Group should ask departments to report on reviews and lessons learned every year. The UK Governance Group should also undertake an audit of Fast Stream graduate programme and Civil Service Learning to explore how devolution awareness can be enhanced by these programmes.*

# Conclusions and recommendations

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## Introduction: Inter-institutional Relations in the UK

1. The UK's exit from the European Union will require not just diplomacy and effective intergovernmental relations at the EU level, but also within the UK. It offers both risk and a fresh opportunity, and, therefore, an incentive, to develop more effective intergovernmental relations in the UK. (Paragraph 4)

## Intergovernmental Relations

2. The Joint Ministerial Council should be at the heart of the UK's intergovernmental relations, playing an important coordinating role and facilitating effective government. With devolution of power to Edinburgh, Cardiff and Belfast having increased, and following the outcome of the EU referendum, having an effective mechanism for intergovernmental cooperation and discussion for all four UK administrations is more important than ever before. Unfortunately, however, it is clear that the JMC, while not without its merits, is not, as it is currently organised, set up to cope with this increasingly significant responsibility. (Paragraph 25)
3. If it is to be fully effective, the JMC needs to enjoy the confidence of all four Governments. It is clear from the evidence received that the Scottish and Welsh Governments have had different experiences of both the JMC specifically and, of intergovernmental relations more generally. While this arguably reflects the respective importance attached by the UK Government to the different devolved administrations, it is crucial that a multilateral forum such as the JMC engages with, and treats, the three devolved administrations with respect and as valued partners. (Paragraph 26)
4. Bilateralism is a prominent aspect of intergovernmental relations in the UK. With substantial new fiscal and welfare responsibilities flowing to the Scottish devolved institutions, this will only grow in importance in the future. We are therefore heartened at the evidence of constructive cooperation between the Scottish and UK Governments in relation to both the Scotland Act 2016 and the fiscal framework which will underpin the practical operation of this important constitutional legislation. *The UK Government must maintain and strengthen this practical and pragmatic approach to intergovernmental relations. This is essential if the full potential of the new powers contained in the Scotland Act 2016, particularly those in areas where competency is shared between the two Governments, are to be realised. It will be all the more important as an underpinning to the discussions about exiting the European Union which are currently taking place.* (Paragraph 41)
5. However, the starkly different evidence provided by the Scottish and Welsh Governments does suggest that intergovernmental relations in the UK are still overly dependent on factors such as the respective influence of the different administrations. Although PACAC is aware of reports that the UK Government has, at times, been unreceptive to concerns expressed by the Scottish Government, the Scottish Government appears to have experienced a more effective and responsive relationship with Whitehall than can be said of the Welsh Government.

It is to be expected that the UK Government will have to, at times, prioritise certain relationships. *However, the UK Government must do all it can to promote goodwill and to develop a system of effective intergovernmental relations which ensures that devolved administrations with less nominal influence are treated with respect, so that meetings and discussions are trusting and sincere, and that the matters being decided are substantive rather than tokenistic.* (Paragraph 42)

