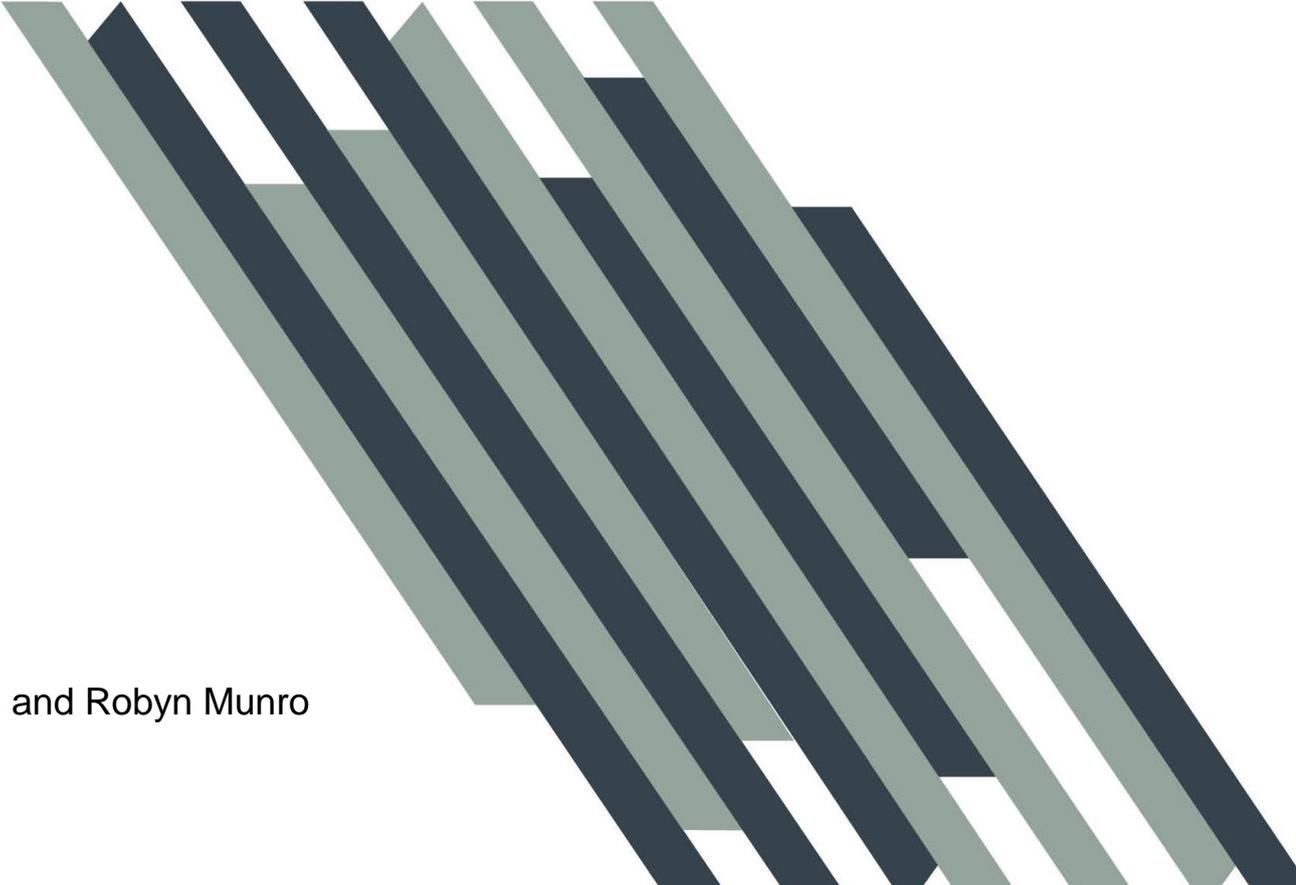


Governing in an Ever Looser Union

How the four governments of the UK co-operate, negotiate and compete

Akash Paun and Robyn Munro



Foreword

Relations between the constituent parts of the United Kingdom have for too long been taken for granted. Paradoxically, this has been most true at the centre where London politicians and civil servants have taken little interest in what is happening in Edinburgh, Cardiff and Belfast unless forced to do so, as during the run-up to the September 2014 referendum in Scotland. But that generally benign neglect is no longer sustainable in the light of increasingly complex and divergent constitutional arrangements within the UK. Draft clauses have already been published proposing a further substantial transfer of powers to the Scottish Government and Parliament. All national parties are committed to introducing legislation immediately after the election, while there is a continuing debate about big changes to the devolution arrangements for Wales, which will also be the subject of an early bill.

This authoritative report, by Akash Paun and Robyn Munro, concentrates on the key relationships within the UK, between London and the devolved capitals. It is based on an extensive series of interviews and a number of workshops held over the past 10 months with key participants in the main capitals.

The authors are clear that the current system is increasingly strained and fragmented. They look at how relationships can be improved within the developing new arrangements, and propose a number of practical steps. But, above all, they argue that there needs to be a more joined-up and coherent approach to managing the constitution as a whole. This would involve a serious commitment of time, resources and political and civil service will at the centre.

A handwritten signature in black ink that reads "PJR Riddell" followed by a horizontal line and two dots.

Peter Riddell
Director, Institute for Government

About the authors

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All errors are the responsibility of the authors.

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Summary

How, and how well, do the UK and the devolved governments in Edinburgh, Cardiff and Belfast work with each other, deal with shared problems and resolve disputes?

In this report we discuss the various ways in which 'intergovernmental relations' are facilitated, highlighting a number of strengths and weaknesses of current arrangements as well as setting out recommendations for reform that are designed to help improve the governance of the UK as a whole.

The changing devolution context

Devolution was deceptively easy to introduce and manage in its first two parliamentary terms after 1999. This led to neglect of the systems that facilitate relations between the different parts of the country and may have left Westminster and Whitehall ill-prepared for when greater challenges emerged.

The original devolution settlements left most Whitehall departments largely untouched, as almost all the powers transferred to the new institutions were already administered separately in Scotland, Wales and Northern Ireland. Other key systems and structures for managing relations between the UK's territories were also retained – notably including the block and grant (Barnett) funding system, and the united Home Civil Service.

Labour dominance across the country from 1999-2007 meant that divergence between the different capitals in terms of policy, culture and style of governance was limited and manageable.

The presence of the Liberal Democrats in coalition in Scotland, and Welsh Labour's 'clear red water' strategy of differentiation from New Labour, did lead to some emblematic policy differences emerging. But serious disputes were rare, and could be facilitated through Labour party channels. The strength of the economy and rising public spending further helped to minimise serious tensions.

This was also a period of 'bedding in' of the devolution arrangements. In Scotland in particular there was little discussion about further constitutional change. Even in Wales it was mainly about streamlining and improving the existing settlement, while political dysfunction led to a suspension of home rule in Northern Ireland for most of the first eight years of devolution.

This has all changed, in ways that complicate and challenge existing approaches for managing intergovernmental relations, which have already suffered from some important shortcomings.

Since 2010, all four of the governments have a different political composition, and the different political systems appear to be diverging in deeper ways too. For instance as Westminster prioritises market mechanisms and competition in public services, in Scotland and Wales there is greater emphasis on collaboration and joining up.

Financial pressures have risen, leading to more frequent disputes over money, for example, about the interpretation of the Barnett Formula, or effects of the Westminster-led welfare reform programme.

The constitution is also in a state of flux.

In the aftermath of the Scottish referendum, the Smith Commission has set us on the road to a significantly revised settlement for Scotland. In January 2015, following the report of the Commission, the UK Government published draft legislation that represents the biggest change to the devolution settlement since 1999, and which will have major implications for much of Whitehall.¹ Future powers are on their way to Cardiff too – though much detail remains to be agreed. And having teetered on the edge of collapse in late 2014, the Northern Ireland power-sharing arrangements may now be subject to revision following cross-party agreement.

Although this is not a major focus of this report, the ‘English Question’ is on the agenda too. Are special processes needed at Westminster and Whitehall to deal with English policy issues? And will devolution within England lead to a fundamentally different kind of relationship between Whitehall and England’s cities and regions?

Significant differences between the devolution arrangements in each part of the country remain, and in some cases this asymmetry is accelerating. This creates a need for bilateral interaction between Whitehall (and individual departments) and the different territories, around the specific issues faced in each case.

However, it is also imperative that there is a more joined-up and coherent approach to managing the devolution arrangements as a whole. Westminster’s default approach of dealing with territorial matters is to respond to particular pressures that arise in one part of the country in a tactical and short-termist fashion, without thinking sufficiently about overlaps and spillovers between the different settlements. This can create instability and dysfunction.

Our conclusions are therefore driven by analysis both of the effectiveness of existing systems for managing devolution, and of how those systems will need to evolve to meet the challenges of the changing constitutional settlement.

Modes of interaction between the UK and devolved governments

The UK and devolved governments must interact in many ways: at different levels of government; for different purposes; through bilateral and multilateral forums; and in more or less formal ways. We identified 10 different ‘modes’ of intergovernmental relations, and discussed areas of strength and weakness in managing these different forms of interaction between Whitehall and the devolved administrations (DAs).

¹ HM Government, *Scotland in the United Kingdom: An enduring settlement*, 2015, retrieved 11 February 2015

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf>

Political summitry

The heads of the governments come together annually in the Joint Ministerial Committee (JMC) Plenary. This plays an important symbolic role, and it is also helpful that disagreements can be referred there if not resolved elsewhere. However, it is not clear that these ‘summits’ are used effectively in practice.

Dealing with differences and disputes

JMC machinery is the ‘highest court of appeal’ for resolving disputes, but most issues are of course dealt with earlier at official level or through bilateral ministerial links. So good relationships and networks are important, as is good understanding of how other governments work and think.

Fiscal and financial governance

Many recent tensions have been about money and as fiscal devolution continues this threatens to become a more complex and dispute-prone area. There should be greater transparency about how this works, for instance in terms of how calculations are reached on the size of the block grant.

Working with the European Union and multi-level governance

There are more than two levels of governance to consider. The UK and devolved administrations must also come together to agree a UK line in EU negotiations, and to co-ordinate the implementation of EU decisions. The tension here is that the UK is the member state and retains the prerogative to set negotiation lines, even when (as in fisheries) the devolved governments have a very strong interest.

Managing cross-border policy and public service issues

This covers issues and services that span geographic borders between one or more territories, and where co-operation of various kinds can therefore be required, including via cross-border regulatory bodies and sector-specific agreements on funding for cross-border use of services.

‘Jagged edge’ constitutional issues

There are many policy areas that cut across the constitutional boundaries between the territories, where devolved and reserved competences overlap and the activity of one administration affects the responsibilities of another. Close co-operation is necessary, but in a context of political difference, policy may get pulled in different directions as objectives of the different governments may not be aligned. Such jagged edges seem likely to increase in the Scottish case as a result of the Smith Commission agreement (for instance around management of the welfare and tax systems).

Organisational and professional networks within the Civil Service

Separate from any specific intergovernmental issues that may need resolving, officials from the UK, Scottish and Welsh Governments interact through their common membership of the Home Civil Service – for instance through joint training activities, shared HR processes and civil service professional groups.

Lesson learning and best practice sharing

One of the rationales for devolution was to facilitate policy innovation and lessons about what works. Learning from each other should be a benefit of devolution, but this happens mainly in *ad hoc* and informal ways at present, as well as through some formal structures such as the British Irish Council. Learning may be limited by low interest among the political and media class in London about developments at the devolved level, and perhaps vice versa.

Negotiating constitutional change

When change to a devolution settlement is on the agenda, the governments must work together to agree on the precise legislative package. This seems likely to remain a major form of intergovernmental relations (IGR) for the next few years in all parts of the UK. Constitutional IGR are high politics, so requires significant ministerial involvement, but also requires consideration of implementation challenges and of how change to one settlement will affect other parts of the UK.

Joint implementation of change

Once constitutional changes have been agreed, a different set of interactions is required to manage the implementation of those changes. This may require new machinery and involve several government departments, as well as the devolved administrations.

Conclusions and recommendations

Even in the context of severe political disagreements – such as during the Scottish independence referendum campaign – civil servants from the different governments are able to communicate and co-operate effectively and in good faith. Officials in all governments value and cultivate their networks across the country, and engage with counterparts in other administrations as colleagues not adversaries.

But we also found evidence of weaknesses and strains in the current arrangements. There have been disputes over legislative competence, financial matters, policy initiatives in important areas such as welfare and energy, and frustration about poor consultation. With Scotland voting to maintain the Union, albeit with the promise of significant additional devolution, the challenge is to ensure that the UK's evolving constitutional settlement works in the interests of all parts of the country.

To achieve this, we conclude that changes are required in six main areas, relating both to the machinery underpinning intergovernmental relations and to the way Westminster and Whitehall deal with devolution.

1. A more joined up and strategic approach to devolution at the centre

- Benign neglect of the territorial constitution by Westminster/Whitehall is no longer appropriate (if it ever was). The UK Government must take territorial issues as a whole more seriously, and should create a stronger centre to co-ordinate devolution strategy on the basis of clear principles and with sufficient attention to how different settlements relate to one another.

- This requires a merger of units spread across the Cabinet Office, the Treasury and territorial offices either into a new department for devolution, or else into a single centre within the Cabinet Office. Staff from devolved administrations could also be co-located in this central devolution hub. This would create a central locus for Whitehall's collective institutional knowledge of devolution and would mitigate risks posed by high staff turnover in smaller (and often short-lived) units.
- This newly-configured centre for devolution would be responsible for issuing and updating guidance on devolution and ensuring that departments take devolution fully into account when developing policy or taking other important decisions. It should also actively manage the cross-Whitehall networks of officials with responsibility for devolution, co-ordinate a training offer for policy officials dealing with the devolved administrations, and help devolved officials identify the best point of contact in Whitehall (and vice versa).
- There are still three different jobs to be done in managing relations with Scotland, Wales and Northern Ireland and overseeing changes to the respective settlements. Consequently, even if the territorial offices are merged into a single department, their separate policy teams and outward profiles should be retained. However, they are very small as stand-alone departments. Merging them could increase coherence and might also save costs by merging back office functions, though a proper analysis of the business case would be required to be certain of this.
- For both political and practical reasons, retaining separate and full-time ministers of cabinet rank for each of the non-English territories will also be necessary for the foreseeable future. But these posts could potentially become ministers of state within the new merged departmental structure.

2. *Improve consultation and devolution awareness in the policymaking process*

- In each Whitehall department, a single senior official (probably not on a full-time basis) should take responsibility for ensuring that the devolved governments are consulted sufficiently and early enough in policy development processes, and held to account accordingly for this by the central devolution department.
- Building on the experience of the 'Senior Officials Scotland Group' (SOSG) set up during the referendum campaign, but with a wider remit covering all the devolved territories, these senior figures should meet regularly in a cross-Whitehall network to share best practice and flag devolution issues that may affect other departments.
- Departments should also think more carefully about which part of the country they are acting for – England, England and Wales, Great Britain (GB), the United Kingdom (UK) – when developing or setting out policy or legislation. They should be clear about this in public communications and dealings with other departments and governments. This will become particularly important if 'English votes for English laws' is implemented.
- There must be a reciprocal obligation on devolved governments to inform Whitehall departments of relevant developments at the devolved level.

3. *Refresh and reinvigorate the ministerial committee system*

- At the political level, the formal intergovernmental machinery – in particular the Joint Ministerial Committee – plays an important symbolic role as the summit of senior

political figures from the four governments, and provides an opportunity for tricky issues to be aired at the highest level. However, we were told that the JMC is not used in an effective way, for reasons that include reluctance to allow discussion of sensitive topics, and ‘political grandstanding’ taking the place of constructive dialogue.

- More time and resources should be dedicated to planning and supporting the JMC Plenary meetings and there should be greater willingness to allow discussion of sensitive topics, with an objective of improving mutual understanding from different political and territorial perspectives. This of course requires that the political leaders themselves (including the Prime Minister) take the need for intergovernmental dialogue seriously.
- The leaders of the four governments should meet in this formal setting at least once a year as at present, but for longer and with greater transparency and scrutiny – for instance by a new Devolution Committee of the House of Commons, or through joint scrutiny arrangements by parliamentarians from the UK and devolved legislatures.
- The overarching JMC Domestic seems to have lost its way and should be scrapped. In its place additional subcommittees should be created in areas with a complex division of powers, such as welfare, energy and the environment. These meetings should be used to discuss and if necessary negotiate issues that cut across the reserved/devolved divide, and could also become a forum for sharing lessons from policy and governance innovations in the different territories.
- The ‘finance quadrilateral’ meetings should become a formal JMC Finance, with far more transparency about its dealings. There should be more transparency in general about how the Barnett Formula operates in practice – how block grants and other financial decisions are determined.
- The EU format of the JMC remains important and should continue its work – but it could be made clearer that this is a shared forum of the four governments (not a creature of Whitehall), even though the UK Government retains ultimate responsibility for determining the UK line in Brussels. Where disagreements arise, there should be greater transparency about how devolved concerns were taken into account (or why they were discounted), as well as a more permissive attitude to allowing devolved ministers to speak for the UK at the Council of Ministers in certain circumstances.

4. *Strengthen bilateral relations to smooth ‘jagged edges’*

- While the JMC has value as a multilateral discussion forum, the asymmetry of the devolution settlements means that in many policy areas, bilateral relations are more important. There is a need to strengthen co-ordination between England and Wales in particular, as a result of the many ‘jagged edges’ of the Welsh settlement. The proposal for a Welsh Intergovernmental Committee has merit and could become a standing forum in which co-ordination is facilitated in areas such as police and justice, skills and employment, and cross-border use of public services such as the NHS.
- Likewise, the changing nature of the Scottish settlement is increasing the number of areas that are neither clearly devolved or reserved, placing a premium on partnership working – and perhaps creating a need for new standing bilateral bodies, for instance around management of the new Fiscal Framework.

- Furthermore, a growing number of important UK Government bodies – including HMRC, Ofcom, Ofgem and the Social Security Advisory Committee – are being required to operate across constitutional jagged edges and work with more than one government. New lines of accountability between these bodies and the devolved institutions will need to be developed accordingly, covering issues such as appointments to and funding of these cross-border arm’s-length bodies (ALBs). Triennial Reviews should examine whether these governance arrangements are sufficient.

5. *More active management to maintain a unified Home Civil Service*

- The UK, Scottish and Welsh administrations all benefit from the continued existence of a unified Home Civil Service (HCS). But staff interchange, and other activities that build networks and mutual understanding, appear to have declined.
- To prevent a gradual drift towards fragmentation, there should be more active management of the HCS as a whole by civil service leaders, supported by ministers. This should include encouragement of staff interchange and secondments, as well as expansion of joint training and development initiatives.
- At the same time, it should be recognised that the Home Civil Service is a ‘federal’ rather than a unitary entity, and many important management powers relating to the Civil Service should be held at the devolved level.
- The presence in Scotland and Wales of many thousand UK Government civil servants could be used more effectively by Whitehall as a resource for generating local knowledge and contacts. There should also be an effort to build networks and co-operation across silos between the various departments present in each part of the UK (and with the devolved governments), with the territorial offices helping to facilitate the sharing of information, staff and other resources.

6. *Working together to implement constitutional change*

- When further changes to the devolution settlements are being considered and negotiated, joint teams of officials from Whitehall and the devolved administrations should be created to work through options, consider implementation challenges, and where possible to generate a single evidence base for the use of both sides in the negotiations, learning from past processes such as the Silk and Smith Commissions.
- Future changes to the devolution settlements should be designed so as to avoid messy divisions of competence between levels of government wherever possible. We therefore support the Silk Commission proposal to move Welsh devolution from a ‘conferred powers’ to a ‘reserved powers’ model, as it appears likely to reduce the complexity of intergovernmental relations and the likelihood of disputes.
- Implementation of the Scotland Act 2012 provides positive lessons for how to manage the transfer of further powers to Scotland, Wales or Northern Ireland. These include the creation of joint implementation teams staffed by both governments with accountability to both parliaments, a clear remit and timelines, and oversight by a committee of ministers from both governments – providing a clear line of escalation if disputes arise. Finally, as further powers are devolved, relevant Whitehall departments should follow HMRC’s example in working closely with the devolved governments to build up their own capacity to absorb the new tasks.

1. Introduction

2014 was a momentous year for Britain's 'territorial constitution' – the structures, systems and conventions that govern relationships, and the division of power and resources among the nations and regions of the UK.

Scotland voted to stay in the UK, but the political challenge of nationalism led directly to the commitment by the unionist parties to significantly extend – and also to make permanent – the Scottish devolution settlement. These commitments have now been incorporated into draft legislation published in January 2015 and due to be implemented early in the next parliament. More power (and other constitutional change) is on its way to Wales and Northern Ireland too. And England is to be recognised as a nation in its own right if the Prime Minister follows through with his commitment to tackle, finally, the West Lothian Question.

The overall impression is of upheaval at a rapid pace, without a great deal of consideration about how the various proposed changes relate to one another, or how they should be implemented. The risk is clear: that short-term political incentives mean insufficient attention is paid to the big picture, and that the UK ends up with a dysfunctional or incoherent set of devolution arrangements as a result.

This concern lies behind this report by the Institute for Government, which is the final output of a 10-month study on the theme of Governing after the Referendum, carried out as part of the ESRC-funded Future of the UK and Scotland programme in partnership with the Centre on Constitutional Change. The central focus of our work has been to examine how the different territories of the UK relate to one another, and how government and the Civil Service could improve their management of the territorial constitution.

As part of our focus on the effectiveness of the devolution arrangements, we concentrate on how government and the Civil Service is organised rather than on more political questions, such as the role of political parties in structuring relations between different parts of the country. Nor do we take a position on which powers should be held at which level of government, or even whether maintenance of the UK is to be welcomed *per se*. That is a matter for political negotiation and the electoral process to determine.

However, we start from the position that on 18 September 2014 Scotland opted to remain within the UK, on the basis of further devolution, and that there appears to be consensus about extended devolution to Wales and Northern Ireland too. Our objective is to help inform those responsible for making this new emerging settlement work. Our audience therefore, is both the political class – and particularly whichever party or parties are in government after May 2015 – and the Civil Service in Whitehall and the three devolved capitals.

The report draws on over 50 interviews conducted in Whitehall, Edinburgh and Cardiff, as well as two public events and three private roundtable discussions with participants from all four nations of the UK. We also, of course, draw on relevant government and academic publications, as well as close observation of the political and media debate around devolution matters throughout the course of our project. We have also been closely engaged in this debate ourselves – for instance by submitting oral or written evidence to four different select committee inquiries, publishing various other shorter articles, and commenting in the media.

This paper also builds on insights from two previous publications from the Institute for Government, both published just before the Scottish referendum, which respectively analysed the 'territorial profile' of each Whitehall department, and considered the range of constitutional scenarios lying ahead for Scotland and the UK.

Including this brief introduction (Chapter 1), the report is divided into seven chapters. Chapter 2 discusses the context for this report of 'change and continuity' in the devolution arrangements. Chapter 3 looks at how the Home Civil Service operates as a single organisation supporting the separate UK, Scottish and Welsh Governments. Chapter 4 then turns the gaze onto Whitehall in particular, examining the different ways UK Government departments engage with the devolved bodies. Chapter 5 asks what role the Scotland, Wales and Northern Ireland Offices play today in facilitating relations between governments. Chapter 6 looks at the formal intergovernmental machinery of the joint ministerial committee and British Irish Council, through which political leaders from the four governments meet. Finally, a brief concluding Chapter 7 pulls together our analysis and makes the case for our recommendations.

2. Devolution, change and continuity

One of the distinctive characteristics of the UK's devolution arrangements is the extent they built on existing governance machinery and avoided major structural change wherever possible. In many ways, Whitehall faced a very limited set of adaptation challenges as a result of devolution. This made the initial implementation of devolution a fairly straightforward matter, but the initially-simple transition to a new territorial constitution arguably bred a complacency that left the system unready for more significant challenges that would come later. As a previous study of devolution concluded, 'It is remarkable how little effort has been put into thinking through the longer-term consequences of introducing devolved democratic processes, of changing territorial administration into territorial politics.'²

Explaining Whitehall's (non)adaptation to devolution

The main reason why Whitehall did not have to confront this issue was that almost all the areas of policy and public service delivery that were transferred to the new institutions in Edinburgh, Cardiff and Belfast were already administered separately in the three non-English territories – falling under the responsibility of the Scottish, Welsh and Northern Ireland Offices (the territorial offices). As a consequence, most Whitehall departments saw little change as a direct result of devolution. Departments such as health and education already had little responsibility for delivering public services outside England. And others, such as the Treasury, simply continued to operate on behalf of the UK as a whole without needing to reflect political pressures at the devolved level.

Another feature of territorial relations retained from the pre-devolution era was provided by the maintenance of a unified Home Civil Service serving the administrations in Westminster, Edinburgh and Cardiff (while Northern Ireland retained the separate civil service it has had since 1922). For civil servants in any part of the UK this meant that relationships at the working level changed little in form.

Likewise, the system for funding the devolved administrations was left broadly untouched. The Barnett Formula, created in 1977 when devolution was last on the agenda, was kept as a system for agreeing the budgets of the territorial offices and simply rolled into the new era. From a Treasury perspective the three devolved administrations continued to be treated as they had been when they were UK Government departments. The three devolved administrations remained almost entirely dependent on the centre in terms of their budgets.

A further element of continuity was that the small Whitehall presence of the three pre-devolution territorial offices was retained along with separate cabinet-level secretaries of state for Scotland, Wales and Northern Ireland. Shorn of most of their policy and delivery functions (with the major initial exception of police and justice in Northern Ireland), these departments carried on in their other function of co-ordinating relations between the rest of Whitehall and the territories.

But at the same time, devolution created the potential for significant political and policy divergence through the new directly-elected legislative bodies and governments. Some

² Jeffery, C., 'The Unfinished Business of Devolution: Seven Open Questions', *Public Policy and Administration* vol. 22, no.1, 2007, p.93

important differences in policy and the organisation of public services between the four territories were present before devolution, but the UK Government was always able to impose uniform policies across the country when it chose to (though on occasions, as with the Poll Tax, this could be politically costly). Now, with separate electoral mandates and a new space for the expression of distinct political identities, each nation was unleashed to move in markedly-different directions than Westminster.

