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SELECT COMMITTEE ON
THE CONSTITUTION

DEVOLUTION:
INTER-INSTITUTIONAL RELATIONS IN
THE UNITED KINGDOM

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CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Glossary.....		4
SUMMARY OF RECOMMENDATIONS.....		5
INTRODUCTION: DEVOLUTION IN THE UNITED KINGDOM.....		9
CHAPTER 1: ARRANGEMENTS FOR INTERGOVERNMENTAL RELATIONS		
IN THE UNITED KINGDOM	16	12
Informality and the reliance on goodwill	24	15
The role of the Joint Ministerial Committee	30	16
Concordats	38	18
The resolution of disputes	46	19
The broader dimensions of intergovernmental relations	49	20
CHAPTER 2: ARRANGEMENTS WITHIN THE UK GOVERNMENT	52	21
The Secretaries of State for the devolved areas of the UK and their Offices	54	21
The Office of the Deputy Prime Minister	69	25
Relationships at the centre	77	26
CHAPTER 3: FINANCING DEVOLUTION	79	27
How the devolved bodies are financed	82	27
Financial and constitutional implications of the Barnett formula	86	28
Payments outside the scope of the Barnett formula	96	30
Reviewing the Barnett formula?	103	32
CHAPTER 4: INTER-PARLIAMENTARY RELATIONS	110	34
The scrutiny of intergovernmental relations	111	34
Legislating for Wales after devolution	119	35
Legislating for Scotland after devolution: the Sewel convention	126	38
Improving links between the UK's Parliaments and Assemblies	135	39
Lessons for Westminster from Holyrood, Cardiff Bay and Stormont?	144	40
CHAPTER 5: CROWN SERVICE: THE CIVIL SERVICE AFTER DEVOLUTION ...	149	42
Special advisers across the UK	155	43
One Civil Service or several?	156	43
CHAPTER 6: DEVOLUTION AND THE EUROPEAN UNION	170	46
The framework of relations between the devolved administrations and the EU	171	46
The transposition and implementation of EU obligations	180	48
Input into EU policy by the devolved administrations	185	49
CHAPTER 7: CONCLUSION.....	190	51
Appendix 1: Membership and Declarations of interest.....		52
Appendix 2: Contact details.....		53
Appendix 3: List of witnesses.....		54
Appendix 4: Committee visits.....		56
Appendix 5: Commissioned research papers		59
Box 1: How it works in practice: the case of Foot and Mouth disease		13
Box 2: Ministerial Meetings for Agriculture.....		17
Box 3: Sewel Motions.....		23
Box 4: The Barnett Formula.....		27
Box 5: Principles to be Adopted in Government Bills Affecting the National Assembly for Wales		37
Box 6: A Problem in Agriculture: Modulation.....		49
Box 7: EU Issues Causing Problems in Agriculture		50

Glossary

AM	Assembly Member (in Wales)
AME	Annually Managed Expenditure
Barnett formula	<i>see</i> Box 4 (p. 27)
BIC	British–Irish Council
CAP	Common Agricultural Policy
COBRA	Cabinet Office Briefing Room A network
DEFRA	Department for the Environment, Food and Rural Affairs
DEL	Departmental Expenditure Limit
EU	European Union
JMC	Joint Ministerial Committee
MAFF	Ministry for Agriculture, Fisheries and Food (now part of DEFRA)
MEP	Member of the European Parliament
MLA	Member of the Legislative Assembly (in Northern Ireland)
MP	Member of Parliament (House of Commons, Westminster)
MSP	Member of the Scottish Parliament
NICS	Northern Ireland Civil Service
ODPM	Office of the Deputy Prime Minister
OSAG	Office of the Solicitor to the Advocate-General
Sewel motions	<i>see</i> Box 3 (p. 23)
UKREP	United Kingdom Permanent Representation to the European Union

Note

Both oral and written evidence received by the Committee have been published in the volume: *Devolution: Inter-Institutional Relations in the United Kingdom* (HL Paper 147, Session 2001–02).

In the text of the report: Q. refers to a Question; and

p. refers to a page number in the evidence volume.

SECOND REPORT

17 DECEMBER 2002

By the Select Committee on the Constitution.

ORDERED TO REPORT

DEVOLUTION: INTER-INSTITUTIONAL RELATIONS IN THE UNITED KINGDOM

SUMMARY OF RECOMMENDATIONS

Use of formal mechanisms

1. We recommend that further use should be made of the formal mechanisms for intergovernmental relations, even if they seem to many of those presently involved to be excessive. Formal mechanisms, such as the Joint Ministerial Committee (JMC), are not intended to serve as a substitute for good relations in other respects, or for good and frequent informal contacts, but rather to serve as a framework for such relations and to act as a fall-back in case informal personal relations cease to be sufficient. Such mechanisms are likely to become increasingly important when governments of different political persuasions have to deal with each other. (para. 29)

Joint Ministerial Committees

2. We recommend:
 - (a) that the criteria to determine whether a meeting should be a Joint Ministerial Committee meeting should be resolved and published;
 - (b) that at least one formal meeting of the JMC in 'functional' form should be held each year in each policy area where functions are devolved to two or three devolved administrations and exercised by the UK Government for the rest, or where there is substantial overlap between functions that are devolved and those retained at United Kingdom level; and
 - (c) that the existing agriculture Ministers' meetings become JMC meetings, assuming that they meet the criteria stipulated above. (para. 33)

Openness

3. We recommend the following steps to ensure greater openness:
 - (a) the UK Government should issue a substantive press statement as a matter of course after every meeting of the Joint Ministerial Committee. Wherever possible, that statement should be agreed by the parties, and should contain as much information as possible. At the very least, it should record the fact that the meeting took place, where it took place and who attended it; and
 - (b) the UK Prime Minister should make a statement to the House of Commons after each annual plenary meeting of the JMC regarding both that meeting and the conduct of intergovernmental relations within the United Kingdom generally over the previous 12 months. (para. 37)

Concordats

4. We recommend that concordats be made for a fixed term only, capable of being varied during that term if necessary but to terminate at the end of that term and be renegotiated. During that term, it would not be open to a party to withdraw from or repudiate a concordat. (para. 43)
5. We also recommend:
 - (a) that all concordats and other agreements between the UK Government and any devolved administration should be deposited in the Libraries of both Houses of Parliament within two weeks of their being concluded; and
 - (b) that the UK Prime Minister's annual statement about intergovernmental relations should be accompanied by the deposit of a list in the Libraries of both Houses of Parliament of all concordats and other intergovernmental agreements concluded during the previous 12 months or in force at the date of the plenary Joint Ministerial Committee meeting. (para. 45)

The Secretaries of State for the devolved areas and their Offices

6. We recommend that the Government should consider:
 - (a) merging the existing Devolution and English Regions team (presently in the Office of the Deputy Prime Minister) and those parts of the Scotland and Wales Offices dealing with intergovernmental relations, to create a single group of officials able to deal with the full range of intergovernmental issues;
 - (b) whether such an intergovernmental group would require leadership and support from three Cabinet Ministers. For Scotland and Wales, adequate Ministerial involvement might be secured by one Cabinet Minister with responsibility for intergovernmental relations overall, with the possibility of appointing Ministers of State to deal with particular policy issues or devolved areas. (For the foreseeable future, however, we envisage that there will continue to be a need for a Secretary of State for Northern Ireland, supported by appropriate staff); and
 - (c) providing civil service support for this function in the light of the arrangements for dealing with intergovernmental relations at Ministerial level. (para. 68)

The Office of the Deputy Prime Minister

7. We recommend that the Cabinet Office/Office of the Deputy Prime Minister devolution team should be strengthened in anticipation of an increase in formal liaison between Westminster and the devolved institutions. In particular we consider that the UK Government will require more specialist advice on intergovernmental relations. (para. 74)

Relationships at the centre

8. We recommend that the UK Government consider with care how to deal with devolution matters at an early date, so that the machinery of government relating to devolution can cope not just with intergovernmental relations as they stand but as they are likely to become in the medium term. While implementing major changes would raise problems in the short term, the situation would change dramatically if the National Assembly for Wales were to acquire primary legislative powers. (para. 78)

The Barnett formula

9. We recommend that:
 - (a) information about changes to public spending for England should be made available in a manner that relates directly to the categories attracting consequential payments under the Barnett formula; and
 - (b) the statistics collected and made available by HM Treasury to the devolved administrations be reviewed so as to ensure that all the information needed by the devolved administrations is available to them. (para. 93)

Payments outside the scope of the Barnett formula

10. We recommend that where discrete disputes arise, they should be referred to an independent body, such as a Devolution Finance Commission, with that body then making a recommendation to the Cabinet. To the extent that macro-economic management requires control by the Treasury of the aggregate amounts of funding involved, such amounts could be set as the total value of a settlement to be allocated by the same body without the Treasury being able to determine the way in which it is allocated. (para. 102)

Reviewing the Barnett formula?

11. We recommend that, when the Barnett formula is reviewed or a needs assessment is carried out, it be done by an independent and impartial body. This body should include persons nominated by the devolved administrations and by the UK Government, and should include people who reflect the views of all parts of the United Kingdom, including the English regions. (para. 107)
12. We recommend that there should be consultations with the devolved administrations about macro-economic and fiscal policy before decisions about such matters are taken by the UK Government. (para. 109)

The Scrutiny of Intergovernmental relations

13. We recommend that a review of intergovernmental relations, looking both at the UK's institutional arrangements for intergovernmental relations and the UK Government's conduct of such relations, be conducted at least once during every Parliament – or at least once every five years. We consider that this would be best undertaken by a Joint Committee of both Houses of Parliament. (para. 117)

Legislating for Scotland and Wales after devolution

14. It appears to us that a number of steps could be taken to improve Westminster legislation affecting the National Assembly. We therefore recommend:
 - (a) that greater consistency be introduced into the process by which Westminster legislates for Wales. It seems to us that the Principles adopted by the Assembly Review of Procedure, following recommendations made by Professor Richard Rawlings (see Box 5) establish a very useful starting point for bringing a greater measure of consistency to legislation;
 - (b) that the Explanatory Memorandum for any bill affecting the functions of the National Assembly (or not affecting the Assembly's functions directly, but affecting areas of policy in which the Assembly has responsibilities in Wales) include a section explaining briefly how the bill affects the Assembly and its functions. Such a section should also explain how the bill complies with the Principles adopted by the Assembly Review of Procedure;
 - (c) that further steps be taken within Parliament to improve the consideration of legislation specifically applying in Wales, whether as a distinct Wales-bill or Wales-only parts of bills applying in England and Wales. One way to do this would be for the Welsh Affairs Select Committee to carry out inquiries into such bills, for which it might wish to take evidence in Wales from affected interests including the various parties represented in the National Assembly. Another would be to make greater use of the Welsh Grand Committee, possibly for the Committee stage of bills; and
 - (d) that further thought be given to how Members of the National Assembly can be afforded the opportunity to consider Westminster legislation that will affect the Assembly and its functions. Such an opportunity needs to take account not only of the needs of the UK Government and MPs and Peers at Westminster, but also the different ways of working and timescales applying to the National Assembly. The trend toward publishing bills in draft is especially welcome and will, we believe, be especially helpful in this context. (para. 124)

15. While the UK Government may have a view about whether a Bill affects devolved matters or not, and what action should be taken as a result, we recommend that such communication should be between the UK Parliament and Scottish Parliament, not mediated by the executives at each end. (para. 131)

Lessons for Westminster from Holyrood, Cardiff Bay and Stormont?

16. We welcome the greater use of pre-legislative scrutiny at Westminster and recommend, in this context, that the approach to legislation adopted in the Scottish Parliament be the subject of further consideration. (para. 145)
17. We recommend that the use of business committees at Westminster be considered further in the light of the experience of the devolved bodies. (para. 147)

One Civil Service or Several?

18. We believe that the advantages that flow from having a single Home Civil Service are such as to justify the retention of a single Home Civil Service and we recommend accordingly. (para. 169)

INTRODUCTION: DEVOLUTION IN THE UNITED KINGDOM

1. This report is the outcome of the first substantive inquiry undertaken by the Committee. We took evidence between February and July 2002 in Westminster, Edinburgh, Cardiff and Belfast. We are most grateful to the Presiding Officers of the Scottish Parliament and the National Assembly for Wales and the Speaker of the Northern Ireland Assembly for the co-operation they gave us and accommodation they afforded us in undertaking the inquiry.
2. During the inquiry we heard oral evidence from a total of 62 witnesses, and received written evidence from a further 17 organisations and individuals. This evidence has already been published.¹ Our witnesses included 10 Ministers in the devolved administrations, the Deputy Prime Minister and three Secretaries of State in the UK Government, the three Chairmen of the House of Commons Select Committees for Scottish, Welsh and Northern Irish Affairs, 28 senior officials from the Home Civil Service or Northern Ireland Civil Service, and 10 academics studying various aspects of devolution. We believe this evidence makes our inquiry the largest and most comprehensive investigation of the working and implications of devolution for the United Kingdom. We have also had informal discussions with a number of other figures involved in devolution, which have informed our thinking about the subject but which do not constitute part of the base of evidence supporting this report.
3. We are most grateful to all those who gave evidence to us. We are particularly grateful to the Ministers from the devolved administrations who answered our wide-ranging questions about the working of devolution in practice. We are also grateful to the many academics who gave evidence or information to us, and would like to acknowledge the valuable research being carried out under the aegis of the Economic and Social Research Council's 'Devolution and Constitutional Change' programme, and the two 'Nations and Regions' programmes, funded by the Leverhulme Trust, at the Constitution Unit, University College London and the Institute of Governance, University of Edinburgh. We also express our appreciation of the splendid work undertaken by our Special Adviser, Mr Alan Trench. He has been tireless in his efforts and an invaluable source of information on the subject.
4. Our Committee has a cross-party membership and includes a wide range of views about devolution. Some of us have long campaigned for devolution while others of us have opposed it. Although our enthusiasm for devolution varies, we agree that devolution has been a major change to the UK's constitution. Our very first witness, Professor Vernon Bogdanor of Oxford University, compared it in scale to the Great Reform Act of 1832. The very magnitude of the change means that this is a very early stage at which to judge devolution, as Professor Bogdanor noted. In our First Report, we decided that we would focus our subsequent inquiries on issues that were a principal part of the constitutional framework and which raised important questions of principle. There is no doubt that devolution meets our 'principle and principal' test.² We think our inquiry is timely, partly because the process of devolution has started to settle down, and partly because it is during the early stages of such a major change that precedents are set that will determine how matters are resolved many years in the future. By looking at how devolution is now working, and what precedents have been set, we hope to ensure that it continues to work effectively and that its institutional arrangements throughout the United Kingdom will be sufficiently robust.
5. We have been conscious in carrying out this inquiry that devolution has been a long-standing source of political debate. It did not materialise in 1998 out of the ether. Gladstone and Chamberlain discussed implementing it across Great Britain in the late nineteenth century. It was a major concern for Asquith's Liberal Government in the early years of the twentieth century during the debates on Irish home rule, and was the subject of the Speaker's Conference in 1919. The development of devolved administration through both the Scottish and Welsh Offices was an answer to calls made for devolution at different points during the twentieth century and created a basis for the present arrangements for devolution. It was most notably recommended by a majority of the Royal Commission on the Constitution chaired by Lord Kilbrandon in 1973.³

¹ This evidence was published in July 2002 (HL Paper 147, Session 2001–02).

² First Report, Session 2001–02, HL Paper 11, paragraph 22.

³ Royal Commission on the Constitution, 1969–1973. Report Cmnd 5460 (London: HM Stationery Office, 1973).

6. Our inquiry is concerned with the inter-institutional relations, and the impact of devolution at a United Kingdom level, and not with the internal working of the devolved institutions themselves. Our inquiry has not concerned itself with the merits or disadvantages of devolution. We have treated it as a settled part of the United Kingdom's constitutional arrangements and have addressed ourselves to how it works at present, and its implications on a more day-to-day, practical level. Few of us were specialists in devolution before we began this inquiry. One of the first points that struck us was the complexity, indeed intricacy, of the arrangements for devolution. We are most grateful to Professor David McCrone of the Institute for Governance of the University of Edinburgh, Mr John Osmond of the Institute for Welsh Affairs in Cardiff and Professor Paul Bew of the Department of Politics at Queen's University of Belfast for helping to explain to us how devolution came about in Scotland, Wales and Northern Ireland respectively, and the nature of developments and their political background in each place since devolution.
7. We were reminded at an early stage in our inquiry that the devolution is asymmetrical – there are fundamental differences between each devolution settlement. The arrangements for Scotland and Northern Ireland resemble each other to an extent, although even that resemblance is limited. Both administrations have a devolved legislature and a separate executive, accountable to that legislature. Both the Scottish Parliament and Northern Ireland Assembly have a wide-ranging general legislative competence, which includes all matters not retained for Westminster to deal with at a UK level. Those lists, set out in Schedules 4 and 5 to the Scotland Act 1998 and Schedules 2 and 3 to the Northern Ireland Act 1998, are complicated to understand or to apply in practice, and vary from each other in a number of respects. Most notably, policing, criminal law and criminal justice fall within the competence of the Scottish Parliament but not the Northern Ireland Assembly.
8. In Northern Ireland there is also a distinction between 'reserved' and 'excepted' matters; it would be open to the Northern Ireland Assembly to legislate for reserved matters, provided the Secretary of State consented to that legislation. Further distinguishing features of the Northern Ireland Act are the joint nature of the offices of First Minister and Deputy First Minister, the appointment of Northern Ireland Ministers on a proportional basis using the D'Hondt system, and the lack of collective responsibility for the Executive Committee. These are all part of the power-sharing arrangement for devolved government in Northern Ireland under the Belfast Agreement, forming part of the jigsaw of arrangements which we discuss in more detail in Chapter One below. They serve to make devolution to Northern Ireland different in its nature to that for Scotland.
9. Wales, too, is different. Under the Government of Wales Act 1998, the National Assembly for Wales has only the power to make delegated legislation within the framework of existing primary legislation passed at Westminster. Moreover, the National Assembly is a single body corporate, including both the 'parliamentary' and 'executive' functions within one legal entity and with one set of staff. Its powers are defined with great precision in either the transfer of functions orders or subsequent Westminster legislation. The staff of the Assembly working in the Presiding Office to support Assembly Members (AMs) individually or collectively are all civil servants and ultimately accountable, through the Clerk of the Assembly, to the Permanent Secretary.
10. These differences are such that it is hard to find even common terminology under each settlement to describe functions exercisable by the devolved administration and those remaining at UK level. We have preferred the term 'devolved function' for those exercisable by the devolved administration and 'retained functions' for those exercisable only by the United Kingdom Parliament or Government.
11. Although all the devolution arrangements differ, they have certain things in common. One is that the United Kingdom parliament at Westminster retains its sovereignty and continues to be able to legislate throughout the United Kingdom. As we discuss in Chapter Four, the way in which it does so for both Scotland and Wales raises a number of complex questions. A second is that a number of key functions – including defence, foreign affairs, national security, macro-economic management and many supply-side issues such as competition policy or the labour market – are retained at UK level. In practice, social security is also retained; although formally devolved to Northern Ireland, the requirements of parity give the Northern Ireland Assembly and Executive very little room to develop a distinctive approach. A third is the financial arrangements underpinning devolution, in which (as discussed in Chapter Three) HM Treasury continues to play a dominant role. A fourth is the restraints on all three devolved legislatures or assemblies and their administrations, requiring them to act in compliance with EU law, the European

Convention on Human Rights, and the UK's international obligations. A fifth is the civil service, which we discuss in detail in Chapter Five.

12. A further characteristic of devolution is that it makes intergovernmental relations inevitable, and integral to the UK's system of government. The pattern of devolved and retained functions is an intricate one. It can be hard to see in practice (and sometimes in principle) where a devolved function stops and a retained one starts. Even if that were clear, many policies or initiatives of one level of government will require some degree of contact between the devolved administration and UK Government. In some cases joint action may be required, but in any event each administration will need to be aware of what the other is doing and take account of that in its own work. Even if the devolution arrangements did not place the premium that they do on continued good relations between the various governments within the United Kingdom, necessity would compel a high degree of interaction.
13. We should note one further point in relation to Northern Ireland. Devolution to Northern Ireland was suspended by an order of the Secretary of State at a late stage in our work, after we had taken evidence but while we were preparing our report. So far as Northern Ireland is concerned, direct rule may mean that our remarks are not appropriate for the moment. However, we continue to refer to Northern Ireland throughout the report, both because we consider that there are useful lessons or comparisons from Northern Ireland for other parts of the United Kingdom, and in anticipation of a return to devolved government in Northern Ireland.
14. Finally, we consider that the value of this report lies as much in the discussion of the evidence we have gathered as in the specific recommendations we have made. In some areas we have made recommendations; in others, we have simply drawn attention to matters without further comment.
15. We hope that any further consideration will not be limited to our specific recommendations but will encompass the whole report.

CHAPTER 1: ARRANGEMENTS FOR INTERGOVERNMENTAL RELATIONS IN THE UNITED KINGDOM

16. The arrangements for intergovernmental relations in the United Kingdom rest on a non-statutory basis. The institutions created for them have no legal basis; they exist by virtue of a set of intergovernmental agreements, chief among them the Memorandum of Understanding and Supplementary Agreements, whose own legal status is unclear.⁴ The devolution statutes – the Northern Ireland Act 1998, the Scotland Act 1998 and the Government of Wales Act 1998 – create the various devolved bodies and establish the framework within which they exercise their powers, but do not set out how the governments will deal with each other.
17. As noted in the Introduction, the way devolution has been implemented in the United Kingdom means that a high level of interaction between levels of government is inevitable. Quite apart from necessary links at the highest political levels, the interplay between functions that have been devolved and those retained at United Kingdom level means that many policies or initiatives of one level of government will affect the other in some way. Even where a function has been given to all three devolved administrations, as with many aspects of health or agriculture, the fact that the UK Government retains responsibility for it in England means that there are also close connections between devolved and UK administrations.
18. The arrangements for intergovernmental contact have been very ably described by the various governments involved in their memoranda to us.⁵ Their chief features are:
 - (a) the framework of the Memorandum of Understanding and supplementary Agreements, between the UK Government and the three devolved administrations;
 - (b) the various bilateral concordats between a particular UK Government Department and a devolved administration; and
 - (c) the arrangements for meetings between devolved administration and UK Government Ministers through the framework of the Joint Ministerial Committee (JMC), established by Supplementary Agreement A to the Memorandum of Understanding.
19. The Memorandum of Understanding sets out the key principles of intergovernmental working, as seen by the administrations. These are:
 - (a) communication between administrations;
 - (b) co-operation;
 - (c) the sharing of information, statistics and research; and
 - (d) respect for the confidentiality of information shared between the administrations.
20. The Memorandum of Understanding also includes supplementary agreements dealing with specific topics of over-arching significance, such as inward investment, the conduct of international relations and management of EU matters, and the collection of statistics. Bilateral concordats largely repeat the key principles agreed between the UK Government and devolved administrations for one particular UK Department and one devolved administration, either in areas where each organisation has responsibility for the same area of policy (such as health or agriculture), or where the two have different but overlapping responsibilities (as with the Home Office and National Assembly for Wales or the Ministry of Defence and Scottish Executive). This formal network of agreements covers most parts of the UK Government affected by devolution, although not all of them – Northern Ireland is, for understandable reasons, largely outside their scope.
21. Witnesses to our inquiry have been keen to emphasise that such agreements create the framework for the dealings each administration has with the others, and are not a substitute for those

⁴ In full, Memorandum of Understanding and supplementary agreements between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee Cm 5240, December 2001 (henceforth ‘Memorandum of Understanding’). See also the section on ‘Concordats’ in Chapter One of this report, and R. Rawlings ‘Concordats of the Constitution’ (2000) 116 *Law Quarterly Review*, pp. 257–86.

⁵ See Memorandum by the Cabinet Office, evidence volume pp. 14–24, especially paras 3–12; Memorandum by the Scottish Executive paras 3–8, evidence volume pp. 108–12; Memorandum by the Welsh Assembly Government, National Assembly for Wales, paras 4–8, evidence volume pp. 230–33; Memorandum by the Northern Ireland Executive, paras 7–17, evidence volume pp. 315–20.

dealings. That is partly because of the nature of the agreements themselves, but mainly because the concordats are themselves largely procedural.

22. These mechanisms and principles appear to us to be relatively limited in scope compared with those in other countries with similar arrangements. They exhibit nothing like the formality or intensity of arrangements in Spain or Canada, for example. Moreover, we have found that in practice the relationships are considerably less formal than an analysis of the mechanisms outlined in the various documents involved, such as the Memorandum of Understanding, would suggest. The Welsh First Minister described the formal aspects of the relationship as accounting for only 20 per cent of the relationship between the administrations, and personal chemistry and goodwill as accounting for 80 per cent of the relationship.⁶
23. Our inquiry has found that:
- (a) a large amount of contact takes place between the four administrations, frequently and at a variety of levels. Many devolved administration Ministers have a high level of contact with their counterparts at Whitehall.⁷ Officials, whether senior or junior, also have a high level of contact with their counterparts;
 - (b) these contacts are highly informal. They often take place by telephone or e-mail. Many of the meetings in person are quick words when people meet socially or for other purposes. Consequently it is impossible to keep records of them. Formal, minuted meetings – especially of representatives of all four governments – are a rarity;⁸
 - (c) the justification for this informality is the fundamental goodwill of each administration toward the others;⁹
 - (d) the bulk of the informal contacts tend to be bilateral, between the UK Government and one devolved administration. This appears to be where the bulk of working-level matters are dealt with – they are not referred to the JMC or discussed in other settings with the other devolved administrations.

Box 1

How it works in practice: the case of Foot and Mouth disease

Although agriculture in general is a devolved matter in Northern Ireland, Scotland and Wales, animal health appears to be particularly complex in the pattern of functions that are devolved or reserved. This was made readily apparent during the 2001 outbreak of Foot and Mouth disease. Even the very detailed official reports on the outbreak do not attempt to map the precise responsibilities of the UK Government and devolved administrations. They do little more than note that some functions were devolved and others retained by the UK Government.¹⁰

The very first response to the crisis was by the UK Government, through the Ministry of Agriculture, Fisheries and Food (MAFF). Thereafter certain aspects of the crisis were dealt with by MAFF and others by the devolved administrations. In Scotland, matters were largely in the hands of the Scottish Executive. In Wales, the situation was compounded because most of the non-veterinary staff responsible for animal health had transferred to the National Assembly, but the Assembly did not have the legal powers needed to deal with the crisis. However, the Assembly was seen as being politically accountable. The ultimate solution was for the Assembly to be appointed as MAFF's agent to deal with matters on the ground, using powers in section 41 of the Government of Wales Act, and for many of the Statutory Instruments needed to be made jointly by MAFF Ministers and the National Assembly. Even so, although the National Assembly was in practice dealing with the crisis in Wales, many key decisions had to be taken by a UK Minister at MAFF rather than by the Assembly.¹¹ Similar problems did not arise in Scotland as the various powers had all been transferred to the Scottish Parliament and Executive. However, in both Scotland and Wales, much

(continued)

⁶ Evidence of the Rt Hon. Rhodri Morgan AM, 27 May 2002, Q. 816.

⁷ Evidence of Patricia Ferguson MSP, 15 May 2002, Q. 346 and Q. 395; and evidence of the Rt Hon. Paul Murphy MP, 10 April 2002, Q. 161.

⁸ For example Memorandum by the Cabinet Office, para. 3, evidence volume p. 14; evidence of the Rt Hon. John Prescott MP, 27 February 2002, Q. 48; evidence of Mr Ian Gordon, 20 March 2002, Q. 105; evidence of the Rt Hon. Dr John Reid MP, 10 April 2002, Q. 158; evidence of the Rt Hon. Paul Murphy MP, 10 April 2002, Q. 161.

⁹ See for example evidence of the Rt Hon. Helen Liddell MP, 10 April 2002, Q. 157.

¹⁰ See *The 2001 Outbreak of Foot and Mouth Disease. Report by the Comptroller and Auditor General HC 939*, especially paras 1.17–1.20. *Foot and Mouth Disease 2001: Lessons to be Learned Inquiry Report. Chairman, Dr Iain Anderson CBE HC*

Box 1*(continued)*

depended in practice on the Chief Veterinary Officer at MAFF (Mr Jim Scudamore) having confidence in the Assistant Chief Veterinary Officers for each devolved area and allowing them autonomy to deal with issues that arose locally.¹²

For Northern Ireland the issues raised by the crisis were rather different. Not only does Northern Ireland rely on agriculture more than other parts of the UK, but as it does not share a land border with any other part of the UK but does share a land border with the Republic of Ireland issues of animal health and disease control are more complicated. Northern Ireland's determination to deal with the initial outbreaks of the disease so as to eliminate it altogether may have caused concern at MAFF but was ultimately effective.¹³

The crisis created an intense pattern of intergovernmental contact and working. That included innumerable telephone calls; Scottish Executive and the National Assembly for Wales staff being based in the operational headquarters at Page Street, Westminster; and involvement of all three devolved administrations in the COBRA (the acronym for Cabinet Office Briefing Room A) network based in Downing Street. The use of COBRA appears to have improved co-ordination considerably, and both the Scottish Executive and National Assembly for Wales participated in its meetings. In the case of Northern Ireland, it was not possible to send staff to London and liaison was therefore effected through the Northern Ireland Office.¹⁴

Clearly there were tensions in the relationship, if only because Scotland was free of the disease months before England was, but was unable to approach the European Commission for a change in its export status until the disease had been eliminated from England. However, a devolved administration in Northern Ireland was able to seek to change its status ahead of England.¹⁵

It appears that the shared determination of officials and Ministers to deal with that crisis, and the effectiveness with which the Scottish and Welsh administrations did so on the ground (which they attribute in part to being much closer to the action) were largely responsible for the effectiveness of intergovernmental co-operation during the crisis. This way of working put a premium on finding a common approach to the problem, even where the administrations disagreed. Staff from a variety of different organisations – some from MAFF or the State Veterinary Service, some from the devolved administrations, some from the Army or the Police – worked together on an *ad hoc* basis to deal with the emergency. At working level they do not appear to have made much distinction between the different interests of the organisations for which they worked. Where there were differences, these were an issue for senior figures operating at a high level and not for operational staff. It is not clear to us what would have happened if there had been fundamental disagreement about the approach to be taken and the Scottish Executive or National Assembly had declined to make instruments to parallel those being made by MAFF for England – in other words, we are unclear what real discretion they had at the level of policy.¹⁶ The operational discretion of the Scottish and Welsh institutions depended in large part on the efficiency with which they appeared to deal with matters, compared with England, and the pressures on UK Ministers and senior officials to focus on the English aspects of the crisis.

In other words, a solution was delivered more despite the formal arrangements for intergovernmental relations rather than because of them. We consider it would be dangerous to assume that future crises affecting devolved functions will be capable of being solved in the same way. Devolved administrations may be more conscious of their distinct interests in future, or less willing to help the UK Government resolve its own problems.

888 is a partial exception; see paras 5.4 and 9.9–9.10. However, the existence of the devolved administration and the role of COBRA in linking them with MAFF or other parts of UK Government are not even mentioned in chapter 11 on 'Joining Up Government'.

¹¹ Evidence of Carwyn Jones AM, 28 May 2002, QQ 960–71.

¹² Evidence of Ross Finnie MSP, 15 May 2002, QQ 419–23; evidence of Mr Andy Lebrecht and Mr Jim Scudamore, 24 April 2002, QQ 248–52.

¹³ Evidence of Peter Small CB and Pat Toal, 10 June 2002, QQ 1178–81.

¹⁴ Evidence of Mr J. Scudamore, 24 April 2002, Q. 249; evidence of Mr R. Finnie MSP, 15 May 2002, Q. 419; evidence of Mr C. Jones AM, 28 May 2002, Q. 972; evidence of Mr P. Small and Mr P. Toal, 10 June 2002, Q. 1181.

¹⁵ Evidence of Jim Walker, 15 May 2002, Q. 324; evidence of Mr P. Small and Mr P. Toal, 10 June 2002, Q. 1178.

¹⁶ See evidence of Mr R. Finnie MSP and David Crawley, 15 May 2002, QQ 420–23.