6. There is longstanding criticism of the ineffectiveness of the existing JMC. It is clear that while the JMC plenary (JMC (P)) offers scope for the different devolved administrations to air their views to the UK Government, this potential is limited. The failure of the JMC Domestic committee has rendered the JMC (P) the sole forum for Heads of Government meetings. At best, these plenaries take place annually and the tight timetables for plenary meetings mean that there is little opportunity for issues of concern to be discussed in detail and undermine the ability of the JMC to be a vehicle for constructive engagement and collaboration. (Paragraph 48)
7. *In the absence of new Heads of Government meetings or the revitalisation of the JMC Domestic, the format of JMC plenaries needs some reform. While it is not realistic to expect plenaries to end up with points of agreement on all issues, plenaries should enable the devolved administrations to raise, and discuss in satisfactory depth, issues of concern. This would add a greater sense of purpose, and value, to the JMC. The continuing discussions on the new Memorandum of Understanding should therefore look at international examples of IGR best practice.* (Paragraph 49)
8. *PACAC recommends that the ongoing review into the MoU should examine the idea of evolving the JMC (P) into an annual Heads of Government Summit, analogous to meetings of the Council of the European Union. Under this model, responsibility for hosting the JMC would rotate among the four administrations, with the host Government given the responsibility for setting the agenda for the plenaries. The four Heads of Government would meet in this consultative body and the communiqué should, wherever possible, be agreed unanimously. This would provide the devolved administrations with greater opportunity for involvement, and responsibility, in the JMC.* (Paragraph 50)
9. *Adopting a ‘summit’ approach could facilitate an extension of the length of time spent on JMC/Heads of Government business. For example, they could include informal as well as formal meetings, to facilitate greater interaction and, hopefully, to strengthen trust and relationships between the people who make up the different administrations. Rotating the responsibility for hosting, and setting the agenda would help meet the demands of the devolved administrations and would provide a greater guarantee that the interests of all four of the Governments are heard and better understood.* (Paragraph 51)
10. *Bilateralism and informality have been a defining feature of intergovernmental relations in the UK post-devolution and while these tendencies may reflect the asymmetry of the different devolution settlements and the uncodified nature of the UK Constitution, the deepening asymmetry and growth of concurrent policy responsibilities requires a more rigorous and formal approach to bilateral intergovernmental relations. PACAC recommends that the revised Memorandum of Understanding should recognise the Scottish and Welsh Joint Exchequer Committees as permanent standing bodies in*

*recognition of the interdependencies that will continue to mark tax policy in the future. Similar provision should be made for the Joint Ministerial Working Group on Welfare. (Paragraph 55)*

11. *Since all of the devolved legislatures are now responsible for some aspects of tax policy and Holyrood and Stormont both have welfare responsibilities, the four administrations should establish new sub-committees of the Joint Ministerial Committee focused on tax, welfare and the financial settlements between the four Governments of the UK. This would allow areas of mutual concern among the four administrations to be discussed, models of best practice in these areas to be more effectively shared and would be another step towards the establishment of a more purposeful and policy relevant model of intergovernmental relations. To support this, there should be a formal mechanism for representatives of Departments of State and their counterparts in the devolved administrations to meet at least once a year, to discuss policy matters. Additionally, within each Department of State there should be a minister acting as a designated contact point for the devolved administrations. (Paragraph 56)*
12. PACAC welcomes the UK Government's commitment to engage the devolved institutions throughout the process of negotiating the UK's withdrawal from the EU and the agreement, at the last JMC (P), of a new Joint Ministerial Committee on the EU negotiations. The onus for facilitating constructive dialogue between the devolved administrations, while negotiating the process of leaving the EU, is on the UK Government. It is, therefore, vital that the UK Government's commitment to engage with the devolved administrations is meaningful and is not simply a tool to allay the concerns of the Scottish and Welsh Governments and the Northern Ireland Executive. (Paragraph 63)
13. PACAC welcomes the opportunity provided by the decision, taken at the most recent JMC (P), to defer consideration of a revised Memorandum of Understanding, in light of the changing political and constitutional landscape since the EU referendum. (Paragraph 64)
14. *There now exists an ideal opportunity for the formal machinery of intergovernmental relations in the UK to be imbued with a sense of purpose, with a revitalised and reformed JMC. While PACAC supports the decision to establish a new Joint Ministerial Committee on EU negotiations, this should not preclude further consideration by the four administrations as to how the JMC and its sub-committees can be best structured so as to assist the UK Government to develop a truly UK-wide approach in a range of areas where all four administrations have policy interests in the outcome of the negotiations to leave the EU. (Paragraph 65)*
15. *PACAC sees merit, for example, in the idea of creating agriculture and fisheries and economic affairs sub-committees. Such committees could either be formal sub-committees, under the general coordination of JMC (EN) and JMC (P), or could be meetings of the JMC (EN) in a functional, sector-specific, format (in a fashion similar to Council of Ministers meetings at the EU level). Additionally, the JMC secretariat's capacity should be enhanced so that the JMC (EN) can call upon the advice and support of 'shared' technical staff, with expertise in key policy areas. (Paragraph 66)*