Initially, the potential dynamism of the new territorial constitution was constrained by the pre-eminence of Labour everywhere except Belfast – though in both Scotland and Wales the devolved governments introduced a few emblematic policies distancing themselves from New Labour in Westminster. Devolution also came into being in the context of economic growth and rising public spending, which helped to avoid resource conflicts or difficult trade-offs. This led to the emergence of an informal and low-key system of intergovernmental relations (IGR).

For the most part, post-devolution IGR have been bilateral too, meaning that each of the three devolved administrations dealt separately with Whitehall. This was a product of the asymmetrical nature of devolution, in which there was a different settlement and set of challenges in each part of the UK. Bilateralism may also have reflected Whitehall's tendency to treat the devolved administrations as other government departments. This was emphatically not a federal system in which the centre and the states engage in a formalised, or even legally-prescribed, way to determine how resources and powers should be allocated. For the most part, the new multilateral machinery that was set up in the shape of joint ministerial committees (JMC) met rarely and had a limited role.

UK-devolved relations in the context of political divergence

Things have changed greatly since 2007. Since then, the largest of the devolved governments, in Scotland, has been led by the nationalist SNP. This significantly altered the tone of relations between Edinburgh and Westminster, a change which stepped up another gear in the run-up to the September 2014 referendum on independence. At a working level, however, the original Scottish settlement – with a fairly-clear divide between reserved and devolved matters – has facilitated smooth relations even when at the political level things are tense.

Wales has remained under Labour control (either alone or in coalition) ever since 1999. But since the Conservative-led government came to power in London in 2010 and began to implement large-scale public spending cuts, the UK Government's relationship with Cardiff also appears to have taken on a more confrontational tinge – as illustrated by two recent disputes being taken to the UK Supreme Court.³ The UK-Welsh relationship is also inherently more prone to disputes over competence as a result of the messier division of

³ These two cases both involved judgements on whether bills passed by the National Assembly for Wales were within the sphere of devolved competence. Both these bills – the Local Government Byelaws (Wales) Bill in 2012 and the Agricultural Sector (Wales) Bill in 2014 – were judged by the Supreme Court to be lawful. Welsh Government, 'First Minister welcomes 'significant' Supreme Court ruling', Welsh Government website, 2014, retrieved 14 February 2015 <<http://wales.gov.uk/newsroom/firstminister/2014/140709supreme-court/?lang=en>> Welsh Government, *News: First Welsh Bill is lawful – Supreme Court rules unanimously*, Welsh Government website, 2012, retrieved 14 February 2015 <<http://wales.gov.uk/newsroom/firstminister/2012/121121scj/?lang=en>>

powers between the two governments. For historical reasons, Wales has no legal jurisdiction of its own (and no control of police and justice, unlike the other two devolved nations). The original devolution model was for Wales to have power over secondary legislation only, within tightly-defined areas of autonomy as set out in acts of the Westminster Parliament. Today, following further legislation and a second referendum (in 2011), Wales' *Senedd* resembles a parliament much more than the 'glorified county council' it was once caricatured as, though it still lacks many of the powers its Scottish counterpart has.

As for Northern Ireland, the devolved government there has always been led by an entirely different constellation of parties to the rest of the country, but for much of the eight years after 1999, direct rule had to be imposed from London due to political instability. Since 2007, home rule has operated again, but for the UK Government (in partnership with the Republic of Ireland), there remains an ongoing intergovernmental challenge in keeping devolution in Belfast from collapsing as a result of divisions between the parties and communities in the Northern Ireland Assembly. In terms of government machinery, Northern Ireland has an even greater sphere of competence than Scotland, extending to administrative control of social security (though policy autonomy is severely restricted).

In the post-2007 context of political divergence (and especially since 2010), intergovernmental relations have taken on a more formal form in some respects. The JMC structures have been used more, for instance, though bilateral relations remain more important in many policy spheres. Over time, a decline in staff interchange and mutual understanding may also have made it harder for issues to be dealt with through the old informal networks, even though the unified Civil Service remains intact.

Austerity has also squeezed the budgets of all the governments, leading to a number of disputes over funding that have had to be resolved at ministerial level or through a new mediation process as part of the JMC system. The pursuit of different policies has also begun to reveal some of the complex interactions between devolved and non-devolved spheres.

On energy for example, the Scottish Government controls planning but lacks powers over subsidies for renewables, which the UK Government has placed less emphasis on than the SNP would choose to. A messy divide between skills and employment policy has led to tensions with both Cardiff and Edinburgh around the operation of the Work Programme. And a refusal by the Northern Ireland Executive to follow GB welfare reform policies led to the imposition of fines on the devolved budget (though this latter issue has now been resolved, smoothed by a promise of £2 billion extra funding from Westminster). These and other so-called 'jagged edges' between UK and devolved powers have taken on a new significance when money is short and the politics are less congenial.

The Scottish independence referendum was particularly challenging in terms of intergovernmental relations, as the UK and Scottish Governments were pitted against each other in a struggle for the future of the country. The Civil Service on both sides was called on to support their ministers' diametrically-opposed objectives, while continuing to transact necessary intergovernmental business across many areas. For the most part, it seems that operational relationships at official level remained professional and constructive, although in more politicised areas – such as welfare reform and energy policy – there were tensions to manage.

The never-ending devolution story

As the political context has grown more complex, the process of devolution has continued – changing the nature of the relationship between the UK and devolved governments as devolution starts to cut into departments such as the Treasury, Her Majesty’s Revenue and Customs (HMRC) and the Department of Work and Pensions (DWP) that were left largely untouched by the previous phases of devolution.

Legislation in 2012 and 2014 has already granted Scotland and Wales respectively some limited additional tax and borrowing powers. Welfare has also become a more territorially-complex policy sphere. Some smaller benefits have been devolved, and some flexibility to ‘mitigate’ the effects of welfare reform has been granted.

Wales is now engaged in debate about potentially more radical reform – including police and justice devolution, which would significantly change the way that departments such as the Home Office and Ministry of Justice (as well as associated arm’s-length bodies) deal with devolution.

But it is in Scotland where the story has unfolded fastest in recent months. The pre-referendum ‘vow’ of extensive further devolution was followed by the Smith Commission process, which ended by recommending the devolution of all rates and bands of income tax on earned income; full devolution of some other smaller taxes; several welfare benefits; and additional powers, including to change the Scottish electoral system and franchise. Signalling that a qualitative transformation in the constitution was under way, Smith also recommended placing Scottish devolution on a permanent footing and giving the ‘legislative consent convention’ (by which Westminster requests Scottish parliamentary permission for legislation touching on devolved areas) a statutory basis. And there were proposals for an overhaul of the intergovernmental machinery, and new consultation powers for the Scottish Government in areas such as energy and broadcasting policy – all of which combined would require a significant shift in how Whitehall will have to think about devolution.

In January 2015 the UK Government published a Command Paper containing draft legislation which would implement many of Smith’s recommendations, although detailed plans remain to be drawn up in some important areas (including on the design of the new fiscal framework and processes for consulting the Scottish Government on the functioning of cross-border arm’s-length bodies). Work is already underway to reform the UK’s intergovernmental machinery: a working group has been established to revise the principles and structures of intergovernmental relations in the UK. This group will meet for the first time in February 2015.⁴

As for Northern Ireland, the much-delayed transfer of police and justice functions from the Northern Ireland Office to the devolved government in Belfast in 2010 was a major step forward, but the UK remains closely engaged with Northern Ireland on sensitive issues relating to the peace process and ‘the past’. Most recently, this involved close involvement by UK government ministers and officials in brokering the Stormont House Agreement of

⁴ HM Government, *Scotland in the United Kingdom: An enduring settlement*, Gov.UK website, 2015, retrieved 14 February 2015 from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf

December 2014, which ended deadlock around the implementation of welfare reforms, and has paved the way for the probable devolution of some fiscal powers (notably over corporation tax) and other institutional changes.

The referendum has also put the West Lothian Question onto the agenda. The Government's proposals for 'English votes for English laws' raise the possibility of Whitehall and Westminster having to differentiate more carefully between UK and English business – a distinction often forgotten by many in SW1.

More than ever before, the UK Government must take devolution seriously and take into account territorial differences across a wide array of areas. The UK and devolved governments will need to work closely together over the coming years to ensure that changes to the settlements are implemented effectively, while areas of shared or overlapping responsibility are managed in the interests of all sides.

Modes of intergovernmental relations

'Intergovernmental relations' (IGR) is a broad and somewhat vague terms capturing a number of different forms of interaction between levels of government. To understand what works well, what does not, and what needs to change, it is helpful to distinguish between different 'modes' of IGR. Past studies have attempted to do this (often in the context of federal systems). Bolleyer has identified four 'intergovernmental interaction modes' that can be used to characterise the ways different tiers of government work together: through 'unilateral adaptation' of decisions of one government by another; '*ad hoc* co-ordination', where governments adapt each other's policies to suit their requirements; 'co-decision' between different governments; and via a 'supra-governmental' mode, where new systems are created to exercise collective authority for more than one government.⁵

Others have applied theories of intergovernmental relations to the UK example. Trench identifies three distinct approaches to IGR depending on the type of issue being resolved, specifically differentiating between IGR around 'constitutional matters', where changes to powers and functions are sought; 'financial matters' relating to taxes, borrowing and grants; and 'functional policy issues' that arise when devolved and non-devolved matters affect each other.⁶

Keating identifies four 'functions' of IGR, or areas which require co-operation between administrations: 'resolving conflicts' of competence; 'dealing with overlaps' of competence, for instance when one level of government action spills over into others; 'harmonising policies'; and 'dealing with new policy challenges'.⁷

Building on these frameworks and our own research, we have identified 10 distinct ways in which the UK and devolved governments interact and work with one another.

⁵ Bolleyer, N., *Intergovernmental Co-operation: Rational Choices in Federal Systems and Beyond*, Oxford University Press, Oxford, 2009, p.19

⁶ Trench, A., *Intergovernmental Relations and Better Devolution*, presentation given at UK's Changing Union seminar, 10 April 2014

⁷ Keating, M., 'Intergovernmental Relations and Innovation: From co-operative to competitive welfare federalism in the UK', *The British Journal of Politics and International Relations*, vol. 14, 2012, pp. 214-230

Political summitry

At the top of the intergovernmental machinery, senior political leaders from the four governments meet in the semi-formal settings of the Joint Ministerial Committee and British-Irish Council. These summits take few decisions but have a symbolic value, signalling the importance of maintaining effective relationships between governments.

Dealing with differences and disputes

Through various channels the UK and devolved governments must come together to resolve differences and disagreements. Many issues are resolved between officials, but more serious disputes are escalated to ministerial level.

Fiscal and financial governance

A key set of interactions centres on financial matters, particularly on negotiations around the size of the block grants that fund the devolved governments. This is becoming a more complicated task as the process of fiscal devolution continues.

Working with the EU/multi-level governance

The UK and devolved administrations come together to agree a UK line in EU negotiations, and to co-ordinate the implementation of EU decisions, many of which interact with devolved responsibilities. But the UK Government retains the prerogative to determine negotiation positions and reach agreements in Brussels, which can cause tensions.

Managing cross-border policy and public service issues

Many policy issues cross the geographic borders between one or more territories, requiring co-operation between the governments. For instance, there is a significant amount of cross-border use of health services between England and Wales.

'Jagged edge' constitutional issues

Devolution has not created a watertight division between devolved and non-devolved spheres of competence. In many cases the split between the two is complex and overlapping and requires close co-ordination between governments. In some areas, such as tax and welfare, 'jagged edges' seem set to increase as a result of further devolution.

Organisational and professional networks within the Civil Service

Civil servants from the UK, Scottish and Welsh Governments (Northern Ireland is separate) interact in various ways through their joint membership of the single unified Home Civil Service.

Lesson learning and best practice sharing

Devolution allows experimentation via different policy approaches in different parts of the UK, and therefore provides scope for learning, though it is arguable whether this opportunity is made full use of.

Negotiating constitutional change

Devolution has rarely been static, and when change to one or other settlement is being considered, the different governments (along with other actors) must come together to negotiate the details of the new package.

Joint implementation of change

The UK and devolved governments must also work closely together to manage jointly the implementation of changes to the devolution settlement, as the UK and Scottish Governments have been doing following the passage of the Scotland Act 2012.

In the chapters that follow we present evidence relating to how the various systems and structures that facilitate intergovernmental relations work at present in the UK. We illustrate a number of weaknesses – as well as examples of good practice – across these different systems and identify which modes of IGR are currently under-performing. Finally, we set out recommendations for how these systems will need to evolve to meet the challenges and complexities of the changing devolution settlement.

3. How the unified Home Civil Service facilitates relations between governments

An important factor in understanding how the UK and devolved governments interact is that officials from the UK, Scottish and Welsh Governments all remain part of a single civil service, as was set out explicitly in the 1998 legislation that established devolution to Scotland and Wales.⁸ Officials in Whitehall, Edinburgh and Cardiff may serve different governments and implement different policies, but they all remain part of the Home Civil Service. Northern Ireland is the exception as since 1921 it has had its own Northern Ireland Civil Service.⁹

A number of reports and commissions have looked into the value of the Home Civil Service and found it to be useful in facilitating intergovernmental relations and sharing experience and lessons across administrations. Even before devolution, in 1996, the Constitution Unit advocated that Scottish officials should remain part of the Home Civil Service.¹⁰ In its 1997 white paper *Scotland's Parliament*, the UK Government concluded that maintaining a united Home Civil Service across Scotland, England and Wales was important for a number of reasons. These included safeguarding common standards of professionalism and political neutrality; securing an integrated approach to policymaking; and ensuring good lines of communication.¹¹

In the years following devolution there has been continued recognition of the value delivered by the Home Civil Service. In 2002 the Lords Constitution Committee concluded that the unified Home Civil Service 'enables close working across government generally and the ready flow of information from one administration to another'.¹² In 2004 the Richard Commission report on the Welsh Assembly Government found no evidence that being part of the Home Civil Service prevented civil servants from 'challenging' Whitehall.¹³

In 2009, a decade on from devolution, the Calman Commission found that 'the evidence on the Civil Service has overwhelmingly been to retain a unified service. Common working practices, staff secondments and ease of communication were cited in support of the status quo, in particular the shared values of integrity, honesty, objectivity and impartiality'.¹⁴

⁸ HM Government, *Scotland Act 1998*, paragraph 51.2, 1998, retrieved 16 February 2015, <<http://www.legislation.gov.uk/ukpga/1998/46/section/51/enacted>> ; HM Government, *Government of Wales Act 1998*, paragraph 35.2, 1998, retrieved 16 February 2015, <<http://www.legislation.gov.uk/ukpga/1998/38/section/34/enacted>>

⁹ House of Lords Constitution Committee, *Constitution: Second Report*, 2002, retrieved 16 February 2015 <<http://bit.ly/1yylxlr>>

¹⁰ Constitution Unit, *Fundamentals for a New Scotland Act*, Constitution Unit, 1996, p.173, retrieved 16 February 2015, <<https://www.ucl.ac.uk/spp/publications/unit-publications/3.pdf>>

¹¹ Scottish Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009, p.124

¹² House of Lords Constitution Committee, *Constitution: Second report*, paragraph 161, 2002, retrieved 16 February 2015, <<http://bit.ly/1yylxlr>>

¹³ Richard Commission on the Powers and Electoral Arrangements for the National Assembly of Wales, *Report of the Richard Commission*, 2004, p.162, retrieved 16 February 2015, <<http://bit.ly/11AnLVF>>

¹⁴ Scottish Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009 p.134

The academic community has also found evidence to support the continuation of the Home Civil Service. Parry describes the Home Civil Service as ‘oil and glue in intergovernmental relations... an adhesive function that binds staff together in a common personnel system that gives them common orientations and interests’.¹⁵

As we discuss below, the devolved governments themselves appear to share this positive view of the value of maintaining a unified GB-wide civil service. There is, however, increasing debate about how far the Home Civil Service continues to operate as a single entity in practice and whether this matters. As we will explore in this section, the devolved administrations have taken a different direction to the UK Government in terms of certain aspects of the management and structure of the Civil Service. In evidence to a select committee in 2014, Professor Michael Keating said that ‘informally, there is a distinct Scottish Civil Service. There always has been, but it is more distinct now than it was in the past’.¹⁶

In this section we discuss the operation of the Home Civil Service across the devolved administrations; how this has changed since 1999; what challenges the Home Civil Service faces at present; and what changes may be required if the Home Civil Service is to be maintained.

How the unified Home Civil Service works under devolution

The ‘Civil Service of the state’ remains a reserved matter under the Scotland Act.¹⁷ Some aspects of civil service administration are reserved, including pensions, employment policy, the Civil Service Code and the Civil Service Commission. The UK Civil Service has one broad pension scheme (with options within it) that does not differ according to territory.

The Constitutional Reform and Governance Act (2010) put the Home Civil Service (as well as the separate Diplomatic Service) on a statutory basis for the first time and defined it as ‘the Civil Service of the state’, excluding Northern Ireland. This legislation also sets out the functions that are reserved to the UK Government. It specifies that ‘The Minister for the Civil Service [by convention, the Prime Minister] has the power to manage the Civil Service’, including matters relating to pay and retirement age.¹⁸ The act also sets out the role of the Civil Service Commission as regulator of recruitment into the Civil Service and guardians of the Civil Service Code across the whole Home Civil Service (with Northern Ireland having its own, but similar, commission).

However, some recent reforms have created differences in how certain appointments are made in the different governments. Recent (and contested) reforms have granted the Prime Minister the right to make the final selection decision over permanent secretary

¹⁵ Parry, R., ‘The Civil Service and Intergovernmental Relations in the Post-devolution UK’, *British Journal of Political and International Relations*, vol. 14, 2012, p.297

¹⁶ House of Commons Public Administration Select Committee, *Inquiry into Civil Service Impartiality and Referendum: Oral evidence session with Professor Michael Keating, University of Aberdeen and Professor Jim Gallagher, University of Oxford*, Parliament UK website, 2014, retrieved 17 February 2015, <<http://bit.ly/137i41p>>

¹⁷ HM Government, *Scotland Act 1998*, paragraph 51.2, 1998, retrieved 16 February 2015, <<http://www.legislation.gov.uk/ukpga/1998/46/section/51/enacted>>

¹⁸ HM Government, *Constitutional Reform and Governance Act*, 2010, Section 3(1)-(5)

appointments – but this power extends only to Whitehall-based permanent secretaries and has not been followed by parallel reforms in Scotland and Wales.

Following recommendations of the Calman Commission, the Head of the Scottish Civil Service is appointed by the Head of the Civil Service, rather than the Prime Minister.¹⁹ The First Minister of Scotland is also consulted on the appointment, and a parallel process applies in Wales.²⁰ For other senior appointments, in practice the Scottish Government run the recruitment process though senior leaders in Whitehall have to sign off on the decision.

[The decision is] taken here and ratified and approved by SLC [the Senior Leadership Committee of the Civil Service]. So we take a view on where we think the best range of candidates will come from and we put a business case down to SLC, and they would take a view on whether what we're proposing to do is appropriate. That's been fine. They would get feedback on the outcome of the interview process and we would seek their approval for the candidate we're proposing to appoint.²¹

The 2010 Act also specifies that there must be a published civil service code. Separate codes may be published for the Scottish and Welsh administrations, following consultation with the respective first ministers, but all must incorporate the core values of honesty, impartiality, integrity and objectivity. Again Northern Ireland is excluded, but it has developed its own code that includes the same four values. A new version of the Code for Scottish Executive civil servants was published in 2010, with the following addition.

The Civil Service is an integral and key part of the government of the United Kingdom. It supports the UK Government and devolved administrations of the day in developing and implementing their policies, and in delivering public services. As a civil servant, you are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament.²²

There are also important semi-institutionalised networks that bring together officials from across the Home Civil Service – especially at the most senior levels. Wednesday morning meetings of permanent secretaries continue to be attended by the heads of the Scottish and Welsh civil services, although during the Scottish referendum campaign it was reported that the Scottish permanent secretary was excluded from certain discussions relating to the campaign. Scottish and Welsh civil servants are also part of the Top 200 leadership group, which comprises permanent secretaries and directors general from all departments. The high-potential development scheme includes deputy directors from across the HCS.

A number of our interviewees highlighted the value of HCS-wide training and talent development programmes.

There will be UK-wide training around things like leadership development and talent development, some of which is policy specific but much of which is more leadership focused, and that is quite an

¹⁹ Scottish Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009 p.124

²⁰ DCLG & Pickles, E., *Announcement: 'Peter Housden appointed Scotland's top civil servant'*, Gov.uk, 2010, retrieved 16 February 2015, <<https://www.gov.uk/government/news/peter-housden-appointed-scotlands-top-civil-servant>>; Welsh Government, *News: 'New Permanent Secretary for Welsh Government'*, Welsh Government website, 2012, retrieved 16 February 2015, <<http://wales.gov.uk/newsroom/firstminister/2012/120921perm/?lang=en>>

²¹ SCO04

²² Scottish Government, *Civil Service Code*, Scottish Government website, 2010, retrieved 16 February 2015, <<http://www.scotland.gov.uk/Resource/Doc/923/0110016.pdf>>

important way of building networks across the whole Civil Service.... There is quite a lot of joint work that's done or that has been in that development context.²³

There's a lot of really good work that we jointly do with UK Government, HR, sharing talent, secondments, development programmes etc... It makes sense for both sides to develop talent together, share opportunities etc.²⁴

This interviewee added that cross-government training programmes had benefits for the devolved administration as a whole, as well as for individuals receiving training.

Some of our senior people go on the UK Government's leadership programmes... We are able to nominate our best people for these opportunities. From our point of view we see real value in that because we think our people have a lot to contribute in terms of the way we do our business here, but we also get a lot back.²⁵

Another area where cross-governmental working has been successful is in civil service professions. The professions operate across the Home Civil Service and each provides a degree of shared training and professional development, creating a space for inter-administration working. One interviewee told us:

Clearly we work for a different government, so we will have a different political set of priorities to work to. But nevertheless, there are things that we can learn from them and they can learn from us, and I quite often have to work with Whitehall colleagues in that role as well.²⁶

All of these structures and systems are perceived to strengthen networks and the sense of a shared culture across the HCS.

How the unified Civil Service facilitates intergovernmental working

A strong message from interviewees in the Welsh, Scottish and UK Governments is that the majority of communication between the administrations takes place at official level, and that common membership of the Home Civil Service helps to strengthen relationships between the different governments. This was noted by the Calman Commission.

The Commission also accepts the evidence that has been submitted arguing that the close working relations between civil servants working for different administrations are assisted by being subject to similar cultures and expectations.²⁷

Several of our interviewees agreed that the fact of belonging to a single organisation and sharing common professional values helped facilitate intergovernmental relations.

At working level, the working relationships are actually very good, even on areas where we disagree, because we all recognise that we're impartial civil servants and it's about integrity and objectivity and providing the advice to your ministers. If your ministers are disagreeing, that doesn't mean that we

²³ SCO18

²⁴ SCO04

²⁵ SCO04

²⁶ SCO18

²⁷ Scottish Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009, p.134

have to. We just have to do what we're told. I often find the working level discussions are quite good.²⁸

We found little support for the idea of devolving or splitting up the Home Civil Service. One Whitehall official argued:

I think there are strong arguments for a unified civil service within a unified state, and I see nothing wrong with a unified civil service working to three separate governments... I think it lends itself to a common culture of service, to interchange, which is important.²⁹

A Scottish Government official argued that the fact of belonging to the same organisation could create a sense of shared identity, even in the absence of personal networks.

The things that have gone well from the beginning of the devolution process have gone well because of shared cultural understandings and a sense of shared cultural identity... Even when there was a lot of new recruitment into the Scottish Civil Service with no Whitehall experience or contacts, what happened was that they stepped into a shared cultural understanding. So in their dealings with Whitehall, their approach was similar irrespective of their lack of personal contacts.³⁰

Northern Ireland Civil Service

Northern Ireland has had a separate Northern Ireland Civil Service (NICS) since 1921 and NICS has remained separate from the Home Civil Service throughout periods of both direct rule and devolution. As noted, NICS has its own code of ethics and Civil Service Commission, but these are set up along very similar lines to the HCS.³¹

There are similarities in practice as well as principle. The Northern Ireland Civil Service has followed a similar path of reform and modernisation to the Home Civil Service. Parry argues that NICS has been heavily influenced by the 'norms and practices' of the Home Civil Service and that it rarely uses its discretion to pursue a different path.³² Birrell has argued that the NICS has tended to end up with similar initiatives but with a number of divergent aspects – similar to the differences discussed above that apply to Scotland and Wales.³³ A Whitehall official told us that in practice, interaction with NICS officials does not feel substantially different.

The NICS has worked for the NI Executive for years. They're not part of the Home Civil Service and it works perfectly well, abiding by broadly the same principles as the rest of us.³⁴

However, we were also told that the networks between Whitehall officials and their counterparts in Belfast are weaker, which creates a greater need for the Northern Ireland

²⁸ GAR17

²⁹ GAR10

³⁰ SCO10

³¹ Birrell, D., 'The reform agenda in the Northern Ireland Civil Service', *Public Policy and Administration*, vol. 22, no. 3, 2007, p.275

³² Parry, R., 'The civil service response to modernisation in the devolved administrations', *Financial Accountability & Management*, vol. 21, no. 1, 2005, p.60

³³ Birrell, D., 'The reform agenda in the Northern Ireland Civil Service', *Public Policy and Administration*, vol. 22, no. 3, 2007, p.275

³⁴ GAR06

Office to manage intergovernmental relations across the Irish Sea (as we discuss in the next chapter).