Informality and the reliance on goodwill

24. We have noted the heavy reliance on goodwill in intergovernmental relations. Many of our witnesses emphasised the need for goodwill to make these relations work, and attributed their smoothness to date to the existence of such goodwill.¹⁷ The view that came across was that such goodwill permitted the high level of informality that presently exists, and meant that the need to have more formal procedures, or use those that already exist, was reduced. As the Secretary of State for Scotland put it in evidence

“...there is little doubt that the easy, informal relationship which exists between myself and the present First Minister, and existed with the previous First Minister, *because we are all members of the same party*, does help ... the very fact that we can each lift the phone to one another and discuss matters knowing we are among friends and with a similar long-standing desire to see not just a successful Scottish Parliament but also a stronger United Kingdom helps.” [our italics]¹⁸

25. We would certainly not seek to recommend the absence of goodwill as an element of intergovernmental relations. We are pleased to note that goodwill exists and acknowledge its value to date. However, we are concerned by the sheer extent of the reliance on goodwill as the basis for intergovernmental relations within the United Kingdom. We are also concerned that goodwill appears to have been elevated into a principle of intergovernmental relations: it is used to explain the avoidance of disputes and to justify maintaining the present informality of the system. Some also argue that it works against the pluralist concept of devolution in that informality helps perpetuate previous practices. While matters may be relatively straightforward now, we wish to ensure that good and effective relations between governments can continue even if the present level of goodwill should decline.

26. In any case we suspect that the present levels of goodwill will diminish over time. The first reason for this is political. At present, Labour is the dominant partner in the administrations in Edinburgh and Cardiff and also forms the UK Government in London. It is clear that commitment to a common set of values and objectives, including making devolution appear to be a success, is an important element of the present cordial relations. Even in the present situation, the similarity of outlook of the different Labour administrations can be exaggerated. Sooner or later, moreover, Labour will lose its dominance in one or more administrations, and governments of different political complexions will have to deal with each other. Whether that takes, for example, the form of a Labour government in London and a nationalist administration in Cardiff or Edinburgh, or a Conservative one in London and a Labour administration in office in Scotland or Wales, is a secondary issue. It is having administrations of different political persuasions that is our principal concern. Ways to deal with such differences beyond relying on goodwill and being “among friends” need to have been established in advance if a change of government is not to threaten devolution as a whole. There was widespread acknowledgement that ensuring there could be successful co-operation between governments formed from differing parties and with different priorities would be a challenge.¹⁹ However, there was a marked reluctance to take any action now that might reduce the scale of that challenge.

27. Second, part of the foundation of the present level of goodwill is that the senior politicians involved, whatever their party, know each other well. That is because so many of the prominent figures – whether Ministers, opposition politicians or indeed presiding officers – have shared experience as MPs at Westminster. However, many of those elected to the devolved legislatures and assemblies have never held elected office before. As all the United Kingdom parties and Plaid Cymru and the SNP have declared their opposition to people holding multiple mandates and being elected to both Westminster and a devolved body, this trend is likely to increase over time. (Only Northern Ireland still has individuals who are both MPs and MLAs.) Unlike his predecessors, the present Scottish First Minister (Jack McConnell MSP) has never been elected to the United Kingdom Parliament, and the only members of his Cabinet with Westminster experience are Jim Wallace MSP, the Deputy First Minister and Minister for Justice and Home Affairs, Malcolm Chisholm MSP, Minister for Health and Community Care, and Lord Watson of Invergowrie MSP, Minister for Tourism, Culture and Sport. In the Welsh Assembly Government

¹⁷ For example, evidence of the Rt Hon. J. Prescott MP, 27 February 2002, QQ 44, 48; evidence of the Rt Hon. R. Morgan AM, 27 May 2002, QQ 816–17, 822.

¹⁸ Evidence of the Rt Hon. H. Liddell MP, 10 April 2002, Q. 157.

¹⁹ See for example evidence of the Rt Hon. J. Prescott MP, 27 February 2002, Q. 63; evidence of the Rt Hon. P. Murphy MP, 10 April 2002, Q. 174.

only Rhodri Morgan AM, the First Minister, has sat at Westminster. As politicians make their careers wholly within a devolved administration, and look less to Westminster, governments will find that they can no longer rely on past acquaintance serving as a foundation for continued relations. The system needs to be able to cope with people who have no knowledge whatever of each other until they become ministerial counterparts.

28. Third, the range of differences that need to be dealt with at the moment is limited, but that too will change with time. The devolved administrations increasingly pursue distinct policies. As this process continues, the aggregate differences involved will increase. These differences are likely to develop whatever changes there may be in the political parties in office at the various levels. At the moment the areas of policy difference are limited, but as they grow the more issues may need to be dealt with through the formal mechanisms, and the more complex those issues will be.
29. **We recommend that further use should be made of the formal mechanisms for intergovernmental relations, even if they seem to many of those presently involved to be excessive. Formal mechanisms, such as the Joint Ministerial Committee (JMC), are not intended to serve as a substitute for good relations in other respects, or for good and frequent informal contacts, but rather to serve as a framework for such relations and to act as a fall-back in case informal personal relations cease to be sufficient. Such mechanisms are likely to become increasingly important when governments of different political persuasions have to deal with each other.**

THE ROLE OF THE JOINT MINISTERIAL COMMITTEE

30. Joint Ministerial Committee meetings are the tip of the iceberg of intergovernmental contact. They take a number of forms. The annual ‘plenary’ JMC is attended by the United Kingdom Prime Minister and Deputy, the Chancellor of the Exchequer, the Secretaries of State for, and the First Minister and Deputy First Minister from, each devolved administration. The JMC for European matters now appears to meet at least twice a year, as part of the UK Government’s preparations for European Council meeting at the end of each EU Presidency. This is discussed in more detail in Chapter Six below. There are also functional JMC meetings in a number of areas, most notably Health, and the JMC for Officials also appears to have recently been revived, after a single meeting in November 1999.²⁰
31. Under the Memorandum of Understanding it is for UK Ministers to determine whether to convene a meeting of a ‘functional’ JMC, although any Minister may call for one. The UK Minister also chairs any meeting. The only meeting required is an annual plenary meeting of the JMC.²¹ However, the areas in which ‘functional’ JMC meetings are held, and the frequency with which they are held, do not correspond with the areas of important interaction or overlap of policy between governments. In the area of health – a very important devolved function – JMC meetings have taken place only once a year. Although education, like health, is devolved to all three administrations, its ministers do not appear to meet at all. Environmental matters are to a greater or lesser degree devolved too, and can raise complicated issues involving the powers of UK Government, public agencies, local authorities and devolved administrations (as for example with the question of planning permission for the windfarm at Cefn Croes, Ceredigion, which Mrs Morley drew to our attention).²² They too are not discussed within the JMC framework, although the interaction between devolved and retained functions in this area is clearly highly intricate. While a number of functional JMC meetings on Poverty were held in 1999-2000, those have not recurred – even though anti-poverty strategies are likely to involve co-ordination of a number of areas of policy, some devolved (e.g. health, education or inward investment and economic development) and others reserved (e.g. social security). Again, however, there is no use of the JMC framework for such matters.
32. We have not been able to find any clear criteria to establish whether intergovernmental Ministerial meetings are held, and whether meetings are held within the JMC framework or not. We believe that there is a need to clarify the basis on which such meetings take place and whether they take place within the JMC framework or not.

²⁰ Evidence of Mr Gerry Loughran, 10 June 2002, Q. 1218. See also evidence of Mr Jon Shortridge, 28 May 2002, Q. 1048; evidence of Mr Peter Unwin, 20 March 2002, Q. 123.

²¹ Memorandum of Understanding, *Agreement on the Joint Ministerial Committee*, paras A1.3–A1.8.

²² Evidence volume, pp. 427–29.

Box 2*Ministerial Meetings for Agriculture*

In agriculture and rural affairs, Ministers described themselves as meeting “most months”. There were in fact nine such meetings in 2001.²³ These meetings involve five Ministers; one from each of Scotland, Wales and Northern Ireland, and two from the Department for the Environment, Food and Rural Affairs (DEFRA). This practice pre-dates devolution, and is based on the principle that the Minister of Agriculture, Fisheries and Food (as it then was) would chair the meeting and represent United Kingdom interests, and that a more junior Minister would speak specifically for English interests and concerns.²⁴

The agenda for such meetings is largely driven by the agenda for the forthcoming EU Council of Ministers meeting. However, the meetings also deal with domestic matters affecting only the United Kingdom as well. They are in turn prepared by meetings of officials two weeks beforehand, and the whole process is reviewed annually.²⁵

All the official witnesses from whom we heard expressed overall satisfaction with the arrangements. Mr Walker, President of the National Farmers’ Union Scotland, suggested that the situation had changed since Mrs Beckett became Secretary of State, and had assumed a more activist approach to such meetings than Mr Brown, her predecessor.²⁶ This was not accepted by those who attend the meetings.

One curiosity is that, although these formal meetings take place more often than in other sectors and appear to be more extensively prepared at official level than many other meetings, they are not classed as meetings of the JMC. We were told that there is no particular reason for this, but as the existing arrangements are working well it is seen as unnecessary and that the additional formality of the JMC framework remains in reserve to be used if needed.²⁷ There was a view that such formality would be undesirable at the present time and that any publicity about these meetings would inhibit free discussion at them.²⁸ We find this rather strange, since these are clearly formal meetings already and the Memorandum of Understanding provides expressly that the JMC is a consultative not executive body, which reaches agreements not decisions, and that its proceedings will remain confidential to permit the free exchange of views.²⁹

33. We therefore recommend:

(a) that the criteria to determine whether a meeting should be a Joint Ministerial Committee meeting should be resolved and published;

(b) that at least one formal meeting of the JMC in ‘functional’ form should be held each year in each policy area where functions are devolved to two or three devolved administrations and exercised by the UK Government for the rest, or where there is substantial overlap between functions that are devolved and those retained at United Kingdom level; and

(c) that the existing agriculture Ministers’ meetings become JMC meetings, assuming that they meet the criteria stipulated above.

34. A further issue is the patchiness of the publicity given to JMC meetings. While the plenary JMC meeting is publicised, only limited publicity seems to be given to many other meetings of the JMC in its functional format. While we were told that press statements are always issued after meetings of the JMC (Europe),³⁰ the Committee’s own inquiries have been unable to locate any press statements from the meetings that took place in January and June 2002, nor did any reports of those meetings appear in the Scottish or United Kingdom national press. While government

²³ Memorandum by the Department for Environment, Food and Rural Affairs, para. 6; evidence volume, p. 70.

²⁴ Memorandum by DEFRA, para. 6, evidence volume p. 70; evidence of Mr Peter Small CB, 10 June 2002, Q. 1165.

²⁵ Memorandum by DEFRA, para. 6, evidence volume p. 70; evidence of Mr A. Lebrecht, 24 April 2002, QQ 249, 257–58.

²⁶ Memorandum by National Farmers Union Scotland, para. 4; evidence of Jim Walker, 15 May 2002, Q. 312.

²⁷ Evidence of Mr A. Lebrecht, 24 April 2002, QQ 254–58; evidence of Mr R. Finnie MSP, 15 May 2002, QQ 424–27; evidence of Mr P. Small CB, 10 June 2002, QQ 1165–70.

²⁸ Evidence of Mr R. Finnie MSP, 15 May 2002, Q. 426.

²⁹ Memorandum of Understanding, *Agreement on the Joint Ministerial Committee*, paras A1.10–A1.11.

³⁰ Evidence of Michael Roberts, 24 April 2002, Q. 237.

press offices cannot be expected to be responsible for whether newspapers publish stories drawing on government press statements, the fact that these statements have had such limited availability undermines the objective of making information publicly available about such meetings.

35. In any case, there is a question-mark about the information that has been made public following JMC meetings. We have been made aware of concerns expressed by opposition parties at the lack of material made public. It is very hard to form an understanding of what the JMC meetings actually do from press statements. It takes an inquiry of the scale of ours – which is not easily repeated – to form a reasonably clear view. The reason for this appears to us to be the high level of concern paid by all four governments to keeping intergovernmental negotiations and discussions confidential. While we understand and acknowledge the sensitive nature of many of the matters discussed and the need for those participating in such discussion to be able to speak with candour, it seems to us that this degree of confidentiality is excessive. We consider that greater attention should be paid to the interest of ensuring that Parliament and the public are aware of what Ministers do when they attend such meetings.
36. In particular, we are struck by the discrepancy – drawn to our attention by Professor Robert Hazell – between the information made available to Parliament and the public about JMC meetings and devolution and that made available about EU Council of Ministers meetings, and in particular European Council meetings.³¹ We were also struck by the practice adopted in the Northern Ireland Assembly for the reporting of all meetings of the British-Irish Council or North-South Ministerial Conference attended by Northern Ireland Ministers, with a statement made followed by a generous period for questions.³²
37. **We therefore recommend the following steps to ensure greater openness:**
- (a) the UK Government should issue a substantive press statement as a matter of course after every meeting of the Joint Ministerial Committee. Wherever possible, that statement should be agreed by the parties, and should contain as much information as possible. At the very least, it should record the fact that the meeting took place, where it took place and who attended it; and**
- (b) the UK Prime Minister should make a statement to the House of Commons after each annual plenary meeting of the JMC regarding both that meeting and the conduct of intergovernmental relations within the United Kingdom generally over the previous 12 months.**

CONCORDATS

38. The UK Government and devolved administrations have placed much emphasis in their evidence to us of the importance of the concordats. However, although the value of having concordats is unquestioned, their usefulness in practice is more questionable. Some witnesses have said to us that if there needs to be regular reference to concordats to ensure good relations, then relations are already bad.³³
39. While we can understand this view, we do not entirely agree with it. We consider that the point of concordats and other agreements is to facilitate good relations. That means that concordats are kept up to date and ready for use.
40. Other material put to us suggests that the Government considers that the chief value of the concordats is the process of making them, rather than actually using them to facilitate intergovernmental relations.³⁴ The preparation of concordats ensured that civil servants and Ministers, especially in Westminster, had thought about the new ways of working that would arise following devolution. That may well be true (the way the civil service has responded to devolution is discussed in more detail in Chapter Five below). However, most routine intergovernmental interaction is handled by officials in the middle ranks, between Higher Executive Officer and Grade 7 or the lower rungs of the Senior Civil Service. Such officials change posts fairly frequently – at least every 5 years, and often every 2 or 3 years – and this

³¹ Evidence of Professor R. Hazell, 10 July 2002, Q. 1412.

³² Evidence of Lord Alderdice FRCPI, FRCPsych, MLA, 10 June 2002, Q. 1239.

³³ For example see evidence of Mr R. Finnie MSP, 15 May 2002, Q. 425.

³⁴ For example, evidence of Mr J. Shortridge, 28 May 2002, Q. 1048.

means that the benefits of their experience of drafting the concordats will diminish as time passes.

41. We are also concerned by the possibility that one party might decide unilaterally to withdraw from such fundamentally important documents. We emphasise that such a risk is wholly theoretical and utterly remote at present; all the witnesses from whom we heard emphasised the value of the concordats. We also accept that such an act might not greatly help the party repudiating them, which would lose its own protection under them if it did so. However, while the risk may be hypothetical now, the time at which it will cease to be a theoretical issue will be the time when the risk is real. This risk therefore needs to be pre-empted.
42. It appears to us that there is a single solution to these two problems. That is that all concordats should be made for a fixed term, say of five years. At the end of that period they should cease to have effect and would therefore need to be renegotiated. That would mean that concordats would have to be periodically updated and made to reflect the circumstances of the time. During that fixed term it would not be open to any party to withdraw from or repudiate the concordats. They could however be amended if the parties wished to do so, to bring them up to date with changing circumstance
43. **We recommend that concordats be made for a fixed term only, capable of being varied during that term if necessary but to terminate at the end of that term and be renegotiated. During that term, it would not be open to a party to withdraw from or repudiate a concordat.**
44. If this recommendation should not be adopted, we consider that efforts need to be made to ensure that all involved are aware of the existence of concordats and their content. This should include supplying all relevant agreements to officials who take up a post which may involve dealing with the devolved administrations, on their appointment to that post; and ensuring that concordats are covered as part of the induction of such staff. Similarly, the nature and importance of the concordats will need to be covered as part of the initial briefing for all newly-appointed Ministers.
45. **We also recommend:**
 - (a) **that all concordats and other agreements between the UK Government and any devolved administration should be deposited in the Libraries of both Houses of Parliament within two weeks of their being concluded; and**
 - (b) **that the UK Prime Minister's annual statement about intergovernmental relations should be accompanied by the deposit of a list in the Libraries of both Houses of Parliament of all concordats and other intergovernmental agreements concluded during the previous 12 months or in force at the date of the plenary Joint Ministerial Committee meeting.**

THE RESOLUTION OF DISPUTES

46. Three mechanisms for resolving devolution-related disputes exist:
 - (a) the Joint Ministerial Committee (presumably in its plenary form), for disputes of a political nature;³⁵
 - (b) the courts, and, ultimately, the Judicial Committee of the Privy Council, for legal disputes involving 'devolution issues' – principally, challenges to the action of a devolved institution for being beyond that body's legal competence;³⁶ and
 - (c) the Chief Secretary to the Treasury and the UK Cabinet, for disputes regarding financial matters.³⁷
47. The consensual nature of intergovernmental relations to date means that these mechanisms have not yet been seriously tested.³⁸ We are therefore unable to comment on whether they would be

³⁵ Memorandum of Understanding, Agreement on the Joint Ministerial Committee, paras A1.6–A.1.7.

³⁶ 'Devolution issues' are defined in the relevant Schedules to the devolution Acts – Schedule 6 to the Scotland Act, Schedule 8 to the Government of Wales Act, Schedule 11 to the Northern Ireland Act.

³⁷ HM Treasury, *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: a Statement of Funding Policy*, (3rd edition, July 2002), para. 11.2.

appropriate or effective in the event of a real dispute. Much would depend on the circumstances of a particular dispute – the general political situation, which parties were in office in London and the devolved capitals, how important the issues were to the parties involved, and what support the parties were able to recruit. We have an unresolved concern that these mechanisms may not prove adequate to the challenges arising from a highly-charged political dispute, especially if the parties are accustomed to informal rather than formal dealings with each other.

48. We also have some particular concerns about the UK Government's position regarding financial disputes. These are discussed in Chapter Three below.

THE BROADER DIMENSIONS OF INTERGOVERNMENTAL RELATIONS

49. Any survey of intergovernmental relations that looked purely at arrangements between the UK Government and the three devolved administrations would be incomplete. The picture needs to take into account two other sets of arrangements: those with the European Union (EU), and those established under Strands 2 and 3 of the Belfast Agreement.³⁹ Relations with the EU are the subject of Chapter Six, but we need briefly to discuss some issues arising from Strands 2 and 3.
50. Under Strand 2, the North-South Ministerial Conference has been established. That meets in both plenary, functional and 'institutional' formats and involves ministers from the Northern Ireland Executive and the Government of the Republic of Ireland in co-operation on a wide range of practical matters, including administering EU Objective 1 aid under the 'PEACE II' and other programmes. Under Strand 3 there is the British-Irish Council, sometimes called the 'Council of the Isles'. That involves the UK and Irish Governments, the three devolved administrations and the governments of the Isle of Man and the Channel Isles.
51. The evidence presented to us suggests that the North-South Ministerial Conference has been more successful and effective in practice than the BIC. There are several reasons for this. The obvious one is that progress with the BIC has been interrupted by the difficulties that the peace process in Northern Ireland has encountered. As a result it became much more active in the second half of 2001 and during 2002 than it had been hitherto. It is also partly because the NSMC has tangible business to deal with while the BIC is a more symbolic and political body, and partly because the NSMC has its own dedicated secretariat to facilitate the holding of meetings, provide continuity and give impetus to its work.⁴⁰ Both bodies have been valuable not just in relation to the Northern Ireland peace process, but in improving relations within the British Isles generally.

³⁸ The Judicial Committee of the Privy Council has to date given judgement in ten cases involving devolution issues, though none has affected significantly the issues addressed in this report. The judgements can be found on the Judicial Committee page of the Privy Council website: www.privacy-council.org.uk

³⁹ *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 (The Stationery Office, London, 1998).

⁴⁰ Evidence of the Rt Hon. D. Trimble MP MLA and Mr M. Durkan MLA, 10 June 2002, QQ 1116–21; evidence of Professor Paul Bew, 10 June 2002, QQ 1096–97.

CHAPTER 2: ARRANGEMENTS WITHIN THE UK GOVERNMENT

52. Within the UK Government, responsibility for intergovernmental relations is widely dispersed. Few parts of the UK Government are untouched by devolution. In a department such as the Department for the Environment, Food and Rural Affairs (DEFRA) almost every part of the organisation has to interact with its counterparts in the devolved administrations with some degree of frequency.
53. We are more concerned with how the UK Government is organised at the centre to deal with intergovernmental relations. The key participants are the Scotland, Wales and Northern Ireland Offices and their Secretaries of State, and the group that was formerly in the Cabinet Office and is now in the Office of the Deputy Prime Minister. We heard evidence from the four Ministers involved as well as the civil servants heading each office.

The Secretaries of State for the devolved areas of the UK and their Offices

54. The Scotland and Wales Offices, in their present form, were established in 1999 to deal with UK Government functions which related to Scotland and Wales. The Northern Ireland Office was established in 1972 when the UK Government established direct rule in Northern Ireland. Each Office has rather different functions as a consequence of the different devolution settlements. The Secretaries of State for Scotland and Wales are each supported by a Parliamentary Under-Secretary; until devolution was suspended, the Secretary of State for Northern Ireland (who unlike the others has programme responsibilities) was supported by a Minister of State and a Parliamentary Under-Secretary.
55. The Secretaries of State and their offices play a number of roles. Different views have been expressed as to what these roles are and some of the claims made are contested. Not all of the roles are related to devolution. According to a senior official in the Scotland Office, the Secretary of State:

“is there to have particular regard to the impact of government in Scotland and to Scottish concerns that need to be dealt with within government”⁴¹

The Secretary of State herself described her role as:

“to be the voice of Scotland within the Cabinet and also to promote the Government’s policies in Scotland”⁴²

These remarks were echoed in the case of Wales, and another senior official (in the context of Northern Ireland) said:

“it is a false dichotomy to say that the Secretary of State is either Northern Ireland’s man in government or the government’s man in Northern Ireland. He tries to be both”⁴³

56. This particular interpretation of the Secretary of State’s role implies that the minister assumes a broad political role in relation to the devolved area concerned. It involves membership of many Cabinet Committees (twenty in the case of the Secretaries of State for both Scotland and Wales).⁴⁴ Such a role need not be limited to devolution; it follows that the Secretary of State will be involved in discussions on any matter concerning that area whether the matter is devolved or not. Indeed, one would expect them to be more active where the matter remains a UK responsibility (for example in relation to defence) than where the matter has passed to the devolved bodies. This role relates to the devolved area, and not to devolution as such; it is very much the same role as that always played by the relevant Secretaries of State.
57. Beyond this, we are sceptical about the value of the political role of the Secretaries of State for Scotland and Wales. The Secretary of State is not accountable to Parliament for what the devolved administration does. He or she has no financial responsibility for how the devolved administration spends its funds. While the role may have been valuable for a transitional period, while the devolved institutions were established and immediately afterward, we have to question what its value is once devolution has become a settled part of the constitution.

⁴¹ Evidence of Ian Gordon, 20 March 2002, Q. 97.

⁴² Evidence of the Rt Hon. Helen Liddell MP, 10 April 2002, Q. 152.

⁴³ Evidence of Mr Bill Jeffrey, 20 March 2002, Q. 99.

⁴⁴ Memorandum by the Cabinet Office, paras 16 and 22, evidence volume, p. 16; evidence of the Rt Hon. H. Liddell MP, the Rt Hon. P. Murphy MP and the Rt Hon. Dr J. Reid, 10 April 2002, QQ 153–55.

58. In relation to devolution, we found the comment of Mr Paul Murphy, then Secretary of State for Wales, particularly telling. He said

“on the question of representing the views of the Assembly, that is not my job. I present the views of the Assembly, which is quite different. The representation of the views is the job of Rhodri Morgan and for the Assembly Government itself, not for me.”⁴⁵

The Secretary of State later also said:

“... my role is not simply one presenting the views of the Assembly but of presenting the views of Wales”.⁴⁶

He retains his own sources of information in Wales, and clearly he assumes that there may be a difference between the views of Wales and those of the Assembly.⁴⁷

59. This Janus-faced role of political presentation and liaison is not in itself the consequence of devolution. It complements a further role arising as a result of devolution, that of resolving issues concerning both the UK Government and the devolved administration. The Secretaries of State for Scotland and Wales have lost almost all responsibilities for government programmes; elections are the principal exception for Scotland, and of course the Secretary of State for Northern Ireland has retained responsibility for policing, criminal justice and security there throughout the period of devolved government, as well as a broader responsibility for management of the peace process.⁴⁸ In other areas, the Secretaries of State have no direct involvement in policy-making. Rather, the relationship is directly between the devolved administration or administrations involved and the relevant UK Department. The Secretary of State and his or her Office only become involved when matters cannot be resolved at that level or become complicated or difficult, as their expertise is in the particular devolution settlements, not the policy issues involved.⁴⁹ The Secretary of State is therefore at one remove from the making of policy, kept abreast of what is going on but only involved when an issue cannot be resolved directly between the devolved administration and the relevant UK Department. For the Secretaries of State this means that a great deal of their work is done behind the scenes.⁵⁰ Consequently, the nature of the roles of Secretary of State has changed considerably with devolution. The evidence we heard suggests that the political involvement and sensitivity of the Secretaries of State and the expertise in each particular devolution settlement housed within their Offices have played a significant role in defusing such issues and preventing them from turning into disputes.
60. However, both these roles rely in large part on the Secretaries of State (especially those for Scotland and Wales) being members not just of the majority party at Westminster but also the dominant party in office in the devolved administrations. The assumption is that parties share “a common agenda, a common understanding as to the values and problems they were trying to address.”⁵¹ That obviously raises the question of how these functions would work if different parties were in office. There was a general consensus that this would be a challenge, but also a view that it would make the role of the Secretary of State more important, not less.⁵² To an extent Northern Ireland is a parallel, as the Labour Party is not present there. The Secretary of State’s evidence suggested a rather more formal relationship with the parties in Northern Ireland than his colleagues for Scotland and Wales have.⁵³
61. A third major role for the Secretary of State is in relation to Westminster legislation affecting devolved functions. This is particularly significant for Scotland and Wales, although the

⁴⁵ Evidence of the Rt Hon. P. Murphy MP, 10 April 2002, Q. 164.

⁴⁶ Evidence of the Rt Hon. P. Murphy MP, 10 April 2002, Q. 175.

⁴⁷ Evidence of Mrs A. Jackson, 20 March 2002, Q. 100.

⁴⁸ Evidence of the Rt Hon. H. Liddell MP and the Rt Hon. Dr John Reid MP, 10 April 2002, QQ 166 and 168

⁴⁹ Memorandum by the Cabinet Office, para. 13, evidence volume p. 15; evidence of Mr I. Gordon and Mrs A. Jackson, 20 March 2002, QQ 10, 103 and 122; evidence of Andy Kerr MSP, 16 May 2002, Q. 544; Memorandum by the Welsh Assembly Government, National Assembly for Wales, para. 7–8, evidence volume p. 230; evidence of Carwyn Jones AM, 28 May 2002, QQ 956–59.

⁵⁰ Evidence of the Rt Hon. H. Liddell MP and the Rt Hon. P. Murphy MP, 10 April 2002, QQ 161–62 and 168; evidence o

⁵¹ Evidence of the Rt Hon. John Prescott MP, 27 February 2002, Q. 63; evidence of Mr I. Gordon, 20 March 2002, Q. 121.

⁵² Evidence of the Rt Hon. H. Liddell MP and the Rt Hon. P. Murphy MP, 10 April 2002, QQ 157, 174–75; evidence of Mr I. Gordon and Mrs A. Jackson, 20 March 2002, Q. 105.

⁵³ Evidence of the Rt Hon. Dr John Reid MP, 10 April 2002, Q. 158 and Q. 166; evidence of Mr W. Jeffery, 20 March 2002, Q. 116.

different devolution arrangements for each mean that the nature of the role is very different in each case. For Wales, there is a key role in the framing of legislation affecting National Assembly functions, including the selection of Government bills, if any, to receive legislative ‘slots’ in the following session and instructing Parliamentary Counsel for Wales-only legislation.⁵⁴ He does not appear to exercise a role in ensuring any consistency of treatment in what powers are conferred on the National Assembly in Westminster legislation or how that is done. This role also extends to the Secretary of State having a seat in the National Assembly, and being obliged to present the Queen’s Speech to the Assembly each year. However, he appears to attend the Assembly formally only for that one occasion and not otherwise, and does not play any active role in the work of the Assembly.⁵⁵ For Scotland, the role appears to involve determining whether legislation before the Scottish Parliament is within the Parliament’s powers. (If legislation at Westminster affects devolved matters it therefore requires a Sewel motion: see Box 3.) There is a legislative role at Westminster if legislation affecting Scotland is introduced. Determining the status of legislation also calls for heavy involvement from the Advocate-General for Scotland and the Office’s legal advisers.⁵⁶

Box 3

Sewel Motions

Sewel motions are motions introduced into the Scottish Parliament inviting the Westminster Parliament to legislate on matters that are devolved and thus fall within the competence of the Scottish Parliament.

Sewel motions derive their name from the statement made in the House of Lords by the Scottish Office Minister, Lord Sewel, during the Second Reading of the Scotland Bill. He outlined the principles governing the introduction of legislation at Westminster affecting devolved matters. The principles are now set out in the Memorandum of Understanding.⁵⁷ Paragraph 13 of this provides:

“The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government.”

Sewel motions are the means through which such agreement is expressed. We discuss the extent and implications of Sewel motions later: see paragraphs 126–34.

62. A fourth role – at least for Scotland and Northern Ireland – concerns legislation enacted by the Scottish Parliament and Northern Ireland Assembly. Such legislation would be void if it were beyond the Parliament’s or Assembly’s legislative competence. The primary responsibility for ensuring that a bill is within legislative competence lies with the Minister responsible for the bill and the Presiding Officer. However, the relevant statutes have provisions to prevent the granting of Royal Assent to legislation by challenge before the Judicial Committee of the Privy Council. The consideration of whether legislation is beyond legislative competence falls to the Law Officers and the Secretaries of State for the devolved areas.⁵⁸
63. A fifth role, for all three Secretaries of State, relates to finance. On a formal level, the block grants payable to the devolved administrations (discussed in Chapter Three below) are paid to the

⁵⁴ Evidence of the Rt Hon. P. Murphy MP, 10 April 2002, Q. 164; evidence of Mrs A. Jackson, 20 March 2002, QQ 103 and 141. See also Memorandum by Professor K. Patchett, paras 7–9, 17–19, 32–33; evidence of Professor K. Patchett, Q. 1069; supplementary memorandum of Professor K. Patchett, para. 8.

⁵⁵ Evidence of the Rt Hon. P. Murphy MP, 10 April 2002, Q. 154; evidence of Lord Elis-Thomas AM, 27 May 2002, Q. 946.

⁵⁶ Evidence of the Rt Hon. H. Liddell MP, 10 April 2002, QQ 167 and 198; evidence of Mr I. Gordon, 20 March 2002, QQ 111, 142–43.

⁵⁷ See HL Debates, 21 July 1998, col. 791.

⁵⁸ Scotland Act 1998, section 33; Northern Ireland Act 1998, sections 11 and 14. See also evidence of Mr I. Gordon, 20 March 2002, QQ 142–43.

Secretaries of State, who pass those grants to the devolved administration after deducting the costs of running their offices. This has served as a convenient means of enabling funding to be paid to the devolved administrations within the existing financial framework of Votes and Appropriations to ensure Parliamentary accountability.⁵⁹ However, while it would be conceivable – and proper – to hold a Secretary of State responsible for the use of public funds by his or her department, that does not apply to a devolved administration accountable to its own assembly or legislature and thence to its own electorate. The idea that the Secretary of State might be held accountable in Parliament for the misdeeds of a devolved legislature, assembly or administration may be remote but implies a constitutional fiction which we consider would be better dispensed with.