16. *However, it is important to have realistic expectations about the limits of IGR machinery. The response to the recent JMC (P) has indicated that the JMC cannot, by itself, be expected to resolve issues which remain politically contentious between the four administrations. Instead, the effectiveness of any model of IGR rests on the ability of the four administrations to collectively develop an atmosphere of trust and goodwill. In order to develop such an atmosphere of trust and goodwill, the UK Government must show a genuine receptiveness to the concerns and suggestions put forward by the devolved administrations. (Paragraph 67)*
17. The existing level of transparency regarding intergovernmental relations is insufficient and, as demonstrated by the example of the fiscal framework negotiations, has acted as a barrier to effective parliamentary scrutiny of both intergovernmental discussions and, as in that example, significant reform to the UK's constitutional arrangements. (Paragraph 75)
18. In light of the development of devolution of powers to Edinburgh, Cardiff Bay and Stormont, and the growth of concurrent responsibilities shared between the UK Government and the different devolved administrations, as well as the impact of the UK's exit from the European Union, intergovernmental relations will only grow in significance in future years. PACAC therefore welcomes the written agreement between the Scottish Government and Parliament, which offers the prospect of a more open and accountable model of intergovernmental relations and a model of best practice from which the Welsh Government and the Northern Ireland Executive, and Westminster and Whitehall can learn. (Paragraph 76)
19. *PACAC therefore recommends that the UK Government agrees to provide the House of Commons and House of Lords with similar transparency to that found between the Scottish Government and Parliament. (Paragraph 77)*
20. *PACAC and the House of Lords Constitution Committee should have advanced written notice, and written summaries, of intergovernmental meetings. This commitment should replicate the lines of the agreement reached between the Scottish Government and Scottish Parliament. This agreement should be guaranteed by making reference to minimum standards of transparency that future Governments will be expected to meet. (Paragraph 78)*

### Inter-parliamentary Relations

21. It is clear that, while the principle of closer inter-parliamentary cooperation commands much support, there is no consensus on any particular model of enhanced inter-parliamentary relations. Any reform of inter-parliamentary relations must acknowledge the practical difficulties mentioned by a number of witnesses to our inquiry, not least the difficulty of finding time for these meetings in the already full diaries of parliamentarians from across all four legislatures. (Paragraph 94)
22. *However, PACAC recommends that a number of modest, yet in some cases symbolically significant, steps be taken to enhance inter-parliamentary relations in the United Kingdom. (Paragraph 95)*

23. *First, the provisions of Standing Order No. 137A(3) (henceforth referred to as 137A(3)), which enables the Welsh Affairs Committee to hold joint evidence sessions with committees of the National Assembly for Wales, should be extended to enable all committees of the House of Commons to meet jointly with any specified committee of any of the three devolved legislatures. It makes little sense, given the increasing number of concurrent responsibilities, for 137A(3) to continue to be limited to the Welsh Affairs Committee. Amending 137A(3) will provide for inter-parliamentary collaboration ‘on demand’, allowing Committees of the House that wish to undertake joint evidence sessions with the Committees of the other legislatures to do so at a time of their (and, of course, the relevant Committee of the other legislature) choosing. However, for such a reform to be meaningful, PACAC calls upon the other three UK legislatures to examine where their Standing Orders, or relevant statutory provisions, inhibit greater inter-parliamentary collaboration and, where possible, to eliminate these barriers. This collaboration would not undermine the right of the devolved legislatures to form legislation independently of UK Parliament influence. (Paragraph 96)*
24. *Secondly, while PACAC welcomes the continued inter-parliamentary collaboration at Speaker and Presiding Officer level, the lack of transparency regarding the agenda and conclusions of these meetings is unsatisfactory. PACAC therefore recommends that the Speakers and Presiding Officers consider providing written notice, and written summaries, of these quadrilaterals. (Paragraph 97)*
25. *Finally, while PACAC recognises the role of the House of Commons Library and the Scottish Parliament’s Information Centre in raising awareness of one another’s institutions and is aware of a number of examples of ongoing informal inter-parliamentary cooperation among Clerks and other officials, we recommend that this cooperation be deepened by examining how the training of officials, including the Parliamentary fast stream, can better raise awareness of one another’s institutions. PACAC recommends that at their next meeting, the Speakers and Presiding Officers of the four UK legislatures agree to undertake an audit of their institutional cooperation, including, for example, the level of secondments and placements between each institution. (Paragraph 98)*