Calls to devolve the Civil Service

Since 1999 the idea of devolving control of the Civil Service to create more distinct public services in the devolved territories has arisen from time to time. The Scottish National Party's 2007 manifesto promised to look into the creation of a 'wholly-devolved Scottish civil service' on the Northern Ireland model.³⁵

On entering government, however, the SNP dropped this pledge. As one official told us:

It is noteworthy that before it came into office in 2007 the SNP had a manifesto commitment to create a separate civil service in Scotland. They wondered if the civil service would be supportive of their objectives. They were, and the commitment to create a separate civil service has been quietly dropped.³⁶

Previous Institute for Government work has explored how the Scottish Civil Service managed the transition from Labour to SNP Government in 2007, and found strong evidence that the incoming ministers were quickly convinced of the Civil Service's impartiality and ability to support a nationalist administration, and therefore concluded that pushing for formal separation was unnecessary and perhaps would bring greater risks than benefits.³⁷ A yes vote to independence would of course have led to the establishment of an entirely-separate civil service, but even then the Scottish Government's proposed draft constitution contained clauses entrenching an impartial civil service on familiar lines. Now, post-referendum, the SNP appears to have again dropped any interest in breaking up the HCS in the near term. Its submission to the Smith Commission contained no reference to changing the structure of the Civil Service, even while requesting full control of all elements of tax and welfare in Scotland.³⁸

In Wales, the idea emerged of developing a more integrated 'Welsh public service' by forging better connections between officials working for the Welsh Government and the 'public servants' who work in devolved areas such as schools, health and local government.³⁹ A 2004 paper by the Welsh Government set out an ambition to use 'the opportunity conferred by devolution to bring together the different elements of the public service in a more integrated way', reducing costs and delivering more citizen-focused

³⁵ Scottish National Party, Manifesto 2007, retrieved 16 February 2015, <<http://www.brs-snp.org/2007manifesto.pdf>>

³⁶ Osmond, J., *Better Apart, Together: The Centre and Intergovernmental Relations: A report on the proceedings of a private roundtable*, UK's Changing Union, 2014, retrieved 16 February 2015, <<http://ukchangingunion.org.uk/papers/01/Forum%20%20Report.pdf>>

³⁷ Paun, A. & Munro, R., *Separate Space: The Final Year of the Scottish Coalition, 1999-2007*, Institute for Government, 2014, retrieved 16 February 2015, <<http://bit.ly/1zMGLyv>>

³⁸ Scottish Government, *More Powers for the Scottish Parliament: Scottish Government proposals*, Scottish Government website, 2014, retrieved 16 February 2015, <<http://www.scotland.gov.uk/Resource/0046/00460563.pdf>>

³⁹ Welsh Assembly, *Making the Connections: Delivering better public services for Wales, Constructing Excellence in Wales* website, 2004, retrieved 16 February 2015, <http://www.cewales.org.uk/cew/wp-content/uploads/making_the_connections.pdf>

services. Proposals included 'simpler relations' between the Welsh Assembly Civil Service and its public service partners.⁴⁰

The Silk Commission acknowledged the argument that a separate civil service might allow for 'a more cohesive Wales-wide public service ethos and better co-operation,' but nonetheless advocated retention of the unified service.⁴¹ Welsh Labour committed to 'continue [its] work towards establishing a pan-Welsh public service development and improvement function,' in its 2011 manifesto, though this has not led to serious attempts to break up the Home Civil Service.⁴²

We found limited support for the idea of a separate Welsh public service among our interviewees. One roundtable participant told us that a separate Welsh public service would be complex and expensive to establish and would run into difficulties in seeking to merge or align differential pay and pension systems. It might also create a new barrier to exchange of personnel between Whitehall and the Welsh Government. There are far more civil servants in Wales working for Whitehall departments than for the Welsh Government, so connections between the administrations are valuable.⁴³ A Whitehall official made a similar point when asked about the benefits of a more interconnected Scottish public service.

Most civil servants in Scotland work for the UK Government, not the Scottish Government. It's useful to maintain a continuing relationship, to have 'linkages'; so with a devolved Scottish civil service you might get more linkages with the NHS or the police, but you would lose connectivity with HMRC, DWP. Managing linkages across the public sector is important – 'connectivity' is valuable.⁴⁴

Divergence of practice and culture within the Home Civil Service

While certain aspects of civil service organisation are fixed across the country, there is also significant flexibility that allows the Welsh and Scottish Governments to diverge from UK practice. One important example lies in the structure of devolved government in Scotland, which since 2007 has diverged from Whitehall by abolishing departmental structures and creating a single corporate leadership team and strategy.

There are other important differences which set the devolved administrations apart. Scottish ministers have delegated responsibility for appointing staff (in compliance with the Recruitment Code) and for determining the pay, grading systems and conditions of the civil servants below 'senior civil service' (SCS) level.⁴⁵ This is in line with the flexibilities granted to individual Whitehall departments. However, the Scottish and Welsh Governments have

⁴⁰ Welsh Assembly, *Making the Connections: Delivering better public services for Wales*, Constructing Excellence in Wales website, 2004, retrieved 16 February 2015, <http://www.cewales.org.uk/cew/wp-content/uploads/making_the_connections.pdf>

⁴¹ Commission on Devolution in Wales, *Empowerment and Responsibility: legislative powers to strengthen Wales*, 2014, p.168

⁴² Welsh Labour Party, *Welsh Labour Manifesto 2011: Standing up for Wales*, Welsh Labour website, 2011, retrieved 16 February 2015, <<http://www.welshlabour.org.uk/uploads/welsh-labour-manifesto.pdf>>

⁴³ GAR01

⁴⁴ GAR02

⁴⁵ Scottish Government Finance Committee, *Report on 'Submission to the Public Administration Select Committee Inquiry into Civil Service Effectiveness'*, Scottish Parliament Archive website, 2005, retrieved 16 February 2015, <<http://bit.ly/1scM2MP>>

taken a different approach even at SCS level by opting out of the UK Government's performance-related pay system.⁴⁶

Scottish ministers have quite a different approach to pay and one of the strands of the SCS pay policy would allow you to make 'performance-related payments' for fairly-significant amounts in civil service terms, for particular levels of performance. The policy of Scottish ministers is that performance payments are not appropriate at any level. So for those bodies covered by the Public Sector Pay Policy across the public sector, staff below SCS and including our SCS do not receive performance payments.⁴⁷

Other differences emerge more gradually as a result of other changes, rather than deliberate policy choices. For instance, Scotland's emphasis on collaboration across different policy areas may mean that policy officials in Edinburgh require a slightly different mix of skills and training methods to their counterparts in Whitehall.

We are working to implement different policies, in some cases very different policies. And more than that, the ways in which ministers want policy to be developed and delivered also differs between the UK Government and the Scottish Government. The expectations are different of civil servants, to some extent, of how they want that to be done. ... And that in turn does affect what it means to be a good policy developer and a good policy deliverer.⁴⁸

There are also some structures and systems that previously brought together officials from the different governments but no longer do so. For instance, the Scottish Government recently ceased to participate in the Fast Stream graduate scheme on the grounds that it only had Fast Streamers for a number of months before losing them to other departments. The Scottish Government is in the process of establishing its own graduate scheme. The National School of Government, which ran training and development courses for UK civil servants, has closed.

The degree of institutional and cultural divergence between Whitehall and the Scottish and Welsh Governments has led some to conclude that the three governments are now more separate than unified. In 2014 former Permanent Secretary of the Scottish Government, Sir John Elvidge, wrote in the context of the independence debate that in many ways Scotland's separate civil service was 'already there'.

[An independent Scottish Civil Service] would not be so different from the practical realities of life as it has been since devolution because most aspects of the organisation and management of the civil servants serving the Scottish Government are already within the control of the permanent secretary or, on pay policy for almost all staff for example, Scottish ministers.⁴⁹

In evidence to a Select Committee inquiry on the Home Civil Service, Institute for Government Director, Peter Riddell argued 'It is evident already that, in practice, Scotland

⁴⁶ GAR01

⁴⁷ SCO04

⁴⁸ SCO18

⁴⁹ Elvidge, J, 'Scottish Independence? It's civil service is already there', *The Guardian*, 11 March 2014, retrieved 17 February 2015, <<http://bit.ly/N9Aohr>>

and Wales are at least more distinct civil services.⁵⁰ A participant in our private roundtable concluded:

You cannot describe the Home Civil Service as one organisation any more. Despite the fact that organisation of the senior Civil Service is a reserved matter, terms and conditions of service have been devolved. It feels more like a federation of organisations – with a senior leadership committee on top. It's more like a number of separate organisations that happen to share a senior professional code.⁵¹

This 'federal' rather than unitary conception of the Home Civil Service holds certain key functions and values in common across the system, while many operational elements are controlled at the devolved level and can vary in response to distinct organisational needs and circumstances. To some extent, this resembles the relationship between Whitehall departments, which themselves vary in terms of culture, structure, pay and conditions and more. But the scale of difference between the three governments is greater and appears to be growing. Furthermore, if the present drive towards more unification of systems and creation of shared services across Whitehall continues, the differences between the UK and devolved governments may be brought into sharper focus.

This divergence in how the different administrations operate has led to concerns that the connections between the Home Civil Service in different administrations are weakening.

One Scottish official told us that, as a result of the erosion of shared experiences, working in the Scottish Government does feel different to working elsewhere.

I think it feels quite different from UK Government in respect of our governmental approach, [for instance in terms of] the National Performance Framework, the outcomes focus, our business strategy, people strategy – just how we operate here feels quite different.⁵²

Another interviewee felt that distance between civil servants was an outcome of different centres of government.

In terms of the 'one civil service', I think it probably feels less so as time has moved on, as [the Scottish] Parliament's been established and ministers are effectively here five days a week, as opposed to previously when it was the UK Government and civil servants travelled with them to London.⁵³

Several interviewees felt that the weakening of connections between officials in the different administrations could become detrimental to intergovernmental relations and good government in general. One official was concerned that if those connections were lost, interactions would become more 'transactional' and moved into a formalised space – to the detriment of good government.⁵⁴

⁵⁰ House of Commons Public Administration Select Committee, *Inquiry into Civil Service Impartiality and Referendum: Rt Hon Peter Riddell CBE, Director, and Akash Paun, Fellow, Institute for Government*, 2014, retrieved 17 February 2015, <<http://bit.ly/1K2VR4h>>

⁵¹ Osmond, J., *Better Apart, Together: The Centre and Intergovernmental Relations: A report on the proceedings of a private roundtable*, UK's Changing Union, 2014, retrieved 16 February 2015, <<http://ukchangingunion.org.uk/papers/01/Forum%205%20Report.pdf>>

⁵² SCO04

⁵³ SCO04

⁵⁴ GAR02

Declining interchange between administrations

One specific issue that several interviewees pointed to as both cause and consequence of the growing distance between Whitehall and the devolved governments, was the fall in interchange of personnel since devolution. Neither the UK nor the devolved administrations keep data on the number of secondments or transfers across time, so we are unable to verify these claims. However, all those we spoke to with memory of the pre-1999 situation agreed that there had been a significant change in this respect.

Giving evidence to the Lords Constitution Committee on the quality of intergovernmental relations in the UK, Philip Rycroft, Director General of the Deputy Prime Minister's Office, said:

There is no doubt that there is less exchange now than there used to be under the old dispensation... Most of the interchange at the moment is through the territorial offices, and there it is still very much part of the picture. Where it is less common now is in other Whitehall departments... We need to see whether we can get back to something like the old practice.⁵⁵

Our interviewees echoed this assessment. One civil servant told us that exchange of civil servants, either through secondment or permanent transfer, now happens 'much, much less, so much less than it used to' in the years immediately preceding the devolution settlements.⁵⁶ Another agreed.

We've seen less of this [interchange] since devolution. There was a time when if you were working in Cardiff or Edinburgh pre-devolution it was seen as an important part of your career to go and work in the imperial capital and get your spurs in Whitehall... It cuts slightly against the grain of going out and meeting opposite numbers, but does it do that in a particularly difficult way that is fatal for the devolution settlement? No, providing we just keep up the interaction.⁵⁷

This view was shared by a Scottish official.

What happens far less, particularly recently, is the short-term secondments and then returning... My impression is that used to be more the norm than it has been since devolution when a single civil service had to learn to work for separate governments.⁵⁸

This issue has also been raised in several official inquiries. In 2009 the Calman Commission heard evidence that the number of secondments between administrations had fallen. In the same year the House of Commons Justice Committee highlighted the shortage of secondments and recommended 'a more systematic programme of secondments between Whitehall, Cardiff and Edinburgh'.⁵⁹ The Conservative Party's Strathclyde Commission also called for the establishment of an expectation that senior Scottish officials spend part of their

⁵⁵ House of Lords Select Committee on the Constitution, *Inquiry on Intergovernmental Relations in the UK: Oral evidence session with Dr Philip Rycroft*, Parliament UK, 2015, retrieved 18 February 2015 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/intergovernmental-relations-in-the-uk/oral/17632.html>

⁵⁶ GAR06

⁵⁷ GAR11

⁵⁸ SCO18

⁵⁹ House of Commons Justice Select Committee, *Devolution: A Decade On*, Parliament UK website, 2009, retrieved 17 February 2015, <<http://bit.ly/1z6ZePt>>

career in Whitehall as part of their career progression, to improve mutual understanding and relationships.⁶⁰

Interviewees suggested a number of reasons for the decline in interchange: lack of encouragement from the centre; the cost of relocation (particularly to London); lack of career incentives; and fear (in the context of large-scale headcount redundancies) that after going on secondment there would be no job to return to in an official's home department.

One issue was the failure of the political leadership to encourage movement of civil servants. One interviewee told us that 'neither government is keen to encourage the importance of the unified Civil Service'.⁶¹ Another echoed this.

We notice a huge reticence on the part of the Scottish Government to let staff go to the Scotland Office.⁶²

Another interviewee, speaking before the referendum, suggested that if an official moved between the UK and Scottish governments, they might struggle to gain the trust of their ministers:

And particularly now, in a contested political environment, I think it would be quite difficult for ministers to have trust, or for you to ask ministers to trust, a civil servant who has the Friday before been working for an administration working directly against the primary objective of the other government.⁶³

Nonetheless, secondments and transfers (including at senior levels) do still happen, and another official pointed out that having to build relations with ministers of a different political persuasion is what civil servants have to do after an election, when there is a change of government.

In contrast to this reluctance to encourage interchange between administrations, we were told of efforts led by the Scotland Office to join up the arms of Whitehall departments based in Scotland. For example the Department for International Development (DfID) and DWP both have significant numbers of civil servants based north of the border.

What we want to do with the other parts of the UK Government in Scotland is just make people feel more part of a family. On a simple level, there are advantages in knowing that for HR and career purposes you could look at moving from the Scotland Office to HMRC or DWP or DfID.⁶⁴

A second set of reasons given for the fall in interchange involve practical and financial barriers.

If you are a Scottish civil servant thinking about coming down to London, you can't afford it as housing is just too expensive... If you are an ambitious civil servant operating in Cardiff, Edinburgh or Glasgow, if you knew you could come down here and it wouldn't bankrupt you, then I think we would get more mobility. There is still the issue of mobility of school places etc. But we should be trying to come up with ways to address that.⁶⁵

⁶⁰ Scottish Conservatives, *Strathclyde Commission on the Future Governance of Scotland*, 2014, p.2, retrieved 17 February 2105, <<http://bit.ly/1pzN0iV>>

⁶¹ GAR03

⁶² GAR06

⁶³ SCO18

⁶⁴ GAR05

⁶⁵ GAR14

Finally, some interviewees told us that the benefits of working in a different administration were less clear than previously. One told us that there used to be a sense that to be a good civil servant you have to get experience in Whitehall, but that is less the case today.

There seems to be much more a sense that there's something to work for in Cardiff and Edinburgh now. There's a separate institution... it's that sense of identity you have now in the cadres of the Civil Service in Cardiff and Edinburgh. I think there's less of a reason to come to London, which I think is a shame.⁶⁶

Another interviewee told us that civil servants in the Scottish Government often have a broader range of responsibilities than their Whitehall counterparts because teams are smaller. It's therefore less clear what that career advantages of secondment would be.

It would be perfectly possible for people to go and work in Whitehall [but] the relevance of that isn't what it was and the question would be why do you want to do it? The reasons for doing it are maybe less immediately apparent to everybody than they were say 20 years ago.⁶⁷

Not only did we find evidence of reluctance among civil servants in Wales and Scotland to spend time in Whitehall, but there were also suggestions that Whitehall civil servants have little incentive to seek secondments to the devolved administrations. One participant at our roundtable told us that experience gained working for the devolved administrations was not valued sufficiently in Whitehall, making it harder for people to transfer from Cardiff or Edinburgh to jobs at an appropriate grade.⁶⁸

Many interviewees felt that this falling away of exchange between administrations had a negative impact on the links between different administrations, leading to a lack of understanding between them. An interviewee from the Welsh Government told us that since devolution, the number of civil servants working for the Welsh Government has increased from 2,000 to over 5,000, with new recruits drawn from a wide range of backgrounds.

There are very few people left who have direct experience of Whitehall, in terms of working there. Indeed, a lot of our people have only a limited understanding of how the Parliament at Westminster works. So when we talk of the Welsh Civil Service it's quite different from the traditional Whitehall conception. There is little sharing of understanding between the two.⁶⁹

This lack of understanding has implications for how the administrations work together. Other interviewees made this connection between lack of interchange, a weakening of relations and reduced understanding of each other's' position.

Practical consequences include worse understanding on both sides. If you work in the Scottish Civil Service with the Scottish Government then you know what they are doing and you can understand why they have come up with a particular policy idea or why something intended to be imposed UK-wide wouldn't work for them. Then you have more cultural understanding and learning, as there might

⁶⁶ GAR11

⁶⁷ SCO18

⁶⁸ Private roundtable, Institute for Government, 16 December 2014

⁶⁹ Osmond, J., *Better Apart, Together: The Centre and Intergovernmental Relations: A report on the proceedings of a private roundtable*, UK's Changing Union, 2014, retrieved 16 February 2015, <<http://ukchangingunion.org.uk/papers/01/Forum%205%20Report.pdf>>

be some things we are doing in Whitehall that they would think ‘that’s quite a good initiative, let’s do it in Scotland.’⁷⁰

The overall message we heard from interviewees was that the value of the Home Civil Service rests on its facilitation of networks, strong relationships, mutual understanding and a shared professional culture. The biggest threat to this is not political division, but may be a steady erosion of the ties that bind civil servants through lack of interchange and the falling away of common institutions and professional experiences.⁷¹

The impact of political divergence

As we have noted, civil servants across Great Britain may belong to a single organisation in strict constitutional terms, but it is clear at the same time that their primary responsibility is to their ministers. When there is political divergence, this can pose challenges for the operation of the Home Civil Service as a single body.

One official told us that there has been a ‘major shift’ in civil service relations, particularly since 2007 when administrations of a different political colour were elected in Scotland and Wales. Another said relationships between civil servants had changed more after 2010 when the Conservative-led Coalition came to power in Westminster. They had noticed a new reluctance to share documents and information. This official attributed this shift in relations to a change in the ‘political colour’ across the UK.⁷²

Not surprisingly, a number of civil servants also pointed to the challenge posed to intergovernmental relations by the Scottish independence referendum. We were told that the referendum has made interactions between civil servants more strained because politicians were keener to get involved.

What might have traditionally been quite a routine conversation or transaction on an issue has become noticeably more likely to get political interest from a Scottish Government perspective and be used in a political manner by their ministers, more than it might have been in the past. Things definitely feel different and this makes it more challenging to work as effectively at official level.⁷³

Another interviewee agreed that in the context of the referendum any conversation with colleagues from the Scottish Government felt ‘loaded’ with political significance.⁷⁴ A third told us that on pre-referendum negotiations, Scottish and UK civil servants felt like ‘adversaries’, and that there is ‘no real rapport’ between officials from the different administrations.⁷⁵

The role played by civil servants on both sides throughout the referendum campaign – and particular in the production of the Scottish Government’s White Paper on independence – raised a number of questions about whether the civil service principle of impartiality had been broken. One interviewee told us:

There’s a greyer area in the white paper where [Scottish Government civil servants] were writing a manifesto on specific policies to be taken forward, for example ‘childcare provision will increase

⁷⁰ GAR14

⁷¹ SCO18, GAR10

⁷² WAL05

⁷³ GAR15

⁷⁴ GAR02

⁷⁵ GAR03

substantially in an independent Scotland'. There's an argument that that takes you across the line into manifesto-writing... but the Scottish Government would say that what they're doing is giving a practical example.⁷⁶

Another issue which contributed to the debate was the decision of Sir Nicholas Macpherson, Permanent Secretary to the Treasury, to publish private advice he had given the Chancellor to rule out a currency union with an independent Scotland. This sparked claims that he released the document under 'political pressure' from the UK administration,⁷⁷ or that Macpherson himself had breached the principle of political impartiality by publishing the advice.⁷⁸

In February 2014 the Public Administration Select Committee launched an inquiry into 'civil service impartiality and referendums' to address these issues, and to consider whether it was possible for civil servants to work towards the opposing objectives of two sets of political leaders while still remaining part of a single organisation.⁷⁹

Several witnesses to this inquiry, which has not yet reported, argued that there was no breach of civil service impartiality. Richard Parry argued that in setting out the case for independence Scottish civil servants were simply fulfilling their role of supporting their ministers.⁸⁰ Professor Michael Keating agreed that civil servants were fulfilling their duty to support the policy of the government of the day – in this, he argues, the Scottish referendum is 'no different from other controversial political issues'.⁸¹ But this position is not universally held. At a private roundtable at the Institute for Government, there was a difference of view about whether one could speak of Scottish independence as 'just another policy', when its effect would be the breakup of the UK and its entire system of government (including the unified Civil Service).⁸² Sir Nicholas Macpherson himself justified his unusual public intervention in the referendum campaign on the grounds that this was not a normal policy matter since 'the British state's position was being impugned'.⁸³

However, despite disagreement on this point and some evidence of reluctance to share information in sensitive areas, in many other respects civil servants continued to demonstrate the ability to work together and get business done in the interests of both sides. One official from the Scottish Government told us that officials were able to keep different

⁷⁶ GAR06

⁷⁷ Riley-Smith, B., 'Sir Nicholas Macpherson: I was not ordered to rule out sharing pound with Scotland' *The Telegraph*, 9 April 2014, retrieved 17 February 2015, <<http://bit.ly/1z6zTIH>>

⁷⁸ Maddox, D., 'Independence impartiality under scrutiny', *The Scotsman*, 5 May 2014, retrieved 17 February 2015, <<http://bit.ly/1ByDdj9>>

⁷⁹ House of Commons Public Administration Select Committee, *Inquiry into Civil Service Impartiality and Referendums: Call for evidence*, 2014, retrieved 17 February 2015, <<http://bit.ly/1K2YX8v>>

⁸⁰ Parry, R., Written Evidence submitted to, *Inquiry into Civil Service Impartiality and Referendums*, House of Commons Public Administration Select Committee, 2014, retrieved 17 February 2015, <<http://bit.ly/1yPVE0w>>

⁸¹ House of Commons Public Administration Select Committee, *Inquiry into Civil Service Impartiality and Referendum: Oral evidence session with Professor Michael Keating, University of Aberdeen and Professor Jim Gallagher, University of Oxford*, Parliament UK website, 2014, retrieved 17 February 2015, <<http://bit.ly/137i41p>>

⁸² Private roundtable, Institute for Government, 16 December 2014

⁸³ Macpherson, N., *Speech by the Permanent Secretary to the Treasury: The Treasury and the Union*, Kings College London, 2015, retrieved 17 February 2015 <<http://www.kcl.ac.uk/sspp/policy-institute/events/assets/Speech-macpherson190115.pdf>>

streams of work separate, and that the referendum did not affect their ability to work together on other matters.

We understand we're serving ministers who've got a different view of the world in terms of whether Scotland should remain part of the UK. It doesn't mean you can't update each other on what you're doing to prepare a paper.⁸⁴

A senior Whitehall official involved in implementing the Scotland Act 2012 echoed this sentiment.

Both sides are very conscious of the referendum and they're working on the white paper. And they're working on preparation for post-independence, working for their ministers. And they've been very careful to keep that separate because we do talk and we know they are doing it... It's a relationship that works. I don't see that it couldn't work in the longer term.⁸⁵

What is clear, given the evidence we gathered from interviewees, is that while the referendum was an extreme manifestation of political divergence, it did not cause intergovernmental relations to grind to a halt. While some areas of discussion became tense and perhaps 'loaded' with significance, other ongoing pieces of work – such as the implementation of the Scotland Act 2012 – continued.

The Home Civil Service after the referendum

In the weeks after the referendum the need for more active encouragement of interchange of personnel and building of networks was recognised by the senior leadership of the UK and Scottish civil services, and two senior officials with experience in both Whitehall and Edinburgh were asked to lead some thinking about how to 'extend the depth and range of those contacts among the UK administrations through an imaginative approach to development, secondment and interchange'.⁸⁶

The message for the future of the Home Civil Service is, on the whole, positive. The bulk of our evidence supports the proposition that there is real value in maintaining a single unified civil service, while recognising that the HCS is in practice an increasingly-federal rather than unitary organisation. But our evidence also suggests that greater effort and investment of time and resources might be needed to strengthen and maintain the practical (rather than merely the constitutional) reality of the unified service, given the trends towards divergence that we have noted.

⁸⁴ SCO17

⁸⁵ GAR08

⁸⁶ Housden, P., 'Two weeks is a long time in politics', *Civil Service Blog*, 2014, retrieved 17 February 2015, <<https://civilservice.blog.gov.uk/2014/10/03/two-weeks-is-a-long-time-in-politics/>>

4. How Whitehall departments deal with devolution

Much day-to-day intergovernmental business is resolved on a bilateral basis between individual Whitehall policy departments and the devolved administrations. The territorial offices (Scotland Office, Wales Office and Northern Ireland Office, discussed below) may be closely involved in the implementation of newly-devolved powers or in managing politically-charged areas, but they do not have the resources to be involved in every conversation that takes place between administrations. This is reflected in official guidance issued by the Cabinet Office.