64. On a more practical level, the Secretary of State has a key role in any negotiations about financial matters, such as the overall amount of the block grants as determined by the Comprehensive Spending Review, and amounts in addition to that (as with the extra money provided to Wales as a consequence of it being awarded Objective One status under the Structural Funds by the European Commission).⁶⁰ Quite what that role is appears to vary a good deal. While the Secretaries of State do not simply act as proxies for the devolved administrations, they often do rely heavily on support from officials working for the devolved administrations regarding technical matters.⁶¹
65. These roles are all important in making devolution work. The issue is not whether they should exist, but whether they should continue to be played by three separate Secretaries of State or by fewer Ministers.
66. The role of the Northern Ireland, Scotland and Wales Offices is, in large part, to support the Secretaries of State. To that extent, they replicate the roles of the Secretaries of State. One important exception is the arrangements within the Scotland Office for legal matters. Scots law is of course different in many respects from the law applying in England, Wales or Northern Ireland. This creates two legal offices: the Advocate-General for Scotland, the UK Government's Scottish law officer, and the Office of the Solicitor to the Advocate-General, (OSAG) which houses the UK Government's general legal advisers on matters of Scots law. OSAG also deals with Scots law issues arising from Westminster legislation and has a role in the scrutiny of legislation before the Scottish Parliament.
67. We are struck by the disparity in size of the Scotland and Wales Offices. In many ways the roles they play are similar. There are two major differences that do exist. First, as noted, the Scotland Office incorporates the Office of the Solicitor to the Advocate-General (OSAG), which has no parallel for Wales. Second, while both offices play important roles in relation to Westminster legislation, since Westminster remains the sole legislature for Wales we would expect the staffing of the two offices to be similar. It is not, though. The latest annual reports for the two show that the Scotland Office has 85 staff (excluding OSAG and the Legal Secretariat to the Advocate-General) and the Wales Office an average of 41 (excluding its legal adviser).⁶² The Scotland Office therefore has more than twice as many officials as the Wales Office, even though the devolution settlement for Scotland is rather more straightforward from a UK Government point of view than the Wales one. We were offered no cogent explanation for this discrepancy and do not understand how it has arisen.⁶³
68. **We recommend that the Government should consider:**
- (a) merging the existing Devolution and English Regions team (presently in the Office of the Deputy Prime Minister) and those parts of the Scotland and Wales Offices dealing with intergovernmental relations, to create a single group of officials able to deal with the full range of intergovernmental issues;**

⁵⁹ Evidence of Mrs A. Jackson and, Mr P. Unwin, 20 March 2002, Q. 117.

⁶⁰ Evidence of the Rt Hon. H. Liddell MP, the Rt Hon. P. Murphy MP and the Rt Hon. Dr John Reid MP, 10 April 2002, QQ 199–201; evidence of Mrs A. Jackson and, Mr P. Unwin, 20 March 2002, QQ 117–20.

⁶¹ See for example evidence of Andy Kerr MSP, 16 May 2002, QQ 544–45; evidence of Edwina Hart AM, Minister for Finance, Local Government and Communities, National Assembly for Wales, 27 May 2002, QQ 886, 890–92 and 906.

⁶² *Scotland Office Departmental Annual Report 2002*, Chapter 1 figure 4; *Wales Office Departmental Annual Report 2002*, para. 1.4.

⁶³ See evidence of Mr I. Gordon, Head of Department, Scotland Office; Mrs A. Jackson, Head of Department, Wales Office; Mr W. Jeffery, Political Director, Northern Ireland Office; and Mr P. Unwin, Head of General Policy Division, Office of the Deputy Prime Minister, Cabinet Office, 20 March 2002, QQ 143–47.

(b) whether such an intergovernmental group would require leadership and support from three Cabinet Ministers. For Scotland and Wales, adequate Ministerial involvement might be secured by one Cabinet Minister with responsibility for intergovernmental relations overall, with the possibility of appointing Ministers of State to deal with particular policy issues or devolved areas. (For the foreseeable future, however, we envisage that there will continue to be a need for a Secretary of State for Northern Ireland, supported by appropriate staff); and

(c) providing civil service support for this function in the light of the arrangements for dealing with intergovernmental relations at Ministerial level.

THE OFFICE OF THE DEPUTY PRIME MINISTER

69. The Secretaries of State are by no means the only Cabinet Ministers with a specific interest in devolution. The Cabinet Ministerial Committee on Nations and Regions is chaired by the Deputy Prime Minister, the key figure at the centre of Government, and other Cabinet Ministers attend. (The Committee's predecessor, the Devolution Policy Committee, was chaired by the Lord Chancellor.) Although the existence of the Committee was mentioned in evidence, we were not told how often it meets or what functions it now serves.⁶⁴ We therefore have to question what central co-ordinating role that Committee in fact now plays.
70. Official support for the central co-ordination role for devolution has also changed its identity over time. Initially this role was played by members of the Cabinet Office's Constitution Secretariat, which provided specialist advice on issues such as human rights, freedom of information and House of Lords reform as well as devolution. Following legislation to implement much of the Government's agenda for constitutional reform, that Secretariat was wound up in June 2001, as part of changes to the machinery of government.⁶⁵ The officials dealing with devolution became part of the Devolution and English Regions team in the General Policy Division of the Office of the Deputy Prime Minister (ODPM).⁶⁶ Further changes occurred in June 2002, with the Office of the Deputy Prime Minister becoming a department in its own right, incorporating the local government, planning and housing functions formerly exercised by the Department for Transport, Local Government and the Regions.⁶⁷ The role of the Deputy Prime Minister in developing policy on the English regions means that there has been a link between those working on devolution in Scotland, Wales and Northern Ireland with issues of English regional government.
71. Throughout all these organisational changes, we are told that the devolution team has remained in constant existence and with essentially the same personnel. Its staffing is relatively small, but it plays a crucial role.⁶⁸ That role includes:
- (a) providing oversight of the devolution arrangements in general and the concordats in particular;
 - (b) general liaison across the UK Government on devolution matters;
 - (c) liaising with similar groups in the devolved administrations; and
 - (d) providing the Secretariat for meetings of the Joint Ministerial Committee and British-Irish Council.⁶⁹
72. The Cabinet Office/ODPM team is small, comprising six officials. These are the specialists in intergovernmental relations at the heart of the UK Government. It is in the UK Government's own interest to ensure that it has at the centre a group of highly knowledgeable specialists who understand the institutional framework of devolution, the policy issues involved, and are able to advise Ministers on the political issues in the devolved administration. Admittedly this role is not one exercised solely by the Cabinet Office/ODPM team – it is shared with the Secretaries of State

⁶⁴ Memorandum by the Cabinet Office, para. 32, evidence volume p. 17; evidence of the Rt Hon. John Prescott MP, 27 February 2002, Q. 73. The committee was not mentioned by any of the territorial Secretaries of State in their evidence to us nor by the Director of the Deputy Prime Minister's Central Policy Group in Cabinet Office, the Heads of the Scotland and Wales Offices or the Political Director of the Northern Ireland Office.

⁶⁵ We commented on this in our Fourth report, *Changing the Constitution: The Process of Constitutional Change*, Session 2001–02, HL Paper 69.

⁶⁶ Memorandum of the Cabinet Office, para. 32; evidence volume, p. 17.

⁶⁷ Letter from the Deputy Prime Minister, 13 June 2002; evidence volume, p. 34.

⁶⁸ Evidence of Mr P. Unwin, 20 March 2002, Q. 147.

⁶⁹ Evidence of Mr P. Unwin, 20 March 2002, Q. 112.

and their teams, who are the experts in their particular devolution settlements and the consequent issues arising. But it appears to us that the importance of devolution means that such expertise is needed gathered together at the centre not distributed across a number of Whitehall departments.

73. Moreover, while the present level of staffing may be adequate for the demands the UK Government currently places on its devolution advisers, it cannot assume that this situation will continue indefinitely. We have discussed in Chapter One the issues arising from the present amicable state of relations between Westminster and the devolved institutions, and the ways in which relations will need to become more formal, if not more adversarial, in future.
74. **We recommend that the Cabinet Office/Office of the Deputy Prime Minister devolution team should be strengthened in anticipation of an increase in formal liaison between Westminster and the devolved institutions. In particular we consider that the UK Government will require more specialist advice on intergovernmental relations.**
75. The changes to the structure of government made in June 2001 and June 2002 have implications for the way the UK Government deals with devolution which have so far escaped public attention. The original arrangements, with the Constitution Secretariat a key part of the Cabinet Office, meant that devolution was emphatically at the heart of government. By moving the devolution team to the Office of the Deputy Prime Minister within the Cabinet Office and then moving ODPM out of the Cabinet Office, devolution is no longer so intimately integrated with the Cabinet Office.
76. This has some importance symbolically, indicating how central devolution issues are to the UK Government. It has greater importance practically, if the Prime Minister and those responsible for the centre of government are to have ready access to devolution expertise. It also means that devolution is removed from two other parts of the Cabinet Office. One is the Central Secretariat, which deals with key Civil Service issues – grading, the Senior Civil Service, the Civil Service Code, for example. Civil Service issues are discussed in detail in Chapter Five below, but for present purposes the key point is that the close linkage that previously existed has been broken. The second part of the Cabinet Office with which a direct link has been broken is the European Secretariat. Such a link appears to us to have been valuable in two ways. First, EU issues are of very great importance to the devolved administrations (and we discuss them in Chapter Six below). The recognition of the need to link EU and devolution issues appears to have eased the way such issues were dealt with in the Cabinet Office. Second, the former situation meant that intergovernmental relations ‘up’ (with the EU) and ‘down’ (with the devolved administrations) were dealt with on a common basis. That is no longer the case; treating them in different ways implies that the UK Government considers one set of relations to be more important than the other, by virtue of its closeness to the centre of government.

Relationships at the centre

77. A further issue arises from the relationship between the Cabinet Office/ODPM team and the Offices and Secretaries of State for the devolved areas. We have already remarked on the disparities of size between the Scotland and Wales Offices. It does not appear to us that there is any significant duplication of work at the official level, although we are less clear about the respective roles of the Deputy Prime Minister and the Secretaries of State. However, the principal roles of the Deputy Prime Minister and the Secretaries of State for Scotland and Wales – as identified above – relate to intergovernmental relations. That is important for the Secretary of State for Northern Ireland as well, although he has other more pressing concerns. Consequently four Cabinet Ministers are chiefly or heavily concerned with intergovernmental relations. Whether or not that involves duplication, it certainly implies a loss of focus. Four Ministers cannot devote the same attention to the framing of policy for intergovernmental relations and implementing that policy that one could. This may raise no problems in present circumstances, when relations are amicable and informal. If relations become less amicable, clarity of focus and consistency of approach will be at a premium.
78. **We therefore recommend that the UK Government consider with care how to deal with devolution matters at an early date, so that the machinery of government relating to devolution can cope not just with intergovernmental relations as they stand but as they are likely to become in the medium term. While implementing major changes would raise problems in the short term, the situation would change dramatically if the National Assembly for Wales were to acquire primary legislative powers.**

CHAPTER 3: FINANCING DEVOLUTION

79. Finance is a vital element of intergovernmental relations. It is the basis for the capacity of the devolved bodies to act and develop their own approaches to policy. In addition, ensuring that adequate resources are available for them to discharge their functions is itself an important element of the relations between the four governments.
80. The key element of the devolution finance arrangements is the Barnett formula (see Box 4). Named after Lord Barnett, former Chief Secretary to the Treasury, this has become famous, even notorious, after devolution legislation was proposed in the late 1970s. We note, however, that this is the successor to various formulae originally dating to the late nineteenth century and named after Viscount Goschen. We also note that Lord Barnett himself now considers the formula outdated and in need of replacement, although the House of Lords debate on the issue showed much divergence of view, irrespective of party.⁷⁰

Box 4*The Barnett Formula*

The Barnett formula is a mechanism for allocating *increases* in funding to the devolved administrations in Scotland, Wales and Northern Ireland. It applies only to some types of expenditure: large expenditure areas, such as welfare payments, are outside the formula's jurisdiction. There are three elements to the formula:

- (i) the change in planned spending in departments in England;
- (ii) the extent to which the relevant English departmental programme is comparable with the services carried out by each devolved administration; and
- (iii) the population proportion in each devolved region of the UK. In 2001, these proportions were:

Scotland	10.23%
Wales	5.89%
Northern Ireland	3.40%

The formula simply multiplies (i) x (ii) x (iii). The increase in funding payable to the devolved administration is therefore the increase for England, multiplied by the extent to which a programme is comparable, multiplied by the population of the devolved region as a proportion of the English population.

Sources:

HM Treasury, *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding Policy* (London: HM Treasury, July 2002), pp.10–11.

House of Commons Library, *The Barnett Formula* (Research Paper 01/108, 30 November 2001).

81. Detailed matters of public finance and economics are beyond the Committee's remit, and we do not consider them here. Our concerns with finance arise from its constitutional implications: the way it affects the position of the devolved administrations, the extent to which it is open and transparent, and the processes which might be followed if the system were to change.

How the devolved bodies are financed

82. It is worthwhile noting, albeit briefly, how the system of devolution finance works.⁷¹ With very limited exceptions (such as the ability of the Scottish Parliament to vary the income tax rate in Scotland by 3%) the devolved institutions have no capacity to raise their own finance. Collection

⁷⁰ HL Debates, 7 November 2001, cols 225–64 (L. Barnett's view is expressed at cols 225–29).

⁷¹ Details are set out in HM Treasury *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding Policy* (second edition, July 2000; third edition, July 2002).

of revenue remains the responsibility of UK bodies (the Inland Revenue and HM Customs & Excise) and it is allocated by the Treasury under authority of Parliament by means of the Appropriation Acts. The devolved administrations are financed by block grants paid to the Secretaries of State for Scotland, Wales and Northern Ireland. After deducting the costs of running their own offices, this is then transferred to the devolved administrations for them to spend in accordance with their own priorities. As a block grant, the devolved administrations may do what they wish with this money. There are no formal restraints or conditions imposed by the UK on how they use or allocate their funds. While public service agreements exist between the Treasury and most UK Government Departments, setting out how the Department will use its funds, there are no such agreements with the devolved administrations. The administrations are free to allocate their funds as they see fit.

83. The bulk of the funds paid to the devolved administrations constitute the Departmental Expenditure Limit (DEL) of that administration. These are the funds that are calculated in accordance with the Barnett formula. In addition funds are allocated as Annually Managed Expenditure (AME), not calculated or varied according to changes in the Barnett formula. This covers various forms of funding passed directly to the devolved administrations, notably funding from the EU for agriculture under the Common Agriculture Policy. The Barnett formula also does not apply to various payments that simply by-pass it. One notable example is for claims on the UK Reserve. Another has been public-sector pay claims such as the pay settlement for nurses in 1988.⁷²
84. The Barnett formula applies to changes made to public spending, whether from year to year or during the course of a financial year (where there is a change in the money made available for spending in England). It does not relate to the starting-point for public spending in Scotland, Wales or Northern Ireland. That is a historic level and appears never to have been re-assessed (at least, not in public); although a needs assessment was carried out in 1978 to determine the spending needs of the Scottish and Welsh devolved administrations proposed at that time, the assessment was never implemented. The present levels of spending are simply what has happened over time by taking the original base-line set and adding to it successive annual increases.
85. The formula works by identifying whether an area of spending of a devolved administration is a 'comparable sub-programme' in relation to spending by the UK Government on services in England. This varies widely, because of the different structures of the devolution settlements: criminal justice and policing are comparable matters for Scotland but not Wales or Northern Ireland; social security is a comparable matter for Northern Ireland but not Wales or Scotland, while the National Health Service is comparable in all three devolved areas. If the programme is comparable, the funding payable to the devolved administration will be increased by multiplying the increase for England by two percentages: one for the extent to which the programme is comparable and the other by the proportion of the English population that is accounted for by the population of that devolved area. Details of the calculation are set out in Annex B to HM Treasury's *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: a Statement of Funding Policy*, and details of the comparable sub-programmes are set out in Annex C. The population proportions are revised to reflect changing populations as part of the Comprehensive Spending Review.⁷³ The increases it makes in spending are therefore of the same nominal amount per capita in each area with comparable sub-programmes.

Financial and constitutional implications of the Barnett formula

86. The Barnett formula has been the subject of considerable criticism in evidence put to us by academic observers.⁷⁴ However, it attracted almost unanimous support from witnesses from the devolved administrations, as well as the UK Government. We are conscious that the evidence we have taken does not encompass all views on the subject. Because of the focus of our inquiry, we did not take evidence on this point from politicians and other representatives of the English

⁷² Referred to by Professor D. Heald in his Memorandum to us; paragraph 12. Evidence volume, p. 146.

⁷³ Following the 2000 review, the proportions were 10.34% for Scotland, 5.93% for Wales and 3.41% for Northern Ireland; following the 2002 review, they are respectively 10.23%, 5.89% and 3.40%.

⁷⁴ See Memorandum of Professor D. Heald; evidence volume, pp. 144–47; evidence of Professor D. Heald and Professor D. Bell, 16 May 2002, QQ 499–526; Memorandum of Professor I. McLean, evidence volume, pp. 422–27. Support for it was however expressed by Professor V. Bogdanor in his Memorandum, para. 4 (evidence volume, p. 1) and his evidence of 20 February 2002, QQ 10–12. See also the evidence of Professor R. Hazell, 10 July 2002, QQ 1419–22.

regions, although we are aware that there are considerable concerns among them too about the operation of the formula.

87. Part of the reason for governmental support is that finance is allocated according to a formula. The Scottish Minister for Finance described the formula as “simple, straightforward [and] objective”. It means that negotiations with the UK Government about particular aspects of funding are avoided: finance is allocated according to an automatic and simple mechanism.⁷⁵ We can quite understand the advantages of a formula for the devolved administrations as well as the UK Government.
88. We note, however, that these would be advantages of any formula for determining annual changes to the finance available to the devolved administrations, and are not unique to the Barnett formula. Other formulae could supply such advantages as well. Evidence to us shows that, in fact, the Barnett formula has a number of curious mathematical consequences.
89. The first of these derives from the fact that increases in funding throughout the UK are calculated per capita, and are unrelated to the current baseline of spending in each of the parts of the United Kingdom. If public spending per capita in England is 100, and increases by 10, public spending has increased by 10%. In the devolved administrations, however, public spending is higher per capita, say, 120. The per capita increase of 10 would thus represent only an 8.33% increase in public spending. As a consequence, the rate of growth in the financial resources available to the devolved administrations has slowed and will continue to slow. This is known as the “Barnett squeeze”.⁷⁶ This does not mean that the devolved administration’s funding will be reduced, but that it will grow at a decreasing rate in comparison with the rate at which public spending for England grows. The result is that the financial room for the devolved administrations to develop distinctive policies requiring extra funding will reduce. We should note, however, that finance ministers from the devolved administrations were divided about the extent to which this affects their capacity to develop policy.⁷⁷
90. A second is that it provides for public spending across the UK to converge on a single uniform level of spending over time, if public spending continues to increase. Scotland, Wales and Northern Ireland each starts from a different base level of spending, but because increases are related to the increase in spending for England eventually the same level of per capita spending will prevail throughout the UK. This takes no account of different needs in different parts of the UK, or of the different costs of providing public services in the different parts of the UK. The present rate of growth in public spending appears to make convergence likely to occur within a relatively short period of time. There has been no public debate about whether this is an appropriate criterion to use for allocating public spending across the UK; it will happen, but as a mathematical inevitability not a decision about policy.
91. Third, the Barnett formula does not take into account a number of factors which have serious effects on the finances of the devolved administrations. One example drawn to our attention is the lack of funding for Welsh-language provision and the development of bilingualism in Wales, for which there is no comparison elsewhere in the UK.⁷⁸ Another appears to be the running costs of the devolved institutions themselves. These have increased substantially since devolution, as staffing levels have grown to service larger numbers of elected politicians and Ministers, and for the devolved institutions to have the capacity to develop their own policies rather than implement UK policies with local variations.⁷⁹
92. The working of the Barnett formula in practice presents further difficulties. Two key ones relate to information. First, there appears to be some question about the extent to which the devolved administrations are informed about provision of additional money by the Treasury where this attracts a consequential payment under the Barnett formula. A public announcement that extra

⁷⁵ Evidence of Mr A Kerr MSP, Minister for Finance, Scottish Executive, 16 May 2002, Q. 528; evidence of Mrs E. Hart AM, Minister for Finance, Local Government and Communities, National Assembly for Wales, 27 May 2002, Q. 873.

⁷⁶ Evidence of Professor D. Bell, 16 May 2002, Q. 499, QQ 511–12.

⁷⁷ Evidence of Mrs E. Hart AM, Minister for Finance, Local Government and Communities, National Assembly for Wales, 27 May 2002, Q. 875, Q. 902 and Q. 910; evidence of Mr A Kerr MSP, Minister for Finance, Scottish Executive, 16 May 2002, Q. 529.

⁷⁸ Evidence of Professor D. Heald, 16 May 2002, Q. 503.

⁷⁹ For example, in Scotland “the core of the office headquarters department has gone up by about one sixth, that is 600 on 3,600 over three years” (evidence of Sir Muir Russell KCB, 15 May 2002, Q. 465). Seventeen per cent of the National Assembly for Wales’s staff are entirely new (evidence of the permanent secretary, Mr J. Shortridge, 28 May 2002, Q. 1038).

money is being provided may not be straightforward; it may be a switching of funds from the AME category to the DEL, for example, or a claim on the Reserve which may or may not attract a consequential payment.⁸⁰ Second, the data available to the devolved administrations may not be adequate for them to assess whether what they receive is in fact their fair share of the funds allocated, because for example data in relation to spending in England are either not collected or not published.⁸¹ The devolved administrations' finance ministers have disavowed that they have problems in practice with access to data, but their own resources to gather data are limited. These are matters that, in the present state of relations, do not cause a difficulty, but might cause problems if circumstances were to change.

93. **We recommend that:**

(a) information about changes to public spending for England should be made available in a manner that relates directly to the categories attracting consequential payments under the Barnett formula; and

(b) the statistics collected and made available by HM Treasury to the devolved administrations be reviewed so as to ensure that all the information needed by the devolved administrations is available to them.

94. When such review is completed, it may be appropriate to include the categories of statistics to be collected and made available in a revised version of the over-arching Concordat on Statistics annexed to the Memorandum of Understanding.

95. We are conscious of criticisms of the Barnett formula from various groups, including those in England concerned by the inequalities in public spending between parts of England on one hand and Scotland, Wales and Northern Ireland on the other. We also had written evidence from Plaid Cymru – the Party of Wales – and Professor Iain McLean raising questions about the continued workability of the formula.⁸² We note that the effects of the formula across the United Kingdom as a whole, including the different regions of England, are unequal, and also that at present they appear to be unmeasurable. We consider that this will pose a problem with ensuring that devolution finance is equitable and sustainable in the longer term.

Payments outside the scope of the Barnett formula

96. We have already noted that payments made as Annually Managed Expenditure (AME) fall outside the scope of the Barnett formula. This does not raise any matters for us to consider from a constitutional point of view. However, we are concerned about other payments made outside the scope of the formula.

97. Two of these particularly attract our attention. First are claims made by the devolved administration on the UK DEL Reserve. While the devolved administrations maintain their own reserves, these are small (both in comparison with the devolved administrations' budgets and with the size of the UK Reserve). In the event of a devolved administration suffering a major financial shock outside its control, it is unlikely that it would have adequate resources to cope with such costs itself and it would therefore need to make a claim on the UK Reserve. The Treasury's *Statement of Funding Policy* provides that such claims will be considered:

(a) where a UK Department is granted access to the Reserve to meet exceptional pressures on a spending programme, and the devolved administration has a similar programme and faces similar pressures; or

(b) where a devolved administration faces exceptional and unforeseen domestic costs which cannot reasonably be absorbed within existing budgets without a major dislocation of existing services.⁸³

98. The important point about the determining whether to grant such claims or not is that it is entirely in the hands of the Treasury. Not only does the Treasury determine how such funds will be paid,

⁸⁰ Evidence of Professor D. Heald, 16 May 2002, Q. 504.

⁸¹ Memorandum of Professor D. Heald, para. 10, evidence volume p. 145; evidence of Professor D. Heald, 16 May 2002, Q. 499.

⁸² Memorandum by Plaid Cymru – the Party of Wales Group, National Assembly for Wales 'The Case for Replacing the Barnett formula', evidence volume 436–42; Memorandum by Professor I. McLean, evidence volume 422–27.

⁸³ Summarised from *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly*, para. 9.2.

but it retains control of the criteria by which it makes such decisions. Moreover, the Treasury does not publish these criteria.⁸⁴ A UK Government department therefore determines both whether a particular event occurring in relation to a devolved administration is a crisis and what the appropriate payment to make is. The present state of relations has been such that no serious dispute appears to have materialised as a result, and claims on the Reserve have been paid by the Treasury, for example, in relation to the consequential effects for tourism of Foot and Mouth Disease. Such claims were paid for Scotland and Wales on a similar basis to that for England. We received no satisfactory answer to the question of whether claims would have been paid by the Treasury had Foot and Mouth Disease been a Welsh and Scottish but not an English disease. It would have been entirely a matter for the Treasury to determine, however serious its financial implications for the devolved administrations.

99. A similar issue arises in relation to EU funding. Northern Ireland, Scotland and Wales are all in receipt of funding from the European Union under Objective One of the Structural Funds. Scotland still receives transitional funding for the Objective One programme for the Highlands and Islands. Northern Ireland receives Objective One funding under two headings: the PEACE TWO programme (a cross-border initiative administered by the North-South Ministerial Council in one of its sectoral forms) and a 'mainstream' package of funding. Wales receives Objective One funding for West Wales and the Valleys. There has been considerable debate about 'additionality' in relation to this money – meaning not whether the UK Government makes extra public spending available to match the EU funding, but whether the UK Government passes on the extra funding to the relevant administration at all. Historically, it often has not, employing what one witness called 'a consistent scam'.⁸⁵ The PEACE TWO funding for Northern Ireland has been one exception to this, however. The funding for Wales has been another. The circumstances in which this occurred – being withheld by the Treasury, leading to a vote of no confidence by the National Assembly in Mr Alun Michael as First Secretary, and later being made available after Mr Rhodri Morgan had become First Minister – are well known. We do not propose to consider whether the judgement to make the funding available was right.⁸⁶ We must however note that this was a matter of high political controversy in Wales, which had profoundly serious effects for politics within the National Assembly, and that the key decisions were all taken by HM Treasury.
100. In this context, we must note what the *Statement of Funding Policy* says about the resolution of financial matters in general. Disagreements between the Treasury and a devolved administration must be pursued with Treasury Ministers by the Secretary of State (a member of a different administration, and in the future possibly of a different party). While the matter can be raised at the Joint Ministerial Committee, the *Statement of Funding Policy* notes that the issue remains the responsibility of the UK Government and that the final decision will be taken by the UK Cabinet, if raised there by the Secretary of State.⁸⁷
101. We have no objection to this way of dealing with financial matters in the first instance. However, we have concerns about this as a way of reaching a final resolution of disputes raising financial issues. This appears to us to be an appropriate way to deal with a department of the same government, but we do not think it is appropriate for dealing with a separate administration. The difficulties that might arise where the administrations are of different political complexions, or where the interests of the UK Government and devolved administration conflict, are immense.
102. **We recommend that where discrete disputes arise, they should be referred to an independent body, such as a Devolution Finance Commission, with that body then making a recommendation to the Cabinet. To the extent that macro-economic management requires control by the Treasury of the aggregate amounts of funding involved, such amounts could be set as the total value of a settlement to be allocated by the same body without the Treasury being able to determine the way in which it is allocated.**

⁸⁴ Evidence of Ms R. Dunn and Mr M. Parkinson, 26 June 2002, QQ 1268–71.

⁸⁵ Evidence of Professor D. Heald, 16 May 2002, Q. 503.

⁸⁶ They have been investigated by the House of Commons Welsh Affairs Select Committee. See its Second Report for the Session 2001–02, *Objective 1 European Funding for Wales*, 22 May 2002. HC 520.

⁸⁷ See *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly*, para. 11.2.

Reviewing the Barnett formula?

103. It will be apparent from the above that there are serious difficulties presented by the long-term continuation of the Barnett formula. We do not think that it will be a sustainable basis for allocating funds to the devolved administrations in the long term. Many of those in Wales and Northern Ireland, as well as those in parts of England, consider that the formula is unfair in its allocation of funds to them in comparison to its allocation of funds to other areas, and does not provide them with the resources they need. Even if it does provide those resources, it does not do so in a manner that convincingly demonstrates that.⁸⁸ This is largely because so much control remains in the Treasury's hands.
104. This will inevitably become a major source of tension in the devolution settlement. It may only become a matter of open dispute when the parties in office in the devolved administrations have profound disagreements with the UK Government, but that is likely to happen sooner or later.
105. We do not have a neat ready-made alternative to Barnett to propose. We do not believe that full fiscal autonomy would be the answer, not least because it would threaten the economic and fiscal integrity of the United Kingdom. However, we would envisage that any alternative would incorporate the following elements:
- (a) an assessment of the needs of the devolved administrations, and the different regions of England, taking into account the nature of their responsibilities and the demographic characteristics of the relevant population;
 - (b) that needs assessment would not be repeated every year but only at periodic intervals. Adjustments to the funds available, whether annually or in-year, would be made by means of a formula;
 - (c) however calculated, funds made available to the devolved administrations would remain in the form of a block grant which the administration could allocate as it wished;
 - (d) funds for the devolved administrations should be payable solely to them. The present arrangement by which the offices of the Secretaries of State are 'top-sliced' from the devolved administration's block grant should be ended and payments for those offices made separately and directly by the Treasury; and
 - (e) the transition to a new arrangement should be phased over a number of years, to minimise the effects of it for those parts of the UK which lose out relatively in terms of funding.
106. We are conscious that the carrying out of that needs assessment would not be straightforward. We were told of the difficulties arising from the Standard Spending Assessment used for allocating funding to local government in Great Britain, which is highly complicated, highly contentious, and (however the formulae involved are adjusted) always produces substantially the same outcome.⁸⁹ It would inevitably involve considerable tensions between the devolved administrations. Concerns about the present over-provision of funding to Scotland, and the unequal distribution of funding across England, would also emerge if a needs assessment were carried out. The impartiality of those undertaking the review will be of prime importance. Our attention has been drawn to a number of models used in other countries, and we are struck by the relative success of the Australian Commonwealth Grants Commission compared with other such bodies.⁹⁰
- 107. We recommend that, when the Barnett formula is reviewed or a needs assessment is carried out, it be done by an independent and impartial body. This body should include persons nominated by the devolved administrations and by the UK Government, and should include people who reflect the views of all parts of the United Kingdom, including the English regions.**
108. More generally, we note that management of the United Kingdom's economy, on both the macro-economic and micro-economic levels, remains wholly in the hands of the UK Government. While we do not consider that this should be changed, such decisions can have a major impact on

⁸⁸ See for example the Memorandum by Plaid Cymru, evidence volume pp. 436–42, or the Memorandum by Professor I. McLean, evidence volume pp. 422–27.

⁸⁹ Evidence of Mr A. Kerr MSP, Minister for Finance, Scottish Executive, Q. 529; Memorandum by Professor I. McLean, evidence volume pp. 422–27.

⁹⁰ See the evidence of Professor D. Heald and Professor D. Bell, 16 May 2002, QQ 504–05 and Q. 522; evidence of Professor R. Hazell, 10 July 2002, Q. 1420; Memorandum by Professor I. McLean, evidence volume pp. 422–27.

the devolved administrations. Conversely, the devolved administrations may well be able to help the UK Government achieve its macro-economic objectives more effectively. For the UK Government to persist in making such decisions unilaterally seems to us to be inconsistent with the spirit of devolution.