### The Civil Service, post-devolution

26. The continuation of the Home Civil Service has played an important role in facilitating inter-institutional relations post-devolution. The shared Home Civil Service enables interchange between the devolved administrations and Whitehall, facilitates knowledge exchange and, as we heard from Sir Derek Jones and Leslie Evans, it has not resulted in any conflict of obligations and loyalties for those civil servants serving the devolved administrations. (Paragraph 105)
27. It is unacceptable that 17 years after the advent of devolution Whitehall departments, when considering the effect of UK policy decisions, are not better at involving and consulting the devolved administrations, so that their views and interests are positively engaged at the outset, rather than as an afterthought. While Sir Derek Jones and Ms Evans both emphasized the good collaborative relationships that they have with many Whitehall Departments and with the leadership of the Home Civil Service, it is nonetheless disappointing that it has taken 16 years for sustained

efforts to be made at boosting awareness of devolution issues and capabilities across Whitehall. Nonetheless, these efforts are better late than never and PACAC welcomes the work undertaken by the UK Governance Group, including the development of the Devolution Toolkit. (Paragraph 111)

28. *To supplement the progress Whitehall departments have made in engaging relevant officials from devolved administrations in UK policy formation, PACAC recommends that every Whitehall department should implement procedures to ensure such engagement takes place. A senior official should also be appointed within each department to review successful and failed examples of inter-administration engagement at official level. The UK Governance Group should ask departments to report on reviews and lessons learned every year. The UK Governance Group should also undertake an audit of Fast Stream graduate programme and Civil Service Learning to explore how devolution awareness can be enhanced by these programmes.* (Paragraph 112)

## Appendix: Joint Ministerial Committee plenary meetings since 1999

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The following is a complete list of the Joint Ministerial Committee plenary meetings that have been held since 1999:

- 1 September 2000–Edinburgh
- 30 October 2001–Cardiff
- 22 October 2002–London
- [25 June 2008–London](#)
- 16 September 2009–London
- [8 June 2010–London](#)
- [8 June 2011–London](#)
- [19 September 2012 - London](#)
- [16 October 2013–London](#)
- [15 December 2014–London](#)
- [24 October 2016–London](#)

The JMC has also met in functional formats, such as the JMC Domestic (JMC (D)), JMC Europe (JMC (E)) and, most recently, the JMC on EU Negotiations (JMC (EN)).

# Formal Minutes

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**Tuesday 29 November 2016**

Members present:

Bernard Jenkin, in the Chair

Ronnie Cowan	Mrs Cheryl Gillan
Mr Paul Flynn	Mr Andrew Turner
Marcus Fysh	

Draft Report (*The Future of the Union, part two: Inter-institutional relations in the UK*), proposed by the Chair, brought up and read.

Question put, That the draft Report be read a second time, paragraph by paragraph.

The Committee divided.

<b>Ayes</b>	<b>Noes</b>
Ronnie Cowan	Mr Paul Flynn
Mrs Cheryl Gillan	
Mr Andrew Turner	

Question accordingly agreed to.

Paragraphs 1 to 112 read and agreed to.

Appendix agreed to.