The principal channel of communication between administrations should be through bilateral links between the relevant departments of each administration, at official or ministerial level.⁸⁷

Our interviews reflect this. We were told that the devolved administrations value direct contact with UK departments and try to develop bilateral relationships.⁸⁸ The nature and level of interaction with the devolved administrations varies considerably between departments. This is due to the ‘territorial non-uniformity’ of the devolution settlements⁸⁹ and the fact that Whitehall is the government both of the UK as a whole for reserved matters, and of England alone in areas devolved to the other nations. Consequently, as previous Institute for Government research has explored in detail, Whitehall departments fall on a spectrum in terms of the territorial coverage of their policy responsibilities.⁹⁰

Some departments, such as the Department for Education, are ‘England-only’ and have no spending programmes that cover the devolved territories. Some have a wholly UK-wide profile, including the Treasury and the three international departments: the Ministry of Defence (MOD), the Foreign and Commonwealth Office (FCO) and DfID. The largest department, DWP, is GB-wide in terms of most of its operational responsibilities (Northern Ireland administers its own social security system) but UK-wide as far as policy is concerned (as Northern Ireland almost always replicates DWP policy).

Others have a more mixed profile. For example, around three-quarters of the Home Office’s programme spending covers England and Wales only. This includes spending on crime and policing, which are fully devolved to Scotland and Northern Ireland and funded by block grants to those administrations. The remaining quarter of programme spend is allocated to UK-wide programmes including immigration, passports and border control. The new National Crime Agency, responsible for tackling serious and organised crime in partnership with police forces and other bodies across the country, however, operates primarily in England,

⁸⁷ Cabinet Office, *Devolution Guidance Note 1: Common Working Arrangements*, Gov.uk website, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60977/common-working-arrangements.pdf>

⁸⁸ SCO10

⁸⁹ Jeffery, C., *Devolution in the United Kingdom: The Problems of a Piecemeal Approach to Constitutional Change*, *Publius: The Journal of Federalism*, vol. 39, no. 2, 2008

⁹⁰ Paun, A., & Munro, R., *The Civil Service in Territorial Perspective*, Institute for Government, 2014, retrieved 17 February 2015, <<http://www.instituteforgovernment.org.uk/publications/civil-service-territorial-perspective>>

Scotland and Wales. The nationalist parties in the Northern Ireland Executive withheld permission for the NCA to operate fully on the other side of the Irish Sea.⁹¹

Whitehall departments also interact with devolved administrations on policy areas that are partly or fully within devolved competence. Defra, for example, operates relatively few programmes in the devolved territories. However, it works closely with the Welsh and Scottish Governments on policy matters. While environmental policy is devolved to both administrations, environmental issues do not stop at the border and often require consultation. Operational matters, such as managing outbreaks of animal diseases, also require close cross-border co-operation between the Department for Environment, Food and Rural Affairs (Defra) and devolved administrations and agencies. Furthermore, much of the policy framework in these areas is decided in Europe not Westminster, so the devolved governments must be consulted about UK negotiating positions in Brussels.

Some departments have significant interaction with one devolved administration but very little with others. The Ministry of Justice must work closely with Wales on a number of non-devolved areas, particularly where they interact with devolved powers. Achieving policy objectives in the sphere of youth justice, for example, involves aspects of non-devolved judicial policy but also intersects with devolved competencies relating to education and social services.⁹²

In some cases, changes to the devolution settlements are significantly changing how departments must engage with the devolved administrations. Notably, devolution of tax, borrowing and welfare powers in recent years are increasing the need for HMRC, the Treasury and DWP to engage with the Scottish and Welsh Governments, including through joint implementation of the devolution of these new functions.

Co-ordination of devolution issues across Whitehall

There is no single place at the centre of Whitehall with ultimate responsibility for all aspects of the devolution settlements. Instead there are a few different teams and networks through which matters relating to the territorial constitution are co-ordinated.

There is a Cabinet Office team responsible for co-ordinating meetings of the intergovernmental joint ministerial committee in partnership with officials from the devolved administrations (DAs) discussed below. This team is part of the Economic and Domestic Secretariat (EDS), and also plays a wider role in devolution management across the UK Government. A Cabinet Office official told us that a major part of this team's role while not co-ordinating JMC meetings, was promoting devolution awareness across Whitehall departments, and discussing policies with departmental teams. The official described this role as 'making sure that policy development takes account of the different devolution settlements and that the DAs are engaged at the right time... Having a discussion planned [for a JMC meeting] is an added impetus which helps in making sure that the departments are properly considering how the DAs fit into something complicated like that'.⁹³

⁹¹ BBC News, *National Crime Agency block burdens PSNI says David Ford*, BBC Online, 2013, retrieved 17 February 2015, <<http://www.bbc.co.uk/news/uk-northern-ireland-24419507>>

⁹² GAR12

⁹³ GAR09

Another part of Whitehall's devolution machinery is the Devolution Strategy Team. This team of around 15 people is part of the Constitution Group, also in the Cabinet Office. We were told that the role of this team is to ensure coherence (though not symmetry) across the different settlements, for instance by spotting where a change to one settlement might have an impact on another part of the country. The Devolution Strategy Team meets regularly with devolution representatives from individual departments and the territorial offices to ensure that devolution lines are co-ordinated and that any 'hot' issues with other administrations are flagged.⁹⁴

There is also a team within the Treasury responsible for the financial aspects of devolution, including devolution of fiscal powers and management of the Barnett Formula. During the referendum campaign a Scotland Analysis team was also set up, led by the Treasury and Scotland Office, which produced 14 papers in the 18 months before the referendum setting out the impact independence would have on various policy areas. This programme of work drew on expertise and information from a variety of other UK Government departments, including the Department of Energy and Climate Change (DECC) and the Home Office.⁹⁵

Separate from these small central teams are the territorial offices for each of the three devolved nations (discussed below). The territorial offices oversee their respective devolution settlements and play a role in facilitating relations between the devolved governments and other parts of Whitehall.

This multiplicity of centres for devolution issues corresponds with the tendency of Westminster and Whitehall to deal with each part of the territorial constitution in isolation, without much consideration about how the various proposed changes relate to one another. As Jim Gallagher recently argued, 'One of the defects of our system of devolution in the UK as a whole is that we have never looked at it as a whole... not merely a series of bilateral deals but an overall narrative about three smaller nations inside a larger multinational state'.⁹⁶

Departmental devolution co-ordinators

At departmental level, all UK departments have a devolution lead or 'devolution co-ordinator'. According to Cabinet Office guidance, their role is to 'advise on your department's relationship with the devolved administrations and how devolution affects the department's work'.⁹⁷

These individuals, or the small teams they sometimes lead, also provide a link between the department and the territorial office. One of these officials described their role to us as follows.

There's a business-as-usual strand which is maintaining good, professional constructive working relationships with each of the devolved administrations... We're also a way into the various territorial

⁹⁴ GAR10, GAR11

⁹⁵ GAR07

⁹⁶ The House of Commons Political and Constitutional Reform Committee, *The Future of Devolution after the Referendum: Oral evidence session with Professor Jim Gallagher*, Parliament UK website, 2014, retrieved 17 February 2015, <<http://bit.ly/1CS0Jai>>

⁹⁷ HM Government, *Guidance on Devolution*, Gov.uk, 2014, retrieved 17 February 2015, <<https://www.gov.uk/guidance-on-devolution#considering-devolution-in-government-work>>

offices. So we act as a sort of repository of knowledge in terms of what does the devolution settlement mean and what are the terms of it, which bits are reserved and which bits are not, and we provide advice to policy teams across the department on when and how to engage with the devolved administrations.⁹⁸

These departmental devolution teams also have a role in spreading devolution awareness through their department. In the context of the Scottish independence referendum campaign, demand for this service was high and we were told that awareness of the devolution settlements had improved.

The Indyref effect

In the months leading up to the September 2014 referendum, there was a significant effort, led by the Cabinet Office and Scotland Office, to increase devolution awareness across Whitehall. As part of this effort, a new group, the 'Senior Officials Scotland Group' (SOSG), was established to draw together senior officials from across Whitehall and provide some central co-ordination in combating the independence campaign. Every department was asked to nominate a representative to oversee and promote understanding of Scottish issues in their department and to come together to share lessons about how best to advance the UK Government's objective of maintaining the Union. In an illustration of how the referendum raised the profile and importance of territorial questions, SOSG comprised officials at director level, and was chaired by the director general of the Deputy Prime Minister's Office, a former senior official in the Scottish Government.⁹⁹

One member told us that the group created a clear point of contact in each department who could manage devolution issues.¹⁰⁰ The group also allowed departmental representatives to share lessons and best practice about managing relationships with the Scottish Government and stakeholders in the context of the referendum. SOSG was also used to co-ordinate communications activity relating to Scotland. It appears that from a UK Government perspective, SOSG helped to join up different strands of Whitehall's Scotland-facing work, co-ordinating activity such as at a politically-sensitive time.

A number of officials felt that this was a good thing and had led to improvements in how departments interact with Scottish colleagues.

[We have been] reminded endlessly by Cabinet Office, Scotland Office etc... and that has sharpened our awareness, I would freely confess that. We have raised our game in terms of our engagement with Scottish interests and thinking about it in a slightly more sophisticated way.¹⁰¹

The heightened constitutional awareness because of the referendum has led to general improvement in understanding about the devolution settlements and understanding about the need to think through how things will impact on Scotland, Wales and Northern Ireland, which is one bonus that's come out of this quite difficult time.¹⁰²

⁹⁸ GAR17

⁹⁹ House of Lords Select Committee on the Constitution, *Inquiry on Intergovernmental Relations in the UK: Oral evidence session with Dr Philip Rycroft*, Parliament UK, 2015, retrieved 18 February 2015 <<http://bit.ly/1zNkM4a>>

¹⁰⁰ GAR03

¹⁰¹ GAR13

¹⁰² GAR09

However, some interviewees were concerned about whether this new awareness of the devolved context of policies would outlive the independence campaign. For one interviewee a critical question is whether the good practice generated by political concerns would survive once the heat moved on to another issue.

We're now much better at explaining what we do, co-ordinating it, and getting Whitehall to understand Scotland. But the big issue for me is to make sure we don't slip back after the referendum, so we're starting to turn our attention to how we embed that.¹⁰³

This concern that the heightened consideration of devolution issues was temporary and context-specific was echoed by another senior official.

One of my great worries about what happens post-referendum is that Whitehall just goes back to sleep again on all things Scotland... All the good practice will be lost.¹⁰⁴

Another interviewee told us that before the independence referendum campaign began, there was a short-lived attempt to nominate 'devolution ministers' in each department to take the lead on devolved issues. Similar to SOSG, these ministers were to have regular meetings. However, the group fell apart after only three meetings due to a lack of political interest.¹⁰⁵ This experience suggests that, without the referendum to provide an incentive, devolution will fall back down Whitehall's list of priorities.

Intergovernmental working groups

Another mechanism used to facilitate working relations between the different governments is via working groups with a more focused remit, such as co-ordination of a single policy issue that affects several administrations, or implementation of UK-wide programmes.

An example of this is the Electricity Network Strategy Group, which discusses Britain's shared electricity grid and upgrades to it. We were told that the group helps to build relationships across the different levels of government.

You have senior officials from UK departments. You have the regulator, people from the private transmission owners, people from national grid. All these things are good because you just get people in a room together... You get a lot of informal discussions. There's a formal agenda but you get people milling around and chatting over coffee. All of that has value.¹⁰⁶

Other examples of 'standing fora' include the UK Roads Liaison Group, which includes the Scottish and Welsh Governments and the Department for Transport,¹⁰⁷ and the Home Office Advisory Group. This gathers together representatives from the Home Office, Welsh Government, Wales Office, Local Government Association, Association of Chief Police Officers Wales and others to discuss criminal justice issues in Wales – a sensitive area where the two governments have come into conflict on issues such as the imposition of police and crime commissioners in Wales, which the Welsh Government opposed.

¹⁰³ GAR05

¹⁰⁴ GAR06

¹⁰⁵ GAR22

¹⁰⁶ SCO09

¹⁰⁷ GAR13

One official involved in one such group told us that its establishment had helped to improve working relationships between the two governments.

We've gone from being in a very difficult relationship, to being in a relationship where we understand our parameters and political dimensions and finding solutions to things... We're in a much, much better place, so we should be ready for anything!¹⁰⁸

Another example, from Scotland, was a regular meeting of UK and Scottish Government officials to discuss issues that affect the army population based in Scotland – particularly relating to issues such as the provision of devolved services such as health and social care to military personnel.

The people in the policy area here who are responsible for it meet weekly with their counterparts in the MoD to discuss issues. They have a very, very good policy relationship, in terms of each government having the opportunity to put forward its views and opinions on actions.¹⁰⁹

Working together to implement change

A bespoke set of intergovernmental mechanisms were also set up to oversee the implementation of the devolution of tax powers contained in the Scotland Act 2012. These included a joint programme board of Whitehall and Scottish Government officials that reviews progress, as well as regular meetings at the political level. Ministerial-level contacts are maintained through the Joint Exchequer Committee, which comprised the Chief Secretary to the Treasury, the Secretary of State for Scotland, the Deputy First Minister and Finance Minister. This group meets every six months to reach agreements between governments, providing political oversight and a forum in which to resolve more tricky points of negotiation.¹¹⁰ At the official level implementation of the Scottish Rate of Income Tax (SRIT) is overseen by a Joint Programme Board, chaired by an HMRC official but with representation from the Scottish Government. An Intergovernmental Assurance Board oversees the planning and implementation of the financial provisions of the act. This is jointly chaired by the Treasury and the Scottish Government.¹¹¹

Those involved that we spoke to had a positive view of how this process was working, with a clear timeline and shared interest in making a success of the new settlement, providing the ideal context for effective co-operation at working level. We were told that having clear governance structures and lines of accountability was very helpful in ensuring that the right people were involved and that work happened on time.

I do think that the governance structures are important... So Joint Exchequer Committees are really important set piece meetings that you can work towards and are a useful level to force things to happen, actually. So you know the meeting is going to happen in a month's time, it forces you to do the work and it forces both sides to think about what they want to achieve.¹¹²

¹⁰⁸ GAR16

¹⁰⁹ SCO01

¹¹⁰ GAR07

¹¹¹ GAR07; see also Paun, A., Randall, J., Munro, R. & Shaddock, L., *Future Constitutional Scenarios for the UK*, Institute for Government, 2014, retrieved 17 February 2015,

<<http://www.instituteforgovernment.org.uk/publications/governing-after-referendum>>

¹¹² GAR07

Not only are these formal groups useful for keeping projects to time, they are also useful for forcing useful and constructive conversations rather than political back-and-forth. As one official told us:

Ministers don't want to sit in a meeting and have an argument, and officials don't want ministers to sit in a meeting and have an argument. What they want is to go to the meeting and maybe iron out a few things at the margins, but actually reach agreement and be constructive, because that helps you to be constructive over the longer term. So actually the governance structures, I think, help to deliver some of that.¹¹³

But while the implementation of the Scotland Act 2012 is in many respects a positive example of co-operative intergovernmental relations, this process has not been without tensions. In particular, the two governments have struggled to agree on a process for how the Scottish Government's block grant should be adjusted to take into account the devolution of control of stamp duty and landfill tax. In the context of the referendum campaign, we were told, it was difficult to focus ministerial minds on resolving this issue or to convene meetings of the lead ministers to thrash out a compromise. This case illustrates that the two sides work together well in spite of political difference when there is a shared interest in effective implementation, but that things are more difficult to resolve when it comes to 'zero-sum' issues such as the size of the block grant in the new context of fiscal devolution.

Management of cross-border issues

Even in areas of devolved responsibility there remains a number of policy areas which require co-operation between administrations, either because the border does not easily divide the issue (for example, maintenance of rivers and water channels), or because they concern services used by residents of different territories. The need for effective cross-border co-operation is particularly acute with regard to the Whitehall-Wales relationship, reflecting the fact that the Welsh devolution settlement is less self-contained than those of Scotland or Northern Ireland, and also that Wales in a broader social and economic sense is more interconnected with England, due to heavy population along the Anglo-Welsh border.

Healthcare is an example of where there is significant need for co-operation as well as evidence of intergovernmental tensions. We were given the example of a dispute over NHS charges for cross-border services between Wales and England. There are arrangements for cross-border compensation on healthcare costs, agreed by the previous Labour government. A ministerial arrangement entered into in 2009 agreed that the Welsh Government would be compensated for additional costs it would incur as a result of the introduction of the Payment by Results Tariff within England. The dispute with the Department of Health centred on the time period for which this compensation would be paid. In the end an agreement was reached, but it required the intervention of senior officials on both sides, and the threat of escalation to ministerial level.¹¹⁴

A Welsh Government official told us that even in the event of further devolution of power to Wales, there will be a need for the two administrations to work effectively together and that specific machinery should be developed to facilitate this.

¹¹³ GAR07

¹¹⁴ GAR01

There will still be quite a lot of stuff in the middle... We're never going to detach to that degree in which you have a hermetically sealed health system on one side, because of the nature of the border – people go back and forth across it every day. So that is the argument for having joint machinery.¹¹⁵

One interviewee said that similarly complex agreements would likely be needed to manage cross-border issues in the event of devolution of policing and justice matters to Wales, which the Silk Commission has recommended. For instance, there would probably still be a requirement for cross-border traffic in prisoners since maintaining an integrated England and Wales prison system would be more efficient than seeking to create an entirely separate Welsh system.¹¹⁶

Emergency responses to crises such as outbreaks of contagious diseases in livestock also necessitates close co-operation between different administrations and agencies, as the actions required may straddle devolved and reserved responsibilities.

There are fewer such cross-border issues between the Scottish and the UK Governments, but upcoming changes to the Scottish devolution settlement seem set to increase the requirement for cross-border co-operation and partnership arrangements across the Anglo-Scottish border. Devolution of income tax, for example, will require close co-operation and consultation between the UK and Scottish Governments since HMRC will continue to operate the income tax system across the UK on behalf of the UK and Scottish Governments. While HMRC is a department of the UK Government, in this capacity it will effectively also become an agent of the Scottish Government (and potentially in future for the Welsh Government too). New accountability systems are being developed to reflect this change. For instance, the second permanent secretary of HMRC has been given 'accounting officer' responsibilities for the operation of the Scottish rate of income tax on an ongoing basis, and is required to report both on the implementation of the tax and on all matters relating to its operation, to both the Scottish and UK Parliaments. The additional devolution of tax and welfare powers set out in the Smith Commission report will increase further the need for cross-border co-operation in managing these complex systems.

Cross-border issues in Northern Ireland have a different meaning. Following the Good Friday Agreement, formal machinery was established to manage services shared with the Republic of Ireland. The North South Ministerial Council was established under the Good Friday Agreement to encourage co-operation and consultation across the Irish border. While the Council meets at a ministerial level, bringing together politicians from north and south, it also has several implementation bodies which manage cross-border services. These include Waterways Ireland, which manages inland waterways, and the Food Safety Promotion Board. These implementation bodies operate under the policy direction of the Council and are accountable to the Irish Parliament (Oireachtas) and the Northern Ireland Assembly.¹¹⁷ Expansion of this set of cross-border machinery is limited by political division on the whole idea of working with the Irish Government.

Experience of cross-border working between Northern Ireland and the Republic offers some lessons for the UK. Ruth Taillon, Director of the Centre for Cross-Border Studies, describes

¹¹⁵ WAL09

¹¹⁶ WAL05

¹¹⁷ North South Ministerial Council, *North South Implementation Bodies*, 2006, retrieved 17 February 2015, <<http://www.northsouthministerialcouncil.org/index/north-south-implementation-bodies.htm>>

a number of factors that contribute to successful co-operation. Political will is vital. A lack of political drive can paralyse attempts to boost cross-border co-operation. It is also important that cross-border arrangements are written down so they can be adhered to. Institutions are important, as co-operation does not happen organically, but needs to be supported and facilitated through formal structures. Finally, sufficient funding should be allocated to support cross-border co-operation. This can be challenging in the context of government cuts, as departments may be reluctant to allocate budgets to such work.¹¹⁸

Challenges in managing cross-border ALBs

Whitehall and the devolved administrations also face a specific set of challenges around relationships with arm's-length bodies that operate across more than one territory, often in areas that are partly devolved and partly reserved. Ofgem is an example. Scottish Government officials told us that their relationship with Ofgem can pose problems. While the Scottish Government can give planning consent to all but the largest power-generating plants (excluding nuclear), Ofgem's ability to influence National Grid strategy and expansion curtails the ability of the Scottish Government to encourage the development of some new power sources. We were given the example of a project that would connect the Scottish Islands to the National Grid and hence support island-based small-scale renewable energy generation. The Scottish Government were able to give consent for the projects, but Ofgem sets the framework which governs investment in the National Grid transmission network.¹¹⁹ An interviewee told us that in this case the delivery of Scottish Government energy policy – of encouraging renewable generation – is 'frustrated' by its lack of ability to influence the regulatory framework with respect to local circumstances.¹²⁰

Another official agreed that the Scottish Government's limited ability to influence Ofgem's decision making on investment meant that the Scottish Government's distinct policy aims could be difficult to achieve.

I think we've got a different approach to government in Scotland... We've got an economic strategy that's about inter-generational equity as well as sustainable economic growth... So sometimes because of different policy intentions, one being very market driven and very much about the end point for consumers... we can sometimes find ourselves on divergent paths and in those circumstances it can be quite difficult to get what we want.¹²¹

Because Ofgem works within a context directed by the UK Government, this official found it difficult to have any input into energy regulation in the UK 'because actually you're trying to deal with a toolkit that hasn't been designed to facilitate that... it's just not always designed in a way that's helpful for what we're trying to achieve'.¹²²

However, a DECC official provided an alternative perspective, arguing that Ofgem is an independent regulator accountable to the UK Parliament and bound by UK and EU laws in the way it can operate. The UK Government does not direct Ofgem although it does set out

¹¹⁸ Ruth Taillon, Director of the Centre for Cross-Border Studies, at Institute for Government seminar on 16 July 2014

¹¹⁹ SCO05

¹²⁰ SCO09

¹²¹ SCO05

¹²² SCO05

the framework in which Ofgem operates, and the devolved administrations are consulted on this framework. We were told:

Even if the Scottish Government had the same powers as the UK, they would still have the same arguments about the case for a transmission link to the Scottish Islands. The Scottish Government would not simply be able to say 'build it' because of their economic strategy, because that would, arguably, fall foul of EU law. The proponents of the link would still need to demonstrate how it meets the interests of consumers as they would be the ones paying for it.

A second set of challenges mentioned by our interviewees relate to the accountability structures that govern these cross-border bodies. Who should appoint, direct and pay for bodies that serve various administrations? Discussing the Planning Inspectorate, which operates in both England and Wales but is established as a Department of Communities and Local Government (DCLG) ALB, one Welsh official told us:

The Planning Inspectorate is an entirely England thing, but we fund the Welsh bit of it. So we've got no constitutional role in the Planning Inspectorate but we've got an operational role because they take decisions for us and we give them funding... But they're not our body. We're not part of appointing the Chief Planning Inspector or anything like that.¹²³

Effective management of these bodies is a live issue within the debate about further devolution. In November 2014, the Smith Commission recommended that the Scottish Government be given a 'formal consultative role' in setting the strategy for Ofcom, Ofgem, and the BBC, as well as two lower-profile bodies, the Maritime and Coastguard Agency and the Northern Lighthouse Board.¹²⁴ Several submissions to the Commission also mentioned the need for better arrangements for cross-government consultation on regulation, particularly in the sphere of energy.¹²⁵ This commitment, including the precise phrase 'formal consultative role', was replicated in the January 2015 draft legislation, but precisely what this will mean in practice remains to be worked out.¹²⁶ Reflecting on accountability issues relating to cross-border ALBs, one devolved official argued, 'You'd want those [bodies] to be consistently owned, consistently run, consistently accountable to the different administrations equally.'¹²⁷

Devolution of aspects of welfare policy is also likely to require changes in the function of bodies such as the Social Security Advisory Committee (SSAC), the DWP-sponsored body that has a statutory responsibility for scrutinising all social security regulations passed as secondary legislation, working closely with the relevant select committee in so doing. As the Scottish Government builds up its own welfare competence following the Smith proposals, it is possible that the SSAC will take on a similar role for the Scottish Government and Parliament, requiring new accountability mechanisms in the process. Alternatively, the

¹²³ WAL04

¹²⁴ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, Smith Commission website, 2014, retrieved 17 February 2015, <<https://www.smith-commission.scot/smith-commission-report/>>

¹²⁵ The Smith Commission, *Submissions from Organisations: Numbers B00111 (Community Energy Scotland), B00119 (Scottish Renewables), B00041 (EDF Energy)*, 2014, retrieved 17 February 2015, <<https://www.smith-commission.scot/resources/submissions-organisations/>>

¹²⁶ HM Government, *Scotland in the United Kingdom: An enduring settlement*, Gov.uk website, 2015, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf>

¹²⁷ WAL04

Scottish Government may opt to set up an equivalent body of its own, but this would then require close co-ordination between any such body and the SSAC since there will be a complex interaction between devolved and reserved parts of the benefit system.

The discussions above illustrate the variable and sometimes ad hoc ways in which relationships between the different governments are organised in different policy domains. But while there can be no one-size-fits-all model, we can draw some conclusions about good and bad practice, which will naturally apply in different ways to different parts of the system.

Personal relationships are crucial, but structures can help build relations

One clear lesson from our research is that good inter-personal relationships at official level are key to effective intergovernmental relations.

Informal relationships are very important. Developing strong one-to-one relationships with key position holders in the Welsh Government is really key.¹²⁸

Generally speaking, we've managed really well with the Scottish Government, and that's partly about personalities. Obviously you need to be able to get on... if that relationship was not a good thing all sorts of other things would happen because we would have to deal with things more formally.¹²⁹

But while good relationships are vital, the examples given above show that the existence of regular forums for discussion of particular policy issues can be a useful way to build such relationships. Face-to-face contact is very important, as another official emphasised.

Even with all the technology, I don't think there's any substitute for being in a room with somebody, being able to read their body language, being able to talk outside of the formality of a meeting and be able to take somebody to one side and say 'I've heard this' or 'What do you think about this?' That's all invaluable.¹³⁰

As discussed earlier in this report, there is a live debate about whether there is a need for the expansion of other network-building activities within the Home Civil Service, such as joint training and talent management schemes, and further development of networks within civil service professional groups.

Whatever the context of interaction between officials from the different governments, communication style is also important. As one UK Government civil servant put it:

You should be as open as you can be and trust the people you're dealing with. [At] the point when I took over there was quite a bit of nervousness about working with the Scottish Government, and about what we should share and what we shouldn't, and in practice my experience is that it's worth being open and being very straightforward [with the devolved administrations]... Although occasionally that will trip you up, it very much pays dividends.¹³¹

Willingness to compromise was also mentioned.

¹²⁸ GAR10

¹²⁹ GAR08

¹³⁰ GAR17

¹³¹ GAR08

Being fair, not presenting yourself as in any way underhand or overly political, and being fair with the position you're reaching – and, to the extent possible, being prepared to compromise, trying to find common ground. That's not always possible obviously.¹³²

This sense of being fair and professional echoes comments we heard about the value of being part of a single civil service and having a shared professional code. Officials that we spoke to felt that they worked well with colleagues in the devolved administrations because they had similar objectives and values.

Remember that the people who are in Scotland or the other devolveds are just ordinary people like us, doing a public sector job... I would treat them the way we would treat people from other government departments or senior officials in local government. We are part of a collective effort.¹³³

Development of a shared evidence base where possible

Officials from both the Scottish Government and Whitehall told us that working with colleagues in another administration to develop shared evidence was a valuable activity, as it both helped to develop good working relationships and to ensure that discussions or negotiations were based on shared facts and analysis. A Scottish official told us:

One thing that worked well ... was jointly commissioning and funding research with DECC. Just the process of doing the joint research was helpful. It's quite an involved process. You get together with officials from the other government. You agree a project specification. You commission the research. You meet up a lot during the research. Those things have a value beyond what you get from the consultants – you've had a six-to-nine-month period of weekly communication with your colleagues elsewhere.¹³⁴

Another official, with experience of implementing the Scotland Act, told us that when going into negotiations about how to implement legislation it was important to have a common evidence base.

I think it's also really important to understand, as far as possible – it doesn't always work in practice – but as far as possible, have a joint understanding of the evidence, the risks, the benefits, the analysis etc.¹³⁵

Boots on the ground

A final point several Whitehall interviewees made to us is the value of having a presence in the devolved territory. We were told that this offers a number of benefits. It allows Whitehall departments to gather intelligence about policy debates in Scotland and Wales, and facilitates relationships with the devolved administration. One UK Government official told us:

Practically, when you're trying to implement a policy [from a UK Government department], if you haven't got a senior enough person on the ground, then those negotiations [with the devolved

¹³² GAR10

¹³³ GAR13

¹³⁴ SCO09

¹³⁵ GAR07

administration] just don't happen... They expect, and rightly so, to see senior [departmental] officials coming... to talk to them.¹³⁶

Basing a team member in the devolved territory also sends a positive message about the value Whitehall places in those devolved relationships. One interviewee, who works for a UK Government department but was based in Scotland during the referendum campaign, told us that this allowed the department to build relationships with local stakeholders who would otherwise have contact only with the Scotland Office, which does not have the necessary policy expertise.

Variation in devolution awareness

However, while our interviewees painted a generally positive picture of the ability of officials from different administrations to work together in a professional way, we also heard various criticisms of how intergovernmental relations currently work.

First, given the wide variation in the 'territorial profile' of different parts of Whitehall it is not surprising that we found significant variation in how, and how well, departments manage their relationship with the devolved administrations. One official in a devolved government reported:

There is a very big difference between departments in the UK Government, enormous in some instances...we straddle [department X] and [department Y], they are often chalk and cheese in the way they interact with us.¹³⁷

Several interviewees in Edinburgh and Cardiff reported poor or variable understanding of the devolution settlements and of departments not understanding how their own powers apply in different parts of the country.

Often in Whitehall... it just won't occur to them that there will be a devolved element... and there will be a natural assumption that they are responsible for that area and will progress in that way until they come up against something.¹³⁸

[Departments] would purport to be making statements that covered the whole of the UK, and we'd have to point out that they couldn't do [so].¹³⁹

A further reported problem is that officials do not always realise that the settlements are not uniform across the different territories and may wrongly assume that similar issues apply in all cases.

People will get an understanding of Scottish devolution... and then will seek to try to apply that to their understanding of Welsh devolution and Northern Irish devolution.¹⁴⁰

Often there is a connection between how frequently a department has to deal with the devolved administrations and how successful it is.

¹³⁶ GAR16

¹³⁷ WAL08

¹³⁸ WAL08

¹³⁹ SCO10

¹⁴⁰ WAL08

Devolution awareness is an ongoing issue... certain departments are more devolution-aware than others. For example, departments for which most of their policy area is already devolved tend to be very aware of the devolution settlement. Departments where they hit devolution, as it were, very occasionally are less aware. Plus you deal with officials, bill teams being created by officials, which may not have encountered devolution previously.¹⁴¹

In some cases, insufficient awareness of the devolved context is less about knowledge of the formal division of competencies between levels of government and more about understanding how language or terminology used in a policy announcement might be received outside of England. One Whitehall official highlighted this issue.

A lot of the language that we use in England is about the private sector delivering a better, more efficient service. That language doesn't have the same resonance in Scotland because they have a slightly different approach to private versus public provision.

Officials in this department are advised 'not to forget to nuance the language a bit so it's about improved services... not about the virtues of the private sector operating it. Sometimes we don't do that well, and we can get caught out'.¹⁴²

Some interviewees felt that Whitehall's communication with the devolved administration was becoming more sensitive to devolved sensitivities.

We're getting much better at communicating UK Government activity that relates to Scotland, in Scotland... [previously] a UK Government press release would go out without a recognition of the impact in Scotland.¹⁴³

However, we heard scepticism as to whether this new awareness of the need to manage devolved relationships more carefully is a lasting improvement, or a temporary symptom of the Scottish referendum.

Failure to consult in time

An issue raised by several interviewees was a lack of consistency in when information is shared or other administrations consulted on policy changes, and in particular, a perception from the devolved administrations that Whitehall too often engaged them too late in the policy process.

The main bone of contention was really about sharing information early enough. Always the feeling [from...] all the devolved administrations was 'you could have shared stuff with us quicker and earlier and we're not very happy about not getting it'.¹⁴⁴

Very often, things are presented to us as a policy change for us to fit into Wales, rather than coming to us at the early stage of development for us to explain to them where the challenges may be, for them to redesign their thinking so it will work in Wales or any of the other devolved administrations... It's presented as a fait accompli.¹⁴⁵

¹⁴¹ GAR10

¹⁴² GAR13

¹⁴³ GAR05

¹⁴⁴ GAR17

¹⁴⁵ WAL07

What they tend to do is consult us after they've decided on their policy and the direction that they want for any issues... instead of that more collaborative process... It's often just ticking a box, and it's often very late. ...they will often ask us for ministerial agreement in very, very tight timeframes.¹⁴⁶

This is not an entirely one-way issue. One Whitehall interviewee told us that devolved administrations also did not always give advance notice of legislation which might require UK input. When asked to give one key lesson for more effective intergovernmental relations, a Welsh official likewise advised to '[engage] as early as possible in any development, and that goes for us just as much as UK Government'.¹⁴⁷

A Northern Ireland official told us that DWP was generally good at consulting them in time on welfare reforms (which the Northern Ireland Executive are expected to replicate and implement themselves) and that it was entirely political disagreement that had led to the long impasse on welfare reform and funding that was finally resolved in December 2014. There was, however, a concern about the effects of the implementation of universal credit, and whether it would force the Northern Ireland Executive to invest in a complex new IT system to replicate the GB system.

Poor communication leading to misunderstanding

In some instances problems seem to arise not through a failure to consult, but due to crossed wires during the consultation process. We were given the example of a Defra policy initiative which revised flood insurance by basing premiums on council tax bandings. Welsh Government officials told us that Defra had failed to take into account that Wales had revalued council tax bandings some years earlier, with the result that under the new scheme Welsh council tax payers would contribute more than their English counterparts with homes of an equivalent value. A Welsh Government official told us:

That's an example of working up something without thinking that it affects somewhere else, so you need to think about it. There's no real place where that sort of 'Wait a minute, this isn't just England' bit can happen. Or is not in the psyche to happen. I remember working in London all those years and really Wales wasn't on the agenda... It wasn't there, it wasn't part of the thinking... I think that's, for me, the main issue.¹⁴⁸

Defra officials, however, told us that they had consulted colleagues in Cardiff before publishing a consultation on the proposed changes, but that concerns about the scheme were not raised until later in the process, in early 2014. However, by October 2014 the issue had still not been resolved, and Welsh Minister Carl Sargeant wrote a public letter calling for the UK Government to listen to the Welsh position.¹⁴⁹ In this case, it is hard to be sure exactly what was the cause of this disagreement, but it does appear to illustrate the problems that poor communication between administrations can lead to.

¹⁴⁶ WAL08

¹⁴⁷ WAL07

¹⁴⁸ WAL04. For details of this issue see: Welsh Government, *News: Welsh homes disadvantaged by UK flood protection scheme, says Minister*, Welsh Government website, 2014, retrieved 17 February 2015, <<http://wales.gov.uk/newsroom/environmentandcountryside/2014/9228417/?lang=en>>

¹⁴⁹ Welsh Government, *News: Welsh homes disadvantaged by UK flood protection scheme, says Minister*, Welsh Government website, 2014, retrieved 17 February 2015, <<http://wales.gov.uk/newsroom/environmentandcountryside/2014/9228417/?lang=en>>

Small devolved administrations not seen as a priority

One factor that can affect how departments engage with the devolved administrations is the simple fact that the Scottish, Welsh and Northern Irish governments are significantly smaller than Whitehall, and can therefore be seen as a low priority. One interviewee described working in partnership with the UK Government as being ‘in bed with an elephant’ – it can roll over and crush you and not even hear you squeak.¹⁵⁰ We heard a similar perspective from a Welsh Government official, who told us that the problem is a cultural one of respect in Whitehall for a much smaller administration.¹⁵¹

From a Whitehall perspective, we heard the following admission.

Devolution is one thing in a list of 20 things that in an ideal scenario you’d take into account right at the beginning of the policy process, but in practice that’s not really how policy is made. So just trying to be one of the five things that a policy team thinks about is quite a good start, but in practice you know it’s extremely hard to do.¹⁵²

Another official offered an example that shows how lack of political focus on the devolved administrations can be to the detriment of intergovernmental relations at departmental level. They told us that while working groups with members from both administrations could be beneficial, their effectiveness relied on Whitehall officials making the groups a priority.

Often the reason that we find those forums are not as good as they could be is that the UK officials are under pressure to deliver their own objectives. So on [named specific policy] there’s a huge amount to do, and extra consultation with the SG probably takes up time. So there’s no real barrier, it’s more a practical barrier of taking the time to do that.¹⁵³

Another devolved official similarly told of how formal consultation with the devolved governments was downgraded, as part of a wider streamlining of governance arrangements for a major reform programme led by one Whitehall department.¹⁵⁴

Lack of consistent devolution training

A further issue raised by our interviews is the lack of consistent devolution training provided by Whitehall departments. One interviewee felt more should be done to deliver training across departments.

I think there needs to be a way of engraining devolution awareness more fully in departments. There needs to be a more systematic approach in terms of delivering education... in terms of all departments induction processes for example, devolution should be a fundamental part of that in terms of training on policy development, on bills and legislation, devolution should be part and parcel of that.¹⁵⁵

¹⁵⁰ SCO20

¹⁵¹ GAR01

¹⁵² GAR09

¹⁵³ SCO09

¹⁵⁴ SCO17

¹⁵⁵ GAR10

Another interviewee felt that devolution capability and awareness was an issue, and suggested that this was directly related to the devolved administrations being seen as less of a priority.

Do Whitehall departments appreciate the need to have staff with skills/training/experience in devolved matters? Where's the devolution capability in Whitehall? Is it seen as a priority?¹⁵⁶

Structural misalignment complicates dialogue

Even if devolved administrations are given the opportunity to engage with UK departments on policymaking, it is not always clear which team or individual they should contact. In part, we were told, this is due to the vast differences in scale between UK departments and the teams or directorates in the Welsh and Scottish Governments.

The scale of it is huge in comparison with the number of people operating at a similar level, in similar areas of work... There must be several hundred people in DWP that are linked in to [a particular policy area], and within my direct team there's a handful of us. So there's a real challenge there to find the right person to talk to and get your view heard.¹⁵⁷

Difficulties also arise because policy responsibilities are divided differently in different administrations. For example, the Scottish Government has created 'Marine Scotland', an organisation which brings together all policies relating to marine strategy and marine resources. There is no equivalent post in the UK Government, which, we were told, can make engaging the right people less than straightforward.¹⁵⁸ We were given another example by a Welsh Government official.

This is where it's become slightly challenging because the internal organisation of some of these departments, and the boundaries between departments, are not exactly symmetrical. We don't have a BIS [Department for Business, Innovation and Skills]. We have a Department for Education and Skills. So does Scotland and so does Northern Ireland. So we can talk to them and we can match person to person. It's quite easy. With London it's a bit harder.¹⁵⁹

Making the right connection can be even harder where the policy in question covers both reserved and devolved issues. One interviewee offered the example of trying to develop a strategy which covers both devolved and reserved policy areas.

The silo working made it very difficult for any one person in that office to have that broader view... To have their questions answered they'll need to go to six different people. In England that's manageable within one government, but in Wales it's really complicated because you've got to find the right person within two governments.¹⁶⁰

Turnover of staff hampers relationship-building

Difficulties in finding the right person to talk to in other administrations can be made worse by high turnover of staff on all sides. Officials from both the Scottish and Welsh Governments told us that often they would put time and energy into developing contacts in Whitehall, only for that individual to move on, and any shared understanding to be lost.

¹⁵⁶ GAR01

¹⁵⁷ WAL07

¹⁵⁸ SCO07

¹⁵⁹ WAL06

¹⁶⁰ GAR16

Sometimes you'll work hard to build up a relationship with a particular person, who will then understand the issues well. But they'll then move on and you have to start from scratch. There's a willingness to try to understand but they start from a low level of knowledge.¹⁶¹

An official from the Welsh Government agreed.

We now have liaison with specific individuals but until recently that was a real challenge. Personnel changing is the big challenge because of having to re-establish connections and explain how devolution works.¹⁶²

Lack of capacity at devolved level

Limited capacity can be a challenge for devolved administrations. While they may be keen to engage with Whitehall departments, they can lack the expertise, information or manpower to monitor relevant policy developments. For instance, we were told that the justice policy team within the Welsh Government – which acts as a link between Welsh Government policy teams and the Ministry of Justice – was developed in part out of a need for additional capacity on the Welsh side in this largely non-devolved area.¹⁶³ Other interviewees in the devolved administrations voiced similar concerns about their ability to interact with Whitehall policy processes from a far smaller base.

Just to think about resources, it's often the case that we are a bit mismatched. Working with officials in the Scottish Government, you might find it's a team of 10 people here [in Whitehall] who have part of one person to interact with. Sometimes that makes it more difficult for them to present their case with evidence that we can then appreciate. Clearly it's quite a big resource drain to be able to do that.¹⁶⁴

[Engaging with Whitehall has] required us to put quite a lot of investment into analysis and modelling, and just the toolkit that lets you engage with the kind of high-level experts that a government department the size of [named department] can engage with and utilise... We need to be able to demonstrate that we know what we're talking about.¹⁶⁵

We've got much less of a regular relationship with Wales, partly down to the resource bottleneck. The WG is quite a small group of people compared to Whitehall, and generally that means that one official will be covering quite broad areas. So they really have to focus and prioritise their attention on what's important to Wales and what's important to their ministers.¹⁶⁶

These challenges were recognised by some of our Whitehall interviewees. One told us that it was difficult to manage the balance between overwhelming the devolved administrations by giving them too much information to process, and failing to give them enough foresight or information to be able to decide whether to intervene.¹⁶⁷

However the constitution evolves in the coming years, bilateral relations between particular UK Government departments and the devolved administrations will remain central to the effective management of many policy areas that cut across the division of competences

¹⁶¹ WAL05

¹⁶² WAL07

¹⁶³ WAL05

¹⁶⁴ GAR17

¹⁶⁵ SCO05

¹⁶⁶ GAR17

¹⁶⁷ GAR17

between Whitehall and the devolved capitals. There is significant experience to learn from about what works in managing such relationships, but at present there is clearly room for improvement.

5. The post-devolution role of the territorial offices

Long before devolution there were separate Whitehall departments – the ‘territorial offices’ – for each of Scotland, Wales and Northern Ireland. The Scottish Office was established in 1885, the Welsh Office in 1965 and the Northern Ireland Office in 1972. The territorial offices implemented government policies and administered public services in the three territories and were responsible for articulating the needs and interests of each to the rest of the UK Government.¹⁶⁸ Each office was led by a secretary of state who represented that nation’s interests at the Cabinet table.

At the point of devolution in 1999, the major policy and operational functions of the Scottish and Welsh Offices were devolved and became the new Scottish Executive and National Assembly for Wales (later itself divided into Assembly and Government). The much smaller Whitehall arms of the old territorial offices were retained with the specific role of representing Scotland and Wales in Whitehall, and vice versa. The Scottish Office became the Scotland Office, and the Welsh Office the Wales Office.

These reconstituted territorial offices took on a new role in facilitating intergovernmental relations between the UK Government and the devolved administrations. The principles that underpin relations between the UK Government and the three devolved administrations are laid out in a ‘Memorandum of Understanding’, first published in 1999. The Memorandum sets out a series of agreements on consultation, co-operation and exchange of information between the centre and the devolved administrations. It also sets out principles for dispute resolution, the centrepiece of which is the Joint Ministerial Committee (discussed below). The Memorandum of Understanding gives the secretaries of state for Scotland, Wales and Northern Ireland responsibility for ‘promoting the devolution settlement, for ensuring effective working relations between the Government and the devolved administrations, and for helping to resolve any disputes which may arise’.¹⁶⁹

In addition, the secretaries of state must ‘ensure that the interests of those parts of the UK in non-devolved matters are properly represented and considered’ by the UK Government.¹⁷⁰ Guidance to other government departments specifies that the territorial secretaries should therefore be kept ‘closely informed’ of all reserved and devolved matters affecting the relevant devolved administrations.¹⁷¹

¹⁶⁸ Cairney, P., *Reforming Intergovernmental Relations Before and After the SNP*, ESRC Seminar Series, 2009, retrieved 17 February 2015, <<https://paulcairney.wordpress.com/2009/05/29/intergovernmental-relations-in-scotland-before-and-after-the-snp/>>

¹⁶⁹ Scottish Government, *Devolution: Memorandum of Understanding and supplementary agreements*, 2002, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/Doc/918/0097099.pdf>>

¹⁷⁰ *Ibid* p.4

¹⁷¹ HM Government, *Devolution Guidance Note 3: The role of the Secretary of State for Scotland*, Gov.uk website, 2006, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60979/role-secretary-state-scotland_20.pdf>

Interestingly, Guidance Note 5 – which details the role of the Secretary of State for Northern Ireland – includes policing and criminal justice among their responsibilities, suggesting that the note has not been updated since 2010 at least, when control over these policy areas was devolved. HM Government, *Devolution Guidance Note 5: The role of the Secretary of State for Northern Ireland*,

In practice, however, the Scotland and Wales Offices had a fairly-limited role in the early years of devolution due to political congruence across administrations as well as constitutional stability (particularly in Scotland, where there was no major change to the original settlement until 2012). With Labour in power in Scotland, Wales and Westminster and direct rule for Northern Ireland having resumed, there was little need for the territorial office or the secretary of state to act as a point of contact between administrations. Instead, interaction took place through party mechanisms in Scotland and Wales.¹⁷² As one interviewee put it, 'the Scotland Office withered to a degree because it wasn't necessary to act as the oil in the machine because the machine operated at party level'.¹⁷³

Cabinet positions became part-time too, signalling the lack of importance of the secretary of state as a communications hub relative to other channels. From 2003-08 successive secretaries of state for Scotland also held the office of Secretary of State for Transport (twice) and Defence. Peter Hain, Secretary of State for Wales from 2002-08, combined the post with various other cabinet roles including that of Secretary of State for Northern Ireland.¹⁷⁴

From 2007 the dominance of Labour began to end. Nationalist parties made gains in Scotland and Wales. The 2007 Welsh Assembly election returned Labour as the largest party but short of a majority. Rather than continuing to govern in minority, a coalition was formed with Plaid Cymru. More dramatically, the Scottish Parliament election in the same year resulted in a minority SNP government (after eight years of Labour-Liberal Democrat coalition). And the resumption of devolution in Northern Ireland after a suspension of five years meant that there was again a political executive in Belfast with which the UK Government had to do business. Since 2010, following the formation of the Conservative-Liberal Democrat coalition at Westminster, each of the UK's four governments has had an entirely different political complexion.

These political shifts changed the nature of intergovernmental relations in the UK, and with it the role of the territorial offices. One interviewee described the shift from managing relations between two Labour administrations to the current context of providing a link between two different, and occasionally opposed, governments.

The role has changed as the politics have changed... Traditionally, we probably were a bit more of an honest broker, actually [between 1999 and 2007] you were genuinely trying to help reconcile two different views without an axe to grind yourself... We are now more likely to be siding with the UK Government and trying to help promote their position.¹⁷⁵

Political tensions between the administrations became more pronounced after the 2010 General Election. One interviewee told us that the UK Government became more 'guarded' after 2010 and more reluctant to share information with the Welsh Government. Another

Gov.uk website, 2007, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60981/role-secretary-state-ni.pdf>

¹⁷² Cairney, P., *Intergovernmental Relations in Scotland: What was the SNP effect?*, paper presented to the American Political Science Association Annual Meeting, 2009, retrieved 17 February 2015, <<http://bit.ly/1HKNPIV>>

¹⁷³ GAR05

¹⁷⁴ HM Government, Biography of Right Honourable Peter Hain MP, Parliament UK website, no date, retrieved 17 February 2015, <<http://www.parliament.uk/biographies/commons/mr-peter-hain/567>>

¹⁷⁵ SCO15

interviewee added that the Welsh Government has firmly opposed the UK Government on issues such as the welfare reform agenda.¹⁷⁶ This has changed the role of the territorial offices.

The development of the Northern Ireland Office has not followed the same path as the Scotland and Wales Offices. From 2002-07 devolution was suspended in Northern Ireland and the territory returned to direct rule. During this period the Northern Ireland Office had a role similar to that of the old Scottish and Welsh Offices, in that it was directly responsible for public services in Northern Ireland. In 2007 devolution was reinstated, and in 2010 policing and justice powers were devolved too. The Northern Ireland Office continues to oversee policy relating to elections and human rights, parades and public processions, and national security. It has also been heavily involved in implementing a stable political settlement based on the Good Friday Agreement.¹⁷⁷

The involvement of the Northern Ireland Office in managing day-to-day operations in Northern Ireland – as well as a prospect that, if the political situation deteriorated the Office may have to take on a more direct role once more – means that the nature of its interactions and the challenges involved are different to those of the Wales and Scotland Offices. The fact that the Northern Ireland Civil Service is a separate organisation also contributes to the fact that there are fewer personal connections between Whitehall officials and Belfast than with Edinburgh and Cardiff. There is therefore a greater need for the Northern Ireland Office, as facilitator of intergovernmental relations.

The different roles and responsibilities of each territorial office are reflected in the size of their staff and budget. Although significantly smaller following the devolution of policing and justice powers, the Northern Ireland Office (NIO) remains the largest in terms of staff and budget. The NIO currently employs around 175 staff with offices in Belfast and London, and had expenditure of £24.9m in 2013-14.¹⁷⁸ This is stark contrast to its size in 2010 before the devolution of policing and justice powers, when it employed over 2,000 staff with a budget of £1.3bn.¹⁷⁹

The changing role of the Northern Ireland Office has brought it closer in line with the Scotland and Wales Offices. The Scotland Office (together with the Office of the Advocate General) employs around 100 people in Edinburgh and London. Spending in 2013-14 was £7.9m.¹⁸⁰ The Wales Office employs 56 people with spending in 2013-14 of £4.8m.¹⁸¹ Each office is led by a secretary of state and one or two junior ministers. The Northern Ireland

¹⁷⁶ WAL05, WAL07

¹⁷⁷ Northern Ireland Office, *Annual Reports and Accounts 2013-14*, Gov.uk website, 2014, pp.5-6, retrieved 17 February 2015, <<http://bit.ly/166pPFD>>

¹⁷⁸ Northern Ireland Office, *Annual Reports and Accounts 2013-14*, Gov.uk website, 2014, p.25, retrieved 17 February 2015, <<http://bit.ly/166pPFD>>

¹⁷⁹ Northern Ireland Office, *Annual Reports and Accounts 2013-14*, Gov.uk website, 2014, pp.5-6, retrieved 17 February 2015, <<http://bit.ly/166pPFD>>

¹⁸⁰ Scotland Office and Office of the Advocate General for Scotland, *Annual Report and Accounts 2013-14*, Gov.uk website, 2014, p.31, p.64, retrieved 17 February 2015, <<http://bit.ly/16ldJJF>> . Figures given are for departmental expenditure limits and exclude funding allocated to the Scottish Government, which also appears in these accounts.

¹⁸¹ Wales Office, *Annual Reports and Accounts 2013-14*, p.92. Figures given are for departmental expenditure limits, and exclude funding allocated to the Welsh Government, which also appears in these accounts.

Office is the only territorial office to be led by a permanent secretary (though only since 2014). The Scotland and Wales Offices are each led by a director.¹⁸²

The territorial offices today: Custodians of the devolution settlement

Another function that unites the territorial offices is their role as the guardian of their respective devolution settlement and lead department for changes to that settlement, from negotiating changes to co-ordinating implementation. The Wales Office led on taking the Wales Act 2014 through Parliament and ‘holds the rein’ on negotiations surrounding implementation of the bill, which involve the Welsh Government, the Treasury and HMRC.¹⁸³ A UK Government official told us:

My discussions about the operation of devolved taxes are with the Welsh Government. The Wales Office obviously is running the Wales Bill, so in terms of the legislation and the way the legislation works, there’s a quite a big chunk of legislation in there. People in my team are part of that bill team which is very much run by the Wales Office.¹⁸⁴

Similarly, the Scotland Office was responsible for leading the Scotland Act 2012 through Parliament and continues to be involved in working through the implementation of the provisions of that act. One official said of the Scotland Office’s involvement in this:

[The Scotland Office] continue to be responsible, working with Treasury and HMRC, for delivering the Scotland Act changes. HMRC is broadly doing the technical stuff, HMT [Treasury] are doing a lot of the work on some of the big issues like block grant adjustments that still need to be worked out, but [Scotland Office] co-ordinates this and does things like the annual reports to Parliament about progress on implementation.¹⁸⁵

Of the involvement of the Scotland Office in implementing the Scotland Act 2012, one HMRC official said:

We rely on them to help us manage the overall relationship between UK Government and Scottish Government, where there may be some wider issues that aren’t specifically around tax that we might not be aware of otherwise.¹⁸⁶

Another Whitehall official reiterated the point that while HMRC and the Treasury negotiated on the technical detail of block grant adjustment and other issues, the Scotland Office advised ‘on the politics and the handling’.¹⁸⁷

The Northern Ireland Office is involved in all discussions on changes to the Northern Ireland devolution settlement. It led the negotiations in late 2014 that led to the Stormont House

¹⁸² Scotland Office, *Our Management*, Gov.uk website, retrieved 18 February 2015, <<https://www.gov.uk/government/organisations/scotland-office>>; Wales Office, *Our management*, Gov.uk website, retrieved 18 February 2015 <<https://www.gov.uk/government/organisations/wales-office>>

¹⁸³ GAR10

¹⁸⁴ GAR08

¹⁸⁵ GAR05

¹⁸⁶ GAR08

¹⁸⁷ GAR06

Agreement, which averted potential financial collapse and secured agreement on welfare reform, potential fiscal reform and other changes to the power-sharing system in Belfast.¹⁸⁸

The view from Whitehall

In our interviews with Whitehall officials we found a variety of opinions about the territorial offices. Officials in Whitehall recognised the value of the offices as a source of information on the technical details of the devolution settlements, as well as advice on the political landscape of each devolved administration.

The way we tend to use the territorial offices has been very much to seek an early understanding of where the relevant devolved administration is going to be. So it's almost like they're a first point of contact. For example, if there's something happening or policy being developed which is going to have particular impact in Northern Ireland, then we might advise people to talk to the Northern Ireland Office first and say 'Where do you think they're going to come out on this? How should we approach them? What's the best way?' So try and get a bit of intelligence first so that the engagement is more constructive.¹⁸⁹

We rely mainly on Wales Office to give that legal advice on how the settlement works in relation to a particular issue... We do get value from Wales Office there. We deal with their lawyers very regularly.¹⁹⁰

However, several interviewees – both from UK departments and the devolved administrations – felt that direct interaction between Whitehall departments and the devolved administrations meant that the role of the territorial offices was not always clear.

One Whitehall official argued that bilateral relationships between departments and devolved administrations were more important and the idea that the Scotland Office should act as gatekeeper was unrealistic.

It seems ridiculous that while the Scottish and UK Governments share responsibility for the task, they can't have a bilateral department-to-department conversation. Why should it go through the Scotland Office? A lot more stuff could be done bilaterally. In reality, [the Secretary of State for Scotland is] kept informed of [policy developments], but he can't police the entire devolution settlement with under 100 people! So the letter of the law doesn't reflect reality.¹⁹¹

The territorial offices have comparatively few staff next to Whitehall departments. Each territorial office consequently 'realistically... can't be expected to know everything that's going on', either in Whitehall or in the devolved administrations.¹⁹² They aren't involved in every discussion, but often get involved in issues that are 'hot' politically, or when an area of the settlement is particularly complex, they are told.¹⁹³ Another agreed.

¹⁸⁸ GAR18; Villiers, T., & Northern Ireland Office, *Stormont House Agreement*, Gov.uk website, 2014, retrieved 17 February 2015, <<http://bit.ly/1zfabIE>>

¹⁸⁹ GAR17

¹⁹⁰ GAR12

¹⁹¹ GAR03

¹⁹² GAR13

¹⁹³ GAR10

The Wales Office, for me... tends to come into play more when there is a more important issue at stake or when there are formalities... One would only alert the Secretary of State for Wales if there is a real constitutional issue at stake or there is a disagreement.¹⁹⁴

Another Whitehall official said that his dealings were most often with the Scottish Government directly, but that he would contact the Scotland Office if an issue required influence at ministerial level.¹⁹⁵

While the political intelligence and expertise of the territorial offices was noted by Whitehall officials – one told us that he consulted the territorial offices so that his team would be ‘better placed to help people avoid doing stupid things at the outset’ – some interviewees from the offices themselves felt that they were often consulted too late in the policymaking process.¹⁹⁶ The role of the office therefore becomes to troubleshoot issues that might cause political tension.

We end up ‘shooting foxes’ just by the nature of government, but we’d much, much rather be involved in policy issues way upstream.¹⁹⁷

Another emphasised that in future it should be the responsibility of departments to flag issues with the Scotland Office, rather than expect them to be aware of everything.

There’s an opportunity for the Scotland Office... to be a team that supports, advises and helps other departments, right from the initiation of policy issues, to think about the Scottish implications of policy and get them to think, ‘let’s check that out with the Scotland Office’... As policy develops, we are working with them, helping them to develop it, helping with the legislative side and then helping with communications.¹⁹⁸

Another agreed that the territorial offices would be more effective if consulted earlier in the policy development process. Their lesson for more effective IGR was ‘proper involvement of the territorial offices, who are there to advise on the process and points of principle. There’s a lot of misunderstanding about the role of territorial offices’.¹⁹⁹

A further example of an issue that would merit the involvement of the territorial offices is one which involves more than one Whitehall department.

When it’s not simply a case of a policy which connects one department with the relevant devolved administration, so if it’s more that it’s territorial and it involves multiple government departments, then it makes more sense for Scotland Office in particular to hold the ring on that.²⁰⁰

In this case the territorial office is seen less as a key negotiator in intergovernmental relations, and more of a co-ordinator or facilitator. This role has become increasingly important for the Wales and Scotland Offices in the context of negotiation and implementation of further devolution. As noted above, each territorial office is closely involved in co-ordinating the implementation of changes to the devolution settlements.

¹⁹⁴ GAR11

¹⁹⁵ GAR15

¹⁹⁶ SCO10

¹⁹⁷ GAR06

¹⁹⁸ GAR05

¹⁹⁹ GAR11

²⁰⁰ GAR17

While both the Scotland and Wales Offices have similar roles in facilitating discussions on further devolution and providing political intelligence, there are important differences in the role of each territorial office. The Wales Office works in the context of a very different devolution settlement, and the issues that require Wales Office intervention are very different to those which involve the Scotland Office. The Scottish devolution settlement clearly sets out which policy areas are reserved – all other areas are devolved. Although there are still policy areas that cut across the reserved-devolved divide, it is more often clear who has competence over a particular area, and officials are generally able to work with their devolved counterparts without the need to involve the Scotland Office.

The Welsh devolution settlement works on a ‘conferred powers’ model, whereby a number of specified policy areas are devolved to the Welsh Assembly in an often incomplete way, which creates a need for close monitoring by the Wales Office of precisely where the line lies between devolved and non-devolved matters. Areas listed in the devolution settlement are devolved. Areas that are not mentioned in the devolution settlement – including policing, justice and social security – are reserved. We were told that these ‘silent subjects’ which are not mentioned in the devolution settlement can be the source of dispute as it isn’t clear where a particular policy lies. For example, the Supreme Court was recently asked to rule whether setting agricultural workers’ wages was a devolved or reserved issue. Agriculture is named as a devolved policy area, but employment is not mentioned. This led to a dispute over which side of the devolved-reserved boundary this particular policy area lies. The dispute was resolved when the Supreme Court ruled that the Welsh Assembly did have competency to legislate in this area.²⁰¹

Another official told us that the Wales Office is often called in when there is a disagreement over how the settlement should be interpreted in a particular context.

If it’s a Welsh Government policy then we tend to involve the Wales Office more... There’s a sense that the Wales Office quite rightly want to be monitoring where that boundary lies. If it’s particular Welsh Government legislation coming out, something that has the potential to affect that boundary, that’s where [the Wales Office] want to be copied in anyway just to see what’s going on.²⁰²

The view from the devolved administrations

We encountered differing views from officials in the devolved administrations about the value of the territorial offices. Some officials told us that the Scotland Office was useful for providing information and helping them to navigate how Whitehall networks.

I think we find [Scotland Office] helpful and useful... We rely on them to help us be sighted on ministerial announcements and, for example, Scottish referendum papers that will be coming out.²⁰³

They [Scotland Office] have been a good organisation to help you understand what might be going on or navigate some of the relationships.²⁰⁴

²⁰¹ Bodden, T., ‘Welsh Government secures Supreme Court victory over farm wages law’, *Daily Post*, 9 July 2014, retrieved 17 February 2015, <<http://www.dailypost.co.uk/news/north-wales-news/welsh-government-secures-supreme-court-7395347>>

²⁰² GAR12

²⁰³ SCO16

²⁰⁴ SCO17

A Welsh Government official gave an example of a policy dispute where the Wales Office supported the Welsh Government's position against a Whitehall department, and encouraged the department to find an alternative policy with less impact on Wales. In that case the Wales Office was 'extremely useful' – perhaps because of the risk posed to the Welsh Secretary in defending an unpopular policy.²⁰⁵

Others told us that while the Scotland Office was useful, they saw more value in having bilateral relationships with Whitehall departments.²⁰⁶ Another Scottish Government official reported that their dealings with the Scotland Office are 'virtually none' and that their interaction is directly with other Whitehall departments.²⁰⁷

Other officials offered a more critical view of the territorial offices. We also heard a perception – among both Welsh and UK department civil servants – that the role of the Wales Office is to police the devolution settlement and prevent any 'devolution creep'.

Traditionally, Wales Office has always been in that gatekeeper function, so they crawl over absolutely everything to see how it impacts on the Government of Wales Act; it's very legislatively focused.²⁰⁸

From the UK Government perspective, this close involvement is justified.

They are seen a 'custodians of the Welsh devolution settlement'. Wales's settlement is particularly difficult and complex because of the conferred powers model, so you could argue that it requires more oversight. Whatever model of devolution you have for Wales will be complex because of the degree to which it interacts with England.²⁰⁹

Several interviewees reported that the Wales Office had been given a clear ministerial instruction to 'rigorously police' the devolution settlement and prevent any further powers being devolved, pending the outcome of the Silk Commission on further devolution of powers to Wales.²¹⁰ These interviewees told us that this freeze on further devolution was used to prevent even minor and pragmatic changes to the settlement and caused 'gridlock'.²¹¹

A final issue which we uncovered concerns the political standing of the territorial secretaries of state. Ministers in the devolved administrations are often keen to deal directly with Whitehall departments and ministers.

There is a real issue about Secretary of State for Scotland and Wales. Precisely what is their role and how much the other person, who regards themselves as leader of a country, will engage directly with them. That is an ongoing difficulty.²¹²

You would also keep an eye on how the relationship between the Secretary of State for Wales and Scotland was going. Those relationships were always a bit different as quite often leaders would want to talk to leaders. That was more of a problem in Scotland than it was in Wales.²¹³

²⁰⁵ WAL03

²⁰⁶ SCO10

²⁰⁷ SCO09

²⁰⁸ GAR16

²⁰⁹ GAR10

²¹⁰ GAR01

²¹¹ GAR01

²¹² GAR14

²¹³ GAR14

After the referendum

The Scottish referendum campaign introduced a new level of complexity into the Scotland Office's interactions with the Scottish Government. An official told us that during the referendum campaign there was, perhaps unsurprisingly, less interaction with Scottish Government officials.

I think it's fair to say that in the context of the referendum, there's probably less of that day-to-day engagement with the Scottish Government, although it does still happen.²¹⁴

Another interviewee told us that the real change in relationships has been at the political, rather than official level.

At the moment, the Secretary of State for Wales and Scotland tend to be more adversarial *vis à vis* the governments. It was adversarial even before the referendum.²¹⁵

As the quote above suggests, a shift in the role of the territorial offices as a result of political divergence was apparent even before the independence referendum was announced. However, one interviewee told us that it wasn't until 2010-11 – and the Scottish referendum agreement – that the UK Government realised the importance of maintaining intergovernmental relations.

Changes start to be made in 2007, and the Scotland Office becomes more active and proactive in what it does, but it's not really until 2011 that you really get the UK Government properly waking up to what this means.²¹⁶

This interviewee added that there is a belief in the Scotland Office that the atrophying of formal intergovernmental machinery between 1999 and 2007 was one reason why the pro-independence movement had gathered such momentum.²¹⁷ He told us that the Scotland Office had perhaps neglected its role as the face of the UK Government in Scotland.

Part of the reason we're in the position we are now is because between 1999 and 2007, the UK Government was not very good at explaining what the UK Government did in Scotland, largely because you had a Labour government here and Labour as part of the administration in Scotland.²¹⁸

Another interviewee echoed this and added that, as the descendant of the old Scottish Office, the Scotland Office has seen itself as part of Whitehall machinery and been more comfortable talking to fellow Whitehall civil servants.

The Scotland Office maybe hasn't done enough over the years to foster HMG [Her Majesty's Government's] presence in Scotland, to chair that forum where all UK Government departments in Scotland can come together.²¹⁹

The Scottish independence campaign has highlighted the UK Government's lack of presence in Scotland and boosted interest in developing the outward facing role of the Scotland Office as 'the face of the UK in Scotland'. The referendum put Scotland back on the

²¹⁴ SCO15

²¹⁵ GAR14

²¹⁶ GAR05

²¹⁷ The Joint Ministerial Committee did not meet in plenary form between 2002 and 2008.

²¹⁸ GAR05

²¹⁹ GAR06

agenda and created a new imperative to develop communication networks in Scotland and strengthen the UK Government's 'brand' north of the border.

Increasingly, my mind is turning to what happens after the referendum, in terms both of further devolution and how the UK Government will work with the SG [Scottish Government], but also how we will better reflect and represent what the UK Government does in Scotland.²²⁰

Work to develop the outward-facing side of the Scotland Office, as well as the rest of the UK Government in Scotland, has already begun.

We're now much better at explaining what we do, co-ordinating it, and getting Whitehall to understand Scotland. But the big issue for me is to make sure we don't slip back after the referendum, so we're starting to turn our attention to how we embed that.²²¹

We've been having this conversation inside the Scotland Office recently, about how we create a much better Scotland network of DfID, Home Office, HMRC, DECC and what could be done to better feed back to the centre about, for example, how the Passport Office in Glasgow is performing, or the removal of illegal immigrants – how do we get the message across to Scotland that HMG is not just full of nasty people doing horrible things; that actually this is sensible stuff to be doing.²²²

This interviewee, and others, felt that this development of 'the face of the UK in Scotland' was a crucial role that the Scotland Office should play in future.²²³

That's the interesting shift, from thinking of the Scotland Office as something which you had for the benefit of the devolved administration, in a sense, to understanding that if you have a Scotland Office, you have it for the benefit of the UK Government. You have it to enable the UK Government to maintain its legitimacy more effectively in Scotland.²²⁴

This last quote illustrates how the role of the territorial offices has shifted away from that of facilitator of relations between two governments, to becoming more clearly a part of the UK Government, with responsibility for advancing its interests outside England. From our perspective, the relevant question is how the territorial offices can help to facilitate better governance and relations between the different administrations. Promotion of the UK Government in Scotland and Wales may not itself improve intergovernmental relations, if it is led by a political objective of competing with the devolved government for 'market share' in their own territory. However, if the objective is to build greater links between the different departments in Scotland and Wales, and to enhance public understanding of the respective responsibilities and functions of the different governments, then this may well be a valuable area of future emphasis.

Three into one? Combining the territorial offices

As we have described, the role of the territorial offices has changed over the course of devolution. Since the advent of devolution in 1999 there has been debate about the need for three separate territorial offices and whether they could be merged into a single department. For a while, the Scotland and Wales Offices were entities of the Ministry of Justice (and

²²⁰ GAR05

²²¹ GAR05

²²² GAR06

²²³ GAR06

²²⁴ SCO10

before that the Department for Constitutional Affairs), but even then they retained their separate identities and secretaries of state.²²⁵

It has been argued that combining the three offices into a single 'Department for Devolution' or 'Department for the Nations and Regions' under a single secretary of state would encourage more joined-up thinking about devolution strategy across the UK, as well as allowing lesson learning and exchange of best practice across different administrations. One proponent of this change has argued:

Merger of the three territorial departments would create stronger capacity to look ahead, to understand the dynamics of devolution, the read-across from one devolution settlement to the rest, and the implications of devolution for the rest of the constitutional reform programme.²²⁶

More recently, Professor Jim Gallagher argued for a single 'Minister for the Union', combining the three territorial secretaries of state, responsible for managing all devolved relationships.²²⁷ However, there are political and practical challenges to such a reform. Even those advocating a merger of the three territorial offices recognise that the existence of a separate secretary of state for each territory is 'intensely political' in that it gives each territory representation at the Cabinet table.²²⁸ Particularly in an ongoing context of political divergence in all four administrations, it is likely that any attempt to remove one or more territorial secretaries of state from the Cabinet would be contentious. Professor Gallagher conceded that the loss of a distinct voice at Cabinet might be unpopular in the devolved territories.

The argument that you lose your seat around the Cabinet table might resonate with someone in Wales or in Scotland.²²⁹

Several interviewees agreed that there are strong political arguments for maintaining separate secretaries of state. One suggested merging the offices into a department with a single support structure, but maintaining separate secretaries of state, adding that as the secretary needs to spend a significant amount of time in each territory, the role would not be suited to a single individual.²³⁰ For political reasons, governments also tend to fill the Scottish and Welsh portfolios with MPs from the nation in question. Another senior official concluded that the territorial offices should now be merged into a single 'Department of Nations', because while the secretaries of state had an important function in the past, they

²²⁵ House of Commons Justice Select Committee, *Devolution: A Decade On*, Parliament UK website, paragraph 29, 2009, retrieved 17 February 2015, <<http://bit.ly/1z6ZePt>>

²²⁶ Hazell, R., *Towards a New Constitutional Settlement: An agenda for Gordon Brown's first 100 days and beyond*, University College London Constitution Unit, 2007, p.19, retrieved 17 February 2015, <<http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/141.pdf>>; see also Hazell, R., *Three into One Won't Go: the Future of the Territorial Secretaries of State*, University College London Constitution Unit, 2001, 17 February 2015, <<http://www.ucl.ac.uk/spp/publications/unit-publications/69.pdf>>

²²⁷ The House of Commons Political and Constitutional Reform Committee, *The Future of Devolution after the Referendum: Oral evidence session with Professor Jim Gallagher*, Parliament UK website, 2014, retrieved 17 February 2015, <<http://bit.ly/1CS0Jai>>

²²⁸ Hazell, R., *Three into One Won't Go: the Future of the Territorial Secretaries of State*, University College London Constitution Unit, 2001, p.20, 17 February 2015, <<http://www.ucl.ac.uk/spp/publications/unit-publications/69.pdf>>

²²⁹ The House of Commons Political and Constitutional Reform Committee, *The Future of Devolution after the Referendum: Oral evidence session with Professor Jim Gallagher*, Parliament UK website, 2014, retrieved 17 February 2015, <<http://bit.ly/1CS0Jai>>

²³⁰ GAR04

have a much less clear role in the current constitutional context.²³¹ Another made the case as follows:

That's where we ought to be going with these things. There ought to be a Department for the Constitution. The [Deputy Prime Minister] model, with him being Secretary of State for the Constitution, actually works quite well in many ways. I think you could have three junior ministers, one for Scotland, Wales, Northern Ireland... It's also just not sensible to have a government department of 55 people... [that has] to carry out all the duties that a department of 120,000 people carries out.²³²

A practical rather than political objection to merging the territorial offices is that, as we have already discussed, the differences between the three settlements mean that there are three very different sets of relationships between Whitehall and the devolved bodies. The Welsh Government, for example, must work closely with the Ministry of Justice (MoJ) because judicial policy is reserved but other related policy areas (such as youth services) are devolved. The Scottish Government, on the other hand, has full control of justice policy so has less need for contact with MoJ. This changes the set of issues the territorial offices must themselves keep on top of.

As for the Northern Ireland Office, it is closely involved in areas of dispute between UK departments and the Northern Ireland Executive, and must also deal with a set of issues that are unique to the political situation in Belfast, including working to maintain a stable political settlement. One interviewee also suggested that Whitehall departments tend to have weaker links with the Northern Ireland Executive than with Edinburgh or Cardiff, which may mean that there is a greater reliance on the Northern Ireland Office to facilitate relations, at least when there is some degree of disagreement.²³³

What this means is that any unified department for devolution would therefore have three different jobs to do in relation to each of the devolution settlements. This is not a decisive argument against merger however. One could maintain separate policy teams and ministers for each of the three territories, while rationalising back-office functions and creating a single departmental leadership team – creating more coherent policy across the different settlements. We set out our recommendations in more detail in the final chapter of this report.

²³¹ GAR03

²³² GAR06

6. The purpose of the joint ministerial machinery

In the preceding chapters we have discussed how relations between governments are facilitated through informal civil service links; bilateral department level contacts; and the territorial offices. Sitting at the top of this is formal intergovernmental machinery. The UK did not set up extensive new intergovernmental machinery to manage devolution. As we have discussed, the approach taken was of minimal adaptation to the structure of the central state as far as possible. However, one exception was in the creation of a limited set of intergovernmental fora at which politicians (and officials) from the four governments could communicate on issues of shared concern and resolve disputes.

In this section we discuss the two sets of intergovernmental machinery that operate across the UK. The first is the Joint Ministerial Committee (JMC), which meets in a variety of formats and brings together ministers from the UK and the three devolved governments. A second and quite different set of machinery is the British Irish Council, which is a product of the Good Friday Agreement and symbolises ‘east-west’ links between Northern Ireland and mainland Britain, and is seen by unionists as an important counterweight to the north-south links with the Republic that were also created by the 1998 agreement.

The Joint Ministerial Committee system

The JMC was set up in 1999 through the Memorandum of Understanding (MoU) that set out the principles of intergovernmental relations (as mentioned in the preceding chapter). According to the MoU, the JMC’s terms of reference are to:

- consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities
- where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom
- keep the arrangements for liaison between the UK Government and the devolved administrations under review
- consider disputes between the administrations.²³⁴

The MoU also sets out how the JMC should operate. It is stated explicitly that issues should be resolved via bilateral relations ‘wherever possible’, with matters being referred to the JMC only ‘where a dispute cannot be resolved bilaterally or through the good offices of the relevant territorial secretary of state’. The MoU also states that the JMC is a ‘consultative body rather than an executive body’.

It may not bind any of the participating administrations, which will be free to determine their own policies while taking account of JMC discussions. Nonetheless, the expectation is that participating administrations will support positions that the JMC has agreed.²³⁵

²³⁴ HM Government, *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*, Scottish Government website, 2013, p.10, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

The model set out in the MoU is of annual plenary meetings between the political leaders of each administration and the territorial secretaries of state, with the option of creating additional sub-committees on specific policy areas. However, in the early years following devolution, the JMC machinery rarely met, other than in the form of a sub-committee dealing with EU matters (discussed below). With Labour in power in Scotland, Wales and Westminster, and devolution suspended in Northern Ireland for much of the period up to 2007, there was little need to use these formal intergovernmental structures. Instead intergovernmental relations were managed more informally (and often bilaterally) between officials or through party machinery.²³⁶ Former Scottish First Minister, Jack McConnell has said that the neglect of the JMC machinery was not an unconscious by-product of Labour dominance, but that ‘a conscious decision was made to stop the JMCs meeting in order to facilitate and encourage a much stronger bilateral relationship’.²³⁷

From 2007 and the election of a minority SNP government in Scotland, Labour’s internal party networks could no longer be used to facilitate relationships between administrations. This created a renewed need for formal intergovernmental machinery. The new SNP minority government stated in 2007 that it would seek a return to the arrangements set out in the Memorandum of Understanding. In 2007 Alex Salmond said in a speech at Westminster:

An arrangement that was brought into being – presumably, because it envisaged a situation in which the same party would not be in government in Westminster as was in government in Scotland or Wales – has fallen into total disrepair. It is important that that instrument, or something like it, is brought back into being very quickly.²³⁸

One civil service interviewee confirmed that the impetus for the revival of the JMC came from the Scottish Government and Alex Salmond’s desire to ‘be treated with proper respect as the head of an independent government’.²³⁹ This led to annual meetings of the leaders of the four governments resuming and other changes.

With the formation of a Conservative-led government in the UK in 2010, the trend towards political divergence continued with different parties in power in each of the four capitals for the first time. In the first weeks of his premiership David Cameron visited both the Scottish and Welsh Governments to, in his own words, ‘show the respect that I have for devolution and trying [*sic*] to make sure that we make devolution work even better in the future’.²⁴⁰ A Scottish Government official noted this improvement in JMC processes under the Coalition Government.

²³⁵ HM Government, *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*, Scottish Government website, 2013, p.13, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²³⁶ Cairney, P., *Intergovernmental Relations in Scotland: What was the SNP effect?*, paper presented to the American Political Science Association Annual Meeting, 2009, retrieved 17 February 2015, <<http://bit.ly/1HKNPiV>>

²³⁷ House of Commons Justice Committee, *Devolution: A Decade On*, Parliament UK website, 2009, paragraph 108, retrieved 17 February 2105, <<http://bit.ly/1z6ZePt>>

²³⁸ House of Commons Justice Committee, *Devolution: A Decade On*, 2009, Parliament UK website, paragraph 110, retrieved 17 February 2105, <<http://bit.ly/1z6ZePt>>

²³⁹ WAL09

²⁴⁰ Cameron, D., *Speech to Welsh Assembly*, Gov.uk website, 2010, retrieved 17 February 2105, <<https://www.gov.uk/government/news/prime-minister-visits-wales>>

To the credit of the Coalition... they wanted to try to make it work because they knew they were going to have to deal with a different administration.²⁴¹

Under the new government the transparency of intergovernmental relations was also improved with greater detail released about JMC meetings including through a new annual report. In this new era of political divergence there have – perhaps unsurprisingly – been more formal disputes to resolve between governments, necessitating the creation of new dispute resolution mechanisms under the umbrella of the JMC.

The JMC machinery today

Today the JMC meets in three different formats – JMC Plenary, Domestic and Europe. A fourth format – the disputes resolution committee – meets only occasionally, as and when required. There are at least two other ‘quadrilateral’ meetings that bring together representatives of all four administrations outside the JMC framework – the Finance Quadrilateral and the Agriculture Quadrilateral.

JMC Plenary (JMC(P)) meetings now take place on an annual basis after years of disuse.²⁴² The meeting is chaired by the UK Prime Minister and is attended by the heads of the devolved governments, as well as other ministers depending on the business on the agenda. One interviewee told us that the type of issues discussed at the Plenary meeting would be ‘a meaty policy thing but one that has specific reasons why the devolved administrations would be interested’.²⁴³ Another expanded on this definition.

We discuss the economy. We discuss the state of play on anything big, plus a constitutional and strategic forward-look for the administrations. Between them, those items cross off any of the really big issues that might turn into disagreements or disputes in the future... We try to balance it so there’s opportunity for people to raise bones of contention but also where there’s something that allows them to collaborate and emphasise best practice as well.²⁴⁴

The 2014 JMC Plenary took place on 15 December. Topics covered included counter extremism, constitutional change and the economy.²⁴⁵

A newer format is the domestic JMC, created in 2008. Meetings are now chaired by the Deputy Prime Minister. This meeting is intended to allow ministers from the four administrations to discuss various issues, particularly those that ‘straddle both devolved/non-devolved areas’.²⁴⁶ An interviewee told us that these meetings offer ‘a bit more of a chance to have genuine discussions on policy, and the discussions will be led by the subject ministers rather than the heads of administrations’.²⁴⁷

²⁴¹ SCO02

²⁴² Trench, A., *Intergovernmental Relations and Better Devolution*, presentation given at UK’s Changing Union seminar, 10 April 2014

²⁴³ GAR09

²⁴⁴ SCO02

²⁴⁵ HM Government, *Joint Ministerial Committee Communiqué: December 2014*, Gov.uk website, retrieved 17 February 2015, <<https://www.gov.uk/government/news/joint-ministerial-committee-communicue-december-2014>>

²⁴⁶ Welsh Government, *Organisation Explained: Joint Ministerial Committee*, Welsh Government website, 2012, retrieved 17 February 2015, <<http://bit.ly/1z6hrkU>>

²⁴⁷ GAR09

The JMC Domestic met once in 2013, and media reports suggest it also met once in 2014, although no official record of the meeting has been published.²⁴⁸ This body used to meet more frequently, but it appears that there was insufficient interest or shared business to justify this. One official told us that annual meetings have become the norm.

In practice we aim for at least one meeting a year. If there are good, substantive agendas to make it worthwhile, we will have more, but we don't see the point in dragging ministers from each of the 'devolveds' to London, just so we can say we've had three meetings this year.²⁴⁹

JMC Europe is by far the most frequently-occurring meeting of the JMC formats. JMC(E) meets in advance of each European Council meeting, usually four times a year, and is chaired by the UK Foreign Secretary.²⁵⁰ According to the Memorandum of Understanding, the UK Government represents the UK as the EU Member State and the devolved administrations should be 'fully involved in discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on matters which fall within the responsibility of the devolved administrations'. The JMC Europe meeting allows the devolved administrations to have input into UK policy with regard to EU issues. It is 'one of the principal mechanisms for consultation on UK positions on EU issues which affect devolved matters'.²⁵¹ The meeting, convened by the Foreign Office, brings together ministers from the four administrations to discuss EU policy matters that cut across devolved responsibilities.²⁵²

One official told us that the JMC(E) is a chance for the devolved administrations to feed in to the UK line on EU negotiations.

JMC(E)'s got a slightly clearer remit... which is that it meets before every European Council so there's a very clear structure... and discusses the position the UK will take. It's still the decision of the UK what position it will take, but they want to take into account the views of the devolved administrations. It means there's always a concrete point at which the DAs can influence the negotiations.²⁵³

Dispute Resolution Protocol

The JMC Dispute Resolution Protocol is a relatively new facet of the intergovernmental architecture. It was created in 2010 to provide an agreed process for the avoidance and resolution of disputes.²⁵⁴ This protocol states that 'all efforts should be made to resolve

²⁴⁸ Williamson, D., 'Carwyn Jones: UK Government's position on rail electrification 'all over the place', *Wales Online*, 26 March 2014, retrieved 17 February 2015, <<http://www.walesonline.co.uk/news/wales-news/carwyn-jones-uk-governments-position-6880018>>

²⁴⁹ SCO03

²⁵⁰ SCO03

²⁵¹ HM Government, *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*, Scottish Government website, 2013, p.13, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²⁵² HM Government, *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*, Scottish Government website, 2013, p.13, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²⁵³ GAR09

²⁵⁴ HM Government, *Protocol for Avoidance and Resolution of Disputes*, Gov.uk website, 2010, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62121/avoidance-

differences informally and at the working level', but if that proves impossible then the 'difference' becomes a 'disagreement' that any of the parties can refer to the JMC Secretariat. A meeting of officials from the relevant administrations will be convened to propose a solution. If the disagreement cannot be solved through official channels, it is then referred to the JMC as a 'dispute', and a meeting of ministers from relevant UK departments and devolved governments will be called, with a senior UK minister in the chair.²⁵⁵

This process has only been invoked four times. All disputes to date have been brought by devolved administrations against the UK Government. An official told us that administrations will only raise a dispute if there is a prospect of securing change. They will raise concerns about whether a process (such as calculations relating to the Barnett Formula) has been followed correctly.

Most of the arguments that become a formal dispute under the JMC process are related to finance, because the protocol is that it's only suitable for issues which are not political difference of opinion, but where there's an actual process or protocol that's not being followed and one administration can argue they're not being treated fairly.²⁵⁶

One example of a financial dispute arose in 2012 when the Scottish Government (supported by the other devolved governments) challenged the categorisation of Olympics funding as UK rather than English spending, which had the effect that it did not incur Barnett 'consequentials'. This dispute was not resolved until 2014, when the devolved administrations were given additional funding as compensation (though less than they had called for).²⁵⁷ An earlier dispute raised by the Welsh Government related to funding for new housing that was also classed as UK-wide with no Barnett consequentials. There have also been stramashes about fishing quotas, and infrastructure funding for Northern Ireland.²⁵⁸

Finance and Agriculture Quadrilateral meetings

In addition to these various JMC formats there are other intergovernmental meetings that are separate from though similar to the JMC, including around finance and agriculture policy. The Finance Quadrilateral is chaired by the Chief Secretary to the Treasury and involves the devolved governments' finance ministers as well as territorial secretaries of state. It meets around twice a year to discuss cross-cutting issues such as UK Government spending reviews, capital investment and welfare reform.²⁵⁹ This meeting brings together Finance Ministers from the devolved administrations and the relevant secretaries of state for the devolved territories. In 2009 the Calman Commission recommended that the functions of the Finance Quadrilateral be elevated to a full JMC committee, though no action was taken to enact this. The Agriculture Quadrilateral used to meet around 10 times a year, illustrating the

[resolution.pdf](#)>; see also Trench, A., *Intergovernmental Relations and Better Devolution*, presentation given at UK's Changing Union seminar, 10 April 2014, p.5

²⁵⁵ HM Government, *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*, Scottish Government website, 2013, p.19-20, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²⁵⁶ SCO02

²⁵⁷ SCO03

²⁵⁸ GAR01

²⁵⁹ HM Government, *JMC Annual Report 2012-13*, Gov.uk website, 2013, pp.3-4, retrieved 17 February 2015, <<http://bit.ly/167eXaH>>; See also Trench, A., *Intergovernmental Relations and Better Devolution*, presentation given at UK's Changing Union seminar, 10 April 2014

high level of cross-government co-ordination needed in this area, but it is not known whether it still meets so regularly. Unlike the Finance Quadrilateral, it has not been mentioned in recent JMC annual reports.²⁶⁰

JMC Secretariat

The JMC in its various formats is supported by a joint secretariat comprising at least one official from each administration. Unlike the secretariat of the British Irish Council – which sits permanently in Edinburgh, officials in the JMC secretariat remain in their respective capitals, with the UK Cabinet Office expected to play a lead role in co-ordination of JMC meetings and associated logistics.²⁶¹

The Secretariat officials liaise with their counterparts in each administration – one official told us that the Secretariat has fortnightly video conferences and meet in person twice a year.²⁶² The JMC Secretariat will also work to agree an agenda for the Plenary and Domestic meetings – the agenda for the JMC Europe meetings is written by the UK Government, and is heavily influenced by upcoming EU Council meetings.

The minutes for the JMC(E) are written by the UK and circulated. The minutes for the other parts are written by whichever administration's turn it is... The agenda for the JMC D and P are set in a much more collaborative fashion because that part of the Joint Secretariat is used to working jointly.²⁶³

Officials told us that the four administrations do work together to agree an agenda for the Plenary and Domestic meetings.

We're quite rigid that we agree on the agendas jointly. Nothing will go on the agenda if all four administrations aren't happy with it.²⁶⁴

An official from the Scottish Government agreed.

For the [Domestic] and the [Plenary meetings], we can have a proper four-way discussion about what the agenda should look like. We don't always succeed in having our views heard but we have far more chance than we do in some of the others.²⁶⁵

The Cabinet Office team responsible for co-ordinating JMC meetings, is based in the Economic and Domestic Secretariat (EDS). It is the same team with wider responsibility for promoting devolution awareness across Whitehall that we mentioned in Chapter 3.

²⁶⁰ Trench, A., 'The 2011 plenary meeting of the Joint Ministerial Committee', *Devolution Matters* blog, 2011, retrieved 17 February 2015, <<https://devolutionmatters.wordpress.com/2011/06/08/the-2011-plenary-meeting-of-the-joint-ministerial-committee/>>; HM Government, JMC Annual Report 2012-13, Gov.uk website, 2013, pp.3-4, retrieved 17 February 2015, <<http://bit.ly/167eXaH>>

²⁶¹ HM Government, *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*, Scottish Government website, 2013, p.15, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²⁶² WAL02

²⁶³ SCO02

²⁶⁴ GAR09

²⁶⁵ SCO03

British Irish Council

The British Irish Council (BIC) is a different beast to the JMC. It is an international forum established under the Good Friday Agreement alongside co-operative mechanisms between Belfast and Dublin such as the North-South Ministerial Council. The BIC has a wider cast list than the JMC, with representatives of Jersey, Guernsey and the Isle of Man, as well as the four UK administrations and the Irish Government. The Council is intended to act as a forum where member administrations can ‘exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations’.²⁶⁶

The BIC meets in two different formats: the ministerial summit, which takes place annually and is attended by senior figures of the member administrations (including some heads of government, though not the UK Prime Minister); and through work sector meetings, which include ministers and officials from specific policy areas. The Council has 12 different work sectors including energy, early years policy, transport and misuse of drugs – areas where there are common challenges across all member administrations and the potential for benefit from lesson and information sharing. The work of the Council is supported by a standing Secretariat based in Edinburgh, comprising six staff on loan from the different member governments.

How well does the intergovernmental machinery work?

Our research found mixed evidence of how useful this system is but some key issues did emerge.

A shared secretariat with good relations is a necessity

The members of the JMC Secretariat that we spoke to told us that they enjoyed a good relationship with their colleagues in the other administrations. One told us that JMC Secretariat members wear two hats – one of their home government and the other of the JMC.

We trust our counterparts not to spread information further if it's just been provided in a Joint Secretariat way.²⁶⁷

A Cabinet Office official told us that these good working relationships and quiet conversations with colleagues in the other administrations, with the Secretariat and other officials, help to prevent disagreements becoming formal disputes.

We have a shared interest across all administrations in preventing problems escalating.²⁶⁸

²⁶⁶ Northern Ireland Office, *The Belfast Agreement*, Gov.uk website, 1998, p.14-15, retrieved 17 February 2015, <<http://bit.ly/1DoETcr>>

²⁶⁷ SCO03

²⁶⁸ GAR09

Indeed, another official told us that it would be wrong to focus on the dispute resolution function of the JMC, because most of the work around the JMC is carried out by officials working together to solve problems.

[Focusing on dispute resolution] takes you off on a tangent and doesn't reflect the reality of day-to-day IGR, for two reasons really. One is that it's very rarely invoked but also it tends to put too much focus on conflict. A lot of what we're doing is working informally together and undue focus on the conflictual situations gives you a misleading impression of the nature of the relationship.²⁶⁹

Another official closely involved in the JMC process told us that the machinery is useful not only for the conversations around the table, but also for the networks that develop around the meetings.

We wouldn't have resolved the Olympic consequential dispute without the JMC machinery and without the informal networks that were built round that.²⁷⁰

Scope for raising issues directly at a senior political level

JMC meetings are useful in that they allow ministers from the devolved governments to raise issues with the UK Government and make their position clear. One senior official told us not to 'underplay the utility of the JMC as a vent for issues that need airing'.²⁷¹ Another told us that discussions raised at JMC can challenge 'groupthink' among the coalition parties and encourage them to consider alternative views.

At the very least, having these discussions leads to people understanding on both sides of the House that there are different perceptions. [Agreement on allowing the Scottish Government to use other budgets to mitigate] the bedroom tax was probably helped by the JMC process... So when the JMC machinery is working well, it provides the opportunity for that sort of discussion and for different viewpoints to be put and discussed.²⁷²

Building cross-administration networks

Intergovernmental meetings such as JMC and BIC summits are useful not only in allowing political differences to be aired, but also for the networking and relationship building that goes on in the lead up to and during the meetings. Like international diplomacy, much of the real work takes place in the shadow of the summit, by the officials who attend with their ministers. A Welsh official told us that the benefit of the BIC is not delivering 'tangible results' but maintaining a conversation between the different administrations.²⁷³ A Whitehall official felt that 'some of the British Irish Council's formal work is of questionable value' but it does allow informal conversations to happen.²⁷⁴ A Scottish Government official agreed.

²⁶⁹ WAL09

²⁷⁰ SCO03

²⁷¹ GAR02

²⁷² SCO02. Discretionary housing payments are funds which local authorities can distribute to help cover the cost of housing. The interviewee is referring to negotiations which allowed the Scottish Government to set the cap on these payments, which enables them to mitigate the effect of the spare room subsidy, effectively ending the subsidy in Scotland. Watt, N., 'Holyrood given power to end 'bedroom tax' in Scotland', *The Guardian*, 2 May 2014, retrieved 17 February 2015, <<http://www.theguardian.com/society/2014/may/02/holyrood-power-end-bedroom-tax-scotland>>

²⁷³ WAL02

²⁷⁴ GAR18

The formal discussions... are not actually the most useful part [of BIC Summits]. The most useful part, from our point of view, is the 24 hours of informal networking, bilateral, discussing policy opportunities, potential for collaboration... at a level that you can't in any other forum.²⁷⁵

Learning lessons and sharing best practice

JMC and BIC meetings also provide a forum for lesson sharing and increasing understanding and awareness of issues faced in different parts of country. A Welsh Government official gave us the example of ageing population – representatives from each administration explained their respective strategies, which was followed by a discussion of common interests and challenges in this policy area across the UK.²⁷⁶

At its most useful, the private discussions provide opportunities for a proper exchange of views, collaboration, new thinking and an additional impetus for officials to go away and find a solution to an issue.²⁷⁷

There's an opportunity for people to raise bones of contention but also where there's something that allows them to collaborate and emphasise best practice as well.²⁷⁸

However, one official told us that the ability to use the JMC as a forum for sharing best practice across administrations was limited.

We have done some lesson sharing and best practice, but that doesn't tend to make for the best discussion at ministerial level, we find.²⁷⁹

British Irish Council summits and work sector meetings also allow administrations to exchange examples of best practice and learn from each other.

Most of the work sectors are about sharing policy developments that are happening in different jurisdictions, or best practice if it's about delivery of a policy. It's about things like building links and relationships between officials which officials find very helpful. It's about site visits and seeing what's happening. So it's kind of the 'softer side' of relationship building.²⁸⁰

We were also given examples of some small-scale collaborative activities on cross-border services that have emerged from the BIC. For instance, the administrations have agreed to operate 'early warning systems' whereby they alert each other to the emergence of invasive non-native species and new illicit drugs, so they can learn from each other and be more ready to respond should the problem spread.²⁸¹

Helping to resolve and avoid conflicts

As discussed above, there is a formal dispute resolution process that can be triggered through the JMC. As set out in the guidance on dispute avoidance and resolution, an issue will only go to the JMC Dispute Resolution Committee after several stages in which officials are trying to solve it. The EDS devolution team also acts as a broker in establishing

²⁷⁵ SCO03

²⁷⁶ WAL02

²⁷⁷ SCO03

²⁷⁸ SCO02

²⁷⁹ GAR09

²⁸⁰ SCO06

²⁸¹ SCO06, SCO03

collective agreement on a policy (and alerting the relevant parties when a dispute cannot be resolved).

Several interviewees told us that the disputes resolution process was often useful for averting major ‘disputes’ because the threat of invoking these formal meetings drove ministers and officials to find a solution at official level. We were given an example of a disagreement between the Welsh Government and the Department of Health about compensation for cross-border health costs. The Welsh Government was owed money after the compensation tariffs were changed. The issue was resolved through official channels, but a Welsh Government official told us that the threat of escalating the issue to the JMC was useful in driving a resolution.

It's important as much as anything that it's there. There have been letters from the Welsh Government which have indicated that ministers would take an issue through the machinery if it cannot be resolved. That has sometimes resulted in a satisfactory response from Whitehall.²⁸²

In the Cabinet Office, the EDS devolution team co-ordinate the JMC process and also work to broker agreement both across Whitehall and between the UK and devolved governments. Escalation to the formal inter-ministerial forum is seen as a failure of the system. If there is a suggestion that an issue may be escalated, officials will seek to resolve the issue before it becomes a formal disputes. Having the formal escalation route set out therefore appears to help drive the different administrations towards compromise earlier on in the process.

Co-ordination of the UK line in Brussels

As noted above, the JMC Europe meetings have a specific function in that they are held in advance of quarterly European Council meetings. The JMC(E) allows representatives from each administration to meet and discuss issues that will be covered at the forthcoming meeting, and to feed into the development of the UK's line on these areas.

It's still the decision of the UK what position it will take, but they want to take into account the views of the devolved administrations. It means there's always a concrete point at which they can influence the negotiations.²⁸³

Another Whitehall official felt that the JMC(E) was a useful consultative process.

There's a good set up there with the JMC(E) Secretariat having good links with each of the devolved administrations about getting them to feed into UK Government positions. We are very clear that when it comes to European Council meetings and negotiations that there is a UK Government line... There's a lot of talking to SG [Scottish Government] officials about their position and a lot of conversations between Defra ministers and Richard Lochhead, the Scottish Government minister.²⁸⁴

An official from the Scottish Government agreed that through the JMC(E) the UK Government did make an effort to involve the devolved administrations in discussions about European-led areas such as fisheries policy, but that the machinery was less useful in areas where the Scottish Government took a different view to the UK.

[EU policy] has been an area where efforts have been made on both sides to try to make sure discussions go on. And the Scottish ministers and officials have their opportunity to put views into UK

²⁸² GAR01

²⁸³ GAR09

²⁸⁴ GAR05

departments, so that they can take them into account when making decisions on what the UK line will be. ...That generally works relatively well, but it only works up to a point... Where it doesn't work so well is where there are differences.²⁸⁵

Our research also uncovered a number of other limitations to the current formal intergovernmental processes.

A low priority for the UK Government?

One challenge raised by officials in the devolved administrations was that the JMC and BIC meetings are not seen as a priority by UK ministers. One told us that not enough time is allocated to the JMC Plenary meeting to allow all issues on the agenda to be covered.

An hour and a half if we're lucky, for the Plenary... (we're) scrabbling to finish.²⁸⁶

Another official told us that UK ministers don't always treat JMC meetings as discussions with separate and equal administrations.

The impression that UK ministers sometimes give is that they are at just another Cabinet committee where everybody round the table is bound by Cabinet collective responsibility. They don't give the impression that they understand that actually they're talking to potentially 14 different political parties, representing four different governments and that each of those governments has an equal view.²⁸⁷

The British Irish Council faces similar challenges. We were told that it can be difficult to get the UK Government to engage in the work of the Council.

We do struggle at times to engage UK Government departments or get serious UK Government interest from ministers and officials in some of the work areas of BIC because it's not a top priority for them.²⁸⁸

Discussion rather than decision making

As set out in the Memorandum of Understanding, the JMC 'is a consultative body rather than an executive body, and so will reach agreements rather than decisions'. One official explained what this means in practice.

It doesn't have any executive decision-making powers, so the decisions are that more discussions should be had, or the transport secretary needs to keep in touch on this, or the DA should be allowed to feed into something.²⁸⁹

This limited remit of the JMC meetings was mentioned by several interviewees, in both the UK and devolved governments. A Scottish Government official told us that the meetings served simply as a 'sounding board'. They can put their position across and get a response from the UK Government, but this does not lead to negotiation.

The problem with the JMC structures... is that they aren't really about resolving differences; they're about the ability for the devolved authorities to put their views forward and for the UK to respond to them. It's an answer-response mechanism. It's not a negotiation.²⁹⁰

²⁸⁵ SCO02

²⁸⁶ SCO02

²⁸⁷ SCO03

²⁸⁸ SCO06

²⁸⁹ GAR09

The most successful meetings are the ones where you can actually have a proper discussion. The least successful ones are where each devolved minister says his set piece speech, the UK Government responds to that, and that's it. There is no actual discussion.²⁹¹

We noted above that the JMC Europe has an important role in allowing discussion on upcoming EU business, but that this works only up to a point. Several interviewees from the devolved governments expressed frustration at the limited influence this forum afforded them over the UK line on European issues. One interviewee told us that while the JMC Europe allows the devolved administrations to make their views heard, there's no guarantee that the UK Government will take them into account at Council meetings.

(JMC Europe) takes place. Views are put in. Answers are given back [but there's] no sign of it in the UK line for the Council, because of the fact that you've got, really, a sovereign government not wanting to be constrained by the fact it's got devolved authorities hanging on the edge, who may have different views on the issue.²⁹²

This official continued:

Quite a lot of effort has been made to make structures work better, particularly under the Coalition. But, when it comes to the crunch, there isn't a mechanism, really, for getting governments at both levels to negotiate on outcomes about representing the UK in Europe.²⁹³

Difficulties arise not only in agreeing what the UK line should be, but also in deciding who should be allowed to put forward that line at EU Council meetings. According to the Memorandum of Understanding, decisions on ministerial attendance at Council meetings are taken 'on a case-by-case basis by the lead UK minister'. However, that minister should allow ministers from devolved administrations to speak on issues that have a 'significant impact' on their responsibilities 'unless there is a compelling reason not to do so'.²⁹⁴

A Whitehall official told us that ministers from the devolved administrations are allowed to attend and speak at EU Council meetings, provided they maintain the UK Government line.

The issue that we had was about the right to attend European Council meetings... If a UK minister can't attend, what would normally happen is you'd get the UK Government lead official in UKRep to take the UK Government line. But we have said that if a UK minister can't attend but a devolved administration minister can, they can ask to speak, as long as it's to the agreed line. But that's about who sits at the top table in the room during discussions.²⁹⁵

However, a Scottish Government official told us that while devolved ministers had been allowed to speak at Council meetings on areas where their policies coincided with those of the UK Government, in areas where there is disagreement ministers from the devolved administrations have not been allowed to represent the UK view.

²⁹⁰ SCO02

²⁹¹ SCO03

²⁹² SCO02

²⁹³ SCO02

²⁹⁴ HM Government, *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*, Scottish Government website, 2013, p.33, retrieved 17 February 2015, <<http://www.scotland.gov.uk/Resource/0043/00436627.pdf>>

²⁹⁵ GAR05

There are significant differences on agriculture. And as a result of the differences, even though... there's a recognition... that Scottish or devolved ministers can speak for the UK where the UK minister agrees, with respect to agriculture Defra have always refused to allow ministers to speak.²⁹⁶

In its evidence to the Smith Commission, the Scottish Government argued:

Scotland should be able to act directly in the European Union on fisheries, marine environment and food and drink exports, given their importance within the Scottish economy and the distinctive policy positions in Scotland. In areas such as fisheries, where Scotland has the predominant interest within the UK, Scotland should have the lead role at Council, where appropriate.²⁹⁷

Unsurprisingly, the other parties represented on the Smith Commission did not agree with this position. Instead, the following compromise statement was agreed.

That a devolved administration minister can speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line where the devolved administration minister holds the predominant policy interest across the UK and where the relevant lead UK Government minister is unable to attend all or part of a meeting.²⁹⁸

Use for political grandstanding

While officials in the devolved administrations told us of difficulties in securing input into EU negotiations, officials from the UK Government had different concerns about the JMC. One theme that emerged from our interviews was that JMC meetings can be used by ministers from other administrations to score political points. While the proceedings of the meetings themselves are confidential, the UK Government and devolved administrations often publish statements in advance of and following the meetings. As a result the meetings can be used for political positioning.

One UK official told us that there is often 'political grandstanding' at the JMC meetings. In March 2013 Nicola Sturgeon used a meeting of the JMC Domestic as a media opportunity to make public her opposition to the spare-room subsidy.²⁹⁹ In March 2014 Welsh First Minister, Carwyn Jones used a meeting of the JMC to make an announcement on rail electrification, which he made public after the meeting.³⁰⁰ Another UK official said:

Does JMC as constituted, does it work as effectively as it might? Well, that's a moot point. Is it over choreographed, not only from the UK Government side but also from the devolved side in terms of

²⁹⁶ SCO02

²⁹⁷ Scottish Government, *More Powers for the Scottish Parliament: Scottish Government proposals*, Scottish Government website, 2014, p. 20, retrieved 16 February 2015, <<http://www.scotland.gov.uk/Resource/0046/00460563.pdf>>

²⁹⁸ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, Smith Commission website, 2014, p. 16, retrieved 17 February 2015, <<https://www.smith-commission.scot/smith-commission-report/>>

²⁹⁹ Staff, 'Nicola Sturgeon lodges Scottish Government's objections to 'misguided' bedroom tax with Westminster', *Daily Record*, 6 March 2013, retrieved 17 February 2015, <<http://www.dailyrecord.co.uk/news/politics/nicola-sturgeon-lodges-objections-bedroom-1746845>>; Staff, 'Sturgeon urges rethink of UK Government's 'misguided' bedroom tax', *STV News online*, 6 March 2013, retrieved 17 February 2015, <<http://news.stv.tv/politics/216606-nicola-sturgeon-attacks-uk-governments-bedroom-tax-as-misguided/>>

³⁰⁰ GAR02; and see Williamson, D., 'Carwyn Jones: UK Government's position on rail electrification 'all over the place', *Wales Online*, 26 March 2014, retrieved 17 February 2015, <<http://www.walesonline.co.uk/news/wales-news/carwyn-jones-uk-governments-position-6880018>>

people coming with set speeches, set things that they want to say? There will be an element of that in every meeting.³⁰¹

Another interviewee told us that both the BIC and the JMC meetings are ‘more performance art than politics’, and that many of the announcements made at summits are ‘stunts’ which are well publicised even before the meetings have taken place.³⁰² That these meetings of political leaders from different administrations should involve some attempts at point scoring is not in itself a surprise. However, the downside is that open politicisation may make the UK Government reluctant to engage in the JMC process.³⁰³ Point-scoring may make it increasingly difficult to have open and fruitful conversations

I’m deeply unconvinced that things like the JMC apparatus add anything to the sum of human understanding. On a ministerial level, is bread put on anyone’s table as a result of the JMC? Well, no... [from the UK Government’s perspective JMC has] come to be used as vehicle for the devolved administrations to beat us up.³⁰⁴

Another Whitehall official confirmed that there is therefore reluctance to allow contentious items on to the agenda.

The public nature of JMC meetings makes it harder for us to accept having difficult agenda items, as that is just inviting a public fight.³⁰⁵

Another official told us that it had become difficult to discuss the economy in meetings because of sensitivity that the devolved governments see such discussion as an opportunity to attack the UK Government.

UK officials are reluctant to schedule time for formal discussions on the economy, because it’s seen as a UK-bashing item.³⁰⁶

Another agreed that this had led to a lowest common denominator approach to agenda setting and a ‘sanitised’ agenda that all sides were happy with.³⁰⁷

By contrast, several officials told us that the BIC sees far less debate and disagreement than the JMC. One official told us that the UK, Welsh and Scottish Governments reserve real disagreements for the JMC meetings. ‘That’s where the meaty issues and disagreement’ takes place.³⁰⁸ Another agreed.

There’s scope [at the JMC] for mud-slinging in a way that is not appropriate at the British-Irish Council which is an international summit...People are very conscious that they are on an international stage, and things which may be appropriate to say in private are not appropriate to say there.³⁰⁹

Other interviewees told us that the role of the BIC as part of the Northern Ireland Peace process also means that BIC summits are not the place for political point scoring.³¹⁰ One

³⁰¹ GAR10

³⁰² GAR22

³⁰³ SCO02

³⁰⁴ GAR06

³⁰⁵ GAR09

³⁰⁶ SCO02

³⁰⁷ SCO20

³⁰⁸ SCO06

³⁰⁹ SCO03

³¹⁰ WAL02 and SCO03

interviewee added that the lack of politics in the room was no bad thing and that it allows useful conversations to happen.³¹¹

Difficulties in agreeing an agenda

Beyond the reluctance to allow JMC meetings to descend into political grandstanding, there was also a view that the asymmetry of the different devolution settlements means that there are not many substantive issues of interest to all sides in any case. As noted above, the JMC Secretariat works together to agree an agenda supported by all administrations.³¹² One official told us that there is sufficient common ground between the four administrations to allow them to agree an agenda.

You could identify matters on which there are common cause between the four administrations and emphasise agenda on that basis.³¹³

However, other officials felt that the devolution settlements are so different that it is difficult to find a set of issues common to all administrations. One said, 'We don't have much in common with the Northern Irish. Their problems are their problems.'³¹⁴

Consequently, a Whitehall official put it to us that 'because the settlements are not the same and the political interests are not the same... a four-way forum is not going to make or break intergovernmental relations'.³¹⁵

A Scottish official agreed that, given the significant differences between the administrations, bilateral relations were more important.

The Welsh issues with England are so intricate and detailed because of the border, they're much closer to home that there's a need for greater discussion.³¹⁶

Multilateral IGR facilitated through the JMC and BIC clearly have their limitations, and many complex intergovernmental matters can only be dealt with on a bilateral level. But that is not to say that the multilateral machinery serves no purpose.

Enhancing the formal intergovernmental machinery

Despite the challenges outlined above, interviewees told us there is a need for and a benefit to having multilateral, high-level political meetings such as the JMC Plenary and the British Irish Council. The latter is seen as important particularly by the devolved administrations and the other small governments – because it allows them to sit at the table with the British and Irish Governments and be treated as an equal – as one interviewee told us, the BIC 'is really the only international body where they can do that'.³¹⁷

The JMC similarly provides a useful forum in which representatives of the various UK administrations can meet and raise concerns at the most senior political level that cannot be resolved lower down, or simply where there is value in airing issues at a senior level.

³¹¹ WAL02

³¹² GAR09

³¹³ GAR10

³¹⁴ WAL09, and see also SCO03

³¹⁵ GAR09

³¹⁶ SCO02

³¹⁷ SCO06

Does a JMC style institution need to exist? Yes it does. There needs to be a pyramid of engagement if you like, and JMC is top of the pyramid.³¹⁸

Another agreed that the process of ministers meeting and sharing issues and concerns was important to the functioning of the UK's constitutional settlement in a symbolic sense.

We see it as constitutionally significant, that you have the First Ministers coming together once a year to discuss matters of mutual interest and to discuss anything that's immediate and important at that time.³¹⁹

Given continuing political divergence across the UK, and ongoing changes to the devolution settlements (including around contentious issues such as tax and welfare) there is likely to be an increased need for a multilateral forum in which administrations can share experiences and discuss UK-wide issues.

Whatever happens in the referendum, there will be an ongoing need for some form of intergovernmental machinery and it would be easier to extend the JMC machinery than to set up something else from scratch.³²⁰

Since the creation of the JMC in 1999 a number of inquiries, commissions and academic studies have recommended changes and reforms to the UK's intergovernmental machinery to strengthen and build on the existing JMC model. Common themes include more regular meetings covering a wider range of issues, and with greater transparency to the public and parliaments.

In 2009 the Calman Commission recommended that the JMC machinery be 'enhanced' by a renewed focus on co-operation rather than dispute resolution; more regular plenary and domestic meetings; scope to discuss a wider range of issues that require co-operation; and a new JMC Finance Committee (in place of the informal finance quadrilaterals mentioned above).³²¹ In 2010 the Scottish Affairs Select Committee recommended that the processes around the JMC be made more transparent, with regular publication of the dates and agenda of meetings.³²² In its response to the Calman Commission, the UK Government committed to 'greater regularity of contact' between the four administrations through the various JMC formats, but did not accept the need for a JMC Finance committee.³²³

We asked a number of interviewees what they thought of the JMC system. Most felt strongly that there was a continuing need for a multilateral forum along the lines of the JMC. However, there was also a view that it could be used more effectively to promote co-operation in areas of common interest and move towards decision making rather than simply discussion. One Whitehall official felt that a more decision-focused approach would encourage ministers to work together more fruitfully and discourage political point scoring.

³¹⁸ GAR10

³¹⁹ GAR09

³²⁰ SCO03

³²¹ Scottish Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, 2009, p.148-9

³²² House of Commons Scottish Affairs Committee, *Scotland and the UK: Co-operation and communication between governments*, Parliament UK website, 2010, para.51, retrieved 17 February 2015, <<http://bit.ly/1Aj4LZJ>>

³²³ Scotland Office, *Scotland's Future in the United Kingdom: Building on 10 years of devolution*, Gov.uk website, 2009, p.6, retrieved 17 February 2015, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228529/7738.pdf>

Is there a mechanism whereby some other agreement can be reached [at JMC]? And that would lend itself to a common cause as an institution, rather than ‘this is my stall, this is your stall’.³²⁴

This interviewee didn’t think that extra bureaucracy should be created, but believed that the ‘culture’ of the meetings could be orientated towards agreeing solutions.

I wouldn’t want to see JMC spawn all manner of working groups etc., but that doesn’t mean that the meetings themselves can’t be more focused towards a single outcome and an agreed solution... It’s about a culture change in the JMC as an institution and about more of a focus on working together, and less of a focus on fighting our particular corner.³²⁵

Another senior Whitehall official told us that it would be ‘a real game changer’ to use the JMC to discuss and reach agreement on what they called ‘big ticket’ policy areas, such as welfare.³²⁶ Yet another Whitehall insider told us that the JMC can be useful in drawing in the perspective of the devolved administrations in areas where policy decisions have not yet been made.

In an ideal world, there would always be a big, substantial, meaty agenda item on an issue where policy was not yet finalised, so we can use it to take their views into account, and use it to get the machinery of Whitehall to take the views of the DAs into account, and to work through the details of how things might affect the DAs earlier.³²⁷

This official also hoped that greater emphasis on decision making at JMC would have an impact on improving devolution awareness across Whitehall departments.

There have been calls to reform intergovernmental machinery to reflect the changes set in motion by the Smith Commission agreement. In its November 2014 report the Smith Commission recommended that the Joint Ministerial Committee structures be updated to reflect a more complex devolution settlement.

The current intergovernmental machinery between the Scottish and UK Governments, including the Joint Ministerial Committee (JMC) structures, must be reformed as a matter of urgency and scaled up significantly to reflect the scope of the agreement arrived at by the parties.³²⁸

The Commission recognised that the wider changes they recommended (as well as previous extensions to the original 1999 settlement) require a new kind of intergovernmental co-operation. With the devolution of new tax and welfare powers, the nature of the relationship moves away from the binary distinction between devolved and reserved powers, and enters a new phase where co-operation and consultation becomes more important. For example, the partial devolution of tax powers means that the Scottish Government will need to have an ongoing dialogue with the UK Government, and in particular the Treasury and HMRC, which will administer the Scottish income tax rates set in Holyrood. Similar issues arise in relation to welfare devolution and the relationship with DWP. The Commission’s recommendations therefore include new ‘bilateral governing arrangements’ to oversee devolution of tax and welfare powers; new working groups within the current JMC format,

³²⁴ GAR10

³²⁵ GAR10

³²⁶ GAR03

³²⁷ GAR09

³²⁸ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, Smith Commission website, 2014, retrieved 17 February 2015, <<https://www.smith-commission.scot/smith-commission-report/>>

covering areas such as welfare and home affairs which will require co-operation and discussion between the administrations; and more transparent parliamentary scrutiny of the work of the JMC and other intergovernmental machinery.³²⁹ Work has now begun to implement these recommendations. In December 2014 the JMC Plenary commissioned a group of officials to develop a revised Memorandum of Understanding to reflect the fact that ‘the constitutional landscape has changed fundamentally’ since the dawn of devolution.³³⁰

It has similarly been argued that the distinctive nature of the Welsh devolution settlement necessitates the creation of a more formal bilateral relationship between the Welsh and UK Governments. The Commission on Devolution in Wales (The Silk Commission) recommended the creation of a Welsh Intergovernmental Committee to oversee the Welsh devolution settlement. The Welsh devolution settlement produces a more intertwined relationship between the two governments and there are a number of areas – such as around youth policy, the environment, skills and training – which are partially devolved and partially reserved (so-called constitutional ‘jagged edges’) and therefore require continuous co-operation and communication between the administrations.

However, as we have discussed in preceding chapters, it is apparent that from the Welsh perspective at least, such co-operation and communication does not always occur as it should. In some cases the lack of timely consultation has led to ministerial-level disputes. We have noted elsewhere disagreements on flood insurance policy and compensation for cross-border use of NHS services. The Welsh Intergovernmental Committee could provide a standing bilateral forum for the Welsh and UK Governments to settle such disputes. It would also have a role in overseeing future devolution of powers to Wales, and in resolving cross-border issues.³³¹

The overall conclusion we draw from our study of these systems is that both multilateral and bilateral mechanisms are needed, and should be strengthened to reflect the changing nature of the intergovernmental challenges faced. Multilateral ‘summits’ of government leaders are important in part for symbolic reasons, as they reflect a serious attempt to establish strong working relations at all levels between the four governments of the UK. JMC meetings will never be the place that detailed discussion of intergovernmental disputes takes place, but there should be greater willingness to allow debate on sensitive subjects (as well as a commitment from all sides to have constructive rather than destructive discussions – even if the product is simply an enhanced understanding of each other’s positions). And at the bilateral level, with both Wales and Scotland, there are a set of complex cross-cutting issues that will need continuous close co-operation and dialogue, so the creation of new bodies to facilitate this should also be considered.

³²⁹ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, Smith Commission website, 2014, pp. 14-15, retrieved 17 February 2015, <<https://www.smith-commission.scot/smith-commission-report/>>

³³⁰ HM Government, *Joint Ministerial Committee Communique: December 2014*, Gov.uk website, 2014, retrieved 17 February 2015, <https://www.gov.uk/government/news/joint-ministerial-committee-communique-december-2014>

³³¹ Wales Office & Crabb, S., *Empowerment and Responsibility: Legislative powers to strengthen Wales*, 2014, p.185, retrieved 17 February 2015, <<https://www.gov.uk/government/publications/empowerment-and-responsibility-legislative-powers-to-strengthen-wales>>

7. Conclusions and recommendations

Devolution has radically changed the British constitution. The UK was never a fully-unitary state, and it is not (yet?) a federation either. It is in fact difficult to define precisely what the nature of our ever looser union is, particularly as so much is changing. What is clear is that there are now multiple centres of power, divergent party political systems, and a complex division of responsibilities and resources between the four nations of the UK.

All of this makes governing effectively a challenging task that relies on the ability of the UK Government and the three devolved administrations to work together in a range of different ways. In this report we have explored a number of the main systems by which the four governments engage with each other. We identified 10 different modes of interaction – ranging from formal political summity, through negotiations over finance and EU issues, to working level relations between civil servants on day-to-day policy and operational matters. On the whole, those we spoke to from across the UK were positive about the ability of officials (and even ministers) from different administrations to co-operate to achieve shared objectives, and to negotiate in good faith when differences arise.

However, we also found evidence of weaknesses and strains in the current arrangements. There have been disagreements of varying severity over legislative competence, money, participation in EU decision making, major reform initiatives in areas such as welfare and energy, and frustration about poor consultation during the policy process. As the devolution arrangements grow even more complex (particularly in areas such as the tax and welfare systems) tensions and tricky cross-border issues are likely to become even more frequent. Continued austerity in the public sector and party political incongruence between the four capital cities raise the risk that more disagreements escalate to become serious disputes, undermining the effective governance of the country as a whole. To avoid this scenario, there is a need for reform, and significant strengthening, of the systems and structures through which the governments interact.

Below we identify six priorities for change, supported by evidence from our interviews and other research. We also provide more specific recommendations for improvement within each priority area.

Six areas for change

First, we argue that there is a need for more joined-up thinking and practice relating to the different devolution settlements. In line with past periods of change, devolution is proceeding on separate tracks for each part of the UK, with important decisions being taken in response to political pressures in each territory and without much consideration of the implications for the rest of the country. This may lead to what Charlie Jeffery has termed a ‘constitutional chain reaction’, as developments relating to one territory then spill over into debates elsewhere in the country (as when devolution to Scotland raises the pressure to address the ‘West Lothian Question’).

Second, we argue that Whitehall as a whole must raise its game in terms of how it engages with and consults the devolved institutions during the policy process. We found significant evidence of variable practice in this regard. UK Government departments fall on a spectrum in terms of the territorial coverage of their policy responsibilities. This affects their awareness

of the devolution settlements and can lead to problems when consultation with the devolved governments fails to happen or happens too late. Because Whitehall is at once the government of the UK as a whole, and of England alone on domestic matters, policy is often developed without sufficient thought being given to which part of the country the government is operating for. The ‘Indyref effect’ created strong incentives for Whitehall to improve its awareness of the devolution settlements, particularly that of Scotland, but the risk is that this heightened awareness now recedes. The challenge, one official argued, ‘is to turn structures we’ve put in place to deal with the referendum into ongoing structures that are properly embedded in the civil service machine and deal with Scotland routinely’.³³²

A **third** area where there is a need for change is at the level of ministerial interaction. The joint ministerial committee system, which brings together senior political leaders from the four governments, plays an important symbolic role and provides an opportunity for tricky issues to be aired at the highest level. But there are weaknesses in current arrangements. There is a perception that these summits are not seen as a priority by the UK Government, with insufficient time allocated to them, and a reluctance to allow contentious issues onto the agenda to avoid the embarrassment of arguments. As a result, these meetings don’t always fulfil a particularly clear function. There are also particular tensions around the JMC meetings relating to EU affairs, and a lack of clear process and transparency surrounding IGR on financial matters. As Michael Keating has pointed out:

Federal states with resource-sharing will usually have some intergovernmental forum for discussing this, often with an independent body to advise on facts and figures. In the UK, the Barnett Formula is entirely at the discretion of the centre.³³³

Fourth, there is a need for improved machinery to facilitate bilateral relations between the UK and devolved governments, particularly to co-ordinate policy across the ‘jagged edges’ of the devolution settlements, where policy issues are split in a complex way between central and devolved governments. These are prevalent in the UK-Wales relationship, but are becoming more common with regard to Scotland too, as partial devolution of the tax and welfare systems takes place. Management of cross-border ALBs is another area requiring change, with a need to develop new accountability systems to reflect the fact that many regulatory and other ALBs carry out functions that relate to devolved as well as reserved competences.

A **fifth** set of issues relates to management of the unified Home Civil Service, which is widely seen as helping to facilitate smooth intergovernmental relations at working level, and to create useful networks and scope for learning and co-operation. However, our research indicates that the Scottish, Welsh and UK Governments are growing further apart with networks weakening over time for a number of reasons. Many interviewees felt that civil service leaders could do more to build the reality of the unified service, for instance by encouraging secondments and shared career development activities.

Finally, our **sixth** set of issues relates to how the process of constitutional reform is managed. When change to the devolution arrangements is on the agenda, joint teams of officials from the UK and devolved governments should be set up to work out the details and

³³² GAR05

³³³ House of Lords Committee on the Constitution, Inquiry on Intergovernmental Relations in the UK, written evidence from Professor Michael Keating Available here: <http://bit.ly/16adccv>

oversee the implementation of such changes. Past changes, such as the implementation of the Scotland Act 2012, offer a positive model to learn from about ensuring effective intergovernmental co-operation in this important task.

Detailed recommendations

In light of the above, we therefore recommend the following.

1. A more joined up and strategic approach to devolution at the centre

- Benign neglect of the territorial constitution by Westminster/Whitehall is no longer appropriate (if it ever was). The UK Government must take territorial issues as a whole more seriously and should create a stronger centre to co-ordinate devolution strategy on the basis of clear principles and with sufficient attention to how different settlements relate to one another.
- This requires a merger of units spread across the Cabinet Office, Treasury and territorial offices either into a new department for devolution, or else into a single centre within the Cabinet Office. Staff from devolved administrations could also be co-located in this central devolution hub. This would create a central locus for Whitehall's collective institutional knowledge of devolution and would mitigate risks posed by high staff turnover in smaller (and often short-lived) units.
- This newly-configured centre for devolution would be responsible for issuing and updating guidance on devolution and ensuring that departments take devolution fully into account when developing policy or taking other important decisions. It should also actively manage the cross-Whitehall networks of officials with responsibility for devolution, co-ordinate a training offer for policy officials dealing with the devolved administrations, and help devolved officials identify the best point of contact in Whitehall (and vice versa).
- There are still three different jobs to be done in managing relations with Scotland, Wales and Northern Ireland and overseeing changes to the respective settlements. Consequently, even if the territorial offices are merged into a single department, their separate policy teams and outward profiles should be retained. However, they are very small as stand-alone departments. Merging them could increase coherence and might also save costs by merging back office functions, though a proper analysis of the business case would be required to be certain of this.
- For both political and practical reasons, retaining separate and full-time ministers of cabinet rank for each of the non-English territories will also be necessary for the foreseeable future. But these posts could potentially become ministers of state within the new merged departmental structure.

2. Improve consultation and devolution awareness in the policymaking process

- In each Whitehall department, a single senior official (probably not on a full-time basis) should take responsibility for ensuring that the devolved governments are consulted sufficiently and early enough in policy development processes, and held to account accordingly for this by the central devolution department.
- Building on the experience of the 'Senior Officials Scotland Group' (SOSG) set up during the referendum campaign, but with a wider remit covering all the devolved

territories, these senior figures should meet regularly in a cross-Whitehall network to share best practice and flag devolution issues that may affect other departments.

- Departments should also think more carefully about which part of the country they are acting for – England, England and Wales, Great Britain (GB), the United Kingdom (UK) – when developing or setting out policy or legislation. They should be clear about this in public communications and dealings with other departments and governments. This will become particularly important if ‘English votes for English laws’ is implemented.
- There must be a reciprocal obligation on devolved governments to inform Whitehall departments of relevant developments at the devolved level.

3. Refresh and reinvigorate the ministerial committee system

- At the political level, the formal intergovernmental machinery – in particular the Joint Ministerial Committee – plays an important symbolic role as the summit of senior political figures from the four governments, and provides an opportunity for tricky issues to be aired at the highest level. However, we were told that the JMC is not used in an effective way, for reasons that include reluctance to allow discussion of sensitive topics, and ‘political grandstanding’ taking the place of constructive dialogue.
- More time and resources should be dedicated to planning and supporting the JMC Plenary meetings and there should be greater willingness to allow discussion of sensitive topics, with an objective of improving mutual understanding from different political and territorial perspectives. This of course requires that the political leaders themselves (including the Prime Minister) take the need for intergovernmental dialogue seriously.
- The leaders of the four governments should meet in this formal setting at least once a year as at present, but for longer and with greater transparency and scrutiny – for instance by a new Devolution Committee of the House of Commons, or through joint scrutiny arrangements by parliamentarians from the UK and devolved legislatures.
- The overarching JMC Domestic seems to have lost its way and should be scrapped. In its place additional subcommittees should be created in areas with a complex division of powers, such as welfare, energy and the environment. These meetings should be used to discuss and if necessary negotiate issues that cut across the reserved/devolved divide, and could also become a forum for sharing lessons from policy and governance innovations in the different territories.
- The ‘finance quadrilateral’ meetings should become a formal JMC Finance, with far more transparency about its dealings. There should be more transparency in general about how the Barnett Formula operates in practice – how block grants and other financial decisions are determined.
- The EU format of the JMC remains important and should continue its work – but it could be made clearer that this is a shared forum of the four governments (not a creature of Whitehall), even though the UK Government retains ultimate responsibility for determining the UK line in Brussels. Where disagreements arise, there should be greater transparency about how devolved concerns were taken into account (or why they were discounted), as well as a more permissive attitude to allowing devolved ministers to speak for the UK at the Council of Ministers in certain circumstances.

4. *Strengthen bilateral relations to smooth 'jagged edges'*

- While the JMC has value as a multilateral discussion forum, the asymmetry of the devolution settlements means that in many policy areas, bilateral relations are more important. There is a need to strengthen co-ordination between England and Wales in particular, as a result of the many 'jagged edges' of the Welsh settlement. The proposal for a Welsh Intergovernmental Committee has merit and could become a standing forum in which co-ordination is facilitated in areas such as police and justice, skills and employment, and cross-border use of public services such as the NHS.
- Likewise, the changing nature of the Scottish settlement is increasing the number of areas that are neither clearly devolved or reserved, placing a premium on partnership working – and perhaps creating a need for new standing bilateral bodies, for instance around management of the new Fiscal Framework.
- Furthermore, a growing number of important UK Government bodies – including HMRC, Ofcom, Ofgem and the Social Security Advisory Committee – are being required to operate across constitutional jagged edges and work with more than one government. New lines of accountability between these bodies and the devolved institutions will need to be developed accordingly, covering issues such as appointments to and funding of these cross-border ALBs. Triennial Reviews should examine whether these governance arrangements are sufficient.

5. *More active management to maintain a unified Home Civil Service*

- The UK, Scottish and Welsh administrations all benefit from the continued existence of a unified Home Civil Service (HCS). But staff interchange, and other activities that build networks and mutual understanding, appear to have declined.
- To prevent a gradual drift towards fragmentation, there should be more active management of the HCS as a whole by civil service leaders, supported by ministers. This should include encouragement of staff interchange and secondments, as well as expansion of joint training and development initiatives.
- At the same time, it should be recognised that the Home Civil Service is a 'federal' rather than a unitary entity, and many important management powers relating to the Civil Service should be held at the devolved level.
- The presence in Scotland and Wales of many thousand UK Government civil servants could be used more effectively by Whitehall as a resource for generating local knowledge and contacts. There should also be an effort to build networks and co-operation across silos between the various departments present in each part of the UK (and with the devolved governments), with the territorial offices helping to facilitate the sharing of information, staff and other resources.

6. *Working together to implement constitutional change*

- When further changes to the devolution settlements are being considered and negotiated, joint teams of officials from Whitehall and the devolved administrations should be created to work through options, consider implementation challenges, and where possible to generate a single evidence base for the use of both sides in the negotiations, learning from past processes such as the Silk and Smith Commissions.

- Future changes to the devolution settlements should be designed so as to avoid messy divisions of competence between levels of government wherever possible. We therefore support the Silk Commission proposal to move Welsh devolution from a 'conferred powers' to a 'reserved powers' model, as it appears likely to reduce the complexity of intergovernmental relations and the likelihood of disputes.
- Implementation of the Scotland Act 2012 provides positive lessons for how to manage the transfer of further powers to Scotland, Wales or Northern Ireland. These include the creation of joint implementation teams staffed by both governments with accountability to both parliaments, a clear remit and timelines, and oversight by a committee of ministers from both governments – providing a clear line of escalation if disputes arise. Finally, as further powers are devolved, relevant Whitehall departments should follow HMRC's example in working closely with the devolved governments to build up their own capacity to absorb the new tasks.