109. **We recommend that there should be consultations with the devolved administrations about macro-economic and fiscal policy before decisions about such matters are taken by the UK Government.**

CHAPTER 4: INTER-PARLIAMENTARY RELATIONS

110. Although there has only been limited discussion of non-executive relations in this report so far, such broader issues have been part of the inquiry's concerns from the outset (hence its title: *inter-institutional* relations) and a significant focus of its inquiry. We are aware that, while intergovernmental relations have been the subject of considerable academic interest since 1997, much less attention has been paid to the relations of the UK Parliament and the devolved Parliament and assemblies. Our consideration of these matters has been assisted not just by having had written evidence from the Leaders of both Houses and the Clerk of the Commons at Westminster, but also oral evidence from the Presiding Officers or Speakers of each of the devolved assemblies and legislatures and the Chairmen of the Commons Select Committees on Scottish, Welsh and Northern Irish Affairs. On the specific subject of inter-parliamentary relations, we have been assisted by a paper submitted by Mr Barry Winetrobe.⁹¹

The scrutiny of intergovernmental relations

111. We have been surprised by the limited extent of arrangements for the scrutiny of intergovernmental relations, not just at Westminster, but also in the devolved assemblies and legislatures. We would have expected this to be an area of some interest to the devolved bodies, given their concerns with ensuring that government is carried on in a more open fashion. However, we have found that scrutiny in each body is limited, and that it arises largely in one of two settings. One is scrutiny of the devolved administration's policy and activities in particular functional areas, such as agriculture. The other is questions to the devolved administration's Minister responsible for intergovernmental relations generally (usually the First Minister), which often means that the intergovernmental aspect is a peg on which opposition parties hang broader criticisms of the parties in office.⁹²

112. Part of the reason for the limited amount of scrutiny taking place in the devolved assemblies and legislatures is that, although each body does a great deal of its work through committees, in Scotland and Wales no committee includes intergovernmental relations as such in its remit. While the Northern Ireland Assembly has a Committee of the Centre to examine the work of the Office of First Minister and Deputy First Minister, its remit does not extend to most aspects of intergovernmental relations.⁹³ Scrutiny therefore takes place in most cases in the context of broader inquiries into particular issues or areas of policy which involve interaction between the devolved administration and the UK Government.⁹⁴ This means that scrutiny of intergovernmental affairs is not carried out in a sustained or systematic manner. This has parallels elsewhere.⁹⁵

113. Within Westminster the situation is somewhat different. The Commons Select Committees on Scottish, Welsh and Northern Irish Affairs remain in being and include among their remits the role of the appropriate Secretary of State and his or her office. The chairmen of the select committees reported that they had received considerable co-operation from Ministers in the devolved administrations and the devolved assemblies and legislatures when inquiries they were undertaking involved both devolved matters and those retained at UK level.⁹⁶ Given the important roles these Ministers and offices still play in intergovernmental relations (as discussed in Chapter Two), this means that scrutiny at Westminster of how intergovernmental affairs are dealt with is more systematic. The committees are also concerned with the effect of UK government policies in the relevant devolved area, and this means that their focus on intergovernmental matters is broader than it might be. The chief shortcoming with this approach

⁹¹ See Appendix 5 to this report.

⁹² See the Memorandum submitted by Lord Steel of Aikwood (Sir David Steel MSP, Presiding Officer of the Scottish Parliament), evidence volume p. 195, para. 3; the Memorandum submitted by Lord Elis-Thomas AM (Presiding Officer of the National Assembly for Wales), evidence volume p. 252, para. 6, or the evidence of Lord Alderdice MLA (Speaker of the Northern Ireland Assembly), 10 June 2002, Q. 1239. See also evidence of Lord Elis-Thomas AM, 27 May 2002, QQ 916–18.

⁹³ Memorandum submitted by the Committee of the Centre, Northern Ireland Assembly, paras 1.3 and 2.1; evidence volume, p. 432.

⁹⁴ See for example the memorandum submitted by the Committee for Social Development, Northern Ireland Assembly; evidence volume, pp. 434–36.

⁹⁵ See memorandum submitted by Mr G. Horgan, evidence volume pp. 416–19, paras 18–22.

⁹⁶ Evidence of Mrs I. Adams JP MP, Mr M. Jones MP and Mr M. Mates MP, 3 July 2002, Q. 1358. See also the memorandum submitted by Mrs Adams, paras 1–6 (evidence volume, p. 373) and that submitted by Mr Mates, paras 18–19 (Evidence volume, p. 376).

is that it is fragmented – the Scottish Affairs Committee is interested in relations between the UK Government and Scotland, but not with broader issues arising from Welsh-UK relations having an effect on Scotland. Thus we were told that the Welsh Affairs Select Committee intends to consider how UK legislation affecting Wales is made, but no similar inquiry into UK legislation for Scotland appears to be envisaged by the Scottish Affairs Select Committee.⁹⁷ The way each Committee approaches its own work understandably gives priority to issues relating to the appropriate area. Consequently, no Commons Committee appears, at present, to take a general overview of intergovernmental relations.

114. Grand Committees also fail to take on such a role. There are Grand Committees for Scotland, Wales, and Northern Ireland. The Scottish Grand Committee comprises all 72 MPs returned for Scottish constituencies. The Welsh Grand Committee comprises all MPs returned for Welsh seats plus five other members of the House nominated by the Committee of Selection. The Northern Ireland Grand Committee comprises all MPs returned from Northern Ireland plus 25 other members of the House nominated by the Committee of Selection. Each Committee can consider certain matters referred to it and can engage in discussion and put questions to ministers. Bills affecting the area covered by a Committee may be referred to the Committee for a debate on the principle of the measure. However, following devolution and the introduction of debates in Westminster Hall, the Procedure Committee of the House of Commons recommended that Grand Committees be suspended for the period of the Westminster Hall experiment. The Government decided that it was too soon to take such a step. The Committees thus remain in existence but they do not figure as significant bodies in discussing issues affecting the devolved areas of the United Kingdom and, by their nature, cannot assume a role examining multi-lateral inter-institutional relations in the UK.
115. In the House of Lords, the only committee which has a remit in this area is our own. The House has no committees for the devolved areas. Our interest in this matter is demonstrated by our undertaking the present inquiry.
116. We consider that this is an area that requires more systematic and regular scrutiny than at present. Such scrutiny need not be constant, and there may be occasions for urgent or *ad hoc* inquiries into particular issues.
117. **We recommend that a review of intergovernmental relations, looking both at the UK's institutional arrangements for intergovernmental relations and the UK Government's conduct of such relations, be conducted at least once during every Parliament – or at least once every five years. We consider that this would be best undertaken by a Joint Committee of both Houses of Parliament.**
118. It is not for us to criticise how the devolved legislatures and assemblies go about their business. However, we are surprised that a matter of such importance does not attract greater or more rigorous scrutiny. We therefore suggest that the devolved legislatures and assemblies might wish to consider introducing more systematic ways of scrutinising what their administrations do.

Legislating for Wales after devolution

119. We heard a good deal of evidence about the ways in which Westminster legislates for functions in Wales. We note that this is the subject of a forthcoming inquiry by the House of Commons Select Committee on Welsh Affairs, and will limit ourselves in our comments to the constitutional issues arising from the detailed evidence we received.
120. The arrangements for Welsh devolution mean that the National Assembly continues to rely heavily on Westminster. The National Assembly derives its powers either from functions under existing Westminster statutes transferred to it under Transfer of Functions Orders made under section 22 of the Government of Wales Act 1998, or by powers conferred on the National Assembly under subsequent Westminster Acts. As a consequence, legislation made at Westminster has a major effect on what the National Assembly can do and how it can do it. These arrangements were described to us as unsatisfactory at the outset, and the evidence we heard suggests that their working has been more cumbersome than was envisaged by the Assembly's designers.⁹⁸ We were therefore concerned by the evidence of Professor Patchett, suggesting as it does that there are serious weaknesses in a host of areas including:

⁹⁷ Evidence of Mr M. Jones MP, 3 July 2002, Q. 1358.

⁹⁸ Evidence of Mr J. Osmond, 27 May 2002, Q. 789, and Dr J. Marek, 27 May 2002, Q. 920.

- (a) the selection of bills affecting Wales which will be considered at Westminster;
 - (b) the policy options dealt with in those bills;
 - (c) the structure of the legislative scheme followed in such a bill; and
 - (d) amendments made to bills by the Government while they are before Parliament.⁹⁹
121. Further problems appear to arise with the patchwork pattern formed by the National Assembly's powers and the difficulties that arise if one wishes to identify what the Assembly may do.¹⁰⁰ These are themselves aggravated by the wide variations in the powers new Westminster legislation confers on the National Assembly.¹⁰¹ We note Professor Patchett's comparison of the situation to "a jigsaw of constantly changing pieces, none of which has straight edges", a view with which we agree in the light of other evidence we have heard.¹⁰²
122. This problem is compounded by the very limited access the National Assembly has to Parliamentary time for Wales-only legislation. While this was described to us by the First Minister as constituting a 500% improvement on the situation before devolution, it clearly is still very problematic.¹⁰³ While we understand the political circumstances that have led to Wales-only legislation being split, so that parts appear in a bill dealing with a variety of other matters for both England and Wales in one session while others appear in a Wales-only bill the following session, we do not find this to be a commendable or sensible practice.¹⁰⁴ It has led to further confusion in the National Assembly's functions, since the relevant powers are scattered over two pieces of legislation not one. It also makes it much harder for legislators at Westminster to understand what the effect is of bills before Parliament, because they only tell part of the story – and part of that story may have yet to be decided.
123. We are particularly concerned by the unstructured way in which the process of liaison over legislation operates. Liaison is unsystematic, almost random, highly opaque, and hard for lay people, Westminster legislators or Assembly Members to follow. It also affords only limited opportunities for the National Assembly's views to be heard in connection with bills affecting the Assembly. Moreover, such opportunities as exist to influence legislation are exercised behind the scenes and are only available to Ministers and the Welsh Assembly Government, not the Assembly as a whole. It appears to us that Wales figures in such arrangements largely as an afterthought appended to a process driven by the UK Government's concerns and priorities rather than those of Wales in general or the National Assembly.¹⁰⁵ This might be mitigated if there were effective mechanisms for Welsh views to be considered by the involvement of Welsh MPs, but these do not exist either. Neither the Welsh Affairs Select Committee nor the Welsh Grand Committee in the Commons plays a direct role in considering legislation affecting matters devolved to the National Assembly. Such bodies could not act as surrogates for the Assembly but could serve to provide a channel for Welsh concerns to be heard directly in the legislative process.
124. **It appears to us that a number of steps could be taken to improve Westminster legislation affecting the National Assembly. We therefore recommend:**
- (a) that greater consistency be introduced into the process by which Westminster legislates for Wales. It seems to us that the Principles adopted by the Assembly Review of Procedure, following recommendations made by Professor Richard Rawlings (see Box 5) establish a very useful starting point for bringing a greater measure of consistency to legislation;**

⁹⁹ See Memorandum by Professor K. Patchett, evidence volume, pp. 285–92; evidence of Professor Patchett, 28 May 2002, QQ 1054–85; supplementary memorandum by Professor Patchett, evidence volume, pp. 299–305.

¹⁰⁰ See the memoranda submitted by Professor Patchett cited above and his oral evidence, especially QQ 1065 and 1084.

¹⁰¹ See evidence of Professor Patchett, 28 May 2002, especially QQ 1054–56 and Q. 1079; evidence of Lord Elis-Thomas, 27 May 2002, Q. 919.

¹⁰² Evidence of Professor Patchett, 28 May 2002, Q. 1055. See also evidence of Professor R. Hazell, 10 July 2002, QQ 1409–11.

¹⁰³ Evidence of the Rt Hon. Rhodri Morgan AM, 27 May 2002, Q. 824.

¹⁰⁴ We were told that this has occurred in relation to the Children's Commissioner for Wales and to the restructuring of the NHS in Wales; evidence of Mr J. Osmond, 27 May 2002, QQ 791–92 evidence of Rt Hon R. Morgan AM, 27 May 2002, QQ 824–25, QQ 839–50.

¹⁰⁵ Dr John Marek AM, Deputy Presiding Officer of the National Assembly, suggested this was also a problem with secondary legislation: 27 May 2002, Q. 929.

(b) that the Explanatory Memorandum for any bill affecting the functions of the National Assembly (or not affecting the Assembly's functions directly, but affecting areas of policy in which the Assembly has responsibilities in Wales) include a section explaining briefly how the bill affects the Assembly and its functions. Such a section should also explain how the bill complies with the Principles adopted by the Assembly Review of Procedure;

(c) that further steps be taken within Parliament to improve the consideration of legislation specifically applying in Wales, whether as a distinct Wales-bill or Wales-only parts of bills applying in England and Wales. One way to do this would be for the Welsh Affairs Select Committee to carry out inquiries into such bills, for which it might wish to take evidence in Wales from affected interests including the various parties represented in the National Assembly. Another would be to make greater use of the Welsh Grand Committee, possibly for the Committee stage of bills;¹⁰⁶ and

(d) that further thought be given to how Members of the National Assembly can be afforded the opportunity to consider Westminster legislation that will affect the Assembly and its functions. Such an opportunity needs to take account not only of the needs of the UK Government and MPs and Peers at Westminster, but also the different ways of working and timescales applying to the National Assembly. The trend toward publishing bills in draft is especially welcome and will, we believe, be especially helpful in this context.

Box 5

Principles to be Adopted in Government Bills Affecting the National Assembly for Wales

1. The Assembly should acquire any and all new powers in a Bill where these relate to its existing responsibilities.
2. Bills should only give a UK Minister powers which cover Wales if it is intended that the policy concerned is to be conducted on a single England and Wales/GB/UK basis.
3. Bills should not confer functions specifically on the Secretary of State for Wales. Where functions need to be exercised separately in Wales, they should be conferred on the Assembly.
4. A Bill should not reduce the Assembly's functions by giving concurrent functions to a UK Minister, imposing a requirement on the Assembly to act jointly or with UK Government/Parliamentary consent, or dealing with matters which were previously the subject of Assembly subordinate legislation.
5. Where a Bill gives the Assembly new functions, this should be in broad enough terms to allow the Assembly to develop its own policies flexibly. This may mean, where appropriate, giving the Assembly "enabling" subordinate legislative powers, different from those given to a Minister for exercise in England, and/or which proceed by reference to the subject-matter of the Bill.
6. It should be permissible for a Bill to give the Assembly so-called "Henry VIII" powers (i.e. powers to amend primary legislation by subordinate legislation, or apply it differently) for defined purposes, the test being whether the particular powers are justified for the purpose of the effective implementation of the relevant policy. Where such powers are to be vested in a UK Minister for exercise in England, they should be vested in the Assembly for exercise in Wales.
7. Assembly to have power to bring into force (or "commence") all Bills or parts of Bills which relate to its responsibilities. Where the Minister is to have commencement powers in respect of England the Assembly should have the same powers in respect of Wales.

(Assembly Review of Procedure Final Report, Annex v; submitted to us in the Annex to the Memorandum by Lord Elis-Thomas AM; evidence volume pp. 255–56.)

125. The problems arising over Westminster legislation cause us to doubt whether the form executive devolution has taken in Wales is sustainable in the long term. The difficulties set out above are one reason. Underlying that, however, is the reliance of the Welsh arrangements on mutually sympathetic administrations in London and Cardiff. We find it hard to see how such

¹⁰⁶ We appreciate that there would need to be some consideration given to the political composition of the Grand Committee if such a function were to be vested in it.

arrangements could work satisfactorily if there were major political differences between the two governments. We heard a good deal of evidence suggesting that the conferring on the National Assembly (or a successor body) of primary legislative powers comparable to those in Scotland would resolve many of the difficulties discussed above. That is a matter presently being considered by a Commission established by the National Assembly under the chairmanship of Lord Richard.¹⁰⁷ It is beyond the scope of our present inquiry to consider that matter further, but we note that this issue is likely to return to the agenda in due course.

Legislating for Scotland after devolution: the Sewel convention

126. We also heard much evidence about the way Westminster continues to legislate for devolved matters in Scotland. As we have noted, the principles governing this were first stated by Lord Sewel in the Lords Second Reading debate on the Scotland Bill, and are now set out in the Memorandum of Understanding. Agreement to Westminster legislating for Scotland is given, as described above (Box 3), in Sewel motions.
127. Professor Page's evidence to us emphasised that Westminster legislation on devolved matters was expected to be rare, but has in fact turned out to be common.¹⁰⁸ To the end of June 2002, there had been 34 Sewel motions.¹⁰⁹ Some bills have been the subject of more than one Sewel motion, while other motions have been passed for bills which have failed to complete their passage at Westminster.¹¹⁰ Professor Page's explanation for the frequency of legislation emphasised pulls toward uniformity across the UK despite the existence of a Scottish Parliament. These arose from a variety of factors, including electoral expectations, the administration of policies by UK bodies, avoiding 'regulatory arbitrage', applying EU or international law, or simply seeing no good reason why the law should differ between Scotland and other parts of the UK.¹¹¹ Professor Page also highlighted reasons why such legislation may be attractive to the Scottish Executive, including the reliance on the UK Government to initiate reforms, avoiding disruption to the Executive's legislative programme for the Scottish Parliament, and avoiding any risk of legal uncertainty about the validity of Scottish legislation.¹¹²
128. From the point of view of the Executive, we note that the convention offers significant benefits – in particular, enabling legislation to apply to Scotland without having to find legislative time for it.¹¹³
129. A number of aspects of the operation of the Sewel convention cause us concern. One of these is the nature of the consent the Scottish Parliament gives when it assents to a Sewel motion put before it. It appears to us that this is very often in the nature of a blanket permission – a 'blank cheque' – for the Westminster legislation. If the matter were the subject of legislation before the Scottish Parliament, the Parliament would have several opportunities to consider the bill and propose amendments. When the matter is dealt with at Westminster, the Scottish Parliament receives only the one opportunity to consider the matter. It cannot propose amendments or, it appears, make its consent conditional on desired changes being made to the UK bill. It also gets no opportunity to consider the UK bill again, even if that has been the subject of extensive amendments. (The only circumstances in which the bill will return to the Parliament is if further amendments are made extending to Scotland provisions which did not apply there earlier, as with the Adoption and Children Bill.¹¹⁴) From the point of view of the Scottish Parliament there appears to us to be a loss of control over legislation affecting devolved matters when that is made at Westminster, compared with the mechanisms that apply in the Scottish Parliament. The idea that amendments affecting devolved matters should be subject to a 'scrutiny reserve' in a way

¹⁰⁷ See Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *The Powers of the National Assembly for Wales: Issues and questions for consultation*, November 2002. The Commission is charged with producing an independent report by the end of 2003.

¹⁰⁸ See Memorandum by Professor Alan Page, para 3, evidence volume, p. 184.

¹⁰⁹ Supplementary memorandum by the Scottish Executive; evidence volume, p. 138.

¹¹⁰ The Political Parties, Elections and Referendums Act 2000 and the Adoption and Children Bill and Police Reform Bill presently before Parliament have had more than one Sewel motion. In the 2000–01 session, the Adoption and Children Bill failed, as did the Tobacco Advertising and Promotion Bill. See Supplementary memorandum by the Scottish Executive, evidence volume, p. 138.

¹¹¹ Memorandum by Professor Page, paras 4–8; evidence volume, p. 184.

¹¹² Memorandum by Professor Page, paras 10–13; evidence volume, p. 185.

¹¹³ See evidence of Ms P. Ferguson, 15 May 2002, para. 351.

¹¹⁴ Evidence of Ms P. Ferguson MSP, 15 May 2002, Q. 353.

similar to EU measures, and so require further approval by the Scottish Parliament was put to us by Professor Page, and is one that interests us.¹¹⁵

130. Second, we find it strange that an issue which is fundamentally about co-operation between legislatures has turned in practice into co-operation between executives. The convention itself states that it is for the UK Government to determine whether an approach should be made to the Scottish Executive, and for the Executive to signal whether that consent has been given. That appears to us to be inappropriate.
131. **While the UK Government may have a view about whether a Bill affects devolved matters or not, and what action should be taken as a result, we recommend that such communication should be between the UK Parliament and Scottish Parliament, not mediated by the executives at each end.**
132. Making such communication a parliamentary and not a government matter would involve considerable changes. Whether those changes should be made and what they should be are of course matters for the Scottish Parliament as well as the UK Parliament to determine. The Committee consider that these would include ensuring that the UK Parliament had access to advice so that it could determine whether a bill affected devolved matters or not. They would also include the establishment of a formal arrangement between the UK Parliament and Scottish Parliament to deal with procedural issues arising from such consent, and enabling the Scottish Parliament more routinely to express its views on amendments made during a bill's passage at Westminster. Such changes would of course also require the Scottish Parliament to make changes to its procedures as well, and improving procedures will require a shared will for the two parliaments to take control of this matter. However, in the interests of promoting a proper separation between the executive and the legislative functions, we think that should be undertaken.
133. Third, we note that the Sewel motion mechanism does not appear to operate in the Northern Ireland Assembly. There have been only two votes on Westminster legislation affecting devolved matters. There is no formal exchange of information about Westminster legislation with the Northern Ireland Executive, and a flow of information that rests on the fact that the Speaker of the Assembly is a member of this House and receives Hansard as a matter of course.¹¹⁶
134. While it is of course a matter for the Northern Ireland Assembly and Executive to deal with themselves, we consider it would be advantageous to the UK Parliament as well as the Assembly for there to be a proper procedure to deal with Sewel motions where a Westminster bill affects devolved matters in Northern Ireland.

Improving links between the UK's Parliaments and Assemblies

135. In attempting to understand what links exist between the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, we have been greatly assisted by a paper written for us by Mr Barry Winetrobe.¹¹⁷ It is clear to us from that paper, and the evidence we heard on the subject, that this aspect of devolution is one that has been relatively neglected hitherto.
136. However, we are pleased to note the assistance provided to the devolved assemblies and legislatures by Westminster in their early days, particularly on the technical level and in seconding staff to help to establish the new institutions.¹¹⁸
137. We find the neglect of inter-parliamentary relations regrettable. It appears to us that there are lessons that Westminster may learn from practices in the devolved assemblies and legislatures (some of which are noted below). Further contact between the various bodies will help ensure that each is aware of novel practices which might beneficially be adopted by other institutions.
138. We note that one of the forums used for inter-parliamentary discussions is the British-Irish Inter-parliamentary Body, but that this has caused some concerns on the part of the Republic of Ireland

¹¹⁵ Evidence of Professor A. Page, 17 May 2002, Q. 696.

¹¹⁶ Evidence of Lord Alderdice MLA, 10 June 2002, Q. 1253.

¹¹⁷ B.K. Winetrobe *Inter-parliamentary Relations in a Devolved UK: an initial overview*.

¹¹⁸ See Memorandum by Sir William McKay KCB, evidence volume pp. 412–16; see also evidence of Lord Steel of Aikwood MSP and Mr Paul Grice, 17 May 2002, QQ 748–50, evidence of Mr Paul Silk, 27 May 2002, QQ 940–42; and evidence of Lord Alderdice MLA, 10 June 2002, QQ 1234–35;

- as it involves both legislatures of both sovereign and non-sovereign entities.¹¹⁹ We note this problem, as well as the limited involvement of Northern Ireland Unionists in that body. In any case, we do not consider that such a body is necessarily the proper forum for meetings of parliamentarians from bodies within the United Kingdom. We think it would be advantageous for there to be meetings of members of both Houses at Westminster together with Members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly on a periodic basis, without using an existing but not entirely appropriate body for the purpose.
139. We should emphasise our support for the convention by which questions at Westminster about devolved matters are treated as out of order. For Westminster to do otherwise would be to undermine the spirit of devolution, and the authority of the devolved assembly or legislature to scrutinise the actions of the executive accountable to that body.
140. However, there are areas where it appears to us that it would be advantageous for Westminster and one or more devolved assembly or legislature to be able to hold a joint inquiry into particular matters which span both the functions of the devolved body and those reserved to the UK level. The Leader of the House of Commons pointed out that such a hearing would need to be constituted as an informal not a formal hearing, and that problems of privilege would arise in connection with it.¹²⁰ Whether for these reasons or others, we note that so far no such joint hearing has taken place at all, although there have been instances where UK Ministers have appeared before committees of devolved assemblies and legislatures and devolved administration Ministers have appeared before Westminster committees.
141. We think that such joint inquiries could usefully be carried out on occasion, and look forward to seeing that happen.
142. In addition to other concerns, we note the value attached by all three Presiding Officers or Speakers of the devolved assemblies and legislatures to membership of the House of Lords. This is clearly valued highly by them, as a connection to a broader range of parliamentary expertise, as a source of information about parliamentary matters, and as a setting in which to meet each other informally.¹²¹ They were also at pains to note that they would not speak at Westminster on matters which were within the scope of the body over which they presided and which might therefore be a source of controversy there.¹²² We also note that two of the present holders of those offices (Lord Steel of Aikwood and Lord Alderdice) are to stand down from their respective bodies at the elections scheduled for May 2003.
143. The value the present presiding officers attach to such links suggests to us that it would be advantageous to the presiding officers and the devolved bodies if, in future, the holder of the posts were to be members of the House of Lords or, if not, at least for some alternative arrangements to be made to enable them to share their concerns and experience not only among themselves but also with parliamentarians at Westminster.

Lessons for Westminster from Holyrood, Cardiff Bay and Stormont?

144. As part of our inquiry, we were interested to see if lessons could be learned at Westminster from the experiences of the devolved assemblies and legislatures. There are several distinct features of procedures and structures, but two struck us as having particular salience. The first, particularly used in Scotland, is that of pre-legislative scrutiny. This practice is familiar in Westminster and is increasingly used. The difference is that, in Scotland, it is an established and integral part of legislation. At Stage 1, each bill is committed to one of the Parliament's Committees for consideration, before the matter proceeds to the floor of the Parliament itself. We consider that this might be a useful way of ensuring that the principle and approach of all bills is carefully considered before the bill starts its more formal progress. Apart from anything else, this means that problems in bills can be rectified before all involved are committed to partisan positions.

¹¹⁹ Evidence of Lord Alderdice MLA 10 June 2002, QQ 1244–45.

¹²⁰ Memorandum by the Rt Hon. R. Cook MP, evidence volume pp. 407–12, paragraphs 11–21. See also report of House of Commons Procedure Committee session 1998–99, Fourth report *The Procedural Consequences of Devolution*, paragraphs 41–45.

¹²¹ Joint supplementary memorandum by the Presiding Officer of the Scottish Parliament, the Speaker of the Northern Ireland Assembly and the Presiding Officer of the National Assembly for Wales; evidence volume, p. 356.

¹²² Evidence of Lord Steel of Aikwood MSP, 17 May 2002, QQ 772–74; evidence of Lord Elis-Thomas AM, 27 May 2002, QQ 933–35; evidence of Lord Alderdice, 10 June 2002, QQ 1236–37.

145. **We welcome the greater use of pre-legislative scrutiny at Westminster and recommend, in this context, that the approach to legislation adopted in the Scottish Parliament be the subject of further consideration.**
146. The second feature, found in all three assemblies and legislatures, is the business committee. This meets regularly (once or twice a week) while the body is in session to discuss forthcoming business and arrange the timetable. It is usually chaired by the presiding officer or his deputy, and includes the Minister for Parliament or Assembly Business (in Scotland and Wales respectively), and the business managers (whips) of the other party groups, with the clerk and other officials in attendance. The business Committee is therefore both more formal and more open than the “usual channels” as they operate at Westminster. The Committee helps to develop a consensus about the conduct of business in the chamber, and ensures that the timetable for business is more clearly determined in advance. Again, it is a procedure that is to be found in other legislatures in Western Europe and has been variously proposed for adoption in Westminster.¹²³ It seems to us that the use of business committees has a great deal to commend it, injecting a greater degree of transparency than exists in the current arrangements at Westminster and transferring some degree of control from the executive to the legislature. Their use does not prevent a government from getting its business, but it does ensure greater openness and time for the proper scrutiny of government.
147. **We recommend that the use of business committees at Westminster be considered further in the light of the experience of the devolved bodies.**
148. Another feature of the devolved parliaments and assemblies is the extent to which they are open to the media and the public. The Welsh Assembly has also introduced excellent bi-lingual arrangements. Again, these features are not unique to them. Westminster is also moving in the direction of being more open to the media and members of the public. Both Houses have dedicated information officers. The media have greater freedom now in the Palace of Westminster and there are already changes, such as a dedicated Visitors’ Centre, designed to enable the public to see what Parliament does. We note, though, that the resources of both Houses for the dissemination of information – in effect, for public relations – pale beside those enjoyed by the Scottish Parliament.

¹²³ We also note with interest that the success of the Business Committee in the Northern Ireland Assembly has attracted interest from other countries, especially Canada. See R. Wilford and R. Wilson, *A Democratic Design? The political style of the Northern Ireland Assembly*, London: The Constitution Unit, 2001, p. 59.

CHAPTER 5: CROWN SERVICE: THE CIVIL SERVICE AFTER DEVOLUTION

149. There is no doubt that devolution represented a major organisational challenge for the civil service. It has dramatically altered both the working environment and the workload of many thousands of officials, not just in the devolved administrations but also in UK Departments that deal with the devolved administrations. Within the devolved administrations it called for considerable re-organisation and restructuring, a process that continues.¹²⁴ It meant adapting to working with a large number of Ministers based locally, rather than a small number of Ministers who spent most of their time in London. It also required officials to adapt to working with coalition administrations rather than a Westminster government composed of a single party. Many of the Ministers and politicians from whom we heard were keen to emphasise how smooth a change devolution had been. That this was the case was due to the professionalism, dedication and hard work of many officials in both the devolved administrations and the UK Government. We feel that this element has not been sufficiently noted and wish to pay tribute to all the civil servants involved for their contribution to the process of devolution.
150. So far as Scotland and Wales are concerned, the civil service remains a UK matter.¹²⁵ In relation to Northern Ireland the situation is more complex, as Northern Ireland retains its own civil service under the control of the First Minister and Deputy First Minister, but the functions of the Civil Service Commissions for Northern Ireland remain a reserved matter and therefore subject, ultimately, to UK control.¹²⁶ Thus senior figures such as the Permanent Secretaries to the Scottish Executive or National Assembly for Wales, or the National Assembly's Counsel-General, are appointed (at least formally) by the UK Prime Minister.¹²⁷
151. Although the formal position is that the civil service remains a UK matter, in practice, things work somewhat differently. In common with UK Government departments, the Scottish Executive and National Assembly for Wales have considerable autonomy in staffing matters, extending to levels of staffing, promotions and grading, and pay settlements. A single framework governing the whole of the Home Civil Service only arises for the highest reaches of the Home Civil Service – the Senior Civil Service.¹²⁸ The Scottish and Welsh devolved administrations consequently have considerable room for manoeuvre in developing staffing policies and arrangements that are appropriate to their local needs, within the framework of the Home Civil Service. Neither of the Permanent Secretaries of the Scottish Executive or National Assembly for Wales expressed any dissatisfaction with this in their evidence to us.¹²⁹
152. One anomaly that arises from the framework of devolution in Wales is that all officials working for the National Assembly – whether for the Welsh Assembly Government side of the Assembly or the Presiding Office side – are civil servants. That means that the Clerk of the Assembly is (at least formally) appointed by the UK Prime Minister and managed by the Permanent Secretary; and legal advice to Assembly Members and the Presiding Office is provided (at least in part) by the Counsel-General, whose main task is to advise the Welsh Assembly Government.¹³⁰ All this reflects the fact that the National Assembly was designed to be a quite different sort of institution from the one it has now become. While we note that all involved said that the tensions that might arise from such arrangements had not in fact arisen, we consider that it could become a source of difficulty – especially if relations between Assembly Members in general and the Welsh Assembly Government were not good, for example if a minority administration were to be in office once again.
153. The situation in Northern Ireland is somewhat different, as the Northern Ireland Civil Service (NICS) has been a distinct service since 1921. That service provides the staff of the Northern Ireland Departments, the staff of the bodies responsible for services such as health and social

¹²⁴ See evidence of Sir Muir Russell, 15 May 2002, Q. 455–56; evidence of Mr (now Sir) J. Shortridge and Mr W. Roddick QC, 28 May 2002, QQ 1000–01, 1009, 1016; evidence of Mr R. Parry, 17 May 2002, QQ 603–04.

¹²⁵ Scotland Act 1998, s. 51 and Schedule 5, para. 8; Government of Wales Act 1998, s. 34.

¹²⁶ Northern Ireland Act 1998, s. 23 (3) and Schedule 3, para. 16.

¹²⁷ Evidence of Mr J. Shortridge, 28 May 2002, Q. 1026.

¹²⁸ Evidence of Sir Muir Russell KCB, 15 May 2002, Q. 457; memorandum by Mr R. Parry, evidence volume, paras 10–11 and evidence of Mr R. Parry, 17 May 2002, Q. 618; evidence of Mr J. Shortridge, 28 May 2002, Q. 1004; evidence of Sir Richard Wilson, KCB, 26 June 2002, Q. 131.

¹²⁹ Evidence of Mr J. Shortridge, 28 May 2002, Q. 1026.

¹³⁰ Evidence of Mr J. Shortridge, 28 May 2002, QQ 1002–03; evidence of Mr P. Silk, 27 May 2002, Q. 924; evidence of Mr W. Roddick QC, 28 May 2002, Q. 1009.

services, or of the education and library boards. The NICS also provides a significant proportion of the staff of the Northern Ireland Office. Many civil servants working in Northern Ireland are not members of the NICS, however – for example, staff of the Inland Revenue are members of the Home Civil Service rather than NICS.¹³¹

154. As far as the Home Civil Service is concerned, one change occasioned by devolution was to amend the Civil Service Code. This now provides that “civil servants owe their loyalty to the Administrations in which they serve”, Administration meaning the UK Government, Scottish Executive or National Assembly for Wales.¹³² This was designed expressly to address the concern that officials’ loyalty might be affected by the fact that they remain part of a single Home Civil Service. With a career progression that ends in London, we can understand that concerns may exist about the loyalty of civil servants.

Special advisers across the UK

155. In both Scotland and Wales, special advisers work for the centre of government rather than individual Ministers, and are limited in number. In Scotland the number is limited to 12, though there have never been more than 10 or 11 at once. Each has subject responsibilities, and two work for the Deputy First Minister (the Liberal Democrat leader) and the others for the First Minister. Their functions have changed over time, but have included presentation work as well as policy development and speech-writing.¹³³ In Wales there are six special advisers, two for the Liberal Democrats (although one post was vacant) and four for Labour. They were appointed following an open recruitment exercise and work within the newly-established Strategic Policy Unit, alongside permanent civil servants (but without being able to give instructions to the civil servants). They attend the Assembly’s Executive Board as well as providing political advice to Ministers.¹³⁴ In Northern Ireland there are 16 special advisers in total, one per Departmental Minister and three each for the First Minister and Deputy First Minister, again unable to give instructions to permanent officials.¹³⁵

One Civil Service or Several?

156. The question underpinning this part of our inquiry was the appropriateness of retaining a single Home Civil Service for officials in Scotland and Wales as well as the UK Government. Despite the provision in the Civil Service Code noted above, some observers doubt whether this would be sufficient to eliminate such concerns altogether if the political circumstances became highly charged or contentious.¹³⁶
157. The advantages of a single Home Civil Service were presented in evidence by various officials.¹³⁷ First, it serves as a guarantor of impartiality against politicians who might seek to co-opt or undermine it, because members of the devolved institutions do not have the power to interfere with it. Impartiality is a central and necessary dimension of the civil service and has been a feature since the Northcote-Trevelyan reforms more than 130 years ago. Officials are able to serve ministers loyally but without bias, an attribute variously attested to by ministers in different administrations.
158. Second, it serves as a “brand”: it guarantees recognition of officials as belonging to a common service, politically impartial and recruited on merit, that enables those officials to deal with each other as belonging to the same profession no matter whom they work for.¹³⁸ The brand acknowledges the value of diversity, and a common service facilitates comprehensive and co-ordinated action to make progress in this field.¹³⁹ The Civil Service brand is thus a well

¹³¹ Evidence of Mr G. Loughran, 10 June 2002, Q. 1198.

¹³² *The Civil Service Code*, para. 2. The NICS has a separate Code of Ethics which substantially mirrors the Code.

¹³³ Evidence of Sir M. Russell KCB, 15 May 2002, QQ 461–64, QQ 476–80.

¹³⁴ Evidence of Mr J. Shortridge, 28 May 2002, Q. 1006, QQ 1011–14.

¹³⁵ Evidence of Mr G. Loughran, 10 June 2002, QQ 1216–17.

¹³⁶ Evidence of Professor R. Hazell, 10 July 2002, Q. 1441. See also evidence of Mr R. Parry, 17 May 2002, Q. 614.

¹³⁷ Evidence of Sir R. Wilson GCB, 26 June 2002; evidence of Mr P. Unwin, Mr W. Jeffrey, Mr I. Gordon and Mrs A. Jackson, 20 March 2002, QQ 137–40; evidence of the Rt Hon. H. Liddell MP, the Rt Hon. P. Murphy MP and the Rt Hon. Dr J. Reid MP, 10 April 2002, QQ 195–96.

¹³⁸ The term ‘brand’ is Sir Muir Russell’s; evidence of Sir M. Russell, 15 May 2002, Q. 458.

¹³⁹ Diversity is one of six key objectives of the Civil Service reform programme which the Civil Service in Scotland and Wales have signed up to. See evidence of Sir R. Wilson GCB, 26 June 2002, Q. 1327.

- established one, appreciated by officials and recognised by others well beyond the civil service itself.
159. Third, it enables ready interchange of staff, giving officials access to a broad range of experience and expertise from various different parts of the civil service. The main recipients of staff exchanges from the devolved administrations appear to be their counterpart offices in Whitehall – about 88% of the Northern Ireland Office staff are from the NICS, and the great majority of those in the Scotland and Wales Offices.¹⁴⁰ Only 17 Scottish Executive officials work in other parts of Whitehall and five from the National Assembly for Wales are in Whitehall beyond the Wales Office. Smaller numbers of staff from UK Government departments have spent time in the Scottish Executive or National Assembly.¹⁴¹ Fewer staff from the NICS seem to be involved in such exchanges.¹⁴² The value of such exchanges extends beyond the individuals directly involved.
160. Fourth, it links officials in a broader context, enabling devolved administration officials (especially at the most senior levels) to participate in civil service-wide initiative, and to draw on a wider range of experience from officials across the Civil Service. The degree of linkage was apparent from the evidence given to us. We note, for example, the importance attached by the Permanent Secretary of the Scottish Executive to taking part in Civil Service Management Board meetings.¹⁴³
161. Finally, and as a consequence of the other factors, it enables close working across government generally and the ready flow of information from one administration to another.
162. We readily recognise that these are powerful and, in many respects, compelling arguments. We are aware that counter-arguments can be advanced. The need for a single civil service to maintain neutrality, for example, assumes implicitly that such independence is threatened in the context of the devolved administrations but not in the case of the UK Government. Moreover, there is no inherent reason to assume that small services are prone to losing such impartiality – that of the NICS is unquestioned, even in a perennially difficult political situation.¹⁴⁴ This argument also assumes that the safeguards of independence that presently operate for officials serving in the UK Government – notably the professionalism of officials themselves and the supervisory role of the Civil Service Commissioners – would not apply equally to devolved administration officials.
163. Regarding the value of the civil service “brand”, it could be argued that this is largely a matter of shared professional skills, approach and training. These are skills that officials can recognise in each other whenever they come across each other, in whatever setting. There appears to be no difference between the Home Civil Service and the Northern Ireland Civil Service in that respect.¹⁴⁵
164. Third, it is clear that while staff interchange is important, it is limited in scale. The extent to which the existence of a single service facilitates that interchange is rather limited.
165. Fourth, we note the value attached to participation in a broader civil service by many of our civil service witnesses – the sense of belonging to a wider organisation than the immediate one in which an individual works. This, though, does not require the membership of a single civil service – the Head of the NICS noted he is invited to those meetings too, though he rarely attends.¹⁴⁶
166. The fifth factor – enabling clear communication between officials – is also something that does not necessarily depend on retaining a single civil service. Provided there were good contacts between public services, communications of the sort presently enjoyed could be maintained.

¹⁴⁰ Evidence of the Rt Hon. H. Liddell MP, the Rt Hon. P. Murphy MP and the Rt Hon. Dr J. Reid MP, 10 April 2002, QQ 195–96.

¹⁴¹ Evidence of Sir R. Wilson GCB, 26 June 2002, Q. 1340. See also evidence of Sir M. Russell KCB, 15 May 2002, QQ 466–71.

¹⁴² Evidence of Mr G. Loughran, 10 June 2002, QQ 1196, 1198, 1203, 1205 and 1224. The ‘constitutional difficulties’ referred to by Mr Loughran are believed to relate to arrangements to secure fair employment in the public service in Northern Ireland.

¹⁴³ Evidence of Sir M. Russell, 15 May 2002, Q. 494;

¹⁴⁴ Evidence of Mr G. Loughran, 10 June 2002, Q. 1207.

¹⁴⁵ Evidence of Mr R. Parry, 17 May 2002, Q. 607.

¹⁴⁶ Evidence of Mr G. Loughran, 10 June 2002, Q. 1196.

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167. A more serious objection to change in the status of the civil service would be the sense of detachment or semi-detachment from the rest of the UK that we detected in Northern Ireland. The NICS is neither as closely connected with the Home Civil Service as the Scottish Executive or National Assembly are, nor as concerned by management issues that are priorities within the Home Civil Service. However, the NICS works as it does because of long-standing administrative devolution in Northern Ireland. It has operated since 1921, through devolution to the Stormont Parliament and direct rule as well as under the arrangements established by the Belfast Agreement. It functions as it does because the way government works in Northern Ireland is different from that obtaining in other parts of the UK.
168. The effects of devolution may in the long term create significant pressures for the ending of a single civil service, with the devolved administrations in Scotland and Wales wanting their own distinct civil services. We recognise that the time may come for change. However, we also recognise the advantages that flow from the retention of a single Home Civil Service. Given the pressures that may result from administrations of different political persuasions existing in the UK, the case for a single civil service has so far, in our view, strengthened rather than weakened.
169. **We believe that the advantages that flow from having a single Home Civil Service are such as to justify the retention of a single Home Civil Service and we recommend accordingly.**

CHAPTER 6: DEVOLUTION AND THE EUROPEAN UNION

170. The profound impact of the European Union (EU) on policy-making in the UK has been widely acknowledged. The devolved institutions are no exception to that. Many of the functions devolved in Scotland, Wales or Northern Ireland are heavily affected by the EU – notably agriculture and fisheries, but also the environment, economic development (where financial assistance can raise state aids issues), and, for Scotland, justice and home affairs. The Scottish Executive estimate that 80% of their business “has a strong EU dimension”.¹⁴⁷ As well as the direct effect on devolved functions and policy, the EU is important as a broader arena in which the devolved administrations may wish to act. However, the United Kingdom remains the member state of the EU, and the devolved administrations have no direct legal relationship with the EU or its institutions (with the exception of the Committee of the Regions). The UK Government also retains responsibility for foreign relations under all three devolution settlements. Consequently, the United Kingdom has a pivotal role in the relationship between the devolved administrations and the EU.

The framework of relations between the devolved administrations and the EU

171. The framework of relations between the devolved administrations and the EU is given effect formally in a number of ways. Some of these are legal: each of the devolved legislatures and administrations is under statutory obligations not to legislate or act in a manner that is contrary to EU law.¹⁴⁸ Beyond that, the arrangements for their dealings with the EU are set out in the Memorandum of Understanding.

172. Three provisions of this Memorandum are important. First, it provides that Ministers from the devolved administrations may attend EU Council of Ministers meetings, and may speak at those meetings, albeit they do so on behalf of the United Kingdom as a whole. The decision whether they may attend is one for the lead UK Minister, and the devolved administrations must adhere to the single agreed United Kingdom ‘line’ in those meetings.¹⁴⁹ Second, the devolved administrations are involved in the formulation of that line. That involves the copying of correspondence, liaison at official level, some bilateral meetings and the use of the JMC (Europe).¹⁵⁰ However, that is subject to obligations of confidentiality that appear to be even more stringent than generally apply under the Memorandum of Understanding.¹⁵¹ It also assumes “maximum co-operation on both sides”.¹⁵² Thus the devolved administrations are involved in the formulation of the United Kingdom line but on the basis that they may not disclose to anyone – including their own legislature or assembly – what disagreements they may have had with the UK Government over the formulation of that line. Third, the devolved administrations are responsible for the implementation of EU obligations affecting functions devolved to them. That may involve the administration of a part of the United Kingdom quota, where the obligation is a quantitative one. It also involves the devolved administrations undertaking to assist the UK Government in the event of proceedings before the European Court of Justice, and to pay any financial liabilities the United Kingdom may incur as a result of any failure by the devolved administrations to implement EU obligations properly.¹⁵³

173. The Memorandum of Understanding expressly permits informal links between the devolved administrations and the EU institutions, particularly the European Commission.¹⁵⁴ In practice, there is extensive liaison of this sort, and the devolved administrations appear appreciative of the assistance they receive from the Foreign and Commonwealth Office in promoting such links.¹⁵⁵

¹⁴⁷ Memorandum by the Scottish Executive, para. 19; evidence volume, p. 110.

¹⁴⁸ As regards Scotland, see Scotland Act 1998, s. 29(2), s. 54 and s. 57; as regards Wales, see Government of Wales Act 1998, s. 106; as regards Northern Ireland, see Northern Ireland Act 1998, ss. 6(2) and s. 24.

¹⁴⁹ *Memorandum of Understanding and Supplementary Agreements* Cm 5240 (The Stationery Office, London, December 2001), *Concordat on Co-ordination of European Union Policy Issues*, paras B4.12–B4.15.

¹⁵⁰ *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, paras B4.4–B4.411.

¹⁵¹ *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, paras B1.4, B2.4, B3.4 and B4.3; see also *Memorandum of Understanding*, para. 11.

¹⁵² *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, para. B4.4.

¹⁵³ *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, para. B4.25.

¹⁵⁴ *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, paras B4.26–B4.28.

¹⁵⁵ Evidence of the Rt Hon. Rhodri Morgan AM, 27 May 2002, Q. 852.

174. All three devolved administrations have their own offices in Brussels. The main functions of those offices are lobbying and the gathering of information, but staff in such offices have diplomatic status and are linked to the UK Permanent Representation to the EU (UKREP) in what a witness from the Cabinet Office called an “almost umbilical relationship”.¹⁵⁶ This grants them access to information circulated among the member states, and so puts them in a different position to (unofficial) representative offices of other member states’ sub-national governments. Other links include secondments: a total of eight staff from the devolved administrations were seconded to UKREP in April 2002, although in that capacity they were working for the UK Government and not the administration seconding them, as well as secondments from the devolved administrations directly to the European Commission.¹⁵⁷ In addition, Ministers from the devolved administrations are able to visit Commissioners or their *cabinets* to discuss concerns relating to a particular area and not the UK as a whole.¹⁵⁸
175. This is particularly significant when it is coupled with the ability of Ministers from the devolved administrations to attend EU Council meetings. We were told that this has been used on quite a number of occasions: for example, twice by the Scottish Minister for Justice and Home Affairs; and five times by the Welsh Minister for Rural Affairs.¹⁵⁹ On some occasions these devolved administration members take the lead at Council meetings, speaking for the UK as a whole. On others, devolved administration Ministers speak (Mr Jim Wallace mentioned dealing with a point of Scots law, for example) while the UK Minister remains the lead Minister. The effectiveness of this was questioned by one witness, however, who likened the appearance of Ministers before the Council to “playing musical chairs”.¹⁶⁰
176. The devolved administrations are also able to establish links with sub-national governments from other EU states, such as Catalonia, Wallonia and Flanders or the German *Länder*. The UK Government itself would have difficulty establishing such links, and we were told that the Foreign and Commonwealth Office positively encourages such links.¹⁶¹ We note that the existence of devolution therefore extends the reach of the external relations of the United Kingdom, by enabling governments from the UK to have relations with governments with which the UK Government itself could not.
177. Two other formal institutions linking the devolved administrations and the EU deserve comment. One is the Joint Ministerial Committee meeting in its European format. That has met four times in the last year, in preparation for the EU summits at Stockholm, Laeken, Barcelona and Seville. Its work appears to be rather less formal than that of other JMC meetings, in the sense that it is concerned with informing the devolved administrations about matters to be discussed at the forthcoming EU summit and seeking their views about those matters. This form of the JMC therefore appears to be less driven by a formal agenda or the need to take decisions. Its most recent meetings have therefore been concerned largely with the work of the Convention on the Future of Europe chaired by Mr Giscard d’Estaing. The JMC (Europe) is considered to be valuable by all involved.¹⁶² However, this may partly reflect the fact that the devolved administrations are conscious that EU relations are solely a matter for the UK Government, and that the work of this format of the JMC does not directly relate to devolved functions.
178. The other is the Committee of the Regions, established under the Maastricht treaty in 1993. The Welsh First Minister described this as “a great disappointment”, although the Scottish Minister with responsibility for European External Affairs was more positive about it.¹⁶³ However, none of the evidence we heard suggested it plays a dominant part in the European relations of the

¹⁵⁶ Memorandum by the Scottish Executive, para. 24, evidence volume p. 111; Memorandum by the Welsh Assembly Government, National Assembly for Wales, para. 20; evidence volume, p. 232; evidence of Peter Small CB, 10 June 2002, Q. 1177. The expression quoted was used by Sir Stephen Wall KCMG, LVO, 24 April 2002, Q. 205.

¹⁵⁷ Evidence of Sir S. Wall, 24 April 2002, Q. 208. See also evidence of the Rt Hon. Jim Wallace QC MSP, Q. 590.

¹⁵⁸ For example, the Scottish Executive visited the Agriculture Commissioner, Franz Fischler, to discuss suckler cow premium quotas; evidence of Ross Finnie MSP, 15 May 2002, Q. 412.

¹⁵⁹ Evidence of the Rt Hon. J. Wallace QC MSP, 16 May 2002, Q. 563; evidence of Carwyn Jones AM, 28 May 2002, Q. 974. See also evidence of Peter Small CB, 10 June 2002, Q. 1176. According to a Cabinet Office witness, Scottish Ministers have attended meetings of the Council of Ministers in its Agriculture, Fisheries, Youth and Education, Health, Culture, Environment and Justice and Home Affairs formats: evidence of Michael Roberts, 24 April 2002, QQ 231–32.

¹⁶⁰ Evidence of Mr Jim Walker, 15 May 2002, Q. 315.

¹⁶¹ Evidence of the Rt Hon. J. Wallace QC MSP, 16 May 2002, Q. 600.

¹⁶² Evidence of Sir S. Wall, 24 April 2002, QQ 225, 235–36; evidence of the Rt Hon. J. Wallace QC MSP, 16 May 2002, Q. 578; evidence of the Rt Hon. R. Morgan AM, 27 May 2002, Q. 853.

¹⁶³ Evidence of the Rt Hon. R. Morgan AM, 27 May 2002, Q. 854; evidence of the Rt Hon. J. Wallace, 16 May 2002, Q. 579.

devolved administrations. Rather, the devolved administrations appear to find their other contacts and networks in Brussels more useful. The Committee of the Regions' potential to play a prominent role in the European policy of the devolved administrations remains unexploited for the present.

179. Overall, the Welsh First Minister was eager to contrast the position of the devolved administrations in the United Kingdom with that of sub-national governments from other European countries, such as Spain. For the Spanish Autonomous Communities, such direct representation and ready involvement in EU matters would be "inconceivable". He even considered their position to be advantageous in comparison with the German *Länder*, which can attend Council meetings but whose broader influence on German EU policy appears to be limited.¹⁶⁴ Evidence from the Spanish Government indicates that the only opportunity for the Autonomous Communities to influence EU policy is through the Sectoral Conference on European Union Matters, and that direct formal access to EU institutions other than the Committee of the Regions does not exist.¹⁶⁵ Whatever the shortcomings of the ability of the devolved administrations to affect UK policy at EU level (and they were decried by the President of the National Farmers' Union Scotland¹⁶⁶), there is no doubt that the devolved administrations have better access to EU institutions, both formally and informally, than their counterparts elsewhere in Europe.

The transposition and implementation of EU obligations

180. We have been concerned to examine whether devolution has affected the transposition of EU obligations. Historically the United Kingdom has had a good record for implementing EU obligations within the period specified, but there have been some suggestions that this has been undermined by devolution.¹⁶⁷
181. We were pleased to note that such difficulties as there have been in this respect have now been largely resolved, partly thanks to support from the UK Government in making extra staff available to the devolved administrations to deal with the administrative work involved in transposition.¹⁶⁸ We trust that this will continue to remain the case.
182. However, we note the limited discretion available to the devolved administrations in how they implement EU legislation falling within the ambit of devolved functions. The Welsh Assembly Government helpfully distinguished between four sorts of EU legislation in this respect:
- (a) legislation allowing for little or no discretion by the Member State (and so by the devolved administrations too, if the issue falls within devolved competence);
 - (b) legislation allowing for limited discretion but which requires precisely equivalent legislation across the Member State, because of its subject matter;
 - (c) legislation allowing for wide discretion at Member State level, but which raises the issue of whether such discretion can be used in different ways by devolved administrations because they choose to, without an objective basis for such policy difference; and
 - (d) legislation which allows expressly for administration to be carried out by sub-national administrations, of which there appears to be little in practice.¹⁶⁹
183. In particular, our attention was drawn to the third category, in the context of the requirements set out in the Drinking Water Directive for the level of nitrate residues, and whether those need to be the same across the United Kingdom because of the EU law principle of equal treatment.¹⁷⁰ We appreciate that the issues involved are technical and legal in nature. However, if the point of devolution in general is to enable differences in policy to emerge, then it would be regrettable if

¹⁶⁴ Evidence of the Rt Hon. R. Morgan AM, 27 May 2002, Q. 852.

¹⁶⁵ Memorandum by the Ministry for Public Administration, on behalf of the government of the Kingdom of Spain, para. 12; evidence volume, p. 446.

¹⁶⁶ Evidence of Mr J. Walker, 15 May 2002, Q. 313.

¹⁶⁷ Memorandum by the Cabinet Office, para. 65; evidence volume, p. 21.

¹⁶⁸ Evidence of Sir S. Wall and Mr M. Roberts, 24 April 2002, QQ 211 and 229–30; evidence of the Rt Hon. Helen Liddell MP, 10 April 2002, Q. 179.

¹⁶⁹ Memorandum by the Welsh Assembly Government, National Assembly for Wales, paras 26–30; evidence volume, pp. 232–33.

¹⁷⁰ Evidence of the Rt Hon. H. Liddell MP, 10 April 2002, Q. 179; evidence of Sir S. Wall and Mr M. Roberts, 24 April 2002, Q. 229. See also evidence of Sir Muir Russell KCB, FRSE, 15 May 2002, Q. 496.

member states did not have the discretion to permit the means of implementation to vary between devolved areas within the state.

184. The answer to this problem lies not so much in the hands of the UK Government but rather – as Mr Jim Wallace suggested – in the hands of those who draft EU legislation. EU law could, as appropriate, allow for a greater latitude in its implementation.¹⁷¹ Those involved in negotiations, such as the staff of UKREP, also need to be aware of the need for such latitude.

Box 6

A Problem in Agriculture: Modulation

A similar difficulty arises in relation to modulation. Modulation is the term used for money paid to farmers not by way of subsidy but to support rural development more generally, in accordance with rural development plans. Separate rural development plans exist for England, Scotland, Wales and Northern Ireland, and each seeks to achieve rural development in different ways. However, EU law only permits a member state to apply a single rate of modulation (that is, the amount of money diverted to activities under the rural development plans). The devolved administrations cannot in fact decide to adopt their own rates of modulation, although the power to fix the rate is in law devolved.

That has clearly caused some problems for all three devolved administrations, and the implication of what we were told is that the rate of modulation was determined to accord with priorities for England and then applied across the United Kingdom. It was also clear that it was only the supply of matching funding by HM Treasury that made it possible for the devolved administrations to accept the modulation package as tabled by DEFRA. Had the UK Government used its discretion in financial matters differently, the outcome would have been very different and it is likely that a major dispute would have arisen.¹⁷²

Input into EU policy by the devolved administrations

185. We have discussed above the means by which the devolved administrations have an input into EU policy. There are behind-the-scenes consultations about what the United Kingdom line should be. The content of those negotiations, and the success (or otherwise) of the devolved administrations in having their views incorporated in that line, remain confidential. Like the conduct of many other aspects of intergovernmental relations, they rest on a high level of co-ordination at official level and a high level of goodwill at political level.¹⁷³ In some cases – as with agriculture – this is done through formal regular meetings at Ministerial level. In many other cases, it is done through less formal meetings or contact by telephone, letter or e-mail. The process is not an open one, for the devolved administrations let alone the general public, and it is one in which the UK Government retains a high level of control.
186. So far as the process itself is concerned, we find it hard to see how matters could be otherwise. The true test of whether the process is the right one will ultimately be in its outcomes. But there is a problem, as the obligations of confidentiality imposed on the devolved administrations mean they cannot tell anyone, including their own assemblies or legislatures, when the outcome of the process has been unsatisfactory.
187. We have already noted the satisfaction expressed regarding European constitutional issues and the work of the JMC (Europe). However, we also received evidence suggesting that there have sometimes been tensions in the relationship arising from detailed questions of policy. These seem to be most common in agriculture (see Box 7). The evidence we received also suggested that most such problems have so far been satisfactorily resolved within the existing framework.¹⁷⁴ However, that does not rule out the possibility of those problems occurring in the future, and one or two of the issues mentioned to us will require ongoing attention from the UK Government and specifically the Department for Environment, Food and Rural Affairs.

¹⁷¹ Evidence of the Rt Hon. J. Wallace QC MSP, 16 May 2002, QQ 584–88.

¹⁷² Evidence of Andy Lebrecht, 24 April 2002, Q. 264; evidence of Mr R. Finnie MSP, 15 May 2002, Q. 428; evidence of Mr C. Jones AM, 28 May 2002, Q. 995; evidence of Mr P. Small CB, 10 June 2002, Q. 1187.

¹⁷³ Evidence of Sir S. Wall, 24 April 2002, Q. 242.

¹⁷⁴ Evidence of Mr R. Finnie MSP, 15 May 2002, QQ 405–07; evidence of Mr C. Jones AM, 28 May 2002, QQ 973 and 977; evidence of Mr P. Small CB, 10 June 2002, Q. 1171 and QQ 1174–76.

Box 7*EU Issues Causing Problems in Agriculture*

We were told that issues have arisen in relation to the payment of agri-monetary compensation for farmers in both Scotland and Northern Ireland.¹⁷⁵ For example, issues such as CAP reform and animal health have been matters where the UK position appears to be dominated by English concerns rather than those most suiting Northern Ireland.¹⁷⁶ For Scotland problems have arisen in relation to the suckler calf premium as well as fisheries, while for Wales it has been sheepmeat.¹⁷⁷

188. We are conscious that co-operation between the parties is not just an implicit assumption in this area, but an explicit one (although the Memorandum of Understanding has nothing to say about what would happen if such co-operation were to decline).¹⁷⁸ We are conscious that the United Kingdom has one seat in the Council of Ministers and must therefore speak with one voice there. We are aware of the speed with which negotiations within and around Council of Ministers meetings can proceed, and the need for the United Kingdom's negotiating line to be able to accommodate the outcome of such negotiations very quickly. Reconciling the need for speed with the requirements of devolution is akin to squaring the circle. Nonetheless, we see no reason why devolved administrations should not be consulted to the same extent as Westminster Departments. Advances in communication technology should mean that this consultation problem is not insoluble.
189. Given that relations with the EU are not devolved and that the devolved administrations are affected significantly by EU law, the adaptation of the devolved governments to the process of EU law making has been remarkable for being less problematic than might have been expected. This is in large measure, as with so many other aspects of inter-institutional relations, attributable to goodwill between the UK Government and the devolved administrations, as well as to the work of officials. It is also attributable in part to the work done by the devolved administrations, encouraged by the Foreign and Commonwealth Office, in establishing links with Brussels. Nonetheless, as we have seen, there are problems, both immediate and prospective. The immediate problem is that of providing some flexibility for devolved areas in the transposition of EU law. That may be addressed more appropriately in the making of EU law. The longer term problem, when there is not the goodwill deriving from the same party dominating inter-institutional relations, can only be addressed in a UK context.

¹⁷⁵ Evidence of Mr P. Small, 10 June 2002, Q. 1182.

¹⁷⁶ Memorandum by Northern Ireland Executive, Annex A 'Agriculture: A Case Study', paras 1 and 7; evidence volume pp. 320–21.

¹⁷⁷ Evidence of Mr R. Finnie MSP, 15 May 2002, Q. 407; evidence of Mr C. Jones AM, 28 May 2002, Q. 973.

¹⁷⁸ *Memorandum of Understanding, Concordat on Co-ordination of European Union Policy Issues*, para. B4.4.

CHAPTER 7: CONCLUSION

190. The two most significant findings of our inquiry are the differences between the devolved settlements and the extent to which devolution has bedded in with remarkably few problems. Underlying both findings are potential difficulties.
191. Though it is common to refer to ‘devolution’, the use of a single term rather masks the disparate and discrete nature of what has taken place. Though powers have been devolved to elected bodies in different parts of the United Kingdom, there is no uniformity in terms of the powers devolved, nor in terms of how the elected bodies exercise their powers. Though the powers devolved to Scotland and Northern Ireland are legislative as well as executive, the circumstances of Northern Ireland mean that the situation is unique to the province. No legislative powers have been devolved to Wales.
192. The differences in the arrangements for the devolved bodies have given rise to complaints. It is clear from the evidence that we took in Cardiff that many would like to see the Welsh Assembly acquire legislative powers. As we have noted, an inquiry into the workings of the devolved arrangements in Wales has been established under the chairmanship of Lord Richard. However, it is not just in relation to the devolved bodies that differences are apparent. We are conscious that our inquiry has focused on the workings of devolved bodies. As such, we have largely neglected England. Though there is an elected mayor and assembly in London, there is no parliament or assembly for England. Given the absence of any such body, there has been nothing for us to study. Nonetheless, we recognise that there is an English dimension that may well become more significant over time.
193. The extent to which devolved government has settled in may, in part, be attributable to the fact that the issue has been seen as one for the different parts of the United Kingdom rather than for the United Kingdom as a whole. The demand for a parliament in Scotland has been far more marked than demand for a parliament in England and devolution has, in large measure, been seen as a matter for Scotland, for Wales, and for Northern Ireland. The move towards regional government in England, with a Bill introduced in the current session of Parliament to provide for regional referendums on the subject, may possibly proceed as a discrete development. We think it will be difficult to divorce it from a comparison with the powers and operation of the elected parliaments and assemblies outside England. Though it has not been within the remit of our current inquiry to pursue such a comparison, since we have been concerned with extant institutions, the time may well come when an inquiry into the distribution of decision-making power throughout the United Kingdom will be desirable.
194. The fact that inter-institutional relations in the UK have settled down in a relatively painless manner is, as we have seen, attributable in large measure to goodwill between the different administrations and to the professionalism of the civil service. We have stressed the extent to which issues are discussed and resolved on an informal basis. This extensive informal contact has considerably aided the process of intergovernmental relations. However, in the long term, when administrations are run by different political parties, informal contact will be difficult to sustain. In such circumstances, the value of a single civil service may be at a premium, though there may be pressures for the civil services to be patriated to their respective administrations. Given that, we think that preparations for the time when there will be administrations in place of different political persuasions are necessary. In particular, we see the need for relations to be put on a more formal, as well as a more transparent, basis. It is important not to wait. We think it prudent to anticipate and to start taking action now. We have identified the ways in which we think this outcome can and should be achieved.
195. Devolution constitutes a major change in our constitutional arrangements. The fact that the intergovernmental arrangements have operated smoothly thus far against a background of dominance by one party has perhaps masked the significance of the change and its implications. How the process evolves depends in large part on popular attitudes towards the different devolved bodies and also, in our view, on ensuring that the structures and processes in place are sufficiently robust to survive strains in the future. We believe that our recommendations could help to ensure that they are.

APPENDIX 1

Membership

The members of the Constitution Committee who conducted this inquiry were:

Lord Acton
 Lord Elton*
 Lord Fellowes
 Baroness Gould of Potternewton
 Lord Holme of Cheltenham
 Baroness Howells of St Davids
 Lord Jauncey of Tullichettle
 Lord MacGregor of Pulham Market
 Earl of Mar and Kellie
 Lord Lang of Monkton
 Lord Morgan
 Lord Norton of Louth (*Chairman*)
 Baroness Young†

* Appointed as a member of the Committee on 19th November 2002.

† Deceased. Member of the Committee until September 2002.

The Committee appointed Alan Trench as their Specialist Adviser for this inquiry.

Declarations of interest

General interests declared by Members of the Committee may be found in the Register of Lords Interests, available on the parliamentary web-site at www.parliament.uk

Members of the Committee declared the following interests in relation to this inquiry:

Lord Fellowes—Member of the Royal Household (retired from active list)

Baroness Gould of Potternewton—Member, Council, UCL Constitution Unit; Council Member, Hansard Society for Parliamentary Government; Member, Independent Commission on PR

Lord Holme of Cheltenham—Chairman, Hansard Society for Parliamentary Government

Lord Lang of Monkton—Author, *Blue Remembered Years* (Politico's Publishing, 2002)

Lord Morgan—Academic Assessor, Leverhulme research projects on Devolution at the University of Edinburgh and UCL Constitution Unit; Member, Council, UCL Constitution Unit; Member, Institute for Welsh Affairs, Cardiff; Adviser to University of Wales, Bangor, ESRC devolution project

Lord Norton of Louth (Chairman)—Member, Council, UCL Constitution Unit (since October 2002); Member, Advisory Board, ESRC Devolution and Constitutional Change programme; Member, Study of Parliament Group; Chairman, Commission to Strengthen Parliament (1999–2000)

APPENDIX 2

Contact details

You can contact the Clerk to the Committee by:

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Details of the work of the Committee, including the evidence volume for this inquiry and past reports, are available on the web at <http://www.publications.parliament.uk/pa/ld/ldconst.htm>

Details of the Committee's work can also be found in the House of Lords Committee Office Weekly Agenda. This is available via e-mail (please contact Shaun Conner at conners@parliament.uk), or in hard copy (please contact Geoff Newsome on 020 7210 6678, or at the above address).

APPENDIX 3

List of witnesses

The following witnesses gave evidence. Those marked with an * gave oral evidence.

The evidence was published on 10 July 2002 (HL Paper 147, Session 2001–02).

- * Mrs Irene Adams JP MP, Chairman, House of Commons Scottish Affairs Select Committee
- * The Lord Alderdice FRCPI, FRCPsych MLA, Speaker of the Northern Ireland Assembly
- * Mr Nicholas Baird, Head, European Union Department, Foreign and Commonwealth Office
- * Professor David Bell, Professor of Economics, University of Stirling
- * Professor Paul Bew, Professor of Irish Politics, Queen’s University, Belfast
- * Professor Vernon Bogdanor CBE, FBA, Professor of Government, University of Oxford
- * Miss Sarah Bradburn, Senior Policy Manager, National Farmers Union Scotland
Canadian High Commission
Committee for Agriculture and Rural Development, Northern Ireland Assembly
Committee for Employment and Learning, Northern Ireland Assembly
Committee for Social Development, Northern Ireland Assembly
Committee of the Centre, Northern Ireland Assembly
The Rt Hon. Robin Cook MP, Leader of the House of Commons
Council of Civil Service Unions
- * Professor John Curtice, Strathclyde University
- * Ms Linda Devlin, Head of the Machinery of Government Division, Office of the First and Deputy First Minister, Northern Ireland Executive.
- * Ms Ros Dunn, Head of the Devolved Countries and Regions Team, Treasury
- * Mr Mark Durkan MLA, Deputy First Minister, Northern Ireland Executive
- * The Lord Elis-Thomas AM, Presiding Officer, National Assembly for Wales
- * Ms Patricia Ferguson MSP, Minister for Parliamentary Business, Scottish Executive
- * Mr Ross Finnie MSP, Minister for Environment and Rural Development, Scottish Executive
- * Mr Ian Gordon, Head of Department, Scotland Office
- * Mr Robert Gordon, Chief Executive, Crown Office and Head of Legal and Parliamentary Services, Scottish Executive
- * Mr Paul Grice, Clerk of the Scottish Parliament
- * Ms Edwina Hart MBE AM, Minister for Finance, Local Government and Communities, National Assembly for Wales
- * Professor Robert Hazell, Director of the Constitution Unit and Professor of Government and the Constitution, University of Wales
- * Professor David Heald, Professor of Accountancy, University of Aberdeen
- * Mr Victor Hewitt, Head of Strategic Policy Division and Chief Economist, Department of Finance and Personnel, Northern Ireland Executive
Mr Gerard Horgan, University of Oxford
- * Mrs Alison Jackson, Head of Department, Wales Office
- * Mr Bill Jeffrey, Political Director, Northern Ireland Office
- * The Rt Hon. Dr John Reid MP, Secretary of State for Northern Ireland
- * Mr Carwyn Jones AM, Minister for Rural Affairs, National Assembly for Wales
- * Mr Martyn Jones MP, Chairman, Welsh Affairs Committee
- * Mr Andy Kerr MSP, Minister for Finance, Scottish Executive
The Law Society of Scotland
- * Mr Andy Lebrecht, Director General, Food, Farming and Fisheries Directorate, Department for Environment and Rural Affairs
- * The Rt Hon. Helen Liddell MP, Secretary of State for Scotland
- * Mr Gerry Loughran, Head of the Northern Ireland Civil Service

- * Dr John Marek AM, Deputy Presiding Officer, National Assembly for Wales
- * Mr Michael Mates MP, Chairman, Northern Ireland Affairs Committee
- * Mr Denis McCartney, Senior Legal Adviser, Department of the Office of the First and Deputy First Minister, Northern Ireland Executive.
- * Dr Andrew McCormick, Second Permanent Secretary, Department of Finance and Personnel to the Select Committee on the Constitution, Northern Ireland Executive
- * Professor David McCrone, Professor of Sociology and Co-director, Institute for Governance, University of Edinburgh
- Professor Iain McLean, Professor of Politics, University of Oxford
- * Mr Colin Miller, Head of Constitutional Policy Unit, Scottish Executive, First Minister, Northern Ireland Executive
- Ministry for Public Administrations, on behalf of the government of the Kingdom of Spain
- * Mr Arthur Moir, Clerk of the Northern Ireland Assembly
- * The Rt Hon. Rhodri Morgan AM, First Minister, National Assembly for Wales
- Mrs Elizabeth Morley
- * The Rt Hon. Paul Murphy MP, Secretary of State for Wales
- National Farmers Union of England and Wales
- Northern Ireland Public Service Alliance
- * Mr John Osmond, Director, Institute of Welsh Affairs
- * Professor Alan Page, Professor of Public Law, University of Dundee
- * Mr Mark Parkinson, Head of the Devolution Branch, Devolved Countries and Regions Team, the Treasury
- * Mr Richard Parry, Senior Lecturer in Social Policy, University of Edinburgh
- * Professor Keith Patchett, Emeritus Professor of Law, University of Wales
- Plaid Cymru/Party of Wales Group, National Assembly for Wales
- * The Rt Hon. John Prescott MP, Deputy Prime Minister and First Secretary of State
- * Ms Jenny Randerson AM, Acting Deputy First Minister, National Assembly for Wales
- * Mr Joe Reynolds, Deputy Clerk, Northern Ireland Assembly
- * Mr Michael Roberts, Head of Division, European Secretariat, Cabinet Office
- * Mr Winston Roddick QC, Counsel-General, National Assembly for Wales
- Royal Society of Edinburgh
- * Sir Muir Russell KCB FRSE, Permanent Secretary
- * Mr Jim Scudamore, Chief Veterinary Officer and Director General, Animal Health and Directorate, Department for Environment, Food and Rural Affairs
- * Mr Jon Shortridge, Permanent Secretary of the National Assembly for Wales
- * Mr Paul Silk, Clerk of the National Assembly for Wales
- * Mr Peter Small CB, Permanent Secretary, Department of Agriculture and Rural Development, Northern Ireland Executive
- * The Rt Hon. the Lord Steel of Aikwood KBE PC DL MSP, Presiding Officer of the Scottish Parliament
- * Mr Patrick Toal, Deputy Secretary and Principal Finance Officer, Department of Agriculture and Rural Development, Northern Ireland Executive
- * The Rt Hon. David Trimble MP MLA, First Minister, Northern Ireland Executive
- * Mr Peter Unwin, Director, Central Policy Group, Cabinet Office
- * Mr Jim Walker, President, National Farmers, Union Scotland
- * Sir Stephen Wall KCMG LVO, Head of the European Secretariat, Cabinet Office
- * The Rt Hon. Jim Wallace QC MSP, Deputy First Minister and Minister for Justice, Scottish Executive
- The Rt Hon. the Lord Williams of Mostyn QC, Leader of the House of Lords
- * Sir Richard Wilson GCB, Secretary of the Cabinet and Head of the Home Civil Service
- Barry K Winetrobe, Constitution Unit, University of London

APPENDIX 4

Committee visits

During the course of this inquiry, the Committee travelled to Edinburgh, Cardiff and Belfast to take oral evidence. Transcripts of the public meetings are printed in the volume of evidence (HL Paper 147, Session 2001–02): this is published by The Stationery Office; it is also available on the parliamentary web-site at www.parliament.uk

The Members of the Committee would like to thank all those who gave public evidence to the Committee, as well as those who took the time to meet the Committee in private. They would also like to thank the Speaker of the Northern Ireland Assembly, and the Presiding Officer of the National Assembly for Wales, for hosting the Committee during their visit.

EDINBURGH, 14–17 MAY 2002

Visiting Party: Lord Acton; Baroness Gould of Potternewton; Lord Holme of Cheltenham; Baroness Howells of St Davids; Lord Jauncey of Tullichettle; Lord MacGregor of Pulham Market; Earl of Mar and Kellie; Lord Morgan; Lord Norton of Louth (*Chairman*); and Mr Alan Trench (*Specialist Adviser*).

Wednesday 15 May 2002*Public Meetings — Oral Evidence*

1. Professor David McCrone, Professor of Sociology and Co-director, Institute for Governance, University of Edinburgh
2. Mr Jim Walker, President, and Miss Sarah Bradburn, Head of Policy, National Farmers Union Scotland
3. Ms Patricia Ferguson, MSP, Minister for Parliamentary Business, Scottish Executive
4. Mr Ross Finnie MSP, Minister for Environment and Rural Development, Scottish Executive
5. Sir Muir Russell KCB FRSE, Permanent Secretary; Mr Robert Gordon, Chief Executive, Crown Office and Head of Legal and Parliamentary Services; and Mr Colin Miller, Head of Constitutional Policy Unit, Scottish Executive

Private Meetings

1. Mr David McLetchie MSP, Leader of the Conservative MSPs
2. Mr John Swinney MSP, Leader of the Scottish National Party MSPs; and Miss Fiona Hyslop MSP, Shadow Minister for Parliamentary Business

Thursday 16 May 2002*Public Meetings — Oral Evidence*

1. Professor David Heald, Professor of Accountancy, University of Aberdeen; and Professor David Bell, Professor of Economics, University of Stirling
2. Mr Andy Kerr MSP, Minister for Finance; and Mr David Palmer, Scottish Budget Team Leader, Scottish Executive
3. The Rt Hon. Jim Wallace QC MSP, Deputy First Minister and Minister for Justice, Scottish Executive

Private Meetings

1. The Rt Hon. Jack McConnell MSP, First Minister, Scottish Executive
2. Professor Alice Brown, Professor of Politics, University of Edinburgh; Professor James Mitchell, Head of Government, Department of Government, University of Strathclyde; and Mr Peter Jones, Scotland Correspondent, The Economist

Friday 17 May 2002*Public Meetings — Oral Evidence*

1. Mr Richard Parry, Senior Lecturer in Social Policy, University of Edinburgh
2. Professor Alan Page, Professor of Public Law, University of Dundee
3. The Rt Hon. the Lord Steel of Aikwood KBE PC DL MSP, Presiding Officer of the Scottish Parliament; and Mr Paul Grice, Clerk of the Scottish Parliament

CARDIFF, 27–28 MAY 2002

Visiting Party: Lord Acton; Baroness Gould of Potternewton; Baroness Howells of St Davids; Lord Lang of Monkton; Earl of Mar and Kellie; Lord Morgan; Lord Norton of Louth (*Chairman*); and Mr Alan Trench (*Specialist Adviser*).

Monday 27 May 2002*Public Meetings — Oral Evidence*

1. Mr John Osmond, Director, Institute of Welsh Affairs
2. The Rt Hon. Rhodri Morgan AM, First Minister; and Mrs Jenny Randerson AM, Acting Deputy First Minister, National Assembly for Wales
3. Ms Edwina Hart MBE AM, Minister for Finance, Local Government and Communities, National Assembly for Wales
4. The Lord Elis-Thomas AM, Presiding Officer; Dr John Marek AM, Deputy Presiding Officer, National Assembly for Wales; and Mr Paul Silk, Clerk of the National Assembly for Wales

Private Meetings

1. Professor Nicholas Bourne AM, Leader of the Conservative AMs
2. Mr Ieuan Wyn Jones AM, leader of the Plaid Cymru AMs

Tuesday 28 May 2002*Public Meetings — Oral Evidence*

1. Mr Carwyn Jones AM, Minister for Rural Affairs; and Mr Huw Brodie, Director of Agriculture, National Assembly for Wales
2. Mr Jon Shortridge, Permanent Secretary; and Mr Winston Roddick QC, Counsel-General, National Assembly for Wales
3. Professor Keith Patchett, Emeritus Professor of Law, University of Wales

BELFAST, 10 JUNE 2002

Visiting Party: Lord Holme of Cheltenham; Lord Jauncey of Tullichettle; Earl of Mar and Kellie; Lord Norton of Louth (*Chairman*); and Mr Alan Trench (*Specialist Adviser*)

Monday 10 June 2002*Public Meetings — Oral Evidence*

1. Professor Paul Bew, Professor of Irish Politics, Queen's University, Belfast
2. The Rt Hon. David Trimble MP MLA, First Minister; and Mr Mark Durkan MLA, Deputy First Minister, Northern Ireland Executive
3. Dr Andrew McCormick, Second Permanent Secretary; and Mr Victor Hewitt, Head of Strategic Policy Division and Chief Economist, Department of Finance and Personnel, Northern Ireland Executive
4. Mr Peter Small CB, Permanent Secretary; and Mr Patrick Toal, Deputy Secretary and Principal Finance Officer, Department of Agriculture and Rural Development, Northern Ireland Executive
5. Mr Gerry Loughran, Head of the Northern Ireland Civil Service; Mr Denis McCartney, Senior Legal Adviser; and Ms Linda Devlin, Head of the Machinery of Government Division, Office of the First Minister and Deputy First Minister, Northern Ireland Executive
6. The Lord Alderdice FRCPI FRCPsych MLA, Speaker of the Northern Ireland Assembly; Mr Arthur Moir, Clerk; and Mr Joe Reynolds, Deputy Clerk, Northern Ireland Assembly

APPENDIX 5

Commissioned research papers

The Committee commissioned two research papers during the course of its inquiry. These papers are printed below.

1. Barry Winetrobe: *Inter-Parliamentary Relations in a Devolved UK: an Initial Overview* (p. 59)
2. John Curtice: *Devolution, the Union and Public Opinion* (p. 70)

1. Inter-Parliamentary Relations in a Devolved UK: an Initial Overview

Barry Winetrobe

Abstract

Inter-Parliamentary Relations, is, alongside intergovernmental relations, a necessary aspect of post-devolution inter-institutional relations in the UK. Though the various devolution schemes differ; some relations arise partly out of the Belfast Agreement, and future developments such as English regionalism may well have an impact, the story of IPR in the last 3-4 years has been one of solid if unspectacular success. Unlike intergovernmental relations, it is not, nor should it be (at this stage, at least), based on formal, overarching machinery coordinated at the Centre, but on the organic development of appropriate and widespread bi-lateral and multilateral networks between Members, offices and officials. It is essential that such relations be conducted by parliaments themselves, and not indirectly on their behalf by executives or political parties. Formal procedural change to devolution has been relatively slow at Westminster, but jurisdictional difficulties have been minimal, other than in Members' representational roles, and this is assisted by an acceptance by Westminster that stricter adherence to demarcation by it than by the devolved parliaments may be inevitable in the early days of devolution. The devolved parliaments have also pursued active external relations amongst themselves and beyond the UK, as well as directly with relevant UK bodies and offices, and the effectiveness of all this activity is enhanced by a general acceptance that the relationship between all the parliaments in the UK is based on equality, partnership and the mutual sharing of experience and resources, rather than on a dependency of the devolved parliaments on Westminster. Legislative business is an area which can cause difficulties between the devolved parliaments, though each has a distinct concern arising from its particular form of devolution (parity legislation in Northern Ireland; the Sewel Motion procedure in Scotland; and influencing applicable Westminster in Wales), and more formal parliamentary arrangements may be necessary to avoid any inter-parliamentary disputes in the future.

I. Introduction

1. The Committee requested a paper on inter-parliamentary relations as part of its inquiry into devolution inter-institutional relations in the UK; in particular to summarise the published work on the subject, and to address the extent, nature and utility of such relations as between the three devolved parliaments/assemblies, and between them and Westminster, including the use of Sewel Motions in the Scottish Parliament.
2. This paper examines
 - what is meant by 'inter-parliamentary relations';
 - the nature of such relations in the devolution context; and
 - the various types of formal and informal relations, with particular reference to the jurisdictional and legislative aspects.
3. It concludes with some conclusions and proposals for the future of inter-parliamentary relations (IPR). In order to keep it as concise as possible, this paper can only be an overview of this very broad subject; abbreviations are used extensively; citations and the like are kept to a minimum, and many terms or procedures (such as 'devolved matters'; 'non-devolved matters'; 'parliaments') are used in their colloquial rather than strict sense.

II. Inter-Parliamentary Relations

A. The context of Inter-Parliamentary Relations

4. The pattern of relations between ‘parliaments’ (however termed)¹⁷⁹ is an under-researched subject, often regarded as some sort of minor sub-set of Inter-Governmental Relations (IGR).¹⁸⁰ One reason for this may be the conventional assumption in the UK that, as governments generally dominate parliaments (at least their elected houses), parliamentary relations can be subsumed in the wider idea of governmental relations. In this sense, the very fact of your Committee examining IPR as part of your current inquiry may itself contribute to any revival of parliamentarism in this country. By adopting as the overarching concept, the term ‘inter-institutional relations’ rather than ‘inter-governmental relations’, the Committee’s inquiry can regard both IPR and IGR as two separate, if related, aspects, both equally worthy of examination in the governance of the UK.

B. The devolution context of Inter-Parliamentary Relations

5. In considering the relationships between the various UK parliaments, regard must be had to the distinctive nature of each, both as between the three devolved parliaments themselves, and between them and Westminster. The devolution schemes in Scotland, Wales and Northern Ireland are very different from each other (and from UK governance), in their provenance, powers and structure, and many of these differences will have an impact, positively or otherwise, on IPR activity. Obvious examples are the existence or absence of ‘parliamentary privilege’; the extent of legislative power; the relationship between the ‘parliament and its executive’,¹⁸¹ and the legal basis of the institutions themselves and their staff.¹⁸²

6. In addition the political context of constitutional governance in the UK as a whole, and in its constituent nations and regions, remains a live and often sensitive issue. The shapes of the three devolution schemes, and of their parliaments, reflect the territorial diversity of that issue. IPR is, therefore, not just a practical matter of relations:

- between the 3 devolved parliaments,
- between them collectively and Westminster, or
- between them individually and Westminster.

7. It also has to have regard to the various, often conflicting, sensibilities and sensitivities which do, or potentially, exist.¹⁸³ The level of IPR activity (especially between the devolved parliaments and Westminster) may be a factor, not just of practical necessity and convenience, but also a result of particular views of UK constitutional development. So, for example, ‘unionists’ may support close and extensive relations (especially of the formal kind, such as in legislative matters through the Sewel Convention or otherwise), whereas ‘nationalists’ may wish to keep such activity to a necessary minimum, except as an expression of equality between close neighbours, rather than of subordination or dependency.

C. The wider context of Inter-Parliamentary Relations

8. IPR does not exist solely in the devolution context.¹⁸⁴ The machinery arising from the 1998 Good Friday Agreement also covers non-UK institutions, and includes a parliamentary component through

¹⁷⁹ For convenience, this paper uses the term ‘parliament’ to denote Westminster (or, as appropriate, either or both the House of Commons (HC) and House of Lords (HL)), the Scottish Parliament (SP), the National Assembly for Wales (NAW, or, as appropriate, that part designated as the Presiding Office) and the Northern Ireland Assembly (NIA). Unless otherwise noted, this paper does not cover the bilateral relationships between the HC and HL.

¹⁸⁰ For example, the substantial devolution research programmes funded by the ESRC and Leverhulme include some IGR projects, but none appears to be solely focussed on inter-parliamentary relations.

¹⁸¹ For example, the membership of Ministers in NAW committees distinguishes them from committees in the other UK parliaments. The extent of executive control of parliamentary business, and its influence in their parliament’s IPR activity – whether through informal means such as ‘usual channels’, or more formally through business committees or ‘Leader of the House’-type posts - can vary in practice across the parliaments.

¹⁸² A useful introductory comparative overview is provided by N Burrows, *Devolution*, 2000.

¹⁸³ As in the ‘hands-off’ relationship between Westminster and Stormont during the half-century of devolved government in Northern Ireland, which was a product of the particular Irish constitutional situation.

¹⁸⁴ The scope and extent of visits to and from the parliaments - especially as between those in the UK, and between them and overseas parliaments - can be seen from the information on such activity published by the parliaments themselves. See for example the SP’s External Liaison Unit’s programme of visits (<http://www.scottish.parliament.uk/po/elu-visits.htm>), which shows forthcoming visits by the HC Clerk, and the NAW Clerk in September, and a one-day visit by the HC Modernisation

the expanded *British-Irish Inter-Parliamentary Body* (BIIPB).¹⁸⁵ The BIIPB seems to have accommodated the new devolved bodies (and the Crown Dependencies) within its framework without disrupting the original relationship between the two sovereign parliaments. The expanded BIIPB is itself a symbol of the fundamental change that devolution has produced in governance of the UK, and in the balance of governance within ‘these islands’. Through its parliamentary-style proceedings, it provides a forum for

- the discussion of matters of common concern, which may be wider than the specific focus of the Northern Ireland peace process, such as foot-and-mouth disease or BSE, or
- the sharing of experience, such as a question by an MSP to the Irish Justice Minister on the Republic’s use of drug courts, in view of the consideration of a similar policy by the Scottish Executive.¹⁸⁶

Though the future of the BIIPB may be tied to the 1998 Agreement peace process mechanisms such as the British-Irish Council, it has the potential to develop as a free-standing forum for IPR in ‘these islands’

9. As with Westminster, the three devolution parliaments are developing bilateral and multilateral relations with the wider family of parliaments around the world, such as by membership of bodies such as the *Commonwealth Parliamentary Association* (CPA),¹⁸⁷ and participation (at various levels from membership to observer status) in a number of European associations, such as the *Committee of the Regions* (CoR) and the *Congress of Local and Regional Authorities in Europe* (CLRAE).

10. Where membership of a body is not open directly to the devolved parliaments - such as the *Inter-Parliamentary Union* (IPU) or the *European Centre for Parliamentary Research and Documentation* (ECPRD) - any access to its wide and useful resources and facilities has to be through the UK Parliament, or by way of any special arrangements the body itself permits. Westminster facilitation may be regarded in some senses as an aspect of IPR in action, but the devolved parliaments may see it as symbolising a dependency relationship rather than a partnership of equal colleagues. It would be in the interests of such bodies themselves, and of the national Parliaments, if the devolved parliaments (and their sub-national counterparts elsewhere), were able to make full use of such comparative resources directly, even where they cannot be not afforded full membership. This would be more efficient, and less time-consuming for everyone, and would avoid any need for the devolved parliaments to duplicate such vital but expensive comparative resources, either by themselves or in conjunction with their overseas sub-national counterparts. Pending any such arrangements, the two Houses at Westminster should maintain a cooperative and facilitative approach to any requests from the devolved parliaments for access to the benefits of these bodies.¹⁸⁸

11. It is noteworthy that the devolved parliaments, especially the SP, are developing a twin-track external relations approach, by establishing contacts both with the parliaments of sub-national territories (such as Catalonia and Flanders) and of sovereign states of comparable size (such as Ireland and the Baltic States). The latter limb of this strategy does not appear to have caused any disquiet thus far in London,¹⁸⁹ which, if maintained, is a welcome approach by the ‘centre’ to this devolved parliamentary activity.

Committee in October (“Direct request from the HofC to visit the Scottish Parliament with particular reference to how the Parliamentary Bureau operates and how we ensure business in Chamber is topical.”).

¹⁸⁵ F Cranmer, “The British-Irish Inter-Parliamentary Body: a postscript”, (2001) *Table* 12–14.

¹⁸⁶ Patricia Ferguson MSP to John O’Donoghue TD, 22nd Plenary Session, 26.2.01: <http://www.biipb.org/biipb/summary/sum/doc/1022601/1022607.htm>

¹⁸⁷ The NIA provides much detail on its website of its CPA activity: <http://www.ni-assembly.gov.uk/commonwealth/commonwealth.htm>

¹⁸⁸ As parliaments, as defined for the purposes of this paper, the 3 devolved bodies have just as much interest as national parliaments in the aims of such bodies. See for example, the clear objective of the ECPRD “to facilitate contacts and exchanges between the officials of member parliaments to the mutual benefit of all. The ever increasing international aspects of parliamentary activities and concerns render it necessary to strengthen exchanges between European parliamentary assemblies in an organised and effective way. A sufficiently strong base of impartial information and analysis can enhance the role of parliaments in the overall policy process by enabling the legislature to act more independently by offering additional options for consideration in the policy debate. The ECPRD provides the structure for this kind of cooperation” (<http://www.ecprd.org/Public/EN/about.htm>).

¹⁸⁹ The parliaments’ external relations offices presumably maintain contact with the Foreign Office. That UK department has a Parliamentary Relations and Devolution Department, and has sought to develop close and amicable relations with the devolved parliaments and executives, not just in order to cover obvious substantive issues such as EU business.

12. The future scope and shape of IPR may also depend on the further development of UK sub-national governance in the UK, notwithstanding the apparent Governmental differentiation between devolution, English regionalism and Greater London government. The GLA has participated in some IPR activities (for example, on research and information services and on scrutiny processes), and it, and any English regional chambers, will probably look to the devolved parliaments and to Westminster for some ‘start-up’ advice and assistance, just as the new devolved parliaments looked to Westminster in the late 1990s. Whether these bodies will enter existing devolution IPR networks, or whether they form their own parallel networks, are matters beyond the specific scope of this paper.

D. The levels of Inter-Parliamentary Relations

13. Parliaments relate with each other at many different, if often over-lapping, levels, and all of these must be included in any overview of post-devolution IPR in the UK:

Parliament-Parliament: Relations at this level may, for example, be through membership of relevant organisations, such as the CPA and the BIIPB, where the parliaments may be represented by Members and/or officials. Procedural rules and practice will determine the extent to which one parliament’s formal proceedings (plenary, committee or otherwise) can enter the ‘jurisdiction’ or area of competence of the others. In most other respects, relations are not undertaken by a parliament itself, or through its plenary, but through its component parts, such as particular committees or offices. These aspects are considered below.

Committee-Committee: Relations between committees (or similar mechanisms) composed of Members can take a number of forms, from informal gatherings and sharing of experience and information, to joint activity in formal proceedings. These committees may be primarily ‘external’ (such as subject or legislative committees), or more ‘internal’ (such as ‘domestic committees’, ‘business committees’ or standards committees). In some cases, the committees may interact through their officials rather than their Members.

Member-Member: Members may, for example:

- represent their parliaments as delegates to representative bodies or meetings;
- participate as holder of a particular parliamentary office, such as presiding officer, business manager or committee chair/convener
- represent their political parties or parliamentary party groups,¹⁹⁰ even where the parliamentary aspect may be incidental,
- participate through all-party/cross-party groups, or
- participate as a Member of another parliament.¹⁹¹

Official-Official: Officials may, for example:

- accompany or represent a particular parliamentary body or office for which they work
- participate in IPR activity related to their professional function, which may have a particular parliamentary focus (procedural issues; executive relations, official reporting and so on), or, at the other end of the spectrum, which may be common to any institution, albeit from a specific parliamentary perspective (corporate services, ICT, and so on).¹⁹²

III. Jurisdictional issues

14. It may be argued that issues of the formal or practical demarcation between the areas of activity of each parliament are not IPR matters at all, or at least, only in a very specific sense. In practice, they are of practical importance in a devolved, rather than federal, UK constitutional system. Areas of

¹⁹⁰ The common interest in the latter may be in terms of the relevant office or body, such as whip or backbench subject committee.

¹⁹¹ This has become less common since the ending of most ‘dual mandates’ at the 2001 Westminster election, though membership of the House of Lords (especially of the three present devolved Speakers/Presiding Officers) is often seen as beneficial. However, dual membership can cause difficulties if such Members, (especially those holding sensitive devolved offices, such as a presiding officer or Minister) participate in what may be regarded by some as inappropriate business.

¹⁹² There appear to be many examples in the available material from or about all the parliaments in the UK of such official-official contacts, both formal and informal, some of which are noted elsewhere in this Paper.

actual or potential overlap - whether to prevent, minimise or regulate such overlapping activity – may be dealt with as a matter of:¹⁹³

- ‘law’ – such as in legislation, Standing Orders or parliamentary resolutions,
- written, but not legally-binding, agreement or arrangement – such as by protocols, concordats, or internal guidance,¹⁹⁴
- informal practice – such as by the development of conventions, or by ‘self-denying ordinances’.

15. Some influences, however, may tend to counter any prevailing spirit of ‘non-interference’. For example, Members (not just those who call themselves ‘nationalists’) in favour of greater territorial self-government may wish to exploit any opportunities to maximise the scope and range of devolved parliamentary activity, especially in areas where parliaments have no legislative competence, such as:

- non-devolved issues within their territories (such as defence-related industries, postal services; asylum, or energy);
- non-devolved UK issues (such as the constitution; the monarchy; social security, or defence and foreign affairs), and
- direct representational, external relations outwith the UK.

16. On the other hand, MPs from the devolved territories may wish to demonstrate that they still retain an important political and parliamentary role. The Scottish context is especially sensitive currently by the conjunction of the proposed reduction in the number of Scottish MPs; the Scotland Office review on the consequential reduction in the number of MSPs, and the various jurisdictional sensitivities subsumed in the overarching term ‘the West Lothian Question’ (or, latterly, ‘the English Question’).¹⁹⁵ Both Westminster and the UK Government have a similar interest in demonstrating the continuing centrality of the UK Parliament to the devolved nations. This may account, in part, for the relatively minimal formal changes to Westminster procedure and practice since 1999, including retention of the territorial select and grand committees.¹⁹⁶ In the early years of devolution at least, some MPs from the devolved areas may also find it difficult to ‘let go’ of issues they have pursued vigorously in and through Westminster prior to devolution.¹⁹⁷

On a related point, the devolved executives may not always seem to welcome activity by the parliaments which they might regard as properly matters for them. This could be especially sensitive in external and EU relations,¹⁹⁸ and other areas where there may be a question as to who ‘represents’ the devolved territory. An example of the latter is the making of representations, or the giving of evidence to, various inquiries or committees examining issues of direct relevance to the devolved parliaments, and their role in devolution. Executives (if only through its ‘Leader of the House’ office-holder) may wish to speak for parliaments as well as for themselves, especially if they believe that a common public view on the matter under investigation is necessary or desirable. Parliaments can speak for themselves through their presiding officer or their clerk/chief executive, as appropriate, or by a formal expression by the plenary, committee, corporate body or other appropriate mechanism,

¹⁹³ The House of Commons and the NIA (both of which existed prior to the establishment of Scottish and Welsh devolution) conducted initial committee inquiries into the procedural consequence of devolution for their respective bodies: Commons Procedure Committee, 4th report, HC 185, 1998-99, May 1999, and NIA Ad Hoc Committee, interim report, NNIA3, October 1998 and final report, NNIA 5, November 1998.

¹⁹⁴ For example, in the *Memorandum of Understanding* between the UK and devolved administrations (in the drafting of which no parliament had a role, although invited to endorse them once they were published), all the administrations undertake to “encourage” their respective parliaments “to bear in mind” the division of responsibilities when transacting business their business (Cm 5240, December 2001, paras 14-15).

¹⁹⁵ The November 1998 NIA Ad Hoc Committee report took the view that “this, ultimately, is a matter which only Westminster can resolve” (para 34), and the ‘English Question’ has been described as “the outstanding, and recurrent, challenge to the established Westminster order post-devolution” (R. Masterman & R. Hazell, “Devolution and Westminster”, chapter 9 of A. Trench (ed.) *The state of the nations 2001*, 2001, p. 215).

¹⁹⁶ The topics chosen for inquiry by the Scottish Affairs Committee are examined with interest by Scottish politicians and media, and the choice in October 2001 of post-devolution broadcasting in Scotland was initially interpreted by some as an investigation into why the Scottish media had allegedly turned their political focus from Westminster to Holyrood, ignoring Scottish MPs and Westminster business.

¹⁹⁷ A visible example has been Tam Dalyell’s pursuit in the House of Commons of his interest in the various domestic legal and judicial aspects of the Lockerbie disaster.

¹⁹⁸ The issue of distinct parliamentary offices, or other similar presence, in Brussels may be an example of this.

and should not rely on ‘their’ views and interested being represented on their behalf by either executive ministers or by parliamentary parties.¹⁹⁹

A. Committees

17. The remits of the committees (especially ‘subject committees’) of the devolved parliaments are generally defined or limited in terms of the responsibilities or accountabilities of their relevant executives/ministers.²⁰⁰ However, this can be interpreted broadly, as appropriate. For example, all SP committees have power, in relation to competent matters within their particular remits, to “consider the policy and administration of the Scottish Administration upon any competent matter... [and] any proposals for legislation which relate to or affect any competent matter, including proposals for primary or secondary legislation, whether before the Scottish Parliament or the United Kingdom Parliament.”²⁰¹ As Westminster retains unlimited competence in relation to the three devolved territories, any limitations will be self imposed, as was enunciated in the 1999 HC Procedure Committee report on the procedural consequences of devolution,²⁰² and the principles set out in the *HL Committee Office Guide*.²⁰³

18. The power of committees (or, as appropriate, the parliament itself) to require the attendance of witnesses or the production of documents is set out in the relevant devolution legislation, which limits this power generally to ‘devolved matters’ and persons (including ministers and officials) dealing with such matters.²⁰⁴ However, ministers, departments and Members from one devolved area have, on invitation,²⁰⁵ given evidence to other parliaments’ committees, though it may be that those from the devolved areas are more willing to attend Westminster committees (especially ‘their’ territorial Commons committee), than UK ministers are to attending devolved parliaments’ committees.²⁰⁶ The form of Welsh devolution²⁰⁷ means that such interactions may be more frequent than those between Scotland or Northern Ireland and Westminster/Whitehall, or between the 3 devolved areas.

B. Motions for debate etc.

19. While the NAW is expressly empowered by the devolution legislation to “consider, and make appropriate representations about, any matter affecting Wales”,²⁰⁸ the power of the NIA and SP to consider any matter arises impliedly out their respective devolution schemes, and so will only be restricted by any internal rules or practice on ‘admissibility’. The HC’s restrictions on admissibility of questions dealing with ‘devolved’ matters, agreed in October 1999, also applies to that House’s daily adjournment debates.

C. Other parliamentary proceedings

20. Similar limitations on ‘admissibility’ may apply to techniques such as questions,²⁰⁹ statements,²¹⁰ and petitions.²¹¹ Legislation is considered below.

¹⁹⁹ The NAW debated House of Lords reform on 22 June 1999, and apparently sent the Wakeham Royal Commission the official record of that debate as evidence. The parliaments, in various guises, give evidence to UK parliamentary committees, and to public bodies such as the (Wicks) Committee on Standards in Public Life.

²⁰⁰ For example, *Government of Wales Act 1998* (GOWA), s57.

²⁰¹ SP Rule 6.2.2(a)-(b).

²⁰² 4th report, HC 185, 1998-99, para 5 (“...the House should respect the fact of devolution and try not to interfere with matters that are the responsibilities of the devolved legislatures.”)

²⁰³ para 57 (“Westminster Committees should respect the spirit of devolution, and should not seek to hold a devolved institution to account”).

²⁰⁴ GOWA s74 and sch 5; Northern Ireland Act 1998 (NIAct) s44; Scotland Act 1998 (SAct) s23. Generally, in practice, committees will seek to secure the information they require through invitation.

²⁰⁵ For the position of the UK Government, see Devolution Guidance Note 12, *Attendance of UK ministers and officials at committees of the devolved legislatures*.

²⁰⁶ Though the Minister for Communities, Wendy Alexander, became the first Scottish Executive minister to appear before a Commons select committee, the Scottish Affairs Committee, on 22 March 2000, it was not until 5 November 2001 that a UK minister appeared before an SP Committee, when Peter Hain, the Foreign Office Minister for Europe gave evidence to the European Committee. In a different context, the International Development Secretary, Clare Short, recently became the first UK Cabinet Minister to address an SP cross-party group, when she spoke at a meeting of the International Development Group on 7 May.

²⁰⁷ Especially in terms of legislative power, and also the statutory right of the Secretary of State to participate in Assembly proceedings: GOWA s76.

²⁰⁸ GOWA s33.

²⁰⁹ NIA SO 19(1)(a); SP Rule 13.3.3(b) (as explained in para 2.2.1 of the *Detailed guidance on parliamentary questions*, Feb 2001); NAW SOs 6.26 and 6.33; HC resolution 25.10.99; HL *Companion to Standing Orders*, para 4.88(d).

D. Other parliamentary activity

21. The representational activities of Members have, perhaps inevitably in view of the political and electoral context, caused some difficulties between the various parliaments. Elected members will always wish to be seen to be conscientiously and effectively representing the interests of their locality and constituents, and this has led to claims that Members have, inadvertently or otherwise, intruded on other Members' 'patch'. In general, the principles and conventions which have evolved at Westminster, such as those to prevent such 'poaching', have been applied to the post-devolution situation. This has not always been straightforward, not only because of the expansion in the overall number of elected representatives, but also because of the electoral system adopted for the SP and the NAW producing the new category of the regional (or 'list') Member.²¹² Well-publicised difficulties in Scotland led to the establishment by the Presiding Officer of an ad hoc group of SP and HC Members to review the situation as between constituency and regional MSPs, and as between MSPs and MPs. After much inter-party negotiation, the SP finally agreed detailed guidance, based on 5 principles. However, this guidance only related to the relationship between MSPs, and the second half of the initial remit – that between MSPs and MPs - has not, to date, been pursued.²¹³ The UK Government has produced guidance on how its departments should deal with correspondence on devolved matters or from Members of devolved parliaments.²¹⁴

IV. IPR aspects of legislation and legislative process

22. The issue of legislation is substantially one of jurisdiction, in the sense discussed above. However it is of such importance to the operation of the various devolution schemes, and to post-devolution IPR, that it deserves separate consideration. Primary legislative power is a defining characteristic of the Scottish and Northern Ireland schemes, and its absence is a key determinant of the Welsh scheme. While there is a large degree of commonality in what may be regarded as the boundary between 'devolved' and 'non-devolved' matters (whether in the legislative or executive context), the actual classifications of legislative competence in the SP and NIA are very different; 'executive devolution' may be wider than legislative competence, and the boundary in the Welsh context depends largely on specific transfers of functions and the granting of subordinate legislative power in UK statutes.

23. This means that, in terms of IPR, the legislative context is different in each of the three devolved schemes:

Scotland: Other than in terms of any political or legal disputes as to the boundaries of competence, which (contrary to many pre-devolution expectations) have been minimal to date,²¹⁵ the main legislative IPR aspect which has emerged since 1999 has been the operation and extent of the 'Sewel Convention'. Briefly, this non-statutory arrangement provides that the UK Parliament will not normally legislate on matters devolved to the SP, without the SP's consent.²¹⁶ It was initially set out by a junior minister, Lord Sewel, during consideration of the Scotland Bill on 28 July 1998,²¹⁷ and reaffirmed in intergovernmental guidance, such as the relevant concordats and devolution guidance notes, and by the HC. The SP has not explicitly examined or endorsed the principles of the convention, nor has it been asked to; the then First Minister informed the Parliament of its existence and intended use in a statement on 9 June 1999.

²¹⁰ NIA SO 18(1).

²¹¹ NIA SO 22(3); SP Rule 15.5.

²¹² This produces different representational issues from the multi-member constituency electoral system used in Northern Ireland, or for the European Parliament.

²¹³ This is considered more fully in B Winetrobe. *Realising the vision: a parliament with a purpose*, Constitution Unit, UCL, 2001, pp. 27-38. The Scotland Office review on the number of MSPs explicitly raised these representational issues as between MSPs and MPs if future SP and HC constituency boundaries are not coterminous.

²¹⁴ *Guidance on handling correspondence under devolution*, Devolution Guidance Note 2, 1999.

²¹⁵ There have been no pre-Assent interventions by the Law Officers or the Secretary of State under ss33-35 of the SAct, and the only legal challenge to the validity of an SP Act which has been decided thus far was unsuccessful (*A v Scottish Ministers* 2001 SLT 1331, a challenge to the Mental Health (Public Safety and Appeals) (Scotland) Act 1999, reviewed in I. Jamieson, "Challenging the validity of an Act of the Scottish Parliament" 2002 *Scots Law Times (News)* 71 and B Winetrobe, "Scottish devolved legislation and the courts" [2002] *Public Law* 31). There is currently a challenge before the Court of Session to the Protection of Wild Mammals (Scotland) Act 2002.

²¹⁶ *Post devolution primary legislation affecting Scotland*, Devolution Guidance Note 10, 1999.

²¹⁷ HL Deb vol 592, c 791, 21.7.98.

The main issues surrounding the operation of the Convention can be summarised briefly.²¹⁸

Resort to ‘Sewel Motions’ lodged by the Executive for SP approval, has been much more frequent than was generally expected, or (it is claimed in some quarters) as originally indicated by UK and Executive ministers, amounting to a significant *de facto* transfer of legislative power from the SP to Westminster.

The terms and handling of Sewel Motions means that the SP’s ‘consent’ is often not only to Westminster legislating in a devolved area, but also to the specific policy of the proposed legislation (or even to wider policy principles within that particular devolved area) without prior resort to any of the legislative (including pre-legislative) processes integral to the SP’s general legislative business.

The broad and general nature of the arrangements as they have been operated mean that neither Parliament has any formal or clear guidance as to how to act if and when any problems arise, such as a wish by the SP to amend or even revoke its consent, thereby raising the very risks of legislative stalemate or ‘ping-pong’ that the Convention was originally designed to prevent.

Justifications by Executive ministers that use of the Sewel Convention enable the relevant legislation to benefit from Westminster’s legislative ‘immunity’ from legal challenge²¹⁹ may undermine public faith in the status and integrity of devolved legislation enacted by the Parliament.

It would appear that the time is ripe, before any significant difficulties emerge, for the two Parliaments to review the nature and operation of the Sewel Convention, and for each to examine how to establish or improve their procedures in handling such business. In particular, the SP (whether, as is often suggested, through a Procedures Committee inquiry, or otherwise) should examine how proposed legislation intended to be subject to a Sewel Motion can receive as effective and participative scrutiny within Scotland as does the generality of its legislation.

Northern Ireland: Although the Sewel Convention operates in principle,²²⁰ it has not been an issue of practical importance thus far. This may be due to factors,²²¹ such as the interrupted nature of devolution since 1998, and the distinctive classification of legislative competence (including the existence of a category of ‘reserved matters’, matters with the NIA’s legislative competence, but where the power to legislate requires the consent of the Secretary of State²²²). In addition the devolution legislation and the NIA’s rules together aim to ensure that any potentially *ultra vires* legislative proposals would not be introduced in the Assembly.²²³

The major legislative concern, from an IPR perspective, is the handling of ‘parity’ legislation, which may be regarded in some senses as ‘Sewel in reverse’, in that it often concerns legislation which the NIA may feel ‘obliged’ to enact to maintain conformity with all or part of the rest of the UK. Concerns have been expressed about the procedures applicable to such legislation, and the opportunity for any NIA pre-legislative input into any UK Bill which gives rise to parity issues.²²⁴

Wales: As the NAW does not have any primary legislative power, its relationship with Westminster is necessarily of continuous importance in determining the scope and nature of the Assembly’s powers and responsibilities. The devolution legislation did not provide the Assembly with any formal role in

²¹⁸ B Winetrobe, “Counter-devolution? The Sewel Convention on devolved legislation at Westminster”, (2001) 6 *Scottish Law and Practice Quarterly* 286-92.

²¹⁹ As in the Sewel Motion debates on the Regulation of Investigatory Powers Bill on 6 April 2000, and on the International Criminal Court Bill on 18 January 2001. See A Page & A Batey, “Scotland’s other Parliament: Westminster legislation about devolved matters in Scotland since devolution”, *Public Law*, forthcoming.

²²⁰ *Post-devolution primary legislation affecting Northern Ireland*, Devolution Guidance Note 8, 2001. The Belfast Agreement recognised that the operation of the NIA’s legislative power may be subject to the “option of the Assembly seeking to include Northern Ireland provisions in United Kingdom-wide legislation in the Westminster Parliament, especially on devolved issues where parity is normally maintained (e.g. social security, company law)” (Strand One, para 26).

²²¹ R Wilson & R Wilford, “Northern Ireland: endgame”, in A Trench (ed.), *The state of the nations 2001*, 2001, pp. 96–100.

²²² NIA Act s8(b) and sch 3.

²²³ NIA Act ss 9-10 and SO 28. In particular, no Bill can be introduced if the Speaker decides that any provision of it is not within the Assembly’s legislative competence (SO 28(3)). No such restriction applies in the SP.

²²⁴ *Review of the legislative process of the Northern Ireland Assembly*, Committee on Procedure, 1st report, 2001/2002, January 2002, para 4.11, and the Assembly debate on the report on 26 February 2002.

the UK Parliament's legislative process,²²⁵ and so any such relationship has had to be devised through more informal means.²²⁶ That this legislative relationship between the NAW and Westminster (such as through, for example, the Secretary of State, the Welsh Affairs Committee, the Welsh Grand Committee or otherwise) is not regarded, at least from the Welsh perspective, as either adequate or effective can be seen from the academic or political commentary on the 3 years of Welsh devolution,²²⁷ and from the almost continuous review within the Assembly of these arrangements.²²⁸ The new Commission on the Assembly's Powers, which is due to report by the end of 2003, will no doubt examine these matter further, in terms of devising the most effective arrangements under the current devolution scheme, or even by considering the case for amendments to the devolution legislation, such as granting primary legislative powers to the NAW.

V. IPR activity by parliamentary officials

24. In the past four years there have been many examples of staff from one body assisting each other. Westminster staff were made available to the new devolved bodies prior to their establishment (whether on secondment or otherwise) especially in areas - such as parliamentary research, clerking and official reporting - where the UK departmental implementation teams recognised that they had little appropriate in-house expertise. This clearly helped to create a 'parliamentary ethos' within these new bodies, which complemented the parliamentary experience of some elected Members and their own staff. Before and after their establishment, staff from Westminster and the three devolved bodies have assisted each other in numerous ways, such as participation in recruitment exercises; exchanges and secondments, and advising on the setting-up of various systems and procedures.²²⁹ It is common for one body to collect and consider comparative information from the other UK bodies (and often from further afield) when dealing with uniquely parliamentary matters.²³⁰ In some cases, more formal liaison machinery has been established to bring together staff in the various bodies (including Westminster, and, sometimes, the Irish Parliament and the GLA) doing similar work. Examples of this include the:

- *Common Interest Group* (or *Contact Group*) of finance and administration staff, initiated by Commons staff
- *Interparliamentary Information Services Forum* (IISF) of research, information, reporting and IT staff, which has a Steering Group composed of an official from each participating body.
- *Interparl*, an on-line discussion forum for parliamentary staff
- *Inter-Parliamentary Research Network* (IPRN), initiated by SP staff, as a forum for research services for Members
- Standards seminars, initiated and sometimes facilitated by the Committee on Standards in Public Life (Neil, now Wicks, Committee), a regular forum for clerks and research staff involved in parliamentary standards regulation
- Meetings of counterparts, such as of the heads of the professional service (Clerks and/or Chief Executives), and of secretaries/clerks to 'corporate bodies'/'domestic committees' and equivalents

²²⁵ Though the Secretary of State is required to consult with the Assembly after the beginning of each Westminster session on the Government's legislative programme, and on any other Bills subsequently introduced: GOWA, s31. According to UK guidance, "this clearly means consultation with Assembly Members and will be carried out in a formal and public way. However if there has been adequate consultation with the Assembly Cabinet, the consultation with the Assembly as a whole is less likely to raise issues which have to be addressed during the passage of legislation": *The role of the Secretary of State for Wales*, Devolution Guidance Note 4, 1999, para 8.

²²⁶ *Post-devolution primary legislation affecting Wales*, Devolution Guidance Note 9, 2001.

²²⁷ K Patchett, "The central relationship: the Assembly's engagement with Westminster and Whitehall", Chap 2 of B Jones & J Osmond, *Building a civic culture*, 2002.

²²⁸ The most recent being the *Assembly review of procedure*, 2002, chaps 4 and 6, and the plenary debate on the report on 14 February, examined in J Williams, "The legislative process" in the *Welsh Devolution Quarterly Monitoring Report January to March 2002*, pp. 32-37. The Assembly review report noted that "the work of the Modernisation Committee and of the House of Lords Constitution Committee offers a useful opportunity for parliamentary procedures and co-operation with devolved bodies to be reviewed and improved. We commend the proposals in this Chapter to them": para 4.15.

²²⁹ A good example was the review of the NIA's procurement processes by the Head of SP Procurement, as noted in the Assembly Commission minutes of its meetings on 4.10.00, 23.10.00 and 12.2.01. The HC Director of Finance Policy is an 'external member' of the NAW's Corporate Governance Committee, and the HC Director of Catering was special adviser on the NIA's contract catering arrangements.

²³⁰ Examples are Members' allowances arrangements, and guidance for operation prior to and during election periods.

25. These forums provide a useful way for the various bodies to approach common issues, such as the implementation of new statutory duties (notwithstanding any legal differences, such as Westminster's privilege).²³¹ In addition there is the sharing of resources, such as Westminster's POLIS system (in which the NIA and NAW participate), and this may well develop, especially in IT-based systems, where there are ascertainable resource advantages in sharing.

26. Legal, resources or timetabling reasons may limit the potential for developing relations between staff. Perhaps the most relevant are the civil servant status of NAW staff, and the small size of each body's staff complement. While the former may be more theoretical than real in hindering the full involvement of NAW Presiding Office staff in IPR, the latter (especially where, as at Westminster, there is a substantially 'federal' rather than unified service in practice) can restrict the scope for activities such as exchanges, secondments, attachments, advisory visits, meetings and the like, not linked to formal or informal parliamentary proceedings (such as committee visits). This may tempt each body to ally itself to other 'local' public services, for personnel management and career development purposes, such as arrangements between the SP and the Scottish Executive, or the desire of some for the development of a *de facto* 'Welsh Public Service'. Such developments may serve to dilute the unique 'parliamentary' elements of each body's service, and consideration could be given instead to building upon the existing informal staff links to create something like a unified 'Parliamentary Service', covering all parliamentary staff in the UK, including the Presiding Office staff in the NAW. Creation of such a service may require Westminster legislation (at least for the NAW situation), and the details of any such scheme, including the nature of the 'common employer' and aligning terms and conditions, would require careful consideration. However, it could provide the same benefits, in parliamentary terms, as a unified civil service does for executive administration.

VI. Conclusion, issues and prospects

27. Inter-parliamentary relations is both an inevitable and necessary factor of the post-devolution constitutional system in the UK, and it should be accepted as a positive development, distinct from the IGR activity of the devolved and UK executives, and encouraged wherever possible.

28. There are clear benefits in the various parliaments sharing experience and acting as comparators for each other, and this has been a notable component of overall IPR activity thus far. This is especially useful when one parliament adopts what may be regarded as an innovative approach to a particular issue or problem, and, in this respect, the devolved parliaments may be a source of inspiration for Westminster when reforming or modernising its procedures.²³² However care has to be taken when evaluating the appropriateness of a procedure or practice in one parliament being adopted or adapted for another. While the devolved parliaments in particular have much in common, where they can learn from each other, such sharing of experience should not dilute the positive aspects of diversity and distinctiveness between them, by seeking to impose some form of uniformity. The tendency for the devolved bodies to look initially to Westminster for precedents when faced with novel situations may well diminish over time, as their own practice grows, and as they develop IPR contacts with other parliaments.

29. Any perceived imbalance in the way Westminster and the devolved parliaments deal with jurisdictional issues - in the sense that the rules and practice in the latter may be less restrictive when dealing with non-devolved matters than is applied at Westminster in relation to devolved matters - probably can be regarded as acceptable and even inevitable especially in the early days of devolution. A mature and relaxed attitude by Westminster, as the sovereign parliament which retains a formal and practical primary position vis-à-vis the devolved parliaments, to any such perceived asymmetry would be to the broader benefit of constructive IPR.

30. The few years of devolution suggest that, with the significant exception of Wales in a legislative context, the devolved parliaments do not regard the territorial Secretaries of State or the territorial or grand committees in the Commons as necessary or regular 'facilitators' between themselves and UK institutions. Similarly, the apparent lack of enthusiasm, especially in Scotland, to the idea of a reformed Westminster Second Chamber containing either Members of the devolved parliaments, or

²³¹ CIG and IISF have been used to consider Freedom of Information issues.

²³² For example, whereas the SP has recently received its 500th public petition, the NIA only received its first petition on 15 January 2002. The (Newton) Hansard Society Commission report on the Scrutiny Role of Parliament recommended the re-establishment of a Petitions Committee in the HC, along the lines of the SP scheme (*The challenge for Parliament*, 2001, paras 7.45-48), and the Leader of the House, Robin Cook, has expressed interest in the SP public petitions system as a model for the HC: "We should be willing to examine the operation of the process in Scotland and assess whether it could work at Westminster" (speech to Hansard Society Conference, Church House, London, 12.7.01).

members selected in some way by the devolved parliaments,²³³ suggests that the HL, as reformed, albeit with some representation from the nations and regions, is not seen universally as a ‘guardian of devolution’ or as a means of binding the Union. This apparent preference for direct contact with relevant UK bodies as much as possible, and resort to the pre-devolution territorial ministers or parliamentary committees only as necessary or desirable, and on a basis of equality, does not appear to have any significant negative effects on the operation of the devolution schemes, whatever it may mean for the long-term viability of these pre-devolution offices or committees. Indeed, it suggests that it would be any unilateral attempts by these ministers or committees to enforce any such facilitating role that would be unwanted, and so potentially be detrimental to the development of the evolving constitutional arrangements.

31. The organic and pragmatic development of the various layers of IPR described in this paper appears to be generally successful and productive. This suggests that this process should be allowed to develop naturally, without any apparent need for there to be some formal, overarching network of agreements or liaison machinery, as a parliamentary parallel of the elaborate IGR machinery coordinated by the UK Cabinet Office. It may be that the devolved parliaments, and perhaps Westminster, may themselves decide, at some point, that a coordinating office or some ‘UK Parliamentary Association’ should be established. Pending such a development, the use of the existing informal links, and the more formal mechanisms such as the BIIPB, appear to satisfy present IPR needs. It should be recognised that the nature of IPR activity will not, and need not, be uniform as between the bodies involved²³⁴ or the function or policy area concerned.²³⁵ What is important is that such activity is undertaken by parliamentarians and parliamentary officials, and not by executive ministers (even though they will generally also be elected Members) or officials on the parliaments’ behalf.

32. Notwithstanding the approach of the previous paragraph against unnecessary imposition of elaborate IPR machinery, the processes of:

- removing any remaining barriers that may exist which hinder the desired forms and extent of IPR,²³⁶ and
- establishing shared information resources, both on substantive policy matters and on procedures and practices²³⁷

should be continued. There may also be the case for some written agreements between the parliaments, to deal with issues such as the handling of legislative business; joint working by committees, and representational activity by Members covering the same locality in the devolved and UK parliaments.

²³³ This was an idea examined, but rejected by the Wakeham Commission, but which seemed to have resurfaced at the time of the White Paper last year. There may remain a suspicion that some in the UK Government and Parliament favour the HL acting, in some sense, as a revising chamber for SP Bills, a proposition rather surprisingly floated at one point by the then First Minister, Donald Dewar, though recently rejected again by the Leader of the House, when answering question following his statement on Lords reform on 13 May.

²³⁴ For example, any relations between some or all of the devolved parliaments, but not Westminster, should not be regarded as some sort of ‘snub’ to the UK Parliament.

²³⁵ Some areas, such as EU issues, will clearly generate more intensive IPR activity because of their particular nature.

²³⁶ A recent example of this was the adoption of a new HC Standing Order provision enabling the sharing of papers between its committees and the committees of the devolved parliaments (SO no. 137A, 14.5.02). Access by Members (or their staff) to the precincts and facilities of the other parliaments is a matter not apparently subject to any overarching, uniform arrangements.

²³⁷ It is clear from even a brief trawl through the proceedings of the devolved assemblies that there is a demand from committees and other parliamentary offices or groupings for what may be regarded as relatively basic relevant ‘current awareness’ information on the other parliaments. Examples of this include the progress of legislation and of other relevant business; amendments to parliamentary procedures and practice, and changes in personnel on committees and other parliamentary bodies.

2. Devolution, the Union and Public Opinion

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Introduction

The recent implementation of devolution in Scotland, Wales and Northern Ireland was both a response to and an attempt to influence public opinion. It was a response to a feeling amongst many people in those three parts of the United Kingdom that rule from Westminster did not satisfy their political aspirations. By demonstrating that the United Kingdom could provide a framework that met those aspirations it was hoped that support for the Union could be maintained and perhaps even strengthened. Devolution's critics of course doubted whether devolution would strengthen the Union; they feared that it would prove to be the slippery slope towards the break-up of the Union. But they shared with devolution's advocates the assumption that the impact much of the success or failure of devolution would depend on public reaction.

This report summarises some of the key evidence on how the publics of England, Scotland, Wales and Northern Ireland have reacted to devolution. Given the remit of the Select Committee's inquiry it focuses in particular on those aspects of public opinion that are pertinent to an assessment of the impact of devolution on the relationship between the four component territories of the United Kingdom. Thus it considers how many people in Scotland, Wales and Northern Ireland say they want to remain part of the United Kingdom, and equally how much support there is in England for the continuation of the Union. It also examines whether, irrespective of their constitutional preferences, people feel that the Union has been strengthened or weakened. Meanwhile, because much of the concern that has been expressed about the possible impact of devolution focused on its potential for generating territorial conflicts and jealousies between the component parts of the UK (not least because of its asymmetric nature), we also consider whether there are any clear conflicts of public opinion on certain features of the current devolution settlement. And of course as ultimately support for the Union rests not just on cognitive preferences but on emotional loyalties, we also consider the pattern of national identity in each part of the UK.

The report is based on the evidence of opinion polls and social surveys. However, it should be appreciated that thanks to a combination of a decline in the novelty value of devolution and the difficult financial circumstances currently faced by many media organisations, relatively little commercial polling about attitudes towards devolution has been taken place over the last twelve months. Moreover little of what has been conducted is of relevance to an evaluation of inter-institutional relations across the UK. However, we do have available to us the results of four academic surveys conducted during 2001 in each of the four component parts of the United Kingdom as part of the Economic and Social Research Council's Devolution and Constitutional Change initiative. While they were conducted some months ago these surveys have three key advantages for our purposes. First, one of their aims was to assess the impact of devolution on public support for the Union; they thus asked many questions of relevance to this enquiry. Second, because the survey design of the four surveys was co-ordinated, often the same or a functionally equivalent question was asked in all four territories about a particular subject; we can thus compare public opinion systematically across the UK. And third, the surveys also included many questions that have been asked on previous similar academic surveys conducted in recent years, thereby making it possible to examine how public opinion has changed in the immediate wake of devolution. Further details about these four surveys (which are the source for the figures given here unless otherwise stated) are provided in an appendix.

However, while our focus is on inter-institutional relations across the UK, we need to begin with a brief examination of how devolution has been greeted within each of the devolved territories. There is of course no necessary logical link between devolution being regarded as a success or failure and a strengthening or a weakening of the Union. If the devolved institutions are, for example, regarded as a success then this might either mean that people become convinced that their aspirations can be met within the United Kingdom or are persuaded that their part of the UK would be capable of governing itself outside the UK. But whether the institutions are regarded as a success or a failure is important to understanding *how* devolution might have affected public support for the Union, and so this is where we will begin.

Devolution at Home: Success or Failure?

Devolution was greeted with high expectations in Scotland. But many Scots feel that those expectations have not been met, and as a result their hopes for the future are now distinctly more modest. True, few people believe that the advent of the Scottish Parliament has done much harm to their country; rather they simply question whether devolution has made much of a difference.

TABLE 1. EXPECTATIONS OF THE SCOTTISH PARLIAMENT

As a result of having a Scottish Parliament will

	1997ge	1997ref	1999	2000	2001
Scotland's economy become better	54	64	43	36	43
No difference	23	24	37	45	43
Worse	13	12	12	12	10
NHS in Scotland will become					
Better	59	65	49	na	45
No difference	25	28	41	na	42
Worse	6	6	4	na	9

1997ge. 1997 general election

1997ref. 1997 referendum

na not asked

Table 1 charts the decline in expectations. By the time that Scotland voted for devolution in September 1997, nearly two-thirds thought that both Scotland's economy would become better as a result of having a Scottish Parliament, while the same was true of the NHS in Scotland. But now well under half take either view, and they are matched by an almost equal number of people who feel that having a Scottish Parliament will not make any difference.

TABLE 2. HOW THE SCOTTISH PARLIAMENT IS NOT MEETING EXPECTATIONS

1997, 1999: As a result of having a Scottish Parliament will

2000: Is having a Scottish Parliament going to give

2001: Do you think having a Scottish parliament is giving

	1997ref	1999	2000	2001
Scotland have a stronger voice in the UK	70	70	52	52
Ordinary people more say in how Scotland is governed	79	64	44	38
Increase standard of education in Scotland	71	56	43	27

Table 2 meanwhile shows the gap that has opened up between expectations people in Scotland had of their new parliament and their perception of the reality to date. For example, at the time of the 1997 referendum around a half believed that as a result of devolution ordinary people would have more say in how Scotland is governed. Four years later and around half that number think that is happening. The gap between expectations and reality is even greater so far as perceptions of education standards are concerned, doubtless fuelled in part by the difficulties experienced by the Scottish Qualifications Authority in the 2000 round of examinations. The one area where a majority believe that the parliament is securing some success is in strengthening Scotland's voice in the UK, but even

here the proportion who believe this is happening is nearly 20 points down on the proportion who in 1997 expected to happen.

Expectations of devolution were never so high in Wales as they were in Scotland. Given the much lower level of support expressed for devolution in the 1997 Welsh referendum than in its Scottish counterpart, this should perhaps come as little surprise. Even so, a trend of declining expectations and failure of perceived reality to meet earlier expectations such as we have observed in Scotland is present in Wales too. As a result expectations of devolution are still lower now in Wales than they are in Scotland although the performance of the Assembly to date is viewed only marginally less favourably than that of the Scottish Parliament.

TABLE 3. EXPECTATIONS OF THE WELSH ASSEMBLY

As a result of having a Welsh Assembly will

	1997ref	2001
Wales's economy become better	46	33
No difference	43	54
Worse	9	8
NHS in Wales will become		
Better	41	30
No difference	41	61
Worse	16	5

Table 3 illustrates these points so far as expectations in Wales are concerned. Whereas in 1997 around two-thirds of Scots thought that devolution would have a favourable impact on the economy and the NHS, rather less than half of people in Wales took a similar view. But now that latter proportion has fallen to no more than a third, leaving it ten to fifteen points behind the comparable figures for Scotland.

TABLE 4. HOW THE WELSH ASSEMBLY IS NOT MEETING EXPECTATIONS

1997, 1999: As a result of having a National Assembly will

2001: Do you think having a National Assembly is giving

	1997ref	1999	2001
Wales have a stronger voice in the UK	50	62	49
Ordinary people more say in how Wales is governed	54	56	34
Increase standard of education	50	42	22

Table 4 meanwhile shows that while in 1997 a little over a half of people in Wales felt that devolution would increase the say that people had in how they were governed, now only a third believe that is happening. The equivalent gap in respect of education standards is even wider. As in Scotland the one area where devolution is however accorded some success is in enhancing Wales's voice in the UK. Indeed here reality is in line with expectations at the time of the September referendum though not with the enhanced expectations with which the Assembly was greeted (in contrast to Scotland) by the time of the first Assembly election in May 1999.

In Northern Ireland too, so far only a minority believe that devolution has brought much benefit. This is clearly true amongst Protestants who consistently evaluate the performance of the Assembly less favourably than do Catholics. But even amongst the latter group the heady expectations at the time of the 1998 Referendum that the Belfast Agreement would bring peace to the much troubled province now look distinctly fragile.

TABLE 5. EVALUATIONS OF THE ASSEMBLY IN NORTHERN IRELAND

		Under NI Assembly			
		In 2000	In 2001		
		All	All	Protestants	Catholics
Education	Better	16	24	15	37
	Worse	8	12	20	5
	Same	59	43	46	39
Health	Better	9	11	8	15
	Worse	28	40	50	28
	Same	52	35	30	42
Economy	Better	22	24	18	32
	Worse	8	14	17	9
	Same	54	42	45	41

2001: Do you think having a NI Assembly is giving

	Protestants	Catholics	All
NI a stronger Voice in UK	33	55	42
Ordinary people more say in How NI is governed	31	51	40

Table 5 shows how people in Northern Ireland evaluate the impact of the Northern Ireland Assembly to date. Only around a quarter believe it has improved education and the economy in the province, while only one in ten say the same of health. The latter is indeed the one instance we can find where a plurality believes that devolution has made matters worse, though this may well reflect recent dissatisfaction with the performance of the NHS across the UK as a whole rather than dissatisfaction directed specifically at the Assembly. In any event, in each case Catholics are twice as likely to say that things have got better than are Protestants. Meanwhile on the two items in the lower half in the table which are directly comparable to questions that have been asked in Scotland and Wales, we can see that amongst the Northern Ireland public in general the Assembly is rated no more favourably than are the devolved institutions elsewhere.

TABLE 6. EXPECTATIONS OF PEACE IN NORTHERN IRELAND

% very/fairly confident will be long and lasting peace in Northern Ireland

	1998	2000	May2001	Oct 2001
Protestants	35	25	19	20
Catholics	82	59	52	42
All	55	40	33	31

Source: UMS/*Belfast Telegraph*

At the time of the 1998 Referendum, no less than four in five Catholics were ‘very’ or ‘fairly’ confident that there would be long and lasting peace in Northern Ireland. But despite being taken just after the first act of IRA decommissioning was announced in October last year (though prior to the re-establishment of the Executive), the most recent poll to ask this question found that less than half of Catholics take this view. Of course, the months prior to the poll had also seen the well-publicised violence surrounding the Holy Cross school in North Belfast, and this example of continuing inter-communal tension may well have had more impact on public confidence than the high politics of decommissioning. Meanwhile, even at the time of the referendum little more than a third of Protestants were confident about the prospects for peace, and that figure has now fallen to no more than a fifth.

There is then a consistent message from all three devolved parts of the United Kingdom. For the most part, the public does not believe that devolution has made much difference to their lives, certainly not as much as they had originally anticipated, and expectations of devolution are now distinctly more modest than they once were. It would probably be wrong to suggest that this means that devolution is regarded as a failure – after all for the most part it is not thought to have done much harm – but it certainly is not considered to be a resounding success. But interestingly, however, the one criterion on which devolution comes closest to being judged a success in each of the three devolved territories is in strengthening its voice vis-à-vis the rest of the UK. So even if their success at home is judged to be no more than modest, perhaps the devolved institutions have still been able to enhance the reputation of the Union.

Cognitive Support

Our first step in looking at the implications of devolution for public support for the Union is the most obvious one, that is to examine people’s constitutional preferences. How many people in Scotland and Wales prefer independence, and how many people in Northern Ireland favour the reunification of the 32 counties? And do people in England still wish to share the United Kingdom with their neighbours?

So far as Scotland and Wales are concerned, devolution has had no discernible long-term impact on public support for independence. In Table 7 we show the proportion of people in these two countries that said they preferred independence (either inside or outside the European Union) when presented with a list of options that also included a strong and a weak version of devolution, together with not having any kind of separate parliament or assembly at all. As can be seen just over one in four people in Scotland said immediately after the 1997 UK general election that they favoured independence and that proportion is currently almost exactly the same. An apparent brief rise in support for independence at the time of the 1997 referendum proved to be ephemeral. Meanwhile in Wales just one in eight back independence, little changed from the time of the referendum.

TABLE 7. SUPPORT FOR INDEPENDENCE IN SCOTLAND AND WALES

	1997ge	1997ref	1999	2000	2001
Scotland	26	37	28	30	27
Wales	na	13	9	na	12

Devolution may not then have put the nationalist genie back in the bottle in Scotland and Wales, but on the evidence of Table 7 neither has it proved to be the slippery slope towards independence. But in Northern Ireland it appears that support for the Union has weakened in the wake of devolution, though the decline is probably a result of the peace process as whole rather than devolution per se. However, while public support for the Union may have declined, this does not necessarily mean that there has been an increase in support for Irish reunification. Rather, it appears as though the issue of sovereignty in the province is becoming less likely to be seen in terms of the two traditional starkly opposed alternatives.

The first half of Table 8 shows the long-term trends in support for Northern Ireland’s continued membership of the Union. At the beginning of the 1990s seven in ten people in the province supported the Union. Now on the latest reading barely half back the constitutional status quo. Moreover, the decline has occurred within both communities. At the beginning of the decade Protestants were close to unanimous in their support for the Union; now only four in five are in favour. Meanwhile whereas

ten years ago as many as a third of Catholics were inclined to favour their province's membership of the UK, now less than one in six do so.

Two processes appear to be at work here. So far as Catholics are concerned, the more that aspirations to something other than membership of the UK are recognised by the British state, the more they appear to be prepared to consider something other than membership of the Union. Thus the first sign that support for the Union may be declining amongst Catholics came in the first survey reading to be taken after the December 1993 Downing Street declaration. The drop has certainly been persistent since the conclusion of the Belfast Agreement, which apart from providing for a devolved assembly, also created a North-South ministerial council that gave the Irish government some role in how Northern Ireland is governed.

Meanwhile, so far as Protestants are concerned we have already seen that they are less enamoured than Catholics of the performance of the Northern Ireland Assembly. Indeed survey evidence suggests this is true of most aspects of the Belfast Agreement. As a result the confidence of the Protestant community in UK governments and UK institutions appears to have been undermined. Remarkably, for example, the 2001 Northern Ireland Life and Times Survey shows that fewer Protestants (24%) than Catholics (37%) trust the UK government to work in Northern Ireland's best long-term interests 'just about always' or 'most of the time'. As a result their support for the Union has apparently begun to erode as well.

TABLE 8. TRENDS IN CONSTITUTIONAL PREFERENCES IN NORTHERN IRELAND

% saying the long-term policy for Northern Ireland should be for it to remain part of the United Kingdom											
	1989	1990	1991	1993	1994	1995	1996	1998	1999	2000	2001
Protestant	94	93	92	91	90	88	85	84	87	84	79
Catholic	32	33	35	36	24	34	35	19	16	20	15
All	69	68	71	70	63	64	62	57	56	60	50
% saying the long-term policy for Northern Ireland should be for it to reunify with the rest of Ireland											
	1989	1990	1991	1993	1994	1995	1996	1998	1999	2000	2001
Protestant	3	5	4	5	6	6	8	4	3	4	5
Catholic	56	55	53	49	60	56	47	49	48	42	59
All	24	25	22	20	27	27	24	22	21	17	27

However, as the second part of Table 8 shows, none of this necessarily means that support for reunification with the rest of Ireland has increased. Indeed, until the most recent reading at least support for this proposition amongst Catholics also appeared to be in long-term decline as increasing numbers said they did not know which of the two options was better for Northern Ireland. However, in the most recent survey support for reunification did bounce back to close to its all-time high amongst Catholics, but even so at present at least one cannot argue that devolution has helped bring about a long-term increase in support for reunification.

Continued support for the Union within each of the devolved territories may be a necessary condition for the maintenance of the United Kingdom. But it is not a sufficient condition. After all the largest part of the United Kingdom by far is England, and we could hardly argue that devolution has helped maintain or strengthen the Union if we were to discover that support for independence for one or more parts of the United Kingdom had increased in England.

TABLE 9. WHAT ENGLAND THINKS

% favour	1997	1999	2000	2001
Scottish Independence	14	22	20	19
Welsh Independence	13	20	17	18
Irish Unification	51	55	57	56

There is a little evidence that this has happened. After the 1997 UK general election no more than one in seven backed the idea of independence for Scotland and Wales.²³⁸ Since the devolved institutions have been up and running, that figure has been closer to one in five. By far the majority of people in England still support Scotland and Wales' membership of the United Kingdom, but evidently a few more are questioning the status quo in the wake of devolution than was previously the case.

In contrast, it appears that the idea of Irish unification enjoys majority support in England, making it far more popular than it is in Northern Ireland itself. In truth, this should come as little surprise. The British Social Attitudes survey has consistently found around 55% or so of people in Great Britain in favour of unification ever since it first asked the question in 1983. The lack of English support for maintaining the Union with Northern Ireland long predates the Belfast Agreement. Equally, though as can be seen from Table 9 that agreement has done nothing to persuade people in England to change their minds.

Devolution has then so far had so far little apparent success in helping strengthen public support for the Union. Rather, that support appears to have weakened somewhat in England and in Northern Ireland. But at the same time, with the exception of the idea of Irish reunification, the idea of breaking up the United Kingdom is still only supported by a distinct minority. If the slope is a little slippery it is as yet at least far from steep.

Perceptions of the Union

There are, however perhaps more subtle ways in which support for the Union might have been eroded. Although independence may still not be desired, it may have increasingly come to be seen as a realistic possibility. And though independence may not be desired, the new constitutional settlement may not have convinced people that the way the UK is run has been changed for the better. It is to these possibilities that we now turn.

There seems to be no evidence that devolution has brought the prospect of independence closer to people in Scotland and Wales. Indeed, for people in Scotland at least independence appears to have become a more remote prospect in recent years. However, in Northern Ireland, an increasing proportion of people in both communities have come to believe that reunification with the rest of Ireland is likely.

Table 10 shows that both at the time of the 1997 referendum and the first Scottish elections in 1999, people in Scotland were more likely to say that devolution would eventually result in Scottish independence than they were to believe that devolution would help cement Scotland's place in the Union. But since the Scottish Parliament has actually been in operation, that mood has changed. Now as many think that the Scottish parliament is helping to ensure that Scotland remains part of the UK as believe that it is hastening her departure. However, the most common and growing perception, similar to what we found in Table 1 above, is that devolution is simply not making much difference either way to Scotland's position in the Union.

This picture is confirmed by Table 11 which shows that whereas at the time of the 1997 referendum nearly 60 per cent of people in Scotland thought it 'very' or 'quite' likely that Scotland would become independent within the next 20 years, now only 37 per cent take that view. In Wales, in contrast, the perception that devolution would not make much difference to the position of the principality within the UK has always been the dominant impression, with the remainder evenly balanced between those thinking that devolution made Welsh independence more likely and those who thought devolution lessened the prospects of a breakaway. That position has simply little changed since devolution has been in place.

But in Northern Ireland the picture is very different. The percentage of people who believe that a united Ireland is 'very' or 'fairly' likely within the next twenty years has approximately doubled over the last ten years from just over one in five to a little over two in five. Moreover much of the increase (especially so far as Catholics are concerned) appears to have occurred in the immediate wake of the implementation of the Belfast Agreement in 1998. But of course as we remarked earlier, it is the creation of the North-South institutions rather than devolution per se that is more likely to have made reunification appear a closer prospect.

²³⁸ The 1997 figures do not appear to be an aberration, at least so far as Scotland is concerned. Albeit somewhat differently worded, questions about Scotland's constitutional options that were asked of English respondents between 1992 and 1996 consistently recorded no more than 15% favouring Scottish independence.

TABLE 10. PERCEPTIONS OF DEVOLUTION AND INDEPENDENCE IN SCOTLAND AND WALES

Scotland	1997ref	1999	2000	2001
Leave	42	37	27	28
Stay	32	30	25	27
No Difference	19	27	43	41
Wales	1997ref	1999	2000	2001
Leave	21	18	na	21
Stay	28	31	na	25
No Difference	44	47	na	50

1997, 1999: A Scottish parliament / Welsh National Assembly) will. . .

make it more likely that (Scotland / Wales) eventually **leaves** the United Kingdom,
 make it more likely that (Scotland / Wales) **stays** in the United Kingdom,
 or, will it make no difference?

2000, 2001: From what you have seen and heard so far, do you think that having a Scottish Parliament/Welsh Assembly is going to...

make it more likely that Scotland/Wales eventually leaves the UK
 make it more likely Scotland/Wales stays in the UK
 or, will or make no difference

TABLE 11 PERCEPTIONS OF THE LIKELIHOOD OF SCOTTISH AND WELSH INDEPENDENCE IN NEXT 20 YEARS

	1997ref	1999	2001
Scotland			
Very likely	18	12	8
Quite likely	41	39	29
Quite unlikely	24	33	36
Very unlikely	15	14	24
Wales			
Very likely	6	na	5
Quite likely	23	na	19
Quite unlikely	35	na	36
Very unlikely	35	na	38

TABLE 12. PERCEPTIONS IN NORTHERN IRELAND OF THE LIKELIHOOD OF A UNITED IRELAND

% saying that a united Ireland in the next 20 years is 'very' or 'fairly' likely.

	1989	1991	1993	1994	1995	1996	1998	1999	2000	2001
Protestant	23	21	24	34	46	31	42	38	34	44
Catholic	23	23	21	24	35	24	45	44	34	44
All	23	21	22	31	41	27	42	40	34	43

The introduction of devolution appears to have had a varied impact on the perceived likelihood of a break-up of the United Kingdom. In Northern Ireland it has been followed by an increase in the number of people thinking a break-up is likely, in Scotland by a diminution while in Wales little has changed either way. But what has happened to perceptions of the way in which the United Kingdom is run, and thus its attractiveness as a political system in which to live?

We have already seen that in a number of respects the reality of devolution has largely failed to match the early expectations that many people in Scotland and Wales had of it. Unsurprisingly this is also true of perceptions of the impact of devolution on who has most influence over the way that Scotland and Wales are run. At the time of the first devolved elections in 1999, slightly more people thought that the Scottish Parliament would have most influence over what happened in Scotland in future than thought the UK government at Westminster would. But after two years of devolution no less than two-thirds say that the UK government has most influence while only 15 per cent nominate the Scottish Parliament. And while in Wales only a minority ever thought that the National Assembly would be the most influential body, that proportion has subsequently nearly halved to just one in six. Indeed, despite having been suspended twice during its short life, approaching twice as many people in Northern Ireland think that the Assembly there has pre-eminence than take the equivalent view of the Scottish Parliament or the Welsh Assembly.

TABLE 13. PERCEPTIONS OF POWER

1999: Which do you think will have most influence over the way Scotland etc. is run?

2001: Which do you think has most influence?

Scotland

	1999	2001
Scottish Parliament	41	15
UK government	39	66
Local councils	8	9
European Union	4	7

Wales

	1999	2001
Welsh Assembly	30	16
UK government	44	61
Local Councils	12	15
European Union	7	3

Northern Ireland

	1999	2001
NI Assembly	na	28
UK government	na	51
Local Councils	na	7
European Union	na	4

Moreover these perceptions of where power does lie in the devolved territories are sharply at odds with people's perceptions of where power *should* lie. No less than 74 per cent of people in Scotland, 65 per cent in Northern Ireland (including even 61 per cent of Protestants), and 54 per cent in Wales believe that their parliament/assembly ought to have most influence over the way their part of the UK is run. Little wonder then that, as shown in Table 14, for the most part people in the devolved territories feel that devolution has not made much difference to the way that Britain as a whole is governed. In short, it appears that devolution has simply failed to fulfil the political aspirations with which many people in Scotland, Wales and Northern Ireland invested it. Even amongst Northern Irish

Catholics, well under half (42%) believe that the creation of the Northern Ireland Assembly has improved the government of Britain. And if those living in the devolved territories themselves do not believe that devolution has made much difference to the way they are governed, we should not be surprised that those living in England are unaware of there having been much improvement either.

TABLE 14. HAS DEVOLUTION IMPROVED GOVERNMENT?

The way Britain as a whole is governed has beenimproved,	no difference,	made worse
England				
by creating Scottish Parliament	%	18	54	13
by creating Welsh Assembly	%	11	65	7
by creating NI Assembly	%	16	52	12
Scotland				
by creating Scottish Parliament	%	35	54	8
Wales				
by creating Welsh Assembly	%	22	59	11
Northern Ireland				
by creating NI Assembly	%	33	46	7

Devolution appears then to have done little to make the way in which the United Kingdom is governed appear more attractive in the eyes of the public. In the devolved territories it is perceived as having largely failed to take power away from London in the way it was originally anticipated and for the most part is still desired. And in so far as people in England are aware of devolution at all, they do not seem to think it has made much difference either to the way the UK is governed. Any fear that devolution would divide the United Kingdom into four separate territories that increasingly had little politically in common is evidently unfounded. What remains in doubt is whether it has shown itself sufficiently capable of accommodating the diversity of political aspirations that appears to exist.

Sources of Conflict

One of the persistent concerns expressed by the critics of devolution was that it would make political conflict between the various parts of the UK more likely and that this could eventually undermine the health of the Union. This was particularly true of the asymmetric pattern of devolution that was implemented as this appeared to give some parts of the UK rights and privileges that were denied to other parts, leaving the latter at a resentful disadvantage.

In this section we therefore look at the apparent potential for conflict over the current devolution settlement so far as public opinion. We focus in particular on the most crucial and most widely discussed territorial relationship in the devolution debate, that is the relationship between England and Scotland. How far do people in these two parts of the UK disagree about how key aspects of the current settlement? And is there any evidence that, as the allegedly disadvantaged partner in that settlement, England now wants to be granted the benefits of devolution too?

There is little evidence that the current devolution settlement is a potential source of tension between England and Scotland so far as public opinion is concerned. Despite the growth of discussion about the future of the 'Barnett formula' in the wake of devolution, people in England still do not as

yet at least believe that Scotland is over funded. Meanwhile, people in Scotland appear to accept the logic of the 'West Lothian question' and accept that Scots MPs should not now be voting on English legislation in the UK parliament. Above all, people in England appear to support the principle of devolution for Scotland and Wales.

Attitudes in both England and Scotland in 2001 towards a number of the key aspects of the relationship between them are shown in Table 14. A majority of people in England (57%) evidently agree that now that Scotland has her own parliament, Scots MPs should no longer be voting on English legislation. This however is not a potential source of conflict between the two publics because a little over half (51%) of people in Scotland take the same view.

TABLE 15 PERCEPTIONS OF ENGLISH/SCOTTISH RELATIONS

	England	Scotland
Scottish MPs should no longer be allowed to vote on English legislation	%	%
Strongly agree	19	15
Agree	38	36
Neither agree nor disagree	18	21
Disagree	12	16
Disagree strongly	2	8
Compared with other parts of the UK, Scotland's share of government spending is...	%	%
Much more than fair	9	2
Little more than fair	15	8
Pretty much fair	44	36
Little less than fair	8	32
Much less than fair	1	15
Whose economy benefits more from Scotland being part of the UK?	%	%
England's	7	38
Scotland's	42	18
About equal	38	39

Now that Scotland has its own parliament, it should pay for its services out of taxes collected in Scotland.

	England	Scotland
Agree strongly	20	7
Agree	53	45
Neither	12	18
Disagree	11	25
Disagree strongly	1	3

Opinion in the two countries does diverge somewhat when it comes to the financial relationship between them, but still not to a degree likely to cause conflict. Nearly half of people living in Scotland think that their country gets less than its fair share of public spending despite having a higher spending per head of population than in England. Less than one in ten people in England take the same view. But at the same time only one in four people in England accept the argument that Scotland has more than its fair share. Indeed, despite the increased attention given to this subject in political debate recently, what is most notable about this subject is the low salience that it evidently still has south of the border where nearly one in four people say they do not know whether Scotland's share is fair or not.

People in England do however appear to believe that overall Scotland does relatively well economically out of the Union, a perception that is less commonly shared by those living north of the border. Over two in five people in England think that Scotland's economy benefits most from the Union whereas less than in five people in Scotland take that view. But even so, as Table 16 below shows, the belief that Scotland is disadvantaged by the Union is rather less widespread north of the border now than it was before devolution. So, if anything, the advent of devolution appears to have helped quell this potential source of resentment about the workings of the Union.

So while on the one hand few people in England do not think that Scotland gets more than its fair share of public spending, on the other hand many do believe that Scotland benefits from the Union. It should thus perhaps be no surprise that nearly three out of four people in England believe that public spending in Scotland could be funded out of the revenues raised in Scotland. But this does not prove to be a potential source of conflict either, for just over half of people in Scotland take the same view.

TABLE 16 TRENDS IN ECONOMIC PERCEPTIONS IN SCOTLAND

Whose economy benefits more from Scotland being part of the UK?

	1992	1997 ^{ge}	1997 ^{ref}	1999	2000	2001
England's	49	50	48	36	43	38
Scotland's	14	11	14	22	16	18
About equal	32	31	32	36	36	39

So although people in England question certain aspects of the current devolution arrangements, most notably in respect of the voting rights of MPs and how public spending in Scotland is funded, these are aspects that many people in Scotland would query too. Above all, there is no evidence that people in England would wish to deny Scotland the devolution that it now enjoys. Faced with a range of constitutional options, no less than 53 per cent of people in England now agree that Scotland should have its own parliament that has some taxation powers while just 11 per cent say that there should not be any kind of separate parliament in Scotland at all. Indeed this latter figure has fallen from 23 per cent at the time of the 1997 UK general election, while the former has risen from 38 per cent, indicating growing English acceptance of the existence of the Scottish Parliament. Equally only 14 per cent of people in England would wish to deny Wales at least some form of Assembly, down from 25 per cent four years ago.

TABLE 17 PERCEPTIONS OF RELATIVE ADVANTAGE IN ENGLAND

Thinking of the strength of voice of your region has in Parliament, and the amount of Government funding it receives, do you consider that it is better off, worse off, or about the same as...

	Scotland	Wales	London
Better	29	39	20
About same	28	28	16
Worse	25	13	53

Source: ORB/BBC/Mar 2002. Based on respondents living in England outside London

Indeed one clue as to why devolution to Scotland and Wales is not a significant source of resentment in England comes from an Opinion Research Business poll conducted on behalf of the BBC earlier this year. This asked people living in provincial England to compare the financial and political clout of their region with that of each of Scotland, Wales and London. And, as Table 17 shows, for every person who thinks that their region is worse off than Scotland there is at least another one who thinks they are better off. Meanwhile when asked to compare their region with Wales, no less than three times as many people think their region is better off than think it is worse off. In contrast over half of people in provincial England think their region is worse off than London. Evidently resentment of the nation's capital is still a more widespread feeling than is concern about the privileges granted to Scotland and Wales.

TABLE 18 ATTITUDES IN ENGLAND TOWARDS CONSTITUTIONAL REFORM FOR ENGLAND

	1999	2000	2001
England	%	%	%
England should be governed as it is now, with laws made by the UK parliament	62	54	59
Each region of England to have its own assembly that runs services like health	15	18	21
England as whole to have its own new parliament with law- making powers	18	19	13

Indeed while people in England are happy for Scotland and Wales to be granted a measure of devolution, there is evidently still little demand for England itself to be granted some form of devolution. In Table 18 we can see how people in England have reacted over the last three years when asked to choose between the constitutional status quo, regional assemblies on the Welsh model, and an English Parliament similar to that enjoyed by Scotland. On each occasion a clear majority of people in England have backed the constitutional status quo. At most what appears to have happened since 1999 is that the relative popularity of regional assemblies and an English Parliament appears to have moved in favour of the former.

The possibility that there might be a 'me too' reaction in England in respect of devolution was further tested by the 2001 British Social Attitudes survey when it asked people whether they agreed or disagreed with the proposition, 'Now that Scotland has its own Parliament and Wales its own Assembly, every English region should have its own elected assembly too.' Only 29 per cent indicated that they agreed while 32 per cent disagreed. No less than 39 per cent either said they neither agreed nor disagreed or that they could not say whether they agreed or disagreed. Evidently devolution has so far produced more of an English yawn than a backlash.

True, the Opinion Research Business/BBC poll undertaken earlier this year did apparently identify rather greater support for the idea of English regional devolution. No less than 63 per cent of its respondents said that they were in favour of an elected assembly for their region. On closer examination, however, the results of this poll can be questioned. Respondents were not offered the opportunity to say that they were neither in favour nor against a regional assembly. Meanwhile, the 63 per cent who said they were in favour comprised just 19 per cent who said they were 'strongly' in favour and no less than 44 per cent who were only 'somewhat' in favour. The latter answer is of course precisely that one would expect the relatively large proportion of people in England who appear to be indifferent about devolution to give in the absence of a clear opportunity to express their indifference.

The asymmetric nature of the devolution settlement does not then appear to be a potential source of conflict so far as public opinion is concerned. Either the settlement reflects differences between the aspirations of people in England and those in Scotland, or the two sets of public opinion largely agree on how the settlement should be changed in order to remove an existing difficulty. Here at least there seems little reason to believe that devolution has given rise to any additional strain on the Union.

National Identity

Public support for the maintenance of a state rests not just on cognitive preferences but also on emotional loyalties. In particular most modern states rely on the existence of a common sense of national identity amongst its citizens as a means of maintaining public support and loyalties. The United Kingdom, however, is relatively unusual in being a multi-national state. This does not mean that there is not any common sense of identity across the UK, but it does mean that that identity, viz. 'Britishness', co-exists with and perhaps even competes with alternative national identities associated with the individual components of the UK. One obvious potential danger for the Union is that adherence to Britishness may be eroded by the creation of political institutions that appear to acknowledge the legitimacy of those alternative national identities.

It appears that adherence to Britishness does appear to have weakened somewhat in both England and Scotland in the wake of devolution. It is not however evident that the same can be said of either Wales or Northern Ireland. Moreover, a majority of people in Great Britain at least still acknowledge at least some sense of Britishness, even if it is not their primary loyalty. Only amongst Northern Irish Catholics is adherence to Britishness notable by its almost complete absence.

Table 19 shows the responses that people in each of England, Scotland and Wales have given in recent years when they have been asked to choose a single national identity. (The choice offered included a range of other identities such as 'European', 'Irish' etc., but only the percentages choosing British and the 'local' national identity are shown here.) Faced with such a stark choice, the proportion of people in England and Scotland who say they are British has been lower in all of the readings taken since the 1997 referendums than it had been in any survey conducted before that time. Thus, for example, in England the proportion saying they are British fell from 63% to 44% between 1992 and 2001, while in Scotland it fell from 25% to 16%.

TABLE 19 FORCED CHOICE NATIONAL IDENTITY IN ENGLAND, SCOTLAND AND WALES

England							
	1992	1997	1999	2000	2001		
	%	%	%	%	%		
English	31	34	44	41	43		
British	63	59	44	47	44		
Scotland							
	1979	1992	1997ge	1997ref	1999	2000	2001
Scottish	57	72	72	83	77	80	77
British	39	25	20	13	17	13	16
Wales							
	1979			1997ref	1999	2000	2001
Welsh	59			63	57		57
British	34			26	31		31

The more limited time series available for Wales however does not suggest that there has been an equivalent change there. The proportion saying they are British is in fact little different now from what it was shortly after the first devolution referendum in 1979. Meanwhile as Table 20 shows, although there have been some short-term changes in the proportion saying they are British or Irish, the position in 2001 is almost exactly the same as it was twelve years earlier – a stark divide in which seven out of ten Protestants describe themselves as British, but less than one in ten Catholics do so.

TABLE 20 TRENDS IN NATIONAL IDENTITY IN NORTHERN IRELAND

% of respondents describing themselves as 'Irish'

	1989	1991	1993	1994	1995	1996	1998	1999	2000	2001
	%	%	%	%	%	%	%	%	%	%
Protestant	3	2	1	3	5	7	3	2	3	2
Catholic	60	61	61	62	63	57	65	68	59	62
All	25	24	22	25	28	28	27	29	22	27

% of respondents describing themselves as 'British'

	1989	1991	1993	1994	1995	1996	1998	1999	2000	2001
	%	%	%	%	%	%	%	%	%	%
Protestant	68	65	69	70	67	59	67	72	74	71
Catholic	10	10	12	9	11	10	8	9	9	8
All	44	43	48	46	43	39	41	45	49	42

So there is some suggestion that in parts of the UK at least the relative importance of Britishness compared with that of the 'local' national identity may have declined somewhat. So it might be suggested that devolution may have weakened the Union a little in this respect. Even so, we should bear in mind the evidence from Table 19 that adherence to Britishness also eroded rapidly in Scotland between 1979 and 1992, during which time the country was denied devolution. And we should certainly bear in mind that in Great Britain at least (though not in Northern Ireland), people may well feel both 'British'; and 'English', 'British and Scottish' etc. Thus more people feel at least some sense of Britishness than implied in Table 19. Overall, no less than 67% of England and 60% in Wales say that British is at least one of the identities that describes themselves, while even in Scotland the figure is as high as 50%. Moreover these figures for Britishness have not dropped as much since before devolution as have those in Table 19. Thus the proportion of people claiming some sense of Britishness is just six points lower now in England than it was after the 1997 UK general election, while in Scotland it is just two points lower.

Devolution has certainly failed so far to produce any strengthening of adherence to Britishness. Rather in England and Scotland at least it may have helped to erode it a little (further). But as yet at least, there still seems to be sufficient adherence to Britishness in most parts of the UK that the Union could still be maintained.

Conclusion

There appear to be a few respects in which the foundations of public support for the maintenance of the United Kingdom in its current form appear to have been weakened in the wake of the implementation of devolution in Scotland, Wales and Northern Ireland. There has been a marked decline within the province in support for the Northern Ireland's membership of the UK. Moreover, although there has not been a concomitant rise in support for reunification with the rest of Ireland, the prospect of a united Ireland now appears to be more likely in the minds of those living in the province. Meanwhile, people in England seem a little more willing to contemplate the prospect of Scottish and Welsh independence. And there seems to have been a little weakening of the bonds of Britishness amongst those living in England and Scotland.

But what perhaps is more remarkable is the damage that has not been done. Fears that a system of asymmetric devolution would generate jealousy and conflict between the various publics of the United Kingdom appear so far at least to have been highly exaggerated. England appears to be happy for Scotland and Wales to have devolution while eschewing it for itself. Scots seem to accept that both the voting rights of MPs and the way that the Scottish Parliament is funded might need to be changed in future. And so far the only part of the UK for which there is real reason to have much doubt about public support for its status within the UK is Northern Ireland, and that is something that long predates the recent devolution settlement.

Equally, however, it is also far from evident that devolution has done much to strengthen the Union. The failure of devolution to meet the expectations that many held out for it in Scotland and Wales has been accompanied by a perception that power in the devolved territories still lies at Westminster, contrary to the wishes of a majority of those that live there. Devolution has simply not made much of a difference for many members of the public. It is thus perhaps a mistake to expect it to have had much impact one way or the other on relations between the component territories of the UK.

Appendix: ESRC Devolution and Constitutional Change Surveys

England

A random sample of 2,847 adults aged 18 plus and resident in England was interviewed face to face in the summer and autumn of 2001 as part of the British Social Attitudes survey conducted by the National Centre for Social Research. The directors of the research project are Anthony Heath (Oxford University and the ESRC Centre for Research into Elections and Social Trends (CREST)), John Curtice (Strathclyde University, National Centre and CREST) and Lindsay Jarvis (National Centre for Social Research and CREST). Readings for earlier years come from previous surveys in the British Social Attitudes and British Election Study series that were also conducted by the National Centre and CREST.

Scotland

A random sample of 1,605 adults aged 18 plus and resident in Scotland was interviewed face to face in the summer and autumn of 2001 as part of the Scottish Social Attitudes survey conducted by the National Centre for Social Research Scotland. The directors of the research project are Alison Park (National Centre/CREST), Kerstin Hinds (National Centre), David McCrone (Edinburgh Univ.), Lindsay Paterson (Edinburgh Univ.) and John Curtice (Strathclyde Univ., National Centre and CREST). Readings for earlier years come from previous surveys in the Scottish Social Attitudes and Scottish Election Study series that were also conducted by the National Centre and CREST in collaboration with Edinburgh and Strathclyde Universities.

Wales

A random sample of 1,085 adults aged 18 plus and resident in Wales was interviewed face to face in the summer of 2001. The survey was conducted by the National Centre for Social Research. The directors of the research project are Richard Wyn Jones (Univ. of Aberystwyth) and Katarina Thomson (National Centre and CRESY). Readings for earlier years are taken from the 1999 Welsh Assembly Election Study and the 1997 Welsh Referendum Study also conducted by the National Centre and CREST in collaboration with Aberystwyth University.

Northern Ireland

A random sample of 1,800 adults aged 18 plus and resident in Northern Ireland was interviewed face to face between mid-October and the end of December 2001 as part of the Northern Ireland Life and Times Survey. Fieldwork was undertaken by Research and Evaluation Services. The directors of the research project are Roger MacGinty (Univ. of York), Lizanne Dowds (Queen's Univ., Belfast), Geoffrey Evans (Univ. of Oxford and CREST) and Gillian Robinson (Univ. of Ulster). Readings for earlier years come from previous surveys in the Northern Ireland Life and Times and Northern Ireland Social Attitudes series.