Summary agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 6 December at 9.45am.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Monday 7 December 2015

*Question number*

**Dame Rosemary Butler AM**, Presiding Officer, National Assembly for Wales, and **Adrian Crompton**, Director of Assembly Business, National Assembly for Wales [Q1–39](#)

**Sir Paul Silk**, former Chair of the Commission on Devolution in Wales 2011–2014 [Q40–71](#)

**Rt Hon Carwyn Jones AM**, First Minister of Wales, and **Sir Derek Jones KCB**, Permanent Secretary of the Welsh Government [Q72–149](#)

### Tuesday 2 February 2016

**Lord Lang of Monkton**, Chair of the Lords Constitution Committee, and **Lord Forsyth of Drumlean**, former Secretary of State for Scotland [Q150–196](#)

**Lord Steel of Aikwood**, former Presiding Officer of the Scottish Parliament [Q197–228](#)

### Tuesday 1 March 2016

**Philip Rycroft**, Second Permanent Secretary and Head of the UK Governance Group, Cabinet Office, **Francesca Osowska OBE**, Director of the Scotland Office, **Sir Jonathan Stephens**, Permanent Secretary for the Northern Ireland Office, and **Glynne Jones**, Director of the Wales Office [Q229–333](#)

### Monday 14 March 2016

**John Swinney MSP**, Deputy First Minister, and **Leslie Evans**, Permanent Secretary to the Scottish Government [Q334–421](#)

**Professor Nicola McEwen**, Edinburgh University, and **Professor Stephen Tierney**, Edinburgh University [Q422–464](#)

### Monday 21 March 2016

**Alun Cairns MP**, Secretary of State for Wales, **Rt Hon Theresa Villiers MP**, Secretary of State for Northern Ireland, and **Rt Hon David Mundell MP**, Secretary of State for Scotland [Q465–531](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

IUK numbers are generated by the evidence processing system and so may not be complete.

- 1 Action4OurCare ([IUK0003](#))
- 2 Mr Richard Parry ([IUK0002](#))
- 3 Professor Nicola McEwen ([IUK0005](#))
- 4 Rt Hon Tricia Marwick MSP ([IUK0004](#))
- 5 The Federal Trust For Education And Research ([IUK0001](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2015–16

First Report	Follow-up to PHSO Report: Dying without dignity	HC 432 (HC 770)
Second Report	Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe	HC 658
Third Report	The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators	HC 431 (HC 980)
Fourth Report	The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall	HC 433 (HC 963)
Fifth Report	The Future of the Union, part one: English Votes for English laws	HC 523 (HC 961)
Sixth Report	Follow up to PHSO Report of an investigation into a complaint about HS2 Ltd	HC 793 (HC 258)
Seventh Report	Appointment of the Commissioner for Public Appointments	HC 869
Eight Report	The Strathclyde Review: Statutory Instruments and the power of the House of Lords	HC 752
Ninth Report	Democracy Denied: Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe: Government Response to the Committee's Second Report of Session 2015–16	HC 962
First Special Report	Developing Civil Service Skills: a unified approach: Government Response to the Public Administration Select Committee's Fourth Report of Session 2014–15	HC 526
Second Special Report	Lessons for Civil Service impartiality for the Scottish independence referendum: Government Response to the Public Administration Select Committee's Fifth Report of Session 2014–15	HC 725
Third Special Report	Follow-up to PHSO Report: Dying without dignity: Government response to the Committee's First Report of Session 2015–16	HC 770

Fourth Special Report	The Future of the Union, part one: English Votes for English laws: Government response to the Committee's Fifth Report of Session 2015–16	HC 961
Fifth Special Report	The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall: Government Response to the Committee's Fourth Report of Session 2015–16	HC 963
Sixth Special Report	The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators: Government response to the Committee's Third Report of Session 2015–16	HC 980

### Session 2016–17

First Report	PHSO review: Quality of NHS complaints investigations	HC 94 (HC 742)
Second Report	Appointment of the Chief Investigator of the Healthcare Safety Investigation Branch	HC 96
Third Report	Better Public Appointments?: The Grimstone Review on Public Appointments	HC 495
Fourth Report	Appointment of the First Civil Service Commissioner	HC 655
Fifth Report	Follow-up to PHSO report on unsafe discharge from hospital	HC 97
First Special Report	Follow up to PHSO Report of an investigation into a complaint about HS2 Ltd: Government and HS2 Ltd responses to the Committee's Sixth Report of Session 2015–16: First Special Report of Session 2016–17	HC 258
Second Special Report	PHSO review: Quality of NHS complaints investigations: Government response to the Committee's First Report of Session 2016–17	HC 742

# Agenda Item 5

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted